

SENATE*Thursday, June 06, 2019*

The Senate met at 2.30 p.m.

PRAYERS[MADAM PRESIDENT *in the Chair*]**PAPERS LAID**

1. Ministerial Response of the Ministry of Rural Development and Local Government to the Sixth Report of the Joint Select Committee on Land and Physical Infrastructure on an Inquiry into the Establishment of Systems for the Maintenance of Drainage and Roadways. [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]
2. Immigration (Amendment) Regulations, 2019. [*Sen. The Hon. F. Khan*]

URGENT QUESTIONS**Massy Energy Production Resources Limited****(Explosion of Oil Tanker)**

Sen. Wade Mark: Thank you, Madam President. [*Desk thumping*] To the Minister of Labour and Small Enterprise Development: In light of the explosion of an oil tanker in the mining fields operated by Massy Energy Production Resources Limited which led to the death of one person and injuries to another, can the Minister indicate whether this matter will be independently investigated?

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you very much, Madam President, and I thank my hon. colleague for posing this question. Madam President, the Occupational Safety and Health Agency is empowered under the Occupational Safety and Health Act, Chap. 88:08, to, among other things, investigate workplace accidents, including work related fatalities. Madam President, the unfortunate accident which

occurred recently and tragically took the life of a worker. We on the Government bench wish to extend our deepest condolences to the family, and pray that God will be with them during this very difficult time in their lives.

Madam President, I am informed that OSHA was notified of an accident that occurred on June 4th at approximately 10.20 a.m., at Massy Energy, Moruga West oilfield, Haggard Trace, Rock Road Penal, which resulted in fatal injury to Mr. Phillip Ramlochan of Light Pole 92, Harris Village, South Oropouche, a driver/floor man, and also critical injury to Mr. Dirpaul Sookhoo, of No. 1 Mt. Jacob Road, Hassanali Trace North, Lower Barrackpore, a head man, both employed with Total Contractors Services Limited. Madam President, the Occupational Safety and Health Authority initiated an investigation on Tuesday the 4th of June.

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

Sen. Mark: Madam President, through you, can I ask the hon. Minister what period of time this investigation will be executed by the Occupational Safety and Health Authority? What period of time it will take for this report to be completed?

Sen. The Hon. J. Baptiste-Primus: Madam President, I am not in a position to give the hon. Senator the information he seeks, but I can give him the comfort that this investigation will be conducted with the highest priority.

Sen. Mark: Madam President, can I ask through you to the hon. Minister, whether she is aware of any counselling services being offered by the employers as it relates to the family and the affected workers who would have witnessed this tragedy? Can you share with this House?

Sen. The Hon. J. Baptiste-Primus: Madam President, while I do not have that precise information, I would certainly hope that the employer would offer such counselling services to the family of not only the worker who died but the one who

is injured also.

ORAL ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I am pleased to announce that the Government will be answering all questions on the Order Paper.

Venezuelan Company PDVSA and CITGO Chain (Sanctions imposed)

155. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

In light of the US sanctions imposed on the Venezuelan company PDVSA and its retail chain CITGO, a company from whom Trinidad and Tobago will be importing refined petroleum products effective April 2019, can the Minister indicate what measures are being taken to ensure that the said sanctions will not negatively impact this arrangement?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. [*Desk thumping*] Madam President, this question, among many others, is based on a false premise. CITGO is currently not a supplier nor is it a potential supplier of refined products for Trinidad and Tobago.

Sen. Mark: Madam President, may I ask the hon. Minister whether he is aware that on the 13th of October, 2018, a ship named *High Mars* collected refined products from Charles Lake in Louisiana bound for Port of Spain and that ship arrived at the Point-a-Pierre jetty on October the 23rd? Is the Minister aware of such a shipment of refined products from Charles Lake, Louisiana?

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

Sen. Mark: Can I further ask the Minister whether he is aware that CITGO was able to supply refined products which was loaded on a vessel called *High Mars*

that brought those refined products to Trinidad and Tobago on October last year, or in the month of October last year? Since the Minister, Madam President, has denied that there is any relationship between CITGO and the Government and the particular company that brings in refined products, can the Minister clarify this for us?

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

Sen. Mark: Well, is the Minister, Madam President—I am giving him an opportunity to indicate for the records of this House. Is the Minister categorically indicating to this House that there is no relationship whatsoever between CITGO and Paria Fuel that is responsible for importing refined products for Trinidad and Tobago? Can the Minister indicate categorically for the record that there is no such relationship? Can I ask, through you, for the Minister to put on the record?

Madam President: Sen. Mark, that question I would not allow, and you have one more, if you wish, or you want to move on to the next question?

Sen. Mark: Well, Madam President, I would move a matter on the Motion for the adjournment on this matter. Can I go on now to the next question?

Madam President: Yes, you can.

Commercial Agreements between BP and Paria

(Details of)

156. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries: Having regard to reports that this country is paying one third more than the world market price for the importation of refined petroleum products, can the Minister provide details of the commercial agreements between BP and Paria?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, a competitive

request for proposal was issued by Paria Fuel Trading Company in 2018 for the supply of fuels, and BP won on the basis of superior commercial terms and reliability of supply. The agreement was for the supply of products that met the Trinidad and Tobago Bureau of Standards standard over a four-month period. In the global market, Madam President, a premium is applied to the world market reference price for variance in quality and transportation. This premium is typically 3 to 5 per cent over the reference market price. It is therefore simply not true as erroneously stated in the question that this country is paying one third more than the world market price for the importation of refined petroleum products. This is dangerous misinformation, as was the first question. Further, at present Paria does not have a current contract for supply of products with BP. The last cargo from BP's contract was delivered on February 13, 2019.

Sen. Mark: Can I ask, through you to the hon. Minister, what was the then price paid by Paria Fuel Trading Company for the importation of refined products supplied by BP on the date announced a short while ago by the hon. Minister of Energy and Energy Industries?

Sen. The Hon. F. Khan: Madam President, as stated before in response to similar questions of this nature, Petrotrin—nah not Petrotrin, Paria, went out for competitive tender for the supply of fuel largely from traders, and that is where the business is. So BP may be exploration and production and refining, but they also have a trading arm. When you bid as a trader you offer competitive prices. You may discount the reference price. Your mark-up may be 2 per cent whereas your competition may be 5 per cent. If you win you cannot disclose that price because you are jeopardizing the free market system. And no matter how much we try to put that into the heads of the UNC and the Opposition they are not listening. I do not know how to say it again, Madam President, but these are the facts. This is a

commercial world. This is trading in international commodity. Why do you think you go for public tender? Why do you think you go for RFPs? It is because you are playing the market, and that is how the market operates Sen. Mark.

Madam President: Sen. Mark.

Sen. Mark: Yeah, Madam President, is the Minister indicating that at this point in time and in the future, Paria Trading will not be using BP supply and trade to import refined petroleum products for the people of Trinidad and Tobago? Can I ask the hon. Minister?

Sen. The Hon. F. Khan: Madam President, I never said that. I said BP won the first tender for the supply of a four-month contract, afterwards it was retendered. Other companies and other traders won, and every time the four-month and the five-month and the sixth-month period expires they go back out for tender. So it is possible that BP could win again, I do not know, but it is a competitive environment.

Engagement of Israeli Firm (Detection of Sub-Surface Leaks)

157. Sen. Wade Mark asked the hon. Minister of Public Utilities:

Having regard to reports that an Israeli firm has been engaged by WASA for purposes of detecting sub-surface leaks in its water mains throughout the country, can the Minister indicate the following:

- i. the number of leaks discovered as at February 2019; and
- ii. the average timeframe for detecting and repairing said leaks?

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Madam President, the Inter-American Development Bank, the IDB, has been assisting the Government of Trinidad and Tobago to address the challenges in the water and sanitation sector. In this regard, technical assistance was provided for an Israeli

firm, UTILIS Corporation, to visit the country to assist WASA in introducing cutting edge technology involving the use of satellite imagery, achieving a reduction in the levels of non-revenue water caused by sub-surface leaks in its water distribution system. Contrary to false assertions in this question, UTILIS was engaged and paid for by the IDB. WASA has not entered into any agreement with UTILIS nor made any payment to UTILIS. UTILIS visited the country from January 14th to the 18th, 2019, and conducted field exercises with WASA's management and water loss detection repair teams in the north-west Trinidad and in Tobago, as well as several on-site verification training activities in both islands. During the exercise the following was achieved: a total of 127 points of interest were surveyed based on the imagery received and a total of 98 leaks were found.

Madam President, the average leak time taken to repair a leak varies depending on the nature of the complexity of the leak, and can take from one day, where the mains are easily accessible to as much as a week or more for more complex repairs. For example, in situations where the mains are required to be relocated, the leak time for such repairs would be much longer. That being said, the authority is doing everything within its power to have the number of leaks in the country included in those identified by UTILIS repaired expeditiously.

Sen. Mark: Can I ask, through you, to the hon. Minister, whether this is really a firm that conducted the technical work as outlined? Whether the Minister intends to approach the IDB to have that firm revisit T&T to continue the work that it has started?

Sen. The Hon. R. Le Hunte: Madam President, the short answer is, no. We think that the technology—we found that the technology was helpful to some extent, but we were not very comfortable with the detection and how the preciseness of the information that was being given, and therefore we have engaged in a number of

other methods that we are going about to, and with some degree of success in bringing the levels of leaks within the country down.

Sen. Mark: Can you the hon. Minister indicate whether we can have, or put it another way, Madam President, can the Minister make available the information regarding the arrangements between the IDB and this Israeli firm which they would have paid for, but of course they came here to provide certain services? Is a public document available for public consumption, and if it is, can the Minister make same available to this honourable Senate?

Madam President: So, you have just asked two questions there, if there is a document, and can it be made, if there is. Minister.

Sen. The Hon. R. Le Hunte: Madam President, there is no public document that is available to say the IDB provided the assistance. They offered us to just come, and they had some new technologies, some new companies, and they provided us the opportunity to come to look at this firm, try out their technology. They came, they conducted what they wanted. We were not happy with the particular imagery that we were getting. It was useful in helping us, and that was that. There is no documentation, and I am not aware of the arrangement between IDB and the company them self. That is a private document between both of them.

Sen. Mark: Through you, hon. President, can the Minister indicate whether Trinidad and Tobago was therefore used as an experiment by this Israeli firm, testing its new technology? Was Trinidad and Tobago the first country that was used by this Israeli firm to really test its new technology? In other words, we were the guinea pigs. I am trying to get clarification.

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

ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS)

(AMDT.) (NO. 2) BILL, 2019

UNREVISED

[Second Day]

Order read for resuming adjourned debate on question [Tuesday, June 04, 2019]:

That the Bill be now read a second time.

Question again proposed.

Madam President: When we adjourned on the last occasion the Attorney General had just began his winding up. Attorney General, you have 39 minutes of speaking time remaining.

Hon. F. Al-Rawi: Much obliged, Madam President. [*Desk thumping*] Madam President, that is 39 minutes in full time, yes?

Madam President: Yes.

Hon. F. Al-Rawi: Much obliged, thank you. Madam President, I thank you for the opportunity. We paused on the last occasion so that we could allow for the celebration of Eid ul Fitr, in particular, for the obligations that many members of our community had, and I am very hopeful that we had a very happy and proper end to the month of Ramadan as our Muslim community, and indeed Trinidad and Tobago celebrated it as a whole.

Madam President, we were on the last occasion traversing the submissions of hon. Senators with respect to this particular Bill, and as stated this particular Bill has, of course, caused certain considerations. I had addressed in the short time that I had engaged the wrap up, Sen. Mark's allegations that there was no consultation in this legislation and in the process, and indeed I have refuted that by drawing reference to specifically the written submissions coming from Mrs. Elder, Senior Counsel, who is a leading member of the Criminal Bar and who in fact sat on the committee together with the Chief Justice, the DPP, the Attorney General, the Minister of National Security, in the consultative process on the criminal justice

system. I have put on record that Mrs. Elder's submissions dated the 6th of February, 2019, repeated submissions which were given to then Minister of Justice Christlyn Moore back in 2013. In fact, the letter dated to Minister Moore then was the 17th of July, 2013.

Madam President, it is to be noted that there was a considerable amount of consultation also engaged by then Ministry of Justice in relation to the abolition of preliminary enquiries. I remind as a matter of the record that we engaged in a Bill, Act No. 20 of 2011, which is the parent law which we are now seeking to do amendments upon. We then went on to the committal proceedings legislation of 2014, and as it stands, there are three pieces of law to treat with preliminary enquiries or sufficiency hearings, or the abolition of preliminary enquiries and the adoption of a new procedure, and they are: The Preliminary Enquiries (Indictable Proceedings) Act No. 12:01 of 1917—No. 12 of 1917. There are, of course, this Act No. 20 of 2011 and then the Committal Proceedings Act of 2014.

It was in the context of that consultation exercise that Independent Senator, past Independent Senator, God rest her soul, the very distinguished Dana Seetahal, provided then Attorney General Ramlogan with a detailed set of comments as to what ought to be attended to in the gap between the 2011 Bill and the 2014 Bill. And in summary I say, Madam President, that coming to this honourable Chamber, is a continuum of consultative process, and let us put on record, from 1986 come forward, we have been looking at amendments and indeed the prospect of abolishing preliminary enquiries. And as we stand in 2019 and now, the consultative exercise, the comments, the procedures, the acts and omissions that one ought to consider, there has been a plethora of information. So there has been full and proper consideration, and I put that onto the record.

Madam President, I was dealing with, when we stopped, the inconsistency of approach between Sen. Hosein and Sen. Mark. On the one hand Sen. Hosein took full paternity of—in fact, I should say maternity of Act No. 20 of 2011, having attributed it to the leader of the UNC, Mrs. Persad-Bissessar, and Sen. Mark said there was no way on earth that the UNC was going to support this law, this Act No. 20 of 2011, essentially, because Sen. Mark's submission is that the law is somehow unconstitutional. And Sen. Mark took a very curious position. In fact, one against his entire Government as it then sat, and also bench as it is currently comprised, because when we look to Act No. 20 of 2011, as it was originally passed, and we turn to section 4, as it was originally passed unanimously, that recommendation of law coming from the UNC in complete voice, here is what it says:

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

And here is what subsection (2) says:

“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...”

Come on, Madam President. Section 4(2), as passed by the UNC Government, as that Act was partially proclaimed, so ready was the UNC Government to implement Act No. 20 of 2011, that they brought a note of proclamation to the Cabinet, sat on it twice, proclaimed the Act, proclaimed section 34, and today we hear Sen. Mark, in a very boldface fashion, media actually covering the submission made by Sen. Mark. Sen. Mark has the temerity to stand before the nation today to say that section 4 of this Act is unconstitutional.

I mean, which is it? It was constitutional when the UNC passed it, but it is not constitutional today because the UNC is not in power. Madam President, the intellectual prowess behind that kind of submission leaves a lot to be desired, and I would put it as politely as I can. There is an offensive rule in law that you cannot approbate and reprobate at the same time. You cannot blow hot and cold.

Madam Speaker, Madam President, forgive me, the submission coming further echoed by Sen. Sobers in his reference to case law, and there was merit in some of Sen. Sobers' contributions, which I would come to. There was an interesting point which the Government agreed should be treated with. But, Sen. Hosein's reference to the well-known decision of Khoyratty, and in treating with constitutionality, has to be addressed. The simple fact is, the rule of law, the requirement of a fair trial, the constitutional parameters set out in sections 4 and 5 are well-known to us. But this is not something upon which we need to speculate. This has been answered by the clear dicta of the Privy Council in the Hilroy Humphreys case. Effectively, there is no right to a preliminary enquiry, there is simply a right to a process of a trial. And the reference to the Barbadian law, as given to us by Sen. Sobers and others, is of no use, because in Barbados they accept the same process that we are engaging in right now. That is, the fairness of trial is to be had in the process of a trial, and in this instance if there is to be no preliminary enquiry it is to be dealt with in the sufficiency hearing initial hearings as we then proceed to the Assizes.

Now, Sen. Hosein had an interesting submission speaking to the magistrate merely rubber stamping the prosecution, that this amendment, this operationalization of the law should be avoided, because in Sen. Hosein's submission on the back of Khoyratty, the case of Khoyratty, Sen. Hosein made the

submission that magistrates ought not to be rubber stamps of the prosecution. I must refer Sen. Hosein to the supreme law of the Republic of Trinidad and Tobago, so declared by section 2 of the Constitution. Section 2 of the Constitution clearly identifies the supremacy of the Constitution. And then when you turn to section 90 of the Constitution it is in pellucidly clear language that the Director of Public Prosecutions has three powers:

1. To initiate prosecutions;
2. To stop prosecutions; and
3. To take over prosecutions.

3.00 p.m.

Those are the three clear powers. In other words, the DPP can do as the DPP wishes to do pursuant to the Constitution. It is true that the preliminary enquiries law, Act No. 12 of 1917, that law also recognizes that the DPP has a statutory role. If you look to section 22 of the preliminary enquiries law, the DPP has a role and function. You look to section 23, in subsections (5) and (8), you would see that the DPP also has statutory functions to skip past preliminary enquiries; to re-initiate a prosecution where an accused has been discharged by a court; to also be consulted by a magistrate on a question as section 22 of the current law provides.

So the submission coming from Sen. Hosein that the magistrate is a rubber stamp is respectfully to be ignored in the context of the supreme law, section 90 of the Constitution. We see as well that Sen. Hosein's submission in clause 4 that the legislative power is interfering with judicial power; it is that same section 4 that I just referred to. We are back in 2011 and in 2012—the then UNC Government saw it as no breach of the separation of powers principle, nothing to be frowned upon. That answers the submission that there is something to be feared by way of an

intrusion upon judicial power. That is not the case. The law is particularly clear because the issue is not retroactivity per se. It is retrospectivity that is to be frowned upon in the context of the Privy Council's language in the Liyanage case. And it is not every Act of Parliament which is retroactive or retrospective in effect that falls into odium. You can have perfectly clear laws, so stated to be retroactive in fashion, which are upheld as entirely constitutional. We can give an example for instance as that argument was considered in the Northern Construction case. The Northern Construction case at the Privy Council, and at the Court of Appeal, reflected upon the separation of powers argument and the retrospectivity/retroactivity argument, and upheld that the repealing law that this Parliament participated in was not one which offended any one of those principles.

Now, Madam President, Sen. Hosein went on to give a very interesting submission. Sen. Hosein said that we have moved away from a prima facie case, and we do not know what is sufficient evidence, and he referred us to the case of Galbraith. Madam President, I am getting more and more concerned with the submissions which are offered by the Opposition Bench. To make a submission effectively implying that we no longer have security because somehow today in Trinidad and Tobago nobody knows what is sufficient evidence, because we are now introducing it into law for the first time, is to make a mockery of the law as it stands in written form since 1917. And let me refer you to this, Madam President—section 23 of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 says this at subsection (2):

“Where the Magistrate is of the opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put

the accused on trial for any indictable offence, the Magistrate shall commit the accused...”

So Madam President, where does this understanding that sufficient evidence is some new creature of law, some new standard and some new parameter of the law really find any merit? That is made false by a mere reading of Act No. 12 of 1917, Madam President.

And therefore, I really want to urge my learned colleague Sen. Hosein to focus upon the sobriety of the law. The concept of sufficiency of evidence is well known to our courts. We can rest assured that the courts will continue to assess the evidence on the whole. And in looking at the evidence on the whole, there is comfort to be found in the standard of proof with respect to sufficient evidence, and that is not only the subject of over a hundred years of law, but it is the subject of common sense, Madam Speaker—sorry, forgive me, I am dancing between Houses—Madam President.

Madam President, there was reference to a case which was touched upon carefully and that is a case which featured in the newspapers recently, and which dealt with the point of the DPP, in the exercise of the DPP’s discretion. There was a judicial review application which was brought before the High Court, and the High Court effectively just simply said that the High Court would exercise judicial review in a particular circumstance. It is necessary to touch upon it very carefully, simply to say that that matter is in need of clarification by way of appeal on the law as it stands.

The concept of judicially reviewing the DPP is not unknown to us. Indeed, if you were to refer to the well-written text by Dana Seetahal, you would see that back then when was published, she contemplated the application of judicial review

proceedings on a decision of the Director of Public Prosecutions. But it is material to note that one needs to have care and caution in all of a sudden pouring heavy scorn on the Office of the DPP. The DPP's functions and the disclosure of evidence and the Criminal Procedure Rules require that evidence which is prejudicial to the prosecution's case must be disclosed, and I will say no more than that, other than to say, do not move too quickly upon this.

Madam President, we heard coming from Sen. Mark, Sen. Hosein in particular, a very strong submission, both Senators saying that this law was somehow ad hominem, that this process of abolishing preliminary enquiries is somehow engaged to treat with UNC people alone. That is what was said by my learned colleagues opposite. I wish to, Madam President, reject that submission out of hand, and in rejecting it out of hand, I refer to the very statistics offered in the piloting of this law where I reflected upon the existence of 33,000-plus cases in preliminary enquiries—33,000 plus. The fact that one or two members of a political party may be before the courts, in serious circumstances, is one or two out of 33,000 existing cases. And I would not be in a hurry to offer an argument that this law is designed to attack a political party. The simple point is to allow a process of trial.

I can tell you now, Madam President, today in Trinidad and Tobago history was made in the courts. Today the first plea bargaining hearing under the new legislation was dealt with. [*Desk Thumping*] That involved a matter of passage of law, movement of the law forward, operationalization of the law, and that impacts the whole realm of preliminary enquiries. Trinidad and Tobago therefore witnessed today that this Senate passed the plea bargaining legislation, this Government proclaimed the law, this Judiciary saw the movement of a file from the

Magistrates' Court to the High Court in one day. This Judiciary had the first-ever plea bargaining hearing in the history of timeliness, engaged in, and fact is that a trial of that matter has been set for January 2020.

So Madam President, I am giving you an example of how a law can be operationalized, of how the little elemental pieces of what we are doing—public defenders, Criminal Procedure Rules, implementation of a system of Masters, plea bargaining on the back of bail management, et cetera. This Eleventh Republican Parliament is making history in passing law and operationalizing it for the first time.

Madam President, there was an interesting question about bottle-necking raised by Sen. Hosein, joined by Sen. Thompson-Ahye, and there was a legitimate argument raised by my learned colleagues as to whether the elimination of magistrates conducting preliminary enquiries is simply to take the bulk of matters that are in the Magistrates' Court and just drop them at the doorstep of the High Court. This is a very legitimate concern. Sen. Shaikh also brought very commendable argument into the considerations for operationalization; I think the hon. Senator gave good contribution on that measure and I think that the submissions need to be answered.

The fact is that the Judiciary must obviously operate in a system. There must be people, there must be posts, there must be financing, there needs to be buildings and structures. And Senators opposite on the UNC Bench, on the Opposition Bench, quite properly pointed to the state and condition of the Magistracy, the courts at Princes Town, at Rio Claro, at Siparia. Sen. Chote gave us a very vivid example of how the list is managed in the Rio Claro courts and where effectively between 9.00 and 10.45 the matters have to be dealt with. And Madam President,

what I can tell you is, it was for that reason that this Senate passed, together with the House, the Criminal Division, if I call it in its short form.

And in operationalizing the Criminal Division came the amplification of the number of Masters, and when we did the Family and Children Division, and we did a miscellaneous provisions position, we raised—as Sen. Prescott will well remember—we raised the number of judges, the qualifications, from which jurisdictions they may come, we have effectively seen a 77 per cent increase in judicial capacity on paper. The Judiciary has closed off the application receipt for judges of the High Court. I understand that several posts for judges will be filled as a result of the JLSC's exercise which is ongoing now. The magistrates are being trained and tutored, the Judicial Education Institute under Madam Justice Gillian Lucky is hard at work. The Masters of court are receiving training and management, and indeed the legal profession via the Law Association's engagement of training is also busy at work.

But, Madam President, when I listen to my learned colleagues opposite speak and indeed if I were to reflect upon the many contributions coming from Sen. Mark yet again on Motions on the adjournment, and questions on the Parliament, the advocacy coming from the Opposition is that somehow—and Sen. Hosein said this quite vividly, people in the Judiciary, employees of the Judiciary are left crying. Sen. Hosein went so far as to say they tried it in respect of crime and they failed, and now they are trying to deal with the criminal justice system.

Madam President, for the record, there is a systemized engagement with the Judiciary staff, in the 13 district criminal and traffic courts, and three criminal division locations. The implementation of the 12 units. Each unit being staffed and populated by divisional judicial secretaries, judicial support officers, associate

judicial support officers, judicial orderlies, judicial research counsel, five in number for each of them—that is 25 support officers being put into the background to work alongside the judicial officers themselves. Masters, registrars, judges, that is how you make the system begin to happen, to move in the fashion that you saw in the plea hearing which we made history on as a country today.

Madam President, that is to be supplemented by new units in the Criminal Division, witness support unit, bail management unit. There is in fact an improvement in the number of positions which are being managed. And Madam President, let me put that on to the record, as a Cabinet our Government has in fact approved a very significant improvement in the judicial structures. We have approved, and the Judiciary is actively afoot being funded, in the creation on contract of 217 new positions. That is being done right now; yes of course contract. The contract positions being lawfully permitted under the Family and Children Division, and also under the Criminal Division, but permanent and pensionable positions are to be backed by the provision of funding for pensions.

3.15 p.m.

I hear the UNC speaking now, very glibly, about contract positions, when the UNC, as a government, prospered on contract provisions. And more than that, after breaking the Treasury to ensure that there was nothing left in it by way of moneys to pay for permanent and pensionable positions, all of a sudden today, the UNC bench is surprised about the utilization of contracts. You cannot have permanent and pensionable positions if you cannot pay for it, and, therefore, the utilization of contract positions, in the same vein that was utilized by the UNC Government, should not be new information to the UNC bench.

Further to the 217 positions, I am pleased to say that there are a further 84

positions. We are using 64 contract positions for transcriptionists. We are going to look at the improvement of 68 positions for permanent and pensionable offices. We are redeploying 22 vacant permanent pensionable offices, and then further absorbing. Madam President, we have created the human resource management unit, finance and accounts unit, fines and fees unit, records management unit, court reporting unit, statistical and evaluation unit, drug treatment court unit, criminal court information, communications technology unit, witness support unit, bail management unit, court office unit.

These have not happened by mistake. There was a dedicated creation of operational bodies into positions under structures underwritten by the Minister of Finance to operate these laws and that is why we are confident that the bottleneck argument can be managed. But, Madam President, that bottleneck argument is to be managed only if you encourage more and more trials to settle. Let me put it in a very simple way. How does a trial not happen? Number one, you clean up the list. Either witnesses are present or not. Matters are not capable of moving ahead or not, or you encourage plea bargaining, the use of MSI, Maximum Sentence Indication positions. You encourage those things so that you will encourage people to avoid a trial by going through a judicial process, which is a plea bargain and a plea hearing. In other words, quite simply put, the first guy on the bus gets the best seat. And people understand that best-seat concept as it is—that is a terminology coming from the United States of America. The first guy on the bus gets the best seat because the weight of prosecution evidence is more certain. So they would rather plea bargain than face the wrath of a court where evidence is secured.

And, Madam President, that is where the Commissioner of Police is to be

commended, because it is under this Commissioner of Police that an entirely new prosecutorial unit in the Trinidad and Tobago Police Service has been birthed to manage serious fraud, complex crime, money laundering and other matters. That involves the imposition and implementation which is actively on deck right now, of specialist attorneys from the United Kingdom, forensic auditors, forensic accountants. There are 32 forensic auditors and accountants that come from one division alone, and a further six.

This kind of prosecutorial weight has never before been institutionalized in Trinidad and Tobago, and that is why in Act No. 20 of 2011, when we, as a Senate, amended it in February, we specifically included in the definition of a prosecutor the fact that the Trinidad and Tobago police could prosecute. Because the Trinidad and Tobago police is no longer coming with a policeman as a prosecutor. They are coming with specialist prosecutors, coming from the United Kingdom, coming from Trinidad and Tobago, who are right here in the country working right now. They enter the domain as special reserve police.

Do you understand what I am saying? The game has changed. [*Desk thumping*] The population may not understand that just yet, but I think the UNC understands it when I hear the submissions coming from them, and I want to dissuade them from pouring fright into the population. If I stood as someone against whom an allegation was made, I would think it fortuitous to want to get to a trial which will exculpate me, rather than languish in 20 years of preliminary enquiry, to eventually get to a trial at the Assizes. This prospect of improving prosecutorial march is what is required in this country. It is only when that happens that there is a fear that if you do the crime that you must do the time. It is to make a mockery of common sense if the time never factors.

Madam President, Sen. Hosein and several others; Sen. Shaikh also chimed in on this particular purpose albeit in a different dimension, speaking about the buildings and court units. I can tell you today that San Fernando Magistrates' Court is to be constructed at Irving Park, just on the corner, next to Affan's Bakery. There was land that was purchased there by then Attorney General, Anand Ramlogan, to build an office of the Attorney General. There is no need for that office. We took that land and we vested it in the Judiciary and they are busy afoot now in the construction preparations.

Secondly, Madam President, we also took note of the fact that two other buildings were purchased under the UNC in San Fernando, neither of which can be occupied because the Ministry of Works and Transport is on record in saying that those buildings are unfit for purpose. So when the UNC comes today to tell the country, "Where yuh going in a court"? And, "is shift system", and "is junior sec and senior sec"; you put us there. Not a single building was repaired; not a single promise fulfilled in the creation of judicial complexes. Nothing was done, and today we have to hear the Opposition tell us about "where are the courts"?

Sen. Mark: "If you doh win de election, doh blame me."

Hon. F. Al-Rawi: Madam President, Sen. Mark says blame. No, we are not blaming. We are doing. We have vested today the Siparia post office for the retrofit by the Judiciary for a creation of a court there. We are treating with the creation of the courts at the Remand Court Unit at the Golden Grove site, where you will no longer have to leave the prison. You can appear from the prison. But that is entirely contingent upon this Senate, because the ability to appear by video conference feed is a subject of another Bill, and when we get back to that we will treat with what the UNC's position is on that.

Madam President, we note that there was a submission coming from Sen. Chote as it related to a few provisions. Sen. Sobers also raised the issue of clause 5. We saw in the submission coming forward from Sen. Sobers—a very important submission came from him. Sen. Sobers asked us to have a look at an approach to be taken with respect to clause 4. Sen. Sobers then went on to ask us whether we ought to define what is complex and serious fraud. I just want to refer Sen. Sobers to the specific language of section 23(8) of Act. No. 12 of 2017 where the exact terminology is used, where you can have no preliminary enquiry pursuant to the DPP's election, and that has been the law for a very long time. We hang our hat legislatively, and in terms of interpretation of laws, squarely upon the existing law.

Sen. Sobers asked us to look at clause 5 and, in particular, the proposed section 6(3)(d). The hon. Senator suggested that the evidence should be filed before the court since it could be a Master or magistrate. I thank the hon. Senator for that observation. He has hit the nail on the head. The Government believes that that ought to find itself by way of an amendment before the House. I thank you, Sen. Sobers, for that particular submission. We believe that we should amend it so that the determination is made by the DPP, as it does not involve filing of evidence before the court. So we will circulate an amendment to that.

Sen. Chote's submission in relation to clause 4 and the hollowing out of the law, as Sen. Chote put it, and the fact that the law—and forgive me, Senator, I put it in my own words and not in the words that you have used; effectively that the law is there for individual management and not necessarily for the group, as I recorded the submission. In looking at that particular submission, I would just simply say that we perhaps have run into a slight disagreement as to whether we ought to have the joint trial and joint charge approach. The fact is that without the

joint trial or joint charge approach, then the law is silent on it and then we would be inviting confusion into the marketplace, being the court—

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

Hon. F. Al-Rawi: Yes, Madam President. We will be inviting confusion into that particular aspect. In fact, Mrs. Elder, Senior Counsel, took the exact opposite point of view to Sen. Chote. It was Mrs. Elder that really impressed upon us, as we found in the recommendations coming from Dana Seetahal in her 2014 written submissions. They both centred upon the fact of the need to treat with joint trial and joint charges in the very fashion that we have proposed now before the honourable Senate.

Madam President, the position with respect to new section 6(e) and the issue of child charge, Sen. Chote made a very important observation about a child charged not being factored in the circumstances where the DPP may wish to avoid a particular preliminary enquiry. I thank Sen. Chote for that submission. We propose that we cause an amendment to be made in that regard. We were also asked to be mindful of the discretion to exclude certain types of evidence, effectively the argument that “shall” ought to be “may” and this is in the context of section 29(6) as we propose it is amended. I think Sen. Chote is right, that we ought to preserve the court’s discretion to consider the admissibility of evidence and, therefore, we agree with that submission, Madam President.

With respect to 32A(5)(b) and whether parties to proceedings should have a right to agree to having a date, we just wish to put on the record that we have sought to keep it in harmony with the manner in which you may vary a timetable by consent, which is something that we have in the Civil Proceedings Rules, where the parties can, with the permission of the court, vary a timetable by consent, and

that is the back for why we had proposed 32A in the fashion that we have. Again, this is subject to judicial discretion and is not unknown to in a rules-based environment.

Madam President, Sen. Thompson-Ahye was right. Sen. Thompson-Ahye reflected upon an anachronistic colonial long walk to freedom, and it reminded me to go back and take a look at what Lord Devlin had to say in 1960, that preliminary enquiries are an ossified form of regulation which we labour under. So whether it is anachronistic or it is an ossified form of labour under which we toil, we have difficulties; we agree that it is time for this law to be done.

Sen. Prescott's—last submission, as I come. Sen. Prescott's urgings to have a look at the law post the Domestic Violence Act, there are two aspects to that under the Domestic Violence Act. Of course, the jurisdiction is summary and it is a summary matter, not an indictable matter. However, the Domestic Violence Act does make reference to certain indictable matters where charges can be brought under that realm. We think that the two can be separated out, and we did go back and have a look at the law post the Domestic Violence Act. In looking at section 6(3) in the fashion that Sen. Mark suggested, we thought that we could keep it, because it was in keeping with the existing provisions in section 23(8) of the existing preliminary enquiries Act, Chap. 12:01. Madam President, I will ask that our submissions for recommendations be circulated by the CPC's division. We welcome the submissions that hon. Senators may have to make in respect of this law and we can have a more fulsome discussion in committee stage. I am grateful that hon. Senators who were present on the last day are, in fact, still altogether present on this day, and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Hon. Senators, we are in receipt of amendments from the Attorney General which will be circulated, but we also just received amendments proposed by Sen. Mark which we now have to copy and circulate. So I am going to suspend the committee for 15 minutes so that everyone can then have their documents in order. So the committee is suspended for 15 minutes.

3.31 p.m.: *Committee suspended.*

3.53 p.m.: *Committee resumed.*

Madam Chairman: Hon. Senators, let us just make sure that everyone is in possession of the amendments. There are two lists of amendments. There is a list as circulated by the hon. Attorney General and there is a list as circulated by Sen. Hosein. Yes? Okay. Attorney General, are you ready?

Mr. Al-Rawi: Yes, Madam Chair.

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

Clause 4.

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

Madam Chairman: There is a proposed amendment circulated by Sen. Hosein. Sen. Hosein?

Sen. S. Hosein: Thank you very much, Madam Chair. Madam Chair, the essence of this amendment to clause 4 is an amendment to section 4 of the parent Act. And during the debate we would have raised several issues with respect to the way in which this particular provision was drafted, in that it removes any discretion of the court to determine whether or not a matter will remain under the old system or be

transferred under the new system, this being the transitional provision of the legislation. So, Madam Chairman, we propose to make an amendment so that the accused, or the prosecution, is required to make an application in writing to the magistrate so that the power of the magistrate is preserved in making the decision. So that is the essence of the first amendment.

The second amendment is that we delete the word “or” and insert the word “and” where we have—if the prosecution makes an election in the joint trial issues, if the prosecution elects, we want also that the accused must consent to that position in joint trials. And with respect to joint charges it is the same position, where if the prosecution makes an election, the accused must consent to the matter being transferred under the new system. And those are the essence of the amendment, please, Madam Chair.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chairman. I thank Sen. Hosein for the proposed amendments. I have had a chance to look at it. They are of two different types, so perhaps I can address them separately. The first one is “may elect to have the case” and substitute the following words: “shall make an application in writing to the magistrate to have the proceedings”—

Sen. S. Hosein: Yes.

Mr. Al-Rawi: I understand the root of what you are getting to, which is to formalize the manner in which this happens. But I ask if you can reflect upon the language of subsection (2) as we propose it is amended. It is upon the election that 32A kicks in. So where there is an election by either party, if that is the case and the magistrate is told so, then 32A kicks in. And then 32A provides for a prescriptive route as to how the person is to be brought before the court. The essence of 32A is really to make sure that upon election, the magistrate shall order

the accused to be brought to court before the Master, and then you deal with him in accordance with part (ii).

So we felt—and this language actually came squarely from Mrs. Elder who recommended the cleaving out of the process of a new 32A and routing it into a springboard which section 4 had set up. So we felt quite comfortable that there was a process. In fact, the process went further to something which we had omitted, because in the successive views of this Bill we had not thought about how someone who was in an existing proceeding came back before the magistrate. So what we said is, upon election, the magistrate says bring you back before the court immediately. Take you before the Master and then go through the route process of part (ii).

So with respect to the proposed amendments for the first part of clause 4 that you have suggested, I respectfully decline the invitation to treat with it this way. I understand the mischief that you are attempting to get to. I think it is covered by the reference to 32A and to part (ii). The second part of the submission is effectively that you have to have consent, and this is to put in a third leg.

4.00 p.m.

The circumstances that we have put it for subsection (3)(a), (3)(a) is where subsection (2), that is, either party can elect, shall not apply in the case of a joint trial, unless prosecutor elects in respect of all the accused, or accused, all the accused elect. We did not want to have a position of having either of them consent nor did we want to involve the court to consent whether that should happen or not. And if I could explain why? We did not want to have a review argument on what the court should or should not have done.

If we look at the society's perception of what abuse looks like, not that it is because legal rights certainly are not abuse. If you look at the manner in which

judicial review has interrupted magisterial proceedings, you can tend to have trials stretched for 10, 15, 18 years in preliminary enquiries because you are literally reviewing every aspect of the case. So removing the issue of consent was one of the things to get there and on the back of Hilroy Humphreys, we stayed with the fact that it is a process to be elected. A fair trial can happen in both routes and for that reason we did not need to put the court through an exercise of having to consider whether it is appropriate or not because either party says the manner in which they wish to have their trial managed.

So for those reasons, we are slow to take this introduction of the concept of consent. This is something that we had a lot of debate over. A lot, a lot, a lot, a lot. If we introduced the consent of the court then we are looking at the appeal factors, we are looking at judicial review and if you look at some the leading cases that are stuck in 15, 20-year cycles of preliminary enquiries, we want to avoid that. We just want to get on with the trial.

Sen. S. Hosein: Madam, may I?

Madam Chairman: Yes.

Sen. S. Hosein: AG, with respect to the first point that—I am going back to the section that deals with including the application before the magistrate. Now, I understand what you are saying with respect to the application of 32A but at the end of the day, once the prosecution says case X goes to the Master, then the court has no discretion because 32A speaks of immediately going to part two.

Mr. Al-Rawi: That is correct. Yep.

Sen. S. Hosein: And that is the issue that I am having. We need to have some sort of safeguard because there may be some prosecutions in which the prosecution can, in fact, manipulate the process and that is what I am trying to avoid, giving the court that ultimate discretion to determine whether or not it is fair for the accused

person to have gone through, let us just say four years of a PI and then as soon as the PI is about to be completed or you realize that the prosecution's case is not going the way that it should that they just decide to go to the new system. So it is really a matter of procedural fairness I am trying to protect. I understand Hilroy Humphreys, the PI, I know that will be your argument, that you will come but—
[*Interruption*]

Mr. Al-Rawi: But my argument is a little bit broader than that but please continue.

Sen. S. Hosein: But the thing is that we need to create that protection. With respect to the other amendment, in just short response, is that if we use the word “consent”, that the accused person consents to the fact that the—consents to the election of the prosecution for the joint trials or the joint charges, it is a straightforward thing. It is whether or not the accused person consents or not. So I am slow to accept the argument that it will increase the JR applications since—
[*Interruption*]

Mr. Al-Rawi: What happens if the accused says no?

Sen. S. Hosein: If he says no, well then you proceed under the old system for joint charges, joint trials, and I think that is something that they have a legitimate expectation of, from the date in which they were charged until they are committed or if they are discharged in—

Mr. Al-Rawi: All of these arguments found themselves in Hilroy Humphreys. Every single point that you have just raised was in Hilroy Humphreys: legitimate expectation; the manner in which they should go; the need for consent; it fell into the right of fair hearing; it fell into due process and the Privy Council decided all of that. But in terms of an abuse point, the prosecution abusing the process, there is still the opportunity to seek to have the case discharged entirely and that is

always preserved in the body of the trial. So this argument has been ventilated quite properly for many, many years. There will be the prosecutor's point of view and there will be the defence attorney's point of view.

Sen. S. Hosein: The point on abuse, you would understand the difficulty in someone succeeding on an application for abuse of process to quash an indictment. It is a very high threshold that an accused person has to satisfy.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Thank you, Madam Chairman. Hon. Attorney General, I was thinking that the difficulty perceived by Sen. Hosein may not necessarily be one that is incurable because the magistrate may not have oversight but quite frankly, I do not see anything which prevents someone in that situation from judicially reviewing the decision of the director. I could be wrong but it seems to me as though that may be an option available to someone found in that situation.

What I do not follow though and I will be grateful if you could explain it is: Why are we treating accused persons who are jointly charged differently from persons who are charged singly? And I ask this because in your closing on the last occasion, you referred to the contribution sent to you by Mrs. Elder and you referred to the 2011 contribution which was sent via the Criminal Bar Association. I have looked at that and I am not seeing anything referring to the differentiation. So I do not know if this is something new but certainly having the tremendous respect that I do for Mrs. Elder, if there is something that you have that you could perhaps circulate to us to explain why that distinction is acceptable, I will be most grateful.

Mr. Al-Rawi: Sure. She did write to me and did find a copy of her letter to Ms. Christlyn Moore as well. I do have that. The argument put forward by her, effectively, is that the lacuna exists in that we had not treated with joint trials and

joint accused, and that there could be a battle amongst accused as to which is the appropriate process. And then from a policy decision, we had to consider well, do we want to have a battle of purposes because I do follow your argument. Look, if I the individual, want to go and get my trial done, why should I be “chained up” to the fact that four other fellas want to stay in this preliminary enquiry? I understand that. But then the argument as to whether the resources of the State are being best managed also feeds into that because then we are splitting the resources in two different domains.

Then we get into what about the inconsistencies if there is a determination in the Magistracy as to, for instance, a no-case submission which succeeds? There is not a prima facie case whereas you are at the High Court in a different point and then inviting for a judicial review of the circumstances because X is now in position of no prima facie case and Y is before the indictable court. There are too many permutations and combinations around it.

Sen. Chote SC: I know and actually I was looking at it from a prosecutor’s point of view because I was thinking of the kind of situation where you have several joint accused and there is one who has the potential of possibly turning state witness as we say. And if that person does not get—have all his other fellow accused agreeing with him, the prosecutor may not know what is going on in the head of the accused. It may only be his counsel. But if we insist that all of the accused persons have to agree then we may miss an opportunity there to actually have the matter expedited and have the prosecution’s case fortified. So I do not know if that has been—

Mr. Al-Rawi: It is a brilliant case example. Forgive me, Madam Chairman. May I? It is a brilliant case example which actually finds its remedy in a different law, in the plea bargaining law, because it is in the conduct of that plea arrangement,

plea discussion and plea hearing that we can cleave the accused. So state witnesses, as happened—I should not go into it unnecessarily, but the bottom line is we can treat with it under the plea bargaining legislation and cut the pack.

Sen. Chote SC: Hon. Attorney General, I do not want to press the point but I think the reality of this situation has to be taken into account. We have six men charged with murder in the same Remand Yard, possibly in the same cell. Right?

Mr. Al-Rawi: Yeah.

Sen. Chote SC: One has it in his head that he could possibly or he might be the weak link and he could possibly turn state witness. He certainly, because he wants to save his life, may not want to engage the plea bargaining process at that stage so that really is of no use to him, especially when sometimes, if you have to conduct—even though it is improper—you have to conduct your client conferences in the hearing of a prison officer. So I am just wondering whether there could be some further consideration of this or we could have something to say—allow for an exceptional case, let us say, you know, so that possibility will remain. I do not know if that would be considered at all.

Mr. Al-Rawi: May I? Sen. Chote, I think with years of experience and perspective that you bring to this discussion, one would have to be entirely foolish not to hear what you are saying and to not take very good caution about it. I think you are 100 per cent right. The question is a matter of timing. So we have debated this particular point from a policy perspective with the Judiciary, with some of the other practitioners, with the DPP's Office and the process that has come back to us is: let us see where the system falls, let us see what the numbers look like. How much injustice are we going to have in this particular arrangement? Without calling a name of a case, there is an actual case right now with multiple accused for murder, one of whom is now on the State's wagon and—

Madam Chairman: Attorney General, I know you are not even giving a name or anything but I think we should not discuss any case that is before the court, any criminal matters at all, so maybe you can present more hypothetically.

Mr. Al-Rawi: Well, I was stopping right there. I join you in the sensitivity, Madam Chair, and I am of course guided by you. So, in that particular construct, the simple point is that there are other remedies to treat with it. I think that the process will probably involve the Parliament having to reconvene once we get some rhythm and cadence on this issue, and it may very well be apparent then that look, we can get more efficiency by allowing for the cutting from the pack.

I am also very minded to settle this issue of judicial review and the DPP's powers from just a point of view. In fact, I am contemplating right now a case stated from the Attorney General as opposed to an appeal because I think that the law needs to be clarified on that point. So I am contemplating an AG's reference. As we speak, I have been working on it for the last couple of days to think of how we can settle the law on that point. So I hear you loud and clear, I think the caution is welcomed.

Of course, Sen. Hosein, I agree, has hit upon the issue as well. From a policy point, I am not equipped at this point to make a decision left or right. The position having come at me that if I do not treat with it, I may invite chaos into the issue, I propose that we allow it to settle in and we will continue to take a careful look. Once we get the case stated or appeal positions back on the JR-ing aspects, I think that we are going to be a lot clearer on this particular aspect of the law.

Madam Chairman: Sen. Sobers.

Sen. Sobers: Thank you, Madam Chair. Hon. Attorney General, with respect to Sen. Hosein's point, possibly contemplating an issue of an abuse of process by the prosecutor, could we not make the election process itself time sensitive subsequent

to the legislation coming into force? Because it would curtail the ability of a prosecutor or an accused stretching the matter along for an elongated or projected period of time and then triggering the election process only to serve his or her benefit.

Mr. Al-Rawi: Very sensible recommendation. Option one, we allow the Criminal Proceeding Rules to prescribe the time frames by which things ought to be done and then we amplify the application of what is right now an unknown aspect, what are the sanctions to failure. That is a big issue in the Criminal Procedure Rules right now. Canada has actually applied very heavy judicial sanctions and other jurisdictions are flirting with it. So I think it is a welcomed thought but we are at the beginning of this in our country and I would like to allow the system to go into effect. Something that I have come to appreciate pretty well now sitting on this side temporally as we all do in the various positions that we sit, the equality of arms appears to be largely in favour of the State because one thinks that the State can exercise certain functions. The truth is that a nimble, sharp attorney can take proper advantage of the State because the State is very constrained in terms of resource, utilization and allocation and therefore finds itself on the back end of having matters just disappear because of a lack of capacity.

So I would be cautious not to put in into parent law statutory time frames which could inevitably see the baby thrown out with the bathwater just yet. We have, over the course of time, been tightening time frames in pieces of law as we have come to treat with them but I do not respectfully think that now is the opportunity as we start to put in these things. As welcomed and as sensible as they are, I think we need to see the system in operation and allow the rules, the Criminal Procedure Rules to lend us some assistance.

Madam Chairman: Sen. Vieira and then Sen. Mark and then we will have to

resolve this issue.

Sen. Vieira: And on that point, I just wanted to say we cannot legislate for everything. I think in a lot of the legislation that we are going to be working on with the criminal justice system, there must be room for the Judiciary to do its own guidelines just as how you had the Judges Rules and they would set their own time frames and what they regard as best practices. We cannot do everything for them.

Madam Chairman: Sen. Mark.

Sen. Mark: Yeah. Madam Chair, I want to ask the Attorney General whether it is his intention to have this legislation reviewed within a specific time frame having regard to what you have just said earlier. You have taken on board the points made by Sen. Chote and my colleague but does that mean to say that you are thinking about reviewing the legislation within a specific time frame?

Mr. Al-Rawi: Madam Chair, I thank Sen. Vieira for echoing what I believe is some of the sentiments put forward. Let me make it clear to both Sen. Sobers and Sen. Haynes, I hear you loud and clear. There is merit in the suggestion. Sen. Chote has certainly very clearly put forward the same point. I am just speaking about the timing of it, I do not think if we are ready for that just yet. But it now feeds into Sen. Mark's enquiry as to whether we intend to review. The answer is yes and I will draw you to the example of how, as a Government, we have done it.

If you look to the first opportunity that we had in doing the Family and Children Division, we actually caused 19 laws to be amended in the Fifth Schedule to that particular Act. We have since come back to Parliament four times to amend those laws, and in fact, we are going to do it again today when we go to the next Bill, the next debate, and we are going to do it on Friday and Monday again. So we have been keeping these things under a very tight management and under careful watch and our attitude is quite simply the Parliament is here to deal with

the law. So we have this under a constant review position. We have established working groups where we have blended law reform together with law revision and AG's working team Secretariat with the stakeholders, so we do have it under constant review.

Sen. Mark: Madam Chair, AG, would you be inclined to consider an amendment to insert in the legislation that within a period of two years, this Bill, when it becomes an Act, would be subject to review by the Parliament and if something comes up before that period as you have said, then you will take the initiative but at least the Parliament would have, in the law, a process for review within a time frame? Would you have any—

Mr. Al-Rawi: So that is not uncommon. The Dangerous Drugs Act has that very provision that Parliament shall every five years review the law. You know how many times that happened? Zero. [*Crosstalk*] Secondly, they also mandated the establishment of a joint select committee to do certain work which has never happened either. What we saw bring incredible result recently is the use of our Joint Select Committees. Sen. Chote as Chairman of the Committee that she sits on; you, Sen. Mark as Chairman of the Committees that you sit on; Sen. Vieira, Sen. Richards, many of you have had the experience of activating your Joint Select Committees and causing results and I think if we were to allow that route to prosper a little bit that we can actually find ourselves improving laws as we go along.

Certainly, I have paid very close attention to the work that concerns me the most in the Joint Select Committees. I have purposefully removed myself, by way of recommendation to the Prime Minister, from the Joint Select Committee on National Security, and also from the ability to sit on that Committee which Sen. Chote manages because I consider it *infra dig* for the Attorney General to be a

Member of that Committee. I ought to be brought before the Committee. In fact, I regret that I am not personally brought there. The technocrats come as opposed to the functionary for some odd reason. I do not see why I cannot be interviewed by a committee. So I think it is a useful purpose. I think we ought to take it on the different end, at least for now, as our parliamentary structure improves.

Sen. Thompson-Ahye: If I may?

Madam Chairman: Sen. Thompson-Ahye.

Sen. Thompson-Ahye: Yes. Jamaica, as I mentioned before, the Jamaican Act has a provision, the Committal Proceedings Act, which gives to the accused the power to make a submission that the evidence is insufficient. The Jamaican law, the Bill, it went into a joint select committee. A number of people worked on perfecting the law and together with all of that, there was an undertaking or perhaps it may be written in that within three years they are going to review the legislation. So it does not mean you either go to Joint Select Committee which is your recommendation or you are reviewing because both of them happened in the Jamaica situation.

Madam Chairman: Attorney General, and after the Attorney General speaks, I will be putting the question to the vote.

Mr. Al-Rawi: Sen. Thompson-Ahye is very correct but as I have said on many occasions, our Constitution is unique in the Caricom context. We are the only Constitution, our 1976 Constitution, that does not have the exception for national security purposes. In other words, other jurisdictions do not wrestle with the passage of laws the way we do. We are very often faced with three-fifth majority laws that just cannot pass and being subjected to the type of interrogation that I am in the current capacity that I sit, I can tell you that that is not a pretty picture. So our Constitution is very unique, unfortunately so in some instances and for that

reason, those types of review arrangements, et cetera, do not prosper in our context.

Question, on amendment, [Sen. S. Hosein] put and negatived.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5.

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

Madam Chairman: Attorney General, you have circulated amendments?

Mr. Al-Rawi: Yes, Madam Chair. May I?

- A. In subclause (3)(d), delete the words “the evidence filed before the Master discloses” and substitute the words “there is”; and
- B. In subclause (3)(e), delete the words “child witness, or an adult witness who has been assessed as one subject to threats, intimidation or elimination.” And substitute the words “child accused or child witness, or an adult witness who has been subject to domestic violence, threats, intimidation or elimination.”

Madam Chairman: Yes.

Mr. Al-Rawi: Thank you. Madam Chair, Sen. Sobers made a very important observation with respect to subclause (3)(d). If we look to clause 5 of the Bill and we look to (3)(d), we will see that we are treating with:

“Without limiting the generality of subsection (2), the Director of Public Prosecutions may prefer and file an indictment under subsection (2)...”

When we get to subclause (d), subclause (d) says:

“where a Magistrate was unable to complete a preliminary enquiry before the coming into force of this Act, or a Master is unable to complete a sufficiency hearing, because of...”

—these reasons:

“and the evidence filed before the Master discloses, in the opinion of the Director and Public Prosecutions...”

That would have been too restrictive and therefore we propose that we delete the words “the evidence filed before the Master discloses”. That is in the chausure of subparagraph (d). So you will delete “the evidence filed before the Master discloses” and put “there is in the opinion of the DPP”. That ought to take care of the restrictions that reference to Master only would have caused.

In subsection (3)(e), Sen. Chote raised a very important point as to how we treat with child witnesses versus child accused because you can have serious circumstances of child accused. Sen. Chote raised another very important point which was the child committing an offence as a child spending time in a child rehabilitation centre and arriving before the court as a grown individual, it is actually something that we see every day. It was for that reason that we actually introduced the judge-only trials specifically with that in mind. In what was then YTC and now is a CRC, I spent a significant amount of time engaging with the inmates there and the one group of individuals who said they would happily take a judge-only trial were the people in the CRCs because they said they were all mortified of attending before a jury as a grown adult who had committed an offence as a child. So I wrestled with how to treat with the observation that Sen. Chote made in how we treated with child appearances, child accused before the process of trial. In thinking about it perhaps reflected that the best way is before the judge-only route if that is the case, but it is somewhat assisted by the fact that we now have whether the child is going to be treated as an adult or a child at the trial and whether we go before the Children Court.

You will recall we gave an undertaking to come back to the issue of the “in-

betweeners”, those who aged out at the CRCs, where we were going to house them and how we were going to treat them in the judicial process. We are nearly finished with that form of consultation. Some of it is actually done by the team that will be next on deck with us in the next Motion that we do this afternoon. So I could not treat with that limb, Sen. Chote, just yet but it is active in my mind. What I thought was possible was to introduce the concept of the child witness alongside the child accused. So we propose, Madam Chair, in subsection (3)(e) that we delete the words “child witness, or adult witness who has been assessed as one subject to threats, intimidation or elimination” and we substitute the words “child accused or child witness or an adult witness who has been subject to domestic violence, threats, intimidation or elimination”.

If I could just close by saying, when you look to Chap. 12:01 and you look in particular to section 23(8)(e), the wording in the law as it stands right now says and these are the only words that are different:

“in exceptional circumstances...”

That is not in our draft.

“to deal with offences 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.”

Now the question obviously arises whether we should deal with other broader concepts, like inducement, like other aspects. And whilst that is appealing to me intellectually, two things jump out in terms of treating with it that way. Number one, this law can potentially treat with matters which are underway already pursuant to section 4. Number two, the practice, as it has grown up, is one where the DPP exercises the discretion to treat with matters in the circumstances that he has in dealing with this law since 1961 in these exceptional circumstances. I am

loath at this juncture in introducing new law to change the practice on the DPP just yet because I do not have the reference points to make that decision.

So, in the circumstances, we propose the simplest of the amendments which is to introduce the child accused as well to capture the submission that Sen. Chote very commendably made to the Senate, and those are the reasons in the round, Madam Chair, for the proposed amendments by the Government.

Madam Chairman: Sen. Vieira.

Sen. Vieira: Thank you and thank you, AG, for bringing up the point about inducement which I raised during the recess. I agree with the amendment that has been circulated but I do want to put on the record. My understanding is that this whole clause 5 is to prevent obstructions of justice, perversions of justice by giving the DPP this fall-back position, and where we are looking at (e), we are talking about a child witness or a child accused has been the subject of domestic violence, threats, intimidation or elimination. Now of course, we are talking about building a protective environment for children and it seems to me that a lot of times, in our society, justice is perverted because of this very thing about inducement or alienation beseeching. “Oh, do not go and give evidence because yuh gon put yuh stepfather in prison or yuh going to embarrass the family” or in the case of a teacher or a priest or some person in authority, a perversion of justice where there is no threat, no intimidation but these other forms of manipulation. So I hear you but I will just want to put it on the record.

Madam Chairman: Sen. Shaikh.

Sen. Shaikh: Thank you, Madam Chair. Hon. Attorney General, if I may just go back to the first part of the amendment where we are removing “the evidence filed before the Master discloses” and substituting the words “there is”.

4.30 p.m.

Now, I understand what Sen. Sobers was saying, which is that the incomplete evidence, so to speak, which is what we are trying to avoid, when we have an incomplete hearing, it could come from the Magistrates' Court or the Masters court, it could be one and the same. But, my concern in making the change like that is that, in the case of the Masters court, the sufficiency hearing would anticipate that there is evidence that has been filed before the court that the Master is going to make a decision upon. In the case of the Magistrates' Court, unless it was a committal, you are not going to have filed evidence before the court. So in a case where viva voce evidence was being taken, which does still happen a lot of the time, then this would not encapsulate that. So, I would believe that we would still need to have something filed to encapsulate that part of it.

Mr. Al-Rawi: So, you are asking about circumstance of evidence filed as opposed to evidence in the matter, because the viva voce evidence would be part of the record. But I did not consider that it is just the evidence filed. Is it your suggestion that we ought to capture a broader circumstance of the "evidence discloses"? In other words then, more than that which is filed?

Sen. Shaikh: Well, in the case of the viva voce evidence, if you have had only one witness, for example, in a situation like that, to say there is evidence is going to be putting a restrictive tone on it. The only way the Director is going to be able to go further is to go to the evidence that would have been in his possession, but that would not have been led before the court. So, "evidence discloses" might be another way to put it, but there is, without contemplating that does not encapsulate it, in my humble view.

Mr. Al-Rawi: Madam Chair, just permit me a moment to confer with the CPC. Madam Chair, I thank the hon. Senator for her very sharp question. The arguments coming back at me from our technocratic team, the CPC, is that we ought to put

ourselves in the position of appreciating that it is the DPP making a decision, and that the DPP ought to make a decision based upon the matter which he properly has. So he is not in the shoes of the magistrate who has heard evidence, or evidence that is before him, viva voce evidence recorded in a judicial process. What the DPP would properly have is material that is filed because it would have been disclosed to him or he would have originated the information and disclosed it himself.

So CPC's caution to us is, place yourselves in the shoes of the DPP, recognize that it is the DPP exercising the discretion, make sure that the exercise of his discretion is narrow upon material which he ought to have properly, and not things which he is making a decision on which may be speculative, particularly with recent events of judicial review, which are yet to be clarified, I think if we went a little bit broader, we might be opening that box just a little bit too much without having settled the law a little bit. I think it is a very sharp observation. I catch the mischief that you are looking at. I take the caution of the CPC unless, of course, hon. Senators have a different view in the round.

Sen. Richards: Thank you. Madam Chair, through you, just to go back to the point raised for clarity that Sen. Vieira made and through the intervention of Sen. Chote in part (b), the penultimate and final lines. And I know you indicated that the DPP has the discretion in this case. But since you included domestic violence to fully complete the intent—which is very commendable in this case, it is pretty comprehensive—you included domestic violence which really specifies a particular context of violence. Would it not be even more comprehensive to include other types of violence and/or manipulation and manipulation to give the intent of the clause more force, even though, as you indicated just now in response to Sen. Vieira, we have the discretion?

Mr. Al-Rawi: Domestic violence is a term which is cast in the Domestic Violence Act, Chap. 46:01, if I remember the correct number of the Act. That definition includes a whole host of things: emotional distress, financial abuse, et cetera so that domestic violence is really a term of art and a term of law. I think that if we went to condescend to particularizing what domestic violence is or to take cohorts of it, we would be inviting an ejusdem generis rule, which is to construe the language of the statute in the manner in which words are set alongside, basically.

So, we would probably be causing ourselves a little bit more harm if we were to take it that way. I think that the phrase “domestic violence” can capture those different aspects. Of course we have the Interpretation Act, which allows us to amplify the meaning of certain words and terms as they are used in legislation.

Sen. Richards: My intention was not specifically dealing with, through you, Madam Chair, the issue of the domestic violence situation, but other types of emotional manipulation outside a domestic setting, which can easily be applied here, especially where children are concerned.

Mr. Al-Rawi: Sen. Richards, you and I are both members of a particular Joint Select Committee, Sen. Vieira too, where we are having a massive battle with society as to what emotional distress is in the cybercrime law. If we were to introduce that here now, we are entering into the whole New Zealand debate, et cetera. We are going to open Pandora's Box.

Sen. Richards: I am not suggesting, and I know Madam Chair is looking at me with a marshal eye and rightly so. [*Laughter*] I am not suggesting emotional distress, but manipulation is very common where children are concerned.

Mr. Al-Rawi: The problem is the terminations of law. We have to be precise.

Sen. Richards: Thanks for a response.

Madam Chairman: Sen. Hosein.

Sen. S. Hosein: Madam Chair, I will just let Sen. Shaikh take the point.

Madam Chairman: So, you are yielding to Sen. Shaikh?

Sen. S. Hosein: Yes, I am.

Madam Chairman: After Sen. Shaikh, I am going to ask the Attorney General. I am going to move the vote on the particular section.

Sen. Shaikh: I am very grateful. Hon. Attorney General, if I may? I understand the point as to yes it is in the Director's discretion and based on what the evidence is before him. But what am I trying to understand is, okay if you are to go back to the parent Act, subsection (2), which allows the Director basically to deal with anything, so voluntary Bill, so to speak. So, no need to go through all of the sufficiency hearing or the PI in that case. What makes this particular clause different, I would expect that you are contemplating to deal with these particular issues, one, but two, that there must be some sort of transparency with it placed. So based on that, it is either something is being filed before the court to generate the Director's exercise of his power. So, based on these documents I am now exercising my power to facilitate an indictment, having regard to the fact it was incomplete for this reason and this is the evidence that I am relying upon, so something to be filed before the court, which would set is apart from subsection (2). Because otherwise we could have just added one to four, numerals 1 to 4, in subsection (2). It would not be of any difference really. So my humble suggestion, hon. AG, is that there is something that puts that we need to file it within court what the evidence is to be relied upon.

Sen. Chote SC: Could I just ask a question, Madam Chairman? I do not know, with all the amendments, I might be mixing myself up, but we are looking at the part that deals with the summons to be directed to the accused person. Am I correct in saying that? No?

Mr. Al-Rawi: We are dealing with clause 5, which amends section 6 of the Act, where we are allowing the DPP to prefer an indictment and skip a sufficiency hearing.

Sen. Chote SC: Right, yes okay.

Madam Chairman: Expediency of the Act.

Sen. Chote SC: So, what I wanted to say is, in any event, when an indictment is filed, does the Criminal Procedure Act not still kick in and does the Registrar of the Supreme Court not still have the duty in law to provide the depositions, witness statements and any evidence which may have been taken viva voce to the accused person within a particular period of time?

Mr. Al-Rawi: Yes.

Sen. Chote SC: I mean, I know we have enacted so many pieces of legislation that we may very well have abolished that. But I do not remember if that was the case.

Mr. Al-Rawi: We did not.

Sen. Chote SC: If not, then that may assist with Sen. Shaikh's observations.

Sen. Vieira: Also, Chair.

Madam Chairman: Yes, Sen. Vieira.

Sen. Vieira: And I echo Sen. Chote, and just to say that we too were looking at that concern that you raised. But I think it may be better dealt with at clause 10. Because this particular clause 5 really is concerning the remit of the DPP and his discretion.

Mr. Al-Rawi: Yes. So, Madam Chair, if I may answer?

Madam Chairman: I do not think there is need. I think Sen. Vieira and Sen. Chote have said, and it is on the record. So I do not think there is a need to respond.

Mr. Al-Rawi: Your marshal eye has come into a marshal decision.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clauses 6 to 9 ordered to stand part of the Bill.

Clause 10.

Question proposed: That clause 10 stand part of the Bill.

Madam Chairman: Attorney General, there is an amendment circulated on your behalf and there is also an amendment circulated by Sen. Hosein. So Sen. Hosein, I will ask you to speak about your amendment.

Sen. S. Hosein: Madam Chairman, my amendment was borne out of the fact that when I read the insertion of subsection (6), it would have read as though the power of the trial judge was being curtailed by the fact that the evidence would have been admitted as a matter of fact. And I saw the Attorney General's amendment, and it may cover the amendment that I am also seeking. So, Madam Chairman, in the circumstances, having regard to reading the Attorney General's amendment, I will withdraw my amendment.

Madam Chairman: You will withdraw?

Sen. S. Hosein: Yes, please.

Madam Chairman: Okay. So let me just take a note.

Amendment withdrawn.

Madam Chairman: Attorney General, will you speak to your proposed amendment?

“In subclause (6) delete the word “shall” and substitute the word ‘may’.”

Mr. Al-Rawi: Yes please, as I propose to further amend it, having had the chance to have a chat with Sen. Vieira during the recess.

Madam Chair, I thank Sen. Hosein for withdrawing his proposal. I

understood the context in which he was coming at it. Same issue, slightly different course.

Madam Chair, we took note of Sen. Chote and Sen. Hosein's submissions during the course of the debate and I think that prudence dictates that we adjust word "shall" to "may" to definitely preserve the court's jurisdiction, the court's discretion, in admitting evidence. It ought not to be a *fait accompli* and certainly not from a legislative perspective.

Sen. Vieira raised with me the fact that depositions taken and exhibits admitted in proceedings appeared to be a narrow category of matters. And he asked us to consider witness statements filed, exhibits admitted in, and other relevant portions of the record. And I have asked CPC to have a look at that and CPC has crafted an amendment to include those words. I did say that I would fall squarely now upon the experience of Sen. Chote. Whilst I have good experience in the civil law, I do not want to even pretend that I could capture the species that Sen. Chote would be aware of in her practice as Senior Counsel. I mean no disrespect to other criminal practitioners here, Senators Sobers, Shaikh and Hosein who, obviously, have experience as well. So the proposal, Madam Chair, is not only that we amend the word "shall" to "may" but that subsection (6), just after the words "admitted in", we include the following. So it should read this way, if I were to read it clearly as subsection (6). Subsection (6) would be:

Depositions taken in, witness statements filed in, exhibits admitted in, and any relevant portion of the record of, proceedings instituted prior...

And then we continue:

...may be admissible in evidence at trial of an accused.

So, subject to being corrected by Sen. Chote in particular and any others, I wonder if that wording is acceptable. So we are saying more than just depositions taken

and exhibits admitted in, broaden the category to depositions taken in, witness statements filed in, exhibits admitted in and any relevant portion of the record of proceedings.

Sen. Chote SC: Yes, and perhaps I should say Sen. Vieira and I had had some discussions about it and the reason I had suggested that we put in this portion of the record part is because, for example, we may need the endorsements at the back of an information to form the basis of a legal application. We may have situations where a witness whose witness statement has been filed has given additional viva voce evidence, which forms part of the record. There may be an alibi notice given which also forms part of the record. So I was thinking along the lines of those things when I suggested that that should be included. So I know it sounds like quite a mouthful but I think it covers everything that we should be thinking about.

Mr. Al-Rawi: We are very happy to promote it, pursuant to the recommendations. Not being a subject matter expert in the criminal proceedings, I am guided by those with better experience, obviously. So, Madam Chair, would you take the amendment as circulated, as further amended in the manner that I have read?

Madam Chairman: Yes, I just need for you, for our records, to just reread the proposed amendment.

Mr. Al-Rawi: Yes, please. So, Madam Chair, the proposed amendment to subsection (6) of clause 10 is that we will—[*Interruption*]

Madam Chairman: Depositions taken in, witness statements filed in,

Mr. Al-Rawi: Yes.

Madam Chairman:—and the exhibit admitted in, and—

Mr. Al-Rawi: No "and".

Madam Chairman: Witness statements filed in

Mr. Al-Rawi: Comma. So we delete that word "and". We go:

...exhibits admitted in,—then—and any relevant portion of the record of, proceedings instituted prior to the coming into force of this Act may be admissible as evidence of the trial of an accused.

Madam Chairman: Yes.

Mr. Al-Rawi: Yes?

Madam Chairman: Yes. Hon. Senators, the question is that clause 10 be amended as circulated and further amended to read as follows:

Depositions taken in, witness statements filed in, exhibits admitted in, and any relevant portion of the record of, proceedings instituted prior to the coming into force of this Act may be admissible as evidence at the trial of an accused.

Mr. Al-Rawi: Yes.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11.

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

Madam Chairman: Sen. Hosein, there is a proposed amendment circulated.

Sen. S. Hosein: Thank you very much, Madam Chair. I yield to Sen. Sobers in order to pilot this particular amendment, please.

Madam Chairman: Sure. Sen. Sobers.

Sen. Sobers: I am grateful, Madam Chair. Hon. Attorney General, I know that, in terms of your wrapping up, you spoke about section, in 32A(5)(b), with respect to an agreement between the accused and the prosecution for an available session date and I know that when we were here in February, I also had an issue with the logistics behind such an option being made available. I know with respect to the civil realm it happens all the time. So that you would have situations where

matters could even be adjourned or new dates of hearing could be proffered, based upon an email being sent to all parties.

But because the actors within a criminal situation are different I suspect that there could be some mischief created, with respect to a situation like this. So I was considering whether or not we should just simply delete (5)(b) and just leave it at (5)(a), that

“the next available session day as determined by the Registrar.”

Sen. Chote SC: Madam Chairman, may I respectfully lend my support to that proposal, for the simple reason that you have people on bail, people who are remanded on bail. So, essentially what you are doing by having this in is you are telling somebody who is remanded by a court on bail to appear before a court on a particular date, that you can agree out of the court order. I think that might be a bit dangerous.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, I welcome the submissions and I ask: If we were to confine (5) to the next available session day as determined by the Registrar, I understand that. But if a person is in the circumstance that Sen. Chote just gave, you are remanded on bail. Your remand is in a different cycle from the day you are supposed to come before the Registrar. You are still in the same situation. Because the Registrar may give you a date and your remand period may be different.

The intent behind subclause (b) was to allow for agreement between accused and prosecution with the involvement of the court but the court had to be satisfied that that ought to happen. It happens in other jurisdictions, largely where there is prosperity in rules operating and communication and facilities. So we wanted to preserve the legislative ability to do this. Obviously, the bugs will have to be

worked out as to how you treat with bail and other issues that come up with it or compliance with an order in general. Let me not just say bail. There may be other conditions that are attached to it.

So we had this recommendation coming from the Judiciary itself and we also had recommendations coming from Mrs. Elder, as to this particular amendment. I did not think that it would be something which the Registrar would order without reference to the fact that there are other consequential orders that may be affected. But I wonder if it would not be that the appearance before the Registrar as agreed is itself an order which would vitiate any difficulties that a potential breach of an order may theoretically cause.

Madam Chairman: Sen. Shaikh.

Sen. Shaikh: Hon. AG, one other thing to take into consideration. One, I do think it would create some problems, with respect to scheduling, and so forth. And in any event, the Rules do contemplate that these applications can be made. So it may not be something that needed to be legislated. Also, apart from that, because this is something that might be done in the absence of the accused, I think that is also something that we need to consider. Because anything from agreement with defence and prosecution is sometimes viewed with certain amount of skepticism by the accused. So we prefer for these things to be done in their presence, rather than agreeing anything behind their back. So it is a protection as well, for the attorneys involved.

Madam Chairman: Sen. Vieira.

Sen. Vieira: Thank you. I agree with Senators Chote and Shaikh. I think we are coming now in the wake of the new Criminal Procedure Rules and active criminal case management. I think that renders (b) otiose. In any event, case management would require accused and prosecutor to collaborate and to indicate dates and

timetables.

Mr. Al-Rawi: So, Madam Chair, I take the caution. We are having a battle, as I sit as a member of the Rules Committee, having to sign off on the rules that are put to me, where we have very polar positions on the interpretation of law. And it always flows back to: Do you have the legislative authority in the parent law to treat with this?

We ran into this obstacle in the Civil Proceedings Rules as well, which were originally designed to have case management done by Masters, as opposed to just by the judge so that the judge could receive case management from the Master.

In my view it is still a very sensible root that that ought to be the case. But the Rules Committee back then took years to figure out that process and they argued over it because they said the primary law did not provide for it.

So in fact, I am sitting on rules right now for the period of one month, as I am getting advice on which version of the law is in fact correct. Because people are quite prepared, and rightly so, to litigate everything under the sun and the moon.

So the question is: Is it really otiose, insofar as it provides a legislative springboard for agreement between the parties, particularly in light of what Sen. Shaikh has just said, which is there may be odium if something like this happens without the presence of the accused? That causes my alarm bells to ring, obviously. But we have already legislated in Act No. 20 of 2011, the fact that you can take steps, particularly in remand conditions, in the absence of the accused. It is in the parent Act. So when we deal with summonses, warrants, remanding, et cetera, we have legislatively provided for the absence of the accused in those circumstances. So we are not being inconsistent on this occasion, and it is still a court to deal with it.

The mischief that we are treating with is, I am having a battle with the Rules

Committee side of it telling me no, no, no, go back to Parliament and amend the law. We are having an active debate right now about whether Masters need to be "Hinds-ed", if I could put it that way for the lawyers in the room, *R v Hinds* to apply for them.

Masters are appointed by the JLSC. Their terms and conditions cannot be derogated from. They sit in the court. But if we do Masters, what about magistrates? A magistrate in exercising summary jurisdiction under the Copyright Act alone has massive powers over the Insurance Act, et cetera. So our law is in a state of flux right now and we are looking for some assistance from a legislative springboard perspective to at least cure the arguments that can come at us. Having the absence of the accused issue, it is an important issue but we have already legislated for it in this law since 2011.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Yes, hon. Attorney General, if we may, to use an old time word, hew back to the original constitutional principles, bail is a constitutional right. So the practical difficulties that the Rules Committee may be having, with all due respect, in dealing with the preparation of secondary or proposed legislation, ought not to affect our deliberations here. We have an accused person who has a constitutional right to bail, which is derogated from in accordance with the Bail Act, which was passed with a constitutional majority.

Sen. Shaikh's point about the process, the criminal trial process, or the criminal hearing process being embarked upon in the absence of an accused person is a very serious one for attorneys-at-law who will incur the wrath of clients if the clients are of the view that after having spent five/six years in custody awaiting trial that the attorney has gone and agreed to a date that the client does not like. So, there is that very powerful aspect of it.

In any event, the person in custody on Remand ought to be able to have some certainty as to when he is going to come before a court, and that certainty may not be protected if we give this discretion which is contained in (5)(b).

5.00 p.m.

Now I see that the Registrar in any event in the proceeding subsection has the ability to determine the date at the next available session, which is what currently exists. When you commit it to stand trial at the Magistrates' Court, you may be placed on bail or you may be remanded in custody, but you are sent to the next hearing of the criminal sessions. So it continues until you reach the High Court. So it is not that it is non-specific. It is when you get your indictment you know that you are before the court. So there is a process which tells the person in custody or on remand that this is what you are looking at.

I think this (b) is unnecessary having regard to what (a) says and I also think that it allows for too much mischief and confusion in the process which ought to be clear, it ought to be easy to understand for lawyers, and it ought to be easy to understand for clients, accused persons, whether they are on bail or on remand. So with all due respect, I urge you to consider the removal of (b).

Mr. Al-Rawi: Could I just so that I have it clear? Then the sole mischief left on the plate right now which is a laudable one is the protection of the representatives from a client who will recant on opposition and say, "Well look, I never really told you, you could have adjusted the state without my being present." Does that still apply even in the context—I am going to borrow from the civil law now—where attorneys in filing a consent application actually, basically certify that they have their client's instructions or have the client counter-sign?

Sen. Chote SC: Well, as I understand it. Sorry, I beg your pardon and I apologize. No, I think let us stop this analogy with the Criminal Procedure Rules. I think

Criminal Procedure Rules have their place as do the Civil Proceedings Rules. I do not think that we can always draw appropriate analogies. I think that when we come to looking at legislation which affects people's liberty and their due process rights, we have to be very careful.

Mr. Al-Rawi: Madam Chair, may I?

Madam Chairman: Attorney General, yes.

Mr. Al-Rawi: I think that there is a compelling argument put forward for the deletion of the clause. Certainly because I would have an obligation to go back and do some more work on it. So I think if we were err on the side of caution, that Sen. Sobers, Shaikh and Chote have made a compelling case for the deletion of 5(b). What we will do on our end is to go back and do some further work from a policy perspective versus factual perspective to see what the real intent of the Judiciary was in managing this particular process. So, Madam Chair, I respectfully agree to Sen. Sobers' suggestion that 5(b) be deleted.

Madam Chairman: The question is that clause 11 be amended as circulated.

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

New clause 12.

Madam Chairman: Sen. Hosein, I have had a look at your proposed new clause 12. I see that the proposed new clause 12 is dealing with an amendment to section 6 of the Act. Now this Bill has already dealt with section 6 of the Act. You are proposing, I believe, further amendments to section 6 of the Act. It therefore, does not fall and is not relevant to the subject matter of this particular Bill.

Sen. S. Hosein: Madam President, if I may? If I may? While drafting the amendments, I had a difficulty with whether or not it would have formed an amendment to the Bill or whether or not it would have formed a new clause simply

because the AG would have amended 6(3) of the Act at clause 5, I believe. This was going to be an amendment to 6(2) which directly touches and concerns 6(3), because what the amendment is doing is asking for an application to be made at (2) which would have encapsulated the DPP's power under 6(3) which the Attorney General would have amended. So I felt it very—I did not know if it was proper to have amended the Bill itself at clause 5, but rather substitute it as a new clause in order to touch that same power that the Attorney General amended.

Madam Chairman: I understand what you are saying, but in the way we deal with it in committee stage is we deal with clauses that are relevant to the Bill that is before the committee and before the Chamber. Because if therefore, we were to proceed on that basis then we can have more and more new clauses coming out, which may be relevant the Act, but not relevant to the Bill that is before us. Yeah? So therefore, Sen. Hosein, I will not put your proposed new clause 12 for any—I will not put it to the committee because I do not think it is relevant to the Bill. Okay?

New clause 13.

Madam Chairman: Sen. Hosein, again, new clause 13 proposes to insert a new section 35. Again, this is completely off of what the Bill that is before us has contemplated. And therefore, I have to rule in a similar way and I would not be putting new clause 13 to the committee either.

Sen. S. Hosein: Thank you very much. And again simply because of the same reason and these were some of the issues raised in the debate, hence I would have filed this particular clause; just for the record.

Question put and agreed to: That the Bill be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

Madam President: Hon. Senators, even though it is not yet time, but because I am looking at my Marshal's eye [*Laughter*] casting it, on several of your faces, we will suspend the sitting and will return at a quarter to six, 5.45. So we are suspended until 5.45.

5.11 p.m.: *Sitting suspended.*

5.45 p.m.: *Sitting resumed.*

SPECIAL SELECT COMMITTEE REPORT

Sexual Offences (Amdt.) Bill, 2019

(Adoption)

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

Be it resolved that this Senate adopt the Report of the Special Select Committee on the Sexual Offences (Amendment) Bill, 2019.

Madam President, it is my intention to deal with this report in three areas:

1. To talk about the work of the Committee itself;
2. To direct our attention to some of the key issues which were raised during the deliberations of the Committee and the Committee's interaction with the stakeholders; and
3. To direct our attention to some of the amendments which are contained in the report of the Committee.

So, Madam President, you would recall that during the Sitting of the 12th of February, 2019, this Bill was referred to a Special Select Committee of this House. And the committee was comprised as follows, Madam President: Myself as the Chairman; Mrs. Paula Gopee-Scoon; Mrs. Jennifer Baptiste-Primus; Ms. Allyson West; Mr. Garvin Simonette; Mr. Foster Cummings; Ms. Anita Haynes; Mr.

Gerald Ramdeen; Mr. Paul Richards; Ms. Sophia Chote, Senior Counsel; and Dr. Varma Deyalsingh. Madam President, you would also recall that Sen. Ramdeen resigned from the Senate while the committee was still in its deliberation and he was not replaced. And, Madam President, on behalf of the members of the committee, I want to record our gratitude to Sen. Ramdeen on his contribution to the work of this committee. [*Desk thumping*]

Madam President, the committee required 12 meetings, extensive written submissions, deep collaboration and consultation in what turned out to be a piece of legislation that captured the interest of the public and the interest of the Members of this House and it is for that reason the Senate exercised its powers to appoint a Special Select Committee. In the process of our 12 meetings we had consultations with the public sector stakeholders and civil society organizations, NGOs and private entities. And the public sector included the Ministry of Foreign and Caricom Affairs, the Ministry of National Security, the Ministry of Education, Ministry of Social Development and Family Services, the Office of the Prime Minister–Gender and Child Affairs Division, the Children’s Authority of Trinidad and Tobago, the Office of the Director of Public Prosecutions, the Trinidad and Tobago Police Service, the Trinidad and Tobago Prison Service and the Judiciary of Trinidad and Tobago.

The civil society organizations, NGOs and other private entities included the Child Welfare League of Trinidad and Tobago, Coalition against Domestic Violence, Organization for Abused and Battered Individuals, Caribbean Centre for Human Rights, Institute for Gender and Development studies-UWI, the Rape Crisis Society, Women’s Institute for Alternative Development (WINAD), Trinidad and Tobago Association of Psychologists, Womantra, Vision on Mission,

Kaiso Sex and Gender Justice Trinidad and Tobago, and Dr. Jeffrey Edwards who is the director of the Medical Research Foundation.

In total, Madam President, 22 stakeholders advanced written or oral submissions to the committee and having looked at the submissions the committee found that there were approximately 125 recommendations from the various stakeholders. What we found on analysis was that about 65 of the recommendations were directly related to the Bill and another 60 were related to matters which included policy matters which were outside the ambit of the Bill, but nonetheless important for future consideration.

Throughout our 12 meetings the committee had the support of the hon. Attorney General, Faris Al-Rawi, and I will point out that 28 of the recommendations generated came directly from the hon. Attorney General. We had the involvement of the Office of the Ministry of the Attorney General and Legal Affairs and the legislative drafting department through the Chief Parliamentary Counsel and I will say that 33 of the recommendations were generated via the CPC having taken into consideration submissions from the stakeholders.

Madam President, the committee wishes to thank the stakeholders who submitted and participated: the hon. Attorney General, the Chief Parliamentary Counsel and all those who provided technical support. Madam President, the committee also benefited from the participation of Independent Senator, Dr. Maria Dillon-Remy, my colleague on the Independent Bench, who was granted leave to participate in the proceedings on February 26, 2019 in accordance with Appendix 3, No. 9, of the Senate's Standing Orders, and I thank our colleague for participating and contributing. [*Desk thumping*]

Madam President, you may recall that the committee submitted two interim reports on March 26, 2019, and on April 30, 2019; and I thank my colleagues on the committee for ensuring that we stuck to our various timelines and we were able to furnish this House with the report in a reasonable period.

Madam President, on May 21, 2019 the Special Select Committee presented its report to the Senate. It is now this report that is before the Senate for adoption. I now go to and look at some of the key issues raised during our 12 meetings with the stakeholders and during the committee's deliberations, and I would narrow it down to seven key areas of the Bill which were being considered by this Senate at the time the committee was appointed. The first area related to mandatory medical examinations which arose out of the proposed section 36 of the Bill. The second area related to publication, the issue of publication of information contained in the proposed registry, an issue that generated a lot of interest and debate in this House and also amongst the stakeholders and that is the proposed section 42 of the original Bill. The third area did not arise from the Bill itself, but turned out to be an area of deep interest amongst the stakeholders.

And, Madam President, we were very grateful to have before us the Trinidad and Tobago Association of Psychologists and other experts and other committee members who had specific interest and expertise on this issue of professional assessment. Because throughout the Bill there are moments when decisions have to be taken in relation to accused persons and a key element of the discussions in the 12 meetings, a key element, was the opportunity for a professional assessment to be undertaken on an accused or on individuals in order to determine their risk, not only risk of reoffending, but risk to the population.

The fourth area is an areas which was canvassed in this House and also at the 12 meetings and that is the issue of exemption and the opportunity for someone who ordinarily should be listed on the register to make an application for an exemption from registration.

The fifth area was the area of periodic reporting which arose from the Bill itself, and the proposed section 44 to 46 of the Bill which was under consideration by the committee.

The sixth area, Madam President, you may recall because I myself made submissions on this matter during the debate and that is the issue of the entry being made in the passport of someone who was convicted for an offence relating to children. And that requirement comes from section 41—the proposed section 41(5) of the Bill and the consequential amendment to the Immigration Act.

The seventh area, Madam President, and one that almost every speaker during the debate and many of the stakeholders focused our attention to what was described as the broad ambit of the requirement for registration and many speakers in this House and many of the stakeholders felt that the ambit of—or the requirement for registration should be limited to certain offences under the Sexual Offences Act and certain offences under related legislation and those, Madam President, were to me in summary—there were other areas—but in summary, I think that the work of the committee was in the main focused on those seven area which were before us.

Madam President, as a result of our work as a committee with the support that we have had and the contribution of the stakeholders. I believe that we have recommended 90 amendments to the Bill through deletions of certain sections or additions to the Bill. And I would say in summary that the amendments we have

proposed arose from these stakeholders in particular; nine amendments from the Chief Immigration Officer, nine from the DPP, two from the Ministry of Education, three from the Ministry of National Security, six from the Trinidad and Tobago Association of Psychologists, two from the Organization for Abused and Battered Individuals, five from the Judiciary, four from the Trinidad and Tobago Police Service, two from Vision on Mission, two from the Ministry of Social Development and Family Services, and one from Womantra and the Coalition for Domestic Violence. It does not mean, Madam President, that the other organizations did not make recommendations which ended up in amendments. In many cases these were the organizations which put forward the recommendations which were eventually conjoined by the other organizations but or may also have appeared in those organizations.

Madam President, if I direct your attention to the Bill itself which was under consideration by the committee? The key areas as I have said which caused us to take careful attention and also to engage the stakeholders would be the proposed section 36(1) the medical examination requirement; the proposed section 42, the public access to information on registered sex offenders; the proposed section 44, the periodic reporting requirement of the convicted sex offenders; and the combination of section 41(5) and the consequential amendment to the Immigration Act in relation to the stamp in the passport.

So, Madam President, this is the way the committee has approached its work in terms of reviewing the Bill and making recommendations, and I will summarize in this way. In relation to the mandatory medical examination requirement which is now to be found in clause 10 of the amended Bill, in the new Part III, proposed sections 35 to 43, the committee has addressed the amendments which are

proposed in relation to mandatory medical examination. So that is the first area I will direct your attention to. Clause 10, the new Part 3, and the proposed 35 to 43, sections 35 to 43, in relation to the issue of the publication, public access to information contained in the national sexual offender's registry also in clause 10, in the new Part IV this issue is addressed at the proposed 47(2) and 63.

In relation to the issue of professional examination and the examination of an accused or convicted person by a professional, it is addressed in several areas of the amended Bill which I would point out as I go through the Bill shortly. The fourth area of this issue of a convicted individual having the opportunity to claim an exemption from the registration requirement in what we call the "show cause process" is contained in the proposed clause 10 of the amended Bill at section 31—the proposed section 61 sorry.

The issue of periodic reporting is addressed in the following proposed sections of the amended Bill: sections 55, 56(2), 57 and 62. The matter of the passport entry and, Madam President, let me say in summary the committee agreed and the committee recommends the deletion of those clauses which require a convicted person to report to the Chief Immigration Officer for having—for the purpose of having an entry made in the passport. And you would see in the amended Bill which we have proposed this is addressed at section 54(5)(d), and section 54(7)(c). And last the seventh area which I referred to earlier in relation to the applicable offences, the offences for which registration would be required, it is addressed in the proposed clause 8 of the amended Bill, through the revisions to Schedule 1 and Schedule 2 of the Bill.

So, Madam President, I would now take you through some of the amendments I have referred to so that we can get a sense of where they appear in

the proposed amended Bill. The first area I would draw attention to, the committee found it necessary particularly in our interaction with the Trinidad and Tobago Police Service and our interaction with the Director of Public Prosecutions, the Office of the Director of Public Prosecutions, to make certain additions to the definition section found in clause 5 of the Bill and those definitions include the definition of “specified mediator”, “citizen of Trinidad and Tobago” which we found the proposed definition to be applicable throughout the Bill and to bring greater clarity to who is affected and who is not likely to be affected by this Bill.

To the definition of “conviction” the addition of the definition of “conviction”, “intimate sample”, “qualified person” and in the definition of “main address” something that came from both committee members and from stakeholders, the inclusion in a main address of the place, whether or not it was a fixed structure, recognizing that not everybody may reside or find themselves living habitually or regularly in a place that is a fixed structure and that came out of the United States.

6.05 p.m.

Madam President, “registered sex offender”, the changes we have proposed in the definition relate to cross-references. We have recommended the inclusion of a definition for “sample” and, finally, a definition for “sexually transmitted infection”.

As I said before, Madam President, in proposed clause 8, we have recommended deletions and inclusions, and that deals with that important area of the offences to which this Bill is applicable. So I will direct your attention to the proposed changes to Schedule 1, where we have deleted the references to the Sexual Offences Act, Chap. 11:28. Again, Madam President, reminding this

House that previously the Bill recommended that the requirement to register be in respect of all offences under the Sexual Offences Act, Chap. 11:28, and the new Schedule 1, which the committee recommends, lists the offences to which the requirement for registration would be applicable.

I would say, Madam President, at this time, that even after the committee tendered its report, the CPC, the Attorney General and others continued to look at the Bill, and the AG will be speaking and will address in some areas some tidying up that has to be done in order to bring a little more clarity, particularly in Schedule 1 and Schedule 2. Hopefully, it is not going to take an enormous amount of the time, Madam President, but it is something that is required. So, the proposed clause 8 deals with the reference to the offences to which the Bill applies by reference to the offences listed in Schedule 2.

Madam President, the area which I referred to previously, the mandatory medical requirement, the committee found it necessary to redraft certain sections to improve and strengthen those sections but, in particular, to strike the balance between the protection of the accused person or the convicted person, and we believe we have done that in the proposals we have made for the sections which appear as sections 35 to 43.

Madam President, in dealing with a submission that was made in this House and was also made by stakeholders, I refer you to the proposed section 46, and the version of the Bill which we considered read as follows, because I want it to be very clear what we are proposing. That 46 read:

“This Part shall not apply to a person who was a child at the time of a registrable offence.”

And the issue arose in this House and in our discussions with the stakeholders, the

issue arose in relation to someone who was suffering from something which may lead to the issue of diminished responsibility arising, and what we propose is to retain the original language which is that:

“This Part shall not apply”—the requirement to register should not apply to someone who was a child at the time of the commission of the offence—
—and expand it also to someone who is:

“(b) suffering from such abnormality of mind...as substantially impaired his mental responsibility for his acts or omissions in the commission of a registrable offence.”

So it is not just child, but it is someone who is suffering from an abnormality of the mind.

Madam President, in relation to the establishment of the National Sex Offender Register, the proposed section 47, the previous subsection (2) has been amended and you will see, Madam President, now a reference to Schedule 3, which is a new numbering of the Schedules, but also a cross-reference to the proposed section 54, which I will come to, and that deals with the introduction of the “show cause”, which I will come to. The proposed section 54 now, Madam President, and this deals with the initial report of the sex offender—the requirement to report to the police station nearest to his main or secondary address, and it includes a requirement that that reporting be done within 48 hours where he is convicted by a court in Trinidad and Tobago, and a non-custodial sentence was imposed on him, and that is an addition to what previously existed.

There was, Madam President, via the DPP’s Office, an issue raised in relation to what is now proposed as the new section 56, and that has to do with the duration of the reporting period, and in order to make it very clear, in relation to

the maximum period for reporting, the committee has proposed the addition of a new subsection 56(2) which reads:

“The reporting period in Schedule 5 shall be the maximum reporting period for each offence listed in that Schedule and shall not be reduced by any reduction in the sentence imposed on the registered sex offender.”

That has to do, Madam President, with the application of the rules relating to the reduction of a prison sentence after it has been imposed, and it ensures that notwithstanding the reduction of the prison term, the maximum reporting period set out in Schedule 5, in relation to specific offences, should not be reduced on account of the reduction of the prison term which brings me, Madam President, to the proposed section 61.

And section 61 is something that engaged the attention of the committee through its members and through the stakeholders, because the stakeholders felt very strongly that the requirement for registration should not be automatic, and someone who feels that they should not be registered, or somebody who feels that the reporting requirement should not be applicable, should have an opportunity to go before the High Court, through an application, and set out the basis on which they believe that they should be exempted. So section 61, we are very happy to propose that, because we all believe that it strikes the appropriate balance. And in this application, Madam President, it is one of those areas where we have proposed—and I am back on this issue of professional assessment—it is one of those areas where we have proposed that when an application is made before the High Court makes a determination on the application, a request should be made for a mental assessment report from a psychiatrist, and that is the language that was recommended to us by the professionals, and throughout this Bill where there is an

opportunity to get a professional evaluation, you would see the reference to a mental assessment report from a psychiatrist.

More importantly, Madam President, taking into consideration, because we did in fact have stakeholders before us who were prepared to support the Bill in its original form unconditionally and, in many cases, they were in support of the rights of the victims and the interest of victims. And in making this application, the court is required to take into consideration the views of the victims and the risk of harm to the victim and issues like that. In fact, as part of this application, the victim and the family of the victims are required to be served notice of the application and be given an opportunity to be heard in relation to that application.

And, of course, later on in 62(5), you would see, the committee, we have listed some of the factors to be taken into account by the court in making a decision on whether to exempt somebody or not exempt them from registration or from periodic reporting, and that includes references to the views; both professional and personal views of the victims and the families of the victim.

The proposed 63, Madam President, the committee proposes an expansion of the original section to, again, deal with some of the other factors. This section deals with the information to be expunged from the register and again, the committee believes that anybody wishing to have information expunged from the register should make an application to the High Court and, again, the committee proposes that we set out in 63(4), some of the matters which ought to be taken into consideration by a court in determining whether information should be expunged.

The last area I would draw your attention to in the Bill itself, Madam President, is the issue of immunity, and the proposed section 66 deals with the issue of immunity where a person uses reasonable force in respect of the

performance of his duty in accordance with that particular part of the Bill, and this arose from the discussions with the Trinidad and Tobago Prison Service, for example, and there are other parts of the Bill where professionals or persons in the performance of their duty are required to use reasonable force in order to carry out the requirements of the legislation. But the issue first arose in the discussions with the Trinidad and Tobago Police Service in relation to the use of reasonable force and the immunities which should apply to that. Of course, Madam President, that proposed 66(1) has as its counterpart 66(2), where the immunity will not apply where there is negligence or omission in the performance of the duty which is not unusual in matters like these.

Madam President, as I referred to before, there are five Schedules, the first of which deals with the registrable offences which, as I said, arises out of the discussions with the stakeholders. The second Schedule deals with the offences for which a person under the age of 12 is not liable. The third Schedule deals with the information to be contained in the National Sex Offender Register and the committee agreed and recommends certain additions to what was there in the original Bill, including the place of birth, country of citizenship, nationality, telephone number of the educational institution. One interesting proposal came from my colleague Sen. Richards—the address of any place he visits regularly or volunteers, and it is only in our interaction with people who actually deal with these situations, we understand that there may be places where somebody volunteers and we need to have that information: telephone number, place of employment, description of vehicle and so on. Those are some of the things the committee has agreed to add to the information to be provided by the proposed registered sex offender.

Madam President, there are consequential amendments to the Criminal Injuries Compensation Act, Chap. 5:31. The committee did not see the need to interfere with what is set out in the Schedule dealing with consequential amendments in relation to that Act. However, in relation to the next piece of legislation that is named, the DNA Act, Chap. 5:34, the committee has proposed some changes to what was in the original Bill. And, as I pointed out earlier, in relation to the Immigration Act, the committee also proposes some changes and that, in particular, deals with the fact that we have removed the requirement for reporting to the Chief Immigration Officer and for the Chief Immigration Officer to record an entry into the passport.

Madam President, I think I have covered the work of this committee. Madam President, this report is 504 pages. The 12 meetings and the technical work before/after meetings consumed a significant amount of time. I want to thank first the members of the committee who worked according to a schedule and worked very productively. I want to thank you, Madam President, for appointing this committee but, most importantly, Madam President, I want to thank the stakeholders whose written and oral submissions were fulsome. [*Desk thumping*] We benefited tremendously.

Madam President, for a committee of this House to propose 90 amendments to a Bill, arising out of 12 meetings among itself and through engagements with the stakeholders, points to how important this particular course was to the long-term health of this Bill. I thank you very much and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Anita Haynes: Thank you, Madam President, for recognizing me to join in this debate on a Motion to adopt the Report of the Special Select Committee on the

Sexual Offences (Amdt.) Bill. And I would like to join, Madam President, firstly, with Minister Rambharat in thanking the stakeholders that attended our meetings and gave submissions to the work that was done by our committee. Madam President, it would be remiss of me not to point out that all of this work that we have before us today is as a result of consultation, and the fact that the committee was appointed to meet with stakeholders and get their expert opinions on what was before us.

Now, Madam President, this is a process that is oftentimes recommended by the Opposition. When we ask the Government, on several occasions, for Joint Select Committees or Special Select Committees, it is sometimes met with a certain level of derision, where the question as to whether or not we are delaying, et cetera, comes before us. And, Madam President, I think it is important because this was my first experience on a Special Select Committee, and the experience that I had on this Special Select Committee and meeting with the stakeholders and the experts in the field said to me—my takeaway was this is how all legislation should be crafted and created, Madam President.

And I understand that there is always a need for a fast pace, but I have been very consistent in my advocacy for a slower legislative process, one that requires caution and consultation, Madam President, and I think as we go through and as Minister Rambharat so ably did, went through the work and the significant changes made to the legislation but, more importantly, the input of the people who work in the field, Madam President, we can see that this approach is not without merit.

And I recall, Madam President, and I will go through, as I get through to some of the work of the committee, I had some time in preparing for this to look over the advice given to us by a number of the stakeholders, and I want to just talk

about something that Minister Rambharat raised, which was that in presenting before the Special Select Committee, there was, one, a lot of public interest in what we were doing, and it is because of the subject matter which is both sensitive, alarming, heart breaking and it provokes a lot of an emotive response from most of us, Madam President.

And what was important to note is that in the recommendations that we received, a significant number of the recommendations, as Minister Rambharat noted, existed outside of the ambit of the Bill that was presented, and I think that it is important for us to distil why that was the case. It is because, Madam President, the Bill that is before us is an important cog in wheel and we talk about sexual violence, but it is just that. It is one cog in this very important wheel and it comes, Madam President, at the end, and that is not to, in any way, diminish or minimize what was done or the work that has been done but it is, I think, a very serious recognition in that when we are talking about sexual violence and when we are talking about sexual offences, what we have before us today, and the work that we would have done, still comes at the end of what is a very traumatic experience for so many people.

And the reason so many of our stakeholders came to us with recommendations—and I would just read this one comment into the *Hansard*—this is from the coalition of the NGOs, who suggested that this Bill should be made part of a larger comprehensive review of the Sexual Offences Act, and to take into account the need for things like specialized courts' provisions on rehabilitative and psycho-educational approaches and that all of this should be a part of the context of our discussion, Madam President.

The reason that you are looking at people saying, “Here’s what, you have

something in front of you, but there is so much more than can be done”. Now, I appreciate the fact that not everything can be done all at once, but the reason that so many people came with so many different suggestions about the earlier interventions is because the data that we have, the academic data that we have in front of us, is telling us unequivocally, Madam President, that sexual violence is entirely preventable. And because it is preventable and because it is, once recognized as a public health problem, and you understand that sexual violence is preventable, it takes us into a space where our discussions are wider and we can look now while we say, yes today, we would look at the establishment—well, we would look at the register and we would look at compensation, why can we not join the Canadians? I am just going to put a couple suggestions on the record, as we are having this discussion here today, but why can we not look at Alberta and Canada and talk about no more victims? And so while we do this and we put this in place, let us also be thinking about the future and thinking about our wider responsibility to the victims in the context of prevention rather than just retribution at the end, Madam President.

And, today, as we prepared and we expressed our gratitude to the number of stakeholders, the stakeholders were still reaching out to us today to one, thank, you know, the committee for meeting with them, but also to put forward certain areas that were still areas of concerns. And while I would not go into it because I know all Senators would have received it, what that said to me is that there is space for wider discussion and that when we finish this bit here today, the conversation ought not to end, because this is a problem and I would go through some data that shows we have a massive problem in Trinidad and Tobago, and that as a Parliament and as leaders in society, we can all be pivotal elements in a solution

rather than just saying, we are coming at the end and we are passing this law, but we could all work together for solutions and interventions for prevention, Madam President.

And, in preparation again, for today, I noted the comments of some of the NGOs which I would just put on the record, again, that the majority of victims of sexual violence do not report these violations to the police. And, again, in that context, while what we are doing here, as I said, is an important cog in the wheel, a number of people are going to be left out of what we are trying to do here today, because if you do not report your sexual violence, you are not helped by this legislation. And I think it is important for us to think about what we are doing in the context of our society and in the context of victims not reporting because, Madam President, we have seen alarming statistics being presented to us from Joint Select Committees over the past months or month and a half where we saw statistics about teenage pregnancies, Madam President, and the numbers that we are being told that over 570 girls between 13 and 16 are being reported—

Madam President: Sen. Haynes, I just want to make just a short intervention here. We are debating the report of the select committee. I have given you a little leeway, but I want you to bear that in mind. It is not re-debating the Bill. It is debating the report of the Special Select Committee. Okay?

Sen. A. Haynes: Thank you. Thank you, Madam President, for your guidance. In debating the report from the committee, I am just raising some of the key considerations raised by stakeholders and, you know, there is only so much that can be said, Madam President, for the amendments that are put forward for the Sexual Offences Act as they stand now, but as Minister Rambharat noted, the interventions were a lot wider as part of the committee and they sought for a more

holistic approach to what we are doing. And the reason I raised that particular article, Madam President, is to just highlight one line where they were talking about the fact that the fathers of these girls who are found pregnant between 13 and 16, they are reluctant to give the names, et cetera and that, therefore, they do not form part, Madam President, of all this good work that we would have been doing.

And, Madam President, as a member of the committee, I think it is important for us here today to understand that the reason there was so much buy-in to the Bill that is before us today and to the changes that people suggested is because we had adopted this approach where we said yes, bring your concerns and the conversation will continue, and it was my hope, Madam President, while standing here in support of this Bill and in support of what is being done here today, say what more can be done, because there are— oftentimes we are accused of not putting things forward and not suggesting anything and always being obstructionists, and it was the intention not to do that and to show, here is the thinking, here is how we could move forward.

Because, Madam President, when I looked at the Alberta model and the commitment to end sexual violence, which were some of the things that were presented before us, it spoke about a collaborative approach to ending sexual violence and, Madam President, I think that conversation is important which is why I stated that this is an entirely preventable issue, and that if we take appropriate governmental, civil society interventions that we may not even find a lot of youth out of the Bill presented before us today, because if we understand it as a preventable issue in society, then we would have made, I think, steps in the right direction.

And, Madam President, when you look at the work that governments around

the world are doing right now, in terms of shifting the conversation and shifting the culture and the mindset of the citizenry and the understanding of what sexual violence means, you understand that our discourse even now, as progressive as we may try to be, is still somewhat backward, because we are still at the point of talking about registering offenders and compensation for victims which is very important, I agree, but still does not keep any of our citizens safe; all the children that we are trying to keep safe and all the safety of women and, in context, the legislation it really does not do that.

6.35 p.m.

It says, at the end of it, after you have experienced this trauma, after you have experienced this, this is what we can do to help, Madam President. So I took the opportunity to download a technical package on the prevention of sexual violence—

Madam President: I think, Sen. Haynes, that you have dealt with the issue in the sense you have laid out what you think needs to be done non-legislatively, but I do not think that you can go off to talk about all of that. I think you have made the point, I do not think you should be expanding to the extent that your contribution becomes about that point and not about the report. Yeah?

Sen. A. Haynes: Understood. Thank you, Madam President. Madam President, when you look at the report that is before us, I will point out again that what we dealt with would have been the registration of offenders, and that was a subject of quite a lot of debate, and there was a policy position initially adopted by the Government and after persons made their interventions, experts in their field, you saw that policy position shift a little bit.

Madam President, I would like to say again—I would like to start back—I

would like to reiterate that that is the importance of taking an approach where you allow experts in the field to come in, because while we may differ as legislators in here as to whether or not a register ought to be public versus private and the notice of registration, the information that we got from the stakeholders who presented before us, we saw the Government response to that information, and, Madam President, the 91 amendments that are being proposed to this legislation understood—it is from the understanding that we are in a delicate balancing act where we have this desire to protect our citizens and to ensure that our people are safe, but also, while doing that you have to understand that we must include the concept of restorative justice and we must include things that do not just seek to punish but seek to rehabilitate, Madam President.

As I conclude, I would just like to say that what we would have accomplished as a committee is having taken hours of work, weeks of work, Madam President, and crafted something and said, “Listen”—to the citizens of Trinidad and Tobago—“this is what we have right now and this is what we are looking at in terms of the register and compensation for victims.” But what we can do, Madam President, I think, is commit to the citizens of Trinidad and Tobago that we would carry the conversation of sexual violence forward and we would always take this kind of consultative approach to not just legislation but policy as a whole. I thank you, Madam President. [*Desk thumping*]

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

Sen. Paul Richards: Thank you very much for recognizing me and granting me the opportunity to make a short intervention. I would not be long. Minister Rambharat pretty clearly articulated the work of the committee and the outcome in terms of this report, but I think it would be remiss of me not to take 15 seconds to

really congratulate the Members of the committee, including Minister Gopee-Scoon, Minister Baptiste-Primus, Minister West, Sen. Simonette, Sen. Cummings, Sen. Haynes and Sen. Ramdeen at the time, Sen. Chote SC, and Sen. Dr. Deyalsingh, and also Dr. Dillon-Remy in a session. And it would also be remiss of me not to identify—because sitting on this committee has been quite a rewarding experience for me in terms of the way the committee operated, and I really have to take time to congratulate Minister Rambharat for his amazing stewardship of this committee. [*Desk thumping*]

He really was the epitome of efficiency and fairness, and I think it is a good model for others who are chairing committees in particularly difficult and sensitive topics like this. He listened more than he spoke and he was extremely inclusive in his approach, and I really want to congratulate Minister Rambharat [*Desk thumping*] for his approach, and I have the honour to sit on many committees and I think he really did a wonderful job. I also want to congratulate one of the most professional entities I have ever worked with in my life, and that is the Parliament staff and the Secretariat, [*Desk thumping*] because their work facilitates our work and it cannot be underscored enough. Minister Rambharat made it really easy for me to go through my thoughts on it and I just want to go through a bit of quick data on why this Sexual Offences (Amdt.) Bill, 2019, gathered this kind of response.

As the Minister indicated, 22 stakeholder groups met or submitted reports, 65 specifically related to the Bill and 60 outside in terms of policy, and I just looked through the BBC website and the UK has a population of approximately 65 million, according to a 2017 survey. So it is a much larger population than Trinidad and Tobago. And a new study out of the University of Glasgow indicates that more than 90 per cent of rape and sexual assault victims know their attacker—

more than 90 per cent. And I could add to that, back at home, out of the *Newsday* report, Monday, July 09 2018:

The “Children’s Authority warns of spike during vacation periods 253 reports of child abuse in 2 years”

And it underscores, very easily, why this Bill garner this kind of emotive response from the stakeholders, the Members of the committee and the public at large, and one of the more discussed issues, which I will focus on, is the issue of the registration, the public registration in section 42.

I know many were clamouring for this carte blanche national registry because we have a tendency in smaller jurisdictions like Trinidad and Tobago to say, well, the US did it and the UK did it, and Australia did it, but people do not dive deeper into the research about these phenomena and they do not realise 90 per cent of the research anyone would read tells you that in terms of the objectives of a national registry, which are prevention, which are public safety, first of all, in terms of supposedly the public knowing who these sexual offenders are for the protection of children. So public safety, the mitigation of reoffences, the hopeful rebuking of those who have intentions of or who have a pathology toward that sort of behaviour, and 90 per cent of the research would tell you it does not work. So sometimes we want to adopt international paradigms without going deeper into the research and realizing that we have to look at the examples that the international jurisdictions and the paths they have taken and realise, has it worked or has it not worked.

I think we have come up with a really interesting approach whereby in Trinidad and Tobago, in terms of the proposed Bill before us, that the protocol we are adopting is a lot more appropriate for our circumstance and in consideration of

the research internationally on what has worked and what has not worked. And there is going to be a register but there are certain parameters within which the registration will occur, particularly where people who have a higher propensity for reoffending it is going to be subject to judicial discretion and it is going to be reposed with the Commissioner of Police, and specific agencies who can apply have the remit to find out who is on that registry. Because there were many concerns about the small society in which we operate in Trinidad and Tobago and the possibility of tertiary and secondary victims and vigilante justice occurring in a very small society in Trinidad and Tobago when people find out X and Y is a registered sex offender, you can go on a public website and find it, and then their families become victims also because people burn down houses, et cetera.

So I think the committee was very, very careful in considering all the nuances involved in our jurisdiction in Trinidad and Tobago to come to the final proposals contained in this Bill. I think the proposals really are—they will never be perfect but they are the best that we think could work for Trinidad and Tobago, and of course they can reviewed, and hopefully there would be some research done, because many of the tertiary level institutions and the Psychological Association and other stakeholders will no doubt be following, once this is passed, supposedly if it is passed, the application of it, one, and the results, the intended results if they are able to be realised. So I think it is very important to understand that. As Sen. Haynes indicated, there are many of the stakeholders who would have submitted, according the Minister Rambharat, 125 recommendations.

It is almost impossible, if you think about it in a practical level, to accommodate that many recommendations in any Bill, and I know people are passionate about their recommendations because the stakeholders represent very

different sectorial interests. And it really, if you understand, if you sit on this side in this honourable House, you would realize how difficult it is to try to accommodate for every possible scenario when you are trying to make law for any country. I think people need to understand that in the context of what the approach was in trying to get to some level of consensus in every aspect of this Bill. We did not always get to consensus, we argued respectfully and vigorously, and I think we, in many cases, were able to come up with the best possible solution under those circumstances. So I think the issue of that was very important.

The other part I want to quickly cite, Madam President, through you, and Sen. Haynes touched on it a while ago, and I think it is a very important point, and it did not make the final draft of the Bill but it is very important. If you are engaging—and this has been included—the professional psychiatric evaluation of the offender, which is important to find out the risk posed by this offender, as we see in—I missed a section here, but as we see, it is important to understand if you are engaging psychiatrists, clinical procedure has a particular path and a particular protocol and it is incomplete to ask a professional to do a psychiatric evaluation, make recommendations and there are no provisions to complete a therapeutic or rehabilitative protocol involved in that. It is like a doctor seeing a patient saying, well, this patient has a heart ailment, and there is no follow through to remediate that heart ailment. You just put the person in a ward and you leave them there, and that is counterproductive and I think that is a missed opportunity in terms of really ensuring that we go the limit.

We also have to understand because this is a point that our colleague is absent today, Sen. Deyalsingh indicated, not every offender can be rehabilitated, hence he made the now infamous statement about his support for chemical

castration. But if we have the professional assessment done, we will more than likely be in a better position to see who can be rehabilitated, who can go through a particular protocol, like in every other type of crime or every other possible type of crime and put that person through a rehabilitative process and monitor the person's progress through that protocol, because to me it does not make sense not having it as mandatory in the Bill when you engage the services of a professional psychiatrist and ask for an assessment or diagnosis of this person's psychiatric profile and their risk assessment and not take into consideration the recommendations, which would no doubt come from any professional worth his or her "salt" in terms of the remediation protocols necessary for that persons. So I think that was a missed opportunity, and I am hoping that at some point we can get to including that as a mandatory part of this type of legislation, not only in terms of sexual offences but other types of offences in Trinidad and Tobago.

In terms of the other aspects of the Bill, which I think we made tremendous progress on, it includes the issue of the information contained related to the persons who are going to come before the courts and the fact that the fulsome nature, the comprehensive nature inclusive of in section 42 of the proposed Bill where the information is really detailed, name, former names, aliases, date of birth, photograph or photographs, main address, addresses, and non-fixed addresses, as Minister Rambharat indicated, list of registrable offences and areas that the offender frequents, especially in the digital age and also social media handles and digital footprints in the digital age where a lot of the grooming takes place online. So I thought that consideration was very noteworthy because we cannot alienate ourselves from the present realities where you find possible sex offenders are lurking online to groom victims and pounce on them in many instances.

So, there is another aspect that Sen. Dillon-Remy will elucidate on, but I also want to finally, in closing, deal with the issue of education, and there are many aspects to this in terms of—the Bill deals with the legislative part and the remit of the courts and the State's, more than likely punitive and in some small measure, rehabilitative efforts. But there is also the issue of national awareness in education, because very often, as we have seen, since the assent and proclamation of the Children Act, and certainly the amendment to the Marriage Act, culture change is slow in any jurisdiction, and people are sometimes confused by what we take for granted as legislators in understanding law and how it affects them. And if we are going to be passing laws and amending laws and changing laws, it is incumbent upon us as a Parliament and as the State as whole in educating people about the changes and their responsibilities and requirements in terms of how these laws affect their lives. Because in very many instances, as we saw with the changes to the Marriage Act and the Children Act in Trinidad and Tobago, what would have been culturally acceptable in the past is now no longer so, and we have to educate children, adolescents and adults in what is expected of them in the new paradigm of laws and behaviours expected of them in the present context in Trinidad and Tobago.

So, in closing, Madam President, I again want to congratulate the committee and its chairman and all the stakeholders who would have contributed to this, and reiterate that it may not be perfect for everyone, but under the circumstances I think the committee was able to do quite an astounding job in really 12 sessions and in a pretty condensed time come up with something that we think adds a greater layer of protection for people, including children, girls and boys, women and men in Trinidad and Tobago. I thank you. [*Desk thumping*]

Madam President: Minister of Labour and Small Enterprise Development.

[Desk thumping]

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you, Madam President, for affording me the opportunity once again to contribute to this very important and critical piece of legislation, the Sexual Offences (Amdt.) Bill, 2019. Madam President, I would have made my first contribution on the amendment on February 5th, a mere four months ago, subsequent to which this Senate, by resolution on February 12, 2019, established a Special Select Committee to consider and report by March 29, 2019, on the Sexual Offences (Amdt.) Bill. As a Member of this Special Select Committee and under the stewardship of the chairman of the said committee, my colleague, Sen. the hon. Clarence Rambharat, I was once again privileged to make a contribution towards improving the lives of citizens of Trinidad and Tobago, and so today I stand here to make another contribution towards the amendment, the report on the amendment to this Act, and to renew my commitment to ensure that our citizens are protected.

Madam President, the Special Select Committee had the benefit of the expertise, experience, contributions and suggestions from approximately 24 stakeholders over the course of 12 meetings. The stakeholders consisted of both Government and non-Government agencies and organizations, and their contributions proved to be invaluable, so permit me, Madam President, to take this opportunity to extend my own sincere and heartfelt gratitude for their service to their fellow citizens and to our beloved country. Madam President, having had the benefit of stakeholder consultation, the Special Select Committee, in accordance with its mandate, painstakingly examined the Bill before it and its report

containing the consolidated version of the Bill was laid in the Senate on the 21st of May. Madam President, I want to look a little at defining the problem. One does not have to think hard to recognize that crime is a problem in this country because far too often the headlines are dominated by stories of crime, and as this Government continues to assiduously and very “focusedly” work towards ensuring that crime rates decrease in our beloved country.

Madam President, we are not just listening to the demands of the citizens for crime to be assertively and effectively tackled, we in this Government are taking the necessary action in policy and in law and in resource allocation to ensure that crime is addressed and that crime rates are decreased. Madam President, sexual offences are damaging, they are dark, they are complicated, and we must all ardently work towards eliminating sexual offences in Trinidad and Tobago. Without a doubt sexual offences, sexual crimes are especially despicable. For Madam President, they involve the violation of an individual’s body, our personal space, sense of safety and that of security. As I stated in my initial contribution on February 5th, in addition to physical consequences, sexual offences carry with them invisible scars of emotional trauma which can haunt survivors forever, all their living lives, Madam President. Survivors are known to struggle with depression, feelings of worthlessness, suicidal thoughts and post-traumatic stress.

Madam President, anyone, anyone can be a victim of a sexual offence, be it women, men, children, both boys and girls. Madam President, for the years 2016, 2017 and 2018 the Trinidad and Tobago Police Service statistics advised that there has been a steady and drastic increase in the number of reported cases of rapes, incest and sexual offences. Madam President, the Trinidad and Tobago Police Service received 132 reports of rape, incest and sexual offences for the period

January to June 2019. During the special committee meetings the representatives of the Children's Authority of Trinidad and Tobago advised that for the period 2015 to 2018 there were 14,000 cases of which 272 were sexual abuse cases, which means approximately 30 per cent of the cases reported were sexual abuse cases.

Of even further concern are the figures recorded in the statistical report on sexual abuse against children in Trinidad and Tobago, preliminary, April 2016. Madam President, according to that report for the nine-month period May 18, 2015, to February 17, 2016, approximately 915 cases or one in five reports made to the Children's Authority was categorised as sexual abuse. The majority of sexual abuse cases brought to the attention of the Authority involve female children approximately 86.8 per cent, while 13.2 per cent of sexual abuse cases involve male children. Madam President, I want to focus just a bit of attention on the revised Bill. Madam President, the Bill before us has a simple but powerful purpose, the amendment of the Sexual Offences Act, Chap. 11:28, with consequential amendments to several other key pieces of legislation, such as the Criminal Injuries Compensation Act, Chap. 5:31; the Administration of Justice Act, Chap. 5:34; the Immigration Act, Chap. 18:01; the Police Service Act, Chap. 15:01; and the Family and Children Division Act, 2016.

Madam President, the intention of the amendments as contained in this report is to act both as a deterrent to persons who may be tempted to commit sexual offences as well as provide important information with respect to the identity and whereabouts of convicted offenders. So then, Madam President, an analysis of the Bill demonstrates that most of the amendments relate to the updated provisions in the Children Act and the Trafficking in Persons Act, Chap. 12:10.

From the discussions on this Special Select Committee several key revisions to the Bill are proposed. From the discussions with stakeholders it was necessary to add definitions of certified mediator, citizen of Trinidad and Tobago, conviction, intimate sample, qualified person, sample, and sexually transmitted infection, and minor amendments to definition proposed in the earlier draft of the Bill in order to ensure clarity and effectiveness.

Madam President, when addressing the issues surrounding sexual offences it is necessary for medical examinations to be undertaken whether as part of the evidence gathering process or for the health and well-being of the victim as the risk of the transmission of sexually transmitted infections is heightened during unprotected sex. In respect of medical examinations under this Bill, Madam President, there are several issues we are seeking to address. Under the proposals of the Bill, specifically at section 37, the police officer who lays the sexual offence charge must make arrangements for the medical examination of a person charged for the purpose of determining whether that person has a sexually transmitted infection with provision being made for the use of reasonable force for the first time to conduct the medical examination. It also further provides that should no sexually transmitted infection show up, the police officer may, on the recommendation of a medical practitioner, make arrangements for a qualified person to conduct a second medical examination within one year of the date of the first medical examination.

Madam President, with the prevalence of HIV and other emerging sexually transmitted infections, this changing in wording is essential. Victims of sexual violence or virtual complainants will be immediately notified if the person charged is found to be suffering from a sexual transmitted infection. Madam President, this

Bill provides for a compensation of the virtual complainant where a medical examination of the virtual complainant reveals that the virtual complainant may reasonably have contracted a sexually transmitted infection from a person who commits a sexual offence under section 37(1). The High Court may order that compensation be paid by the sexual offender to the victim or victims or their representatives. Madam President, moreover, public access to information on registered sex offenders is a key element of this Bill, and the purpose of this machinery is to allow the police and immigration officers to closely monitor the movements of the persons convicted of sexual offences or to prevent recidivism and to further protect the wider national community.

7.05 p.m.

Madam President, sex offender registries exist in many English speaking countries, including right here in the Caribbean, Jamaica, Australia, Canada, New Zealand, the United States, South Africa, the United Kingdom, Israel and the Republic of Ireland. In Jamaica, the sex offender registry was established in 2014, and offenders are kept on the register and are monitored for at least 10 years before they are eligible for termination of the registration and reporting requirements. Removal of registrants from the register can only be ordered by a judge, and offenders must notify the authorities before leaving Jamaica. As such, Madam President, this Government is moving towards keeping up with our regional and international counterparts in the battle against sexual violence.

So that, Madam President, the Special Select Committee, having had the benefit of discussions with stakeholders, has included provisions for a person to apply to the High Court to, one, be exempt from registering as a registered sex offender or reporting; two, have their information expunged from the register;

three, application to court for cessation of reporting period.

The Bill goes further by making provisions for the victim or the family of the victim to make oral or written representations for or against the application made by the registered sex offender to have the information contained in the register, in relation to him, expunged.

Madam President, the Bill also outlines criteria for the High Court to consider in determining such an application as including, amongst other things, one, the findings of the mental assessment report from a psychiatrist; two, the nature and gravity of the offence; three, whether the registered sex offender has been charged or convicted of any other registrable offence during his reporting period; four, the risk of re-offending; five, the risk of harm to the victim and any other person, and six, any other compelling reasons in the circumstances.

A key addition to the Bill is the provision that there are certain offences to which a person under the age of 12 years is not liable under the provisions of the Bill and the provisions of the Trafficking in Persons Act, Chap. 12:10 and the Children Act, Chap. 46:01. Essentially, this amendment provides that a person under the age of 12 years old will not be deemed capable of committing the following: sexual offences under the Act such as rape, grievous assault, sexual assault, aiding in prostitution, failure of a sex offender to report, and breach of confidentiality, trafficking in persons, inciting, organizing or directing another person to traffic in persons, trafficking in children, inciting, organizing or directing another person to traffic in children, transporting another person for the purpose of exploiting that person, prostitution, paying for the sexual services of a child, child pornography, inciting or facilitating child pornography, and causing or inciting prostitution.

Madam President, I turn my attention to the Government's initiatives. This Government is of the firm view that without a vision one can wander aimlessly and, even worse, a plan without action is rather worthless. This Government has a plan, *Vision 2030*, and I am very pleased that we are making steady progress in implementing the initiatives required to achieve the goals set out in *Vision 2030*.

Madam President, this Government, in keeping with the *Vision 2030* theme of delivering good governance and service excellence has established two relevant short-term national outcomes under this theme, namely, the improved administration of justice and a modern and effective law enforcement system. In acting towards the fulfilment of our goals, we have brought to Parliament many Bills intended to strengthen the legislative framework to Parliament, and in that context I would like to take the opportunity to commend our hard-working, tireless hon. Attorney General, [*Desk thumping*] for he has placed the following pieces of legislation before Parliament: the Anti-Gang Bill, 2018, the Administration of Justice Bill, 2018—

Madam President: Minister, I want to just caution you that we are debating the report of the Special Select Committee. You have made your point about what is being done, but I do not think you need to go to such detail. Okay?

Sen. The Hon. J. Baptiste-Primus: I am so guided, Madam President, and I will make haste to move on, because I am indeed winding down. I would just like to indicate that sexual offences far too often find its way into the workplace in the form of sexual harassment. In addressing this important issue, the Ministry of Labour and Small Enterprise Development held a national stakeholder consultation on the Draft National Workplace Policy on Sexual Harassment on June 01, 2018, in Trinidad, and in Tobago, the 22nd of June. That policy was laid in Parliament on

8th of March, 2019, on International Women's Day. The vision of the policy is to ensure that workplaces are free of all forms of sexual harassment and sexual offences, with the mission to create a workplace where these issues are prohibited, prevented, addressed and remedied expeditiously, with equity, accountability and integrity.

So therefore, Madam President, the Bill for which this report before the Senate, the provisions of which will greatly assist the Ministry of Labour and Small Enterprise Development, employers and employees in addressing the issue of sexual offences, sexual harassment at the workplace.

In closing, Madam President, this piece of legislation aims to provide both a deterrent to persons who may be tempted to commit sexual offences, as well as providing important information with respect to the identity and whereabouts of convicted offenders. Violence and abuse, including sexual violence and trafficking, is a major obstacle to inclusive, equitable and sustainable development, and all of us must do our part to ensure that we effectively address this issue.

Finally, Madam President, the Government by laying this report on the Bill in this House and staying committed to the process, has taken the crucial step, giving us the opportunity to debate and pass this piece of legislation, and also to agree with this report that is before us.

We as parliamentarians, in both the Lower and Upper Houses, whether Government, Opposition, Independent, we spend a significant amount of our time in this hallowed Chamber creating law with the aim of improving the lives of the citizens of this country. We therefore define the future by our actions.

Today, as we debate this revised Sexual Offences (Amdt.) Bill Report, 2019, which aims to amend and thereby strengthen the Sexual Offences (Amdt.) Bill, I

Sen. The Hon. J. Baptiste Primus (cont'd)

urge all of us to be guided by the best interest of the citizens of this country and support it. And lastly I wish to commend once again, our hon. Attorney General for his focus in reforming legislation in Trinidad and Tobago. Madam President, I thank you.

Sen. Khadijah Ameen: Thank you very much, Madam President. We have established in this debate, as well as in the debate that sent us to the Special Select Committee, that sexual offences in Trinidad and Tobago are very prevalent. They are not restricted to any one class in society. Sex offenders can be strangers, they can be parents, step parents, siblings, relatives or even teachers and close relatives of the victims who are considered trusted adults. It could also be a trusted child, and we have also unearthed data that reveals to us the need to increase and encourage reporting.

The Attorney General, when he piloted the Bill, the sex offender registry, shared with this House that for the year 2000 to present there were 13,630 sexual offence cases, and the number convicted was 321 or 2.35 per cent, which is about a 2 per cent conviction rate. As we deliberate on the report of this Special Select Committee, I maintain that responsibility to ensure conviction, which is on the State, to ensure that justice is done and that the victims receive justice.

The responsibility is on the Attorney General, and definitely on the Minister of National Security—and I would expect from any Member of the Government—to share with the nation, through this Parliament, what are your methods, what are the provisions that they intend to put in place to ensure that convictions hold up, that victims have faith and trust in the police and the justice system to which we now add the tool of a sex offenders registry. Acknowledgment has been given to the work done by stakeholders, by members of the committee and all those who

participated, but in order for all of this to be effective the rate of conviction must be improved. It starts with our openness with receiving complaints before we even go to the police. Very important for me as well as we consider punishment, is restoration. The restoration of the mental and emotional well-being of the victim, the relatives, as well as the offender.

The Chairman of the Special Select Committee, Sen. the hon. Clarence Rambharat, indicated that there were 90 amendments at this committee. This is a whopping number, 90 amendments. I remember initially that the Government had objections when the Opposition asked for a joint select committee or a special select committee to consider this Bill. I am thankful that the Opposition's recommendation for a special select committee was accepted, that allowed the stakeholders to have an input and allowed the committee to come forward with these 90 amendments, and I am grateful that the Members on the other side worked fully with that recommendation and that system.

I wish to share with this Senate a few of some of my thoughts on a few of the amendments, and to put forward a few points for future consideration, because I am sure as technology progresses, as crime fighting mechanisms improve, there will be need for amendment to this Bill in the future, and it is intended for the protection of potential sex victims.

Madam President, one of the major requests of the Opposition was for the consideration of a committee to allow consultation with the stakeholders. I found it strange and unfortunate that before the Bill was brought that these stakeholders were not consulted. And I want to implore the Government and the Office of the Attorney General, particularly when you have Bills that have such interest from the public and from organized NGOs, that you give consideration for them to have an

input before it comes to Parliament.

One of the recommendations that was accepted in terms of amendments was in terms of when an offender is to be deregistered, that the victims and the families would be notified of deregistration. There is also now a provision for representation by the offender as well as the victim and family in the decision to deregister. I think it is important to engage the victim in the process, in order for that victim to feel a sense of justice.

Another amendment which I found commendable was the removal of the clause which amended the Immigration Act, where there was a need for the requirement for the passport stamp, but I just want us to caution. This is something that we may have to revisit. While the requirement has been removed completely, we may find, if circumstances develop, the need to reinstate that in a limited capacity. So that is an amendment that I commend, but I think we have to keep an eye on.

Madam President, I maintain that in Trinidad and Tobago we have a culture—they said that we have a violent culture. We have a culture of vigilantism, where we believe in justice as an eye for an eye. Even the State, in the fact that in terms of how we punish crimes violently, we endorse that, which is why I felt it was very important to screen the offenders that are going to be publicized, and clause 49 dealt with that. Clause 48 also dealt with penalties for misuse of the information on the public website.

While people would be outraged to hear Members of this House or even anywhere, people talk about the protection of the offender, it is important that justice be done, but we must also remember that we have had instances of vigilante justice where persons could lose their lives when it is established that they are on

this registry.

Madam President, there is also another amendment, clause 36, limiting offences warranting testing, sexually transmitted infection testing for persons charged with offences involving sexual penetration. I know that the committee did not have a medical doctor before it. You had submissions from a medical doctor which was commendable, but that is an area I think needs more exploration, because sexual penetration is not the only method of exposure to sexually transmitted infections. I saw the record where the committee had its discussions about that, the submission from the medical doctor, but I think that is an area I think should be revisited later on.

We also must remember, apart from establishing whether there is the presence of an STI for security of mind for the victim, it is important to establish that they have not been infected in any way. So I do not think we should hurry to reduce or to limit circumstances where testing for sexually transmitted infections is allowed.

Madam President, the protection of vulnerable groups, particularly children, is important in terms of how we engage their parents and their duty to report sexual offences. Of course, since the Sexual Offences Act, we have had the establishment of community residences, we have had a number of pieces of legislation such as the Children's Authority and so on. So to me I felt very natural that the persons who have a duty to report sexual offences, have now been expanded to include community residence managers, day care owners and workers, school principals, guidance counsellors, social workers, welfare officers and leaders of faith, sport and youth groups.

My concern initially was that failure to report is an offence under the Sexual

Offences Act, and the way the legislation was framed initially meant that any person who failed to report would commit an offence under the Sex Offenders Act and then be likely to have their name on the sex offenders registry. Nurses and teachers as well. So, I am happy to see that clause 9(c) made it possible that those people will not be on the registry if they do in fact commit the offence of failure to report sex offences.

Madam President, another area of concern that I expressed had to do with the professional assessment of an offender in considering what his sentence should be. Because the sentence is not only the jail term or the fine, part of the sentence is also the fact that their name would be put on the sex offenders registry. It is a public shaming, it is a form of punishment. I felt it was important to assess the offender's threat to harm the victim, the likelihood of them reoffending, their state of mind. I remember making reference to my colleague who is not here today, Sen. Dr. Deyalsingh, that recommendation should be made in terms of how persons are assessed and their psychological state before making that decision. So I was happy to see that that was included.

However, one area that I felt that it was related to this, but I felt was not adequately explored is—and this is something that we must keep in the back of our minds for the future, it is examining methods to ensure that persons whose names appear on the sex offenders registry are restricted from working with children or vulnerable groups. It has to do with their psychological assessment. So while the assessment and the court would determine if a person's name must go on the registry, I really did not see any requirement for persons working with children, for there to be any restrictions for people whose names appear on the sex registry. That is something I think is very critical. While employers may use their

discretion, because it is not in law, a person who is denied a job opportunity working with children or vulnerable groups or vulnerable persons, if it is not in law they could claim discrimination. So in order to protect the children and in order to protect the employer, if such a decision is made, we must put some sort of mechanism in law to deal with situations like that.

Madam President, I also wanted to touch on the fact that offenders, who may be in a better financial position, could engage legal representation and petition the court to be deregistered for example, to have their names removed from the register, and persons who are financially disadvantaged would not have access to Legal Aid. So in this instance these persons would not be granted representation by Legal Aid, so it puts persons who are financially disadvantaged at a further disadvantage. This again is an injustice in terms of accessibility to the court. That is an area I think we have to give consideration for in the future.

Madam President, those are my suggestions and those are the things I would like us to consider. I would also like us to consider rehabilitative treatment of offenders as a condition of sentencing. Already established is a fine, a jail sentence, now we have your name being put on the sex offenders registry. But perhaps as a condition of your release or even before their name is removed from the sex offenders registry, we must look at rehabilitative treatment for the offenders as part of their reintegration, or condition for their reintegration into society.

I spoke also previously about the fact that it is not only the victim or the offender, but relatives of the victim and relatives of the offender that we must take into consideration. So there is room for that element of restorative justice in this circumstance, to give the victim the opportunity, whether it is to confront the

offender, whether it is for the families to hear the pain and suffering of the victim, and also for the offender to have that opportunity to appreciate how they violated their victim.

Madam President, I was happy to hear the Minister of Labour and Small Enterprise Development, Sen. The Hon. Jennifer Baptiste-Primus, mention the Government's work on the Draft National Workplace Policy on Sexual Harassment. I think that is commendable. I have heard her speak about it on numerous occasions, and I am happy she took the opportunity in this debate to mention it. I think that it is important for the leaders in our society to set the tone where sexual offences are concerned, where our tolerance to sexual harassment is concerned. In this regard I think it is very important—there is an outstanding report on a former Minister on a sex harassment incident—for that report to come public, and to send a message as to what our leaders in society intend to tolerate in terms of what action is to be taken. This report has been outstanding for quite some time.

The Minister indicated that the draft policy has been laid in Parliament, so I look forward to seeing the contents of it, but I also look forward to the report on that incident that is still outstanding.

7.35 p.m.

Madam President, I want to just put on record also, the thanks—it was mentioned by members of the committee—but there are persons in society in Trinidad and Tobago who do work, thankless work, through NGOs with victims of violence, sexual violence, domestic violence, and they do much of their work on donations and on kindness. I think it is important for Government, all governments, to continue to provide support to these groups, financial support, for

the valuable work that they do. Because when there are victims who do not trust the police, who are afraid of their abuser to the extent, they are also afraid of their abusers linked to the police, they may go to these groups because they just do not trust the police, they do not trust close relatives, and they go to these groups for shelter, to confide in, and their work is very valuable.

They have indicated that their records show that many victims who come to these NGOs do not go to the police, and it never reaches the court, so that there is a vast number of victims who run into the bosoms of these NGOs, and I want to take this opportunity to commend them for their work, to encourage them to continue their service to Trinidad and Tobago, and to continue to contribute wherever they can. Thank you, Madam President. [*Desk thumping*]

Sen. Hazel Thompson-Ahje: I should like to thank first of all the Attorney General. I know it was with some reluctance that he sent this Bill, you know, agreed that it go to the Special Select Committee. But he knew in the long run that it would be worthwhile, and I know his reluctance was born out of a desire to get it over and done with as soon as possible, not that he did not value the work of the committee that was to come and did come.

I have heard a lot about how well Mr. Rambharat did, and I did not expect any less from a “Mayaroian”. [*Laughter*] And I must say the Bill, as it ended, is much better than from where it began. [*Desk thumping*] So it was a very, very useful exercise, and some of the comments I had originally have gone by the board, from the very beginning when I spoke on this Bill I said I had been working on it, and then he started to pull the rug from underneath my feet, so that the children went and a number of things went by the board and for that I am grateful. So, let me just start with the easiest thing first: 49(5), section 49(5), I had a little

difficulty. Now I said this week, earlier this week before we—[*Device goes off*]—that is a different kind of offender. [*Laughter*]

I said outside of the Chamber that I could find no fault at all with the Bill that we were looking at on Tuesday, but I have a difficulty and maybe the fault lies in my eye; 49(5)says:

“The Court may order that the sex offender serve a reduced reporting period less than that specified in Schedule 5.”

Now, I have a difficulty as to when reduced could be other than less. Maybe someone can enlighten me, but I would have taken out less because reduced must mean it becomes less, or I would take out reduced and I would put less. So, let us decide perhaps if we could take off less, which I think may be easier. Enough send on that.

Now, some years ago I was privileged to take part in a course at UWI Barbados on gender, and I did a study on a hidden agenda, I spelt it G-E-N-D-E-R in judicial decision making: myth or reality.

Madam President: Sen. Thompson-Ahye, could you just give way for a minute please, we have a procedural matter. Leader of Government Business.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. In accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand, inclusive of Sen. Mark’s two matters on the adjournment.

Question put and agreed to.

Madam President: Continue Sen. Ahye.

SEXUAL OFFENCES (AMDT.) BILL, 2019

Sen. H. Thompson-Ahye: Thank you, Madam Chairman. I thought it might have been a repetition of my first speech here when at six o'clock the alarm bell rang—Private Members' Day—so, thank you. [*Laughter*] I never forget that, very traumatic. [*Laughter*]

So I looked at 100 sexual offences cases and 70 per cent of them involved minors under 18 years, and a number of them, 53—well, of course, it would include the first set, minors under 16 years, and then we had the most vulnerable group, 10 to 13 years, and that is when the predators came out because they were entering the age of puberty and they were seen as, you know, available. And then you had the under 10 years old, most likely to be virginal and AIDS free, and almost 50 per cent of the cases involved rape or incest, and when I sat at the Children's Authority, and I sat on the Care Committee, I had to ask to be removed, I just could not deal, it was much too, you know, the vicarious trauma was too much.

So we have so many sexual offences cases, and I just looked at 100, and I looked at those—20 per cent, 20 of those 100 accused were acquitted, nine got up to five years, 10 got six to nine years, 36 got 10 to 15 years, five got 16 to 20 years, and 20 got life. And some of them were freed because of legal technicalities; the refusal of victims for various reasons to give evidence; and in some cases the matters stayed so long to come on the trial that the State, they brought applications, the defence counsel, to stay the trial, and one of those victims said she has been waiting for 16 years. So I see this as tying in with what we were dealing with earlier in the week where we are bringing matters to trial earlier because the victims are suffering. So, we have had over the years, and I see this as a continuum of the advances that we have been making. Who remembers 1986 and

clause 4?

Hon. Senator: I do.

Sen. H. Thompson-Ahye: Ah ha, I sat in Parliament, all in black, and I always remember, I would carry to my grave the picture of Sen. Furness-Smith, I thought he would have gotten apoplexy right there in the Parliament Chamber.

So we have had advances in the rules. We abolished recent complaint, reception of evidence of the victim's sexual activity, sexual reputation and so on, except in special circumstances, and then in the year 2000, we have had some more amendments. And I want to thank the committee, because ever since I came here last year, I have been pleading with the Attorney General, and he could not see the sense in what I was asking for—to expand the list of people who must report, and he preferred the catch-all phrase about “any other people”. So I see now that wiser counsel has prevailed, and somebody fought for me, so I am grateful for that amendment as well, because what you see happening here is an expansion in the list of those people who are supposed to do mandatory reporting.

But there is one category that has been left out, and I know it is controversial, and it occurs. You have it in the Guyanese legislation, and the Bahamas legislation, and in those two pieces of legislation, and I must say I like to look at Guyana, because Guyana has a group of people called the Guyana Women Lawyers Association, and these women can be found nowhere else in the Caribbean. They worked extremely hard. I have had the honour of working with them on their children legislation, and at various times I am in touch with them very often, and they worked hard when you have any legislation dealing with women and children.

So it would be useful to see what is happening in Guyana when we deal with

legislation such as this one. They were well trained by former Chancellor of the Judiciary and former member of the CCJ, Justice Desiree Bernard, and they have come up with a number of recommendations for reform of their law. So the category that is outside, that is the category in which Bahamas is called Members of the Clergy, and you have in the other legislation, in Guyana, you have religious persons. So, I know we have the problem, Catholicism, I am one, with the question of the confession, but I can tell you that most of the times that I have encountered priests having to deal with a question of sexual offences, none of them has ever told me that I have received this information in the confessional. So, perhaps that is something that one can look at, and it is especially timely because some of you may have read the report in the newspaper:

Pope issues law to force priests and nuns to report sexual abuse.

Now he did not say report to the police, but he did say all Catholic priests and nuns would be required to report abuse and cover-ups by superiors. So, he has decreed, he did not speak *ex cathedra*, but we expect that he would be obeyed, that all Catholic priests and nuns must report sexual abuse and its cover-up to church authority including wrongs committed by bishops and cardinals. So he decreed in a particular context, and I am saying open it up even to wider contexts, so that if the priest receives information, as they have, and I know one of two of them is not going to be too happy with me, but the fact is we are dealing with something which is bigger than anticipated, so that they can be included in the list of persons. And in the legislation there are even attorneys-at-law, although there is some provision for the fact of confidentiality and privilege and so on, but there is also the provision that if you know a crime has been committed there are certain ethical considerations as well. So, that is a matter that we ought to look at.

Now, I see that the period of registration is in Schedule 5, and we also have in section 62 the question where one can ask for the court to look at termination of registration, and so you have a number of instances. First of all you can ask, I do not want to go on the register for X, Y, Z. So, that is in the Bill, and then you can ask, if I am in the register there are instances where you can apply for termination. And when we look at what is happening in our legislation I find the period is a bit long for a review, so one can consider looking at shortening the period as happens in different legislations. I think it is in one of the other parts of the Caribbean, perhaps in the Bahamas. So that those are things that one can look at.

Now, the question of education, I want to support Sen. Richards in his cry for education. Again, I turn to Guyana. Guyana's Sexual Offences Act actually has it written in section 90 that the Minister, in cooperation with other governmental agencies and non-governmental organizations, shall prepare and disseminate public awareness programmes designed to educate victims and potential victims of sexual offences, and their families of the risk of victimization.

And I would go even further, not only the victims and their families but also the general populace, especially teachers. I think I mentioned some time ago about a teacher who did not recognize that a six-year-old had been raped that day, saw the child in her dirty clothing and beat the child. Another teacher who went to get clean clothing for the child realized that that child was not smelling too right, and then when she investigated further she found out that that little girl had been raped that day, and that case dragged on and on and on. Every time I met the teacher in court I would say you were here for that case, yes. It destroyed her. She could not forgive herself. This is a very dedicated teacher who had taught infants for her entire life. Well, I mean she is dead now. Last year we buried her. But it went on

and on, and she realized, what made her more traumatized is that she realized that she had also taught the child's mother, and that the child's mother had given birth to that child and the grandfather and the father, both of them, so it was a succession going down the line.

She had given birth to the child because her father had raped her and now the father was raping her child. So it is a generational thing as well, and it causes a lot of trauma, and one needs to have a lot of education. Teachers sometimes do not know what is happening, they cannot recognize the signs. There was a teacher in a convent who was talking about this child who was seen in the Queen's Park Savannah, and she was gyrating on the trees in the savannah, and when they investigated, that child was being raped by her uncle and her cousins as well. So, a lot of things are happening with children that we need to fix, and it calls for a lot of education.

Now, there are many agencies of socialization, many ways of educating, and part of it, a very important component, a very important agent you find in the media. And sometimes I do not know if the media fully recognize how far their tentacles reach, and how influential they are. You know, this morning I turned on my radio and I heard a conversation between two media persons. One, the conversation related to—perhaps the subject might find it flattering—I did not like it at all; but the conversation related, Madam President, to the Attorney General. And in speaking about the Attorney General, there were some sexual connotations. A parent supposedly called in, and I do not think what she said was to be taken literally, but what she was trying to convey is that the children are listening, and the media person said, “Well, the parents are supposed to see about that, so you could say”—he told the other person—“you could say what you want”. But media

people must have a responsibility, because a lot of these sexual offences have to do with children's ignorance, it has to do with certain impressions and education that they get from adults, and we always have to be responsible. There is an article written, "Can the mass media be healthy sex educators?" And in the abstract J.D. Brown and Keller says, from the school of journalism—

Madam President: Sen. Thompson-Ahye, please. My caution to you is the same, as my caution to other speakers before you, that we are dealing specifically with the report of the Special Select Committee. I know that Members want to veer away and give some additional information, but the central focus must be the report.

Sen. H. Thompson-Ahye: Thank you, Madam President. In that report, when I perused that report last night, I saw a recommendation for education written in the report. They were asking for people to be educated on sexual offences and things relating to sexual offences.

So, it is arising out of this report that I thought I would look for information about the media and their role in education. And it says the mass media, television, music, magazines and so, are said to be important sex educators, yet they have been rarely concerned with the outcome of their sexual lessons. So in this case what I am saying is that the lessons that we learn from the media influence what happens with children, because many times parents do not educate the children. We still have that ongoing debate as to whether we should have sex education in schools or not, but children are getting their education anyway so we need to know what we are going to do about it.

So there have been many recommendations that came out of the report, and many of them have been taken on board, but we are really not happy about what is

happening in this country with sexual offences, and we welcome all of the recommendations that have been made, and we hope that the recommendations will be taken on board. We hope that everyone who has a part to play in this society, and know the long-lasting effects of sexual offences, that people are being traumatized for life because of their sexual offences that they have suffered as victims. And as I said earlier in the week, there have been people who are languishing in prison, in fact, right now, because their matters have not come up for trial, and they are charged with offences and their preliminary enquiries have not been heard, and some of them are very young and they would not be charged today because they are dealing with 16 and 15 year olds where the girls sometimes are not always so innocent.

We are not living in an age as we did before, so that the girls, I have heard teachers complain about girls who are propositioning them, and you have situations where the girls are propositioning the boys, and they are the ones who are charged. So you have a case where nobody is coming to court, only the accused, the victim and her mother not coming, but this boy is languishing, two of them. So we ought to look and see what we can do about those situations.

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

So, we have a report. We have a number of recommendations, and we hope that all the infrastructure will be put in place, people would be educated about what to do about the Bill, what to do when the Act comes in place, how we are to act, teachers will be educated, parents will be educated, children will be educated, and the lawyers and the judges as well. Because I can give you many instances where some things have been said in the court by judges that have not been demonstrated that they understand. And I talked about a psychiatrist as well, so the doctors also

need to be educated.

So, I thank you, Madam President. [*Desk thumping*] Oh, I did not realize that you had changed. [*Laughter*] So, Mr. Vice-President, I did not begin with you, but I end with you, and I thank you. [*Laughter and desk thumping*]

Mr. Vice-President: Attorney General.

The Attorney General (Hon. Faris Al-Rawi): [*Desk thumping*] I thought perhaps we had some more speakers. I had not indicated yet to speak, Sir.

Mr. Vice-President: Just as a matter of a reminder, because I do realize we do have some, I would not call them new Independent Senators, but the procedure is when the presiding officer stands, if you wish to speak then you catch the eye of the presiding officer. In doing so I called on the Attorney General. However, in terms of procedure, Sen. Dillon-Remy if you would like to speak, and the Attorney General would like to give way at this point in time, I can therefore call on Sen. Dillon-Remy if she would like to contribute at this point in time. Senator. [*Desk thumping*]

Sen. Dr. Maria Dillon-Remy: Thank you, Mr. Vice-President. It was my understanding that I was going to speak after Sen. Ahye. I was waiting on you to call me, Sir. I wish to thank you for the opportunity to make a brief contribution on this report, on the Special Select Committee on the Sexual Offences (Amdt.) Bill. I too would like to congratulate the team and the stakeholders who would have sat before the committee, and as a result of their sitting has resulted in substantial changes to the Bill. I would like to draw attention to the section that deals with compensation of virtual complainants. That is Part III. And specifically section 37(4), which says:

“Where the results of a medical examination conducted pursuant to

subsection (1) do not reveal a sexual transmitted infection, a police officer may, on the recommendation of a medical practitioner, make arrangements for a qualified person to conduct a second medical examination of the person within one year of the date of the first medical examination.”

I am concerned about that time period, one year.

The second part is 38(2) that says:

“A virtual complainant who does not consent to a medical examination pursuant to subsection (1) may, within six months of the date on which the report is made, request that the medical examination be conducted and a police officer shall, without delay, make...a qualified person to conduct the medical examination...”

Again, I am concerned about that time frame. That is (2).

The other part is 38(3). 38(3) says:

“Where the results of a medical examination conducted pursuant to subsection (1) or (2) do not reveal a sexually transmitted infection”—in this case with the virtual complainant, again the repeat examination they said should happen within one year of the first medical examination.

The same as in section 37(4).

My concerns about these in terms of the time frame are related to STI testing, and I would quote a document from WHO guidelines for medico-legal care for victims of sexual violence, 2003. The chapter is chapter 6, dealing with treatment and follow-up care. In relation to sexually transmitted infections, section 6(3) says:

Victims of sexual violence may contract a sexually transmitted infection as a result of assault...et cetera.

And 6(3)(1) talks about STI testing:

Where appropriate test and laboratory facilities exist, the following tests for STI should be offered.

And they named some of the tests, and then they said if the test results are positive, patients can be prescribed treatment according to the regimens listed in tables 11 and 12.

It is important to note, however, that negative test results do not necessarily indicate a lack of infection, as STIs can take between three days to three months to incubate and become identifiable through laboratory testing. Thus, if sexual assault was recent any cultures would most likely be negative unless the victim already has an STI. Therefore, they recommend follow-up tests at a suitable interval to account for each respective infection—are therefore recommended in the case of negative test results. Health care workers should follow national and local protocols and STI testing and diagnosis. That is for general STIs. So the time frame of a year is long.

8.05 p.m.

Usually for HIV, when testing for HIV—and this document does also talk about that in section 6(4)(1), HIV testing. The recommendation was that if the initial test results for HIV were negative, patients should be tested again at six, 12 and 24 weeks after. In other words, they go up to six months after the initial testing. So the concern here is that if a negative test is obtained initially, my suggestion is that the latest we should go for retesting is six months after.

And as far as the virtual complainant is concerned, this is section—where the virtual complainant does not get tested initially and the recommendation here, that is 38(2), where the virtual complainant does not consent to medical

examination, that is initially, my recommendation here—my suggestion would be rather than six months of the date, it should be at least three months, because if you are really looking for an infection that has happened as a result of an assault that happened at a certain time, if you wait longer than that it is not necessarily likely that you can say that this is as a result of that incident. The time is too long, in my understanding.

And then, the other concern is about sharing of information as a result of the test results. I mentioned it before when I did my first contribution when we debated this in February, and I am not too sure how this is going to play out, but I will say it anyway. 42(1) says:

“Where the results of a medical examination of a person referred to in section 37(1) reveal that the person examined has a sexually transmitted infection, information to that effect shall be immediately communicated to—

- (a) the person examined;”—no problem.
- “(b) the virtual complainant;
- (c) a representative, where the virtual complainant is a child or a person with a mental disorder or has died; and
- (d) the complainant.”

Now, the concern here is this person is still a person who has been not yet convicted, and the person’s personal information is being shared with someone. Now, I know there is a time frame to consider, and stuff like that. I am not too sure whether the person should just be treated without necessarily giving that information at that point in time, or whether the sharing of the information could be done in some other way; I am not sure. But I am concerned, because if this person eventually turns out to not be guilty, then you would have shared

information with someone on a matter that is very personal to that person.

So those are my two comments, Mr. Vice-President, and with that, I do thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Mark. [*Desk thumping*]

Sen. Wade Mark: I “doh” mind coming before the Attorney General who has bowed his head when you looked at him. So he had a reason why he bowed his head. Maybe he realized I was on my way up, so he bowed his head. [*Laughter*]

Thank you so very much, Mr. Vice-President, for giving me this opportunity to make my intervention at this time, and may I, from the very outset, record my appreciation and sincerest congratulations to all of my colleagues who served on this Special Select Committee, for their dedication and tireless efforts which have resulted in this final product that we are debating this afternoon—this evening, rather, into the night. I also would like to take this opportunity to thank my colleague who is no longer with us, Sen. Gerald Ramdeen, who really played a very important role before his retirement from this body.

Sen. Baptiste-Primus: Resignation.

Sen. W. Mark: Well, resignation, retirement, whatever you want to call it. [*Crosstalk*] Well, for me, it is a retirement because he will be cleared and he will be back here.

Hon. Senator: Ay-a-yai! [*Desk thumping*]

Sen. W. Mark: So I have no problem. He will be cleared and he will be back. So he is retired. So, anyway, I am not going to be disturbed.

Sen. Ameen: Do not be distracted.

Sen. W. Mark: I did not disturb my friend. So, Mr. Vice-President, I want to, again, record my appreciation to Sen. Ramdeen who made a sterling contribution

to this report. [*Desk thumping*] He attended about eight of the 12 meetings before he was interrupted. But I am sure, as I said, he will be back here shortly.

Mr. Vice-President, I would also like to say, from the outset, as well, that the various stakeholders that came forward to provide their inputs into this report that we have before us on the Sexual Offences (Amdt.) Bill, must also be congratulated for their inputs. I want to also advise the Government, and more so the Attorney General, who has slipped out from the—

Hon. Al-Rawi: I am right here.

Sen. W. Mark: He is right here—yes—who is right here. I want to appeal to him in the future to make sure that he takes on board very important advice, particularly when it comes to having matters referred for further deliberations, further discussions at the level of either a joint select committee or a special select committee. I know he was a bit reluctant, as Sen. Thompson-Ahye has said, but he eventually was brought, kicking and screaming, and he eventually had to surrender to the forces of progress in this Chamber. So we are happy that he catapulted and was eventually allowed to allow good sense to prevail.

Mr. Vice-President, I also would like to say, when I looked at this report, there were some areas that I just would like to put on the record for some clarification and maybe consideration. When you look at the concept in Part III of the consolidated version of this Bill, and that deals with the compensation of virtual complainants, I wanted to ask, Mr. Vice-President, for the consideration of the Chairman of this committee, Sen. Rambharat, whether we can make some provision in the legislation to ensure that when we talk about compensation at the level of the courts—my humble understanding of compensation is of a monetary nature. I have been advised that whenever we talk about compensation at the level

of the courts we are talking about monetary compensation. That is what I understand, and maybe when the AG rises after myself, he will clear the air.

What I would like to put for the consideration of this honourable Senate is that we can put forward an amendment, a tweaking, of the legislation that is before us that would allow the courts to consider, outside of monetary compensation, the possibility of other services to be provided to the victims who would be aggrieved, given what we are dealing with. So I am dealing with, here, the whole question about psychological, physiotherapy, whether it is psychiatric, whether it is, as I said, emotional.

You know, when people go through traumas, they go through all kinds of experiences. And sometimes, Mr. Vice-President, we know under the Children Act, the Children's Authority will have to provide those services, but when you have adults involved, 18 and upward, unless we are able to put into the legislation a provision that would allow the court to consider other services, other counselling services for those persons who have become victims of sexual aggression by those offenders, I am afraid, Mr. Vice-President, we will be narrowing this thing down to purely, from my perspective, monetary compensation, when in truth and in fact, the victims would need more than monetary compensation. So it is a view I would like to put out there for the consideration of the Chairman of this committee and also the distinguished Attorney General of this country, who I know is occupying temporary office. [*Laughter*]

Mr. Vice-President, another area I would like to ask for the consideration of this honourable Senate, and for my colleague who chaired this committee so ably and competently, as I have been advised—and I am sure Sen. Thompson-Ahye would be with me on this one—

Sen. Thompson-Ahye: Let me hear. [*Laughter*]

Sen. W. Mark: Mr. Vice-President, the whole question of language being gender-neutral, that is an area I would like to put for consideration here this evening. Now, I am aware—although I am not a lawyer, although I would like to have been one.[*Laughter and desk thumping*] But, Mr. Vice-President, on this whole question about gender-neutral language, I would like to ask the hon. Attorney General and my friend, the Chairman of the committee, Sen. The Hon. Clarence Rambharat—when I looked through the Bill that we will all support this evening, I was able to see reference being made to “he”—“he”, as if, for instance, we were referring to the male species only. Now, the Attorney General would tell me, as well as my friend, that in the law when we refer to “he” you also refer to “she”. That was what the language is under the Interpretation Act. But, Mr. Vice-President, we must be conscious that when we are legislating, there are citizens out there who would be reading this document and they may not have that kind of knowledge that you and I have, and I am suggesting, in an era of gender-equity, gender-equality, we must begin using, what I call gender-neutral language. [*Desk thumping*]

So I would like to ask Sen. The Hon. Clarence Rambharat to consider little editorial amendments in the legislation. So where we have “he” we can replace it with “person”. We can talk about “victim”. We can talk about “offender”, as examples. So that throughout the legislation we will be able—anyone who is reading the legislation, they will not, for instance, confine it to the male species alone, because the word “he” can convey that impression. So I am simply advising and advancing that that is a consideration we can look at and take on board in our deliberations this evening as we move forward. So that is an area that I looked at and I thought we could look and find some agreement.

Mr. Vice-President, you would know, and I have always argued, whether I am in Government or I am in Opposition, I believe the Parliament, the Legislature, must maintain its supreme role as it relates to oversight of the Executive. I have always said that. And I do not support too much subsidiary legislation, particularly of a negative nature, meaning negative resolution. Now, this is very important landmark legislation that we are dealing with and I would like to ask the Chairman of this committee, if we could go to section 66 of the Bill before us, we will see where Schedules can be amended by Order of the Minister but subject to affirmative resolution. *[Interruption]* No, affirmative. I am seeing “affirmative” here.

Hon. Al-Rawi: That is correct.

Sen. W. Mark: But, Mr. Vice-President, I am seeing something that is even more important: Regulations—Regulations that will govern this piece of legislation being subject to negative resolution. I am asking for this honourable Senate to allow this Senate, and the other place, to debate those Regulations through an affirmative resolution, and not a negative resolution. That is a proposal I would like to put for the consideration of this honourable Senate.

Mr. Vice-President, when I go to Schedule 2 of the matter that is before this House, the Bill, that is, I see, for example, the heading which reads:

“Offences for which a person under the age of twelve years is not liable”

And it goes on to say:

“The following offences under this Act,”—and it goes:

“(i) where the person was twelve years of age or older when he committed the offence—”

Again, Mr. Vice-President, language I made reference to earlier. Now, Mr.

Vice-President, I am not a drafter, a legal drafter that is, but I was wondering if the Chairman and the Attorney General would not have wanted to simply put “offences for which a person 12 years and over are liable.” Because we know that this legislation will not capture 12 years and under, and the offences that we have following this heading under Schedule 2 only relate to those persons 12 years and over. But how it is stated in the Schedule, it is a bit convoluted and somewhat confusing. So I am asking that some consideration be given to the tidying up of the language.

And, again, when we go to—there is a provision here that talks about abduction of a female. Now, you have abduction of males too. So, again, let us be gender-neutral. So I am saying, rather than saying “abduction of a female” we could get some other language: “abduction of a person”, which will cover [*Desk thumping*] both male and female. So, again, these are some very important observations I have been able to discern in the legislation that I believe that our colleagues should pay attention to, and, as I said, as we move towards—as we are in the 21st Century and we are moving more and more towards gender-equality principles, let us reflect those in our legislation. And that is all I am advancing.

Mr. Vice-President, you know, normally I take my full quota, but I will not be doing that this evening because I have two matters on the Motion for the Adjournment, [*Laughter*] and I have to rise to prosecute them, so I want to preserve some of my energy. So, I would like to propose the following for the consideration of this Senate: the re-committal of clause 10 and under that re-committal I am proposing the following new section 67A, and it reads:

The Minister shall cause to be laid in both Houses of Parliament, annually, a report on the administration of this Act.

Because here it is, Mr. Vice-President, we are passing legislation with a three-fifths majority, but after we pass the legislation and it leaves here, it will not revisit, or come back to us in any form or fashion whatsoever, until the distinguished Attorney General moves for further amendments.

Mr. Vice-President, we must have oversight of legislation that we pass in this House, and there must be an administration process conducted by the relevant authorities so that the Parliament—the both Houses of Parliament—can be made aware of how the legislation is progressing on an administrative level. We are not asking for private, sensitive and confidential information. We would like to know how the legislation has been working from an administrative perspective. So we are suggesting, for the consideration of this honourable House—Senate, that is—this particular new section 67A. Mr. Vice-President, we also proposing a new section 67B and it reads:

The relevant Joint Select Committee of Parliament shall be responsible for monitoring the operations of this Act and the review of the report referred to in section 67A.

—which I have just made reference to.

I believe, again, as the Attorney General pointed out, we have some very competent joint select committees in operation in this Parliament, and I must say that we need to have more in the future with an expanded Parliament. My view is that we should move from 41 elected members to about 60. That is where we must go: 60. And then we have a larger Senate, because I believe in a bicameral system. So, Mr. Vice-President, I am suggesting, for the consideration of this honourable Senate, the re-committal of 10 and these are the changes I am proposing on behalf of the Opposition.

And, Mr. Vice-President, consistent with my commitment—and I am hoping that we will be able to have it realized before the end of this session. When I say, end of this session, the end of the life of this Parliament. The life of this Parliament comes to an end in September next year, five years, and we go to the polls after that, September the 7th, and we have three months thereafter. The latest, the 7th of December—is the latest a poll can be held. I can go to the polling booth, latest, the 7th of December, 2020, no later; otherwise you will be in breach of the law, and whenever you are in breach of the law, fire subterranean. [*Laughter and crosstalk*]

Mr. Vice-President, may I continue? There is something called subterranean fire. You know that, right? Okay. So, Mr. Vice-President, I have always advocated—and when I say “I”, I am talking about us here in the Opposition. And the Attorney General is aware of this. We have always advocated for the establishment of a post-scrutiny legislative joint select committee that will help the Attorney General, because when he leaves office we will need to put him on this committee. Right? [*Laughter*] But this is a very important committee, and I know the Attorney General likes this kind of work so we will put him here on this committee. And this committee, as you know, will deal with, for instance, whenever we pass legislation in this honourable House, there must be a committee that will be responsible for reviewing legislation; its outcomes; its workings; its benefits to the people who it was designed to serve.

So we are suggesting, on this side, the most appropriate joint select committee that a report of the nature that we are speaking to, and speaking about, should go to is the Joint Select Committee on Human Rights, Equality and Diversity. So, as I said, this is a very important exercise that we are engaged in, we have embarked upon. I wanted to just make these proposals for the

consideration of this honourable Senate and I am asking the Chairman, as well as the Attorney General, to consider these suggestions and recommendations.

And as I said, the final one I would like the Attorney General to look at is moving us from a negative to an affirmative in terms of the Regulations. And I have made my earlier submission for us to have gender-neutral language in our legislation before us, and some little tweaking here and there to ensure that victims of crime are, in fact, compensated, not only from a monetary point of view—

[MADAM PRESIDENT *in the Chair*]

Madam President, I am very happy you are back. I am about to take my seat and I am sorry you missed my contribution. [*Laughter*] But I am happy that you are back.

Sen. Ameen: Do it over. [*Laughter*]

Sen. W. Mark: So, Madam President, as I said, I have put forward a few suggestions for my colleagues' considerations and I hope that it is all in an effort to tighten and to strengthen the legislation. So, hon. Attorney General and the Chairman of our Special Select Committee, we can all leave here this evening unanimously approving the legislation. [*Desk thumping*] We want this House to vote unanimously this evening for the adoption of this report, but I have put forward some suggestions to strengthen the legislation which I have no doubt the Attorney General and my colleague, the Chairman, will give active and positive consideration to, so we can all join as one happy family in giving approval to this very important piece of legislation. Madam President, I am glad you are back. Thank you very much. [*Desk thumping*]

Madam President: Attorney General.

8.35 p.m.

The Attorney General (Hon. Faris Al-Rawi): Madam President, I would like to say that that is the sweetest I have ever heard Sen. Mark [*Desk thumping and laughter*] in his advocacy as to why one ought to get along. Sen. Mark also regaled us, Madam President, with a very agreeable suggestion. Sen. Mark's suggestion that we recommit clause 10 stands as the first amendment volunteered by the Opposition in this entire Bill literally and for that reason alone, we should agree to it and I urge hon. Senators to in fact recommit that clause because there are a few other clauses that need to be admitted. I thank Sen. Mark for that suggestion. Indeed, I thank Sen. Dillon-Remy equally for a very poignant observation as to medical practice and for that reason alone, also, clause 10 falls to be reconsidered.

Madam President, I propose to be quick as best as one can be in a debate such as this. We are here procedurally debating the report produced in the 12 sessions that we have had. That is a report, Madam President, that is a commendable one. May I put on the record as the author of the legislation my profound gratitude to each and every member that served on this Special Select Committee. [*Desk thumping*] May I say that that goes to every single Member and not just to Government Members or Opposition or Independent. May I say as well that Sen. Rambharat, as the Chair of this Committee, has continued to distinguish himself as a Chairman capable of having tight management of committee work whilst ensuring production.

But permit me, Madam President, to really single out the capacity inside of the Office of the Attorney General. I am talking the CPC's division. There are some officers of the CPC's division: Ms. Angela Moore, Ms. Carla Ali in particular who constitute what Sen. Thompson-Ahye reflected upon, the women

lawyers of Guyana. Sen. Thompson-Ahye will know. She being a dedicated, long-serving member, not only at the Hugh Wooding Law School as she taught almost all of us, me included, Sen. Rambharat. All of us that passed under her hand. [*Crosstalk*] Sen. Thompson-Ahye is testimony to the team of attorneys that worked with the Children's Authority. And I would like to say that last night at about 2.00 a.m., 1.30 a.m., somewhere thereabouts, in the middle of work, I messaged Sen. Rambharat to tell him and forgive me for putting it this way: "Clarence, I am most pleased with this legislative work. I feel that if we have left office and have done service to this country, we have done service to this country by this particular piece of law". [*Desk thumping*]

And, Madam President, it is important because this sexual offences concept, the Sexual Offences Act was born in 1986. We consolidated the law in 1986 by Act No. 27 of 1986. It has been amended in 1994, 2000 and 2012. This concept of a sex offenders registry, this registry has been in existence since the year 2000. What passed for a form of regulation, a form of disclosure, in section 31 onward where we saw the real markings of this, particularly when we get to Part III, the "Notification Requirements For Sex Offenders", in the year 2000 in sections 34A, B, C and D in those four short sections, this concept of a sex offenders registry was born. And, Madam President, what I can tell you is that in the 19 years since we have had a sex offenders registry, we have nothing to show for it, literally nothing.

So last night when or rather this morning in the course of communicating with Sen. Rambharat and expressing my sentiment, I said that this Parliament has done well to treat with this. It is because we are continuing the work that we as a Government have entrenched ourselves in. We started off with the Family and Children Division, we did 19 amendments to law in the Fifth Schedule of that

particular Bill, now Act. We then did the miscellaneous provisions amendments, we did the child rehabilitation centres, we did the protocols, we did the rules, we did the regulations, we birthed courts, and this particular Bill, as it is recommended in Appendix IV and in Appendix V, the amendments themselves attached to this report, this represents an improvement on the law and to the law because we now have reflective measure on the plea bargaining arrangements, the DNA law and the amendments to the Evidence Act as we treat to the fingerprinting, the use of force, et cetera. And therefore let me put this squarely into context now.

The amendments that we see set out in Appendix IV to this report, they are not 90 amendments. We are amending these clauses in a very simple way. We are improving the manner in which we engage the virtual complainant and the complainant. We are dealing with the offender. We are treating with the measures for use of force for intimate and non-intimate samples for DNA evidence and other evidence. We are treating with the manner in which you store the material which you sampled to deal with sexually transmitted infections, including HIV. We are treating with the population of a public register. We have simply added in the concept that a court will tell you what is to be public and what is not, under what we call a show cause mechanism. In having this show cause mechanism, we have allowed for the parties who are affected to have a voice at the court but we now post-plea bargaining and otherwise, we are now as a country understanding the concept of victim impact assessment and victim impact statement.

So, Madam President, as the Attorney General with responsibility to craft this law, crafting the amendments to this law was really quite easy. We came to this Parliament and no one had to take the Government kicking and screaming to any committee. The Government took the decision to go to a Special Select

Committee. We stoutly resisted a Joint Select Committee. Why? Because we are in other Joint Select Committees and I will name just one without going into the work. We are in a Joint Select Committee to treat with cybercrime for nine years right now. We were in a Joint Select Committee to treat with insurance law across two Parliaments, the Ninth and Tenth Parliament. And when we go into Joint Select Committees, you can find a frustration of the very thing that you are trying to fix.

The Special Select Committee was useful on this occasion because one ought to pay high compliment to the stakeholders that participated and we recognize them all. But what the stakeholders brought to the table was not something that was originally not within the parameters of what we could consider because the show cause possibility was already anchored inside of the Bill. So I am saying this, Madam President, it was not a difficult exercise to cause the amendments but we are definitely in a far better off place today after these quick amendment considerations were done in the 12 meetings.

So let me dive immediately, Madam President, to this. Let me just put a few core characteristics that the report speaks to. Number one, there will be a sex offenders registry. Number two, the persons who ought to have been on the registry in the period from the year 2000 to 2019, they will be on the registry in two fashions. Number one, the people who are not yet out of incarceration will naturally fall into the effect of this law, but those who have been released have a six-month period to find themselves reporting to the police station and therefore come on to the register. Secondly, because we are allowing the people who this law catches retroactively in the manner that I have just said, the opportunity to show cause why they should not go on to the register, we are treating them

similarly to people who are in the circumstances of the law go forward, so there is no complication. So, sex offenders registry will capture people who were and ought to have been on the register for the period 2000 to 2019.

The next important position is that this report recommends that we will also capture the opportunity to manage the victim impact aspect, the situations as ugly as they are where incest may be an issue and publication of persons onto the register who we do not want to have on the register because they may reveal the circumstances that may prejudice the family. All of those are enveloped in the show cause aspects.

Sen. Ameen read as submissions today the material which came from the stakeholders. I took careful note of Sen. Ameen's position. I notice that they are exactly in keeping with the recommendations that came from the Coalition Against Domestic Violence, CAISO, et cetera. The very large part of the submissions, we took note of those but those can be answered. The concerns were at points 10, 11, 12, 13, 14 of their written communication which came to all Members by way of email: the need for rehabilitative treatment and clinical treatment; the need for exclusion of persons who are offenders from working with children; the limits for the assessment of court use; the use of psychiatrists, et cetera. All of these are taken care of in the stakeholder comments which we received. I note that. But I can tell that they can be answered by the application of other laws.

Can we treat with a system of rehabilitation for the sex offender in this law? Respectfully we think that that ought to be better managed under the parole system and under the offenders rehabilitation system. I can tell you that we have a draft of that law right now and we intend to come to Parliament with that. Can we treat with the mechanisms raised by Sen. Dillon-Remy? Very important mechanism of

the person charged but not yet convicted having the information of the STIs in the public domain. That can be treated with under regulations. We have done that under the regulations for the children's arena where we anonymized the material samples for children, we applied the UN codes, and in fact, Trinidad and Tobago is now the leading country as to how one can anonymize samples, et cetera, in subsidiary legislation which is rules and regulations. So I have taken note of that and we can look at that under the powers of regulations as we see in clause 67 as we proposed the amendments pursuant to the report.

Madam President, permit me please to invite a recommendation to the Senate? We propose that we recommit, not only clause 10 to take care of the recommendation that Sen. Mark and Sen. Dillon-Remy have both proposed. We also believe in coming through a scrub of the Bill last night, I spotted the need to do a little tweak to clause 53(1). Clause 53(1) is not elegantly set out. We need to put in the word "before" essentially there because it makes a mockery of what the intention actually is.

We also believe that clause 67 needs to be amended more than the manner in which Sen. Mark recommends. But in clause 67, we notice that there was no way to amend the second Schedule other than by way of an Act of Parliament, and so we propose that the second Schedule be amended in the same way that we do the first Schedule. That is by way of affirmative resolution of the Parliament and therefore, there is a need to fix that.

We also propose that we tidy up the second Schedule. The second Schedule, as it is set out, did not read well. The second Schedule unfortunately conflated the issues of persons under 12 and persons over 18 in a manner which should not have happened so we propose that we restate the second Schedule in the manner in

which we propose that clause 10 be recommitted, and that is a restatement to specify that there is a doli incapax, there is a legal inability for someone under 12 years of age to commit certain offences and then we set them out as we relate to the Offences Against the Person, the offences under the Act, the Sexual Offences, the Trafficking in Persons Act and the Children Act.

I would like hon. Senators to note that the report says contrary to what the original Act does—the original Act, the law as it stands, for a sex offenders registry says:

Any offence under the Sexual Offences Act is a registrable offence. They made no distinction for other types of offences being separated out. So the issue of mandatory reporting meant that if you were in breach of mandatory reporting—you are a nurse, you are a doctor, you are a teacher and you did not report and you had no lawful excuse—you could have been a listed sex offender. What we have done very importantly is to carve out the offences. Obviously they include rape which is section 4, they include incest which is section 9, they include section 4A which is grievous sexual assault and they include section 12 which is sexual activity with a person who is deemed to be mentally subnormal.

We have also confined ourselves to dealing with the Trafficking in Persons sexual offences and I would like to say this. We have specifically included in this sex offenders registry what we call the persons who are the—I am “gonna use” the colloquial term “the pimp”. Madam President, the person who causes prostitution. The person who is trafficking females or young persons or men, et cetera, into prostitution and who profit from it. Those persons, even though they are not in flagrante, dealing with sexual intercourse or grievous sexual assault, we are including those persons on to this list because that must be something which

society frowns upon.

Madam President, I propose to deal with a recommendation to recommit clause 11 of the Bill. Clause 11 of the Bill, I noted had need of surgery. Now, I want to note that the report will demonstrate that through each of the committee meetings that we sat in, and of course the Attorney General sat. I am not a Member of the Senate so I cannot be the Chair or pilot or manage, we were in very capable hands with Sen. Rambharat handling all of that. But as the Minister with authority for this Bill and who has piloted the Bill, there were two things which I flagged and which are in the report and which I ask the honourable Senate to consider now.

Number one: we propose the reintroduction of the law of recent complaint. Let me explain that. In 1986, the law of recent complaint was abolished. Recent complaint is sometimes confused to be an exception to the hearsay rule. It is not an exception to the hearsay rule. The hearsay rule is where you attempt to use evidence which is not first-hand evidence to prove the truth of the thing and therefore you have it admitted as hearsay evidence. The concept of this particular area of law of recent complaint is something that we propose is reintroduced. Why?

Recent complaint is extremely useful when you look at the English law context. In England, they did not abolish recent complaint. In England, they actually took recent complaint and expanded it to all offences and there is a very useful dicta, there is a useful case which I recommend to hon. Senators, in particular to the practitioners in the field, it comes out of Saint Christopher and Nevis and that case treats with the recommendations as to what is exactly recent complaint. It is the *Director of Public Prosecutions v Ernell Nisbett*. It is a case

coming from the High Court Federation of Saint Christopher and Nevis 2013. It is Claim No. SKBHCR2013/0035. And in this particular judgment, the admissibility of recent complaint was dealt with and the honourable judge, in traversing the law in relation to recent complaint, pointed out law as old as 1896 on the Queen's Bench Division in *R v Lillyman* saying that recent complaint was obviously:

“...not admissible as evidence of the facts complained of: those facts must...be established, if at all, upon oath by the prosecutrix or other credible witness...”—et cetera—“The complaint can only be used as evidence of the consistency of the conduct of the prosecutrix with the story told by her in the witness-box, and as being inconsistent with her consent to that which she complains.”

I want to point out that prior to the 2010 election in May in the Ninth Republican Parliament, there was actually an Evidence (Amdt.) Bill, 2010 laid and that Evidence (Amdt.) Bill proposed an amendment to the Evidence Act and it noted that the Bill would seek to amend the Evidence Act to revive the common law doctrine complaint. The doctrine and I will quote from the Bill as it is there because it is useful to put this onto the record with your leave, Madam President:

“The doctrine is an exception to the general rule that a previous statement made by a witness is not admissible in order to bolster his credibility. At common law, recent complaint evidence is only admissible in trials for sexual offences and is admitted to show consistency and to rebut consent; it cannot be used as evidence of the truth of the fact that the sexual offence was committed by the defendant. In order to be admissible, the complaint must have been made voluntarily and at the first reasonable opportunity after the commission of the alleged offence.

The Sexual Offences Act, 1986...by section 31, abolished the doctrine from the laws of Trinidad and Tobago. The rationale for the abolition of the doctrine was that it was premised on the archaic notion that if the victim of an alleged sexual assault did not immediately inform someone, the victim would be judged to have consented. It was”—not—“recognized that many victims, particularly children, may be afraid or reluctant to make an immediate complaint.”

Let me repeat that:

“It was”—not—“recognized...”—in 1986—“that many victims, particularly children, may...”—have been—“afraid or reluctant to make an immediate complaint.

It is proposed, however, that the Act be amended in order expressly to revive the doctrine...”—with—“respect”—to—“trials for sexual offences. The abolition of the doctrine creates further difficulties as the prosecution’s case may be substantially disadvantaged, victims are deprived of an opportunity to adduce evidence in support of their credibility and a jury may assume that no complaint was made, thus prejudicing the victim’s credibility. Having regard to these considerations, the probative value of the doctrine appears to outweigh any prejudicial...”—value.

This is something which I indicated in the course of the committee, was something which was occupying the Attorney General’s mind and it was something that we went to do significant research on. We went to the best practice in the United Kingdom, we looked at how they had enlarged that recent complaint doctrine beyond sexual offences. We came back to the statistics in Trinidad and Tobago which demonstrate to us—and Sen. Ameen put it, nail hit on the head—where you

have a 2 per cent conviction, that is not good enough and it is the paucity of evidence and the reluctance for evidence to be brought forward by mechanisms which include credibility being bolstered by the use of recent complaint that we find relief in the recommendation that I now propose on this floor as I do now.

Madam President, there is another very important position which I gave notice of in the committee stage and I ask for leave to treat with it. It is again in clause 11. In proposing the amendment for the introduction to bring back the doctrine of recent complaint, we will, of course, include the caution as to what the jury must be warned about, et cetera. So we propose that in the version that you see circulated. What time must I end, Madam President?

Madam President: You end at 14 minutes past nine.

Hon. F. Al-Rawi: Thank you. Forgive me for taking the time but these are critical amendments. There are two further critical amendments. I will deal with a small one. When we did the scrubbing of the law, when we were referencing the reasons that you could refuse entry for people by the amendment to the Immigration Act in section 8, we used the term “registered offence” and we had not defined it so we propose that we define that by an amendment to the Immigration Act. Very importantly, we want to capture a huge mischief in the world. Luring of a child is number one. Sexual communication with a child is number two and sexual grooming of a child.

Madam President, the law all around the world as it relates to luring of a child is currently enforced by cyber police. Cyber police go onto the Internet, the Dark Web or the regular Web and they pose themselves constables as children and they basically involve themselves in catching people who are predators of children. There is a lacuna in our law. The lacuna in our law is that we do not recognize the

concept of a person who is a constable who is wearing the clothing, the cyber clothing of being a child.

And what we propose is an amendment to the consequential amendments that we had set out in the Family and Children Division Act of 2016. We propose that we replace section 25. We ask that we deal with luring of a child where a person communicates with a child or a person whom he reasonably believes to be a child, then that person commits an offence. And then we go further to ask for the constable who is in the situation of being undercover and luring the child to catch and take a predator off the street and off the Internet, we ask for that person to not be guilty of an offence himself. In other words then, had the constable not been given statutory protection, the constable would be tripping the law. This has arisen in multiple jurisdictions and it is something which is required to be treated with.

We then go to, Madam President, to treat with sexual communication with a child. The law, as it is set out currently, is that you have to have more than one communication with the child. In today's world, one is too much. So number one, we propose that you have one communication with a child or a person whom you reasonably believe to be a child, that is a constable. An undercover person where you are a predator to children, you ought not to have the benefit of going up to court and say "I only did it once. Yuh hata catch meh ah second time." We are proposing instead that sexual communication with a child is a one-time issue and that we also allow for the undercover operative to go into a gear, that is a constable and that the constable is given an exculpation for participating as a constable. We need to take these predators off the streets and off the Internet.

Madam President, we then treat with a recommendation for sexual grooming of a child and in treating with sexual grooming of a child—grooming is where you

take the communication a second step. Grooming is where you cause more than one occasion and that you are basically preparing a child psychologically and mentally to engage in sexual conduct or cause sexual gratification in the context of the law. We believe, Madam President, that we, again, ought to treat with the person whom is reasonably believed to be a child, that is the constable. We need to include the constable. I can tell you that we have looked at multiple jurisdictions: the law of Canada in particular, the United States, the United Kingdom. These are features of their laws. We have been wrestling with this concept. I gave an undertaking since 2016 that we would try to find a solution to this and it is been borne out of actual and dedicated case studies. [*Crosstalk*] Yes, please.

Sen. S. Hosein: AG, sorry, I was out of the Chamber but I overheard that you would have mentioned that there is a reintroduction of the doctrine of recent complaint in the law now? Can you just confirm whether or not that is the position?

Hon. F. Al-Rawi: Yes, that is the position. We propose to reintroduce the doctrine of recent complaint in this Bill by revisiting clause 11 to cause an amendment to introduce it. Okay? And we believe that we are on solid ground because it exists in other jurisdictions, certainly in the United Kingdom and elsewhere and it is extremely useful so that we can deal with the detection and conviction aspects and bolster the preservation of evidence.

9.05 p.m.

It does not go to the truth. It goes, instead, to making sure that you can treat with the credibility aspects. It is well documented, this particular concept. It was unfortunate in 1986 that it was knocked out and indeed, Madam President, I can

tell you the DPP sat in consultation with us. We have sat on umpteen versions of this law, and the recommendation coming from the DPP himself is that we ought to reintroduce this law. It is something that our team of—those of us who are extremely passionate about issues with children and family law, we have run marathon sessions and we have come across multiple jurisdictional examples and we have even gone to all of the other jurisdictions that lend us assistance.

So, Madam President, in the round we propose that we revisit clause 10 to treat with Sen. Dillon-Remy's position. If I could just say to Sen. Dillon-Remy, I am asking the CPC's department to tweak. The clause as it is currently set out is that upon recommendation of a medical practitioner, you can do an exam within one year. I am going to asking for a circulated version to come around that says you can ask for a medical examination within one year or a further medical examination, such further examinations as a medical practitioner may suggest. In other words then, it is up to the doctor, from an evolution of practice point of view, to say: look, you have presented on day one, it is too early you will get a negative. I am going to recommend that you come back in two weeks, six weeks, 12 weeks and we are going to do these tests.

We propose that everywhere we have that provision in clause 10, where you are coming back for further tests, voluntarily or involuntarily, that we can do it in that way. I think it will catch the concern. Thank you for your concern and your expertise as a practitioner, hon. Senator. So clause 10, we propose be recommitted. Schedule 2 to treat with the fixes that we have proposed. Clause 10 will, of course, also deal with section 67, which Sen. Mark has recommended. I am very pleased to accept the recommendation, the one recommendation that has come from the Opposition Bench, certainly that the new section 67 cause the

Minister to lay in both Houses of Parliament annually a report on the administration of the Act. I think that is agreeable.

I do not, respectfully, agree with the second submission that we must say that the Joint Select Committee of Parliament must interact. The power of the Joint Select Committee to take any report and act upon it is there. I do not think that we need to actuate that into law, because I do not want to confuse the law.

We propose that we treat with Schedule 2 in recommittal. We propose that we treat with clause 11, firstly to deal with the reintroduction of the doctrine of recent complaint. Secondly, to treat with the amendment to the Immigration Act to cause an amendment for the interpretation section there. Thirdly, to treat with consequential amendments in the Family and Children Division, which is amendments to the Children Act by dealing with a reinforced version of luring of a child, dealing with bettering the law, as it relates to sexual communication with a child and sexual grooming of a child.

Madam President, I am genuinely pleased to have been a participant in this process. I thank the hon. Members of the Senate for their dedication and work and for those who have even come as volunteers in that purpose, and that is specifically Sen. Dr. Maria Dillon-Remy, and I wish to specially thank the stakeholders who turned out in their numbers with passion.

In a democracy we are not certainly a theocracy. Certainly, we are also not capable of agreeing upon everything. Some submissions require other laws to be improved. Some submissions are a little difficult at times, but in the round, Madam President—

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

Hon. F. Al-Rawi: Thank you. In the round, Madam President, we can do the best

that we can in the stages that we can. I have to tell you not every submission is wholesome. I can tell you that I sat in genuine shock during one of these select committee meetings, where a representative from one of the stakeholders came forward and told the committee that we ought not to register persons who had committed rape until they had raped umpteen people because we needed to establish whether the person was capable of being reformed or not. I nearly fell off my chair when that submission was made. But I understood it for the context in which it was made—let us please try and reform the offender.

As a Government, we have to draw a line. We have spent a dedicated amount of our time as a Government treating with children, the criminal justice system, as it relates to children, as it relates to families. We have operationalized courts. We have passed rules, specific rules, apart from Criminal Procedure Rules. We have passed the United Nations Protocols into law. We have dealt with the child rehabilitation centres. We are dealing with the reform aspects.

But most importantly, this Eleventh Republican Parliament has now done something that other Parliaments before it have not done. We are using data and we are using our own data. And it started with, as it relates to children, the Government's insistence that we would abolish child marriage. It was in that that we demonstrated 10,000 live births to children; children having children. That was ably picked up by Sen. Richards as he chaired the committee that he sat on and again demonstrated the power of joint select committees, followed by no less a person than Sen. Chote in her management of the committee that she has power over.

I think that our joint select committees are now having the benefit of a government willing to publish its own data, because you cannot reform Trinidad

and Tobago in a vacuum. You have to know the good, the bad and the ugly, if you want to reestablish faith in this society. I thank you, Madam President.

[*Sen. Thompson-Ahye rises*] Sorry, before I give way—so I could receive the question? Yes, please.

Sen. Thompson-Ahye: You mentioned earlier that *doli incapax* is part of the law. I would like to get your opinion on whether the rebuttable presumption is also part of the law, because I do not know if we have been hearing the prosecutors dealing with it as part of the law.

Hon. F. Al-Rawi: Thank you, in the one minute I presume I have. That point of law is something that I gave an undertaking to specifically look at and I intend to come back almost immediately with that. What we did here is we made sure, in the sexual offences arena, that we statutorily categorize that children under 12 years of age cannot have capacity for this and it is not rebuttable. So we dealt with it in the sexual offences aspect, and we definitely propose that we deal with it, the general capacity age issue, which I know is very close to your heart hon. Senator, we intend to deal with that very shortly before the Parliament.

Sen. Thompson-Ahye: And dealing with 12 to 14?

Hon. F. Al-Rawi: Yes. Thank you, Madam President.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much Madam President. Madam President, I want to thank all my colleagues who have contributed to this debate on the floor and I have reflected on all their contributions, very supportive. And we have received some suggestions for amendments.

I am also very grateful to Sen. Mark, in your absence, for bringing some lightheartedness to the debate, with a spectre of him almost appearing as defence

counsel one day. It is not something I wish on anybody. [*Laughter*]

Madam President, the report in summary, as I said earlier, addresses seven core areas and I gave some numbers before. We had more than 22 participants. My colleague mentioned 24, somewhere around there, stakeholders, who contributed. And we had more than 120 recommendations. And I said half of those were really recommendations relating to the core issues in the Bill and some important, but not directly relevant because they raised policy issues outside the ambit of the Bill.

I also talked about 90 amendments, Madam President. And I want to say that 18 of those amendments went to the seven core areas. So it is not like we want anybody leave with the impression that the Bill required that major surgery. There were 18 amendments dealing with the seven core issues. But as happens in legislative drafting, you would find in making amendments, you have to correct numbering and do renumbering; correct cross-references; expand the definitions, because of new language you have introduced; and most importantly in this particular Bill, when we got to those areas where procedures had to be detailed, the more you set out procedures, especially those relating to collecting samples and dealing with the chain of custody and those things, the more procedures you draft, the more procedures you find yourself drafting. So my 90 amendments covered the range of 18 core amendments and a series of consequential renumbering and reorganization that were required.

At the end of it, Madam President, I think we have complete support for the Bill that has been proposed by the committee. We have some amendments proposed by both the AG and Sen. Mark. I join the AG in saying that, on the one hand, Sen. Mark's recommendation on the annual report is acceptable, but I do not

think that in legislation we should go so far as to bind the reference to a specific committee. I think we have in the Standing Orders some clarity on what goes where, the committees which have specific responsibilities. We have scenarios in which a report may—because of its subject matter or the breadth of the subject matter—be referable to different committees, but we also have, in the Standing Orders and in practice, the fact that committees will not duplicate work. So I think that the annual report proposed by Sen. Mark is sufficient, without having to go into the detail of naming a committee.

Having said that, Madam President I, beg to move that the Senate adopts the report of the Special Select Committee on a Bill to amend the Sexual Offences Act, Chap. 11:28, subject to the recommittal of clauses 10 and 11 of the Bill to a committee of the whole Senate.

Question put and agreed to.

Senate in committee.

Madam Chairman: Hon. Senators, I remind you that we are only dealing with clauses 10 and 11 in this committee. Okay?

Clause 10 recommitted.

Question again proposed: That clause 10 stand part of the Bill.

Madam Chairman: We have two sets of amendments proposed, Sen. Mark and the Attorney General. I will ask Sen. Mark to speak to his amendment first.

Sen. Mark: Thank you very much, Madam Chair. Contrary to what my colleague said earlier, the amendment does not identify any particular committee. I was just making reference to the most appropriate committee. But it does not identify, because that would be contrary to the Standing Orders. I agree with you. But all we are asking is that the particular report be referred to the relevant committee and

that that committee would review the report referred to it in accordance with 67A and, of course, it follows, Madam Chairman, that the report has to be prepared and tabled in the both Houses of Parliament. So it is a very simple and straightforward amendment, Madam Chair.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, I welcome—I thank Sen. Mark for the clarification—I welcome that the Minister shall cause be laid in both Houses of Parliament annually a report on the administration of the Act. I think that that is very useful as a subset to come to Parliament's specific pointed attention.

I am having difficulty with the legislative statement that the relevant joint select committee shall be responsible for monitoring the operations of the Act. I say that in the context of a number of other things in gear.

Firstly, our Standing Orders certainly permit that any report can be picked up and any entity which falls under purview can be the subject of enquiry. The committee on human rights, equality and diversity is certainly one which can call, even without an annual report, upon the Judiciary or the Ministry with responsibility to speak to these matters. The Commissioner of Police, for instance, could be brought before that committee to speak the management of the database, et cetera. So where I am having the difficulty is with the proposal for a new 67B. No difficulty with the Minister causing a report to be laid in the Houses of Parliament. I think that that would help us, quite frankly, the first suggestion.

So I respectfully ask if the hon. Senator would consider simply the adoption of the recommendation that the Minister shall cause to be laid in both Houses of Parliament, annually, a report on the administration of the Act. My question now is whether I need to define “Minister”. So I am just going to look at the original law, Sexual Offences Act, and there is no definition of “Minister”.

Sen. Mark: Yeah, I think national security.

Mr. Al-Rawi: National security? In our Bill. Sorry, in our Bill we have. I was looking at the original '86 Act. Yes, we have:

“Minister” means the Minister to whom responsibility for national security is assigned.

So that would make sense then. So, Madam Chair, we do agree that:

The Minister shall cause to be laid in both Houses of Parliament, annually, a report on the administration of this Act.

Madam Chairman: Sen. Mark?

Sen. Mark: Yeah, Madam Chair, even if or when the report is laid in the both Houses of Parliament it has to be referred to a particular committee, and all I am asking for here is that the relevant joint select committee shall be responsible for receiving that report, and you are giving them an additional responsibility of monitoring the operation of this Act.

And if you do not want them to monitor the operations of the Act, which I see no harm being brought to the exercise, then why would we object to the report being referred to the relevant committee, without naming the committee? We would know the name of the committee. The Presiding Officers would know the name of the committee that would deal with this kind of matter. So we do not want to put the name of a committee in the legislation, which I am in support of. But tabling the report, Madam Chair, is one thing. There is another step. You have to refer the report. And that is all I am asking the hon. Attorney General to consider.

Mr. Al-Rawi: Madam Chair, we have Standing Orders 93 and 96, for instance, where we treat with the committee on national security and the committee on human rights, equality and diversity, and the ambit of their jurisdiction, both

pursuant to 93 and 96, is more than wide enough for them to just take that report in any event.

What the report has the effect of doing is crystallizing the work that happens under the law. So, I do not think we need to go a step further. Because there may be circumstances where national security wishes to have sight of that or activity on that, as opposed to a committee on human rights, equality and diversity. So I do not want to box it in. A report prepared helps us tremendously. It is like the SSA report or the Dangerous Drugs Act, whatever it may be.

So I respectfully, whilst I understand what the hon. Senator is pushing at, I think if we were to specify one, that we are going to, perhaps, put ourselves out of bounds for another in operation. I do not know if there is a concurrency of jurisdiction on the same matter.

Sen. Mark: Madam Chair, I am just trying to get the Attorney General and the Government to appreciate that we are travelling new grounds, in terms of the proposed amendments, right, and we are saying that: Listen, we would like the Government to consider, once the report is laid, it be referred. And in addition, this is new landmark legislation. We would like a body, a committee, to monitor the operations of this piece of legislation. So that committee would then report to the Parliament. Because we are the ones who are passing this law. And we want a committee that would monitor this law and report back to the Parliament. And I think the Attorney General is confusing the Executive, with that of the Legislature. We have a responsibility, once we give passage to legislation, to monitor it, and that is all I am asking, Madam Chairman. And that exists in all serious Parliaments. Australia, United Kingdom, India, all of those countries have it.

Mr. Al-Rawi: Madam Chair, I again attempt to answer the hon. Senator. I am certainly not confused as to the Executive and the Legislature. That is why I

reached for the Standing Orders in the Senate, Standing Order 93, Standing Order 96, and I referred to the Joint Select Committee of the Parliament, not of the Executive, and I pointed out that the national security joint select committee and the committee on human rights, et cetera, both have concurrent jurisdiction on this, depending upon which way they wish to look at it, because they impact upon human rights aspects and equally upon national security aspects.

In those circumstances, what is required is, they have a roving perambulation. They can take account of anything. We do not need to refer something to them. If they want to call the Auditor General before them, they have that power. So, in the circumstances, I respectfully decline the invitation to take the second step.

Sen. Mark: Madam President, I do not want us to lose the focus on a minor matter. But it is a very important matter.

Madam Chairman: But Sen. Mark, let me just summarize what I am hearing here for the benefit of all Members. You are seeking a two-prong amendment. The first part is that a report is to be laid in both Houses, annually, a report on the administration of the Act. But you are further asking that a relevant joint select committee of Parliament would be responsible for monitoring the operations of the Act and the review of the report.

What the Attorney General is saying in response is, accepting the first part of your proposed amendment, but saying that you are restricting yourself in the second part. Because there are several joint select committees that may want to look into the report. So, for example, the report is laid and the Joint Select Committee on National Security may want to analyze the report and may want to do that on an annual basis or, and in addition to national security, the Joint Select Committee on Human Rights may also want to look at the report and monitor the

report continuously. So what the Attorney General is saying in my—as I understand it—is that by restricting it in 67B, as you are seeking to restrict it, you are therefore not allowing the joint select committees to properly do their oversight.

Sen. Mark: Well, Madam Chair, it is a simple solution.

Madam Chairman: Yes.

Sen. Mark: Rather than say relevant joint select committee we just add an “s”. So, other words, if it has to go to national security, if it has to go to equality, if it has to go to administration, we know it will go to all of those bodies. But you know, Madam Chair, what I am trying to—it is a new idea that we are trying to push here. We have not had the opportunity of any committee being given the power to review—

Mr. Al-Rawi: We have.

Sen. Mark:—legislation. We know that has happened in, as you said, the dangerous drugs and it just died. But since then—

Madam Chairman: But all committees, Sen. Mark, if look at Standing 91, all committees can review legislation. That—it is there in the Standing Orders. So, I think a decision has to be made because one way or the other we now have to put this to the vote. I think the Attorney General is seeking to get some consensus, because he is saying that he is supporting your first part of the proposed amendment.

Sen. Mark: Okay, and I am supporting my second part.

Madam Chairman: So you, okay.

Mr. Al-Rawi: Madam Chair, in clause 10, did you want me to address the proposals?

Madam Chairman: No, not yet—

Mr. Al-Rawi: For 53?

Madam Chairman: We need to deal with—because of the—we have two sets of amendments so just let us deal with Sen. Mark's—

Mr. Al-Rawi: Understood, sure.

Madam Chairman:—and then we would move on to the amendments proposed by the Attorney General. Sen. Mark, so you are not inclined to withdraw your second part?

Sen. Mark: No, Ma'am.

Madam Chairman: So, Sen. Mark, you appreciate that if I put the proposed amendment to the floor, that I have to put it in its entirety? You understand? I cannot say—I have to put the whole amendment.

Mr. Al-Rawi: I can make an amendment to 67, Madam Chair.

Sen. Mark: Well, do you want me to separate my—so we have 10(1) and then we go to a next column, 10(2). So we do (1) by itself. So that all of us agree, and then we go to the vote on the second part.

Madam Chairman: Do not look at me. I am not the AG.

Sen. Mark: No I am just looking at you, nice. [*Laughter*]

Madam Chairman: All right. It is already A and B, you know, but what I am saying, it is one amendment.

Sen. Mark: Yeah, but in the interest of the Parliament, right—

Madam Chairman: Yes.

Sen. Mark:—we want to get the report.

Madam Chairman: Yes.

Sen. Mark: And I agree with that and you would support me on that as well. My only concern, Madam Chair, is that I really have a strong view on the second part. So, I do not know if you want me, or if you would like to, I do not know how we

can do it but we would like to get part—

Mr. Al-Rawi: Madam Chair, perhaps I can assist?

Madam Chairman: Yes.

Mr. Al-Rawi: If Sen. Mark's proposal falls, I propose to ask the Senate to accept an amendment from the Government that we take the very first part of what Sen. Mark has done and introduce it into 67.

Madam Chairman: So, having heard the Attorney General, Sen. Mark, do you still want to go through with your proposed amendment as you have it set out here?

Sen. Mark: Well, I do not want the AG to take my idea—[*Laughter*—and go all over the place and shouting to the heavens that he did that. So, certainly I would want to defend my position. I would defend my position. I would temporarily retreat and to come back fighting. So that, Madam Chair, I will be guided by you.

9.35 p.m.

Madam Chairman: So you will therefore withdraw B?

Sen. Mark: B for the time being until I come back again.

Madam Chairman: So withdraw B and therefore—

Sen. Mark: We will go with A. I want to take ownership of my material.

Madam Chairman: Thank you very much, Sen. Mark. So, hon. Senators, the question is that clause 10 be amended as circulated by Sen. Mark. And it will read as follows:

Insert new section 67A

“The Minister shall cause to be laid in both Houses of Parliament, annually, a report on the administration of this Act.”

Question, on amendment, [Sen. W. Mark] put and agreed to.

Madam Chairman: Attorney General, can we deal now with your proposed amendment?

Mr. Al-Rawi: Yes, Madam Chair. May I ask for your leave to further amend that which is circulated? And I apologize. I could not have anticipated what Dr. Dillon-Remy said until she said it and, therefore, I have proposals to amend in clause 10, sections 37(4), 38(2), 38(3) and 43. They are not circulated, Madam Chair; I was saying that when Sen. Dillon-Remy raised it, I obviously had circulated my amendments already.

Madam Chairman: So, Attorney General, it is that you want us to stand down?

Mr. Al-Rawi: No, Madam Chair, I am not asking that. I am asking if you would allow me to amend that which is circulated in the manner in which I can speak out now.

Madam Chairman: But then what happens to the further amendments?

Mr. Al-Rawi: That is it. So I am adding what Dr. Dillon-Remy has asked—

Madam Chairman: But do you have it writing?

Mr. Al-Rawi: I have just penciled it in myself, Madam Chair.

Madam Chairman: But, how many amendments?

Mr. Al-Rawi: I have just said 37(4), 38(2), 38(3) and 43 to adjust the time frames for the medical examinations to capture what Sen. Dillon-Remy has mentioned. Obviously these are not my own amendments, they were not circulated by Dr. Dillon-Remy, but I have listened to what she said and the best I can do is to write it out.

Madam Chairman: Just one second—37(4)?

Mr. Al-Rawi: Yes.

Madam Chairman: Can you just read out what is the proposed amendment?

Mr. Al-Rawi: Yes please, Madam Chair. At 34, I am proposing, in section 37(4) that we delete all of the words after the word “conduct”. Conduct appears in the third line from the bottom, and that we substitute, and I will say them slowly. So

after conduct, delete all the words. That is beginning with “a second medical examination of the person”.

Madam Chairman: Just one second—37(4)?

Mr. Al-Rawi: 37(4). It would be on page 9 of the marked version that you have, Madam Chair.

Madam Chairman: So 37(4).

Mr. Al-Rawi: Yes please.

Madam Chairman: Let me just tell you what my 37(4) is reading, just to make sure we are on same page:

“Where the results of a medical examination conducted pursuant to subsection (1) do not reveal a sexually transmitted infection, a police officer may, on the recommendation of a medical practitioner, make arrangements for a qualified person to conduct a second medical examination...”

Is this the correct version?

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

Madam Chairman: Okay. So you want to take off the words?

Mr. Al-Rawi: So immediately after the word “conduct” which appears in the third line from the bottom, delete all the words after that. So that begins with “a second” straight down to “examination”.

Madam Chairman: Right.

Mr. Al-Rawi: And instead, if we could replace that with the following words:

“such number of medical examinations of the person within one year from the date of the first medical examination.”

Madam Chairman: Yes.

Mr. Al-Rawi: That would be it. So it would read and this is for the benefit of Dr. Dillon-Remy:

“Where the results of a medical examination conducted pursuant to subsection (1) do not reveal a sexually transmitted infection, a police officer may, on the recommendation of a medical practitioner, make arrangements for a qualified person to conduct such number of medical examinations of the person within one year from the date of the first medical examination.”

So if the medical examiner says, “Go two weeks, six weeks, eight weeks, and 12 weeks.” We allow for that to happen, the medical examiner will allow it, but the cut-off point is at one year, because chances are from the practices that you read that you would not likely find an STI beyond that date that was reasonably connected to the incident of sexual assault.

Madam Chairman: Attorney General, can we move on to the next proposed amendment.

Mr. Al-Rawi: Yes please, Madam Chair. The next one would be section 38(2). On that same page and we are proposing, Madam Chair, that we delete the words “six months” and substitute with the words “three months”.

The next one, Madam Chair, would be 38(3). We are proposing that we delete all the words after the word “conduct” and substitute the words, again it would be similar to what we just read:

“such number of medical examinations of the virtual complainant within one year from the date of first medical examination.”

So if I say it slowly; “such number of medical examinations of the virtual complainant within one year from the date of the first medical examination.”

The last one, Madam Chair, would be in section 43 and this is again to take care of what Sen. Dr. Dillon-Remy raised. We propose that we delete the word “confidential” and substitute with the words “kept confidential by all persons involved in the matter”. So that is another way of anonymizing or managing the

risk until we know what has actually happened. So those words would be “kept confidential by all persons involved in the matter”.

Apart from that, Madam Chair, we propose those which are circulated in the list of amendments.

Sen. Dr. Dillon-Remy: Madam Chair.

Madam Chairman: Just one second, please. Yes, Sen. Dillon-Remy.

Mr. Al-Rawi: 37(4), 38(2) and (3), and 43.

Madam Chairman: Yes, Sen. Dillon-Remy.

Sen. Dr. Dillon-Remy: 42(1).

Mr. Al-Rawi: Yes.

Sen. Dr. Dillon-Remy: This was the—whereas the results of a medical examination reveal that the person had a sexually transmitted that they shall be immediately communicated to these people.

Mr. Al-Rawi: Yes. And then 44 kicks in to keep that—43 kicks in to keep it confidential.

Sen. Dr. Dillon-Remy: I am not sure what that means? If it is being communicated to the—like for instance, the virtual complainant has the information, it is not confidential any more.

Mr. Al-Rawi: It is communicated in a circumstance of confidentiality in respect of which if there is a breach there are consequences. So you see in this dynamic the virtual complainant participating in the process of this road, there is a charge, there is an investigation, et cetera. There is an obligation to inform the virtual complainant of the finding; that is where counselling may be triggered, that is where the application of anti-retroviral drugs, et cetera, has to happen. So we have to tell the virtual complainant.

In those circumstances we are telling the virtual complainant pursuant to the

next section, 43, that you have to keep that confidential. You cannot just go off and, you know, put it all over the news, et cetera, and this came about in the circumstance of your proper statement that we do not yet have a conviction. And that is where the criminal injuries compensation route kicks in and other positions kick in. It is only where we actually have a conviction, yes you actually breach a sexual offence, you rape someone, grievous sexual assault, something happened. It is at that point that it moves from—let us suppose the argument it was consensual and not without consent, it is at that point. So section 43 puts the positive obligation to maintain the confidentiality.

Hon. Senator: On all?

Mr. Al-Rawi: On all. Everybody.

Sen. Dr. Dillon-Remy: Okay.

Sen. Deonarine: Thank you, Chair. Now, section 42 I see that you say here that it is immediately communicated to, but it does not indicate the method in which it is being communicated. Does this include a phone call, or is it face to face? Because something of this magnitude—something like this, I think should be communicated face to face and not be a phone call, because I am aware that, for example, cancer diagnoses, right now, are being communicated via telephone calls from the hospital—

Mr. Al-Rawi: All around the world, yes.

Sen. Deonarine: Right. So in this case would this—

Mr. Al-Rawi: My mother-in-law actually suffered that in the US, a phone call.

Sen. Deonarine: Right. So in this case especially when you are talking about a rape victim, it may not be the best way to communicate news that you are HIV positive or so on over the phone. So—what?

Mr. Al-Rawi: Again, this is going to operate against rules, regulations to come. In

that sense more prescriptive purpose could be added. We did it in the Family and Children Division as it relates to children where we actually set up an entire protocol as to how this is done. We used the UN protocols, how the information is to be exchanged, that you had to anonymize it, it had to be done in the presence of certain things. So we would not propose to put this in any prescriptive form in the law here, this is more of a framework structure. We propose that that be managed in the protocols and systems that the court will develop in the sub-processes. But it is a very important point.

Madam Chairman: Attorney General, can you just go through now the others, yes.

Mr. Al-Rawi: Madam Chair, we propose an amendment to clause 53; as circulated there was some untidy language. We propose that clause 53 be amended as circulated effectively at it was set out—this is clause 10—well, section 53, it is still a clause, it is a Bill—I do not know how to refer to it.

Madam Chairman: No, but clause 10 refers to section 53.

Mr. Al-Rawi: Right, okay. So clause 10 which refers to section 53 which is not yet law, but yes. So, got you. Section 53, it made a nonsense of the process, the Commissioner of Police shall within two months of the discharge cause a designated officer to attend the prison. Obviously that is not what we intended because it meant the prisoner left. So you cannot send someone to the prison. So we propose instead we delete the words “two months of” and we instead put “two months before”.

So it is as circulated to make sure that it happens prior. The second one, Madam Chair, that we propose is in section 67. Section 67 to be found at page 33, provided only for the Minister amending by order subject to affirmative resolution Schedule 1 and then we said order subject to negative resolution amend Schedules

3, 4 and 6. So we had omitted Schedule 2. So we are proposing that Schedule 2 be amended in the similar fashion to Schedule 1 which is by affirmative resolution; that is the reason for the circulated amendments. This is it for clause 10, yes please. Oh, Schedule 2 is part of clause 10, forgive me it is scheduled out separately. Schedule 2, forgive me.

Schedule 2 which begins at page 36; Schedule 2 as it was set out provided for a (i), and a (ii) and it did not make sense in terms of its reference to children, et cetera. So what we have proposed, Madam Chair, is that we clean you Schedule 2 which is, of course, on the legislative springboard of section 26. We specify the offences for which a person under the age of 12 is deemed incapable of committing and now we have sectioned that out;

- (a) in respect of the Sexual Offences Act;
- (b) in respect of the Trafficking in Persons Act;
- (c) in respect of the Children Act.

And that would tidy up what Schedule 2 is really supposed to look like. It made no sense to reference to persons over 18, so this is a replacement of that. Those would be the amendments to clause 10, Madam Chair.

Sen. Thompson-Ahye: So, 49(5) remains as is?

Mr. Al-Rawi: 49(5), is this the “reduction and less”?

Mrs. Thompson-Ahye: “Um-hmm”.

Mr. Al-Rawi: Page 18, thank you. Madam Chair, we could remove the word “reduced” in 49(5).

Sen. Thompson-Ahye: Thank you.

Madam Chairman: So, we deleting “reduced”?

Mr. Al-Rawi: Yes, please. Thank you, Madam Chair, sorry.

Sen. Vieira: Thank you, Chair. Not a big point, but just as a matter of drafting

style. Sen. Mark talked earlier about being gender-neutral. I have a particular penchant and it is supported by Ghana who has written extensively on drafting that a preference for numerals rather than writing out the words “two” or “three”, written out numbers are harder to read than numerals simply because they are undifferentiated from other words. So, as far as possible, numbers.

Mr. Al-Rawi: We unfortunately are bound by a number of protocols and the fact that in our jurisdiction when you are photocopying law written numbers a five ends up looking like a zero and a three ends up looking like a two. So, we have a whole other consequence in the Third World, now Second World or First World where the vicissitudes of reproduction sometimes cause problems. So we have sort of consistently gone there, but I catch you in terms of the move towards neutral terms, et cetera; that would involve, of course, a bit of tweaking to the Interpretation Act, needless to say.

Sen. Vieira: Thank you.

Madam Chairman: So, hon. Senators, the question is that clause 10 be amended as circulated by the Attorney General and further amended as follows: at 37(4) by deleting the words “a second medical examination of the person within one year of the date of the first medical examination” and replacing those words with “such number of medical examinations of the person within one year from the date of the first medical examination”.

At 38(2) by deleting the words “six months” and replacing with the words “three months”; and at 38(3) by deleting the words “conduct a second medical examination of the virtual complainant within one year of the date of the first medical examination” and replacing with the following words: “such number of medical examinations of the virtual complainant within one year from the date of the first medical examination”.

Section 43, by deleting the word “confidential” and replacing with the following words “kept confidential by all persons involved in the matter”. And at 49(5) by deleting the word “reduced”.

Question put and agreed.

Clause 10, as amended, again ordered to stand part of the Bill.

Clause 11 recommitted.

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

Mr. Al-Rawi: Yes. Madam Chair, as circulated we propose an amendment to clause 11.

- 11 A. Insert after the consequential amendment to the Administration of Justice (Deoxyribonucleic Acid) Act, Chap. 5:34, the following new consequential amendment:

“The Evidence Act, Chap. 7:02

By inserting after section 15A, the following new sections:

“Recent 15AA. Notwithstanding any complaint other law to the contrary, the common law rules relating to evidence of recent complaint in sexual offence cases shall apply, from the date this Act comes into force, as if those rules had not been abolished in this jurisdiction.

Judge's warning in absence of or delayed complaint 15AB. Where on the trial of an accused person for a sexual offence, evidence is given or a question is asked of a witness that tends to suggest an absence of recent complaint in respect of the commission of the alleged offence by the person upon whom the assault is alleged to have been committed or to suggest a delay by that person in making any such complaint, the Judge shall –

- (a) give a warning to the jury that an absence of recent complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and

inform the jury that there may be good reason why a victim of a sexual assault may refrain from

making or may hesitate in making such a complaint about the assault.”

B. In the consequential amendment to the Immigration Act, Chap. 18:01 –

(a) insert before item A, the following new item:

“A. In section 2, by inserting the following definition in the appropriate alphabetical sequence:

“registrable offence” has the meaning assigned to it under section 2 of the Sexual Offences Act; and

(b) renumber items A and B as items B and C.

C. Insert after the consequential amendment to the Family and Children Division Act, Chap. 2016, the following new consequential amendment:

“The Children following new sections:

Act,

Chap.

46:01

“Luring a child 25A. (1) Where a person -

(a) communicates
with a child or a
person whom he
reasonably
believes to be a
child; or

(b) coerces or tricks
a child or
attempts to
coerce or to trick
a child or a
person whom he
reasonably
believes to be a
child into
communicating
with the person,

by any means, including
electronic means, for the
purpose of meeting the child or
the person whom he reasonably
believes to be a child with the
intention of engaging in sexual
activity, or doing anything to or
in respect of the child or the
person whom he reasonably

believes to be a child, during or after the meeting in Trinidad and Tobago or elsewhere, and which if done in Trinidad and Tobago would constitute the commission of an offence under Parts IV to VI of this Act or the Sexual Offences Act, the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable –

(a) on summary conviction, to a fine of one hundred thousand dollars and to imprisonment for ten years; and

(b) on conviction on indictment, to a fine of two hundred

thousand dollars
and to
imprisonment
for twenty years.

(3) Notwithstanding subsections (1) and (2), where the person who is reasonably believed to be a child is a constable pretending to be a child while engaged in the detection or investigation of a crime, the constable shall not be liable for the offence of luring.

Sexual
communication
with a child

25B. (1) Where a person –

(a) communicates
with a child or a
person whom he
reasonably
believes to be a
child; or

(b) coerces or tricks a
child or attempts
to coerce or to
trick a child or a
person whom he

reasonably
believes to be a
child,
by any means, including
electronic means, and the
communication is sexual, and
intended for the purpose of –
(c) obtaining sexual
gratification; or
(d) encouraging the
child to make
communication
which is sexual, to
the person or any
other person,
the person commits an offence.

(2) A person who
commits an offence under
subsection (1) is liable –

(a) on summary
conviction to a
fine of one
hundred thousand
dollars and to
imprisonment for

ten years; and

(b) on conviction on indictment to a fine of two hundred thousand dollars and to imprisonment for twenty years.

(3) Notwithstanding subsections (1) and (2), where the person who is reasonably believed to be a child is a constable pretending to be a child while engaged in the detection or investigation of a crime, the constable shall not be liable for the offence of sexual communication with a child.

Sexual grooming of a child 25C. (1) Where a person has on at least two earlier occasions, –

- (a) met or communicated with a child; or
- (b) communicated

with a person
whom he
reasonably
believes to be a
child,

in Trinidad and Tobago or
elsewhere, by any means,
including electronic means, for
the purpose of sexual grooming,
and –

(c) he meets, attempts
to meet or travels;

(d) he arranges for or
persuades the
child to travel; or

(e) he arranges for the
person whom he
reasonably
believes to be a
child to travel,

for the purpose of meeting the
child or the person whom he
reasonably believes to be a child,
in Trinidad and Tobago or
elsewhere, with the intention of
doing anything to or in respect

of the child or the person whom he reasonably believes to be a child, during or after the meeting, which if done in Trinidad and Tobago would constitute the commission of an offence under Parts IV to VI of this Act or the Sexual Offences, the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to a fine of two hundred thousand dollars and to imprisonment for twenty years.

(3) Notwithstanding subsections (1) and (2), where the person who is reasonably believed to be a child is a constable pretending to be a child while engaged in the detection or investigation of a crime, the constable shall not be liable for the offence of sexual communication with a child.

(4) For the purposes of this section, “sexual grooming” means gaining the trust of a child, or of a person who takes care of the child, for the purpose of sexual activity with the child.”

Clause 11, is where we treat with the written laws in the first column being amended to the extent specified in the second column. We propose, Madam Chair, firstly that we cause an amendment to the Evidence Act by inserting clauses which treat with the reintroduction of the common law as it relates to recent complaint and also causing the judges warning in the absence of a delayed or recent complaint.

We then propose, Madam Chair, to cause an amendment to the Immigration Act. We had regrettably omitted to insert the definition of a registrable offence and we have now sought to add that in. Thirdly, we propose in the consequential

amendments to the Family and Children Division Act of 2016 that we amend the Children Act in section 25A by deleting and substituting in section 25, a new section 25A to treat with luring of a child, specifically to allow for the introduction of cyber-policing and constables that are in the domain as children, but who are not children.

Secondly, to treat with sexual communication with a child similarly to provide for that specie of character being involved—that is, a constable treating with predators. And thirdly, Madam Chair, to treat with sexual grooming of a child in the fashion circulated. In each of those proposed sections 25C, 25B and 25A we, of course, propose an exculpation for the constable who was pretending to be a child whilst engaged in the detection, investigation of a crime, et cetera. Those are the reasons for the proposed amendments, Madam Chair.

Sen. Mark: Madam Chair, I would like to ask the Attorney General if these matters were brought up at the level of this Special Select Committee or are these amendments being sprung on us. And they are very—I mean to say, they may be very worthy of consideration, but we have only been made aware of these amendments when they were circulated—

Mr. Al-Rawi: Sure.

Sen. Mark:—and when the hon. Attorney General hinted of their introduction. And I am just finding it strange that a doctrine that was abolished in 1986, we are being asked to support it and reintroduce today. And I really felt that the Attorney General should have given us a little time to consider these matters; these are not light matters and there ought to be subject to some kind of consultation. And to come and drop these heavy matters on us this evening, I really believe it is putting us at a disadvantage and I really would like to ask the Attorney General whether outside of the amendments to Schedule 2 whether this clause 11 could not be

delayed so that Members of this honourable House can consider this thing in some more detail. I do not like to be rushed into matters of this nature. I have consulted with one of my colleagues who sat on the committee and these matters were never brought up.

Madam Chairman: Okay. Sen. Mark, I think your point has been made. Sen. Chote.

Sen. Chote SC: Yes. Thank you, Madam Chairman. Looking back at the history of this, I suspect that I know what the Attorney General might be about to say, which is to say in 2010 there was a Bill worded exactly like this which was proposed before the Senate, but it got nowhere. The reason it got nowhere is because it was unclear, because you simply say that notwithstanding any other law to the contrary, common law rules relating to the evidence of recent complaint in sexual offence cases shall apply from the date this Act comes into force as if those rules had not been abolished in this jurisdiction. So what exactly are you returning into the law? So that was a bit unclear.

The other part of it was that it did not take into account—the proposed legislation in 2010 did not take into account that in addition to legislation, judges now have a mandate to direct juries in accordance with specific rules. So in the United Kingdom you have the Criminal Compendium which tells you how to direct on matters pertaining to the Criminal Justice Act which would contain this kind of provision. We have our own rules and our own rules are informed by the United Kingdom Criminal Compendium Rules.

Now, when I compare what is contained here and what is contained in the directions which a judge ought to consider giving to a jury in respect to sexual offences cases the rules are actually more thorough and better prepared and more clearly defined than what we are putting into law here. So I have some extreme

caution, I have an extreme sense of caution. First, I think that this is a substantive matter and we ought to have had a little more notice of it than this. I think, secondly, simply returning us to the wording of 2010 is unsatisfactory. Thirdly, I think it is clear that the return of this proposal without consideration of how the law has developed in the terms of judge's directions to the jury, that simply has not been taken into account and we must do so. Because we may actually be prejudicing a prosecution by not looking at this legislation properly to bring it in line with the current directions to juries. So, I just want to express my deep concern about this. In the current form, I must say, I cannot support it.

10.05 p.m.

Sen. Vieira: Thank you, Chair. I wish to echo both Sen. Mark and Sen. Chote that this is a very important and substantive change being brought here. While I support the reintroduction of evidence of recent complaint—and I will read an excerpt from *Rook and Ward on Sexual Offences* on that—I do agree that we need to look at it very carefully in terms of which rules would apply. We are just talking here about judges warning, but when you look the—this is so full of case law and contradictory sort of finely tuned differentiations. It is not just warnings, but specific directions that need to be given. I think we have to be very careful with it. But in terms of supporting the general thinking, if I may:

In the middle ages it was incumbent on a woman who brought an appeal of rape to prove that while the offence was still recent, she raised hue and cry in the neighbouring towns and showed her injuries and clothing. By the 18th Century this requirement had evolved into a strong presumption against the victim of an alleged rape if she made no complaint within a reasonable time of the offence. This presumption as itself withered away, but a complaint made within a reasonably time by the victim of an alleged rape is still

potentially of great evidential significance.

—and here is the point.

Indeed recent complaints are recognized to be of such importance that the rules relating to them have been extended in the present century to apply to all sexual offences.

So I agree that it is important, but it is in its implementation that I think we share some concern. And, on the same point, I heard you speak about *doli incapax*, and I looked at section 26, to me, that is a little absolute, but I would like when we go through your amendments, if we could just look at that, because I have some comments to make on that too. Thank you.

Sen. S. Hosein: Thank you very much, Madam Chair. Madam Chair, in the limited time that I had to review this particular provision, and I was doing some research on it, I saw that in Australia, in the UK and several other jurisdictions, the law commissions themselves would have considered whether or not there should be a reintroduction of the doctrine of recent complaint in the law, and I think I would join with my fellow Senators in saying that the time given to us is insufficient to consider this particular provision.

And with respect to the other issues that I have, is that this doctrine of recent complaint is one that creates an exception to the rule of hearsay, in particular, the *res gestae* rule, because if there is a delayed complaint being made by a victim or virtual complainant, it would mean that the evidence is going to be admitted after several—after a long period of time has passed. Now, this leaves room for fabrication of evidence, in terms of the statement that person is going to give. Now, this will call into question, again, the quality of evidence on which a person would now be tried in terms of sexual offences charges, and I think we need to really contemplate whether or not this particular provision will afford enough

safeguards for those persons notwithstanding 15AB which gives the judge a duty to give certain directions to the jury, and I think it is extremely important that we must be careful when legislating a judge's duty, because a judge has a duty to sum up a case and give particular directions, and I do not know if it is proper for us to legislate what direction a judge should give in any particular matter, and I just want to register my dissent to this particular provision on the two grounds: one, insufficiency of time to consider the amendment. This formed an entire Bill, as Sen. Chote said, in 2010, and the fact that it can diminish the evidence that is being given to a court of law for a jury to consider a sexual offence charge. Thank you.

Madam Chairman: Attorney General, Sen. Thompson-Ahye, and then I would ask you to respond.

Mr. Al-Rawi: Pray I could remember all.

Madam Chairman: It is basically the same thing they are raising. Sen. Thompson-Ahye.

Sen. Thompson-Ahye: I would like to signal my abhorrence for this thought of reintroduction. This was an advance that was made in 1986, and there are many myths about rape, and it was based on the myth that women lie. That was the origin of it. So that is taking us back to that myth, and one has to be very careful. I have spoken with women who have been raped years, years ago who are still hurting and who have told nobody about it.

Very recently, I interviewed a young women and she told me about a rape that occurred and she has never reported it. So that she is now trying to help other people. So I would be very, very careful about introducing it, and I certainly would not agree to this reintroduction at this time.

Mr. Al-Rawi: Thank you. Madam Chair, the origin of this particular—well, first of all, it is not true to say that this was not raised. All of these amendments in this

particular clause 11 were specifically raised in the course of stakeholder consultation, and I went so far as to ask the DPP's Office and the other stakeholders to comment on the issue, and this was done repeatedly to multiple stakeholders and in the context of the committee. I appreciate Sen. Mark was not there, Sen. Haynes was not there for the entire time. I know that there are occasions where people missed committees, but it is in the report. So let us start off with that.

Secondly, the Evidence (Amdt.) Bill, 2010, lapsed when the Parliament was prorogued in its third year. I do not know that there were ambiguities in relation to it but, of course, I do not take what Sen. Chote has to say lightly either. I mean, it is a serious point to be taken. The origin of these proposals came from the DPP's Office. It did not come from any less a creature than the Director of Public Prosecutions, and it was to do some surgery to the injustice which was caused in 1986, and we took that on the back of the collapse of convictions in terms of prosecutions. So what was originally the thinking in 1986 has turned out to not be prosperous for Trinidad and Tobago.

The doctrine of recent complaint, and I know Sen. Hosein has not had the time to look at it, was not abolished in England, it was expanded. So I do not know that the Law Reform Commission in England was looking at whether it should be reintroduced. It never left. It was always the law and it was broadened specifically in the year 2003. All of that said, however and I must also say, doctrine of recent complaint has nothing to do with hearsay. It is not an exception to the hearsay rule nor does it have any tagging into *res gestae*. It is not that area of law. It is not driven to cause the evidence as to the truth of what was said on a hearsay basis. It is simply to treat with another issue. So it is an exception. It is not a hearsay rule exception. The point is, however, Sen. Hosein—

Sen. S. Hosein: It is an exception of the hearsay rule.

Mr. Al-Rawi: It is not.

Sen. S. Hosein: What we are creating is an exception.

Mr. Al-Rawi: It is not, and I have the dicta in front of me to demonstrate that. But that said, we are at a disadvantage, and I must accept that because, obviously, hon. Senators have not had the time or space to think about it and that is compelling. So I understand that and take no fault with Sen. Hosein's position, because it would be very unfair of me to ask an hon. Senator to on the fly pull up the law and to look at it. He did well enough to find it as it is. So I do not mean that pejoratively Sen. Hosein.

In the circumstances, I think that this is in need of certainly more ventilation. Whilst it is that the urgings came to the Office of the Attorney General that we really ought to fix this, I had to venture it in the time frame that I got. I only got it recently. The Government does not pass law for itself. This is law to be considered in the round. I take the cautions of hon. Senators. We still have the Evidence (Amdt.) Bill before us, perhaps, it can be treated within that. It is still before this honourable Senate. I thank hon. Senators for the caution that they are demonstrating. We do not intend to force any law on anyone.

In those circumstances, it would be imprudent, if not, downright foolish of me to seek to advance the proposals given to the Government on this ground and, Madam Chair, in those circumstances, I would withdraw the proposals for the reintroduction of recent complaint, give it some room for ventilation and come back, perhaps, in the Evidence (Amdt.) Bill which we have before us now, where we can have some more fulsome thought on it. The other recommendations, however, I wish to proceed with.

Sen. Vieira: I was wondering if you could just remind us as to what prompted the

DPP to make this recommendation to bring back this law.

Mr. Al-Rawi: The DPP's position was that the credibility of the witness was being attacked in terms of—well, first of all, the fact that the recent complaint was abolished specifically by section 31 in the 1986 Act, meant that any attempt to actually bring forward the concept of recent complaint was being rejected by the courts, were saying that, “Look, we are not going to allow you to treat with the issues of credibility of the witness which are under attack, even though recent complaint could have helped your witness appear to be more credible”. That was knocked out. So, in our jurisdiction, statute knocked out the common law clean, and that was the problem.

In other jurisdictions where the rules have applied, the common law was never killed by statute. So we are not comparing apples with apples. The simple point, however, very poignantly made by Sen. Chote, we need room to look at this and to get the four corners of it, and I thank the hon. Senator for the very commendable caution offered.

So, Madam Chair, if you would permit me to withdraw the proposal which is identified at “A” of clause 11. We can in subparagraph “A” remove the references to the “Evidence Act, Chap.7:02”. We wish to keep “B”, which will be renumbered as “A” and “C”, which could go as “B”, and as I had indicated at the beginning, I wanted to make a small correction in “C”. This is where we treat with the FCD, the Children Act, where we say:

“By deleting section 25 and substituting...”

It really should be “By repealing section 25 and substituting” and then when you get to “Luring a child” 25A, that really should be “25”. So we should delete the “A”. If you were to turn two pages over, “25B”, at page 6 is supposed to be “25A”—“A” as in apple, and at page 7, “25C” should be “25B”.

What happened, Madam Chair, is that we have amended these laws on so many occasions that the numbers are out of flux until we do the printed revised laws of Trinidad.

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

Sen. Chote SC: Yes, please. We are looking at the luring.

Mr. Al-Rawi: Yes.

Sen. Chote SC: Okay. I was wondering whether there was something that could possibly be considered for inclusion in this part of the legislation and, that is to say, there has been quite a big scandal in the United Kingdom about video games which are accessible to children under 10—five, six year olds—like Roblox and so on, where the characters carry out graphic sexual activity such as gang rapes and so on, and because the parents see it as children's games, they are not sensitive to the damage being caused to the child.

Now, I suspect that we might be able to bring that into this, not necessarily looking at the description of the section, but I am wondering if we could have this tweaked a little bit to include that kind of situation. Well, you are not really luring a child but, essentially, you are causing damage to a child.

Mr. Al-Rawi: The Children Act does have a section which specifically treats with exposing a child to certain things, which is to be treated with odium. Madam Chair, we have a Miscellaneous Provisions Bill which we are going to introduce into Parliament tomorrow, if you would give me the room to try and see if I could tidy that concept up, I can seek to put it in to that Bill by way of an amendment.

Madam Chair, if you would just permit me this short opportunity, I would like to express to hon. Senators, that when we come here, the Government, we are often fighting for parliamentary space, so sometimes we take the opportunity whilst we have a Bill that can permit us to cause amendments which would

otherwise require a full sitting of one parliamentary session for one thing, we sometimes try to bring them in. So it is not meant to be disrespectful at all to hon. Senators to have the space and time for consideration, but we do try to fit in because there are very, very, few weeks available for Parliament.

So, Sen. Chote, I hear you loud and clear, if you would allow me to have a look at that. The two drafters to my left, to your right, are experts in the children's arena and this is their literal baby, so we would look at that immediately for you.

Sen. Chote SC: Thank you, appreciated.

Sen. S. Hosein: Thank you very much, Madam Chair. I just want to put on record please, that I am looking at the case of *Earl Charles vs the State*, and that paragraph 28 of that judgment, Madam President—

Madam Chairman: But, Sen. Hosein—

Sen. S. Hosein: Yes, please.

Madam Chairman:—before your tell us about the decision, [*Crosstalk*] could you please tell me to which part of clause 11 you are repeating?

Sen. S. Hosein: Madam Chairman, it is just to correct the record earlier with respect to the fact that the Court of Appeal found that the doctrine of recent complaint is an exception to the hearsay rule that a witness is allowed to give that evidence. That is what I want to put on the record. And with respect to the other—

Mr. Al-Rawi: What is the date of that judgment?

Sen. S. Hosein: The date of the judgment, I can give you, is the 17th of January, 2003, Justice of Appeal Hamel-Smith, Justice of Appeal L. Jones and Justice of Appeal A. Lucky, CRA No. 26 of 2001.

Mr. Al-Rawi: And just for the record, Madam Chair, I can quote the judgment of de la Bastide in *Julien Dion vs the State*, I can quote *Sheldon Thomas vs Grenada*

Criminal Appeal, et cetera. We could go at this all night as to why we each have different points.

Madam Chairman: And may I say gentlemen that I do not want us to be going on like this all through the night. So if we can please revert to clause 11?

Sen. S. Hosein: Yes, please. With respect to the sexual communication with a child, I am seeing when I look at 25B at the end of (1)(b) it says:

“...by any means, including electronic means, and the communication is sexual...”

Now that there where you mentioned the communication is sexual, it is a bit vague in terms of what will constitute “sexual communication” whether it would be the sharing of nudity, profane language. It is a bit vague in terms of what you are trying to capture. I do not know if we could try to come up with some other suggestion or a definition of what that section really means.

Mr. Al-Rawi: Sure. Madam Chair, that concept is defined in the Children Act. So it is a defined term, and I do appreciate that you are now seeing this. Right? But it is also to be read in the context of—

“...for the purpose of—

(c) obtaining sexual gratification; or

(d) encouraging the child to make communication which is sexual, to the person or any other person,
the person commits an offence.”

Sen. S. Hosein: So, AG, what if we then put “and the communication is intended for the purpose of” and (c) and (d)?

Mr. Al-Rawi: But it says that.

Sen. S. Hosein: You see, when you read it like this, you are adding to elements to prove. You are adding the communication is sexual one, and it is intended for the

purpose. If you just put “the communication is intended for the purpose of” you just go straight to—

Mr. Al-Rawi: We specifically want (2). So the communication is sexual is almost the actus reus, and then the intention is that you want to get sexual gratification or encourage the child to do things. So we are splitting the actus reus from the mens rea.

Sen. S. Hosein: So the communication would be the actus reus in this here?

Sen. Dr. Dillon-Remy: Madam Chair, I am at a loss as to what they are talking about. Could they refer to the page, please?

Madam Chairman: Sen. Dillon-Remy, Sen. Hosein has raised an issue, page 6, of the Attorney General’s proposed amendments—

Sen. Dr. Dillon-Remy: Okay.

Madam Chairman:—at 25A. He is asking for clarification on what it means by a communication being sexual, and the Attorney General is responding.

Mr. Al-Rawi: Madam Chair, I can refer to subsection (2) of the definition section of the Children Act, which is to be found in section 3 of that Act, and we specifically defined what activity is sexual if:

- “(a) it is not done for medically recognised purposes; and
- (b) a reasonable person would consider that—
 - (i) the person’s purpose in relation to it, is, because of its nature, sexual; or
 - (ii) because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual.”

And this has actually been the subject of judicial consideration.

Sen. S. Hosein: What was is the definition you read out there?

Mr. Al-Rawi: I am reading the definition:

“For the purposes of this Act, penetration, touching or any other activity is sexual if—”

Sen. S. Hosein: Okay.

Mr. Al-Rawi: So we are in the Children Act in the definition section and the CPC’s department is actually reminding me that we have had case law on it now which defines this purpose. But it is an important observation that you have made.

Sen. S. Hosein: I am satisfied if it is defined in the Children Act. I am satisfied then.

Mr. Al-Rawi: Thank you.

Madam Chairman: So, hon. Senators, the question is that clause 11 be amended as circulated by the Attorney General and further amended as follows. At page 3, by deleting from the words “the Evidence Act”, deleting “15AA 15BB” and turning over on the other page as well, which is all part of 15AB(a). Attorney General?

Mr. Al-Rawi: Yes, Madam Chair, that is correct.

Madam Chairman: Then at page 4 at “C” next to “The Children Act, Chap 46:01” by substituting the word “repealing” for the word “deleting”. So you are taking off “deleting” and you are putting back the word “repealing”.

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: Then at page 6—

Mr. Al-Rawi: Still at 4, change “25A” to “25”.

Madam Chairman: Okay, sorry. Still at page 4, “Luring a child”, it is “25”, you are taking off the “A”. Then at page 6, at the top, “Sexual communication with a child”, instead of “25B” it is to read “25A”.

Mr. Al-Rawi: Yes.

Madam Chairman: Then at page 7, “Sexual grooming of a child”, instead of “25C”, it is to read “25B”.

Mr. Al-Rawi: Yes.

Question put and agreed to.

Clause 11, as amended, again ordered to stand part of the Bill.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Sen. The Hon. C. Rambharat: Madam President, I wish to report that the clauses of a Bill entitled “An Act to amend the Sexual Offences Act, Chap. 11:28” which were considered upon re-committal to the committee of a whole were approved with further amendments. I now beg to move that the Bill, as approved, be read a third time and passed.

Question put: That the Bill be now read a third time.

Madam President: This Bill requires a special majority and the Clerk will therefore conduct a division.

The Senate voted: Ayes 29

AYES

Khan, Hon. F.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Lester, Dr. H.

Singh, A.

De Freitas, N.

Cummings, F. Dookie, D.

Simonette, G.

Inniss, W.

Mark, W.

Haynes, Ms. A.

Ameen, Ms. A.

Hosein, S.

Sobers, S.

Shaikh, Ms. H.

Richards, P.

Chote SC, Ms. S.

Vieira, A.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday the 11th of June, 2019, at 10.00

Adjournment
Sen. The Hon. F. Khan (cont'd)

2019.06.06

a.m. During that sitting, we will debate a Bill to amend the Bail Act, Chap. 4:60. We plan to carry the Bill through all its stages.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised. Sen. Mark. [*Desk thumping*]

**Teenage Pregnancy
(Measures to Address)**

Sen. Wade Mark: Thank you very much. Madam President, the matter of teenage pregnancy came shockingly to the fore at a recently held meeting of a JSC, and it just happened to coincide with my submission to your goodself, and the subsequent, I should say, approval of this important Motion—matter on the Motion for the adjournment that is. Madam President, it is very alarming statistics that was revealed to Trinidad and Tobago on this very, very serious situation affecting our young women, in particular, and dare say children, Madam President.

What is clear is that Trinidad and Tobago, at this time, does not have a national strategy or a well-coordinated policy to deal urgently with the requirement of this growing problem of teenage pregnancy in our country. There is clearly a lack of coordination from the evidence proffered at this particular JSC meeting among the 28 agencies in this country that deal with the issue of child protection in Trinidad and Tobago, Madam President.

10.35 p.m.

Madam President, when we learnt, when we discovered the kind of unplanned, clearly unplanned teenage pregnancies, particularly among school children at the primary school level, at the secondary school level; it is worrying, it is troubling, it is concerning. We learnt, Madam President, that there are some 600 cases of teenage pregnancy being investigated, being reported by the Trinidad and Tobago Police Service, Child Protection Unit, and this occurred in the last five

years. No one has been arrested, Madam President, because many of these children fall within the age range of 13 to maybe about 15/16 years, 17 years. And, Madam President, you would know that under the Children's Authority Act, that is equivalent to statutory rape in this country, but here it is we are informed that between 2014 and 2018 there were some 3,777 pregnancies in our country involving teenagers, and that is just what has been reported at state institutions. We do not know because the data that we need is very weak and very poor at this time.

Madam President, what is even more disconcerting is that we are advised and informed that there is an absence of identification of the fathers of these children, of these teenagers. We have hundreds of adults, male, who impregnate our teenagers, and more so our teens at the school level, school-age level, schoolgirls. And as a society we seem not to be taking cognizance of this development and taking the kind of interventionist measures to bring about some degree of control, some degree of direction, some fashioning and shaping of policy and plans and strategies in order to curb, in order to control this situation affecting our young children in this nation of ours. So, Madam President, what is causing this situation in our nation among young teenagers? What is responsible?

Madam President, what we are seeing today is a situation in which we can attribute maybe poverty. Maybe there is a factor of poverty that is associated with this alarming rise in teenage pregnancy. Maybe it has to do with some degree of social exclusion in our nation. Maybe it has to do with poor and inadequate parenting in the society. Maybe it has to do with dysfunctional homes. Maybe it has to do with also underperformance at schools. Madam President, low self-esteem may be a factor that is involved in this. These are what we can describe as risk factors associated with this particular development, but there is need for

action. We need to do something about this scourge, this situation that young people are faced with. Madam President, when these children become pregnant some of them have to leave the school environment.

Some are fortunate to return, having delivered their babies, back into the school system, but, Madam President, is that the way forward for our young people, especially our girls? And the reason I have raised this matter, Madam President, is because there seems to be an absence of an overall policy and an overall national strategy to deal with this serious matter that affects our young children in Trinidad and Tobago. Madam President, I would like to get from the Government today, this evening, tonight, what is the Government of Trinidad and Tobago doing to deal with this particular exponential growth in teenage pregnancies in our nation today? Because it continues to grow, Madam President, and therefore the time has come for the Government of the Republic of Trinidad and Tobago, through the respective agencies that are responsible for dealing with child protection measures—

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

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

Madam President: Attorney General.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. [*Desk thumping*] Madam President, I was not actually aware that this Motion was on the adjournment but I have welcomed it because I am immediately able to respond to it. Madam President, the fact of this scourge has been well documented most recently by the very good advocacy of our colleague, Sen. Paul Richards, and, unless we forget, back in 2015 when the Government came forward in its analysis to cause the abolition of child marriage, one of the points of analysis that we took was to demonstrate the number of teenage pregnancies, child pregnancies

in our jurisdiction, and we in fact demonstrated, by way of data capture, the tens of thousands of live births to children. And we went further, we disaggregated the information against geography, against the age gap between the mother and the father, and, importantly, we then took the subset of identifying where the father was known or unknown.

The live birth data information tells us that we actually know who the fathers are for the vast majority of live births. We took a 10-year period of analysis and we showed that in our country, in making the case that child marriage ought to be abolished, we showed a circumstance of a 12-year-old being married to a 55-year-old. We showed birth certificates with mothers registered at 10, 11, 12, 13 and 14 years of age with named fathers. So back in 2015, coming to the Parliament as we did with data, doing a national roadshow with data, we set about fashioning a Government plan, and far from the advocacy that Sen. Mark brings today, which is to say that there is no plan, that is not the case and it is to be judged by the following:

1. Without shame, data capture and exposure.
2. By way of taking the various articulating arms that have to work with this issue into operation.

Fact:

- We established a Child Protection Unit of the Trinidad and Tobago Police Service. Why? With that kind of data that shows you a child having a child for a grown man who is named, the first thing you needed to do was to have an investigation on the back of the circumstances. You could not have an investigation unless you established the police unit, which was the Child Protection Unit, now

comprised of some 200 police officers.

- Second interacting arm, we established in the Solicitor General's Department, the child advocates. We brought to life Act No. 12 of 2012 which is the Children Act, which created the legal capacity of the child advocates in the Solicitor General's Department. That has been built out and we sit in operation.
- Coordinating arm number three of the national policy, we birthed the Family and Children Division, we created the Children Courts. We merged the jurisdictions of the High Court and the Magistracy and we implemented the utilization of the United Nations standards for anonymizing of certain types of information.
- Fact number four, we then, in the Ministry of Social Development and Family Services, birthed the expansion of the probation officers division, and we did that legislatively in the amendments in the fifth Schedule to the Family and Children Division Act and then factually, by the Cabinet of the Republic of Trinidad and Tobago establishing the positions in law and then going on the recruiting of them.

Madam President, we went further. The Office of the Prime Minister, under the Minister with responsibility for Gender Affairs, the hon. Ayanna Webster-Roy has been a champion of engaging this issue from a number of perspectives in the Office of the Prime Minister. Firstly, amongst the non-profit organizations, the network of NGOs; secondly, by the reformulation of the St. Jude's/St. Michael's facilities; thirdly, by operationalizing through licensing, the child rehabilitation centres and children's homes. That Minister then saw the interaction of the broadened scope of the Children's Authority, and the Children's Authority is

definitely underfunded. For the kind of capacity that it needs to have, it is underfunded. This Government put its money where its mouth is and doubled the contribution to the Children's Authority, amplified the number of bodies that work in that, and can you see that from the statistical output demonstrated in the annual reports of the Children's Authority. We then took a very sincere approach in the Ministry of Social Development and Family Services, and in that Ministry, chaired by hon. Minister Cherrie-Ann Crichlow-Cockburn, that hon. Minister has been pushing the developments from a social sector side.

That is not to be leaving out the hon. Minister of Education and the Minister in the Ministry of Education, the hon. Anthony Garcia and Dr. Lovell Francis, when we look to the work that we are doing in the reformulation of the school curriculum, including the introduction of sexual education, we are now talking about how we treat with the minds of children. Because Sen. Mark is correct, he is right, there has been a disenfranchisement for a number of issues, poor education, poor social circumstances. But the data demonstrates, in our society, that this phenomenon of teenage pregnancies is not rooted to rural Trinidad and Tobago or poor rural, impoverished rural Trinidad and Tobago. It is an urban phenomenon as well. That is also rooted in the local government campaign, and as the local government legislation, now laid in the House of Representatives, demonstrates, you will see the limbs for social service management in the local government structures. It is in that local government structure that you get the social workers closest to the equation to report upon this issue.

Madam President, it would definitely be a dereliction of duty to not connect those dots. Those are underwritten by the policies in the Office of the Prime Minister, and what I have just demonstrated to the Members of the Senate is that these things can be measured by results, by bodies in place, by policies in place, by

actually having the policing power, the educating power, and the social services reach and delivery all coordinated in this. This is what you call evidence of a national plan. A national plan does not happen on a platform, it must be measured by deliverables. That is why this Government is very pleased to demonstrate its product as opposed to wish for it and talk about it, as our opponents opposite engage. I thank you, Madam President. [*Desk thumping*]

Tobago House of Assembly
(Perceived Misuse of Funds)

Sen. Wade Mark: Thank you very much, Madam President. Madam President, the second topic is a very, very important one—or Motion. The second matter, I should say. It is the need for the Tobago House of Assembly to account to the public for the unspent balances in the accounts of the special purpose companies under its purview, as well as the perceived misuse of the Contingencies Fund by the Tobago House of Assembly. Madam President, I have in my possession the Tobago House of Assembly Financial Rules of 1990, and under 34(1), it reads and I quote:

“Subject to subrule (2), where the expenditure of the Assembly for any financial year is less than the amount shown in the final estimates, the Chairman may, with the approval of the Finance and General Purposes Committee, by warrant signed by him, authorize the transfer of all or any of the surplus to the Contingencies Account.”

34(3) goes on, and I quote:

“Subject to rule 35, monies shall not be withdrawn from the Contingencies Account other than for the purpose of meeting urgent or unforeseen expenditure and in accordance with a warrant signed by the Chairman issued with the approval of the Finance and General Purposes Committee, provided

that, where the exigencies of the situation so demand, the approval of the Finance and General Purposes Committee may be obtained subsequent to the expenditure.”

Madam President, the Tobago House of Assembly financial statements laid in the House of Assembly showed that during the period 2003—2012, over \$1.2 billion were spent from the Contingencies Account and the yearly amounts were not retired against a supplementary Vote in accordance with the Financial Regulations of 1965—made by the Minister of Finance under section 50(1) of the Exchequer and Audit Ordinance, 1959—Part II, regulation 23, and it states:

“When advances are made from the Contingencies Fund, it is the responsibility of the accounting officer to seek a supplementary vote; and when such vote is approved by Parliament and the warrant issued by the Treasury, the accounting officer shall retire the advance against the supplementary vote.”

Madam President, to date, expenditures incurred under the THA’s Contingencies Account have never been retired, thereby consistently breaching the laws of the Republic of Trinidad and Tobago as enshrined in the Constitution. The question that must be asked, what were the contingencies occurring in Tobago to warrant the expenditure of over \$2 billion during the period 2003—2015? Madam President, this question is being asked against the background of the THA Act No. 40 of 1996, Part IV, section 48 states.

“Notwithstanding section 42 of the Exchequer and Audit Act, monies appropriated by Parliament...for the service of a financial year which remain unexpended at the end of that financial year shall be retained in the Fund and utilized for the purposes of capital investment.”

Additionally, to the Tobago House of Assembly Financial Rules, 1990, Part

VI, rule 34, I outlined to you a short while ago how contingencies can be employed, but there appears to be a certain degree of lawlessness taking place in Tobago. Madam President, let me bring to your attention, Notes to the THA Financial Statement for the accounting year ended September 30, 2015. This shows, Madam President, a total in excess of \$138 million in contingencies expenditure undertaken by the Tobago House of Assembly. Madam President, let me give you a breakdown of this \$138 million that they used in Tobago, THA, and they took it under contingencies: public administration, \$6.6 million out of the Contingencies Fund; tourism and transportation, \$32 million; infrastructure and public utilities, \$19 million; agriculture, marine affairs, marketing and the environment, \$22 million; health and social services, \$1.3 million; URP, \$41.1 million; CEPEP, \$16.2 million; total, \$138 million.

Madam President, it would be interesting for the Tobago House of Assembly to tell Trinidad and Tobago what contingencies programmes were undertaken by the URP during the period 2012—2015 when they would have received a total allocation from the central government of \$79 million and an additional contingencies amount of \$176 million from the THA, thereby giving you a total of close to \$255 million. Madam President, I have raised this matter as phase one of dealing with a lot of lawlessness taking place in the Tobago House of Assembly. Madam President, they have in Tobago a lot of what is called special purposes entities, and there is no accountability. There is something called, Eco-Industrial Development Company of Tobago Limited, the Tobago House of Assembly Venture Capital Equity Fund Company Limited, Tobago Cassava Products Limited, Fish Processing Company of Tobago Limited, Milford Road Esplanade Limited, Tobago Information Technology Limited, Tobago Cold Storage and Warehouse Facility, Tobago Hospitality and Tourism Institute, Pigeon Point

Heritage Park, Tobago Development Company, Studley Park Enterprise Limited, Tobago Festivals Commission. Madam President, all of these bodies, they have moneys and there is no accountability of their assets, their liabilities and performance to date. I have raised this particular matter on the Motion for the adjournment to get from the Government what is taking place in Tobago. Madam President, you are aware that the Auditor General of this country—

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

Sen. W. Mark: Thank you very much, Madam President. [*Desk thumping*]

Madam President: Minister in the Ministry of Finance. [*Desk thumping*]

The Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, the Motion brought by the hon. Senator, in my view, is a very curious one. As the Senator is aware, under the Tobago House of Assembly Act, the Tobago House of Assembly is a semi-autonomous body responsible for the formulation and implementation of policy in respect of various aspects of the operations in Tobago as listed in the Fifth Schedule of that Act. The first function listed in the Fifth Schedule for which the Tobago House of Assembly is responsible is finance; what income is allocated to the Tobago House of Assembly and how it expends that income. So it seems to me that the person who should first be asked to explain what is happening with the financial affairs in Tobago is the Tobago House of Assembly, and there are mechanisms outside of this honourable place for doing that. We have first the Tobago House of Assembly itself, which is not only represented by members of the administration but also has one of Sen. Mark's cohorts as the minority leader, and the issue could properly be raised at the Tobago House of Assembly.

In addition to that, Sen. Mark is always at pains to bring to the attention of this honourable place, and to the public at large, the purpose for which

parliamentary committees are set up. Parliamentary committees have been set up, and I believe Sen. Mark sits on one of them that is pertinent to this very issue where reports that are brought before the Parliament can be challenged and questioned, and the relevant individuals brought before that place to deal with the issues raised. The Tobago House of Assembly legislation requires the Tobago House of Assembly to file annually an annual report and a financial report on the affairs of the Tobago House of Assembly and are accounted for its stewardship and its expenditure of moneys on an annual basis.

The Tobago House of Assembly has been diligent in meeting the obligations to file those reports. Those reports are filed in the Parliament and it is open to the select committee to bring the House of Assembly members before it to raise all the questions that Sen. Mark is indicating is such a big secret. So mechanisms have been set up for accountability, so if Sen. Mark and his committee choose not to fulfil their obligations to call these people before them, why is that a matter for the Senate? So I would recommend to the hon. Senator that he uses the mechanisms that have clearly been set up in the legislation to deal with these issues. [*Desk thumping*] Madam President, it also concerns me that Sen. Mark wants the honourable Senate to recognize the need for the Tobago House of Assembly to account to the public for the perceived misuse of contingency funds. Where has this perception arisen? Who has perceived that there is misuse? What is the basis for that? So you are flinging out accusations about perceptions, no basis identified, but asking that the Senate recognize that the Tobago House of Assembly be made to account to the public. [*Crosstalk*]

Madam President, I think that matters brought before the Senate and brought before the Parliament in general, should be based on more than a mere perception. There should be some basis for the accusations that are flung out in these places.

So, Madam President, as I indicated, the Tobago House of Assembly legislation is clear, the rules of Parliament in the Standing Orders are clear, there are mechanisms for the Tobago House of Assembly to be called to account in respect of its expenditure and its lack of expenditure. I recommend that Sen. Mark uses the mechanism of the parliamentary committees that he is always so adamant are essential to the operation of the Parliament, and pursue this matter through that forum. I thank you, Madam President. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.05 p.m.