

SENATE

Tuesday, June 04, 2019

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. Paula Gopee-Scoon, Sen. Anthony Vieira and Sen. Dr. Varma Deyalsingh, all of whom are out of the country; and Sen. Taharqa Obika and Sen. Ashvani Mahabir, both of whom are ill.

SENATORS' APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES,
O.R.T.T., President of the Republic of Trinidad
and Tobago and Commander-in-Chief of the
Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. WAYNE A.M. INNIS

WHEREAS Senator Paula Gopee-Scoon 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 acting Prime Minister, in

UNREVISED

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, WAYNE A.M. INNISS, to be temporarily a member of the Senate, with effect from 4th June, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Paula Gopee-Scoon.

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 3rd day of June, 2019."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES,
O.R.T.T., President of the Republic of
Trinidad and Tobago and Commander-in-
Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MS. FOLADE MUTOTA

WHEREAS Senator ANTHONY D. VIEIRA 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, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOLADE MUTOTA to be temporarily a member of the Senate, with effect from 4th June, 2019 and continuing during the absence out of Trinidad and Tobago of Senator Anthony D. Vieira.

UNREVISED

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 3rd day of
June, 2019."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES,
O.R.T.T., President of the Republic of
Trinidad and Tobago and Commander-in-
Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. ELTON PRESCOTT, S.C.

WHEREAS Senator DR. VARMA DEYALSINGH 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, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ELTON PRESCOTT, S.C., to be temporarily a member of the Senate with effect from 4th June, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Varma Deyalsingh.

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 3rd day of June, 2019."

OATH OF ALLEGIANCE

Senators Wayne A.M. Innis and Elton Prescott SC took and subscribed the Oath of Allegiance as required by law.

AFFIRMATION OF ALLEGIANCE

Senator Folade Mutota took and subscribed the Affirmation of Allegiance as required by law.

ARRANGEMENT OF BUSINESS

Madam President: Hon. Senators, I am awaiting two further instruments of appointment from the Office of the President and when I receive them, with your leave, I will revert to this item on the Order Paper.

PAPERS LAID

1. Report of the Central Bank of Trinidad and Tobago (CBTT) with respect to the Progress of the Proposals to Restructure CLICO, BAT and CIB for the quarter ended March 31, 2019. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]
2. Annual Report of the Telecommunications Authority of Trinidad and Tobago (TATT) for the year 2018. [*Sen. The Hon. C. Rambharat*]
3. Tobacco Control (Amendment) Regulations, 2019. [*Sen. The Hon. C. Rambharat*]

PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE REPORTS

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

Export Centres Company Limited

Seventeenth Report of the Public Accounts (Enterprises) Committee on the examination of the Audited Accounts, Balance Sheet and other Financial

Statements of the Export Centres Company Limited (ECCL) for the financial years 2008 to 2011.

Cocoa Development Company of Trinidad and Tobago

Nineteenth Report of the Public Accounts (Enterprises) Committee on the examination of the Audited Financial Statements of the Cocoa Development Company of Trinidad and Tobago Limited (CDCTTL) for the financial years 2014 to 2016.

Trinidad and Tobago Free Zones Company Limited

Twenty-First Report of the Public Accounts (Enterprises) Committee on the examination of the Audited Financial Statements of the Trinidad and Tobago Free Zones Company Limited (TTFZ) for the financial years 2012 to 2017.

JOINT SELECT COMMITTEE REPORTS

(Presentation)

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

National Statistical Institute of Trinidad and Tobago Bill, 2018

Second Interim Report of the Joint Select Committee appointed to consider and report on the National Statistical Institute of Trinidad and Tobago Bill, 2018.

Mutual Administrative Assistance in Tax Matters Bill, 2018

Second Interim Report of the Joint Select Committee on the Mutual Administrative Assistance in Tax Matters Bill, 2018, the Tax Information Exchange Agreements Bill, 2018 and the Income Tax (Amendment) Bill, 2019.

URGENT QUESTIONS**Trinidad Petroleum Holdings Limited****(Conditions of Syndicate Loan)**

Sen. Wade Mark: Thank you, Madam President. [*Desk thumping*] To the Minister of Finance: In light of reports that a US \$720 million syndicate loan has been secured by Trinidad Petroleum Holdings Limited, can the Minister outline the conditions associated with this loan agreement?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I understand that the Minister of Finance is on the way, and I am respectfully asking that this question be stood down as we await his arrival.

Madam President: Yeah. Next question, Sen. Ameen. [*Desk thumping*]

Entry by Jamaican National**(Steps Taken to Locate and Deport)**

Sen. Khadijah Ameen: Thank you, Madam President. To the Minister of National Security: Having regard to reports that a Jamaican national was allowed to leave the Piarco International Airport after being denied entry by the Immigration Authority, can the Minister indicate what steps are being taken to locate and deport this individual?

The Acting Minister of National Security, Acting Minister of Communications and Minister in the Ministry of the Attorney General and Legal Affairs (Hon. Fitzgerald Hinds): Thank you very much, Madam President. [*Desk thumping*]

Madam President, the exact fact and circumstances as to the event are being investigated. The reality, however, is that that Jamaica national is now at large. As such, his photograph and descriptions have been made available to all units of the Trinidad and Tobago Police Service and to other elements of the security

platform in this country, and efforts are being made to locate him. Once he is located and found, he will be handed over to the immigration authorities for their further management of the situation. Thank you very warmly, Madam President.

[Desk thumping]

Sen. Ameen: Thank you. I have a follow-up. Minister, has the Ministry of National Security or the immigration authority given consideration to changing protocols when dealing with situations like these within the airport?

Hon. F. Hinds: We already and always have a system of protocols in place, Madam President, but once a new situation develops and an investigation is completed and there is evidence that some breach or some weakness was identified, then naturally, Madam President, arrangements are made to tighten those gaps so as to prevent future occurrences in these circumstances.

Sen. Ameen: Thank you, Madam President. Have the officers concerned been removed from their positions while the investigation is ongoing?

Hon. F. Hinds: This question suggests loudly that this is putting the cart before the horse. When the investigation is completed, then one would be properly and reasonably in a position to know what was responsible for this unfortunate state of affairs, and it is only then that a sensible decision-maker would contemplate all of the possibilities available to him or her.

Madam President: Acting Prime Minister, response to question one? *[Desk thumping]*

Trinidad Petroleum Holdings Limited

(Conditions of Syndicate Loan)

The Acting Prime Minister, Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. Apologies for being late. The terms and conditions of the US \$720

million proposed financing for Trinidad Petroleum Holdings Limited will be made public upon finalization of the legal documents which is anticipated within the next seven to 10 days. The financing remains confidential subject to disclosure rules associated with the company's exchange offer under US Securities and Exchange Commission Regulations. However, Madam President, I can provide some information.

The tenor of the loan facility will range from three to seven years and the amount in each tenor bucket will be finalized within the next seven to 10 days. I can also say that the interest rate on the loan would be better than the rate on the US \$850 million bonds that Petrotrin currently has issued.

Sen. Mark: Can I ask through you, Madam President, if the Minister can share with this honourable House the rate of interest on this US \$720 million loan?

Hon. C. Imbert: Madam President, I can say that the interest rate will be better than the existing bonds. The range of reduction will be between 50 and 175 basis points.

Sen. Mark: Madam President, through you, can the hon. Minister indicate when the legal documents have been finalized whether this document will be tabled in the both houses of Parliament for viewing?

Hon. C. Imbert: Madam President, I was very clear that the terms and conditions would be made public upon finalization of the legal documents which is anticipated within the next seven to 10 days. Therefore, if the terms are going to be public, there can be no restraint in laying them in this Parliament.

Madam President: Next question, Sen. Richards.

Central Market Poor Conditions

(Measures Taken by the Corporation)

Sen. Paul Richards: Thank you, Madam President. [*Desk thumping*] Good

morning everyone. To the Minister of Rural Development and Local Government: What immediate measures are being taken by the Port of Spain City Corporation to address the issues of poor sanitation at the Central Market?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I thank Sen. Richards for the question. Madam President, four measures have been taken. The first is, this problem emanates from the fish sales section of the Central Market, so on May 27, 2019, that section was closed for refurbishment and it will be reopened on June 11th so the works would be conducted between May 27th and June the 10th. The second is, this matter stems from an issue of productivity, availability of workers and overtime cost. Discussions have been ongoing with the representative union.

The third thing that has been done is that there are 28 short-term workers who have been hired to supplement the existing staff, and these workers would work at straight time, and avoid some of the overtime cost. And the last measure is that there is in the Development Programme for the Port of Spain City Corporation, a project to refurbish that Central Market and a request has been made to the Ministry of Finance for the release of \$1.8 million for the purpose of conducting the refurbishment works.

Sen. Richards: Thank you, Madam President, through you. Thank you Minister for the response. Can the Minister indicate if in light of, and in addition to, the measures he has outlined, if there is a temporary maintenance schedule and procedure for sanitation at the Central Market.

Sen. The Hon. C. Rambharat: There is, Madam President. There has always been a maintenance schedule. The issue relates to productivity, availability and the cost of overtime. So to overcome that in the short term, 28 short-term workers have been engaged. There have been discussions ongoing with the union, and we

also believe that the refurbishment works—the one carded for May 27, 2019, to June 10, 2019, together with the development works which will cost \$1.8 million—would improve the sanitation at the Central Market. Thank you.

Sen. Richards: And finally, through you, Madam President, has the Ministry been able to ascertain if there had been any health risks posed in light of the breakdown of those situations you outlined?

Sen. The Hon. C. Rambharat: Madam President, the matter of health issues is a matter for the Ministry of Health and the Port of Spain City Corporation—both have health inspectors who are available and, so far, I am not aware of any health situation that has emanated from the current situation with the sanitation.

ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, there are six questions for oral response on the Order Paper; the Government intends to respond to five of them. There is one question directed, Madam President, to the hon. Attorney General which is—Madam President, may I correct myself? The Government is proud to say that we have six questions on notice today and we will be responding to all six, and there is one question for written response for which the response will be submitted by the end of this sitting. Thank you.

WRITTEN ANSWER TO QUESTION

Distribution of HDC Houses

(Details of)

256. Sen. Wade Mark asked the hon. Minister of Housing and Urban Development:

With regard to the distribution of the houses by the Housing Development Corporation in Real Springs, Valsayn South; Cashew Gardens North,

Carlsen Field; La Fortune, Point Fortin; Nepuyo Court, Malabar Site 3; Vieux Forte, St James; Bon Air North; Eden Gardens, Freeport; Trestrail, D'Abadie; and Pier View, La Brea; can the Minister provide the following information:

- (i) a list of all the recipients in each of the developments identified above;
- (ii) the preferred residential districts identified by the applicants referred to in (i);
- (iii) the date on which each application was made in relation to (i) above; and
- (iv) the criteria used to select each recipient?

Vide end of sitting for written answer.

ORAL ANSWERS TO QUESTIONS

Venezuelan and Cuban Nationals

(Measures Taken to Protect)

143. Sen. Wade Mark asked the hon. Minister of National Security: In light of ongoing reports that Venezuelan and Cuban nationals living in Trinidad and Tobago are being exploited by unscrupulous employers, what, if any, measures will the Government take to ensure that this vulnerable group is protected?

The Acting Minister of National Security, Acting Minister of Communications and Minister in the Ministry of the Attorney General and Legal Affairs (Hon. Fitzgerald Hinds): Thank you very much, yet again, Madam President. The issue of the protection of Venezuelan and Cuban nationals from being exploited by unscrupulous employers, and potential employers in Trinidad and Tobago, falls under the remit of the Ministry of Labour and Small Enterprise Development. Only recently, the Minister of that Ministry was out there telling the national

community what is expected of them in accordance with the laws that she and her Ministry administer, and must be congratulated for that.

Notwithstanding this, Madam President, being aware of the difficulties faced by the undocumented Venezuelans here in Trinidad and Tobago, the Ministry of National Security, under the influence of soundly worked-out policy, led by the Prime Minister of this country, is in the process of registering this migrant population. In this process, undocumented Venezuelans and/or Venezuelans who have entered the country illegally, or legally sorry, and have become illegal by virtue of overstay and other reasons, are being registered with a view of facilitating official authorization for them to work lawfully in Trinidad and Tobago for a period of up to one year. This registration process, Madam President, commenced on May 31, 2019, and is scheduled to end on the 14th of June, 2019, with the exception of the holiday, Eid-ul-Fitr.

Further, the Trinidad and Tobago Police Service conducts routine and joint exercises with other agencies wherever crime attracts them or in an attempt to prevent crime. And, Madam President, the newly established Special Operations Response Team, supported by other—or, in fact, they supported other units of the Trinidad and Tobago Police Service and other state agencies on raids that resulted in the detention of 10 men for such alleged exploitation. The reported victims are being protected and defended in this time, and will be so protected throughout any trials that would flow from this.

It is also noted that such victim-centred protection and service encourages the willingness of victims to testify, resulting in more convictions. Higher conviction rates will not only reduce the possibility and deter the possibility of exploitation by employers and potential employers, but will also inherently protect these foreigners from such exploitation in our space. Thank you very much,

Madam President.

Sen. Mark: Madam President, can the hon. Minister indicate to this Senate what were the expectations that would have been outlined by the Minister of Labour and Small Enterprise Development to employers and potential employers as it relates to the exploitation of Venezuelan workers as well as Cuban nationals?

Hon. F. Hinds: Since you permitted the question which is already there—the answer is already in the public domain, Madam President, all I can say is that the Minister of Labour and Small Enterprise Development would have identified the current legal platforms that exist in Trinidad and Tobago and elaborated upon them in great detail, sufficiently so, that any ordinary common sense citizen would have understood them.

Sen. S. Hosein: Thank you very much, Madam President. In light of the Minister's announcement that the Venezuelans would be allowed to work for a period of one year, can the Minister then indicate to this honourable House, what happens after the year has expired—to the Venezuelan nationals?

Madam President: No. That question does not arise at this stage.

Sen. Mark: Can I ask, Madam President, upon the finalization of registration of Venezuelans in this country, can the Minister indicate what other services would be made available to the Venezuelan population outside of labour protection measures as outlined earlier by the hon. Minister?

Madam President: Sen. Mark, I am not going to allow that question. While the Minister in his response gave some more information about the registration process, the question posed initially, I am not going to allow that question. You have two more.

Sen. Mark: Can I ask the hon. Minister, therefore, what steps are being taken by the Government to root out criminal elements that seem to find places within our

spaces in this Republic from Venezuela? Can the Minister indicate what steps are being taken to deal with that situation, Madam President?

Madam President: Sen. Mark, I would not allow that question and I will ask you, as you ask your last question on this, to look at what you have posed. It is about employers.

Sen. Mark: Can I ask the hon. Minister, what specific measures have been employed by the Government to beef up the Labour Inspectorate Division in order to ensure that employers adhere, Madam President, to the labour laws of this nation?

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

Sen. Mark: I hope this one would be helpful.

Madam President: Well, it is your question that you are proposing.

Sen. Mark: No, no, I am hopeful.

Madam President: Yes. **Sen. Mark:** I am hopeful. You know, we always live in hope.

10.30 a.m.

Death of Mr. Kadeem Murray

(Investigation of)

145. Sen. Wade Mark asked the hon. Minister of Health:

Has the Ministry launched an investigation into the circumstances surrounding the death of Mr. Kadeem Murray at the Sangre Grande Hospital and, if yes, what are the results of said investigation?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. The Ministry of Health has implemented its Adverse Events Policy as an institutional framework for managing, investigating and reporting

adverse events for all patients in the private and public health sectors. This occurs when the nature, likelihood and severity of risk for legal liability of an event is high. The policy defines the standardized processes on the prevention, identification, reporting, disclosure, investigating, analysing and managing of adverse events. The clinical disclosure of an adverse event occurs within 24 hours of a practitioner's discovery and the institutional disclosure takes place generally within 24 hours, but no more than 72 hours after a practitioner's discovery of an event. Further, there is a period of 30 days for investigation and submission of a full written report with analysis and corrective actions with follow-up consultations between the Ministry of Health and the management of health institutions, whether public or private.

In some cases the Minister can request reported events to be analysed by independent experts who understand the clinical circumstances and care processes involved and who are trained to recognize underlying system flaws. Recommendations for preventative strategies are rapidly disseminated to all heads of units, clinical and nonclinical, especially when serious hazards are identified. It should be reiterated, Madam President, that all files and written materials generated as a result of an adverse event constitute personal medical information and are required to be maintained in a confidential manner for the privacy, security and well-being of the patient or their next of kin. Madam President, there would be serious legal implications if this information were to be disclosed precipitously. No further information can be disclosed on this particular case at this time therefore. Thank you very much. [*Desk thumping*]

Madam President: Sen. Mark.

Sen. Mark: Can the hon. Minister indicate when would be the most appropriate time when information on this very important matter of public interest would be

made available to the general public?

Hon. T. Deyalsingh: Madam President, I answered that in the body of my answer, information of this nature is confidential and will be shared with the patient's family. The reading of medical reports into the *Hansard*, as wanted by the Opposition, is something that should be scorned, that is something that should be discouraged. Madam President, when the PNM was in Opposition we never once sought to make political gain out of the baby Cottle event or the Crystal Ramsomair event. The PNM never once sought to bring those two cases into the public domain, but my friends opposite see the distress of people and their families as political opportunity and their macabre intentions—

Madam President: No, Minister—

Hon. T. Deyalsingh:—should be denounced in the most vociferous manner.

Madam President: Minister, please, a supplemental question was posed and you have given the response, but the last part of your answer I will ask you to apologize for those words.

Hon. T. Deyalsingh: I humbly withdraw it but I simply want to state, when the Crystal Ramsomair event happened and the baby Cottle event happened, we never sought to make political capital out of it. [*Crosstalk*]

Madam President: Sen. Mark, do you have another supplemental?

Sen. Mark: I think we should rid the Senate of this gentleman.

Madam President: No, Sen. Mark, please.

Sen. Mark: Sorry. I ask no further question of the gentleman.

Madam President: No, but you also have to withdraw what you just said.

Sen. Mark: Yeah, I withdraw the withdrawal.

Hon. Senator: What?

Sen. Mark: No, I withdraw, him, getting rid of. I withdraw that. You are happy

with that, Sir?

Madam President: Sen. Mark, are you moving on to your next question?

Sen. Mark: Yes, Madam, let me pay attention to you—

Madam President: Yes, please.

Sen. Mark:—because you have to deal with the AG shortly.

Sen. Baptiste-Primus: Now, “yuh doh deal with de—”

Sen. Mark: All right, we will have to address the AG shortly. Madam President, may I continue, please—

Madam President: Yes.

Sen. Mark:—without any interruption.

**Citizens of Trinidad and Tobago in Venezuela
(Contingency Plan for Evacuation)**

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

Can the Minister advise as to the contingency plan in place to evacuate citizens of Trinidad and Tobago from Venezuela, should it become necessary?

The Acting Minister of National Security, Acting Minister of Communications and Minister in the Ministry of the Attorney General and Legal Affairs (Hon. Fitzgerald Hinds): Thank you very much, Madam President. Madam President, given the present situation in Venezuela it is indeed possible that evacuation of Trinidad and Tobago nationals residing there may be required. As such, the matter of a contingency plan falls within the remit of the Ministry of Foreign and Caricom Affairs which Ministry would assume the lead position if such a situation ensues. Should such an evacuation become a reality the Ministry of National Security and its agencies also stand very ready and able to assist in the following ways:

1. By providing travel documents to any citizen, at short notice, in

distress, to facilitate their return to Trinidad and Tobago.

2. Identifying Trinidad and Tobago nationals. This identification will be done with the assistance of Trinidad and Tobago's embassy in Venezuela and the Ministry of Foreign and Caricom Affairs.
3. By providing transportation by sea for the evacuees, in such an unfortunate circumstance, by utilizing the fleet of vessels owned by the Trinidad and Tobago Defence Force, in particular the Coast Guard.

It should be noted, Madam President, that diplomatic clearance for vessels to enter Venezuela's maritime borders would be necessary. The vessels can proceed to either the Trinidad and Tobago Coast Guard headquarters at Staubles Bay in Chaguaramas, the Queen's Wharf in Port of Spain or Port Brighton in the Labidco project. The time taken to transit the Gulf of Paria from Venezuela to Trinidad and Tobago would be dependent on the point of origin or embarkation, and in the main could take as much as 60 minutes. And, finally, the Ministry of National Security would assist by providing security and first aid care as may be necessary for the evacuees during the transit to Trinidad and Tobago, all very much available, ready for service if this situation ever becomes necessary. Thank you, Madam President.

Madam President: Sen. Mark.

Sen. Mark: Madam President, in order to identify our Trinidad and Tobago nationals through the embassy in Caracas we need to know the number of citizens in that country. Can the Minister share with this Parliament how many citizens are located in Venezuela at this time?

Madam President: Acting Minister of National Security.

Hon. F. Hinds: That question did not form part of the one I came prepared to ask; I left my crystal ball elsewhere. [*Laughter*] The Senator can make a formal and

sensible request going forward and we would be happy to respond to it.

Madam President: Sen. Mark.

Sen. Mark: One could understand your behaviour, no problem. Madam President, may I ask the Acting Minister of National Security, temporarily, can I ask him, Madam President, whether the embassy, the Trinidad and Tobago embassy is functioning, as we speak, in Venezuela? Can I ask him that, through you?

Hon. F. Hinds: The answer, as far as I am aware, is, absolutely yes.

Madam President: Sen. Mark.

Sen. Mark: Can I ask the hon. Minister whether there is an ambassador located at our embassy in Caracas at this time?

Hon. F. Hinds: As I indicated, the embassy is in existence and functional. Where the ambassador is at this time, I am unable to say; my crystal ball is elsewhere.

Cyril Ross Home

(Details of Alleged Abuse)

152. Sen. Wade Mark asked the hon. Minister of Social Development and Family Services:

Given recent reports of abuse at the Cyril Ross Home, can the Minister indicate what is being done to address this issue?

The Minister of State in the Office of the Prime Minister (Hon. Ayanna Webster-Roy): Thank you, Madam President. In the month of July 2018, the Children's Authority of Trinidad and Tobago received allegations concerning the abuse of children at the Cyril Ross Nursery. The nursery is a nongovernmental organization managed by the St. Vincent de Paul Society of the Catholic Archdiocese. The Cyril Ross Nursery receives a monthly payment for the care and protection of each child resident at the nursery. The Government also supports the

payment of the water and electricity bills for this and all other community residences as informed by the Children's Authority of Trinidad and Tobago. The Licensing and Monitoring Department of the Children's Authority of Trinidad and Tobago commenced its investigations on August 08, 2018. Since that time there were several subsequent investigative processes with the most recent visit completed on the 31st of December, 2018.

The Children's Authority has advised that the investigations revealed that there were several allegations that were not substantiated, such as the claim that residents were not receiving adequate meals at the stipulated times, records were not maintained for donations received, residents were engaging in sexual activities and visitors were allowed to stay overnight. However, the investigation did reveal that there were instances where corporal punishment was being used by some caregivers on the younger residents, and there was a case of verbal abuse by a caregiver. The investigation noted that the use of corporal punishment and verbal abuse by the caregiver are not acceptable at the Cyril Ross Nursery and do not form part of their standard care for the children.

The Cyril Ross Nursery has used a disciplinary mechanism to address the errant staff. The investigation also identified two residents engaged in the use of cigarettes. The Cyril Ross Nursery is working with these children to address what appears to be a nicotine addiction. The investigation also revealed that the Cyril Ross Nursery is not in possession of the undermentioned standard documents:

- an established code of conduct;
- a complaints log; and
- a disciplinary log.

In addressing these matters, the Office of the Prime Minister and the Children's Authority of Trinidad and Tobago met with the Cyril Ross Nursery to discuss its

findings and recommendations in an effort to provide adequate support for the Cyril Ross Nursery. As a result, several measures were implemented or are being considered for implementation. Measures taken to date are:

1. A sensitization session with the staff of the Cyril Ross Nursery. The sensitization session conducted for the staff of the nursery was held on January 15, 2019, and covered the following topics:
 - appropriate disciplinary measures to use;
 - the welfare and best interest of the child;
 - record keeping and documentation; and
 - staff submission of application documents.
2. A multiagency meeting was conducted with stakeholders, including the National AIDS Coordinating Committee and the St. Vincent de Paul Society on February 05, 2019, to discuss the findings and recommendations that were made as a result of the monitoring visits at the Cyril Ross Nursery. The aim of this meeting was to develop a wrap-around action plan to support further development and advancement of the Cyril Ross Nursery. The following recommendations were adopted for urgent attention:
 - The St. Vincent de Paul Society will convene a special meeting to consider the establishment of a board of management to oversee the operations of the Cyril Ross Nursery. This was in keeping with the standards for managing the nursery. The board will have responsibility for policy development, human resource and financial management, among other things.
 - Development of a multiagency support services matrix compiled by the Children's Authority of Trinidad and Tobago

and the National AIDS Coordinating Committee outlining the services available by organizations committed to supporting the Cyril Ross Nursery.

- Review of paediatric HIV data to establish a support mechanism for children at the Cyril Ross Nursery for the next five years.
- Collaboration with other Ministries and agencies to ensure that the clinical and psychosocial needs of children are met.
- Capacity building of staff through training programmes offered to the Cyril Ross Nursery by the Office of the Prime Minister.
- Conduct an evaluation of internal and external programmes currently being implemented at the Cyril Ross Nursery.
- Assess the need for transition services for the current residents in need of such services, as well as those who were former residents.

The last visit to the Cyril Ross Nursery revealed that there has been progress made at this residence. Some improvements include: corporal punishment has ceased, draft policies and procedures for the operation of the Cyril Ross—

Madam President: Minister, your time is up.

Hon. A. Webster-Roy: Thank you, Madam President.

Madam President: Sen. Mark.

Sen. Mark: Thank you very much, Madam President, and I thank the hon. Minister. Can I ask, through you, Madam President, what mechanisms have been established by the Prime Minister's office to monitor the implementation of the various recommendations that the investigation proposed?

Madam President: Minister.

Hon. A. Webster-Roy: Thank you, Madam President. Madam President, since the allegations were made I would have instructed, through the PS, that our M&E team provide continuous monitoring of the nursery. As a matter of fact, the Office of the Prime Minister is working closely with the Children's Authority, as well as the team at Cyril Ross to ensure that all the recommendations are in fact implemented.

Madam President: Sen. Mark.

Sen. Mark: Can I ask, through you, Madam President, what action, disciplinary action, if any, would have been taken against the offenders involved in corporal punishment activity, as well as engaging in verbal abuse of children at this particular home, Madam President?

Madam President: Minister.

Hon. A. Webster-Roy: Thank you, Madam President. As I would have indicated in my answer, the nursery would have taken necessary measures to discipline the errant staff identified.

Madam President: Sen. Mark.

Sen. Mark: Would the hon. Minister be kind enough to indicate to this Senate, what were the necessary and relevant measures of a disciplinary nature taken by the home to deal with these situations that we have outlined?

Hon. A. Webster-Roy: Madam President, in going forward the Office of the Prime Minister would have assisted the home in establishing a code of conduct, et cetera, for staff at the nursery. In terms of what would have been done to the particular individuals indicating in terms of verbal abuse, et cetera, the nursery would have used their existing guidelines. However, in going forward we have worked with the nursery as well as the Children's Authority to establish policies and procedures manuals, as well as a code of conduct.

Madam President: Sen. Hosein.

Sen. S. Hosein: Thank you very much, Madam President. In light of the protection of these young children, can the Minister indicate whether or not the offenders are still employed at the Cyril—at the home, please?

Hon. A. Webster-Roy: Madam President, I will verify that.

Madam President: Sen. Mark.

Sen. Mark: Can I ask the hon. Minister to share with this Senate the monthly payments, seeing that you said that we, the taxpayers, the people, meet the monthly payment of this home through subventions? Can you share with this Senate what is this monthly payment? What is the sum?

Madam President: No, Sen. Mark, I would not allow that question. Next question, Sen. Mark.

Sen. Mark: Is it a supplemental?

Madam President: No, next question.

Sen. Mark: Okay, thank you.

Anti-Corruption Investigation Bureau

(Details of)

153. Sen. Wade Mark asked the hon. Attorney General:

In light of recent statements from the Director of Public Prosecutions (DPP) that the Government should transfer the Anti-Corruption Investigation Bureau from under the Office of the Attorney General to the Trinidad and Tobago Police Service, can the Attorney General indicate whether the Government is actively considering this recommendation?

Sen. Mark: Madam President, I would like, in accordance with Standing Order 27(17), to withdraw this matter because I think that has been publicized since I filed this question.

Madam President: The question is withdrawn.

Question, by leave, withdrawn.

National Gas Company

(Total Dividends Paid)

255. Sen. Wade Mark on behalf of Sen. Taharqa Obika asked the hon. Minister of Finance:

Can the Minister advise as to the total dividends paid by the National Gas Company to the Ministry for each year during the period September 2015 to December 2018?

The Acting Prime Minister, Minister of Finance and Acting Minister of Energy and Energy Industries (Hon. Colm Imbert): Thank you, Madam President. For the period September 2015 to December 2018, the total dividends paid by the National Gas Company to the Government totalled \$7,628,479,281.45, comprised of \$6,114,302,043.45 in ordinary dividends and \$1,514,177,238 in special dividends that arose from the TTNGL, also known as Phoenix Park IPO, and that was the mechanism used to send the proceeds of the IPO to the Treasury. The breakdown is as follows: September 2015 to December 2015, \$2,170,423,800 in ordinary dividends and the IPO proceeds of \$1,514,177,238; for the period January 2016 to December 2016, \$2,086,064,200; for the period January 2017 to December 2017, \$1,350,194,716; for the period January 2018 to December 2018, \$507,619,327.45.

Madam President: Sen. Mark.

Sen. Mark: Can I ask, through you, Madam President, could the Minister indicate what has been responsible for the fluctuation of the contribution by the NGC, particularly in the last period of January to December of 2018, re: dividends paid to the State, to the Government of Trinidad and Tobago? Could I ask the hon.

Minister what may have been responsible for this decline from \$2 billion to almost \$500 million? Can you share with us?

Madam President: Acting Prime Minister.

Hon. C. Imbert: Among other things, Madam President, the preponderance of unresolved claims by end users left for us by the UNC Government.

Madam President: Sen. Mark.

Sen. Mark: I am good.

Madam President: Okay.

ARRANGEMENT OF BUSINESS

Madam President: Hon. Senators, I would like to revert to item 2 on the Order Paper because I am now in receipt of the instruments.

Sen. Mark: Madam President, before you do, can I ask, seek your indulgence on the Written Questions?

Madam President: Sure.

Sen. Mark: Madam President, I would like to seek your guidance on Question No. 256, which, as you know, it is due on the 29th of the fifth.

Madam President: The Acting Leader of Government Business did indicate that that would be available during this sitting.

Sen. Mark: During today's sitting?

Madam President: Yes.

Sen. Mark: Okay, thank you.

SENATORS' APPOINTMENT

Madam President:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE
WEEKES, O.R.T.T., President of the

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

/s/ Paula-Mae Weekes

President.

TO: MR. SEAN SOBERS

WHEREAS Senator Ashvani Mahabir is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, SEAN SOBERS to be temporarily a member of the Senate, with effect from 4th June, 2019 and continuing during the absence of Senator Ashvani Mahabir by reason of illness.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 4th day of June, 2019.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES,
O.R.T.T., President of the Republic of
Trinidad and Tobago and Commander-in-
Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MS. HASINE SHAIKH

UNREVISED

WHEREAS Senator Taharqa Obika is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, HASINE SHAIKH to be temporarily a member of the Senate, with effect from 4th June, 2019 and continuing during the absence of Senator Taharqa Obika by reason of illness.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 4th day of June, 2019.”

OATH OF ALLEGIANCE

Senators Sean Sobers and Hasine Shaikh took and subscribed the Oath of Allegiance as required by law.

JOINT SELECT COMMITTEES

(Extension of Time)

National Statistical Institute of Trinidad and Tobago Bill, 2018

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Second Interim Report of the Joint Select Committee appointed to consider and report on the National Statistical Institute of Trinidad and Tobago Bill, 2018, I beg to move that the committee be granted an extension to September 27, 2019, to complete its work and submit a final report. Thank you.

Question put and agreed to.

Mutual Administrative Assistance in Tax Matters Bill, 2018

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Second Interim Report of the Joint Select Committee on the Mutual Administrative Assistance in Tax Matters Bill, 2018, the Tax Information Exchange Agreements Bill, 2018, and the Income Tax (Amdt.) Bill, 2019, I beg to move that the committee be granted an extension to September 27, 2019, to complete its work and submit a final report. Thank you.

Question put and agreed to.

**ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS)
(AMDT.) (NO. 2) BILL, 2019**

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. I thank my colleagues for that warm welcome as well to this honourable Chamber. Madam President, I beg to move:

That a Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act. No. 20 of 2011), be now read a second time.

Madam President, as I look around and recognize some familiar faces and some new faces, I welcome, certainly, all Senators to this very important sitting this morning. We are here to discuss a rather narrow issue which has been brought upon us by way of a very dedicated push towards the operationalization of laws intended to cause dynamic shifts in the criminal justice system of our country. This particular Bill before us, which is just a mere 11 clauses long, is intended to amend the Administration of Justice (Indictable Proceedings) Act, 2011. This, as the long title suggests, is an Act of Parliament of 2011, but it is certainly an Act of Parliament which was long in the making and certainly its operationalization was

even longer in the making. The concept of a preliminary enquiry, as its name suggests, is an enquiry into a criminal investigation, effectively, in the Magistrates' Court where two aspects of enquiry are permitted. Firstly, an accused is allowed to have an understanding of the case which is put to him and which he must answer, and, secondly, the accused is permitted an opportunity to probe or test that particular case. Those are the two purposes of preliminary enquiries.

Preliminary enquiries have been a feature of our law and certainly the common law for a very long time, as far back as nearly 464 years ago. In 1555, the Marian statutes certainly introduced the concept of an inquisitorial preliminary enquiry. Nearly 500 years ago an inquisitorial enquiry was had, and one can only think of the tales of history and literature to understand what a gruesome process that involved. In 1836, we get a little bit closer to what our law begins to look like, and that is where we had the Prisoners' Counsel Act, that some-183 years ago. Of course in 1836, we as a Crown Colony were dealing with this application of law properly in Trinidad and Tobago.

In 1848 we saw the Indictable Offences Act, otherwise known as the Sir John Jervis Act, and that really took us very closely to the operation of the law which we now have, which of course is the law which was passed into the books of Trinidad and Tobago in 1917 which is the Indictable Offences (Preliminary Enquiry) Act. It is that Act which stands on our books as Chap. 12:01 as Act of Parliament No. 12 of 1917, now 102 years later—let me repeat that—102 years later we now seek to abolish the application of this particular law, this law of preliminary enquiries and we seek to fashion a new system of law.

11.00 a.m.

This is not the first attempt to treat with this particular law. Indeed, as the

amendments are reflective of work of Parliament successively, there have been some 26 attempts to amend the law as it relates to preliminary enquiries.

So what is a preliminary enquiry about? For persons who are not attorneys-at-law, a preliminary enquiry, put in very simple fashion, is the opportunity of an accused to be brought before a Magistrates' Court and at that court undergo the process of examining the case put to the accused, and having the attempt to probe the case to see if there is sufficient evidence to put the accused on trial. In other words then, it is a filtration test designed to select out only cases which effectively pass muster and take them before a judge of the High Court, sitting in the Assizes were the matters are treated with.

In Trinidad and Tobago crime is serious issue and for years successive Governments have been battling with the issue of whether we have an appropriate system to dissuade people away from a life in crime. We hear the clichéd expression of "If you do the crime you should do the time". We ask people all the while to consider avoiding life of crime, avoiding wrongdoing, so that they would not be subjected to the odium and punishment of a criminal justice system. But the efficacy of the criminal justice system is what is effectively on trial, because if you ask the average citizen in Trinidad and Tobago whether he or she feels a sense of relief, that the system is working, that there is a consequence to be met for an action determined to be a crime, where an offence is applied, the average citizen would say that they feel no form of relief. Is this new to the equation of discussion in Trinidad and Tobago? It certainly is not.

When we look to the travaux préparatoires, the preparatory material that one passes through in coming to an investigation of our criminal justice system, one must appreciate that the criminal justice system is comprised of a number of

elements. To have a trial you need a judge, you need a jury, you need a witness, you need a defendant, you need a prosecutor, you need the office of DPP's department in its operation, you need a registry to manage the paperwork and procedures, you need the prison service to keep you in remand if you are so remanded to move you from the prisons to courts, you need rules and operations of courts, you need recordkeeping, you need Witness Protection Programmes, you need police service to conduct the investigations which leads to information, transfer to evidence which come before court.

Needless to say that is a multi-dimensional equation and as a Government, we have spent a significant amount of time engaged in moving the Criminal Justice System forward and I propose to give the great details of that. The manner in which we have treated with each of those elemental pieces perhaps best in my reply, because I am sure that the question of operationalization of this law is going to be foremost in the minds of hon. Senators. Suffice it to say in summary, 45 minutes not being enough to pilot the law, put it on the *Hansard* and explain the outer parameters of operation, suffice it to say, we have increased the judicial capacity numerically by 77 per cent, we have birthed the public defenders system, we have introduced rules of court in the Criminal Procedure Rules, we have created divisions of court in the Criminal Division and road traffic arena, in the family and civil division, in the civil division that is coming up and I can tell you now that we are crafting in final form a probate division so that there is a divisioning of aspects.

We have introduced into the Magistracy a computerized environment; we have undergone a case log backlog analysis; we have birthed in the Trinidad and Tobago Police Service a brand new prosecutorial unit which the Commissioner of

Police is in complete and exclusive command of pursuant to 123A of the Constitution. We have improved the accommodation and provisions of Director of Public Prosecutions. We have improved the complement of staff, we have improved the computerized environment. We have also done a series of amendments with the laws, in transferring laws from summary to either way or to indictable as we have gone.

So that is the summary nutshell aspect of what Senators who are by far longer in the dance than some, will recognize has been properly 30 years of analysis paralysis. Let me repeat that, 30 years of report upon report upon report of we should do, we could do this, we could think of this are now before us. How is that to be evidenced? If you look to the amendments to the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 alone, you would see that we have been tinkering and tweaking with the system trying to move towards paper committals, trying to move towards an acceleration of the preliminary enquiry filtration aspect.

In 2005, we had a significant amount of reform hit the law of preliminary enquiries and between 2005 to 2019 as we stand now, we went through a series of exercises. Very importantly, on the 11th of November, 2011, we introduced this law, Act No. 20 of 2011, the preliminary enquiries abolition law, if I put it that way, the Administration of Justice Act, No. 20 of 2011 was birthed. Sen Prescott sat on the Independent bench then, as did I sit on the Opposition bench. We engaged in robust debate, we dealt with that in the House, we dealt with that in Senate, we dealt with that in terms of ascent and operationalization. On the 16th of December, 2011, this Act which we seek to amend now was assented to by the President and on the 31st of August, 2012, as we now know in the scandal of section 34, there was a partial proclamation of the law.

So it was at that point that we had this old law, the 1917 law, Chap. 12:01, next we had side by side this particular Act, No. 20 of 2011. In that process we then went into an exercise after the repeal of section 34 into another law and that was the law of 2014, which saw us deal with the Administration of Justice (Indictable Proceedings) legislation in a different format. The 2011 law was based upon a St. Lucia model; the 2014 law for committal proceedings was dealt with on an Antiguan model. Effectively, both laws sought to transfer out the need for a preliminary enquiry into an appropriate forum.

This parent Act, the 2011 Act, treats with having Masters of the court manage effectively initial hearings and sufficiency hearings and then indictable proceedings together with such summary matters or either way matters as are associated with, they go to the High Court, or summary matters together with other matters go to the magistrate. So the route and process of this particular Act, No. 20 of 2011 which we seek to amend by this Bill is effectively to say bring the matter forward, either pass through a magistrate if that is your first point of contact or a Master if that is your first point of contact, have a sufficiency hearing, unless you are, by the DPP's hand or by this law not going to have it, go directly to the High Court or go directly to the Summary Court, which is the Magistrates' Court.

Madam President, what time do I end in full time?

Madam President: 11.41.

Hon. F. Al-Rawi: 11.41, much obliged. So let us go the underpinnings of proportionality in the manner in which we as a Government lay that track. Let us come back to the statistics, let us come back to what our society looks like. Prior to coming into Government, I had observed in my full five years in the Senate that we never once spoke to an ounce of statistical information in this country from

Trinidad and Tobago. Speaker after speaker, Government after Government spoke about what happened in UK, what happened in the US, what they found on the Internet. Prior to this particular Government's push for local statistics, we really were not analyzing what Trinidad and Tobago looks like.

So let us go to what we look like. Why do we need abolish preliminary enquiries? Why do we need to make sure that we are not examining the sufficiency of evidence twice? Because the Constitution prescribes due process, the rule of law, the fairness of trials if you put it in simple terms. What is required is that an accused has a trial. That trial ought to be fair, that trial ought to be balanced. Has the removal of preliminaries enquiries been tested in the court? Yes they have. Particularly in the Privy Council arena where we have Hilroy Humphrey case which effectively said there is no right to a preliminary enquiry, you just need to have fair trial. So the law is settled. You do not need a preliminary enquiry, but why do we statistically need to have this in our gear.

Let us turn to the statistics coming from the Judiciary as are published and let us look to the Magistracy. In the Magistracy there are matters pending by offense and length of time as at July 31, 2018. And what we have done is we have taken the opportunity to disaggregate matters pending between indictable and summary. Indicatable plus summary there are 44,183 matters outstanding, 44, 183 matters outstanding. Of that 11, 210 are summary matters. So we have 32, 973 pending indictable matters at the Magistrates' Court. They are categorized across murder, attempted murder, kidnapping, arms and ammunition, sexual offenses, narcotics, fraud, corruption, trafficking in persons, robbery, wounding, larceny, arson, escaping custody, riot, malicious damage, et cetera.

In that pact in disaggregating the numbers, the preliminary enquiry dance

statistically demonstrates that we have, for instance in the category of sexual offences, 2, 883 sexual offences matters outstanding out of 32, 973, and in that pack we have three matters over 14 years in age. We have one between 13 to 14 between, five between 12 to 13, six between 11 to 12 years outstanding, 17 over 10 years to 11 years, 10 between 9 to 10, eight between 8 to 9, 153 over seven years, 205 over six years, 294 over five years.

Thousands of matters in the sexual offences arena where a witness, an accused and the entire marching band have to appear in the Magistrates' Court for over five years from the laying of the charge, because mind you, there being no statutory period for a crime, a rape may have occurred in respect of a minor—a child—four years prior to the laying of the charge, five years prior to the laying of the charge and we see for example in the sexual offences arena, child victims who are now adults, mothers, wives, et cetera traipsing into our court for five, seven, 10, 12, 14 years, year on year, for a magistrate to decide whether that matter should go to the High Court to be tried.

In other words, it makes a mockery of justice for the average citizen, it belies the rational jurisprudential underpinnings for the need to have sanctions behind law to cause dissuasion, so that people are encouraged to abide by the laws of Trinidad and Tobago. So jurisprudentially, the underpinning for a preliminary enquiry maintained in our system as we look at the sexual offences arena alone, the statistical information from Trinidad and Tobago demonstrates that we are engaged in the exercise of insanity.

But there is a cost to this and the taxpayers fund the cost. Statistically, we have demonstrated that the taxpayers of this country spend on average TT \$25,000 per month per person incarcerated in remand conditions. There are close to 3,000

persons in remand, 1,000 of them alone on matters of remand for murder which is non-bailable.

In other words then, 1,000 times 25,000 per month per head, times 14 years and 15 years and 16 years, takes us into the realm of the billions of dollars in taxpaying expenditure.

11.15 a.m.

So, the amendments before the Senate today propose a slight modification of the law. We came to this honourable Senate, we brought into effect amendments which we thought would improve the criminal arena, the criminal justice arena, we had embarked in an exercise in 2016 and 2017 where we said—“you know what?”—let us anchor the removal of preliminary enquiries squarely within the domain of the DPP. Let us utilize section 90 of the Constitution where the DPP has three rooted powers to commence prosecution, end prosecution or take over prosecution in his own discretion. Let us use that to allow the DPP simply to say summary or indictable and pitch it in to the Magistrates’ Court or the High Court. In the course of engaging in that exercise we were fortunate enough to put into operation three essential matters:

1. Criminal Procedure Rules;
2. New courts;
3. Creatures referred to as Masters of the Criminal Division.

And in doing that we met the three essential qualifications underwritten as conditions precedent for the 2011 law. Herbert Volney, then Minister of Justice, in piloting the 2011 law said the law will not be proclaimed until we have Masters, rules and courts. We know what happened then, there was a breach of that undertaking, section 34 happened. However, as a Government we were able to

retool the criminal justice system, and therefore we were given a choice—proceed with the amendments that we had proposed in 2016, as we had done deep consultation on going along the DPP route, or instead operationalize a suitably amended version of the 2011 law.

The 2011 law we took into a deep form of amendment. As a Parliament we specifically added that Act. That Act was dealt with by the Administration of Justice (Indictable Proceedings (Amdt.) Act in February 2019. In February of this year the amendment Act, No. 3 of 2019 was assented to on the 13th of February, 2019. As a matter of course, the office of the Attorney General prior to proclamation of law writes out to stakeholders and asks as to the state of preparedness for proclamation. Because as a Government we are anxious to proclaim the abolition of preliminary enquiries. In the course of that consultation for proclamation we received submissions which we thought were useful, and those submissions led us to this Bill.

This Bill effectively asks only for a few things. In this Bill we are proposing in 11 clauses, effectively, treating with clauses 3 to 11 inclusive, we propose amendments which are very rational in terms of a proportionality and in terms of persuasion for amendment. What we are effectively asking to be done is we are asking for the four central matters that the consultation produced to be treated with in this Bill: One, we want to make sure that this law as it will come into effect applies to all people who are arrested. Not just by way of complaint leading to warrant, passing through summons, not just by way of a mechanism of a warrant or a summons to bring you to court, but instead, persons who are arrested in general, because the police may very well arrest you without having had a summons or a warrant. That is one.

Two, we wanted to treat with the manner in which we manage joint trials. Because obviously persons can find themselves before the court with co-accused or with multiple charges. And co-accused and multiple charges take us into the realm of permutations and combinations where we may have indictable mixed with summary or mixed with either-way offences, or where we may have multiple accused in that category as it is split. So that is the second aspect. The third aspect is where we want to treat with a procedure to be followed when we are transferring matters which have already commenced under the previous law. Because under the amended 2011 law we have allowed for the prosecutor on the accused, without consent from the other, being able to bring the matter under the new law, effectively put. That is the third limb.

The fourth limb is that we are treating with the fact of clarifying the circumstances where the DPP should have no sufficiency hearing. Remember in this arena we are treating with the fact of, you come before the court, you get before a magistrate, if that is your first point of contact, or before a Master, if that is your first point of contact, you have an initial hearing, at the initial hearing there is a scheduling that happens in the course of a sufficiency hearing. The sufficiency hearing is where the Master says, "Right, indictable up the road to the High Court", or "Summary down to the Magistrates' Court"; and we skip past all of the need to filter whether there is sufficient evidence until you get to a trial. So what we are proposing is that we would clarify the circumstances where the DPP will say there will be no sufficiency hearing, proceed straight. It ties in obviously with the Constitution itself in section 90 of the Constitution. So, that is point number four.

There is a fifth point, and that is where we needed to clarify the language with respect to the preservation of evidence and documentary evidence. There was

an inadvertent reference only to that evidence being used in sufficiency hearings. Having clarified in the amendments that we do now that there may be no sufficiency hearing in circumstances where the DPP has exercised his prerogative, either under the Constitution or under this law, we say, “Let’s deal with where that evidence goes to for a matter that started already”. So there are five essential core elements of this law.

So let us deal with the law in the round, let us deal with the rationale for the particular amendments, and let us try to tie it in together. In that five-pronged amendment we are proposing that we amend sections 3, 4, 6, 8, 8A, 19, 27(3), 29, and that we introduce a new section 32A. And if I were to put that into context now, section 3—which is proposed to be amended by clause 3 of the Bill—clause 3 proposes that we insert a modification to the definition of “accused”. An accused as previously fashioned means a person or person against whom a complaint is made or an indictment is preferred. And that definition of accused was not broad enough to factor the circumstances where a person can be charged for an indictable offence—meaning, the police charged you, they did not bring you before the court by way of summons or complaint, there was no warrant for your arrest, let us deal with the point where you find yourself before a magistrate in circumstances where there was no summons or warrant for your arrest. No complaint. That is straightforward. That is clause 3 of the Bill. Clause 3 amends section 3 of the Act.

Clause 4 proposes an amendment to section 4 of the Act. Section 4 of the Act is where we had the reference to the institution of how the law is to be applied. This Act shall apply to proceedings which are instituted on or after the coming into force of this Act, and then we went on to say, where proceedings were instituted prior to the coming into force of this Act the prosecutor or the accused, both of

them, may elect to have the case determined in accordance with this Act. In other words then, that was the ability to bring the old matters under the new law. What we have sought to do is to introduce a specific route by introducing a new section 32A. Section 32A is introduced by clause 11 of the Bill. Section 32A is how we transition the matters of moving from the Magistrates' Court to the High Court in the circumstances of section 4 of the Act. We introduce the need for management of joint trials and two or more charges to be tried together. And that is where in clause 4, in amending section 4, we propose the insertion of a new subsection (3). Subsection (3) effectively says, if there is a joint trial and anybody elects, make sure it is all of the joint matters going.

Clause 4, section 4(3), subclause (a) treats with that joint trial. Subsection (3)(b) treats with two or more charges that are to be tried together, and there we make sure that if they are going to bring the previous proceedings or new proceedings that all of the charges themselves must be dealt with as one batch. Because it would be a tragedy to have a disaggregation of accused and also matters which would cause confusion and unnecessary costs.

We then deal with clause 5 which proposes an amendment to section 6 of the law. Section 6 is the institution of indictable proceedings and compelling the appearance of the accused. What we propose in clause 5, where we amend section 6, is first of all that we ensure an amendment to subsection (3). We said previously in the law as it stands now, prior to us asking for it to be amended, where the DPP prefers an indictment under subsection (2) the Master may issue a summons or an arrest warrant to compel the appearance of the accused before him.

We propose now to introduce a removal of section 27(3). Section 27(3) is removed by clause 9 of the Bill. We propose to take the language from section

27(3) of the Act, transport it to section 6 by clause 5 introducing that language, and effectively we are saying in the new proposal, without limiting the generality of subsection (2), the DPP may prefer and file an indictment under subsection (2), and then we add in those circumstances for clarity: coroner's inquest, where a co-accused is arrested at any time and you are joining him effectively to a matter that is ongoing, where the accused is charged with an offence involving serious or complex fraud, where the magistrate was unable to complete a preliminary enquiry before the coming into force of the Act or a Master is unable to complete a sufficiency hearing because of physical or mental infirmity, resignation, retirement, death, inability for any other compelling reason. And we did that to join also offences where there is a serious sexual offence and there are threats, et cetera.

But in the subclause (d), which we had in the law in the section 27(3), which we did in February, where we treat with examples of the need for legislative clarity, as Attorney General I took an interpretation summons before the High Court to treat with a matter which has now been concluded, which was the circumstances of Madam Justice Marcia Ayers-Caesar, then Chief Magistrate, in the circumstance of her resignation/dismissal, as it was alleged. In those circumstances there was a need for clarification of the circumstances leading to retirement or resignation. We caused that amendment to be clarified in the High Court. We have the benefit of a judgment, and we have now provided for circumstances in legislation to treat with what we can call the Marcia Ayers-Caesar phenomenon.

It also treats with, in terms of general purport of law, and I want to repeat that, general purport of law within the meaning of the Liyanage line of authority,

which is Privy Council authority to treat with whether law is ad hominem or not. This law is not designed to treat with any existing matter before the court. There are several existing matters before the court that fall within a general category of having gone on for five, 10, 15, 20 years in preliminary enquiry and which involve serious complex fraud. I can also say that in the uptick of the new prosecutorial unit in the Trinidad and Tobago Police Service, I am very aware that there are serious fraud matters that are expected to be managed imminently. Let me just put it as generally as I can, in those circumstances the last thing that this country would want to have is a 20-year sojourn into whether there is a matter to go to the High Court. Let us just get to the High Court and allow serious and complex fraud to be treated with. And I am saying that in very general terms.

We then turn to clause 7, which proposes an amendment to section 8A. I should add that 8 treats with clause 6—forgive me, clause 6 amends section 8. In section 8 we are introducing a new subsection (7). This new subsection (7) treats with the circumstances where someone may be arrested otherwise than by being brought before the court by summons or by warrant. So subsection (7) treats with a person who is arrested and charged with an indictable offence that that person shall without delay as soon as practicable after he is arrested be brought before a Master, or where not possible, a magistrate. In other words then, preserving the constitutional rights to arrive before a court and to have your matter treated with. That would of course preserve the habeas corpus route, all of the other applications, et cetera.

Clause 7 amends section 8A, capital A, where we include the cross-references to the new 8(7) as has been introduced, and that is really a consequential amendment for the introduction of the new subsection (7). We then go to clause 9

of the Bill. Clause 9 of the Bill treats with an amendment to section 27. If we look to section 27 and we tie it back we are now—or forgive me, I have omitted clause 8 of the Bill. Clause 8 of the Bill causes an amendment to section 19 of the law. Section 19 falls under Part III, the sufficiency hearing, and section 19 is where you say a sufficiency hearing shall be held by a Master to determine whether there is sufficient evidence. We are introducing into this subsection, 19(1), the fact that essentially there will be no sufficiency hearing in circumstances where the DPP prefers an indictment under 6(2); 6(2) is where we treated with things like complex fraud, coroner's enquiry, sexual offences where there is threat to witness. So there will be no sufficiency hearing in respect of those matters. You go directly to the trial of the matter.

We then turn to clause 9. Clause 9 is where I was referring to the amendments to section 27. Section 27 is the discretion of the DPP to prefer an indictment. As I will remind, clause 5 transposed effectively what was subsection (3) of clause 27—of section 27 of the Act, forgive me. And what we have done is to remove the reference to 27(3). We have transposed it into the earlier sections of the Act pursuant to clause 5, which amended section 6. So that is the tidy-up aspects to section 27 of the Act. Clause 10 amends section 29 of the legislation. Section 29 is the admissibility of witness statements at trial. And we thought it important to cause a clarification to subsection (6). Subsection (6) said, depositions taken in proceedings instituted prior to the coming into force of this Act are permitted to be used at the sufficiency hearing.

Obviously, there is an inadvertent confining of applicability to only the sufficiency hearing. That could obviously not be the intention that we had, and therefore we are now saying depositions taken and exhibits admitted in

proceedings instituted prior to the coming into force of this Act shall be admissible as evidence at the trial of the accused. So we preserve all of the matters which happened by way of admissibility of evidence, loading of the record. If you are going to bring yourself under the provisions of this new law pursuant to section 4, pursuant to section 6, then take everything with you and have the lawful authority to use it. And that is the essential rationale for the amendment to section 29, subsection (6). The last section that we propose—

Sen. Prescott SC: AG, would you? Hon. AG?

Hon. F. Al-Rawi: Senator.

Sen. Prescott SC: Forgive me, President. May I just ask the AG to offer me a further, more full explanation of what becomes of the sufficiency hearing that was provided for in section 29(6) of the Act?

Hon. F. Al-Rawi: Sure. Section 29(6) said, effectively in the transitional environment, 29 dealt with the admissibility of witness statements at trial. So the marginal note says, “At trial”. We all know that the marginal note is not used as any statutory interpretation. But common sense tells us that is what we intended.

Section 29 in its original form, and then as amended in February of this year, we had proposed that depositions taken in proceedings instituted prior could be used at the sufficiency hearing. So we had mistakenly boxed ourselves to that evidence only happening at a sufficiency hearing. As we have seen the amendment to section 6 there are circumstances where the DPP would say, “no sufficiency hearing”— complex fraud, coroner’s enquiry, et cetera, magistrate resigned, retired, et cetera. In those circumstances where the DPP elects or where an accused is in a circumstance of election, because that can happen too, and you go directly to the trial, we do not have a sufficiency hearing. So you could be

faced with an argument by a charming lawyer to say, “Look, you can bring all of that evidence that you had admitted already in the preliminary enquiry before—restart everything”. So here it is we instead cause surgery to 29(6) by saying, everything that happened and that was admitted properly in the course of the preliminary enquiry that can go to trial, not only sufficiency hearing.

Sen. Prescott SC: And that is where my question was. So sufficiency hearing remains a place to which the depositions may be taken?

Hon. F. Al-Rawi: Yes.

Sen. Prescott SC: Thank you very much.

Hon. F. Al-Rawi: So, sufficiency hearings can happen pursuant to sections 11 and 12 of the parent Act. If you run the route of sufficiency hearing, because everything is brought before the Master at that point. This is the circumstance where you are skipping past the Master and you are going straight to the High Court judge in the Assizes.

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

Hon. F. Al-Rawi: Thank you, Madam President. Madam President, the last section which is proposed to be dealt with is a new section 32A, caused by consideration of clause 11 of the Bill. Clause 11 invites us to insert a new 32A; 32A is effectively the transitional provision now:

“Subject to section 4(3), where the prosecutor or an accused elects under...4(2) to have a case determined in accordance with this Act, the Magistrate shall order that the accused be brought, as soon as practicable, before a Master to be dealt with in...Part II.”

In other words then, this is the trigger that invokes the magistrate to send it to the Master. So, we are putting a positive obligation upon the magistrate to cause the

matter to go before the Master.

“Where a Magistrate makes an order under subsection (1), the Magistrate shall where it is reasonably practicable to do so, order that any summary offence with which the accused is charged and which appears to the Magistrate to be related to the indictable offence, be tried in the High Court...”

Here is where we treat with the dichotomy that England had to treat with in 2001 and then 2003, and then in subsequent amendments. Because it was in these circumstances, if you follow the English jurisprudence, they dealt with indictable-only matters going straight. Then they said, hold on, what about either-way offences? Then they said hold on, what about summary matters? So they had a collective management thought over a series of years. What we have said, take the indictable thing, any either-way that goes with it, take the summary that is associated with it, the judge will, pursuant to the rules, treat with summary matters as judge- only and treat with indictable matters with the benefit of a jury, or if you elect, no jury at all, as our law now successfully demonstrates that you can have trial of an indictable matter without a jury—judge-only trials. [*Interruption*] Yes, please.

Sen. Prescott SC: Madam President, please allow me further clarification once again. So that, insofar as the magistrate has made a 32A(1) Order that presents—that the matters go before a Master, how am I to read (2) that says it may go to be tried to the High Court? Does the Master fall out of the process?

Hon. F. Al-Rawi: No. Where a magistrate makes an Order where it is reasonably practicable to do so, any summary matters go along with it. So, the Master is always invoked in 32A(1), the Master is always a creature there. 32A(2) says,

“take the baggage with you”. Take the summary, take the either-way and let that go to the trial of the High Court via the Master because there is still a sufficiency hearing or the direct route if the DPP so elects. I think I have two minutes left or less than that.

Madam President, we then, of course, in subsections (3), (4), (5), treat with the prescriptive application of how the magistrate causes the matter to move from the Magistrate’s Court to the High Court. In a nutshell, the law is proportionate, the law is rationally connected to measures which need to be treated with. The amendments before the honourable Senate are driven by way of consultation, emanating—causing responses to come onto the record. We are now tidying up. We are ready and able to abolish preliminary enquiries. That is a significant development for Trinidad and Tobago. Upon the passage of this law, if the Senate should be so minded, we intend to cause the consideration for the implementation of this law. This is hundreds of years too far away. It is 30 years in analysis paralysis. It meets with all of the measures that we have caused by way of operational changes, and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Saddam Hosein: Thank you very much, Madam President, for the opportunity to rise in this debate, to debate what is a Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011). And, Madam President, before I begin my debate, I would just like to express condolences to Mr. Chaitram Sinanan, who would have passed away this morning, prominent attorney-at-law in San Fernando. So, I would just like to express condolences on behalf of the Senate to Mr. Chaitram Sinanan, his family, his friends. And, Madam President, we can all see that one day we make laws for the

benefit of the people and for continuity, and we in this Senate should remember that that is our foremost duty. Our duty is to the citizens of Trinidad and Tobago, and to live in a more peaceful and a more prosperous society.

And two of the most pressing issues in this country right, Madam President, are that of, one, the economy; and two, crime. And we must take every measure in order to deal with the scourge of crime in our society. And we have seen that the judicial system, especially the criminal justice system, has come to almost a grinding halt in terms of how matters are being dealt with in the criminal justice system. Successive administrations have come before and tried to address the situation. I must commend one, firstly, that the Attorney General would have used one of the most pieces of law that was passed under a UNC Government in order to now be implemented to try to alleviate the burdens of the criminal justice system.

But there has been a history of trying to abolish preliminary enquiries in Trinidad and Tobago. And in a nutshell, the PI basically is that any criminal—any person charged with a criminal offence in this country, they start at the Magistrates' Court, and if you are charged with a summary offence, the matter starts and finishes in the Magistrates' Court. If you are charged with an indictable offence, the matter starts in the Magistrates' Court, a preliminary enquiry is conducted by the enquiring magistrate, and if a prima facie case is made out that the person would have committed the offence, then the matter would go before the High Court to be tried before a judge and a jury. And this procedure, as the Attorney General has indicated, has been existing throughout several jurisdictions spanning almost 100 years.

In 2005, then Attorney General, from a PNM Government, would have

attempted to reform the PI system in terms of the introduction of paper committals, so no longer would a witness have to go to court and have to only give viva voce evidence, meaning, the witness is being sworn, placed in the witness box, and they give the evidence, the accused has an opportunity to cross-examine the witness. The paper committals would have been the filing and tendering of witness statements on behalf of the prosecution witnesses together with the relevant exhibits.

Then, ushered in a new Government in 2011, the United National Congress led by the hon. Kamla Persad-Bissessar, then Attorney General Anand Ramlogan would have piloted and passed the Administration of Justice (Indictable Proceedings) Act, 2011, and this is the Act that we are dealing with. It was a model that we adopted from the jurisdiction of St. Lucia, whereby Masters are being used to conduct what we call now, are sufficiency hearings. So basically an accused person no longer has the right to cross-examine the witnesses on behalf of the prosecution.

The Master considers all of the prosecution's evidence and then decides whether or not a sufficient case is made out against the accused, and then commits the person to trial before a judge and a jury.

11.45 a.m.

Madam President, another Bill came in 2014, but I will not touch that Bill, and it was passed actually. But you will remember this year, in this Senate, we would have debated an amendment to this very parent Act. And in that Bill, Madam President, we would have looked at several clauses, and the Attorney General at that stage would have indicated that these amendments were born out of the fact that he would have conducted stakeholder consultations before the

operationalization of the legislation, and therefore that would have prompted the amendment, the first amendment I would call it, to the Act. This is the second amendment.

Madam President, one begs the question: Why were not these amendments included in the first batch of law. Why is it that we are here at this stage, coming in the same session to amend the same Act? Is it that there was not proper engagement of the stakeholders? Because I looked at the Attorney General's speech in the other place, and the Attorney General would have indicated that this Bill, he went back to the stakeholders, but I thought he would have made mention of the stakeholders in the Senate.

But, Madam President, I do not know if the Law Association was consulted on this. I do not know if the Criminal Bar was consulted on this, and this is a very fundamental piece of legislation. Because one of the most important parts of this Bill is clause 4. And clause 4 effectively, what it does Madam President, clause 4 of the Bill it allows the prosecutor—if a matter has been continuing as a preliminary enquiry before the commencement of this Act, all the prosecutor has to say is that I want this matter to now go before a Master of the High Court. And what is dangerous about that is this, is that a person would have spent a couple years before the enquiring magistrate and then all of a sudden the attorney at law had an opportunity to cross-examine that witness and witnesses that the prosecution would have bought, but now all the prosecution has to say is that listen, this matter I want it to go before a Master. Do you know, Madam President, that the court, the magistrate has no power, no jurisdiction to refuse the application of the prosecution, none whatsoever, and that brings me to the point where I believe that we may be trampling on some serious constitutional issues. Because if

the legislation and the Legislature attempts to limit the remit of the Judiciary, then definitely we have to look back at the legislation to determine whether or not we are crossing those constitutional hurdles.

Because there is a case in Mauritius, *The State v Khoyratty* and in that case legislation was passed in order to deny the Judiciary from granting an accused person bail. The Privy Council in that case held that when you usurp judicial function, when the Legislature usurps judicial function you are in breach of the doctrine of the separation of powers. [*Desk thumping*] You are in breach. And in this case, Madam President, I am seeing that a similar trend is happening here with respect to clause 4, because a magistrate has no power. All the magistrate does now is rubber stamp the decision of the prosecution, and in the Bill it gives also the power to the accused.

But I looked, Madam President, at Barbados, and they would have also tried to restructure their preliminary enquiries, and in their transitional provision if you would allow me to quote from the Magistrate's Court Act, it says:

“From the commencement date, committal proceedings for an existing charge shall only be conducted in accordance with the provisions of this Act where at or after the commencement date the committal proceedings for the existing charge has not commenced.”

So simply that says that the Act shall not apply retroactively, but:

“An accused person for whom committal proceedings have commenced prior to the commencement date may, in respect of an existing charge, make an application to the examining magistrate for those committal proceedings to be continued in accordance with the provisions of this Act.”

So what this provision did, Madam President, is that it gives the magistrate a

power now to determine whether or not the matter shall apply under the old system or the new system. And I propose that some safeguard be given in this piece of legislation. I know the Attorney General would have said that this would have existed in the 2011 parent Act. But, Madam President, we are a Parliament, we have all taken an oath; we have said that we would protect the interest of the people. The Attorney General is the guardian of the public interest, and I think we should give the safeguard to the ordinary people of Trinidad and Tobago. Because this provision can be used by the prosecuting authorities in order to cause some—I do not want to accuse anyone, Madam President, but there are several cases of malicious prosecution in this State. We have seen them and we do not want to run afoul of those principles when we are dealing with criminal matters especially, because we have seen recently a certain trend of matters and we do not want the prosecution to use this power in order to manipulate how the prosecution goes. Because in the Constitution of this country it requires that every person has the right to a fair trial and protection of the law. And that is a very important issue that I wanted to deal with.

The Attorney General also indicated that this is not ad hominem legislation. It is not ad hominem. Madam President, I just want to reference a judgment from the Caribbean Court of Justice, the appellant jurisdiction. It is a matter involving the *Attorney General of Belize v Philip Zuniga*, and Madam President, the CCJ had to determine a particular piece of legislation that was passed in Belize run afoul of the ad hominem principle, and this is what the CCJ said at paragraph 41 of that judgment. It says that,

“Legislation prompted by the acts of a particular individual or group, accompanied by the introduction of steep mandatory penalties, and

providing for rules to be made by the Attorney General, might raise a red flag, especially where the Government has or may have an interest at stake...To offend the doctrine”—of ad hominem legislation—“it must be shown that the legislature is undermining the decisional authority, or the independence of the judicial branch by compromising judicial discretion.”

So I will pause there. I raised the issue earlier that you remove judicial discretion, you do not give the magistrate that opportunity to perform a judicial function. Therefore, what the CCJ is saying here is applicable first. The court’s ability to address legal principles in a pending case, that is an adjudication process, must be negatively impacted so that it can truly be said that the Legislature in order to guarantee a particular outcome is prescribing or directing or constraining the court in its application or interpretation of those principles. The court has to make a judgment as to whether the law in question is an exercise of legislative power or an interference with judicial power under the guise of exercising legislative power. And, Madam President, I want to say that clause 4 of this Bill has disguised itself as legislative power, interfering with legislative power. And this is an issue I would also like to raise, it is that now—a preliminary enquiry, a magistrate starts off by determining whether or not a prima facie case is made out. Everybody knows what a prima facie case is. It is a test for which the evidence will be such that a jury properly directed, could properly convict on the evidence, *R v Galbraith*. Everybody knows the Galbraith test.

So, Madam President, under the old system, the magistrate knows what he or she has to do, whether a prime facie case is made out, but when you go under the new system, there is sufficiency hearing, and now the Master has to determine whether or not there is sufficient evidence. Madam President, we do not know

what is the evidential threshold for sufficient evidence, because in the parent Act it was stated that sufficient evidence is a prima facie case, but that provision was deleted. So now there is a mix up with respect to the system, so if a person decides to go under the new system, what is the evidential threshold that one has to satisfy at that stage, having consideration to the fact that they had a legitimate expectation that the prosecution has to satisfy a burden of a prima facie case in a preliminary enquiry. So it raises certain issues there with respect to the standard of proof.

Now, Madam President, there is also clause 5 of the Bill which would have dealt with—the Attorney General would have gone through certain provision of clause 5 of the Bill. And the Attorney General was right that we had over 40 persons in this country who had to suffer for their cases to start over, all because of improper administrations of appointments, Madam President. And this legislation will now try to cure that issue, but we must remember that those persons who have been incarcerated although the legislation is curing the issue now, no one can repay them for the time that they had lost, Madam President, no one.

And then you will see Madam President, that there are certain other instances in which the DPP may just prefer and file an indictment, and one of those cases is those involving serious or complex fraud. And as I mentioned earlier, there are many cases that are now being filed before the court with respect to serious or complex fraud. And it would hurt me, Madam President, to know that we are empowering the prosecution especially in a time where we have been seeing abuse of police powers and you are empowering the prosecution in these cases in order to prosecute these matters in such light. Because if you would have read or picked up any newspapers this morning, Madam President, you would have seen this. You would have seen in the *Trinidad Guardian* headline front page lying witnesses—

“Lying Witness. Man admits to fabricating evidence”, judge—

Hon. F. Al-Rawi:—on the Standing Order for pre-trial—I am sorry, for sub judice please. [*Crosstalk*]

Madam President: Sen. Mark, may I be allowed to make a ruling? Thank you very much. Attorney General, the Senator is referring to newspaper articles from today, and I am listening to what he is saying. He is not infringing the Standing Order. Continue Senator. [*Desk thumping*]

Sen. S. Hosein: Madam President, judge knocks DPP in triple murder case, three men freed after a decade in jail. *Newsday*, “Three freed after judge rules, DPP was wrong”. *Daily Express*, “Three freed of murder, free at last”, Madam President. And a written judgment was handed down yesterday by Justice—the hon. Madame Justice Quinlan-Williams—

Hon. F. Al-Rawi: Standing Order 47, Madam President with the greatest of respect, now into the content of it, Madam President.

Madam President: Sen. Hosein, continue please.

12.00 noon

Sen. S. Hosein: Thank you very much, Madam President. Madam President, and for the record this is a written judgment published and also I have checked, no notice of appeal has been filed in this matter, please.

Madam President: Sen. Hosein, I have made a ruling and I have told you to continue, so there is no need for you to be justifying anything. Please continue, I will guide you along the way.

Sen. S. Hosein: Thank you very much, Madam President. Madam President, and in this judgment, the judge would have gone through the facts of the case. And the judge would have indicated—

Madam President: Sen. Hosein, while I am permitting you to make your contribution and make reference to the decision, I do not think it is appropriate for you to be going into everything in the judgment, okay? So you need to make your contribution a little more compact.

Sen. S. Hosein: Thank you very much for your guidance, I appreciate it. And, Madam President, what the judge in that case expressed was concerns in which the exercise of the power of prosecuting authorities in this country is exercised. Because the judge found that certain decisions were not fairly and justly made.

Hon. Al-Rawi: Madam President, I rise on Standing Order 47 and I will continue to do so. I fear that my friend is on the wrong track. [*Crosstalk*]

Madam President: Members, please. Attorney General, I have made a ruling and I am allowing Sen. Hosein to continue within a certain framework. I am monitoring what is being said and I am well aware of the Standing Orders. Sen. Hosein, please continue. [*Desk thumping*]

Sen. S. Hosein: Thank you, Madam President. Madam President, these are issues that we have to raise for the public interest, because you would have to understand that persons in this country have to have fair trials, they must not be subject to political victimization.

Madam President: Sen. Hosein, you have made reference to a decision, do not try now to expand into something else that is not in the decision. Okay? So you have made reference to the decision, you have made your point, I would ask you to be—to move on to other points. You do not have to read out the entire judgment, but you can make—you have made your references.

Sen. S. Hosein: Thank you, Madam President. I do not intend to read from the judgment, but we must understand that we are empowering the prosecuting arm of

this country. Now when I was at the DPP's Office, I remember that the DPP would have indicated that over 90 per cent of the prosecutions in this country is conducted by the police and 10 per cent would be conducted by the Office of the Director of Public Prosecutions. And, Madam President, what happened in this case calls now for an investigation into the circumstances of how persons are being prosecuted in this country, because this is a very frightening situation—

Madam President: Sen. Hosein, no. I have to stop you here. I have to stop you here, because now you are beginning to infringe the Standing Order. So I am going to stop you and you can restate what you want but you cannot present it in that manner, okay.

Sen. S. Hosein: Madam President, I would simply say this then, that with respect to prosecutions in this country a robust system must be implemented in order to protect the rights and the privileges of the accused. [*Desk thumping*] Because it is very worrying, very, very worrying. And then we would have also looked at other clauses in the Bill. And while the Attorney General was piloting the Bill he made reference to clause 10, and clause 10 says this, that:

“Section 29 of the Act is amended by repealing subsection (6) and...”—
introducing this subsection—

“Depositions taken and exhibits admitted in proceedings instituted prior to the coming into force of this Act shall be admissible as evidence at the trial of an accused.”

So, let me put this into context.

A person is before a court for a preliminary enquiry, the police tenders the evidence, there are exhibits being tendered. When the matter reaches the trial stage the accused person at that stage has the opportunity to challenge the admissibility

of the evidence. So for example, a confession. The confession will be tendered at the stage of the PI, but when it gets to the stage of the trial then the judge has— then the accused can make an application for a voir dire to determine the admissibility of the confession. They would look at whether or not the confession was voluntarily made, if the Judges Rules were properly administered and all of those other factors.

But, Madam President, what this subsection is trying to do, is that you are just going to make these statements admissible at trial. When the Attorney General is winding up, I want to know whether or not the accused right to challenge the admissibility of the evidence, whether or not that right is still preserved. Because that is an important right, because you can have confessions and admissions going into evidence that was illegally obtained, that was obtained through force and duress, and therefore the accused person not having an opportunity to challenge the admissibility of that type of evidence. So I want some clarification with respect to that, whether or not this provision now usurps the accused right to challenge evidence based on its admissibility.

And, we have to look also, because I went back to 2011 to find out what Sen. Faris Al-Rawi had to say about the parent Act in this Bill—

Madam President: As he then was.

Sen. S. Hosein: As he then was. And the Attorney General, Sen. Faris Al-Rawi, as he then was, would have used the majority of his contribution to speak about the operationalization of the legislation. And we come here now, Madam President, almost eight years later, eight years later and you know what they did? They appointed six Masters. Six Masters to deal with over 43,000 preliminary enquiries in this country. What will happen, Madam President, is that you will now remove

the bottleneck from the Magistrates' Court and put the bottleneck in the Assizes. But I want to give some statistics also, because the Attorney General also gave statistics.

This is taken from the Annual Report of the Judiciary 2017-2018. In Port-of-Spain, the length of time a matter has been pending for less than five years, sorry, less than 10 years but more than five years, is 155; less than 15 years but more than 10 years, 69; over 15 years, you know how much matters, Madam President, in Port of Spain, 235. There are 459 matters pending in Port-of-Spain. In San Fernando, there are 236; in Tobago there are 14. There are 352 matters in this country that are over 15 years and are pending before the High Court. That is unacceptable. [*Desk thumping*] How is this legislation going to work? You have in this country, Criminal Masters, magistrates, High Court judges of the Assizes fighting for courtrooms in this country.

In San Fernando, you would have seen the newspaper reports where one judge had to express his concern that there was not even paper to print orders for the court. That is the state in which this present administration has the Judiciary in. You would see a big scar in San Fernando by the Magistrates' Court, because that building has been covered by a tarpaulin for months, Madam President, for months. Just yesterday I was in one of the San Fernando Magistrates' Court, there are persons lined up on the staircase awaiting for their matters to be heard. The Attorney General talked about all of these courts that they are building, but where are these courts? Nobody has seen the courts. I am an attorney, I know my colleagues here are attorneys, but where are the courts? We are not finding the courts, Madam President.

Sen. Mark: Talking about Courts, "boy", Courts.

Sen. S. Hosein: The furniture store?

Sen. Mark: The furniture store.

Sen. S. Hosein: Madam President, you are not seeing what the Attorney General is saying. Everything that they have implemented is clearly not working, it is not working. You would see that the Director of Public Prosecutions office, we heard that they are going to be relocated months now, months, no move, Madam President, they have not moved. The Chief Justice always complains about the recording system in the Magistrates' Court, what has been done to assist the magistrates in that regard, Madam President, absolutely nothing by this present PNM administration, absolutely nothing.

The Attorney General also boasted that 100,000 cases would be coming out of the Magistrates' Court through Traffic Division. Madam President, that Bill was passed years now and not a single case, not a single case was removed from the Magistrates' Court, not a single one. And you would see that workers now in the Judiciary are complaining. These are the persons who will drive this process, these are the persons who will ensure that the Masters of the High Court, the magistrates have the administrative capacity to work. And you know what they do with these persons, Madam President? These persons are now complaining, protesting almost every day because they are being asked to be removed from their permanent appointed positions to take up, what, contract employment; removing the tenure of these persons.

Madam President: So now, Sen. Hosein, I need to just caution you to come back to the Bill. Okay? To be a little more focused on what the Bill is about.

Sen. S. Hosein: I am just focusing with respect to the court system in which this Bill will have to operate within. And you would see, the 14 magisterial districts,

Princes Town Magistrates' Court is still being heard in the Rio Claro magistrate district. It is totally unacceptable, the manner in which this current administration has the Judiciary in, because you would see that everyday persons are complaining about the state of the Judiciary in this country.

And, Madam President, I just want to also give some statistics with respect to the Magistrates' Court and I have taken it from the annual report of the Judiciary. And one thing with respect to the Bill that will run this system is the case management capacity of the Judiciary. And what the Judiciary does is implement a case management system. So if we want the matters to move forward we must have the case management system working.

If you would allow me, Madam President, this is the current state: Arima, case management system, no; Chaguanas, no; Couva, no; Mayaro, no; Rio Claro, no; Point Fortin, no; Princes Town, no; San Fernando 1, no; San Fernando 2, yes; Sangre Grande, no; Toco, no; Port-of-Spain, no; Tunapuna, no; Scarborough, yes; Charlotteville, no.

And, Madam President, that is the backbone of how this system will work because at the end of the day you have a failing judicial system in this country and there is nothing being done in order to properly manage how this Bill is going to operate in the current system.

Now, there are six Masters of the court. Madam President, I want to ask the Attorney General whether or not these Masters, some who may have come from noncriminal background, whether or not these Masters are trained in order to conduct these sufficiency hearings and whether or not a public education system will be done together with the Law Association with respect to sensitizing the legal bar with respect to the new system. Because if you would look at it, it is something

very different to what we are accustomed to. Because the preliminary enquiries has been existing for our entire life, some of us, Madam President, and now you are going to change it to a new system. So therefore we must understand whether or not this will be properly rolled out in the future.

Now, Madam President, there is also another area I would like to move on to, and that area is that, the Attorney General did properly quote the case of Hilroy Humphreys. And he stated that that case would have indicated that a person has no right to a preliminary enquiry. Because when you reach at the trial stage it is at that stage then the person is protected and given the right to a fair trial and the preliminary enquiry does not form part of that. There was a constitutional challenge coming out of the jurisdiction of St. Lucia. And notwithstanding that a person is not afforded the right to a fair trial; notwithstanding a preliminary enquiry does not amount to the right of a fair trial, what we must seek to do, Madam President, is that you must have a level of protection of procedural fairness for persons in this country. And I say that on the backdrop that the Humphreys case would have dealt with prosecutions going forward.

In this case, Madam President, there is a distinction to be made, because you are moving from one system to a next. And therefore we have to understand whether or not that system of moving from one system—from an old system to the new system is in fact one in which an accused person is properly afforded the right to protection of the law and procedural fairness. Because it is an issue that we must take into consideration, because, as I said before, the DPP in this country has a lot of powers being given to him and there are certain circumstances in which the DPP can just prefer an indictment. Now, based on the ruling yesterday we realized that certain constitutional challenges can be made to the exercise of the discretion of

the Director of Public Prosecutions. So therefore we might have more and more persons, when this Bill comes into force, challenging whether or not their prosecution and the continued prosecution is proper.

So, Madam President, we must understand whether or not that is an issue that we also have to deal with, because the floodgates of litigation in this country will open widely, there would be a floodgate of—a large amount of litigation with respect to this issue.

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

Sen. S. Hosein: And I will wrap up on this point, because the Attorney General said that the legislation is not ad hominem. But if I remember clearly the Attorney General said that there are certain cases of fraud, serious and complex fraud, that have already been identified. Madam President, that is extremely worrying to me, because ad hominem legislation means that you are passing legislation to apply to only a certain group or category of persons. And if the Attorney General is saying that there are certain cases already earmarked while piloting a piece of legislation, that raises a red flag in my mind, Madam President, whether or not this piece of legislation is targeted to a certain group or particular individuals. If that is so, Madam President, it will erode whatever confidence the people have in the prosecuting authorities and in the Judiciary of this country.

The Government, Madam President, you will hear them on the platform, they say that there are two major issues in this country and he started off with that, the economy and the crime. Well, Madam President, they failed on the economy, so they are trying to address crime. And you will see that they are doing a horrible job at it, extremely, extremely bad. And this Bill brings no comfort to the people of Trinidad and Tobago because we have no confidence in this Government that

they can fix the judicial system in this country. [*Desk thumping*] Because when you have judges, magistrates and court workers crying out for resources in this country you realize that we have reached a failed state status. The only independent arm of this country has been suffering and under this current Government and under this Attorney General, the Judiciary has been left to deteriorate and I thank you very much. [*Desk thumping*]

Sen. Charrise Seepersad: Thank you, Madam President, for the opportunity to join the debate on an Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011). From the information provided by the hon. Attorney General in the current judicial scenario, thousands of criminal cases are stuck in the Magistrates' Court, some languishing more than five years in the preliminary enquiry phase with no end in sight. While the accused is denied timely justice, the victims and their families are also denied justice and closure. This proposed legislation provides hope, but the travesty of justice that results from cases taking an inordinate length of time to be determined will be a criticism in the past.

Madam President, the United Kingdom woke up a long time ago and abolished preliminary enquiries. Many Commonwealth countries also recognized the preliminary enquiries were pedantic and punitive because of the time lapse between charging the accused and determining if they should be committed to the High Court. We are running almost last in the race to get preliminary enquiries off the books.

As the Judiciary is streamlining its case flow process in the High Court, it is imperative that the focus be placed on getting matters to move efficiently in the lower courts. In the system proposed in the Bill, magistrates will no longer be

dealing with preliminary inquiries. Therefore magistrates can now concentrate on summary matters. The magistrates have measures, such as Criminal Procedure Rules to ensure that these trials are heard expeditiously and fairly. That said, the role of the Legislature with respect to the abolition of preliminary enquiries must be to get the proposed process reform right on paper so that it can become right in practice.

The new process will call for all stakeholders to reassess their current resources and to implement measures to ensure that there is no creation of a new backlog. If the process is not properly thought through then there will be a real risk that matters will become stuck yet again, and there would be no benefit from this change. As soon as possible all stakeholders should become familiar with the proposed changes in the system.

Madam President, the Government must be prepared to invest heavily in all the departments and institutions involved in the new process if the proposed system is to work effectively. We live in a technological age and we must use all the technology available to reduce the time it takes for matters to be determined by the court. All courts must be outfitted with the technology that enables digital recording and timely transcriptions of court proceedings.

Madam President, technology must be used to make our courts current and efficient. It makes little sense to have one part of the system working if the other parts are still operating below optimum. Therefore, as this legislation is being heralded as a major initiative to remove backlogs, it is expected that all the stakeholders will be given all the necessary tools so that they can perform their respective roles in this process reform. Madam President, we must get this right. Thank you. [*Desk thumping*]

Sen. Garvin Simonette: Thank you, Madam President, for permitting me to join this debate on an Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011.

Madam President, the exercise that this Government has been engaged in led by the hon. Attorney General, has to be seen in its context of a restatement of our criminal justice system, fundamentally aimed at addressing what has long been seen as chronic paralysis in the processing of criminal trials, whether summary or indictable. And so it is of fundamental importance for the listening public to appreciate that what we are treating with is an adjustment of the system in the public interest away from what has been chronic and immovable systems to procedures that permit for justice to be delivered in a timely manner. The adage that justice delayed is justice denied is simply a harkening back to old words with little meaning, if in fact those of us with the authority and the duty to change things do not intervene in a meaningful manner. And that is what my learned friend, the hon. Attorney General is embarked upon and has embarked upon, dare I say successfully with the suite of legislative interventions aimed at improving and indeed disrupting the old system of criminal justice as we have been deliberating with the several instruments of legislation in that regard.

Madam President, the pendulum had swung hugely in favour of the offender. In that, the Victorian inflexibility of inquisitorial punishment came to be ameliorated by humanitarian intervention correctly requiring there to be a fair trial and there to be the opportunity to call evidence in the defence of one's liberty. But that pendulum swung far too much in the protection, dare I say, Madam President, of the offender.

In the area of the continued existence of the preliminary enquiry, that

pendulum afforded the offender an opportunity to test, review, probe and indeed frustrate prosecution efforts and then to have a second bite of the cherry if the preliminary enquiry determined that there is a case to answer. That system in our jurisdiction as we well know has led to the horrific statistics that the Attorney General shared with this Chamber earlier. And, of course, the chronic delay in the movement of criminal trials and indeed in the determination of whether punishment ought to be embarked upon or those accused wrongly liberated.

So that the entire system, Madam President, has come into complete disrepute and it is fair to say that regard for the law and an acknowledgment that wrongdoing will be dealt with fairly is virtually non-existent in our society. And this in my respectful view could well explain the wanton high levels of criminal activity in our country. So that the intervention here contemplated with the abolition of the preliminary enquiry and the speeding up of criminal process leading to what undoubtedly is still the maintenance of a fair trial and the opportunity to be heard and to defend oneself must be welcomed. It is not an answer to the past embarked upon that there has been a lack of consultation or no wide-ranging opportunity or investigation into stakeholders' comments. I think that that has to be rejected, Madam President.

We have not started this in a kneejerk nor has it been a process that has been without some considerable history of lawyers' interventions, be it criminal lawyers, be it constitutional lawyers, we have all—those of us in the profession, lived with and appreciated the very severe frailties and faults in our criminal justice system. So that when we embark upon changes that started way back with Sir Hugh Wooding's seminal article in 1962, I believe, where back then the preliminary enquiries were seen by Sir Hugh Wooding to be an anachronistic

impediment to the efficient delivery of our criminal trial. It cannot be valid to complain or to assert that further or more consultation is required.

12.30 p.m.

We have a duty to proffer views. We have a duty to intervene and to assist, especially those of us who are officers of the court and who have obtained our training and education at public expense. And, indeed, the Bill that is before us, Madam President, is, in fact, partly produced by that recognition of the need to contribute and to intervene. The amendments that are proposed were amendments that arose from suggestions made by relevant stakeholders and, accordingly, I beg to differ with my learned friend, Sen. Hosein, who considers that there needs to be, or there ought to have been more consultation.

Sen. Mark: Sen. Simonette, may I clarify? Can you share with this honourable Senate the stakeholders who were involved in this exercise?

Sen. G. Simonette: The hon. Attorney General shared this with us in his opening—

Sen. Mark: No, he never gave us—

Hon. Al-Rawi: I will do it in the wrap-up, Senator.

Sen. Mark: No, we “doh want it in no wrap-up”. We want it now.

Hon. Al-Rawi: “Hush yuh mouth, nuh.”

Hon. Senator: What is wrong with you?

Madam President: Sen. Mark.

Sen. Mark: Sorry. Sorry.

Madam President: Okay, Sen. Simonette, continue please.

Sen. G. Simonette: Much obliged, Madam President—*[Interruption]*

Madam President: Senators Mark and Ameen, please. Continue, Sen. Simonette.

Sen. Mark: Mamaguying us.

Sen. G. Simonette: You see, Madam President, the task that this Government is embarked upon is that of serious and deliberative intervention in the public interest. We cannot continue in this country, I dare say, Madam President, to prevaricate and raise argument for argument sake. What is the meat of the objective? What the knob of the issue? These are the things that we ought to grapple with, to deliberate upon and, indeed, to despatch by action, as opposed to old talk.

So that, Madam President, when we come to look at this Bill and we appreciate that what it achieves is the delivery of acceleration to the criminal justice system with proportionality maintained—and by proportionality, one is careful to indicate that nothing in these changes denies an accused the right to be heard, the right to a fair trial, or for that matter, access to all the material being marshalled against an accused in relation to the charges laid and the prosecution of the relevant matter. So that where the Bill provides for the accused and/or prosecution in relation to matters that are ongoing before the Bill has come into force, electing to have the matters dealt with by the Master in accordance with section 32A, I believe, it cannot be that that provision is to be seen as disproportionate or in some way disadvantageous to the accused. Both accused and prosecutor are afforded the right to elect as to the procedure to be adopted. So I do differ fundamentally with Sen. Hosein's interpretation on that point.

Very critical to the exercise, Madam President, is the issue of not just the objectives of getting a criminal trial proceeded with, but the objective, obviously, of the appreciation that the law is not to be taken lightly, or proverbially, as it is said, to be of no value. If we cannot get the criminal trials moving, Madam

President, in relation to the objective of punishment, whether it be retributive, rehabilitative or otherwise, then how can we attempt, as a society, to grapple with the much more fundamental issue of rehabilitation? In other words, if we are stuck at the point of incarceration of those awaiting trial, of trials taking 14 years, nine years and longer, how do we transform our society by engaging in a deeper reflection on the objectives of sentencing? And we have not gotten to that in any fundamental way as yet, but, of course, that is if one is to take a holistic view of the whole approach to criminal justice, an important element of this exercise.

I mention it, Madam President, because it seems to me that those on the other side are intent on standing still at the point of deliberation on whether or not the criminal trial should be tampered with in the manner in which we are advocating, with the fundamental objective from them being that we are tampering with constitutional rights. And nothing could be more fundamentally incorrect than an assertion in that regard. Ought we not to be moving forward, past this barrier of the slow pace of criminal justice, past the barrier of an anachronistic system steeped almost in the Victorian era, to systems that permit us now to move along to consider a wide-ranging participation of those involved on the sentencing and rehabilitative side, for example, psychiatrists, social workers, probation officers, the police, judges, and the like, in determining and coming to a view as to what ought best to be done to reverse the tendency of those, unfortunately, who have slipped into criminal activity and who, by sentencing and following a fair trial, have been required to be incarcerated for some period of time?

These are the higher tenets of deliberation that I would urge my colleagues on the other side to adopt, as opposed to a facile objection to these provisions which are demonstrably proportionate and which, in any event, do not deny the

citizen the right to a fair trial. It is almost a necessity, Madam President, that we embark upon these initiatives to take our country forward and to reset the tone of civil engagement for the betterment of all. Madam President, the Bill before us is therefore highly recommended. It adjusts the parent Act in a manner that permits not for any denial of rights, but for there to be an efficient treatment of certain aspects of the criminal justice system. The Attorney General was very careful to point out the intervention of the power to have co-accused tried and to have matters that are both summary and indictable referred to a single trial.

In relation to the power of the DPP to avoid the sufficiency hearing, of course, that can only be recommended and acknowledged in the environment in which the DPP is permitted to exercise that power in relation, of course, to serious and complex fraud, matters involving sexual abuse, children, et cetera, who have been threatened. So that, Madam President, there can be little argument that what is being achieved is a modernizing of the criminal procedure in relation to the administration of criminal justice. That initiative is to be welcomed, and without any denial of the constitutional rights, privileges, liberties, et cetera, of the citizen, I certainly support this Bill in its entirety, and I thank you, Madam President. [*Desk thumping*]

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

Sen. Sean Sobers: Thank you, Madam President, for allowing me the opportunity to contribute to today's debate on:

“An Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011...”

Now, oddly enough, Madam President, the last time that I was present in this august House, it was actually to contribute to a similar Bill which became Act No.

3 of 2019, I believe it was. And that particular piece of legislation brought to the House several amendments to this current Bill before us. So it is refreshing that we are being given a secondary bite of the cherry to treat with certain issues with respect to the Bill and the amendments brought today by the hon. Attorney General.

I, just like Sen. Hosein, am a robust advocate that when we sit in this Parliament as legislators, we must always be mindful and cognizant of the end users of the pieces of legislation that we debate, because at the end of the day, whatever we do within this House must redound to the benefit of the end users of the legislation which is the public of Trinidad and Tobago. And based upon being here in January and now being here again and treating with this very said Bill, there were issues that arose in terms of our forensic audit of the Bill itself that we proffered to the Government then, and to be honest, the majority of those issues were not listened to. And now we are being given a second opportunity to look at the Bill and to raise some of those very same issues again and, hopefully, this time around they are adhered to.

[*Desk thumping*]

In particular, Madam President, much has already been said about one of the most offensive pieces of the legislation which is, in fact, section 4, and there have been amendments that have been moved by the hon. Attorney General to treat with section 4. But if I am to be honest, Madam President, those amendments really do not sanitize the offensive nature of section 4 in itself. Now, Sen. Hosein has, in fact, touched on some of the aspects of section 4 that are offensive and I wish now to bring a different dynamic to that section 4.

The current operation of section 4 as it stands, reads as follows—and I would read clause 4 with—having already made the changes as highlighted by the

amendments moved by the hon. Attorney General. So it says:

“Subject to subsection (2), this Act shall apply to proceedings which are instituted one or after the coming into force of this Act.”

So section 4(2) now states:

Subject to subsection (3) where proceedings were instituted prior to the coming into force of this Act, the prosecutor or the accused may elect to have the case determined in accordance with this Act and section 32A shall apply accordingly.

And then the balance of the paragraph is struck out, and then subsection (3) is now included thereafter, subsection (2). And subsection (3) goes on to state that:

“Subsection (2) shall not apply—

- (a) in the case of a joint trial, unless—
 - (i) the prosecutor elects under subsection (2) in respect of all the accused; or;
 - (ii) all the accused elect under subsection (2); or
- (b) where two or more charges are to be tried together unless—
 - (i) the prosecutor elects under subsection (2) in respect of all the charges; or
 - (ii) the accused elects under subsection (2) in respect of all the charges.”

Now, the offensive part of section 4 is within that election process. It may seem fanciful and romantic that the Bill gives an individual, or the actors within a preliminary enquiry—or, in this case the actors within a preliminary enquiry—the ability to elect, to have their matter concluded or curtailed in the Magistrates’ Court and transferred to the Master’s court; that both the prosecution and the

accused have that ability to elect. But the difficulty with respect to that is that you can, in fact, have a situation—there is an absence of an agreement of both parties. So you can, in fact, have a situation where the accused could elect to have the matter curtailed in the—the prosecutor, sorry, can have the matter curtailed in the Magistrates' Court and then transferred to the Master's court. And the danger in that situation, I have broken down into about three or four—three actually—issues.

The legislation does not emphasize or it lacks an emphasis on time and priority. So you have a situation where—I will try to paint a picture as best as I can, as Sen. Hosein also did. Persons come before a Magistrates' Court to have a preliminary enquiry started. This is before the legislation is enacted. Let us say this was within 2016. You have a situation where it is a capital matter, as an example, for murder, and the person is remanded without bail. The natural progression of the matter is such that witnesses, their statements would be sworn, filed and then served upon the accused person. This usually takes maybe about two to three years, graciously speaking.

Thereafter, the accused, either by himself or through his attorney-at-law, has to indicate to the prosecution which of the witnesses they intend to call. So we have sped up now from 2016 and we are in 2019, and the accused now has decided, "Well, out of the 30 witness statements that have been filed, I intend to call 10 witnesses." The Act comes into effect, let us say, tomorrow, and the prosecution is aware, the accused aware. At that juncture—because the Act does not say when they have to indicate, but at that juncture neither of them wish to trigger this election process. The accused continues with the preliminary enquiry and continues to cross the witnesses as they are called. So you have the 10 witnesses. He continues to cross. His attorney-at-law crosses and you reach down

to nine. You pass nine witnesses. You are on the last one. And let us say that takes the matter of itself past 2019 and we are in 2020, and right before the accused is able to complete his cross-examination of the 10th witness, the prosecution, at that stage, decides, “Listen, I want to trigger the election process and have the matter transferred to the Master’s court.”

Sen. S. Hosein: Very unfair.

Sen. S. Sobers: How could that be fair, that you have spent a significant amount of time as an accused person toiling in the Magistrates’ Court, treating with your matter in a particular way; have arrived, or have formed some degree of a legitimate expectation that a matter that has been started should be completed, whether it be by guilt or by discharge, and all of that is now curtailed by a prosecutor who decides at this juncture—because the law does not say when the election process has to be triggered or takes place—he decides, “Right. The matter needs to go to the Master’s court now. I doh want to deal with it anymore.”

No emphasis on time could allow for something like that to happen, and it is something that we cannot allow to pass in this House because it could, in fact, be abused. [*Desk thumping*] Apart from the law not having an emphasis on time, I also mention the fact that there is no mention or contemplation of priority. So we use the same example again. A matter starts in 2016; progresses through; we are in 2019 now; start the cross-examination, whatever, whatever; 2020 comes around and the prosecutor decides at that juncture, “Listen, time to curtail. Send it to the Master’s court.” It is not a situation where the matter is now going to be transferred to the Master’s court and you are now going to be ahead of the line, you know. You are going to be in the back of the queue that has already started.

Sen. S. Hosein: You cannot pick and choose matters.

Sen. S. Sobers: All the matters that have been transferred from the Magistrates' Court—the new matters that have been started and now are going to the Master's court, there is going to be a queue there. All the other accused who may have elected from 2019, if the legislation comes into effect, and elect to have their matters transferred to the Master's court, they are going to be in that queue, and you, who had a legitimate expectation that your matter was going to be concluded in the Magistrates' Court through a preliminary enquiry, you are going to be in the queue as well.

So having spent almost four years in custody on Remand, and as the Attorney General said, \$25,000 per month per person on remand by a taxpayer for four years, you are now going to be in the back of this queue in the Master's court. What is your position then? You have to sit and wait for your matter to come up before a Master for it to be dealt with, because there is no emphasis of priority, no inclusion of priority within the legislation to treat with matters that have been transferred to the Master's court. And this is another travesty that could, in fact, take place.

Looking at the lack of emphasis of time and the lack of emphasis on priority within that section 4, and looking at the amendments themselves, I found it very strange that with respect to an election situation in section 4 wherein it is separated with respect to either/or and not an agreed position, that if we are to consider continuity throughout the amendments, all the other instances where an election process should take place it should be separated like that. Which brought me to consider clause 11, under section 32A(5)(b). You would have a situation where, in terms of the natural transitional process of the matters coming before the Master, when you look at 32A(5), it states:

“Where an order is made under subsection (1) or (2) the accused shall appear before a Master on—

- (a) the next available session day as determined by the Registrar;
or
- (b) such other session day as may, subject to the approval of the Registrar, be agreed between the accused and the prosecutor...”

So you are allowing an agreed position to happen between an accused—and I had a difficulty with this in January. I still have a difficulty with it now because I find it highly untenable to have a situation where a matter is to be fixed for mention at that stage before a Master and you are going to give an opportunity for both the accused and the prosecutor to agree on this fixing date. But you are allowing in this part of the amendment an opportunity for an agreed position to take place between the accused and the prosecution, but with respect to something as much more serious as to his legitimate expectation with respect to his trial in the Magistrates’ Court via preliminary enquiry; there is no agreed position. It is absent.

Even when we look at clause 5, section 6, which treats with the, for lack of a better terminology, the Marcia Ayers-Caesar situation, wherein you would have placed safeguards to treat with a situation like that, where matters would have started before a magistrate or a Master in this case, as the amendment allows, and for these particular reasons because of physical or mental infirmity, resignation, retirement, death or inability for any other compelling reason, the matter is curtailed, you now have a provision where the evidence filed before—in my opinion it should be the court and not the Master—discloses in the opinion of the DPP sufficient evidence to put the accused on trial.

This particular amendment would treat with situations where matters would have been curtailed or cut short. So you have a plug in the hole that was caused by the Marcia Ayers-Caesar situation now being put into legislation. But yet now, within the ambit of section 4, there could, in fact, be situations where matters are again going to be curtailed. Because wherein you have a situation, as I just mentioned, where you had your matter started in 2016; it continues throughout 2019 and then it goes into 2020 and you are almost finished with your matter at the Magistrates' Court and the prosecution decides to elect to have the matter transferred to the Master's court, guess what? Your matter has just been curtailed. Your matter has to now restart again. The same plug that you have put later down in the legislation to stop the same travesties of justice with respect to rioting for that situation in the Magistrates' Court a couple years ago, you leave it widely open now to reoccur again in this ambit of section 4. And that is not the actions of a responsible administration.

Another point that I looked at with respect to section 4 is the issue of retrospectivity. Because this particular section 4 deals—it does have a retrospective nature about it, because it treats with matters that have occurred or have started before the coming into force of this legislation and are going to be affected when the legislation occurs. Madam President, if you would allow me to read from the case of *Wilson v County Trust Limited*, No. 2, 2004, 1 AC 816, and it deals with retrospective applications—the dangers of retrospectivity in legislation:

Retrospective application of procedural rules. The impermissibility of retrospectively applying substantive laws is well understood, particularly in the criminal sphere. The retrospective application of procedural laws is not in itself objectionable, but it is recognized that the retrospective application

of procedural laws is capable of causing unfairness.

I can think of no other example of a serious unfair situation that can be caused if these matters are called to be cut short or curtailed by a prosecutor in a situation where you have already spent a significant period of time treating with a matter in the Magistrates' Court via the preliminary enquiry. Also in the case of *L'Office Cherifien Des Phosphates v Yamashita-Shinnihon Steamship Company Limited*, 1994, 1 AC 486, it stated in the present context—it also stated:

With respect to the retrospective application of new law to an ongoing matter, it creates an obvious risk of unfairness for the reasons outlined.

So on this analysis, the prosecution's unilateral power to cut short a preliminary enquiry and opt out into a new piece of legislation, should also be considered impermissible.

Madam President: Hon. Senators, we will now suspend the sitting and return at 2.00 p.m. Sen. Sobers, you have utilized 17 minutes of your speaking time.

Sen. S. Sobers: Grateful to you.

Madam President: So we are suspended until 2.00p.m.

1.00 p.m.: *Sitting suspended.*

2.00 p.m.: *Senate resumed.*

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

Mr. Vice-President: Sen. Sobers.

Sen. S. Sobers: Grateful, Mr. Vice-President. So, before the break, I was speaking to different areas with respect to the clause 4 part of the legislation and the last issue that I touched on was the issue of retrospectivity and the caution that must be adhered to when introducing a retrospective piece of legislation that in my humble opinion, this particular piece of legislation does not adhere to.

I also found it absent that there were no safeguards with respect to the court or the court acting as a safeguard with respect to the legislation. Because there can be instances wherein the election process is triggered by the prosecution and the court simply acts as a rubber stamp as opposed to a safeguard, or any magistrate, as he or she would be then, would not have the opportunity to challenge the election by means of determining whether or not the election at that juncture would have been an unfair approach by either party.

And Sen. Hosein, in his contribution, touched on the recent change and the amendment in the Bajan legislation that dealt with the Magistrates' Courts (Amdt.) Bill for 2016, and without repeating what the amendment actually was—because I think Sen. Hosein dealt with it quite comprehensively—there were two main points that came out of that change in the Bajan legislation which reflected that the amendment itself dealt with matters that had not been started and that if a matter had commenced under the old law, it was allowed to proceed in that manner. And the second most salient point about the amendment, actually dealt with the fact that the court was kept as a safeguard because wherein a matter was started, the accused person, not the prosecution, would make the application to the court and the court would make the decision whether the existing matter will continue under the Act and not the prosecution or the accused. It preserved the right of the court to make the decision.

And based upon the examples that I proffered to the House before we went to break, wherein there could have been travesties of justice that could have occurred if the prosecution made an election or triggered the election process well within the term of the preliminary enquiry stage, that if that was done, the court— if the court is kept as a safeguard—could now not accept the election or challenge

the election process and indicate, well, listen, I think it could amount to an abuse of process. You waited almost a year after this legislation came into effect and in addition to that, the matter has progressed, it has advanced far too much to disrupt the situation as it is right now and that legitimate expectation kept or held by the accused person could continue.

Now, this particular position or situation with respect to clause 4 actually has transpired in other jurisdictions. Sen. Hosein touched on the Bajan jurisdiction. I as well just touched on it a bit. But it also has roots in the English judicial criminal legal system. And in England, just as in Trinidad and Tobago, wherein most criminal cases would have begun in the Magistrates' Court, with there only really being a small minority being sent to trial in the Crown Court in England, there were in fact advantages in allowing for evidence in most serious cases to be subject to the scrutiny afforded by what was termed "old-style committals". There were also disadvantages in terms of the time and resources taken in examination of live evidence.

And there was a policy decision then in England that was taken or adopted to move away from the system, which was the "old-style system", to form a new system of committals wherein no live evidence would be considered, which is very similar to what we want to do with respect to sufficiency hearings, and that change in England was introduced by the Criminal Procedure and Investigations Act, 1996. The transition process then was quite clear cut, ensuring clarity and foreseeability in the transition to the new system. The new committal regime would only apply to cases wherein the criminal investigation began after the appointed date of the legislation and which post-dated the enactment of the amending Act. So it would not have interfered with any matters or investigations

that took place before the Act came into effect. And there was also no question at this juncture, of that new regime being applied retrospectively to on-going criminal cases, let alone to on-going committal proceedings. And if we were to consider the fact that a more advanced, a more mature system, I dare say not advanced but a more mature system, as the English criminal justice system adopted such an approach way back in 1996, it would in fact be prudent of us to consider their approach and to try to mimic it or marry it into our own legislation here when we are considering clause 4.

As I continue, I also had a chance or I also looked at clause 5, new section 6, which also dealt with powers related to the Director of Public Prosecutions, and Sen. Hosein as well touched on a particular matter that was recently concluded. I will not go into the contents or the nature of the matter itself because in my humble opinion, I mean, I do not see the sense for me doing so when we actually have one of the lawyers who was part of that dream team, present with us here in the Senate [*Desk thumping*] in the form of Sen. Shaikh. So I will leave that particular issue up to Sen. Shaikh to prosecute well within her contribution.

But I would just want hon. Senators and the listening and viewing public at large to take look at the *Newsday* and the *Guardian* articles treating with the case itself, and if they get an opportunity, that they can pull up the case itself and the judgment itself and have a read of it. And to the Senators that are present today, the matter is a cause for great concern. I choose not to cast any aspersions upon any officeholder within this country, it is definitely not my place to so do. But it allows for a serious degree of introspection with respect to increasing powers to any public officeholder, the dangers that can accompany such an activity. And we as a sober Parliament, a sober legislative House should contemplate that especially

with respect to the issues related to section 6, under clause 5.

I also looked at clause 5, (c), wherein there was the mention of complex and serious fraud and I thought it best that we also look at possibly defining what complex and serious fraud is. As it stands right now, it is very loose and very vague and for us to be clear with respect to what we would want to achieve by including it, at that particular point, a definition ought to be made there.

Also, in section 6, at clause 5, (d), where it reads—it deals with the Marcia Ayers situation wherein a magistrate would have been unable or a Master would have been unable to complete a preliminary enquiry before the coming into force of this Act, and it gives the reasons or the situations where that could in fact occur. It goes on to say:

“...and the evidence filed before the Master discloses...”

I think it should reflect, really, the evidence filed before the court as in this case, it could also be a Master and a magistrate and not just simply a Master alone as it is stated here. I guess that could be dealt with in the committee stage of proceedings.

I also looked at clause 10, section 29, which deals with the ability subsequent to a sufficiency hearing being concluded that the DPP is charged with the responsibility to file an indictment and to send that indictment to the High Court, and in the event that the DPP does not do so, section 5(2) allows for an application to be made for a discharge of the matter within 12 months. Now, I know much has been said by myself, by Sen. Shaikh—and I am absolutely certain she would do so in her contribution, has been said by Sen. Hosein, and even the hon. Attorney General indicated that one of the greatest concerns that anyone would have concerning any piece of legislation that touches and concerns the criminal justice system is the ability to operationalize the legislation. This

particular section, placing such an onerous responsibility on the DPP's Office, falls squarely into that argument, falls squarely into that conversation. Because if we do not put certain mechanisms in place for the proper and efficient running of the DPP's Office, we cannot expect the DPP's Office to be able to file that indictment within 12 months.

The last occasion when I was in the Senate and we were dealing with the amendments of Act No. 3 of 2019, if I could recall, Sen. Hosein took us through the paces of what actually occurs or operates when a prosecutor at the DPP's Office attempts to file an indictment, and based upon his summary of those events, one could understand if an office, such as important as the DPP's Office is, is understaffed, unmanned and does not have the requisite resources in terms of physical space, operationalizing an indictment to be filed within 12 months is absolutely impossible. As it currently stands, there are many, many, many persons who have been committed to stand trial at a preliminary enquiry and their indictments have not been filed before the High Court by the DPP's office. So much so that it has caused a move within the past, I would want to say maybe five or six years, that criminal practitioners have actually began to file judicial reviews of that particular process to try to bring about a quicker and smoother filing of the indictments at the High Court by the DPP's Office. And it is not to cast any aspersions upon the office, it is just that they are understaffed and they are unable to comply with this requirement.

So now placing it into legislation that they should do so within 12 months and not properly staffing them, not properly giving them the tools to effect what Parliament is now asking them to do, is literally setting them up for failure and at that juncture, the only people to blame unfortunately would be us sitting in this

House and more squarely so the Government because you are the ones moving this piece of legislation. We really have to look at the issues that could and have arisen based upon the situations that are currently ongoing with respect to the DPP's Office and this is just adding more problems to an already overburdened situation.

Mr. Vice-President, there is not much more that in my opinion with respect to what I have looked at, that I would want to touch on. I know Sen. Shaikh and other hon. Senators would have much more to say. But in conclusion, I would want to add that it is not that we come here and we repeat the things that people hear us say time and time again about the lack of the systems being readily available to execute the things that we are asking them of. Operationalization of any of these amendments, operationalization of the Bill as a whole is going to be a very, very difficult task and unless these things are taken seriously, apart from the fact that the courts do not have any air condition and no CAT Reporters, insufficient recording, no paper in some instances, the thing is, these are resources that are required for a smooth transition and running of such a piece of legislation, and it is incumbent upon the Government to try to get these things in place. Because you do not want to just ram or stuff legislation down the public's throat as a political tool that will be wielded to no end than just to cause more chaos than good. We are here to try to really and truly make a difference and let us be serious about it and get it done. Thank you. [*Desk thumping*]

Sen. Sophia Chote SC: Thank you, Mr. Vice-President, for the opportunity to speak on this Bill. I do not intend to be long because I see this Bill basically as the sweep-up for the piece of legislation which we had spent considerable time on earlier this year, I think it was in February. So I will just refer to a few points.

In particular, if I may go straight to clause 4 which talks about the—

[*Interruption and crosstalk*] I beg your pardon, I was just distracted for a minute. If I may just go straight to clause 4 which talks about the election process where someone can elect to have a case determined in accordance with this Act where proceedings had been instituted prior to the coming into force of the Act, I think what we are trying to do here is to hollow out what we provided for in that piece of legislation and I disagree with that because there was a principle behind that in the first place, and secondly, what we are doing is we are treating people who are charged jointly, differently from people who are charged on their own.

The fact of the matter is that anyone familiar with the criminal courts will know that sometimes people have been charged separately for joint offences, so there is really no provision for that in this legislation. I see no reason for the distinction between the two groups. In any event, this reference to joint trial is misplaced because what we are talking about is proceedings before a Master or a magistrate. So essentially what you are saying is that an accused person, if charged on his own where proceedings have already been instituted can elect to decide to go forward with the Act or can elect otherwise. We are saying that if people are charged jointly, then the prosecution can simply say all of you have to go upstairs, you do not have a choice in the matter. I can see no principled purpose in doing that. And it becomes a little more difficult to understand when we see that all of the accused may elect to continue under this Act.

In reality, what we know is that people who are jointly charged in the lower courts have different approaches to their cases for a variety of reasons. Some may be financial. Some people are—a perfectly sane individual may be charged with a mentally disadvantaged individual. All of those things affect the choices made as to how they approach their process for going before the High Court. We do not

take that into account, we do not take the individuals into account in this proposed amendment and I think when we legislate, one of the things we have to keep our eyes on is that the legislation is intended to affect individuals, it is not intended to affect groups of people or it is not intended to be broad-brushed. It is people's lives and rights that we are talking about. I have a little difficulty with the fact that we are hollowing out what we provided for in this legislation but even if we are doing that, I do not think that we have done it effectively. It really does not make much sense in the way in which it is drafted.

If I may move on, it is what is going to be the proposed amendment to section 6. I think this is important. The fact that we are now taking inquests into account is an excellent idea. It was something which was overlooked in the last piece of legislation that we considered, so it is absolutely necessary. Full points to the hon. Attorney General for that. I have a little uncertainty with subsection (e). That is the part that deals with:

“in the case of an offence of a violent or sexual nature and where there is a child witness, or an adult witness who has been assessed as one subject to threats, intimidation or elimination.”

So, let me break it up a bit. In the case of an offence of a violent nature, now, this pans the gamut of a whole range of criminal offences. I mean, from common assault which is potentially an indictable offence to, you know, the worst possible kind of violent crime that you could think about. So I think for us to sort of generalize about violent offences is not necessarily the most prudent thing. Offences of a sexual nature, I think perhaps we need to clarify that a bit because of the ambit of offences under the Sexual Offences Act and of course, we are going to be looking at the report a little further down the road and we will see that the Act,

with the amendments, will cover quite a range of offences, not all of which will be suitably taken care of under this particular proposed subsection.

Now, with respect to “child witness”, I was wondering whether it is possible to include “child accused” if that does not already exist in the legislation, and for this I use the example of a colleague of mine who sat as a judge in Grenada and was telling me about his experience where children who were charged with criminal offences actually appeared before the courts as children so it was easier for juries and judges to see them as children and to evaluate their cases in that context and I think that is absolutely important.

Here, what we have on the other hand is we have persons charged as children and they face the court as 29 and 30-year-old men. That is the reality. So it is extremely difficult for a jury to comprehend or to analyse evidence when they are looking at a grown person and you are asking them to take liability into account of this person when the person was a child. It is almost speculative. It is almost a speculative exercise in the trial process. So I am wondering if perhaps we could consider that as being included here.

The other thing is an adult witness who has been assessed as one subject to threats, intimidation or elimination. Now, this has been a bit of a bugbear in the operation of the Evidence Act because there have been occasions where police officers have suggested to prosecutors that a witness is not coming forward because the witness is intimidated or fearful or that kind of thing. The fact of the matter is, my experience, even in civil cases now, is that witnesses are afraid to come to court. Even for the smallest cases, you find witnesses being afraid. So we must have some sort of objective assessment of these threats, intimidation and so on, and we have to say who will be the assessor and maybe even consider saying

well, what are the things to take into account before we include it. So I think this whole subsection (e) perhaps could do with a little reworking.

Now, the next area I would like to look at is the proposed amendment to section 29 and that is the proposed amendment to section 29, subsection (6). It says:

“Depositions...and exhibits admitted in proceedings instituted prior to the coming into force of this Act shall be admissible as evidence at the trial of an accused.”

I know this has been touched on by my colleague Sen. Hosein and it is a very important point because a magistrate considering evidence, basically does not have a discretion to exclude certain kinds of evidence. So a dock identification, a caution statement, bad character evidence are just examples of what a magistrate cannot exclude. Now, if we are using the word “shall”, it means that all of this will now become admissible. It will become admissible as a matter of course in the higher court. What I respectfully suggest is that we change “shall” to “may”. That way we preserve the trial judge’s discretion which already exists in law.

The next area that I would like to refer to is section 32 and in particular, 32A(5)(b). I know this has been touched on but I also have to say or add my voice to this because it allows parties to proceedings, subject to the approval of the Registrar, essentially to set dates and I do not know that parties to proceedings should have this right. I think, as it stands, parties to proceedings may make representations to the Registrar to set dates taking into account what the Master’s schedule looks like on any given day or the judge’s schedule looks like on any given day. But I do not know that parties have any right to agree with the Registrar to say that they want any particular date for a hearing. I know it seems

like a small thing but it may actually have a big impact because we know the length of the lists faced by the courts every day. So I would respectfully suggest that we take that out of what is proposed here.

Now, these are my respectful suggestions with respect to the legislation but I implore the hon. Attorney General and those on the Government's side to recognize that there is a growing divide between what we do here as part of the legislative process and how the judicial system and the legislation operates in the courthouses around the country, and it is very good, it is excellent that we are trying to move forward with the legislation but we are hoping that when we legislate, it has an impact on the wider community and unfortunately, we are not yet seeing that. I have used this example before and I will use it again: Rio Claro Magistrates' Court.

The Rio Claro magistrate now has from 9.00 to 10.45 to do her list because she has to clear out by 11.00 for the Princes Town First Court magistrate to sit. A prisoner on a murder charge who is brought by 10.30 has 10 to 15 minutes for his case to be heard on a given day before he is sent back to the prison. First Court magistrate has between 11.00 and quarter to one. Now, take into account that if you have a domestic violence application to make in Rio Claro, if you do not make it there between 9.00 and 10.45, you cannot make it and you cannot face a magistrate for that day. This is the reality. And when I say this, I do not intend for it to be taken as a criticism of the administration. I am simply saying please let us have a connection between what we do here and the outcomes that we see in the courtrooms on a daily basis.

Thank you very much, Mr. Vice-President. [*Desk thumping*]

2.30 p.m.

Sen. Augustus Thomas: Mr. Vice-President, thanks for the opportunity again to contribute to this Bill entitled:

“An Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011)”

Mr. Vice-President, the relevant amendments are intended to do essentially one thing in my humble opinion and that is essentially to ease the time frame in which criminal matters—serious criminal matters—are treated by the courts, the lower courts.

This is intended, basically, to bring more efficiency to the administration of justice, as we all as practitioners attempt to seek justice for our relevant clients. My experience in practice in the criminal justice system is one that is essentially plagiarized by tardiness and adjournments after adjournments and in my own words I normally say that we are motionless.

This Bill would indeed, or should indeed, bring some degree of ease to the criminal justice system. In any criminal matter, Mr. Vice-President, that is laid indictably, you can be certain that any attorney who has been in practice for at least seven years in this country would have had the opportunity to do at least one preliminary enquiry. And that is the irony of the present system. It is not that you get one preliminary enquiry in seven years. But when you practise in the criminal justice system in Trinidad and you attend court on a single preliminary enquiry matter, criminal matter, rest assured that these matters, this particular matter, would not be completed within seven years. And for what it may, whatever these amendments to the Bill that is present before us today seeks to do, it is hoped that these amendments would in fact cure the timelessness with which these matters have been lying before these courts.

I started my practice in 2006 and in 2007 I went to the San Fernando Magistrates' Court in a preliminary enquiry and I received statements that were filed by the DPP in 2012. And these statements, while some were filed, not all were filed. Disclosure in this matter completed in November of 2013, and we were able to start this preliminary enquiry in 2014, May of 2014. Mr. Vice-President, while we had completed this preliminary enquiry in 2014, it is today 2019, and my clients are still awaiting a day in court. And I say this to say that having read through some of these amendments that are being proposed, I would hope that, should they get the support of this House, some measure of ease would be brought to the system so that persons who are before the court on serious criminal matters—because this system, say what you may, it is a system that, really, people who advocate for the removal of preliminary enquiry are actually saying to the justice system that we are in fact clogging up the system in some way and the removal of it would bring great benefit to us. Because, as a filtering process, when you look at the veracity of all of these matters, 90 per cent of these cases end up before the judge, 90 per cent of them. And if there is one way in which we can bring these matters to closure more quickly is by these amendments, I will support these amendments wholeheartedly.

Mr. Vice-President, when you are charged and you are brought before the court, one would expect that your matter—as everyone would like to have their matter—be given some degree of priority. But, time factor, as it relates to clause 4 of this Bill, tends to give one the impression at some stage that these—should the amendment go through, things should happen a little faster than normal. But the mechanisms that are being proposed should have proceedings which commence before the coming into being of this Act, when the DPP can in fact decide

probably, at some stage in the proceedings, whether or not he would want these matters to really go to the Masters or remain if these matters are actually partially resolved at the time that this Act is being brought into being. That, Mr. Vice-President, may seem contentious at this stage.

But in any event the DPP, from practical experience, would seldom change course if matters have commenced in the Magistrates' Court, and I do not see him basically changing course if my colleagues on the other side have proposed that you start a matter, it is close to end, and the DPP change course on you because it is probably expedient for him to do so at the time. My thing is, when you look at the number of preliminary enquiries, how many of these matters have really succeeded the filtering process not having to go before a judge in the High Court? Very miniscule. And I do not think that the DPP would have much to benefit from, if he chooses to exercise an option as to whether we send a matter to a sufficiency hearing or he leaves it at the magistrate level for completion.

Mr. Vice-President, I really would like to look at clause 8 of the Bill, which really seeks to amend section 19 of the Act and section 19(1) says that:

“A sufficiency hearing shall be held by a Master to determine whether there is sufficient evidence to put the accused on trial for an indictable offence.”

And section 19(2) goes on say that:

“A sufficiency hearing shall be held in open court unless a written law or Rules made under this Act provide otherwise.”

Mr. Vice-President, clause 8 of the Bill would have amended section 19 of the Act, to make it clear that a sufficiency hearing would not be held by the Master, where the DPP prefers or files an indictment under section 6(2) of the Act.

And in those circumstances, if that is done, then there would be no need

actually for the sufficiency hearing or for the defence in these matters to be fearful as to whether or not there will be an abuse of one's right to where these matters are heard. And in the scheme of things, when you weigh how these preliminary enquiries take up the kind of time in the judicial system, what you are actually doing, and I say this because, to me, for any accused person, what really matters is they having their day in court as quickly as possible. Because as any accused, any defence will tell you, if you ask them: "What are your chances of winning?" they never tell you. They always say: "We want to have our day in court. We just want this matter to be dealt with, because we are in there sitting and lying waiting on nothing, just waiting. Every time you go, you hear the matter is adjourned."

So, to me, as a practitioner, if I were to echo the sentiments of any accused person who have criminal matters before the court, time is of the essence for all of them. And, to try and indicate in any way that to offer options as to where matters are heard or not heard is really to abuse the rights or privileges of an accused. To me, that would not be sending the message that really, the system, the judicial system in Trinidad and Tobago requires.

Having said that, Mr. Vice-President, as I said before, if these amendments will assist in curing, in assisting, in bringing some relief as to how the court proceeds with the preliminary enquiries, and whether or not the system as a whole, persists in this justice system in Trinidad and Tobago, I would at all times lend my support and credence to all the amendments here and to ensure that preliminary enquiries, or, as they now stand, are dealt with in a more efficient way. I thank you. [*Desk thumping*]

Sen. Hasine Shaikh: I thank you, Mr. Vice-President, and I again thank the Leader of the Opposition for giving me the opportunity to share my views on this

Bill. [*Desk thumping*] I am here to speak on a Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011. Mr. Vice-President, I sat attentively to listen to all the contributions of my fellow Members here and, of course, more specifically, what the hon. Attorney General had to guide us upon. And the hon. Attorney General was right in some regards, that one of the key questions that any practitioner will raise is the operational issues. And there were some indications as to what has been put in place that would assist in allowing this Bill to come into play, because the hon. Attorney General said that we are ready to abolish preliminary enquiries. I respectfully disagree.

The first area where the intention is that it would assist is the increase in judicial capacity. Then we spoke about the fact that we have had divisions of court and that we have Masters put in place. I believe Sen. Sobers indicated that we have six Masters in place, and we have the Rules of Court and that we have computerized environment.

Let me touch on some of these issues and show how these operational areas do not assist in the movement of the matters that are in the Magistrates' Court now to the High Court, and the hon. Attorney General helpfully gave us the numbers. We are talking about 32,973 indictable matters that can be moved from the Magistrates' Court to the High Court.

The persons intended to deal with this, first and foremost, are the Masters, and I say how. The Masters are either going to deal with it by way of sufficiency hearing, or they are going to deal with it by way of case management conferences under the Criminal Procedure Rules. It is not going to go straight to the judge. The Masters first and foremost will be the persons who have to deal with these matters as they come to the High Court.

Currently, these six Masters are sharing the criminal courts with the trial judges. When a trial judge is sitting in a trial matter, he or she has to adjourn his matter to another date, start later, something, whereby both parties cannot be sitting at the same time. That is not expediting justice. That is not making anything move faster. That is moving it from the Magistrates' Court to the High Court and waiting in line.

Now, I know it is easy to say we want more courts and we have been asking for more courts. I know that when I was here on the previous occasion, was one of the things I said; and courts do not materialize overnight, I agree. But at the end of the day, if you want something like this to work, you have to put things in place. [*Desk thumping*] You cannot simply say that it is going to move and it is going to move faster when you are operating under the same constraints. It is not going to change anything.

Let us talk a little bit about how the Master's court works. The Master's court contemplates that the defence attorneys and the state counsel in the Office of the DPP are both present, present and able to deal with the matters in the case management situation. On most occasions, one or the other cannot be present, and I will tell you why. The same defence counsel who are expected to be in the case management conference need to be in trials elsewhere. They cannot leave an ongoing trial to be at the case management conference; they cannot. Judges are not willing to hear that, and they should not have to be willing to hear that. At the end of the day, they are concerned with the management of their court.

Then you have the Office of the DPP. The Office of the DPP, regardless of how many resources you would like to give them, the reality is they have a fixed complement of staff. They do not have physical bodies to man trials and to man

case management conferences. They do not have it. The reality is, even if it is they were to employ more persons, the persons that usually come in are not going to be senior, experienced practitioners. They are going to be junior members. They are coming in bottom. They have to learn. They have to be trained. They are not going to go in High Court immediately.

[MADAM PRESIDENT *in the Chair*]

[*Mr. Vice-President confers with Madam President*]

Mr. Vice-President: Go ahead, continue.

Sen. H. Shaikh: So what happens is that regardless if there is an increase in complement, which we hope for, they are not starting there. They are not starting at the trials. They are not starting full-fledged at the case management. So what we have are delays. So, we are going to have sufficiency hearings manned by the Masters with this problem in the Office of the DPP and the problems with the defense.

We are also going to have a situation where the Criminal Procedure Rules, as much as it is intended to manage and make things faster, it is not able to do so. And I will tell why. You go to the case management conference and you are ordered to do something. You are to file a document. You are to produce, you know, an application. Something needs to be done. But for one reason or the other, it is not done. There are no real sanctions that are applied. And in the case of the Office of the Director of Public Prosecutions, there are very little sanctions that can apply to them, because they simply do not have the manpower.

So when you move the sufficiency hearings there, how are you speeding along this process? How are you actually making it go faster? Because it is all well and good for my friends on the other side to say that they are willing to

support it and that they are willing to do anything that speeds up the wheels of justice, so to speak. But we need to look at it practically. It is not what it looks like on paper, you know. It is what happens in real life.

Let me go to something else. Now, I do believe one of the other Senators did touch on this. What are the training procedures that are being put in place to ensure that all of these things are being done properly? How are the persons who are going to be using this new system being sensitized? Because I can tell you what happened with the Masters system being implemented. It was dropped on us one Monday morning. No one told us it is coming into effect and this is what is going to be happening. It was just dropped on us. And you know what was happening? Accused persons were going from court to court to look for their matters because they were petrified of warrants being issued for their arrest for non-appearance. That is what was happening. So how is this going to be any different? What mechanisms are being put in place?

We were speaking about clause 4, where they proposed to have the election and that any matter, and that was going to be held in conjunction with the amendment proposed at clause 11, whether the accused or the prosecutor can elect to have their matter to continue under this new piece of legislation and go into the High Court.

Now, what that contemplates is that the matter may have already started and that means they would have notes. And we know that is not necessarily the case that there has been a computerization everywhere. So some of it is handwritten notes. We need to get those documents from the Magistrates' Court to the High Court. I am not certain that persons who are looking at this Bill have actually given it any real thought as to how long it takes for that to happen. Let me put it to

you in another way. In the Magistrates' Court, when someone is committed to trial, it takes on average—and this is a reasonable average, it is usually longer than this—about seven months for notes to be prepared. So you have been told that you are going upstairs to trial but your notes have not actually been prepared. And this is a capital matter. So this is serious. These are the ones that you want to push as quickly as possible. You are taking seven months from the date that you are told that you are going upstairs to when that is even transferred to the DPP's office.

The DPP's office then takes at least another five to six months, on a good day, for an indictment to be filed. Does the 12 months in this Bill contemplate all of those logistics? Are they contemplating that the DPP's office is not in control of the process at the Magistrates' Courts to allow for those things to be transferred? I do not see any of that reflected here. The current average for an indictment to be filed is already more than a year, and that is for a single accused. If you happen to be multiple accused, there is a lot more time. And that is why we have had a number of persons going before the court.

Now, one of the things that the Bill contemplates, it says not just that it is that the DPP will have 12 months to do it. It also says, let me be very clear on it. [*Sen. Shaikh peruses documents*] My apologies. It says that, in addition to the 12 months, that you can basically proffer a reason to the Master to indicate, well, what is the reason for the delay.

Now, one of balancing factors that they are going to look at is whether it is just to do so. One of the things that will be considered in being just to do so would be, obviously, in the public interest. But at what point are the accused persons and their interest being considered when you are having something as vague as whether it is just to do so? And you have to take all of this in light, Madam President, in

light of the fact that the sufficiency hearing does not contemplate cross-examination. It does not contemplate the ability to test the witness' evidence.

So, what we have is a situation where you have on the papers, so to speak, a decision being made whether or not there is evidence. And you are relying on that. You are not testing them, and then you are waiting, basically at the mercy of someone else, to get to the point of the trial to be able to test the evidence.

3.00 p.m.

Madam President: Sen. Shaikh, if I may? I just want to ask you, are you speaking to the Bill? I need you to be a little more specific to the Bill as opposed to the parent Act. Okay?

Sen. H. Shaikh: I am guided, please. Madam President, what I am saying is that whilst these amendments are being put in place, it cannot be looked at in a vacuum. We need to contemplate how it is being seen altogether and how it is going to be put into place altogether.

One of the—clause 8, please, removes—and it speaks to the situation where:

“...‘unless the Director of Public Prosecutions prefers and files an indictment...”

So this is where the hon. Attorney General contemplates that there will be no sufficiency hearing. This is where I was going with the whole aspect of, there is no sufficiency hearing, an indictment has been filed and now we are waiting in the long queue, because there are already matters before the High Court, even before this Act would come into play.

Now, the next thing, and my friend mentioned this just now, that the accused should not be worried because it is a very miniscule amount of persons who are actually discharged. But that is something to be worried about, because if it is one

person that is being discharged in a capital matter that is saving the taxpayer \$25,000 per month, according to the figures the hon. Attorney General has told us. And then, in addition to that, we have had situations, I have heard that on average PIs take seven years and so forth.

But that is not always the case. We have actually had situations in the past couple of months, where they happen to fall within the 53 cases that needed to be restarted, where matters have been heard in just a couple of months and they have been discharged. We had six persons, maybe two weeks ago, that were discharged; capital case, murder. Six persons each at \$25,000 a piece, a month. So to say that PIs serve no interest and have no benefit is incorrect.

Which brings me back to the fact of clause 5. Now, clause 5 when read in conjunction with the parent Act, is putting even more responsibility on the Office of the Director of Public Prosecutions, and in fact on the Director himself. Now, it actually says at part (d) of that clause 5:

“...in the opinion of the Director of Public Prosecutions, sufficient evidence to put the accused on trial;”

Now, Madam President, when prosecutions are being taken into account, it is the police that start their prosecution, they start their investigation process. Who do they usually go to get guidance from? They go to the Director of Public Prosecutions. They put whatever material they have before him and he gives an indication in the serious cases whether or not a charged should be proffered. It is that which brings a person before the court.

Now, what we are seeing, instead of having the filtration system that the preliminary enquiry is intended to be, or even to have the sufficiency hearing which still puts something to be assessed before the court, we are trying to bypass

both of those things and put everything to the opinion of the Director of Public Prosecutions who initiated it in the first place and who said go ahead and charge. So what are we really doing to protect the rights of the accused here? We are essentially rubber-stamping him all the way up to the trial. And that is a very real problem especially in light of the cases that have been coming out; especially in light of the judgment that came out yesterday.

What was very clear and what has always been clear about the Office of the Director of Public Prosecutions and more specifically so the Director of Public Prosecutions, is that his decision is not easily reviewable. It is not something that you can interfere with lightly. You cannot run to the court and ask for every time that the Director exercises his power, for it to be reviewed. You will be laughed out of the court because you cannot do it. It is in exceptional situations, exceptional circumstances, whereby you can interfere with that. So what we are having is that judicially we are removing it from them, and we are putting it back on the office of the Director, where the accused person has little or no right to recourse.

And you would remember that we have brought this up before, Madam President. We have no procedural appeals for criminal matters. We cannot get any type of relief in the interim. So to say that you are removing everything out of the court and just the Director can proffer an indictment if he so feels, that is a huge responsibility that is being placed on a person who cannot be reviewed easily. Even more so, when we cannot be sure that the Director always exercises his powers in the way that it should. And let me say why I also say that. We are not like other jurisdictions where we get full and total disclosure. We do not have that. We have to beg from the Office of the Director of Public Prosecutions to get the

simplest of things, we have to make applications—

Madam President: Sen. Shaikh, I am not understanding who the “we”, in making your contribution, who is the “we”, you know?

Sen. H. Shaikh: I will make myself clear. As a criminal practitioner, please. The criminal practitioner will have to ask essentially to get documentation that is relevant to the accused’s case. Usually what would happen is in cross-examination you would be given information and based on that you would be able to ascertain what else you are needing. But now the sufficiency hearing does not have that and if you are bypassing the sufficiency hearing as being contemplated in this clause, which is clause 5, then you are not even having any documents to base your request for disclosure on. So in other jurisdictions where you have the benefit of full and frank disclosure, where you can ascertain what is the case before you, you do not have this here.

And what is even more concerning is that the sufficiency hearing, the indictment at least when comes after the sufficiency hearing, you are going to have an idea of who the witnesses are, you are going to have an idea of what it is based on. When the indictment is filed without that, what are we basing it on at that point? We have no full information, we are not going to be certain about exactly what the State’s case is. That is a very real problem. And in the practical aspect the reality is, this Bill for the most of it is not going to touch and concern every single person, but it is going to touch and concern the poorer members of society.

The people who are not going to understand what is happening, who cannot afford lawyers, who have to depend on Legal Aid, if—because Legal Aid is sparse in the amount of attorneys that they have, and who are even willing to do legal aid at this point. So what are we doing to protect the public? What are we putting in

place to ensure that this presumption of innocence that you have is actually being kept? Because what I heard today, Madam President—and I took notes, because I believe in being fair—is that what we should be focusing on is things to include a wide range of sentencing and rehabilitation, that is all well and good but that is after they are convicted. What we should be concerned about is ensuring that a person who is convicted has had the benefit of a fair trial and all the rights that are accorded to them under the Constitution. [*Desk thumping*] That is what we should be ensuring. So, Madam President, could I enquire how much time I have left?

Madam President: You finish at 3.25.

Sen. H. Shaikh: Thank you very much. What I want to say is this. One of the other things that is not reflected in these amendments, I notice that clause 10 says—and this deals with the admissibility of depositions taken and exhibits and so forth. A lot of times, we have situations where witnesses are put forward and what we see at the paper stage, usually committals in this case it will be in a paper format because it is going to be filed documents.

We have witnesses that are put forward that for some reason or the other do not appear when they reach to trial. They cannot be found, they are out of the jurisdiction, they are fearful; there are a number of things that have been put in place to protect witnesses that are being abused quite frankly. But they are not produced for trial for one reason or the other and an application is made. It certainly cannot be the case that their evidence goes in just like that. It certainly cannot be the case that anything exhibited goes in just like that, because we have situations where police officers would have taken caution statements, and they may have passed on, they may be in another place and they are unable to—is it that we are saying that exhibit is going in? It cannot. It has to be challenged. So, all of

these things are things that need to be considered and things that seriously need to be considered.

So it is not the position that because we are here that it is the intention on this side to frustrate the process. It is not that. The intention is that we want good law to be passed, we want fair laws to be passed. [*Desk thumping*] More than anything we want to assist in that process, we want to make ready changes, because we appreciate that something needs to be done for crime. It cannot be denied. But at the same time it is not just that we should pass legislation with great intentions that erode against fundamental rights only for it to reach to the implementation stage and then we have to run to court because some sort of application has been made against its legality and that everything stops in its tracks. That is wasting time, that is wasting taxpayers' money when we have a chance to get it right here. [*Desk thumping*]

So what I hope, Madam President, is that a lot of the suggestions that have been put forward, that they be taken into account at least at the committee stage and that we are able to meaningfully make some amendments to this Bill. I thank you. [*Desk thumping*]

Sen. Hazel Thompson-Ahye: [*Desk thumping*] Thank you, Madam President. I rise to speak on this Bill:

“An Act to repeal and replace the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 and to provide for a system of pre-trial proceedings relating to indictable offences and other related matters.”

A long title and if I had my way, I would give it another long title, and I would name it “A long walk to freedom from the shackles of an anachronistic practice in

criminal law procedures of a Colonial era”. [*Desk thumping*]

Hon. Al-Rawi: I like that one.

Sen. H. Thompson-Ahye: Now, Madam President, tell the Attorney General “doh like it yet until ah finish”. [*Laughter*] Now, the Attorney General introduced the Bill and he went into history from 1917—

Hon. Al-Rawi: 1555.

Sen. H. Thompson-Ahye:—1555, even earlier. And the Members of the Opposition spoke about 1962, Sir Hugh Wooding, but I want to bring it a little closer to my age, Sen. Saddam. [*Laughter*] And I would like to say that following from my contribution last week, I want to go back to Chief Justice Michael de la Bastide who I would say sounded the death knell of the preliminary enquiries system, and today we witness its cremation, or if you prefer, a final nail in the coffin.

Now, when Chief Justice started, and you know when people start, they like to make very memorable speeches, some of them talk about the powers they have and the powers they do not have. We have all kinds of speeches, but we remember the first speech. And he said a number of things which really prompted me to write the calypso that I spoke about last week. And one of the things he said is that you should not have trial by ambush. So that is why I said, “trial by ambush must be no more, put your case on the table before”, because that was the start of the pre-trial disclosure.

Now, the letter and the spirit of the law do not always coincide. So yes, we have pre-trial procedure, but when you think about what can happen, is that it is sometime dispensed like medication. One document at a time. So you are forced to ask for an adjournment and, of course, what is happening now is that the

accused, his matter is being pushed back and he goes to sit back in the cell waiting for justice like Miss Havisham waiting for her beau who never came.

Another thing that Chief Justice de la Bastide was very firm about, was that you should not have too many adjournments. He did not like adjournment, I remember he said, “This is a now for now court, you should not be here asking, this is in the Chamber court, you should not be asking for adjournment, this is a now for now court”. “Are you ready to proceed?” That was the title of my calypso, “Now for Now Court”. So a number of initiatives over the years by Chief Justices and other stakeholders in the criminal justice system try to advance the process as we limped along the road of justice.

So we had status hearings, we had case management, a number of things were being put into the system. And all because everybody could agree on one thing in the society, we are united in our view that we have a system of criminal justice that does not serve us well. What are we to do about it? And over the years we have been trying our best to see what we can do. And one of the things that we have looked at, and what this Bill is seeking to do, is to put the final nail in the coffin as it were, and abolish preliminary enquiries, because it was found that they clog up the system.

You have preliminary enquiries that take a very long time to be heard. It is not just about the sufficiency of evidence, sometimes defence attorneys are trying to impress the court, impress the clients about how they deserve that big bill. So they have to “ramajay” and do a number of things. So it takes a while for the matter to be heard and then you have a long period between the hearing of the preliminary enquiry and when the magistrate pronounces the words that the matter must go upstairs. And I heard one of my colleagues here speak about—against the

Bill because they say it allows magistrates to do what they have to do. And I remember once being in a court and making a no case submission, I am not a criminal lawyer, but I have done some criminal matters. And to my great pleasure the prosecutor from the DPP's office said to the magistrate, "I agree with Mrs. Ahye, we have not negated self-defence". So when you think everything was going to be fine, the magistrate decided, "No, no, no, I am sending this case upstairs".

Now, people do not always understand, because they do not always see what happens to people who are involved in these matters. That these people have blood, and they have sweat, and they have feelings, and they have heart and they react in different ways. And I will share with you what happened with a police officer who had heart. Here was a juvenile whose matters were going up to the Assizes and the police officer decided that he would do something which in retrospect he realized he was very stupid.

But a call came to my office and my secretary said you have to speak to this person and the man was in tears. And I could not understand what was happening and he said to me, "My gratuity and pension runnin up de street". That made no sense to me, I did not think that he was a candidate for Dr. Bonterre who was the old prison psychiatrist police officer, when they had a problem they would go to that psychiatrist, Dr. Bonterre. So I could not understand. And it turned out that out of the kindness of his heart, he took this juvenile where he should not have taken him and the juvenile decided to run. So that is how his pension was running.

Now, when I spoke to the juvenile, he said, "I ran because I wanted another charge, because I know my matter would not come up for years and years and whenever I went to court my little nieces and nephews would come outside the

court and say, ‘Uncle, Uncle, Uncle’”. So therefore, that it how juveniles think; without consequences. He decided he would commit another act. Three years after, fortunately, the young man walked out of the Hall of Justice a free man, the jury having accepted that there was in fact a real case of self-defence.

So we have to understand that we have to measure lives of juveniles differently from how we measure adults. And I just want to say that we have to think when we frame legislation about all of the consequences and all of the things that we are supposed to do. So that we have done legislation—before I come to this Bill I just want to make a point that, say that we have the Romeo clause, and yet we have juveniles who would have taken advantage of the Romeo clause and they are waiting for their preliminary enquiries to be heard, and they are suffering, one now is a mental case. So the Attorney General should look at what he does when he puts new legislation on the books to see how it affects people and see the consequences and how we can deal with it.

So preliminary enquiries abolition, committal, is nothing that is so peculiar to Trinidad, but a number of jurisdictions have put these things on their books. We have Antigua, we have Barbados, we heard about Barbados, we heard about Saint Lucia, we have not heard about Japan that abolished PI even before World War II, Scotland since 1980, Tanzania and, you know, we have UK, of course, a number of jurisdictions have in fact abolished committal proceedings. So it is a way that most jurisdictions are going because they see it as clogging up a system and there is another way of dealing with it and that is why a number of jurisdictions are moving along those lines.

Now, some lawyers are not pleased at all about this move for a number of reasons. One, of course, is that it denies them fees. I heard one lawyer saying that,

you know, “Yuh doh want me to get fees, so if you send—if you deal with the matter I would lose out on the money”. Very sad, but one has to understand what sometimes people forget the ethical lessons that we teach at law school. And, of course, you come into law school with the ethics that you get from your parents. Now, this is not to say that the Bill is perfect. I am concerned like some others about the timelines and how these things will work. Because we put things in place and we say certain things must happen within a period of time and they do not happen within that period of time, what are the consequences, what do we do? There is nothing in the Bill to say you cannot ask for an extension of time. So are we going to be back to square one?

Another question or concern that I have, is the choice of jurisdiction of the Masters. Now, we have heard that we have, how many? Six Masters? Seven Masters?

Hon. Senator: Six.

Sen. H. Thompson-Ahye: Six? We have 50 Magistrates’ Courts, we have how many Appeal Courts? But we have three High Courts, and these Masters are going to be sitting in the High Court. So, of course, a logical and natural concern is: Are we going to be transferring the backlog from one area or one set of court to another? [*Desk thumping*] And if so, how are we going to address these concerns? I do not know the rationale and I do not know if the Attorney General has addressed that, as to why he chose or, you know, this ruling party, why they chose the Masters to hear these proceedings?

When you look at Jamaica, Jamaica’s Committal Proceedings Act, 2013 speaks about the magistrates who are doing the committal hearings and other jurisdictions talk also about the magistrates. The magistrates are quite competent

to deal with these hearings, it is also cheaper because Masters make a lot more money than the magistrates. So, if we are talking also about a cost saving measure, then we ought to think about how we are to conserve costs in these guava season days.

So, how are we going to handle that, when we have three High Courts, we have very few Masters and we have these timelines that are written into the legislation? I would like to know how we are going to reconcile our need to have a speedier system of justice. Not speed that would sacrifice efficiency and justice, but would do right by all the people who depend on a justice system that would give them their just due.

3.30 p.m.

Now, we have heard some concerns about clause 4, and what can be done and why it is not acceptable. And I would like in that regard to refer to Jamaica again, the Committal Proceedings Act, 2013, which states, and I am looking at clause 3, (3), and it says:

“Nothing in subsection (2)”—which talks about the committal and so on—
“shall prevent the accused person or his attorney-at-law from making a submission to the Resident Magistrate that the evidence is not sufficient to commit the accused to the Circuit Court for trial of an indictable offence.”

And I am wondering if this could not be a solution, or something that we ourselves cannot adopt going forward in our legislation.

When we think about new legislation, we have to look at the roles of all the stakeholders. Starting with the police, we must recognize that the police are gatekeepers. They decide whom they will charge, when to charge, and we saw that graphically depicted in the case of the popcorn vendor. And there was a lot of

comments about it, and we saw it again with the marijuana girl, and how the members of the public rallied around these people to show that there is another type of justice, there is another way of dealing with things. And I ask myself, if we are talking about cost, if we are talking about dealing with a system of justice that works, produces savings, and produces results, why are we not looking at restorative justice? Because all the studies from all over the world show that it is so much cheaper to deal with a number of crimes through restorative justice. And, when you look at what is happening in Jamaica—in the same 2016 so they were very active in 2016 January—a number of pieces of legislation at every stage of the criminal justice process, the justice personnel are empowered to say, “Let us try restorative justice at this stage. Pre-sentencing, pre-plea, pre-trial you know, a number of stages. Let us see what we can do.”

And in Costa Rica, without benefit of legislation, the judges were doing restorative justice sessions, and what they said, is that it cost \$10,000 for a trial, but about \$1,500 to \$2,000 for a restorative justice session. And thousands of cases they have dealt with by restorative justice. So it is an economical way of dealing with it.

So, I have heard time and time again, the Attorney General, Madam President, talking about \$25,000 a month, but he is never condescended to particularize, and some of these costs,—I am sure would be wasted cost—some of these costs can be eliminated. How many times we have heard about this preliminary—the hearing that we are—

Hon. Al-Rawi: Thank you very much, Sen. Ahye, I regret that I did not refer to it. I have particularized and published the information on the Attorney General’s website, as to all of the elemental pieces, and held a round of public disclosure

events in 2015, at which all of that was given. I would very happily provide it to you, but I do catch the limb that you are going along.

Sen. H. Thompson-Ahye: Thank you. And I am pleased that the Attorney General is on a roll with the whole administration of justice reform, and I would like to remind him of some of the outstanding matters, because some of these jurisdictions that I have mentioned, that abolished the preliminary enquiries, have also increased the age of criminal responsibility. I was very pleased to sit in a car with a woman from Scotland a few weeks ago. We were both going to a symposium in Italy followed by a meeting the next day and I asked her “What was happening in Scotland? Because in 2016, I know you introduced the Bill into Parliament?” She said “A few days ago we passed that Act, so now we have gone to age 12.”

So when we are looking at reform, look at all aspects of the law that we need to change to make a better society. So, in the cost of operationalizing the law, look at all the ways that we can save cost Mr. Attorney General, through you, Madam President. So, we are not doing too badly, but there are still lots of things to be done. And as we walk this road, where we have to do what we can to make a better Trinidad and Tobago, let us look at us look at all aspects, let us look at education, and let us look at trying to see what we can do to make police officers more efficient.

You know one of the things that we did, was the alibi, and this Bill also talks about alibi at the first opportunity. So, if you do not put your alibi forward early, then because what you are supposed to do is to speak now or forever hold your peace, and that is not only in church, but also in court. So we have that provision as well. But we must also train the police to do what they must do.

I was in a trial years ago, where my client—his alibi was curiously enough, that “I was working in the police barracks during a passing out parade when this armed robbery took place. I was in the bosom of the police.” We went to trial and the police had not investigated the alibi, right on their doorstep. So what happened is that my client got free and he went on to sue the police, the Attorney General, for malicious prosecution and all of that. In that same trial, the co-defendant had said that “I rented a gun”, he pleaded guilty; “I rented a gun for \$5.” He called the name of the person in Tunapuna, and he said “When we rented the gun the man said ‘I doh like to rent all yuh gun yuh kno, because all yuh does waste bullet and doh make profit—doh bring profit’”. When I checked with the police, the police had not even gone to find that man in Tunapuna, and there was a written statement you know, a written confession.

So, the police must do what they are supposed to do, the DPP’s office has been complaining for the longest while, and I would like to say that the DPP’s office is one of the very honourable offices in this Trinidad and Tobago. [*Desk thumping*] and I want us to be very careful about jumping to conclusions, I say no more. Things are not always what they seem.

So, Madam President, we have come to this stage where we want to abolish preliminary enquiry, and I think the consensus is that it would be a good move to abolish enquiries such as these, but we must put in the proper safeguards. And in the short time that I “get” in the Senate, sometimes when I leave here it does not, sometimes, allow me much time to sleep, but I still had a dream. And in that dream, the criminals of Trinidad and Tobago held a solemn conclave, a secret meeting, and they said to one another: “We have to change our song. We can no longer sing we ‘fraid’ Carl. We must change and have another tune. We have the

words.” And the leader said, the criminals: “Buh we not sure ‘bout de tune yuh kno and de words say something ‘bout ‘Yon gentlemen has a lean and hungry look, such men are dangerous.” That sounding like Shakespeare, yes. And the other one said: “Yuh mean Gary?” And the leader answered: “No, but de name rhymes with Gary. And we ‘fraid him. He name Al-Rawi.” Thank you, Madam President.
[*Desk thumping*]

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

Sen. Elton Prescott SC: Thank you very much, Madam President, for offering me this opportunity to speak on this Bill, a Bill to Amend the Administration of Justice (Indictable Proceedings) Act, 2011.

Firstly, may I put on record my thanks to the Attorney General for offering some clarification in the middle of his presentation this morning; it assisted me in reducing my contribution considerably.

Secondly, may I remind the *Hansard* that in 2011, I was very supportive of the abolition of committal proceedings and I continue to feel that way about it, so that what I am about to say would be founded on that premise.

Thirdly, for the first time in the Senate I am able to say that there is a bevy—I suspect bevy is a good word—of legal minds here, and therefore it would not be immodest of me if I say I will not speak too long, because all of the legal minds have converged in a way that I would have spoken myself, if I had had the opportunity.

I think finally, because this is a temporary state that I am in, in the event that this Bill goes to the committee stage, and I am not present which must be very likely, I am putting on record just the two observations I have, which hopefully would be taken into account by the hon. Attorney General either in his winding up,

or at the committee stage.

The first has this do with what appears to be a usurpation of the power of the courts. The jurisdiction of the courts in respect of what constitutes evidence, admissible evidence at a trial. There are several references in the Bill—the Act itself and the Bill to material being placed before the court or the Master as the case may be, and the language that is used varies from “shall give evidence”, “shall be admissible in evidence” and one is uncertain as to whether it is intended to take away from the judge, the very fundamental responsibility the judge has, especially in criminal trials to ensure that the accused person has all of the procedural protections that he has been accustomed to. Section 13 of the Constitution makes it abundantly clear that the Parliament may not deprive him of those procedural protections.

So, for that reason I wish to bring to the attention of the Senate, clause 5 of the Bill. If you would permit me, I am now taken to making notes, evidence of my advancing years—actually I meant to say clause 10 of the Bill if you would permit me, Madam President, if I may draw your attention, you will note in it, it says that:

“Section 29 of the Act is amended by repealing subsection (6) and substituting the following subsection:”—that it is:

“Depositions taken and exhibits admitted in proceedings instituted prior to the coming into force of the Act shall be admissible as evidence at the trial of an accused.”

3.45 p.m.

My concern is that, unless it is made very clear that the judge still has the power to say, “I do not regard it as admissible evidence”, then this proposed subsection (6) of section 6 appears to take away that power, and one needs only to

address it to make sure that it is clear that we have reserved the right.

In criminal proceedings, the standard of proof requires that it be laid upon admissible evidence, and we ought not to be playing, playing with it, with that right that the accused person has. So, if through you, I may invite the hon. Attorney General to look at some other examples of how the approach to evidence is addressed in the Bill and in the Act itself, you would find at section 26(e) of the Act they use the term given as “fresh evidence” and in section 28(3) of the Act No. 20 of 2011, you would find the words “shall be received in evidence” and then today we are playing with—“playing” is deliberate—“shall be admissible as evidence”. The three may well have different connotations, different interpretations, and my preference is to opt for the protection of the rights of the person who is accused of criminal offence.

Hon. Al-Rawi: Senator? Much obliged. Thank you for giving way, and I take it only in the spirit of your caution that committee may be disjointed from your sitting. May I enquire, consonant with the recommendation coming from Sen. Chote, if there would be an improvement if the word “may” was used instead, therefore providing a discretion to the trial judge in the event that an objection as to admissibility was made?

Sen. E. Prescott SC: Thank you very much. Sen. Chote is seldom off the mark. But may I add yet another piece of language that might be of interest to you? In section 29(4) of the Act No. 20 of 2011, and to give you this proper name, the Administration of Justice (Indictable Proceedings)—bear with me—Act, 2011, you will find these words in section 29(4):

“Where the party intending to tender a statement in evidence under this section has called, as a witness in the proceedings, the person who made the

statement, the statement shall be admissible only with the leave of the court.”

And I think that that offers—certainly, it offers me some succour—s-u-c-c-o-u-r—and I recommend it through you, Madam President, to those who frame the legislation.

The second area that I wish to speak on, second and last, is to be found in clause 5. Now, Sen. Chote had referred to it and I do not wish to take away from anything that she had said pertaining to it but, in clause 5—my reference would be specifically to clause 5(e)—the Director of Public Prosecutions is given very profound powers, that is to say, without limiting the generality of section 6 of the Act, he may proceed to prefer an indictment. Section 6(1) of the Act says:

“Where a complaint in writing is made to a Master that an indictable offence has been committed...”

—he may compel by warrant. And subsection (2) says:

“Notwithstanding subsection (1), where the Director of Public Prosecutions is of the opinion that a person should be put on trial for an indictable offence”—he—“may prefer and file an indictment against that person, whether or not a complaint is made against that person.”

And that is a stinging endorsement of the DPP and his powers, but one has to be cautious in the use of it.

And so, when we see in clause 5—at (3)(e)—the following, that the DPP may indict in the case of an offence of a violent or sexual nature and where there is a child witness or an adult witness who has been assessed as one subject to threats, intimidation or elimination, one is tempted first to ask, are all offences of a violent nature that might have been witnessed by a child susceptible to being the subject of

an indictment? Domestic violence comes to my mind immediately. It is the one place where you are bound to find a child witness, in most cases, at least, and it is certainly in one of those cases where an adult witness might be subjected to threats, intimidation or elimination, and it is that that caused me to bring to the attention of the Senate the width of the provision, the breadth of the provision, and to ask that some effort be made to rein it in.

Hon. Al-Rawi: Sen. Prescott? Much obliged. And, again, thank you for allowing me to interrupt. It is not payback for the interruptions made in my piloting. *[Laughter]* Senator, may I please ask you to consider, or perhaps give us some elucidation as to whether you are comforted by the fact that that very provision, except for two words, appears in section 23(8) of Chap. 12:01, section 23(8), specifically (8)(e), has the exact formulation of words, save for the words “in exceptional circumstances”. The only thing that is different is the use of the words “in exceptional circumstances”.

So this was done by way of amendments 1961, 1962, 1976, 1979, 1994 and 2003. So this particular formulation of words has stood on our books for many, many years and has been in operation, which is why we repeated it. In fact, we repeated it in exact form in 2011, 2014, 2016, 2019, first having started in 1961. So are you at all put to ease insofar as this has been standing law for quite some time and, therefore, do you consider that now is the appropriate point to deviate from that which we know?

Sen. E. Prescott SC: Thank you very much. Madam President, I am inclined to the view that legislation which predated the Domestic Violence Act may not have contemplated acts of violence within the home being the subject of an indictment. So that “comforted” is not the word I would use. I am glad it has been brought to

my attention that provision had been made in the now repealed Indictable Offences (Preliminary Enquiry) Act—I think that is the correct name—Chap. 12:01, but I am wary that one needs to take into account and revisit clause 5, subsection (3)(e), so that it is made clear, if that is not the intention of the framers of the legislation, that persons who find themselves before the court or who are the subject of a complaint of acts of domestic violence are to find themselves before the court—I am sure I lost my train there—but if it is not your intention, then make it clear that such persons ought not to be the subject of the DPP’s now much stronger powers. I think I have made the point. The victims of such acts of domestic violence are most likely to be persons who are subject to threats, intimidation or elimination and, invariably, a child would be a witness to such an event.

I differ from Sen. Chote slightly, and I hope she would not mind, in that I think the use of the word “and” in clause 5, (e), is meant to be read—it means that the section should be read conjunctively and not disjunctively. So that the power of DPP is that in the case of an offence of a violent or sexual nature where there is a child witnessing or an adult witnessing, it is those cases that ought to be—that are permitted rather, to be brought within his ambit, and an indictment can be filed. It is probably just the way I heard it, but if indeed it was meant that cases of an offence of a violent nature are to stand on their own, I did not think that that is what 5, (e), meant. But, once again, the hon. Attorney General could, when he is winding up or during the committee stage, make that more clear for all of us.

As I promised, Madam President, modesty permits me to end here. I thank you very much. [*Desk thumping*]

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

Sen. Baptiste-Primus: “Don’t shout, eh.”

Sen. W. Mark: No, I would not; my voice would not permit me. Madam President, I am armed with my Constitution, and you will permit to quote from this very important document but, before I do so, I want to indicate from the very outset that I was hoping that the Attorney General would have provided this honourable Senate with information as it relates to the consultation that the hon. Attorney General referred to in his opening statement when he said, Madam President, that he had consultation with stakeholders.

In fact, he said he “write out”, or he wrote to stakeholders, and he went on to indicate that he received submissions—that is, the Attorney General—which the Attorney General thought was very useful, but “a brakes” was put after that statement and the Attorney General went on to the actual clauses of the legislation thereafter. So this honourable Senate did not have the benefit of knowing the names of those stakeholders that would have advised the Attorney General to bring these changes to the legislation that we are now debating.

Well, I have been in consultation with some of these organizations that would matter, and as far as I am aware, Madam President, the Law Association has not really been properly consulted on this matter. [*Desk thumping*] The Criminal Bar was not properly consulted on this matter. So the question that has to be raised here by the Attorney General, and for him to answer the people of this country is, exactly who did the Attorney General consult with and who recommended these changes to this piece of legislation?

Madam President, under section 53 of our Constitution, it says that:

“Parliament may make laws for the peace, order and good government of Trinidad and Tobago...”

And that is what our mandate is about. That is what we are here for.

Madam President, I remember that when we did the 2011 legislation on the preliminary enquiry, it was, I think the name of the legislation at that time, if I recall, was the Administration of Justice (Indictable Proceedings) Act of 2011. That was preceded, of course, by Act No. 23 of 2005, which was introduced by the then Attorney General, John Jeremie, on paper committals. And then, of course, we have this legislation that is 102 years old on our statute books, the Indictable Offences (Preliminary Enquiry) Act, 12:01.

But I remembered, Madam President, that the 2011 legislation did, in fact, introduce Masters, or it allowed what is called Criminal Masters to conduct sufficiency hearings. But when the 2014 Act, known as the Indictable Offences (Committal Proceedings) Act, was moved and passed in both Houses but never proclaimed, there was a shift in policy, and the then Government went back to the magistrate, because the magistrate had that particular role in looking at evidence before determining whether a prima facie case had been made out and whether the person should go to court, that is the High Court, for trial.

The Government, when it introduced the amendments in 2018, the Administration of Justice (Indictable Proceedings) Bill of 2018, the Government, at that time, had a shift in the policy or in its policy, and it then went back to the Masters. So we have been going from Masters to magistrate, back to Criminal Masters.

Madam President, when we look at the Bill that is before us and we look at clause 4 in conjunction with clause 11 of this Bill, you realize that a massive seismic shift of tectonic proportions has emerged in this piece of legislation, where for the first time you—and this Parliament is being asked to give to the Office of the Director of Public Prosecutions a power to indict, and that is in the legislation

that is before us today.

And, Madam President, the Director of Public Prosecutions, as you know, cannot become the Director of Public Prosecutions unless the Prime Minister of our country so determines, because the Prime Minister, under the Constitution, has a veto power in determining whether an individual will become the Director of Public Prosecutions. So it is very important when you are giving power to the DPP, we have to understand, Madam President, that that particular office holder, with the greatest respect, can be seen in an indirect way of having some kind of link, not as a judicial officer—

Madam President: No. Sen. Mark, no. Please take your seat. I think that this is inappropriate the way you are presenting it, and I would ask you to steer clear of what you are saying now. Okay?

Sen. W. Mark: All right. Well, you know, sometimes I cannot say it here but I would say it on a platform.

Sen. Baptiste-Primus: Yes, do that.

Sen. W. Mark: Yes, because I do not have the right to say it here.

Sen. Baptiste-Primus: Do that.

Sen. W. Mark: Good. But, Madam President, the point I am making here is simply this. You are giving the power of indictment under this legislation to the DPP, and he is bypassing the sufficiency hearing that is permissible via the Criminal Master and, therefore, there is a major gap that we are creating in this particular piece of legislation as it relates to the rights of citizens who have been accused. Madam President, you are not found guilty. You have not been convicted. You have just simply been accused and you are on trial. So the rights of the individual must be protected under our Constitution.

And, Madam President, I would like you to indicate, or I would like to indicate, rather, that it is very dangerous for us to have a provision in legislation as we have under section 11 which gives to the prosecutor or to an accused to elect to have a case determined in accordance with this Act. As I understand it, Madam President, this provision allows the unilateral right to opt out of an ongoing preliminary enquiry even though, Madam President, the other side would have objected. That is what this provision is seeking to establish here, Madam President and, therefore, the whole issue of scrutiny, Madam President, is very critical.

Madam President, in those circumstances where the prosecution can elect to indict to take a matter from the preliminary stage and take it straight to court, that is to the High Court, bypassing sufficiency hearing, bypassing the preliminary enquiry process, I would submit to you that this really constitutes a collision with section 4(a) of our Constitution, and I would tell you why. Section 4(a) of the Constitution says that the individual is entitled, Madam President:

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

So there is a clash where the procedural rights of the accused are being compromised. And, Madam President, what is being advanced is that the right to a fair hearing and the right to enjoy a fair trial, those two fundamental rights—and they are rights, Madam President—are being disturbed.

Madam President, I also want to draw to your attention that every citizen in this country has a right to equality before the law and the protection of the law, and we are seeing a provision in the legislation that gives to the Director of Public Prosecutions the right to unilaterally intervene and discontinue a matter that is taking place at the preliminary level of a trial. Madam President, that can only

happen, not in a society that has a respect for democratic rights and freedoms, that can only take place, Madam President, under Idi Amin, Uganda, when he was in power, but it cannot take place in a democratic country like Trinidad and Tobago. [*Desk thumping*] And I want to warn this Government and the Attorney General, this legislation cannot be fixed, cannot be fixed. Only the courts of Trinidad and Tobago would be able to address this piece of legislation because today it is a simple majority, so the Government has the numbers and they will pass it. They will pass it, Madam President.

But we want to just indicate to the Government that under section 5(1) of our Constitution, it makes it very clear, Madam President, that the Parliament may not under section 5(2)(e) may not:

“(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;”

And that is part of our Constitution, Madam President. So I want to advise the Attorney General, and I hope that he would give us the benefit of his discussions on this matter. Where did these changes come from, Madam President?

Madam President, we on this side are of the view that provisions in this piece of legislation are inconsistent with sections 4 and 5 of our Constitution. We believe, Madam President, that the Government of this country—the provisions I should say, in this legislation, are inconsistent with the constitutional rights as outlined in sections 4 and 5, and we believe it is not justifiable in a society that has a proper right and respect for the rights and freedoms of the citizens of our country.

Madam President, where in any civilized country—we heard about what is happening in Jamaica, we heard about what is happening in Barbados where,

Madam President, similar pieces of legislation were introduced because, Madam President, it is clear that something has to be done to deal with the backlog of cases. Something has to be done to improve our administration of justice. Something has done to deal with the criminal justice system in our country. But whatever has to be done and whatever must be done cannot be done on the altar of expediency, and we cannot undermine and we cannot subvert and we cannot compromise the rights of citizens, Madam President, in an effort to bring about what is described as speedier justice in our country.

4.15 p.m.

I prefer 10 guilty people to go free than one innocent person to be hung—or hanged. [*Crosstalk*]

Hon. Senator: Make up your mind, Senator.

Sen. W. Mark: I prefer—no, I am clear about what I am saying, you know, I prefer 10 to go free. So, Madam President, the Government is introducing legislation and we do not believe that the Government has given it proper consideration. There has been no proper consultation on this piece of legislation. We believe that it is rushed legislation that the Government is engaging in at this time. And, Madam President, if you go to clause 5 of our legislation, or the legislation before us, we are seeing where:

“Without limiting the generality of subsection (2), the Director of Public Prosecutions may prefer and file an indictment under subsection (2)—”
—and it gives you a series of circumstances where the Director can intervene and deal with matters as he sees fit. But the Director of Public Prosecutions derives his powers under section 90 of the Constitution, and the reason why we have the principle of the separation of powers under our Constitution and entrenched in our

Constitution is to ensure that there is an independent Judiciary in our country that can take decision without the Legislature passing laws to either indirectly, unwittingly, Madam President, remove their discretion.

I do not believe, Madam President, that we would want to be party to any legislation that is going to remove judicial discretion. That is a recipe for serious disturbance, disequilibrium and serious instability in any democracy. So we would not want to be party to that arrangement. And therefore, Madam President, we are of the firm view that this particular legislation that we have before us is extremely dangerous in its current manifestation. Madam President, no one can argue we introduced the legislation in 2011 for the abolition of preliminary enquiries, but the legislation has been on the books for eight years and maybe there was need for some kind of review of the legislation to determine, for instance, what changes may have been required, not to take the legislation as it is, tinker with it, make some amendments in 2018, come back in 2019 to make further amendments, and the actual legislation itself of 2011 may be in need of revision, review.

Madam President, whenever we are talking about criminal proceedings, there is need for fairness. There is need for fairness in criminal proceedings, and, therefore, when we examine these provisions in the legislation before us we are seeing where there are areas of concern, and there are areas where we believe that the potential for undermining a citizen's rights, who has been accused, to a fair trial seems to be real in what we are dealing with at this time. Madam President, the United Kingdom, may I advise, whilst they have introduced committal proceedings and they have sought to amend their legislation back in the 90s, you know, in the United Kingdom, outside of serious fraud or terrorism, serious fraud, complex fraud, they still have their preliminary enquiries, you know. They have

not abolished preliminary enquiries in the United Kingdom. They still have their system there, but what they did, Madam President, from my research, is that there are certain areas they believe they ought to speed up trials, terrorism, serious fraud, but other matters, and so on, go through their normal system.

Madam President, we have to be real in Trinidad and Tobago and we have to understand that there are risks associated with measures of the nature and the kind that we are dealing with here today, because you can have a situation where you have a unilateral intervention as it relates to the bringing to an end of a trial or a preliminary enquiry and taking it straight up to the High Court, and that could be done on an arbitrary and whimsical basis. I am not accusing anyone. I am saying that when you put power into the hands of one office or one group of office holders without the appropriate checks and balances, these are real possibilities that can emerge, and when those possibilities emerge there are practical implications for the citizenry of our country.

So, Madam President, how do you deal with a situation where in Trinidad and Tobago and for the first time in the Commonwealth, the courts of Trinidad and Tobago had to intervene to temporarily take over proceedings that is properly under section 90 of the Constitution to discontinue criminal proceedings against three accused persons? Because, you know why, Madam President?—because the office holders or that office refuse to discontinue those proceedings.

Madam President: So, Sen. Mark, reference has been made to this decision already and I would ask you therefore not to go into tedious repetition. Okay?

Sen. W. Mark: And that is why, Madam President, I am saying that we have to pause for a cause. We are giving power to an office, Madam President, as you have indicated, that we need to look at carefully. We cannot put that kind of power

into the hands of an office that only a few hours ago the court ruled against. And I am saying when we are dealing with legislation we are dealing with the lives of ordinary people and lives in which, for instance, you can be charged with a capital offence and you can be found guilty, and if you are found guilty you could die; you could be sent to the gallows. So we are dealing with serious issues affecting the lives of people. And I, as a Member of the Opposition and the alternative Government, we on this side cannot associate ourselves with what is clearly ad hominem legislation. [*Desk thumping*] We cannot be associated with that, Madam President. How can we be? We cannot support this.

So, Madam President, we are dealing with a situation where the legislation is saying that all or before this Act or Bill becomes law, anything that is taking place before this Bill becomes law can be subject to the provisions in the amended legislation. That is what we are being told by these clauses in the legislation. But, Madam President, when it comes to the retrospectivity, can we as a Parliament sit here and agree to legislation of a retrospective nature in which you have citizens who, as the Attorney General told us earlier in his presentation, have matters at a preliminary level for five years, for eight years, for 10 years, for 15 years? And you are telling this Parliament, in the face of that evidence and that information, that the DPP or the prosecution can intervene under the provision in this legislation and simply cut and say, “Madam President, this matter is serious fraud. It is complex fraud, and I, DPP,” or “I, the office holder, under this legislation, in my opinion, believe, Madam President, that this matter should be taken directly for trial.” Madam President, that can only happen in a Gestapo state. It cannot happen in a democratic society. You cannot give one person that kind of power, and I think this legislation clearly is flawed legislation that we are dealing with.

We cannot, in its current form, support it. [*Desk thumping*] We cannot support this legislation in its current form. And I want to put the Attorney General on notice, you may pass it, you know, you may pass it because you have the numbers, but we will have our day in court. We will not stand idly by and allow the Legislature to be used by the Government for its own objectives. [*Desk thumping*] I believe, Madam President, the Government of this country has its own agenda, it has its own political objectives and they are using the Legislature in order to fix legislation to achieve their own political agenda.

Madam President: Sen. Mark, again, I have to caution you, you are imputing improper motives and I will ask you—you are actually coming up now to where you have five more minutes, please move on to some new points because you are starting to repeat in your contribution.

Sen. W. Mark: You are sure I have five, I thought I started at around 4.00? I thought it was four o' clock I started, Ma'am. So if I started at 4.00, I have 10 more minutes. Anyway, Madam President, I am guided by you.

Madam President: I am so glad, Sen. Mark.

Sen. W. Mark: Of course, I am always guided by you. [*Interruption*] Yes, and I am not shouting.

Madam President, I want to indicate that when it comes to this so-called Humphreys matter—you know, we are always hearing about Humphreys and the Privy Council—Humphreys and the Privy Council, I want to bring to the attention of this honourable House that there is a fundamental difference between the Privy Council ruling as it relates to Humphreys and the Privy Council and what the Government is trying to do in this instance. Madam President, I want to read because I have something here in writing. I want to read for you:

An accused person has no right as such to a preliminary enquiry.

We know that. That has been established by *Humphreys*, and there is no breach of the rule against retroactivity if the law, which is the new law, removes that right in relation to an existing criminal case. Madam President, that is what happened in the case of *Humphreys v Attorney General of Antigua and Barbuda*, but that case can be readily distinguished in the present context on two grounds I submit for your consideration. Firstly, the appellate in that case was caught by a new regime that applied to all existing criminal cases. There was no question of the prosecution exercising any discretion to switch to the new regime with the attendant risk of arbitrary decisions in individual cases or attempts to take prosecutorial advantage of the new regime. That is the first distinction when it comes to *Humphreys* and what we are dealing with here today.

The second area, Madam President, that I need to bring to your attention is that in this case of *Humphreys v Attorney General of Antigua and Barbuda* charges had been laid but no preliminary enquiry had begun. The appellant was not in the position that affected defendants as how it is being done in Trinidad and Tobago where, Madam President, having embarked on a preliminary process, having embarked on a preliminary enquiry, rather, and possibly for several months and even years, the entire process is curtailed by an entirely different streamline regime. So I want to submit, Madam President, that there is as clear scope from what we are analysing in this matter for principled constitutional objections to sections 4 and 2 and strengthened by amendments to section 11 of this piece of legislation. So we want to indicate, Madam President, from where we sit there is a distinction between this *Humphreys* matter that we are being told is almost like sacrosanct. It is not in the context of what we are advancing here.

So, Madam President, I know you told me I have a few—

Madam President: Seconds.

Sen. W. Mark:—a few seconds to wrap up, I want to indicate, Madam President, in closing, that this is legislation that we cannot support in its current form. We do not believe this legislation can be fixed. We believe the Government should withdraw this Bill from this Parliament this evening, and if they pass it, as they will, they will not get our support. Thank you very much, Madam President. [*Desk thumping*]

Madam President: Attorney General. [*Desk thumping*]

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, I thank all hon. Senators for their contributions. Some were indeed reflective of perhaps some simple solution to a few issues on the table. We, of course, heard the ritual approach coming from Sen. Mark, lack of constitutionality as is alleged, Opposition will not support, this is bad law, there is some ad hominem purpose behind this. This is what you call a ritual approach. It is almost cut and paste from debate to debate, but then again that is my learned colleague style and I make no criticism of that. It has worked well for him for the very many years that he has applied it.

Madam President, there are a number of issues, some of which have been coincidental for certain Senators, so perhaps I should start with those as I have flagged out in relation to the first Opposition Senator who spoke. Sen. Hosein spoke, indeed, very reflective of the law. The first point that Sen. Hosein raised was that this is UNC law, that this was good law. That in fact seemed to have collided 100 per cent with Sen. Mark, who now today says, “This is bad law and this cannot be passed, and there is some constitutional collision that is happening.”

So perhaps I invite Senators Mark and Hosein to collaborate a little bit to decide whether they are choosing paternity or rejecting paternity because there seems to be a complete divide between the two hon. Senators.

I note in particular in accepting the paternity of Act No. 20 of 2011, as Sen. Hosein boasted, that Sen. Hosein ran away from accepting paternity of section 34, because there was a submission coming from the Opposition that this law is being operationalized in some degree of haste. And the hon. Senators clean, quick, fast march, jump over, hurdled, high-vaulted over the fact that the only aspect of this Act No. 20 of 2011 that was in fact proclaimed was the long title, the interpretation section and section 34. I do not say that to rub salt on the wounds of the hon. Senators opposite, I say that because there was a question as to consultation. Who did we consult with? So let me stick a pin. The Office of the Attorney General wrote out to the several stakeholders and we in fact engaged in our traditional telephone calls, and I will put on record now that the one compelling submission that we received, coming from the private Bar, was from Mrs. Pamela Elder, Senior Counsel.

By way of her written correspondence to the Office of the Attorney General, dated 06 February, 2019, Mrs. Elder reflected upon this particular Act and made submissions specifically on section 4, section 11, section 13, section 6, section 29, and Sen. Mark, in alleging that there was no consultation, omitted perhaps to reflect upon what he ought to have known, but I forgive the hon. Senator, it has been some time since 2013. Because it was in 2013 that Mrs. Elder wrote to Sen. the hon. Christlyn Moore, the Minister of Justice, and in that correspondence, which Senior Counsel provided to the Office of the Attorney General, was the implementation pitfalls surrounding Act No. 20 of 2011. So these are matters

which have repeated. I thank Mrs. Elder profusely for, as a leading member of the Criminal Bar, having in fact sat at the Criminal Bar head for quite some time and engaged in joint consultations with the Judiciary, the Office of the Attorney General, the Ministry of National Security, the Director of Public Prosecutions, it was Mrs. Elder's comments that in fact drove us to the reflections that we have today before the Senate. There was one suggestion coming from Mrs. Elder which we did not pick up by way of a substantive amendment to the law and that is, quite correctly, Mrs. Elder's reflection that white collar crimes are not referred to in the Schedule 6 where you cannot have the ground of delay discharging them. Schedule 6 is the schedule which says, for these particular matters you cannot have a discharge on the ground of delay, and we recognized the potency of that argument, but the schedule can be amended by way of negative resolution. And so we are in the process of amending the sixth schedule, as we speak, by way of consultative reflection.

So we are going to add in to the sixth schedule of Act No. 20 of 2011, white collar crimes so that when this law is in fact in operation, but prior to proclamation, in full form, we will amend the sixth schedule to make sure that you will never again, on God's face of this earth, see a repeat of what happened with section 34. White collar crimes are complex in nature and we considered that it is appropriate to not allow them to be discharged on the ground of delay. That is the one aspect of Mrs. Elder's submission that stood out as in need of treatment but which was not included in this Bill. So far from Sen. Mark's contribution that there was no stakeholder submission and we can point to none, we can say this, we cannot compel stakeholders to reply to the Office of the Attorney General. We have come to this honourable Senate, time after time, and indicated that we have written

umpteen letters—*[Interruption]*

ADJOURNMENT

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move that this Senate do now adjourn to Thursday, June 06, 2019, at 2.30 p.m., at which time we will deal with the Motion to adopt the report of the Special Select Committee to establish to consider and report on the Sexual Offences (Amdt.) Bill, 2019, and we would continue the debate on the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011).

Madam President: Hon. Senators, I now invite Members to bring greetings on the occasion of the celebration of Eid. Acting Leader of Government Business.
[Desk thumping]

Eid-ul-Fitr Greetings

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. *[Desk thumping]* Madam President, on behalf of the Members on this side, I am delighted to share, in this honourable Senate, through you, Madam President, our heartfelt Eid-ul-Fitr greetings to the Islamic community, both at home and abroad, and to all citizens of our beloved and diverse national. With the new moon in sight, Madam President, we bid farewell to yet another holy month of Ramadan. For Muslims in Trinidad and Tobago and across the world this most spiritual period has been a time of reflection and renewal, increased devotion and worship, recommitment to values of gratitude, charity and compassion.

Madam President, Ramadan is the ninth month in the Muslim lunar calendar where Muslims fast from dusk to dawn abstaining from eating, drinking and

immoral acts. Throughout the holy month across the world Muslims partake in acts of worships such as prayer, reading the Quran and giving charity. Preceding the holy month, Muslims observe the month of Sha'ban in which they prepare for the month-long fast. Madam President, the Holy Quran states, and I quote:

If you who believe fasting is prescribed for you as it was prescribed upon those before you, in order that you may become righteous.

During this holy month Muslims are reminded of the suffering of the less fortunate so that all of us may remember to have compassion for our fellowmen. Muslims are encouraged to increase their good deeds, such as feeding the poor, donating to good causes and visiting the elderly and the sick. It is in this month Muslims read a lot of Quran and pray extra during the nights at the mosque and home.

This celebration, Madam President, is the reminder of Trinidad's cultural diversity and a symbol of the strength and beauty of our multicultural society. Eid-ul-Fitr is a time for Muslims to give charity to those in need and celebrate with friends and family at the completion of a month of blessings and joy. Madam President, I have been fortunate to grow up next to a very devout Muslim family and to have in my family aunts, uncles, cousins and in-laws who are Muslims. As a Trinidadian and Tobagonian citizen, I am proud of the numerous contributions of our Muslim brothers and sisters which they have made and continue to make to our beloved country. Madam President, on behalf of the Government of Trinidad and Tobago, and on behalf of this Bench, I wish to extend blessed Eid-ul-Fitr greetings to the Muslim community, and, by extension, all the citizens of our beautiful country. Thank you. [*Desk thumping*]

5.45 p.m.

Sen. Saddam Hosein: Thank you very much, Madam President. [*Desk thumping*]
Bismillah hir Rahman nir Raheem, I begin in the name of Allah the Most Gracious,

the Most Merciful. At the break of fast this evening my fellow brothers and sisters in Islam anticipate the ushering of the start of the celebration of Eid-ul-Fitr on sighting of the moon.

Muslims in Trinidad and Tobago join millions of Muslims around the globe in marking the end of the month of Ramadan, which was a month of immense prayer, reflection and sacrifice. Muslims have been commanded by Almighty Allah to fast, as it is stated in the *Qur'an*, Chap. 2, Verse 183:

“Oh ye who believe! Fasting is prescribed to you as it was prescribed to those before you, so that ye may (learn) self-restraint.”

Fasting is one of the five fundamental pillars of Islam, and during this holy month Muslims fast by refraining from food and drink from dawn to dusk. However, Madam President, fasting is not only limited to food and drink but refraining from bad deeds and evils. Ramadan is regarded as such a special month that Muslims make special *dua*, which is supplication, months before begging Almighty Allah to spare life so that they can attain the blessings of the holy month, and that *dua* goes— [*Arabic spoken*] —which means:

“Oh Allah, make the months of Rajab and Sha’ban blessed for us, and let us reach the month of Ramadan. Prolong our lives up to Ramadan, so that we may benefit from its merits and blessings.”

During the month of Ramadan we reflect on our lives, especially all that have gone in the previous year. This year has certainly been one of trials and tribulations for the Muslim community. I reflect on the New Zealand Christchurch massacre where a gunman stormed a Mosque during Jummah and left children orphaned, husbands and wives widowed, and parents without children. I sympathize with them especially on this day as they are left to observe Eid without their loved ones.

In Trinidad and Tobago I salute Ms. Sharon Roop, a brave woman police officer, who took the State to court and succeeded in her fight to be able to proudly wear her hijab as a Muslim police woman while on duty. Ramadan is a period of unity as we sit with each other on an almost daily basis to break the fast, and stand shoulder to shoulder with each other to perform our salah. We are uncertain whether we will be allowed another year to get the blessings of the Taraweeh prayer and the observance of the night of power, *Laylatul Qadr*. Ramadan makes us aware of the suffering of a hungry person and remembering them throughout the year. While we give generously during this month, it reminds us that we must also give in the same manner throughout the year. Let us carry the teachings and virtues of this auspicious month with us. Let us always remember to be our brother's and sister's keeper.

Madam President, while Eid is a time of celebration, we often feel a deep sense of sadness that we bid this glorious month of Ramadan farewell. Eid however, represents the mark of a new beginning, and a renewed sense of spirituality. While we live in a blessed country we remain aware of our circumstances. I pray that we can be afforded a society of peace and prosperity. I beg that it allows us to build it communally and allows us to be more tolerant and respect each other. But before I close, Madam President, I would just like to thank the various Jamaats across Trinidad and Tobago, their executives, the imams and those who have prepared Iftar and dinner, and pray that Allah reward their efforts during this month. Let this celebration be one of unity, brotherhood and happiness. I wish Trinidad and Tobago Eid Mubarak on behalf of the Opposition. *Assalaamu Alaikum* and peace be unto you. [*Desk thumping*]

Sen. Dr. Maria Dillon-Remy: Thank you, Madam President, for giving me the opportunity to bring greetings on this occasion of Eid-ul-Fitr 2019. *Assalaamu*

Alaikum to the Muslim community on the occasion of Eid-ul-Fitr.

On behalf of the Independent Senators I wish to congratulate the Muslim community for your patriotism demonstrated during the month of Ramadan as you fasted and prayed for the moral and spiritual upliftment of your families and the nation of Trinidad and Tobago. May your Eid celebrations be an enriching time as you give charity to the less fortunate, and commit yourselves to nation building where your quality of life will radiate the true essence of peace and harmony as we live and work together for a better and productive society. May you and your families be blessed, and may Almighty God shower his blessings on our nation. Thank you. [*Desk thumping*]

Madam President: Hon. Members, I am happy to join with the previous speakers in bringing greetings for the celebration of Eid-ul-Fitr.

Having observed our Muslim brothers and sisters showing such discipline, determination and duty during the month of Ramadan, we now witness and admire the evolution to outward joy and generosity to their fellow men through the giving of alms and other acts of charity. It gives me great pleasure on behalf of the Parliament of Trinidad and Tobago and the members of staff of the Parliament, to wish all Muslims, and in fact all of Trinidad and Tobago, Eid Mubarak. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.51 p.m.