

SENATE

Tuesday, February 11, 2020

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]



LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. Hazel Thompson-Ahye who is out of the country.

SENATOR'S APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes
President.

TO: MS. ZOLA L. PHILLIPS

WHEREAS Senator Hazel Thompson-Ahye is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ZOLA L. PHILLIPS, to be a member of the Senate temporarily

with effect from 11th February, 2020 and continuing during the absence from Trinidad and Tobago of Senator Hazel Thompson-Ahye.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 10th day of February, 2020.’’

OATH OF ALLEGIANCE

Sen. Zola Phillips took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Annual Audited Financial Statements of the National Information and Communication Technology Company Limited, (iGovTT), for the financial year ended September 30, 2019. [*The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
2. Annual Audited Financial Statements of Taurus Services Limited for the financial year ended September 30, 2017. [*Sen. The Hon. A. West*]
3. Annual Audited Financial Statements of Taurus Services Limited for the financial year ended September 30, 2018. [*Sen. The Hon. A. West*]
4. Annual Administrative Report of the InvestTT Limited for the year ended September 30, 2015. [*The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon)*]
5. Annual Administrative Report of the InvestTT Limited for the year ended September 30, 2016. [*Sen. The Hon. P. Gopee-Scoon*]
6. Annual Administrative Report of the InvestTT Limited for the year ended September 30, 2017. [*Sen. The Hon. P. Gopee-Scoon*]

7. Annual Performance Report of the Trinidad and Tobago Bureau of Standards for the period 2013-2014. [*Sen. The Hon. P. Gopee-Scoon*]
8. Annual Performance Report of the Trinidad and Tobago Bureau of Standards for the period 2014-2015. [*Sen. The Hon. P. Gopee-Scoon*]
9. Annual Performance Report of the Trinidad and Tobago Bureau of Standards for the period 2015-2016. [*Sen. The Hon. P. Gopee-Scoon*]
10. Ministerial Response of the Ministry of Works and Transport to the Nineteenth Report of the Public Administration and Appropriations Committee on the Examination of the expenditure and internal controls of the Ministry of Works and Transport. [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]
11. Strategic Services Agency (Personnel) Regulations, 2020. [*Sen. The Hon. F. Khan*]
12. Strategic Services Agency Regulations, 2020. [*Sen. The Hon. F. Khan*]

URGENT QUESTIONS

Violence in Barataria/San Juan School

(Measures to Address)

Sen. Wade Mark: Madam President, to the hon. Minister of Education: Given the pleas for help from teachers of a school in Barataria/San Juan which is described as being “a war zone”, can the Minister indicate what is being done to address this situation?

Madam President: The Minister of Education. [*Desk thumping*]

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. Madam President, I am appalled and dismayed by this question. The question asked about a school in the Barataria/San Juan area, that is a very large area. I do not know which school is being referred to. There are a number of schools, early childhood centres, there are a number of primary schools, and there

are a number of secondary schools. Sen. Mark needs to be more specific. If he identifies a particular school, I would be more than happy to answer his question. Thank you very much. [*Desk thumping*]

Madam President: Sen. Mark.

Sen. Mark: Madam President, the hon. Minister is aware of the school and for purposes of not trying to stigmatize the particular school, we would like the hon. Minister to indicate whether he is aware of any school that is involved in activities that is causing grave harm and bringing great discomfort to teachers as well as students, Madam President. Can the hon. Minister indicate, Madam President—

Madam President: Sen. Mark, you are simply repeating the original question asked. Do you have another question on this?

Sen. Mark: Madam President, can the Minister deny or confirm reports in the press concerning a school within that zone that is involved, that is the students of that school, is involved in activities that is, in fact, causing and generating some degree of discomfort to teachers as well as students? Is the Minister aware of that, Madam President?

Madam President: Minister.

Hon. A. Garcia: Thank you very much, Madam President. As I said before, this indefinite article that he is referring to, I do not know “a” and “a” and “an”. Tell me what school it is and I will answer. Are you afraid to name the school? Once you name the school, I would very happy to answer you, Sen. Mark. Thank you.

Madam President: Sen. Mark, next question.

Repairing of Road (Indian Walk, Moruga)

Sen. Wade Mark: In light of protests by residents of Indian Walk, Moruga concerning road conditions in their community, can the Minister advise as to what

action is being taken to resolve same?

Madam President: Minister of Works and Transport. [*Desk thumping*]

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Madam President, I will be very specific with this answer. Madam President, the Moruga Road rehabilitation project comprises 42 landslips, four bridges and the rehabilitation of the existing roadway. Contracts were awarded for 29 landslips, 14 are completed, 15 are ongoing and the remaining 13 are to commence shortly. There are also three bridges completed and one is ongoing.

To date, the PURE Unit has completed eight kilometres of the 28 kilometres to be rehabilitated, that is the roadway. The remaining 20 kilometres would be executed in line with the completion of the remaining landslips.

It is noteworthy that the protest action which took place yesterday was actually on one of the active landslip sites. As a result of this, the contractor was unable to continue work due to the hostility of the protestors. However, currently work has recommenced under police supervision. Thank you.

Madam President: Sen. Mark.

Sen. Mark: Could the hon. Minister indicate whether criminal elements were largely responsible for bringing a halt to the works that began causing protest action to be taken by residents of the particular community? Can the Minister clarify for this honourable House?

Madam President: Minister.

Sen. The Hon. R. Sinanan: Madam President, we have had instances where contractors would have been approached by different groups in different areas. Moruga is one of those areas where we do have this challenge. However, on this specific project I cannot confirm that that is the issue.

Madam President: Sen. Mark.

Sen. Mark: Can the Minister confirm—or putting it another way, Madam President, is the Minister aware that the Member of Parliament for that particular area, Moruga/Tableland, representative Lovell, on his Facebook, indicated that criminal elements were responsible for that situation resulting in a halt of works taking place on that project? Is the Minister aware of that?

Madam President: Sen. Mark, I will not allow that question. Next question, Sen. Haynes.

Abuse of an Eight-Year-Old Girl in Kelly Village

(Investigation into incident)

Sen. Anita Haynes: To the Minister of National Security. In light of previous reports to the police about the abuse being suffered by an eight-year-old girl from Kelly Village, has an investigation been launched into the police's failure to report same to the Children's Authority?

Madam President: Minister of National Security. [*Desk thumping*]

The Minister of National Security (Hon. Stuart Young): Thank you very much, Madam President. Madam President, information provided to me directly from the Commissioner of Police is as follows: Reports made—the police have checked, including checks with the Child Protection Unit of the Trinidad and Tobago Police Service, and they showed that no reports were made against Maynard either at the Morvant or the Chaguanas Police Stations. There were two reports made against Maynard on September 10, 2011 where he was arrested and charged with assaulting Maysonia Thomas and his eight-month-old daughter, that matter remained pending for years.

There was second report made on 6th of April, 2019 about threats and child neglect. This report was made by Celestine Oliver, the sister of Mr. Maynard, and it was investigated by the police, as well as the Child Protection Unit who spoke to

family members.

At the time, the two children in question were not living with Mr. Maynard, but were living with their grandmother at Kelly Village in Caroni. The children denied, when interviewed, that they were beaten, and there were no marks of violence borne upon the bodies.

Checks with the Criminal Investigation Division of the Trinidad and Tobago Police Service also revealed that no reports were made. So therefore, the basis upon which this question was asked seems to be a false premise.

In any event, on behalf of the Government of Trinidad and Tobago, I would like to extend our sincerest condolences and sympathy to the family members of this young girl who met such a tragic end. The Commissioner of Police as well as the Trinidad and Tobago Police Service also extend their sympathy and say that there were not specific reports and they have listed, the two that were previous made.

Madam President: Sen. Haynes.

Sen. Haynes: Thank you. Madam President, would any measures be put in place at the level of the executive to mitigate against something like this happening?

Madam President: I am sorry. I did not hear.

Sen. Haynes: Would any measures be put in place at the level of the Executive to mitigate against such an occurrence happening?

Madam President: Minister.

Hon. S. Young: The Attorney General has surmised my first question. It is the executive of the Trinidad and Tobago Police Service? What executive are you referring to, if I may ask?

Sen. Haynes: The Government?

Hon. S. Young: Of the Government?

Sen. Haynes: Yes.

Hon. S. Young: So, Madam President, the Government already has measures in place. There are a number of bodies that are responsible for actions such as this including the Children's Authority. At the Ministry of National Security, we also have a Child Protection Unit working along with the Trinidad and Tobago Police Service, the Children's Authority, so there are, in fact, already bodies charged with the responsibility to look after instances such as this.

Madam President: Sen. Haynes. Thank you for your response. And given that the situation has occurred, would there be any measures put in place to bolster those organizations that you have just spoken about?

Madam President: Minister.

Hon. S. Young: Thank you very much. Madam President, it gives me the opportunity to plead with persons in our society who are aware that there may be instances of abuse against our women, our children taking place, to please report it. There are a number of confidential hotlines that they can call, please call into those hotlines, and the police service and the bodies charged with the responsibility including the Children's Authority and the Child Protection Unit will do their utmost best to assist in those types of situations.

ORAL ANSWERS TO QUESTIONS

Madam President: Leader of Government Business.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, as per usual, the Government will be answering all questions on the Order Paper on notice.

Former Deputy Commissioner of Police

(Reasons for Sudden Resignation)

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

Can the Minister provide the reason(s) for the sudden resignation of former Deputy Commissioner of Police Mr. Harold Phillip?

Madam President: The Minister of National Security.

The Minister of National Security (Hon. Stuart Young): Thank you very much, Madam President. Madam President, this was a very strange question and not one grounded in fact, because according to the information provided by the Commissioner of Police, there has been no sudden resignation by Mr. Harold Phillip. In fact, Mr. Phillip was employed and functioned as one of our Acting Deputy Commissioners of Police up to yesterday. So yesterday, on the 10th of February, he went on pre-retirement leave as he approaches his 60th birthday. So, at no point in time, did Mr. Phillip resign and he has continued in his work up to yesterday when he went on pre-retirement leave.

Madam President: Sen. Mark.

Sen. Mark: Is the Minister aware that some time last year, Mr. Harold Phillip did, in fact, threaten to resign owing to internal differences within the police service? Is the Minister aware of this?

Madam President: That question does not arise. Next question. Sen. Mark.

Sen. Mark: Madam President, can the Minister indicate whether he is aware, at any material point in time during 2019, information reached his desk that Mr. Harold Phillip had threatened to tender his resignation and proceeded to do same? Is the Minister aware of that?

Madam President: No. That question does not arise. You want to ask a next question? Okay.

1.50 p.m.

**Shell's North Coast Block Licence
(Details of Impending Expiration)**

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

Having regard to the impending 2020/2021 expiration of the North Coast Block licence owned by Shell, can the hon. Minister state the following:

- (i) what is the expected rate of return on these assets;
- (ii) for what period, if any, did the Government renew the licence; and
- (iii) what value did the Government place on these assets in its negotiations with Shell?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, NCMA 1, which is the block referred to by Sen. Mark, is operated by Shell Trinidad Limited under a production sharing contract, a PSC. There is no set rate of return from PSCs. The Minister receives a share of production or the value thereof based on the commercial terms agreed with the contractor. In the negotiations for the extension the Government achieved improved commercial terms.

With regard to (ii), the NCMA 1 PSC was extended to 2035; it would have expired in the year 2022. And in response to (iii), an assurance of continued gas production during the extended term and access to the production facilities, these goals were achieved.

Sen. Mark: The Minister indicated, Madam President, that there were improved commercial terms being achieved as a result of this extension of the licence to 2035. Can the Minister, Madam President, share with this honourable Senate what were these improved commercial terms?

Sen. The Hon. F. Khan: The hon. Senator keeps asking the same question every week. Last week you asked about Shell's improved commercial terms, I outlined it in some great detail. I indicated to you, the most significant aspect of the increased commercial terms were to new gas price. That was based on a basket of markets,

and is no longer pegged to the low Henry Hub price. It included one-third Bent, one-third European market, and one-third the Chinese-Japanese-Korean market. And that single act increased the value of our production, the Government's share with the production sharing contract most significantly, because as we have articulated over the last two years, the greatest leakage of revenue from this country was in the sale of LNG.

Sen. Mark: Madam President, can the Government indicate, through the Minister, or can the Minister indicate rather, whether the Government sought to get more value in the renewed licence, having regard to the fact it was due to be expired in 2020 and all assets returned to the people of the T&T and not given back to Shell on a free plate or platter? Can you tell us?

Sen. The Hon. F. Khan: Madam President, oil assets are of no value unless you can produce oil, and to produce oil you need capital. So while theoretically when the lease expires it comes back to the State—but it is these very companies that had invested all the capital to create the infrastructure. So it makes more sense to extend the life of the contract and in exploration and production scenarios the gestation period for some of these projects are five to 10 years, so no company will sit with a licence expiring in 2022 and invest in 2020. They need at least a 10-year cycle. So that is the basis of the negotiations, and in that context this is standard procedure in the energy sector, and as I said and let me reiterate again, our biggest value comes from the renewed gas pricing structure. Because at the end of the day you only make revenue from one source, the sale of gas. You “eh” selling nothing else. “Yuh eh” selling tamarind ball or anything there you know, you are selling gas. Okay? And the new price structure for gas is what has brought and will bring significant value to Trinidad and Tobago.

Sen. Mark: Since Shell would have recovered its total investment after 20 years

or just under, can the Minister indicate to this House whether the Government had done a valuation of the assets of Shell in what is called the NCMA Block before extending its licence to 2035, Madam President?

Sen. The Hon. F. Khan: Yes we did an evaluation. The value of an asset is two-fold, the quantum of remaining reserves that is on the ground, and the value of the infrastructure. The infrastructure has no value unless you can use it to transport gas. So in other words, the fundamental value of any licence is the reserves of gas in the ground, and it is in that context we extended the contract, because under a production sharing contract there are two components—I do not want to over talk on this matter—cost recovery gas and profit gas. So when the contractor is in the cost recovery phase the quantum to the Government is less, but when they have cleared out their cost recovery and are in the profit phase, the Government shares sometimes in excess of 50 per cent of that gas stream.

Sen. Mark: Madam President, could the hon. Minister indicate to us, what was the estimated value of the gas in the ground and the estimated value of the infrastructure that he just outlined in dollars and cents? Can we get that information?

Sen. The Hon. F. Khan: Let me take a deep breath. [*Laughter*] The estimate of gas in the ground, nobody buys gas in the ground, you know. You have to produce the gas, and the sale of the gas has to do two things: cover the capital cost to produce the gas, and then the profits based on the production sharing contract is shared between the Government of Trinidad and Tobago and the operator, which is Shell. And the percentages of the split is really the basis of the negotiations of a production sharing contract.

Madam President: Next question. No Sen. Mark those are your four questions.

Sen. Mark: You run from the second part you know.

Madam President: Next question Sen. Mark.

Sen. Mark: You are a sell out, you know.

Sen. The Hon. F. Khan: Bring in a temporary Senator to ask questions.

Sen. Mark: Sell out. Sell out, but anyway we will deal with you on the platform.

Madam President, may I address you?

Madam President: Question No. 36.

Debt Owed to T&TEC and WASA

(Measures to Address)

36. Sen. Wade Mark asked the Minister of Public Utilities:

In light of reports that Government Departments/Ministries and industrial customers are owing hundreds of millions of dollars to both T&TEC and WASA for public utility services, can the hon. Minister indicate the following:

- (i) what measures are being taken to have the debts paid to the respective companies; and
- (ii) within what timeframe?

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Madam President, in the management of its receivables, both WASA and T&TEC have adopted a multipronged strategy which includes the following:

1. Appointment of a special team within the commercial departments dedicated to the recovery of the debt from government agencies and industrial customers.
2. Establishment of payment arrangement plans with very large debtors basically.
3. In the case of WASA a moratorium was given by the company to customers with outstanding bills to come in and regularize their

positions.

Additionally, the Ministry of Public Utilities has been working in close collaboration with the Ministry of Finance to ensure adequate funding is made available in fiscal 2020 for the respective Ministries and state agencies to meet their obligations to T&TEC and WASA within the budget so that undue pressure is not placed on these two public utilities in terms of their cash flow. In addition, the Ministry of Finance is supplementing WASA's annual subvention where necessary. By way of an example, the Minister of Finance is in the process of finalizing a US \$100 million loan to allow WASA to clear all its arrears payments owed to Desalcott for desalinated water, and to allow WASA to have access to funding for future payments to Desalcott.

Madam President: Sen. Mark.

Sen. Mark: Madam President, could the Minister indicate the biggest debtors to both WASA and T&TEC?

Sen. The Hon. R. Le Hunte: Well, that would depend on—[*Laughs*] I mean, if you could be a “lil bit” more specific, when you say the biggest debtors as it relates to private sector companies. In the case of T&TEC, yes, the biggest debtor from a private sector perspective is Desalcott, and I would like to get an understanding as to other—in the case of the other, are you looking at private sector or public sector?

Sen. Mark: Both. Both, hon. Minister.

Sen. The Hon. R. Le Hunte: Well, you know, Madam President—

Madam President: Sen. Mark I would not allow that question based on the question posed—the original question posed. Next question Sen. Mark.

Sen. Mark: A next question, or this same one?

Madam President: Yes.

Sen. Mark: Can the Minister indicate whether the Government of Trinidad and Tobago owes WASA—well let me put it another way, Madam President, through you. Is the Minister, or can the Minister share with this honourable Parliament whether the Government of Trinidad and Tobago owes T&TEC, as an example, over \$1 billion, with your Ministry owing close to \$100 million? Can you clarify that for us?

Madam President: Minister.

Sen. The Hon. R. Le Hunte: Madam President, one, well he started with WASA/T&TEC, to be sure I could assure you that it is not \$1 billion that is owed, based on the information that is before me, but I will have to then check and see, so I would not be able to say exactly. But, yes, the government agencies as I have mentioned, and it is normal business practice, I want to say. It is normal business practice in the case of T&TEC that customers, any accounts that you will have receivables. What I could tell you is that T&TEC as a company has sales and revenue of over \$3 billion, and their receivables are still—total receivables, that includes private sector, Government, is still less than 90 days sales. The threshold that is considered to in management that you want to make sure is that 90 days sales, anything between zero and 90, is considered to be current. So, based on T&TEC's total sales of over \$3.2 billion, their receivables at less than 90 days sales is within management standards and good practice for a utility company.

Sen. Mark: Madam President, through you, can I ask the hon. Minister how successful thus far has been the committee that has been appointed, as you have identified, in collecting outstanding debts owed to both WASA and T&TEC by both the private and public sector? Can you tell us how successful this committee has been, Madam President, through you?

Sen. The Hon. R. Le Hunte: One thing I can say, the performance of the

committee and the performance of these two entities are a lot better than they were under the previous regime. That being said, in the case of, again, the performance of the company as it relates to WASA's debt—you see you have to understand the two debts. They are different. In the case of WASA's debt, for example, a big part of what is being owed in the case of WASA's debt, over 80 per cent, is really residential customers. Government's billing to WASA is very small percentage, represents probably less than 10 per cent of their receivables. So, the activities, you might have noticed that there are a number of commercial buildings that we are now threatening for sale for outstanding payments as regard to WASA. So the committee is working, and there will be different approaches, depends on the different types of customers, but the big part of WASA's outstanding debt, really over 80 per cent of the amount of money owed to people, receivables, is really residential customers. But, again, to your specific question, the committee is working very diligently with targets, and they are meeting their targets that we have set for them in trying to improve the cash flow of these two important utilities.

Madam President: Sen. Mark.

Sen. Mark: Madam President, is the Minister aware that under the last regime, government agencies and Ministries owed less than 100 million at the end of the five-year cycle as compared to what is taking place now, where government agencies and Ministries owe T&TEC over \$1 billion. Are you aware of this hon. Minister?

Sen. The Hon. R. Le Hunte: Madam Speaker, you know, as I said—

Sen. Mark: Madam President.

Sen. The Hon. R. Le Hunte: Madam President. Madam President, you know cash flow situations and the way how cash flowed in the previous regime is a lot

different from these times now. I mean, you know we already—we are aware of other projects, I can tell you of \$1.2 billion in cash being placed in the case of waste water and NGC that could have then been used, plus a number of different ways. So you are talking about a time, Madam President, [*Interruption*] you are talking about a time when you had expenditure, where you were spending expenditure of over \$63 billion. [*Interruption*]

Madam President: Minister.

Sen. The Hon. R. Le Hunte: Of course you had a different cash flow.

Madam President: Minister! Sen. Mark you posed a question, the Minister is answering, please allow him to answer the question. [*Interruption*] Please allow him! Please, let us all when someone is on their legs listen to the person. Minister.

Sen. The Hon. R. Le Hunte: So, as I was saying, yes, you are talking about different times, \$63 billion in expenditure versus what is being spent now, or what is available to be spent now, over \$20 billion less in revenue to be able to spend. And in addition to that, as I said, money was flowing like water then, and you had a lot of projects, SIS, a number of different people that were able to walk away with \$1.2 billion. So therefore cash flow was a lot different. We are managing in different times, and we are trying as best as possible to manage and keep the country afloat in light of over a \$20 billion drop in revenue. [*Desk thumping*]

Madam President: Next question Sen. Mark.

Sen. Mark: Maybe if you had saved 20 million in rental—

Madam President: Sen. Mark next question please! [*Interruption*] So perhaps Sen. Mark—

Sen. Mark: Yes, Madam. Madam, please—

Madam President: Sen. Mark, no, please take your seat! Sen. Mark, please!

Sen. Mark: Sorry.

Madam President: Let me just set the tone for today's sitting. It has already started to sort of stray from what is expected in this Chamber. Sen. Mark I am inviting you to pose your question concisely to the relevant Minister. Sen. Mark.

Sen. Mark: I am guided accordingly, Madam President. I bow to your ruling. *[Interruption]* Could you not disturb me please? Madam President, may I address you and not be disturbed? Please!

**Worker Absenteeism
(Measures to Address)**

37. Sen. Wade Mark asked the Minister of Labour and Small Enterprise Development:

In light of public statements by an official of the Ministry that Trinidad and Tobago has the world's fifth highest rate of worker absenteeism, can the hon. Minister indicate what measures are being taken to address said issue of worker absenteeism?

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): *[Desk thumping]* Thank you very much, Madam President, and I trust Sen. Wade Mark you will hear my response in its entirety without interrupting me. Madam President, the statement to which Sen. Wade Mark made reference, concerning Trinidad and Tobago having the fifth highest worker absenteeism rating in the world, was made by an official of the Ministry of Labour and Small Enterprise Development at a workshop hosted by the Department of Labour of the Division of Community Development, Enterprise Development and Labour of the Tobago House of Assembly.

The workshop titled "Decent Work Agenda, Productivity and Managing Absenteeism", was held on June 14, 2019. Prior to this at a seminar on absenteeism in the work place hosted by the Employers Consultative Association

of Trinidad and Tobago, the information about Trinidad and Tobago's rating in worker absenteeism was revealed and published in the *Business Guardian* on January 21, 2016 by Dr. Kwame R. Charles, Quality Consultants Limited. Madam President, absenteeism is regarded as one of the many workplace issues that can contribute to low productivity, decreased revenue, and even lead to the detriment of the organization and negative impact on the overall development of the nation. In this regard the national productivity council, which falls under the purview of the Ministry of Labour and Small Enterprises Development, was reconstituted on May 10, 2017 and has been working to fulfil its mandate, which includes inter alia:

1. To promote and develop greater productivity and quality awareness and consciousness of the people of Trinidad and Tobago in collaboration with key stakeholders;
2. To inculcate new values and attitudes in Trinidad and Tobago regarding productivity, quality and competitiveness;
3. To establish a system of documentation and dissemination of information relating to productivity;
4. To advise Government on the formulation of national policies and strategies and all aspect of productivity, quality and competitiveness;
5. To identify constraints to the improvement of productivity, quality and competitiveness, and propose remedial measures to be taken;
6. To serve as a focal point on all matters pertaining to productivity, quality and competitiveness;
7. To develop and adopt a set of key productivity indicators to Trinidad and Tobago; and
8. To design and conduct relevant productivity surveys.

Madam President, in the pursuit of these objectives, in September 2019

Cabinet agreed that the National Productivity Council be tasked with the responsibility of collecting data on absenteeism measured in a consistent manner for comparison across sectors and industries, and with particular attention to absences around holidays. Data would also need to be collected on absenteeism in the public service as well as the state enterprises. Madam President, in addition, the Ministry of Labour and Small Enterprise Development, in addressing a range of workplace issues and in sensitizing employers and employees of their rights and responsibilities in the workplace, has embarked on a public sensitization campaign. This includes sharing of information via radio, television and the print media.

Additionally, in the public service, employees have access to free and confidential Employees Assistant Programmes, where professional support and counselling is provided in helping employees address personal and professional challenges that may affect the attendance as well as their performance.

Finally, Madam President, I look forward to the support of employers and workers as we work together to address the issue of worker absenteeism in Trinidad and Tobago, and get the job done. Thank you. [*Desk thumping*]

Sen. Mark: You see I did not interrupt you. Madam President, may I, through you, ask the hon. Minister, how far has the project involving estimating the losses to industry, revenue, productivity, overall development in the private sector, the public sector and the state sector, how far has that project reached by the committee, National Productivity Council, that has been tasked by the Cabinet to get to the bottom of what is going on?

Sen. The Hon. J. Baptiste-Primus: Thank you, Madam President. Madam President, in my sharing of information I did indicate that the National Productivity Council was recently reconstituted. That committee has held one meeting. The committee is chaired by Mr. Roger McLean, Lecturer at the University of the West

Indies, and I dare say by the second meeting of the committee some work plan would emerge.

Sen. Mark: Madam President, can the Minister indicate whether she has given this body any timeline given the urgency and the importance of this subject matter to have an interim report submitted to the Minister, and through her, to the Cabinet? Have you given this committee any timeline?

Sen. The Hon. J. Baptiste-Primus: Madam President, I believe that one must understand the volume and the breadth of work required by this committee. It means conducting a number of different surveys in Trinidad and Tobago, and in that context, the chairman of the committee is aware, very, very much aware of the relative urgency of this matter, but I am not in a position to deliver the desired response which the Senator seeks. Again I said, I will await the chairman of the committee to submit a work plan, I have no doubt that will emerge from the second meeting of the board.

Sen. Mark: Madam President, can the hon. Minister share with this hon. Senate the names of the remaining members of the National Productivity Council? She did tell us that the chairman is a member of the University. Would she be kind enough, through you, Madam President, could the hon. Minister, that is, be kind enough to provide this Senate the names of the other members?

Madam President: Sen. Mark that question is not allowed.

Sen. Mark: Okay.

Madam President: You have any further question?

Sen. Mark: No.

Madam President: Sen. Obika next question.

Ghana and Caricom Bi-Lateral Relations
(Status of Joint Commission)

82. Sen. Taharqa Obika asked the Minister of Foreign and CARICOM Affairs:

In light of advances in bi-lateral relations between Ghana and CARICOM nations, can the hon. Minister advise as to the status of the Joint Commission of Trinidad and Tobago and Ghana?

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dennis Moses): [*Desk thumping*] Madam President, a joint commission comprising representatives of the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Ghana is providing the agreement on economic, scientific and technical corporation between the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Ghana. It was concluded on the 6th of August 1997. Trinidad and Tobago completed its process of notification, such that all legal requirements for its entry into force have been fulfilled. The joint commission would be constituted and convened subsequent to the entry in force of the Government. Thank you.

Madam President: Sen. Obika.

Sen. Obika: Thank you, Madam President. Given that a joint commission has a reciprocal element, can the hon. Minister indicate when would that second part be fulfilled, as he indicated it would be fulfilled, but can he give a timeline?

Sen. The Hon. D. Moses: The second part, I am not clear. The second part that corresponds to the other party, that is the question that is being asked?

Madam President: Sen. Obika.

Sen. Obika: For the absence of doubt, if the joint commission was held in Trinidad there will be a requirement for us to have one in Ghana, if that provides clarity?

Madam President: Minister.

Sen. The Hon. D. Moses: Perhaps with additional information is why I am not frontally responding to that. Thirty days after the notification by both parties through diplomatic channels, that all the legal requirements have been met, the agreement, the joint agreement would enter into force. Thank you very much.

Sen. Obika: Madam President, I want to say that I am totally disappointed with the response, but can the hon. Minister indicate if any—a bilateral air services agreement which normally follows from a joint commission is in the offering with Ghana?

Sen. The Hon. D. Moses: I think we are going around in some circles, but I would provide even more relevant information, Madam President. We are in the process of completing the agreement between both countries and the air services agreement. We expect that to be completed within this month. Thank you very much.

Sen. Obika: I thank the hon. Minister for the clarity in that response. Can the hon. Minister indicate whether or not there would be an opportunity to liaise with our counterparts in Barbados, given their desire to have direct flights from the continent of Africa to Barbados?

Madam President: Sen. Obika that question does not arise. Next question Sen. Obika.

eTeck Park

(Project Status)

83. Sen. Taharqa Obika asked the Minister of Trade and Industry:

Given the Government's stated commitment, in successive Budget contributions 2015-2019, to the establishment of an eTeck Park in Moruga, can the Minister advise as to the status of this project?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon):

[*Desk thumping*] Thank you very much. Madam President, the construction of the eTecK Moruga Agro-Processing and Light Industrial Park is 98 per cent complete, with full completion scheduled for the end of March 2020. The following activities are already completed: All factory shelves, roads and drainage infrastructure, utilities services such as potable water supply, waste water collection, electrical infrastructure, street lighting, security fencing and culvert works.

In addition, the following statutory approvals have been obtained: Certificate of environmental clearance for the overall works, approval from the Town and Country Planning Division for development of infrastructure on the site, and subdivision of the parcel of land into lots. Final TCPD approval for the overall development and subdivision of land and factory shell buildings, design approval from WASA for the waste-water treatment plant, approval from the county medical office of health. Finally, the marketing and tenanting of the park are being done by InvesTT in collaboration with eTecK, the Ministry of Agriculture, Land and Fisheries, and the National Agricultural Marketing and Development Corporation (NAMDEVCO). The prospectus for the park was completed in December 2019, and a marketing team has already secured interest from five prospective tenants, and discussions continue with these potential investors, while promotion and marketing of the park continues. Thank you.

2.20 p.m.

Sen. Obika: Thank you, Madam President. Can the hon. Minister indicate, given the failure to operationalize eTeck Park in Point Fortin, what are the possibilities of operationalizing eTeck Park in Moruga?

Madam President: Sen. Obika I would not allow that question. Next question Sen. Obika.

Sen. Obika: Can the hon. Minister indicate when would the park be operationalized, beyond being tenanted, actually when jobs will be created by tenants of the park?

Sen. The Hon. P. Gopee-Scoon: Jobs have already been created in the construction of the park and of course full operationalization or partial as soon as the park is tenanted I am certain that jobs will be created.

Sen. Obika: Given the Minister's last response, can the Minister give us timeline to operationalization of the park in terms of—

Sen. The Hon. P. Gopee-Scoon: As I said there will be full completion of the park by March 2020. We are in discussions with prospective tenants and as soon as these come on board then we would be facilitated.

Sen. Obika: Can the hon. Minister give any comfort to persons in Moruga, because in Point Fortin there is nothing happening—

Madam President: Are you asking a question Sen. Obika?

Sen. Obika: I am just submitting that there is nothing happening in Point so then nothing can happen in Moruga under this Government.

Madam President: Sen. Obika a submission is not a question. Do you have a question? Okay, next question Sen. Obika.

Occupational Safety and Health Authority

(Strength of Inspectors)

84. Sen. Taharqa Obika asked the Minister of Labour and Small Enterprise Development:

Can the Minister indicate, what are the actual and sanctioned strengths of Inspectors at the Occupational Safety and Health Authority (OSHA)?

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you very much, Madam President. Madam

President, the sanctioned strength of inspectors at the Occupational Safety and Health Agency is 48. The actual strength of inspectors at OSH Agency as at January 09, 2020 is 38. The health and safety of workers is of highest priority to the Government of the Republic of Trinidad and Tobago. In this regard the Ministry of Labour and Small Enterprise Development is committed to ongoing collaboration with the OSH Authority in order to continue to strengthen the OSH Agency to fill all vacant positions and improve its functions in the implementation and enforcement of the OSH Act for the benefit of all workers. Thank you, Madam President,

Sen. Obika: Thank you, Madam President. Can the hon. Minister indicate: what are the reasons why the OSH Agency is operating under its sanctioned strength?

Sen. The Hon. J. Baptiste-Primus: Madam President, it is indeed rather strange that such a question would emanate from the Bench of the Opposition. Because, as I recall, when I became Minister of Labour and Small Enterprise Development in September of 2015 I found a situation at the OSH Authority where these very inspectors were operating from home. What does that mean? They were not reporting for duty for over two years. There were few positions filled in the OSH Agency. So from 2015 to now we have come a very long way, Madam President. The strength of the organization is 48, we are at 38 and intend to fill the remaining 10 vacancies. Thank you. [*Desk thumping*]

Sen. Obika: Given the Minister's failure to have it at full sanctioned strength, can the Minister indicate when would the—can the hon. Minister indicate when the OSH Agency is expected to be at its full sanctioned strength?

Madam President: Is that not a repeat of the question you just asked? So next question Sen. Obika.

Sen. Obika: Can the hon. Minister indicate confidence in only 38 officers for the

entire Trinidad and Tobago?

Madam President: That question is not allowed.

Sen. Obika: Can the hon. Minister indicate, apart from referring to a past Minister, what is the reason for her failure in the OSH Agency?

Madam President: That question is also not allowed.

INTERCEPTION OF COMMUNICATIONS (AMDT.) BILL, 2020

Order for second reading read.

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

Madam President, I beg to move:

That a Bill to amend the Interception of Communications Act, Chap 15:08, be now read a second time.

Madam President, there comes a time when one can certainly separate general work of legislative growth and aim and intention from very specific and critical work. Under the Constitution we certainly make laws for the peace, order and good governance of our society. That implies a general sort of purport and we see it in the work that we do usually from day-to-day in some of the reforming work that we want to do in a large scale change society sort of measure.

Today's Bill, Madam President, is perhaps one of the most critically important Bills that we will ever do in our Parliament. Why? We are and have been in this country for decades fighting the scourge of crime. We as parliamentarians are permitted the privilege to make the laws for the peace, order and good governance of our society. Certainly in December 2010 we saw the introduction of the Interception of Communications Act. That law was introduced, passed on the 3rd of December 2010, assented to on the 17th of December, 2010, amended on December 20th—mere days later—2010. And that particular piece of law introduced into Trinidad and Tobago the offence of intercepting communication,

and permit me to explain that.

Communications as defined in the parent Act includes all forms of communication: verbal communication, human interaction, messaging, et cetera. What is an offence at law, pursuant to section 6 of the Interception of Communication Act, is the interception of communication. Interception is defined as “any communication passing over a public or a private telecommunications network”. In other words then, the law is confined to an offence for communication being intercepted only on a telecommunications network. There is no offence decided at law in the manner in which telecommunication interceptions are, for tape recording, for other things like that, bugging, listening to, et cetera. It may be breaches that are actionable in the civil realm depending upon the circumstances, but the criminal law is very specific.

Now, of course, this law as proposed today is a three-fifths majority law. We are required to pass this law pursuant to section 13 of the Constitution because we infringe on certain enshrined rights in sections 4 and 5 of the Constitution. We are touching and concerning the right to private life; we are touching and concerning the rights involved against self-incrimination; we are touching and concerning the rights involved under a fair trial and due process.

The law as it stands now is 10 years old nearly, it is nine years old odd; December 2010, we are now in 2020, we are just short of a full 10-year period. What we have in Trinidad and Tobago is now an historical tale which the law enforcement agencies can tell, in particular, as a result of litigation and prosecutions which have come about in the application of the law. The representation before us today, the Bill before us today, is intended to improve the constitutionality of the law before us. Secondly, to ensure that the law continues to

develop. Thirdly, it is a significant introduction of heavy anticrime measures and in particular I am speaking about the introduction of intercepted communication and listening devices in prisons as so defined under the Bill. Where this law contemplates having non-warranted communications admissible in a court of law in very careful circumstances.

This Bill proposes the introduction of what the UK law has determined to be fair and proportionate safeguards into the body of our law, not just in the common law of the United Kingdom. This law proposes the introduction of a special procedure by the use of a special advocate to represent the rights of an accused where we are treating with sensitive personal information which can disclose law enforcement activities. This Bill proposes to deliver a tie-in remedy to a number of other laws which we have amended. Number one, the Strategic Services Agency Act, which was born in 1995, by an Act of Parliament No. 24 of 1995, that is Chap. 15:06. Number two, it ties in the very regulations to the SSA legislation which were introduced into the Senate today, laid on the Order Paper pursuant to items 10 and 11, published on the 31st of January, 2020, by Legal Notices 38 and 39. Number three, it ties into the law which we just recently amended, which is the Miscellaneous Provisions (Law Enforcement Officers) Bill. It is Act No. 25 of 2019.

Hon. Members would recall that we amended the Prisons Act specifically to introduce prohibited articles, meaning electronic devices, telephones, et cetera. We introduced very severe penalties for prisons officers who brought material in, for persons who brought prohibited articles in. We have introduced as well in another place, yet before that House, another measure of special procedures and that is to be contained in the gaming law which is before that House now.

So today we are tying up a number of pieces of law by critical amendment that goes to the heart of attacking criminality, and more specifically, introducing constitutional protection to the persons who stand accused before the courts and against whom interception of communication evidence stands. With that said, I wish to state immediately, Members will note the Minister of National Security is here. The time does not permit me to give the underlay and the underwriting of the statistical position of Trinidad and Tobago in the context of interception and crime, and therefore as the piloter of this Motion, and for the purposes of the rule in *Pepper v Hart*, as the mover of this Motion, I am specifically tying my contribution to that to be given by the Minister of National Security as it relates to the state of Trinidad and Tobago from a section 13 of the Constitution perspective in the event that there is a challenge to this law.

It is not good enough that law is passed with a section 13 three-fifths majority. It must be just in a society such as Trinidad and Tobago which looks, feels, and is like Trinidad and Tobago. And the Minister of National Security will put that evidence on the record as it relates to gangs, as it relates to gangs in prison, as it relates to the number of interceptions, as it relates to murder which is committed in Trinidad and Tobago as a result of prisoners using telephones and calling assassination plots and actual assassinations against citizens in Trinidad and Tobago, even as recently as this morning in Trinidad and Tobago. Let me repeat that. In the prisons of Trinidad and Tobago assassination calls are made from the prison in circumstances where national security, pursuant to section 6(2)(b) of the Interception of Communication Act where national security forces, the SSA, the Commissioner of Police, have actionable information that phones are being used in the prisons, assassinations are carried out at the behest of prisoners and you can do

nothing about it because you do not have the privilege of using that as warranted evidence in a court of law because you have intercepted it in circumstances where the evidence is not admissible in law. I think you understand why I said this is one of the most pointed significant laws in this county.

Let me start by indicating, in the course of consultation, the Director of Public Prosecutions; the Prison Service of Trinidad and Tobago; the Trinidad and Tobago Defence Force; Special Queen's Counsel to the DPP, Mr. Edward Jenkins QC; the Ministry of National Security; the Judiciary of Trinidad and Tobago; the SSA itself, the Trinidad and Tobago Police Service; the Law Reform Commission, all gave active feedback. The Law Association of Trinidad and Tobago was written to on many occasions, we have received no comments coming from them and we have been at this work product for over one year in preparation.

The information coming from the DPP in particular is of significant worth. The DPP in reflecting upon prosecutorial standing, improvements to the law, recommended certain improvements to the law which stands now contained in the Bill before us and I think importantly the prisons themselves expressed the view that this particular Bill and I quote here from a letter to me, 3rd of October, 2019 where they say:

The importance of this Bill cannot be understated as a critical tool in the fight against rising criminality in our nation today.

Madam President, permit me to go immediately to the Bill. The Bill is 26 clauses long. As I have indicated it certainly does traverse section 4 and section 5 rights and the Bill has some very important provisions. Now, the Government proposes to discuss this legislation over the course of not just today, but at least on another day. We welcome the suggestions coming from hon. Members opposite

and certainly on the Independent Bench. I noted the commentary coming from the Leader of the Opposition that they will not support this legislation and certain concerns were given in a press conference. I do hope that position is not the position of the Opposition today after I have had the chance to pilot this law.

Madam President, clause 4 of the Bill in particular starts off with a critical improvement. Clause 4 says that:

- “(1) This Act applies to—
- (a) criminal proceedings;
 - (b) proceedings under the Proceeds of Crime Act;
 - (c) proceedings under the Extradition (Commonwealth and Foreign Territories) Act;
 - (d) proceedings under the Anti-Terrorism Act; and
 - (e) proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act.”

And specifically, that unless the trial has started, only in those circumstances will it not apply:

“but unless the trial has commenced and is in progress on the coming into force of this Act

- (2) For the avoidance of doubt, a trial is deemed to have commenced after the evidence has begun to have been led.”

So long as evidence has not commenced and been led this Act will apply. It is not retroactive. There is a general rule that retroactivity is not offensive and in fact applies only, even though not expressly stated in the circumstance where it is procedural in nature. If there is a substantive issue it is deemed to be non-retroactive and clause 4 sets this out very carefully, Madam President.

Clause 5, Madam President, treats immediately with anchoring what we want to do in this law. What do we want to do in this law? The law spoke to interception of communications. That must be on a telecoms network. It was not broadly worked, it was not specific enough to treat with two very important things: stored data, communications data and traffic data. Stored data is effectively, actual communication that passes over telecommunication network, like, text messages, et cetera, and that will be found at a telecommunications provider. It is stored—it happened within the context of the Act, communication over a telecoms network whether public or private and is stored and accessible.

Number two, traffic data or communication data. This is what we called triangulation data. When a call was made, when it ended, when a sim card was changed, when the phone was switched off, at what GPS position the phone was when the call was made. This helps to locate the offender, the communication and the geography of the crime at the same point in time. It is extremely useful in kidnapping cases, for instance, and therefore everywhere else around the world, movies that you look at, where you look at triangulation and its axiomatic on the world stage, in Trinidad and Tobago, there is need to insert it in this law and we introduce the concept today.

Madam President, we deal with the definition of a device. Specifically we have borrowed the broad definition of a device. It is non-technologically specific to include top provisions, voice over internet features used in devices that are not telephones per se, because communications are now done in a multi-verse of methodologies and it is inappropriate to define it as simple wiretapping a telephone or bugging a telephone. You have to contemplate the improvements in technology. We have included an electronic location because your IP address, your email

address the certainty of person is required to be reduced right down to the electronic location.

Madam President, we have also included the definition of a “prison” and you will note that we have sought to capture every aspect of prisons including “prisons” under the state of emergency declarations under the Constitution. This harmonizes with Act No. 25 of 2019 which is the Miscellaneous Provisions (Law Enforcement Officers) Act where we took a holistic definition of “prisons”.

Madam President, we have also sought to include a definition of a “rehabilitation centre” so we can tuck it into the prisons. “Stored communications” is specifically defined as I mentioned earlier, “stored data” is specifically defined, a “telecommunication service provider” and “traffic data”, all with specific terms. Madam President, we have also looked at the broader definition of what “computer files” and “programmes” and “access” look like.

Now, Madam President, let us get to section 6 of the Act which is amended by clause 6. Number one, we were in the old Act only treating with summary offences. Summary offences have a prescriptive time frame of six months generally speaking. If you miss the six months marker there is no offence. We have sought to cleave that offence, keeping summary, adding in a triable either way, introducing an indictable offence, because we have added very significant provisions to the law and it is appropriate to treat them both summarily and indictably by way of division.

Madam President, we then go to a very important amendment in clause 6, in amending section 6(2). I ask hon. Senators to take note. Section 6 of the Act as it relates to section 17 of the Act, as it relates to section 17(a) of the Act, as it relates to section 18, section 19 of the Act, those measures including section 20 of the Act,

that form the—if I can call it the heart and soul—heart and soul of concerns that hon. Senators may have in relation to the general applicability of this law.

Madam President, what time is full time for me so I can gauge myself?

Madam President: You finish at nine minutes past three.

Hon. F. Al-Rawi: Much obliged. Madam President, that is certainly not enough time to do justice of this Bill. Section 6(2) as amended by clause 6 says effectively that we are introducing the fact that you can have warranted intercept, non-warranted intercept. We have that and we are now broadening the non-warranted intercept to include that you can have a non-warranted intercept for an offence under the Act. That was not there before.

Secondly, we are introducing specifically that the non-warranted intercept information can potentially be used in a court of law as evidence provided that you satisfy a judge pursuant to sections 17(2B) and 17(2C) that it is appropriate for that non-warranted information to stand as evidence where the safeguard set out in 17(2B) and (2C) are met. Those—for persons who know the law outside and inside are the Bailey's principles as they have been borrowed from the United Kingdom. We have specifically traversed the laws of New Zealand, Canada, the United Kingdom, Australia, the United States of America, and in those five jurisdictions we have borrowed from the ability to use non-warranted intercept material as evidence subject to the fairness of a trial where a trial judge as the sole abettor of the admissibility of the evidence says whether it can go in or not.

Madam President, it is in this clause that we introduce the concept of having interception of every single phone in a prison, every single phone in a prison vehicle, unless there is the exception applied for legal professional privilege which is sanctimonious in law. We preserve the principle that if you are talking to your

attorney at law in a privileged circumstance in the area or phone line designated for LPP, legal professional privilege that material cannot be intercepted, but in any event, sections 17(2B) and (2C) provide in relation to whether that happened on the phone that it would be inadmissible because it is LPP, it is legal professional privilege. These are very critical safeguards that are expressly set out in the law.

Madam President, in clause 7 of the Bill we introduce a new 6A. In 6A we are providing actual notice that you are being intercepted in a prison, that you run the risk of being intercepted. That is again in compliance with the case law that has come out of the European Court of Human Rights, from the United Kingdom in particular, Canada, et cetera, the Commonwealth jurisdiction, we are taking a step beyond what is normally done and we are providing notice.

Now, Madam President, stick a pin for a moment. The law tells us very carefully and you look to California, you look to the United Kingdom, et cetera, the law is, quite simply put, absolutely clear that you do not enjoy the same privileges when you are incarcerated as the average citizen. Yes there are certain limited privileges but they can be interrupted provided that the interruption is for penological purposes, i.e., national security, general security purposes. And in summarizing this I intend in great detail in my winding-up to focus upon the constitutionality by reference to case law and the Commonwealth and other jurisdictions where this is trite law for them that these purposes actually happen.

Madam President, I turn now to the introduction of a new clause 6B. Again this is clause 7—sorry a new section 6B, where we put communications in a prison or a prison vehicle, et cetera, and if we turn now to clause 9 where we amend section 8, it is here that we broaden more than just the interception on a telecoms network. We are adding in a new subclause (b) and subclause (c) and there are

three of them in the alternative. You can obtain a warrant for interception on a telecoms network for communications. Now we are expressly adding that you can have the ability to obtain by warrant stored communications and also stored data. This is to specifically allow to be anchored in this law something which already exist in other laws. We used the Proceeds of Crime Act, sections 32 to 34, we used the Indictable Offences (Preliminary Enquiry) Act, section 5, to obtain stored data by way of warrant from a magistrate.

These things are the standing law. What we are doing is that we are harmonizing the ability to do this in the specific law. It may very well be that in the applicability of the law, clause 4, that we need to specifically save what has already been purchased by existing law, the interception of communication stored data, material which comes from preliminary enquiry section 5 warrants, and proceeds of crime warrants because that is valid law. And I want to make it clear we are not under any circumstances repealing that law. This law is not to be deemed to be an implied repeal of that law and it is specifically saved and I say so for the benefit of *Hansard* now and the rule of *Pepper v Hart*.

Madam President, we also add for the purposes that this law can apply to legal enforcement, mutual legal assistance in other territories; why? We extradite criminals and it is obscene to not allow the intercept communication to also be the subject of proceedings in another jurisdiction provided it meets the treaty obligations and the provisions of the Mutual Assistance in Criminal Matters Act, Madam President.

2.50 p.m.

Madam President, we turn now to clause 10. Clause 10 specifically amends a very important—looks minor. Here is where you approach the

telecommunications service provider and an obstacle was being created to the tune of millions of dollars at times where the service provider will tell you, “Well if you want to intercept you pay for it”, and then you have to buy the hardware, buy the software, run the risk of damaging their systems. So we will reverse the burden like every other jurisdiction does and we tell the telecom provider, “You bear the cost”, and that way there is no risk or damage to their system and they can manage and mitigate their obligations under the telecoms license as it relates to national security. That is a bona fide purpose within existing parameters.

Madam President, we turn to clause 11. Clause 11 allows a judge to extend in circumstances of urgency, and I specifically put here the three categories: communications over a telecoms network, stored data, or communications and traffic data to make it abundantly clear that we are catching all three mechanisms.

Madam President, clause 12 treats with an entity again providing the cost, bearing the cost of assistance. Section 15 is amended specifically by clause 13 and, again, I am pointing out the reference to any other written law specifically so that we are not impliedly repealing the ability to obtain warrants under the Proceeds of Crime Act and also under the preliminary enquiries’ three iterations, whether it is the Administration of Justice (Indictable Proceedings) Act, No. 1, No. 2, No. 3, or it is the preliminary enquiries Act, Chap. 12:07, whether we are looking at those, we are preserving all.

Madam President, clause 14 ties in again to an amendment to section 16, where we are obliging the maintenance of the key by the telecoms provider or the experts there. Let us get to the heart of section 17 as amended by clause 15—and if I can recommend we put a clock in this direction as opposed to behind me, Madam President, I will be grateful. Madam President, it is critically important to

recognize that in section 17 of the Act there was a prohibition against disclosing sensitive information. What is sensitive information? Anything that relates to who intercepted you and discloses their identity, et cetera, there is a risk to law enforcement if the criminal enterprise knows the identity of the persons who work in this series. This is standard around the world. It was passed in 2010 that you cannot obtain sensitive information.

What we do here, Madam President, is critically important to improve the constitutionality of section 17. It is arguable that the 2010 Act can trip the rule of hearsay, that unless you are permitted to cross-examine on who made it, at what time, in what circumstances, and whether the thing was working in proper integrity, that you could stand in a position where you could not admit the evidence. In those circumstances, we are opening the door in very critical ways as follows:

1. We put the general exception that you cannot reveal the sensitive information.
2. We say specifically that you can in fact admit that information if a judge is satisfied that it should be admitted, that it is effectively in the interest of justice that that matter be interrogated.

Specifically, we are saying that communication, the content of communication obtained, section 6(2)(c), (d), (e), (f) and (g), shall be admissible. Why? Those are the circumstances in the existing law that say that you effectively have consent in those circumstances. When we get to the 6(2)(b), that is national security, unwarranted. When we get to the 6(2)(h), that is prisons and prisons vehicles, you are specifically required to also factor section 6B, the prisons, and here we are saying:

It—“shall be admissible in evidence in any proceedings where the Judge is satisfied that it would be in the interests of justice to so admit...”

The case law coming from Europe, coming from the United States, says that you are safe if you allow the separation of powers principle to prevail, a judge can consider the admissibility of the evidence. We, therefore, want to put constitutionality into this law by improving this section.

Here we add the subsection (2C) and we set out the parameters where a judge, in making a decision whether to admit the evidence under subsection (2A) and (2B):

“...the Judge shall consider all the circumstances concerning obtaining communication”—et cetera, et cetera—“whether the defendant was induced to say what he did and any other relevant factors which would render what he said unreliable and shall consider, in respect of communications”—items (a) through (e) which I refer to as the Bailey principles.

That is the case *R v Bailey*.

In the case of *R v Bailey and Smith*, 97 Criminal Appeal R365 Court of Appeal, the United Kingdom, set out very specific provisions which are recanted here: nothing done to induce or trick; integrity of the recording is sound—we have to add interception; the use of recording—we have to add interception devise was proportionate to the gravity of the alleged or suspected offence; the use of the method was appropriately authorized; no recording of legal professional privilege took place. These have been upheld by the courts of law in the Commonwealth, by the highest courts, as being the markers of fair trial proportionality, and we have brought them into this law. So we are removing the complete ouster of evidence, we are solving the potential inadmissibility of heresay evidence, we are putting it

the proportionality principles for the Bailey principles.

Madam President, if you look to subsection (4) of section 17 as amended by this clause, we will look to now a very important amendment. In the new subclause (b):

“the court shall not grant leave in relation to any evidence or question referred to in (a)...”

That is where you are asking for identity to be revealed, et cetera, of sensitive information. You must have the expressed leave of the court. We are saying here that the court must be:

“...satisfied by the party challenging the evidence that it would be relevant to—

- (i) the validity and lawfulness of the warrant;
- (ii) the accuracy and integrity of the intercepted communication;..
- (iii) the accuracy and integrity of the communication data.”

Madam President, we are saying that it must also be that the refusal to get that information would render unsafe a conclusion of the jury or the court—as we have judge only now—as the case may be in the relevant issue in the case. And, Madam President, the new subclause (c) and (d), that is where we treat with the exceptions to hearsay because we are no longer saying it treats to the admissibility. We are treating to the sufficiency of evidence. Remember that we are very carefully putting judicial discretion as to admissibility. The court must give leave for the sensitive information and documents concerning the granting of the warrant or the communication itself to be led into evidence how, when, and by whom, et cetera.

Madam Speaker, Madam President, clause 16 which amends further the Act

by the introduction of a new section 17A is another critical amendment. We are introducing the concept of a special measure via a special advocate. The special advocate is defined. The special advocate is the person who will represent the accused. It will not be the accused attorney-at-law. It will be a judge selected by the court—forgive me, a vetted attorney selected by the court. That attorney is permitted to take instructions. That attorney then represents the rights of the accused to ensure that in the event that the material is to be led by way of application, if it is refused that the material is not unwittingly transferred to where you did not want it to go subject to judicial discretion. Obviously, there is no procedural appeal in criminal matters. This is a ground that can be taken on substantive appeal, and therefore, you have the right of appeal in relation to these matters.

Madam President, we then go to the provisions of the further sections. Clause 17 amends the provider provisions in subclause (2) of section 18 of the Act. We are tidying up. We have lifted the first part of it into the preliminary aspects of the Bill, and we are tidying up again that whole concept of telecommunication service. Why? We want to capture both local area networks and wide area networks within the definition of telecom providers as the Act does. We need to now sort this out to make sure the law can actually work in terms of prosecutions.

Madam President, if we go to clause 18 where we amend section 19, again we are making it pellucidly clear that we can also have communication data, stored communications. In section 19, that is a whole species that treats not just with communication, it treats now with the stored data, stored communication. There may be sensitive information available there, we subject it to the application to the judge, we subject it to the special advocate and the special procedure, we allow for

the principles of the fairness of a trial to prevail.

Madam President, we also in both the amendments to section 17, the new 17(a), et cetera, and in the amendments to section 19 we are preserving the rules as it relates to section 14 of the Evidence Act, trade and business documents, and section 14(b). Members will recall that we sought to repeal section 14B of the Evidence Act. That is not in effect right now. In fact, we have elected in the evidence special select committee to do a more wholesome reference to the rules as it relates to computer evidence there, so we will not be proclaiming the abolition of section 14B of Evidence Act as it relates to computer evidence. I just ask Members to note that.

Madam President, clause 19 amend section 20 of the Act. Now section 20 is the destruction of communication which has been intercepted. We have very critically today laid in this Parliament the SSA regs. The SSA regs borrow the provisions of general purpose and employee. It is there that standard operating procedures and special provisions are put for destruction of data. I ask Members to note that since 1995 it is the first time regulations have been produced. It is pursuant to an undertaking I gave as Attorney General to this particular Senate.

Madam President, critically in section 20 of the Act, by this clause 19, we seek to add new subsection (9):

“Information which may reveal the commission of other offences by other people or which may jeopardise other enquiries shall not be disclosed to the accused but shall be retained and be the subject of a public interest immunity application to the Court by the prosecution.”

This is landmark reformation of the law. Without this provision if you were to obtain the sensitive personal information, if you were to obtain the disclosure

which we are now putting in, you may unwittingly reveal and tip off persons against whom there are investigations afoot. And very importantly in the United Kingdom, and in the rest of the Commonwealth, the prosecutor has the right to say you cannot get that evidence by exercising the public interest immunity argument. It is an application where the prosecutor asked the court to exclude that evidence. Remember, it is not automatically excluded. It must be the subject of a court granting the exclusions, and again this is effectively trite law in other parts of the Commonwealth.

Madam President, in clause 20 we amend section 21. We are adding in “or another officer authorised pursuant to section 5(2)” because there may be experts involved in the use of a telecoms provider and they have to get into the integration of systems and disclosure, Madam President, we are adding in very importantly a new section 23A via clause 22. Here we add the tipping-off provision. Tipping-off is a reality in this country. It has to be criminalized. We criminalized it very heavily in the Miscellaneous Provisions (Law Enforcement Officers) Act, which is Act No. 25 of 2019. We did that in December of last year. We are putting it into the Interception of Communications Act because we are aware that members of the protective services—

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

Hon. F. Al-Rawi:—unfortunately find themselves in the engaging of tipping off. I can give an alert right now we are drafting a law; we are nearly finished with it, we are on final review, to put in mandatory provisions for lie detection across the services. Let me repeat that—mandatory provisions for lie detection across certain aspects of national security. Very carefully crafted. Obviously, the consultation on that has to happen right now and it is imminent.

Madam President, we have also sought in clause 23 importantly to add the fact that regulations should be accepted from section 63 of the Interpretation Act. If you breach a regulation and you do not put the exemption to section 63 of the Interpretation Act, you are subjected to a whopping TT\$500 as the fine. We have now added in a fine of not exceeding effectively—because that is the maximum—of \$250,000 and imprisonment for two years because this is serious business. Importantly, we had not had the rules of the Supreme Court tied into this. We have introduced via clause 24 a new section 25A to allow the rules committee to introduce rules that can run alongside this as we move into the operationalization of the criminal division.

Madam President, as all of these pieces come together, as we move to opening 125 new courts in this country for the first time in the history of this country, as we tie in the improvements to processes, the quickening of laws be it plea bargaining, trial by jury, criminal proceedings rules, removal of motor vehicle and road traffic offences, removal of preliminary enquiries, removal of decriminalized matters, for instance, ganja cases, as we get less and less matters in more and more specialist courts, with more judges, with Masters of Court under a rules based environment, it is critical that we preserve the integrity of prosecutions which are going to come into the system faster.

So, Madam President, I ask hon. Senators today to draw a line in the sand to say that a prison should be a prison, to say that it is unacceptable for assassinations to be called from inside the walls of a prison, to say that the courts ought to have the benefit of that information put before it for consideration as it relates to admissibility, to protect the identity of law enforcement officers, to use special advocates, to preserve the domain of legal professional privilege, to accept what is

now plain, logical and axiomatic in other jurisdictions, i.e. all of what is contained in this law because it exists in the rest of the Commonwealth. I ask hon. Members to reject what I heard in the public domain coming from the Leader of the Opposition. I ask hon. Members to drape themselves in the national flag of Trinidad and Tobago today, red, white and black only, in a national colour, so that we can right the scales of justice in Trinidad and Tobago.

The floor is open, commentary will be received. We at the Government end are listening intently to improvements that can be made on this Bench from all sides including the Opposition. I ask for your patriotism today and I beg to move.
[Desk thumping]

Question proposed.

Madam President: Sen. Sobers.

Sen. Sean Sobers: Thank you, Madam President, for recognizing me. Madam President, the Bill before us this afternoon I agree is extremely important. I myself, when I first heard of this particular Act that would have been passed in 2011, relished the opportunity to one day, to treat with it because I had some concerns. What the public must be aware, or needs to be made aware of, is that we are basically talking about tapping phone lines, tapping internet communications, tapping into private scenarios. Yes for the benefit of justice in some instances, yes to preserve the work being done by our national security servicemen and women, but there must be a balance.

This particular piece of legislation, these series of amendments for the better part of what I would have understood them to be, especially looking at the Bill essentials when we talk about comparative legislation as articulated here, seems to come directly from the UK experience. I would have listened to the hon. Attorney

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General indicate that he considered, or the team considered, legislation throughout the Commonwealth and to other parts of Europe. The difficulty, however, in terms of my reading and understanding, the majority of this Bill comes from the UK experience. And in terms of my reading from other pieces of legislation throughout the world with respect to the US, South Africa, Israel, Canada, many of those jurisdictions set themselves apart. As a matter of fact, many of them have poured proper scorn on what obtains in the UK. The UK's position, which I believe this Bill is mirrored very closely upon, comes from the Regulation of Investigatory Powers Act, 2000, and in terms of my reading by an article entitled "The Justice Project: Legal Opinion in Intercept Communication". The writer indicates that RIPA, which is the Regulation of Investigatory Powers Act, 2000:

"RIPA creates asymmetries. The defendant is the one party with most to lose here. The defendant is never allowed to examine of content of intercept communications. The normal duties of this disclosure by prosecutors do not apply in RIPA, leaving the defendant at a loss of means of defence."

Now I appreciate at certain parts of the Bill it allows for some degree of disclosure. I appreciate respectfully that in terms of what obtain in the current parent legislation there is currently in terms of this new amendment a widening of the ability to cross-examine in certain circumstances.

Hon. Al-Rawi: There was none before.

Sen. S. Sobers: I appreciate that, but still more needs to be done. And if we were adopting that position today to better the legislation that is currently on the books, I would advance that we have in fact fallen a bit short. I expect the hon. Minister of National Security to indicate the position we are in statistically with crime and

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criminality within this country. I am very well aware. In my contribution in the Miscellaneous Provisions Bill last year I indicated emphatically how I view transmissions coming from the prisons and that something needs to be done to stamp that out.

Last week when we were here dealing with the crime debate as well too, I indicated that it upset me greatly to be aware that a particular communication would have come from the prisons with respect to a hit for someone that I was personally familiar with. So I appreciate those particular circumstances, but it is in times like these where we figure our backs are properly against a brick wall that we must dig deep to ensure that we do not trample upon the rights of citizens who have entrusted us here, within this Parliament [*Desk thumping*] to seek out their best interests that sometimes when we are placed in these positions we effortlessly give knee-jerk reactions, and I believe some of what is contained here reflects that position.

I think if more sensible consultation was done—because I heard the hon. Attorney General indicate who he consulted with, or at least where letters would have gone out. And in all of the organizations that were raised by the AG, most of them, I daresay all of them, were state entities, and that the only one that was not a state entity was the Law Association. I admit I hear what the hon. AG indicated that the Law Association was—well at least the documents would have been sent but no formal communication would have been given. But this is something that affects us all. What about the Criminal Bar Association, were they consulted?

Hon. Al-Rawi: They are members of the Law Association.

Sen. S. Sobers: No, but they are separate and apart in terms of what they can

offer, and these are the persons that would represent probably the interest of individuals who may very well be dependent before the court. [*Desk thumping*]

It cannot be that we articulate positions only with respect to the State and not for the persons who pick up just like members of TTPS, just like members of the regiment, just like members of the coast guard, in defence of the public. These individuals defend public individuals as well too. [*Desk thumping*] It is the common man that is going to find himself before the courts in these particular positions. There are going to be the nefarious ones who should find themselves here, but we should have offered a position, or at least an opportunity, to those entities that represent the interest of persons who may very well be innocent, finding themselves in these precarious positions, an opportunity to raise and voice their concerns.

Madam President, jumping directly into the Bill, I looked at the introduction of “stored data” and “stored communication” which is located at page 5 of the Bill. Now in terms of my reading and understanding of how other jurisdictions treat with stored data in particular in Canada—and the hon. AG indicated it himself—when we look at stored data and stored communication we have legislation on the books that currently treat with that particular form of information, and generally those aspects of information are subject to search and seizure, and not interception. So I found it very strange and it bewildered me greatly to why are we intercepting or placing before this House an opportunity for us to utilize interception mechanisms for stored data? If we are to be symmetric in terms of what currently obtains with respect to the other pieces of legislation, we could have subjected those things specifically to search and seizure. That is what warrants are available

for. So why are we placing stored data and stored communication in the realm of interception? And I would hope either the AG or the Minister of National Security could treat with that as well.

Page 8 of the Bill also addresses this issue of a designated place, and I have a lot of issues with respect to a designated area. Having practiced in the criminal arena, I am aware in terms of—and the many of us who sit in this Chamber, who would have gone to police stations on many occasions and there is supposed to be a designated area where an attorney-at-law would meet with his client, often referred to as the barrister's room, or counsel's room, but on many occasions I would have visited police stations, the immigration detention centre, even the prisons on some occasions, and that designated area is not available. And so, we have to accommodate law enforcement officials and see our clients at secondary locations. Is it now, based upon this Bill before us, that those locations will be subject to some type of interception? If the infrastructure is not in place to properly treat with the designated areas that we have currently right now, are we as attorneys subjecting ourselves to have our communication, privileged communication, between attorney and clients breached by this particular Bill?

Looking on as well too at page 9 where section 8 is amended, section 8 deals with the procuring of the warrant by the authorized officer.

3.20 p.m.

And it is here that I expected to see many changes with respect to how these warrants are in fact procured. In terms of reading and understanding what obtains in other jurisdictions, I would have really hoped that the Government would have compared the obtaining of the warrant to what obtains in the US. The US is the

one place, in terms of my reading and my understanding, wherein there are several safeguards put in place to protect the public from officers and authorized individuals who may approach a judge for a warrant to intercept communication.

Why have we not considered, in terms of amending this particular part where we are asking a judge to consider an application for interception, that parts of the communication have to be specifically identified? It must not be then that the entire conversation being had is available for interception. If there is intelligence that is brought before the judge for the warrant to be procured, the officer must be in a position to indicate specifically what they are looking for and a parameter is set by the judge so that there is a no trampling upon other person's rights in terms of what private conversations that individual is having with other individuals.

I would have liked to see specification with respect to an indication as to who is actually being listened to. [*Crosstalk*] We are looking at section 8, AG. I am hearing you and that is why I am dealing with in terms of interception.

Madam President: Sen. Sobers.

Sen. S. Sobers: Yes, I apologize.

Madam President: May I advise you to just direct your contribution to the Chair.

Sen. S Sobers: Yes, please. [*Crosstalk*] So I would have liked to see some specification indicating, through the judge, as to who exactly is being listened to with respect to this interception warrant. In the US as well too, there is minimalist requirement which indicates exactly what parts of that communication should be allowed to be intercepted. There is a distinction as well too between public and private communication which is not really properly articulated here.

Another big miss with respect to the application of the warrant, which I would have loved to see here, would have been a time frame. It cannot be then that we are asking a judge, a judicial officer that we want to tap X's or Y's phone or tap X's or Y's communication and it is for an unfettered particular period, there must be some specification. In all the jurisdictions that I have looked at, there is a limit, either 30 days or 60 days in some circumstances, and based upon evidence that is brought thereafter, that particular period can be extended. This is something I would have liked to see here, a parameter set out specifically here to treat with such an issue.

There is also a miss with respect to oversight in this particular application as well too under clause 9, amending section 8. In most other jurisdictions, there is a reporting condition. So whilst the individuals, the authorized officers are listening into the communication, they must report specifically to a senior officer who can indicate whether or not the interception is actually procuring or bearing any fruit and if it is not, it would be cancelled. What is also missing here is chain of custody. In most other jurisdictions as well too, there is a chain of custody approach to treating with these issues where intercepted material is actually properly sealed and placed before a judge subsequent to it being done. That is also missing here.

And it begs the question, if we are really and truly amending this legislation for the benefit of the end user, why were not all of these things considered before we actually rushed to the Parliament with this particular piece of legislation? [*Desk thumping*] I would hate to think that there is some other sinister approach behind the Government in bringing this legislation to this Parliament at this

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particular time. It is without a doubt—I mean we all know that this is an election year and I am really wondering whether or not this information or the ability to intercept, as being proposed to this honourable House, is it really intended for the individuals articulated by the Government behind prison walls or is it going to be an attempt—because there is an inclusion now, an amendment now wherein persons will be able to intercept information without the use of a warrant? And before, such information would not have been admissible into court. Now it is going to be. Respectfully, it is not a far-fetched idea or approach or a far-fetched fact that under this particular administration, interception was taking place. Many members of civil society, their privacy was breached. Many persons within this Chamber as well too.

Hon. Al-Rawi: Standing Order 46(6), please. “This particular administration”.

Madam President: Sen. Sobers, be very careful—

Sen. S. Sobers: Guided, please.

Madam President:—on how you are making your contribution, be aware of the Standing Orders of imputing improper motives. Okay?

Sen. S. Sobers: I am guided, Madam President. The PNM administration. [*Desk thumping*] The PNM administration was the one who ran afoul of that particular incident. So we have to be careful, we have to pay attention, lest we find ourselves in that particular position.

I also looked at clause 9 as well too of the Bill where there is winding of the provisions for when a judge can actually issue a warrant. Now, at page 10, it indicates that:

“...under the Mutual Assistance in Criminal Matters Act or giving effect to

the provisions of any international mutual assistance agreement;”

Now when one looks at clause 4, located on page 2, it is clear that:

“This Act applies to-

- (a) criminal proceedings;
- (b) proceedings under the Proceeds of Crime Act;
- (c) proceedings under the Extradition (Commonwealth and Foreign Territories) Act;
- (d) proceedings under the Anti-Terrorism Act; and
- (e) proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act.”

All being Acts of Parliament. But now we are allowing for interception of material based upon “any international mutual assistance agreement”, any international mutual assistance agreement. All of these treaties that may very well be considered here should be Acts of Parliament—

Hon. Al-Rawi: But they are.

Sen. S. Sobers:—as opposed to mutual assistance.

Madam President: Attorney General. Okay. Yeah. [*Crosstalk*]

Hon. Al-Rawi: It is troubling.

Madam President: Sen. Sobers.

Sen. S. Sobers: Well, if it is troubling, “yuh could leave de Chamber”. [*Desk thumping and laughter*]

Madam President: I would ask Members to please comply with the Standing Orders. Okay? Sen. Sobers.

Sen. S. Sobers: Madam President, I apologize, I apologize, I apologize. So that if

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we are treating with something as serious at interception of communication, it should be subject to Acts of Parliament and not some treaty. [*Crosstalk*]

Madam President: Attorney General, I am so hearing you. Could you please? Yes.

Hon. Al-Rawi: I am sorry, Madam President.

Madam President: Continue, Sen. Sobers.

Sen. S. Sobers: Yes. I also looked at clause 10 which amends section 9 of the Act. And I heard the hon. Attorney General indicate that in previous incarnations, when an application would have been made and it would have been granted, and they had to treat with particular entities, the cost would have been enormous for those entities to put that cost upon the State, to bear that cost in terms of procuring this intercepted information. And now we are switching it so that that burden now falls specifically onto the entity.

Now, as much as I think that that is a bit unfair, even if it is we were to consider possibly sharing that burden, maybe half and half with the entity because you are in fact talking about millions of dollars, when we read further on at page 11 where section 3 is amended, the new subsection (4), it also deals with a person having to bear his or her own cost and that is extremely troubling. Procuring this particular amount of information, as the Attorney General would have indicated, is going to be extremely expensive. It should not be that the State is the one, having gone through the process to procure this warrant based upon whatever information that was at their disposal, is now putting this onerous burden upon one person to spend all this money to provide this information to the State. That is something that has to be considered and must be changed entirely.

At page 14, criteria is given for how evidence and intercepted material should also be considered by a judge and it speaks to the proceedings which should be implored for the judge to consider such material. Now, in terms of my reading, I would have come across several situations within the UK and the US, where—in the US especially, not the UK. In the US and in South Africa, and in Canada as well too, where such material is being placed before a judge for his or her consideration, apart from the actual individuals who would have intercepted the information, there are also persons who can articulate with respect to probability, scientific calculations as well, as to how the intercepted material, especially the voice of an individual matches possibly the defendant before the court. And in our society, I mean it is a well-known and settled fact—I mean up to recently, while reviewing this particular piece of legislation, I recalled that there was a gentleman who mimicked the voices of several Members of Parliament. I mean when I listened to it recently as well too, the gentleman, he did a good copy of Sen. Mark for example, and he did a good copy of Members of the Government and whatnot.

And I am just saying, just for instance and it has come up in cases that I would have read, if there is not someone as this individual, in those matters, would have been sound engineers who would have been able to indicate, yes, apart from the methodology implored by the authorized officer to procure this information, that you have a sound engineer coming before the court indicating, based upon scientific calculations, that the voice matches the defendant before the court by a 95 or 99 per cent probability, then this information could definitely be challenged, and there are very well many persons who may find themselves in a precarious position before the courts because we do not have or we have not legislated for

some individual of that nature to present evidence before the court as well too. So it is not only going to be based upon how the information or the intercepted material was procured but we should have someone such as a sound engineer—I am just pulling that from other jurisdictions—to indicate emphatically what the position is with respect to a statistical comparison.

Further at (e), it allows for the recording of conversations at any time once not in a designated place designated by the Minister of National Security. Now, I am fully well aware as to the position I articulated in December when we dealt with the Miscellaneous Provisions Bill. I am fully aware with respect to the position I articulated when we dealt with the crime debate last week and I can understand the position that, yes, a prison is a prison is a prison and there should be no cell phones at all within the prisons; that prisoners, having been placed there, would have given up certain rights and privileges and that we must be very careful with how we treat with those rights and privileges that they no longer hold.

But there have been positions within Trinidad and Tobago. I mean practicing in the courts myself, I have been in positions where prisoners would leave the prisons, come down to the courthouse, we would be given a moment to speak with them to take some instructions and those places are not designated places but there is a certain degree of privacy afforded to us based upon the information that is being procured. There are going to be situations or I know of situations where prisoners, based upon certain restrictions, would not have been given an opportunity to speak with counsel for whatever reason. And in terms of the communication that is actually being made between a prisoner at the prisons or the restricted facility as outlined within the definitions before and his counsel, one

has to balance whether or not we are going to wade into those particular waters.

Should the conversation between a prisoner, even though it is not a designated place, and his counsel, over a telephone at a prison be subject to intercepted material or intercepted communication? Or should that particular conversation, once it runs into legal privilege between the prisoner and his attorney-at-law be protected? Are we at that particular stage in our society that we are willing to say no? Because this is what this particular amendment calls for. This is what this particular amendment calls for and I have heard the remarks being made by the Government and by commentators outside that there are criminal lawyers and then there are lawyer criminals and yes, it is a fact. There are lawyer criminals.

But are we willing now, based upon the very serious actions of a few, to do away with privilege that has existed from time immemorial, that has existed to protect information created and allowed to benefit a defendant before the court? Because I have said it time and time again, the State tends to have infinite resources at its disposal to prosecute an individual before the court. It comes from the beginning of situations with respect to the TTPS go all the way up to the prosecution and the DPP and whatnot. But for that one man or one woman, his or her only defence is his lawyer. Are we, at this stage, willing to trample on those rights? It is something that we really, really need to wrestle with and consider. I am not of the opinion that we should wade into those particular situations. There is a lot that needs to be done to ensure that this designated area and designated space and designated situation works well before we can even consider a situation like that.

Going to clause 16 now, this introduction of closed proceedings and “Special Advocate” later on. In a closed proceedings as articulated in this Bill, no accused or defendant will be present while these issues are being treated with, none. The Bill is quite clear in terms of excluding an accused person. In other jurisdictions, with respect to disclosure of sensitive information, especially in the US, in Canada, in South Africa, that is information is disclosable. The defendant or the accused is before the court while that information is being disclosed. There is no cloak-and-dagger, clandestine approach to doing these things in these countries and I think that is what we are trying to do here. It could never redound to the benefit of citizens within this country. [*Desk thumping*]

For example, in Canada, when persons are dealing with information, sensitive information, there is a particular application that is made for that type of disclosure and it is commonly referred to as “breaking of the seal” and what happens is that the prosecution is given an opportunity to edit certain information or have it blocked out to preserve the identity of criminal informants and officers who may very well be currently in field procuring information. Then the information would be passed on to the defendant or his attorney-at-law and further applications can be made if it is that that information is required to properly prepare his or her defence. But to eject the accused from that particular hearing is a total step backward to how far we have come. [*Desk thumping*]

And the very concept—I know that Sen. Hosein will treat with it properly. The very concept of this special advocate is something that does not exist in all these other mature jurisdictions. I am so sorry that I have to actually say that in terms of juxtaposing Trinidad and these other jurisdictions. This concept of special

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advocate does not exist. How can we talk about confidence in a system when you yourself, respectfully not any Member of Government, respectfully not any Member of Parliament, finding themselves before—well, before a court and having retained an attorney-at-law who you have confidence in and then the same justice system is turning around and telling you, “Well, hear what, for this particular proceedings that concerns you and your future and your liberty and your life, you eh gonna be in the proceedings and yuh lawyer, he coming out the court room too. Have confidence in us, the Judiciary, we will find a lawyer for you.” What is the criteria that is going to be utilized for this special advocate? [*Desk thumping*] Are we aware what experience this individual is going to have? Are we aware that if they are even going to be available? What is the bill that is going to be foot by the State to pay for these special advocates? A special advocate who would only meet his client that very first time to take this set of instructions. That is the position that we are going to be placing citizens in this country. That is extremely irresponsible. I cannot imagine any citizen who would readily or not be in a position like this and have faith and confidence in an institution that is going to articulate and operate in a manner such as what we are proposing in this particular piece of legislation.

And we are doing all of this, Madam President, speaking about closed proceedings, speaking about a special advocate, talking about intercepting stored material and stored communication and we are not hearing about all of the other infrastructural changes and infrastructural problems that this institution is crippled with, that we have asked, time and time again, for updates on. I think everyone in this Chamber and all the listening and viewing public would have slept way more

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comfortably at night just by simply indicating to the public that “Listen, we have done it. Last week, we have the jammers, they came down, we installed them at the prisons and they are totally working, no more communication”. [*Desk thumping*] Why the need for something like this at a time like now? Yes, because statistically—

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

Sen. S. Sobers: Grateful, please, Madam President. Yes, statistically, crime is out of control, prison officers are being gunned down, police officers are being gunned down, hits are being called from the prisons on citizens and whatnot, but all of that could have been fixed with “ah jammer”. [*Desk thumping*] But no, the Government chooses to come here at this 99th hour with this “set ah legislation that they pull from here, there and the other” that specifically mirrors the UK position. In their own Bill Essentials, they compare it to the UK position, and I know in terms of the Bill Essentials, usually from this particular Attorney General, we are seeing legislation from all throughout the Caribbean and the Commonwealth, to tell us that about interception for private information without properly exploring this particular situation as they should have, as a responsible Government should have.

And this is not any partisan approach, I asked as I listened to the prayer of the Senate:

“...in our deliberations so that setting aside private interest and wholesome prejudices and personal affections, we may treat all matters set before us with honesty, courage and conviction.”

And that is why I am saying emphatically, if this is not removed, proper

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consultation is done with the stakeholders who are set out there to defend our citizenry, we will not support this. Thank you. [*Desk thumping*]

Sen. Charrise Seepersad: Madam President, thank you for the opportunity to contribute in the debate on the Interception of Communications (Amdt.) Bill, 2020. I am deeply concerned about the frequency, callousness and apparent ease with which criminals carry out their cruelty. Last weekend, we watched with horror at the number of serious crimes committed in our country, today is no different. The fear factor of ordinary citizens cannot be underestimated. I am aware that those who have the wherewithal are prepared to pack their bags and leave Trinidad and Tobago immediately unless immediate and measurable results are evident. Platitudes, “grand charge” and “ole talk” will no longer cut it in this environment where criminals provide the leadership in forgotten communities. These same criminals benefit from the largesse of the Government as clearly stated by no less an authority than the Commissioner of Police himself.

So, Madam President, will the inclusion of the changes proposed in the Interception of Communications (Amdt.) Bill in the arsenal of law enforcement for crime fighting add to the efficacy of bringing criminals to justice? This legislation infringes on the constitutional rights of citizens and therefore, pushback from various pressure groups is expected. Clearly, the right of the individual citizen cannot be compromised willy-nilly and must be balanced against interest of national security, public safety and security, the economic and social good of the country. If these interests are conflicting, then the constitutional rights of the individual must be preserved.

Given that the primary responsibility of governance is the safety of all

citizens, it may become necessary to temporarily rescind individual rights so that law enforcement can have a decided edge in the fight against organized crime, terrorism or a threat to national security. In this regard, legislation alone will not suffice and priority must be given to policy, systems and procedures for addressing this existing, long-term social ills, maintaining good order, security of the country, prevention, investigation, detection and prosecution of crimes. In several countries around the world, the use of intrusive, directed surveillance or covert intelligence sources by public entities are regulated by law. Some examples include the Australia data retention law, the US Investigatory Powers Act, the USA Freedom of Information Act and the USA Communications Assistance for Law Enforcement Act.

As recent as January 2020, the Trump administration has bought access to a commercial database that maps the movements of millions of cell phones in America and is using it for immigration and border enforcement.

The location data is drawn from ordinary cell phone apps, including those for games, weather and e-commerce, for which the user has granted permission to log the phone's location.

3.50 p.m.

Madam President, the current crime situation in Trinidad and Tobago requires law enforcement officers to have ironclad evidence to convict criminals. We cannot rely on the traditional methods of witness statements and eyewitnesses, if we want to capture gang members; human, drug and gun traffickers; so-called "Mr. Big Fish".

Madam President, the world of information technology and electronic communication is moving at light speed. Many criminals already have more

sophisticated hardware and the requisite software to encrypt, disguise and deceive electronic surveillance in all forms. The dark web is the preferred electronic network for criminals.

Further, electronic information, be it video, audio, text or graphics, can be falsified and protected in many ways. In recent times, Apple refused to assist law enforcement officials in providing access to an electronic device. I believe this legislation is not aimed at petty criminals. I also believe that electronic surveillance and data capture already exist, but require legislation for legal use. I am convinced that fighting crime requires new options, since we cannot keep doing the same things and expect different results. From all appearances, law enforcement is currently on the losing side.

Madam President, we cannot expect law enforcement to make progress in fighting crime when they are handicapped by laws which prevent them from retrieving and using intelligence and evidence from all possible sources. Criminals are acutely aware of the existing legal limitations in accessing data from electronic devices and the use of evidence from such devices. Somehow, prisoners can access mobile phones which, it is believed, are used to order criminal activity from the prisons. Law enforcement should be able to monitor, intercept and record prisoners' communications. They should also be able to seize devices and retrieve stored information for intelligence and evidence purposes.

Safeguards to preserve attorney-client privilege is necessary. There should be certain designated areas in prisons where conversations will not be intercepted or recorded. The areas that are monitored should be clearly marked. The Bill also provides safeguards for the misuse of the powers to intercept and there are offences for persons who act without authority.

Madam President, the current legislation provides that the interception of communication can only be done by a judicial warrant applied for by an authorized officer and issued by a judge after taking into consideration all factors.

Additionally, there will be judicial oversight and fairness to the accused so that the stipulated factors will be considered before admitting the evidence into the court hearing. Therefore, there are checks and balances in place to ensure that the law is proportionate. I am by no means seeking to diminish the constitutional rights of citizens.

At the same time, given the gravity of the crime situation, Madam President, I propose that a limited period be given to gauge the effectiveness of the Bill. By this I mean, consideration be given to a sunset clause of say two to three years. At the end of the period, an analysis can be done to show the effectiveness of the changes implemented from the time the Bill is made law. Factors to be considered include: significantly increased detection rates, substantially decreased murder rates, overall decrease in the prevention of crimes.

I believe that law enforcement already has set annual targets, given the prevailing conditions. These targets must be revised to reflect performance, which is due to this Bill alone. Given proven statistical improvements, the Bill can be brought back to Parliament for extension. I suspect this suggestion can be more properly dealt with in the committee stage.

Accountability: the Interception of Communications (Amdt.) Bill, 2020, provides for a system of parliamentary accountability. Because the Act interferes with the individual's rights, the Parliament has a crucial role in the operation and scrutiny of the legislation.

Section 24 of the Act provides that the Minister of National Security prepare

an annual report within three months after the end of the year, in relation to the operation of the Act in the immediately preceding year. A copy of this report is to be laid in both Houses of Parliament. I can only find the Interception of Communication Annual Reports from 2010, when the law was enacted, to 2016. Madam President, if this is the case, I must request that the reports for 2017 and 2018 be made available to Parliament immediately. The 2019 report should be laid in Parliament in the time frame stipulated by the Act. Thank you, Madam President. [*Desk thumping*]

The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young): [*Desk thumping*] Thank you very much, Madam President. Thank you to Sen. Seepersad for that very sensible contribution, if I might put it that way. Madam President, I join this debate here today to talk about a very important tool in the fight against crime. And I sat here and I listened very attentively to Sen. Seepersad and she hit all of the right notes as to why the time has come for us to tackle crime in the manner that we are. So I would like to start today, Madam President, by talking a little and very briefly about the importance of interception in the fight against crime.

In national security, and in particular in law enforcement, and more so in dealing with interception and the tools that are designed to deal with what takes place constantly, and all of us in here would use the technology, but rest assured that the criminal element are also using the technology and they may also be using technology that is in advance of what we do. Law-abiding citizens, the vast majority of us anyway, I assume we would have absolutely no difficulty having open communications and calls with each other, none. Absolutely no difficulty with who we talk to and where we talk to people.

Let me put at the outset that this Bill here today, the significant amendments being proposed, are to deal with persons in prisons. So I find it difficult, as a citizen of Trinidad and Tobago, as a law-abiding citizen, and as someone with the current responsibility for national security, to understand how anyone can make a legitimate argument that they should be permitted to communicate with a person incarcerated, outside of the means provided in the legal sanctity of a prison.

So I want to put on record at the outset that in our prisons, persons are permitted to communicate via specific landlines, set up in designated areas, with their family members and their lawyers. Their family members and their lawyers are then permitted visitation rights. Outside of that purview, I cannot, for the life of me, believe that any law-abiding citizen would put forward any conscientious argument that a prisoner has a legitimate claim to use of a cell phone.

Cell phones in prisons, tablets in prisons, any device to communicate outside of what the State provides for you in a prison as a prisoner is contraband. It is illegal. And I will get to some examples of what is taking place right now, and why this piece of legislation is important.

So Sen. Seepersad was correct when she talked about proportionality. The time has come. In fact, it is too late in coming. But finally, we have moved on it, and today we are here to debate very important amendments. But let us put them in the context of the existing legislation, because there are the protections and there are the safeguards in the current legislation.

So in balancing exercise, Madam President, in national security, you are constantly called upon to balance the protection of the State and its citizens, their safety and security with the protection of individual person's privacy. But you see no prisoner can legitimately argue that they have a right of privacy to utilize

contraband, illegal cell phones or other devices for communication. To suggest otherwise, is an acceptance by us as citizens that we are living in a state of anarchy. Because those prisoners are not calling, using these cell phones to conduct legitimate business.

And I cast our minds back to the days prior to cell phones, prior to cell phones, and not many people will know it, the new generations would have no concept of landlines whatsoever. I have a landline on my desk as Minister of National Security, and if I pick up that phone, or if there are calls on that phone, over 10, since I have held the office of National Security, I would be in shock. Everything now comes on your cell phone. But cast our minds back to pre-cell phones, every prisoner would have the right of conversation and communication via landlines; that exists. We have set up. We even have a system in the prisons that are listed here, where your family can put credit on cards so the prisoners do not need money. They go and they type in a code, and it gives them access to an outside line. So lest anyone believes that there is not sufficient technology set up, legal technology, for incarcerated persons to communicate with whomsoever they want, their family members, their friends, their lawyers, it exists. It is available. It is not something new.

So to try this fearmongering and to suggest that, “oh, you would not have the opportunity, you would not have the availability”— and I will come to the legislation, not true. So in the balancing exercise in national security, you are constantly balancing the individual's right to privacy versus securing all of the citizens, securing the State and providing for their safety. Not an easy task. But we are not the only country that faces the difficulties, nor are we the only country to deal with what we are dealing with today.

I want to remind persons as well, Madam President, through you, that in today's world, the prevention of criminal acts include acts of terrorism. And when you— anyone who follows international news—and knock on wood, we have been very fortunate in Trinidad, thankfully, due to our law enforcement agencies and our intelligence agency and our international allies providing us with intelligence so far—every time you hear about an act of terrorism, including the recent acts in Great Britain, with stabbings, the last two were persons who had just come out of prison. And you always hear afterwards, the intelligence agency saying: "Well, we were monitoring them but we crossed a line and felt it was not necessary anymore." Do not let us fall into that trap here today. .

Let us provide—what this Bill is seeking to amend the parent Act on is to provide us with the opportunity to utilize intercept for evidential purposes. That cannot be overemphasized, the importance of allowing us now to prosecute anyone who is illegally communicating with prisoners. Why would you want to fall into a protected category of communication there? So it now allows us—and I would get to in a short while, very carefully, choosing a few examples to let the population, and in particular the Members of this House, know of the types of communications that are taking place, the types of people that are speaking to criminals, and the types of conversations that go to the heart of securing Trinidad and Tobago.

Every jurisdiction in the world, in national security, needs to intercept. Sen. Seepersad was talking about some of the most advanced nations, in particular, the United States, and the type of intercept that they are doing now. It is a reality. Let us not bury our heads in the sand and pretend it does not exist. The balancing exercise is to make sure that it is utilized and there are sufficient safeguards and accountability that is utilized for the fight for good, as opposed to being abused. It

is needed for monitoring, intelligence-gathering and evidence-building. It allows the disruption of criminal activity, and importantly here today, gives law enforcement the ability to prosecute criminals for this criminal activity.

And I would like to put on the record, because I heard it being suggested by a previous speaker, that where is the consultation? Where was law enforcement? It is law enforcement that asked for this. So let me put that at the outset. As I have said here repeatedly in the Senate, all we can do as legislators, each and every one of you, is pass law. That is your job. We do not for a moment think that legislation alone is going to solve anything. But it is one of the tools and one of the assets. And these particular amendments that were worked on for a long time by the Attorney General, out of the Attorney General's office, was requested by law enforcement. Because law enforcement and our intelligence services know what they are facing in the fight against crime and, in particular, in the prisons.

This Act provides the necessary safeguards governing lawful intercept. The current Act, we must always protect both individuals and national security interests. We are ordered to provide that safety and security for Trinidad and Tobago.

Madam President, I say here, without fear of contradiction, having gone through these amendments, that these amendments achieve that balance. They allow authorized officers—and I will get to who are the authorized officers—to do their jobs via intercepting, but also protect the rights of law-abiding citizens.

So the original Act, the parent Act, and I want to just remind the population and Senators who is allowed to intercept. There are three authorized officers: the Commissioner of Police, the Chief of Defence Staff, and the Director of the SSA. There is nobody else, pursuant to the legislation of Trinidad and Tobago, that can

legally intercept. Those are the people that we have entrusted to carry out their job and their duty, and there is only one person that they report to, the Minister of National Security, and it is built in here, the protection. So every single time, whether it is a warranted intercept, or whether it is an intercept for intelligence, the Minister of National Security, within a number of hours, days at maximum, is provided with a report that an intercept has been started. And I can tell you, as the Minister of National Security, you do not know who is being intercepted, because codes are used. But you are being told it is for breach of these particular laws. So they are intercepting because they are going after gangs, or they are intercepting because they are going after persons who may be suspected of having ISIS links. And that is all you know as the Minister of National Security.

But there is an oversight, because I read every single report and if I find something strange, I will call upon the officers to explain what is this about. But you have someone looking on at it. And if any officer who is authorized to intercept, breaches the law, there is sufficient provision in here. So I have had cause to warn people at times and to say: "Do not get involved in that, because you can be prosecuted under the law." But there are sufficient safeguards.

And on that note, Sen. Seepersad, the Cabinet did approve the 2017 intercept report and it was only in the last months ago, because it was prepared months ago, at least six months ago, if I remember correctly. And it is only within the last 24 hours when the Attorney General was doing the same research you were doing, that we realized that it got stuck and it was not laid and I apologize for that. *[Interruption]* All of the reports. We were the ones that did it from prior to 2015. We got it up to 2017. The 2018 is currently being prepared. I wrote and told them to write to the various three individuals I have just listed and tell them I want those

statistics in, for the exact same reasons you have listed. Because it is for accountability. And I told them: "By the way, you have a few days left for 2019."

So, let me get now to some of the protection. If you go to section 23, because it is important to just remind ourselves what exists in the law. Section 23 of the current Act, the parent Act, 23(2) says:

"A person who intentionally discloses the contents of any communication"—either—

"(a) obtained by a means of warrant..."—or—

"(b) obtained in the course of interception of communication..."

—and it makes it a criminal act. There is the protection in the Act. So exactly what Sen. Seepersad said, Madam President, this is no longer time for "ole talk" and "grand charge" and politicking. We are dealing with a very specific subset of criminality that is prevalent, too prevalent, in our prison system. And that is what these amendments are here to do today. So I assure the population that under the parent legislation, sufficient protection exists to ensure there is not an abuse of the intercept.

Does it mean that persons may not abuse it? No, it does not, because once you have human elements, there is always that possibility. But is there sufficient protection in the legislation? The answer is yes. These persons can be prosecuted and it is narrowed to three persons can start the interception. You have the courts overlooking the approval of warrants and that is part of the amendment process here today, to make that process more relevant. Because another thing with crime and criminality, like everything in life, there is no mould growing on the stone. Crime and criminality, exactly as you identified, Sen. Seepersad, is marching very strongly along. And if we do not provide the law enforcement agencies and our

intelligence agencies with these amendments here, they are going to be left behind, and the only people that suffer are the law-abiding citizens. Because, by definition, the criminals do not care about the law. So again, I put on alert, the population. Why would anyone, any single citizen, want to try to protect an illegal mode of communication of prisoners in a prison using contraband phones?

The importance of intercept is it boosts investigative and evidence-gathering capabilities, and that is what we need. As I just said, crime and methods of criminality are always evolving.

Madam President, at this time, these amendments are vital to the fight against criminality in Trinidad and Tobago. And let us with that now move to the prisons, and a little bit of what is going on in our prison system; not today, but for far too long. We are able, through the technology that exists, to pick up the fact that persons are communicating and trying to communicate via modes of communication, either phones, tablets, hot spots, with persons on the outside. What we did a few months ago in the passage of The Miscellaneous Provisions (Law Enforcement Officers) (Amdt.) Act, was make it a crime. Today, we take that fight further and we are saying to those who participate in this type of behaviour, those who may be communicating with persons who are incarcerated, some of them for murder, and helping them to carry out their criminal acts and activities: “We know you are doing it. When we pick you up for it, we can now charge you for it”, and charge both of them. That must become a deterrent. Because there are all sorts of people, some in our midst and some outside, who are conducting themselves in this manner. And it is unacceptable.

As the Minister of National Security and as a concerned citizen I repeat, there is no legitimate reason for anyone to be communicating with a prisoner other

than through the legal and designated means, which are sufficient. So, for anyone to suggest there must be protection of a prisoner using a contraband phone to communicate, that is a person who needs to be watched very carefully.

Let us talk about what is going on in the prison system. Gang activity, instructions to gang members on the outside. It is a reality. You have incarcerated prisoners giving instructions, via illegal means, illegal cell phones, to persons on the outside to do all sorts of things, including the continuation and conduct of criminal empires. And if we do not pass this type of legislation, what we are doing is we are condoning that as continuing. But if we pass this type of legislation, we are making it an expressed act of criminality and we are saying we are not going to accept that as a society. And that is what we are being called upon to do here today.

So when you go to some of the amendments, first of all, this is not open-ended. We have limited the type of proceedings that this will, the amendment will carry through to. And this Act applies to criminal proceedings, proceedings under the Proceeds of Crime Act, proceedings under the Extradition (Commonwealth and Foreign Territories) Act, proceedings under the Anti-Terrorism Act, proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act, all legitimate, nothing further than that, very closely confined parameters as to what this should apply to.

In the definition section, we are very, very careful about the expansion of what is covered. Because you see technology changes. Even if you think five years ago, even on your cell phones and the advent of smartphones, there were not these types of end to end encryption platforms, the WhatsApp and the signal and the telegrams. There also were other ways of communicating. It was just a strict

“pick up yuh phone, call from number to number.” But now we must cater. Because sometimes, I heard it mentioned by Sen. Sobers a little while ago asking: “Well, why would you want stored information?” Why would you not?

We have had many a breakthrough in many a criminal investigation, when you pick up the devices of those engaged in criminal activity and you are able to forensically image it and pull out of that, what are the types of communications taking place. The difference that these amendments propose today is to make that criminal evidence, evidence now for criminal prosecution. So when you pull a device of persons in a carnival terror threat and you see some of what they had, how to attack a convoy, how to make a bomb using things you can buy in a hardware, what are the travel routes of certain people. Why should we not allow law enforcement now to use what was picked up from that device as evidence in a criminal case? Because as you said, Sen. Seepersad, we can no longer rely on human witnesses who may be threatened and who may feel afraid and witness statements. But let us put the criminals on the back foot. Let them explain why they have this type of information and plans on their devices, especially the ones in prison.

Just to go very quickly to the conversation about prisons, if I may, through you, Madam President. Because you see, this is not a new or a local phenomenon. I just want to refer to two articles. The first is entitled:

“Contraband cell phones in prisons quickly becoming a national crisis”, by Anne Emerson on the 12th of December, 2018. I repeat the title:

“Contraband cell phones in prisons quickly becoming a national crisis”

This is not Trinidad and Tobago.

“Washington (Sinclair Broadcast Group)-Cellphones are just about

everywhere these days, including, it turns out, our nation's prisons. They're dropped in by drones, thrown over jail walls, and even smuggled in by Corrections Officers. And it's all illegal."

This is in Washington DC, talking about nationally in the United States in December 2018. So do not come with "de ole talk" that this is Trinidad and Trinidad alone. That is one article, Madam President.

4.20 p.m.

The second one, "How Prison Telecommunications Work" by Jane McGrath. "Cell Phones in Prison: Contraband":

"Another way for inmates to dodge prison eavesdropping is to gain their own phones."

And that is what I am hearing here today. I am hearing the suggestion allow them to continue.

"Prison authorities have found it's surprisingly easy for prison inmates to get their hands on working cell phones (with chargers to boot). One tipoff came from an inmate's mother who wrote to a warden in Texas prison complaining that her son's cell phone reception was bad."

That is how ridiculous it is. I see Sen. Chote smiling.

I will tell the population here today that on the weekend, provided to me as Minister of National Security, was a voice note sent by a prisoner giving me his cell phone number saying: "Call me. We need to have a conversation". That is what is going on. And now what we are trying to do is criminalize that, because it is unacceptable for this to continue. Because exactly as the Attorney General has said, what does take place is the continuation of a criminal empire, there is no doubt. Sen. Sobers, reminded us that on the last occasion, one of his pertinent parts

of his contribution was how disturbed he was finding out of a criminal, incarcerated, calling a hit on someone.

What we can do when we pass these amendments today is make that an illegal act because we can now use the evidence, whereas, before we could not. But there was some difficulty with respect to it. Just to carry on with this:

“Cell phone accessibility has become a serious problem for prisons—in addition to the crimes that inmates are known to commit over the phone. Gangs can organize themselves far more easily when members in prison have cell phones. For example, in 2006, incarcerated gang leaders in Brazil orchestrated large, synchronized riots using their cell phones, reportedly in order to prove their influence even behind bars. The gang caused uprising in more than 70 prisons, and meanwhile, members outside of the prison caused riots and wreaked havoc on public busses and police stations. Gangs transcend prison bars in the U.S., too, where gang leaders have been able to wield their power from inside prison walls—even ordering gang murders.”

So this is not a phenomenon that is only about Trinidad and Tobago. It is something every national security apparatus is facing all over the world. The difference is, in their legislatures, the law is passed criminalizing this. In the United States, you “cyar” have a cell phone in a prison. But we are hearing here today, “You should allow that to continue in Trinidad.” And I say, as a citizen who is concerned for the safety and security of all of our law-abiding citizens and as the Minister of National Security, that unacceptable.

At the prisons, we have been doing a lot more work. You all would have been seeing as the public, because I have asked them to notify the public via the relevant releases, we are doing a lot more searches and we have been picking up.

To Friday last week, due to a sting operation, a particular prison officer was caught and is being charged, or has been charged for bringing contraband into the prison, including these same cell phones. But we need this legislation to help us in the fight to convert to what is going on, to evidence that can be used to prosecute these persons for the criminal acts that they continue to carry out.

Our intercept has saved lives. Through the intercept that has taken place, we have managed to save the lives of persons by picking up some of the orders of hits that have gone on. A few weeks ago, a gentleman came up to me and he said, "Mr. Young, I love yuh". I said, "Okay". He said, "No I really do". I said, "Okay, Sir". He said, "You do not know who I am". I said, "No I do not". He is a taxi driver. He then told me, "My son is a prison officer." I said, "What is your name?" He told me his surname. He said "Do you know what you have done for my son?" I said, "Sir, we did it twice". Because of what we have managed to pick up, managed to save his son's life on two occasions because of the illegal contraband cell phones in the prison. He then called his son and put his son on to me and I said, "Officer X, I remember the incident", and they expressed gratitude.

But that is not gratitude to me that is gratitude to the law enforcement officers and our intelligence agencies who are the ones asking for this legislation because you know what? Yes, we saved the life twice, but we cannot prosecute them based on the intercept that was picked up. But with the passage of this legislation, we can. And when persons inside realize I "eh" getting back outside, because if I continue with this type of behavior, my stay here is going to be longer. It will have the deterrent effect. And you can also prosecute them for attempted murder. [*Desk thumping*] So to listen to why we should not do that today, I find offensive.

Let me just quickly respond to a couple things that were raised, lest our population be misled. This whole “bogeyman”, as we call it in Trinidad, of professional legal privilege— there is nothing in this legislation, nothing, Madam President, that affects a prisoner’s legal right to a continuation of legal professional privilege, nothing. A complete fearmongering, a “bogeyman”, a throw out of misinformation, that is synonymous with the Opposition.

Everything in these amendments provides for the protection of continued legal professional provisions. But what it will no longer permit, and it now makes criminal, if and when passed, is for lawyers to have conversations using illegal contraband cell phones with prisoners. Come into the prison, send your junior to get instructions, there are designated areas, there are also landlines that the prisoner can call you, all of that is there. Why would you want to protect them? And I will tell why. It is not evidence because we do not have the Act, but there has been intercept of certain lawyers practicing at the criminal bar communicating openly with the most notorious of criminals on the inside through the same intercept as well as what we have gotten off stored devices. If those conversations ever became public, the public would be shocked. And I remember saying this about 18 months ago and being attacked by the Law Association, it does not bother me. Because every time I say something, I have the supporting information for it.

Six Senior Counsels calling upon me to apologize, “if you have the information, take it to the police.” It is the police I got it from. But that is what is going on. And lawyers conducting criminal empires for their clients, not taking instructions as to how to conduct their defence. I want you to go out there and pay X. “Go and tell Shorty and Redo and tell Shooter, I want this one dealt with and that one dealt with.” Pass this legislation today, we will deal with them. Because

now we can use them through due process, charge them for it, put them before the court, let them now go and explain to the jury and to the court why they were listening to a criminal and conducting the exercise for the criminal as to when that criminal was telling them what to go and do. That is not legal professional privilege. And the amendments protect lawyers in their privileged conversations with clients.

I want to remind persons at this time, Madam President, that the Act also provides very, very clearly, the parent Act, that if you intercept and you pick up information that is not pertinent to the warrant or what you are looking—you have to destroy it immediately. So the parent Act provides the safeguards, you cannot keep that indefinitely. The officer is compelled, mandated to get rid of that communication that has nothing to do with the investigation.

But that is some of the behaviour that is taking place, Madam President. Knee-jerk reaction, typical language. This legislation is not knee-jerk. It has been worked on for a long time, it is well thought-out, and there is nothing that is knee-jerk about it. Consultation, I smile when I heard about the suggestion of who should be consulted with, the prisoners?

Hon. Senator: That is only one left.

Hon. S. Young: Who should be consulted with the prisoners? Even the Law Association, the Law Association who did not give their view, there is nothing legitimate about speaking on a contraband cell phone with anyone from within a prison wall. Who is there to consult with? What, ask the prisoners should you be allowed to speak to Sen. X?" Because that is what is going on. So who should the consultation take place? With the greatest of respect a ridiculous point and a red herring. Have issues designated area, how many times not available—

Sen. Obika: Madam President, Standing Order. I raise on a point of order. Standing Order 46(4), Madam President. It is very offensive, the conduct of the Minister.

Madam President: Minister, continue please. [*Desk thumping*]

Hon. S. Young: Thank you very much. Have issues with designated areas, many times not available, would these areas be subject as designated areas. The legislation is clear as to where the Minister can declare to be an area or not. All of our prisons have working infrastructure. This does not include police stations. In the definition of “prisons”, it does not include police stations. So I do not know where Sen. Sobers was going with that. Well, it does, a holding cell at the police station, but again, a prisoner in a holding cell of a police station should have a phone? Is that what is being suggested?

Also, another red herring, set out how long warrants for intercepts are. Every single warrant has a deadline. The maximum that you can intercept someone for is 90 days and you have to go to a judge to get it. You can try to renew after that, it is up to the judge. But again, it is the Minister who gets an account, who gets a report as to every single intercept and if something is amiss there, ask the questions. This is a system that has been in place since 1995. So do not raise that. These are the legitimate interceptions and under this Administration, that is what exists. Certainly, I can say as the Minister of National Security, that is what exists.

Madam President: Minister, you have five more minutes.

Hon. S. Young: Thank you very much, Madam President. This dog whistle—because that is always part of the strategy. The dog whistling, is this a sinister approach? Is this for individuals behind prison walls? The answer is yes. But are there persons who may be communicating with those behind prison walls that are

nervous? Good, because they should not be talking to them. You should not be having a prisoner, who is in there for murder, give you instructions as to what to do. Because no law-abiding citizens—I am not dog whistling, you know, that is a fact. So do not come with a dog whistle, is there a sinister approach? The answer, Senators and Trinidad and Tobago, is no. The law enforcement officers are asking for this to fight the phenomenon of what we are facing with prisoners talking and this goes to prisoners talking in the vans to and from prison as well.

This one was good, “prison is a prison is a prison”, should not allow cell phones, but— there is no “but”. Yes, a prison is a prison, your rights are curtailed and we have provided for lines of communication with your family, your lawyers, et cetera. So there is no “but”. Only defence is a lawyer. Are we going to trample on his or her rights? To have a cell phone in prison is illegal, it is contraband. No rights being trampled on. Prior to cell phones, as I said a short while ago, how did prisoners speak to their lawyers and their families and we have those facilities in the prisons.

Sen. Seepersad, I agree with you, that legislation alone will not suffice and that is why we need to do this and as you accepted, this is merely one tool in the toolbox and one step forward in the fight against crime and criminality.

So, Madam President, as the Attorney General said, the time allotted to us is not sufficient. But I have come here today, as a concerned citizen and as your Minister of National Security, to ask for your support for the passage of this critical piece of legislation to allow our law enforcement officers that one tool in their toolbox to continue in the fight against criminality and the particular criminality that we are facing down here, is those within the prison walls.

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

Interception of Communication
(Amdt.) Bill, 2020
Hon. S. Young (cont'd)

2020.02.11

Madam President: Hon. Senators, the sitting will now be suspended. We will return at 5.10p.m. and Sen. Hosein will be making his contribution when we resume.

4.34 p.m.: *Sitting suspended.*

5.10 p.m.: *Sitting resumed.*

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

Sen. Saddam Hosein: [*Desk thumping*] Thank you very much, Mr. Vice-President, for giving me the opportunity to contribute on one of—as the Attorney General said, the most important piece of legislation that has been introduced in this Parliament, in this session. That is the Interception of Communications (Amdt.) Bill, 2020, which we were given a copy of last week when we last met.

And, Mr. Vice-President, on the last occasion that we would have met in this Chamber, I would have brought a Motion with respect to the failure of this Government to adequately deal and control the crime situation. And the Government has said that this particular piece of legislation will now be a tool in its arsenal in order to deal with the crime situation. So this Bill is one of the responses of the Government with respect to crime, and how they are going to prevent crime from occurring.

But, Mr. Vice-President, after I read this Bill, I am certain that this Bill will not alone assist the Government and the law enforcement in terms of reducing crime. [*Desk thumping*] Because the Bill can only do so much. Time after time we would come to this Parliament and we would hear the narrative of the Government, “Give them a fighting chance. Let us give the police a fighting chance”. Mr. Vice-President, this is about the tenth chance we have given this

Government in order to fight crime and they have failed. And as the Minister of National Security has said, it is too late now, it is really too late.

Because if you have all of this legislation without proper implementation then it amounts to nothing, absolutely nothing. And I wanted to look at how this legislation had worked prior to its time being amended. So I was able to get my hands on a copy of the last annual report with respect to the Interception of Communications Act. And under the parent Act, this was one of the accountability measures that had been put in place in order for some level of accountability with respect to the Parliament.

And, Mr. Vice-President, I looked at the 2016 annual report for the period January 2016 to December 2016 prepared by the Minister of National Security dated the 23rd of April, 2017. Now, what was strange in this report is that I saw that the Minister of National Security, then, Maj. Gen. Edmond Dillon, MP, said that the report was statutorily due in 2016 by his predecessor. But, Mr. Vice-President, when last I checked, they were in fact in power in 2016 and therefore, he was the person responsible for the preparation of this report. So that is one of the issues that I had flagged with respect to why would the Minister say that his predecessor was responsible when he, in fact, was the Minister responsible for the laying of this report.

So I looked at the back of the report where there are tables, Mr. Vice-President, and in these tables there are certain stipulations which must be complied with regard to the parent Act. And the Commissioner of Police for the year 2016, the calendar year 2016, applied for 36 warrants for interception and they were granted all 36. And there were 144,911 interceptions for speech through the SSA. Data, there were 23,084 through the SSA, and data, 4, by service

providers. So that is the amount of interceptions for the year 2016 by the Commissioner of Police. Commissioner of Police being one of the authorized officers under the Act.

So let us look at what came out of this. So the offences, in respect of which warrants were granted, specifying the number of warrants given with respect of each of those offences. So out of all of those interceptions it led to 14 drug trafficking offences; possession of firearm and ammunition, 2; money laundering, 10; and murder, 3. The number of persons who have been arrested, 5. And there is one pending criminal proceedings where the intercepted communication is to adduced in evidence. There have been zero convictions as the proceedings are pending before the court. There are 35 criminal investigations.

So that is what the interception of communications gave us in 2016 for the Commissioner of Police. Let us look at the SSA, because the director of SSA is another authorized body under this particular legislation in order to intercept communication. He applied for zero warrants, but they were able to intercept 283,418 speech and they were able to intercept 70,162 data all for the Commissioner of Police. Now, Mr. Vice-President, you see this large, high number of interceptions leading to very small amounts of investigation charges and matters before the court. So one has to wonder whether or not— and Sen. Sobers raised the point, whether or not persons are being intercepted in this country and their communication for other reasons. Because this is over 500,000 interceptions in one year. Leading to how many? Five arrests. So one has to wonder, what is the basis for all of this interception?

Now, another issue I would like to raise is an issue where the media is involved. Because oftentimes you would see investigative journalists having

pieces in the print media, sometimes on television, where they would interview persons who may be of interest, and who may be in the prisons who give information. Now all of these persons will be captured by this legislation. Further, they would now have to reveal their journalistic sources because the data and the communication will, in fact, be intercepted. And the Minister of National Security indicated that we are blowing dog whistles.

Well, Mr. Vice-President, we must remember the genesis of this particular legislation. Because, in 2010, when this legislation was introduced in Trinidad and Tobago, you would remember it came on the heels of an abuse of a government with respect to intelligence agencies in this country. [*Desk thumping*] They were spying on private citizens, on judges, on politicians, even a comedian. The President was being spied on. Steps had to be taken in order to regulate a particular government with respect to abusing its power to intercept communication between private citizens in this country. [*Desk thumping*]

Hon. Al-Rawi: I rise on Standing Order 46(6). Mr. Vice-President, there was certainly no law in place and it was bought under the UNC-Panday regime, the inception suites. I object—[*Crosstalk*—46(6).

Mr. Vice-President: Okay. Allow me to rule. All right. Member, just be careful along the lines that you are going and the inferences that you are making, continue.

Sen. S. Hosein.: Thank you very much, Mr. Vice-President. [*Desk thumping*] Those are matters of public record and I will just leave that right there.

Sen. Ameen: Everybody “know” about it—

Sen. S. Hosein: Those are matters of public records. Now, you come with this particular piece of legislation to further invade the rights and the privacy of individuals in this country. But there is one particular piece of legislation that was

passed in 2011 in this country called the Data Protection Act. Why has that Act not been fully proclaimed in order to protect data and the information and the private information of citizens of this country? But you rather bring legislation now to further intrude and invade into persons' privacy. [*Desk thumping*]

Nine years have passed and that legislation is still not proclaimed. You have not appointed the director—the commissioner under the Data Protection Act, you have not appointed him. But you lay this Bill last week and come this week to debate it to invade persons' rights. [*Desk thumping*] That is what you do in this country. That is the modus operandi of this Government. Instead of being the guardian of the democracy and protecting citizens' rights, they come here with Bill after Bill requiring three-fifths majority to invade into your constitutional rights and freedoms in this country. [*Desk thumping*]

Mr. Vice-President, you would understand, all of us recently in December last year would have passed a particular piece of legislation in this Parliament called the Miscellaneous Provisions (Law Enforcement Officers) Act. A specific offence was created there, Mr. Vice-President, for prohibited items, and prohibited items include: one, as a telephone. The offence that is created is that, if a person is found in possession of a prohibited article inside a prison and does not have the express authorization of the Commissioner of Prisons to have the prohibited item in the prison, he commits an offence. It is punishable by summary conviction for \$150,000 and to five years imprisonment, or on indictment to \$300,000 and seven years imprisonment.

So you create an offence that it is illegal to have cell phones in a prison but today you come in this Parliament, two months later to say, “Well, we are not going to deal with the cell phone problems in the prison, we are going to intercept

the communication from that.” I have no idea, Mr. Vice-President, where in this country or where in this world you use illegal items to collect evidence. Because that is what you are doing, you know. When the law enforcement intercepts all of this communication coming out of those lines, you think that they would want to take out the cell phones from prisons? You really think that law enforcement will want to take out cellphones from the prison if they are getting intelligence? So what you are doing is that you are encouraging a cell phone problem in the prison.

And now, under this particular piece of legislation, you remove the requirement to get a warrant. So you have to get no warrant and that evidence is going to be admitted in a criminal trial against you. Mr. Vice-President, that is the height of insanity in this country, legislative insanity. [*Desk thumping*]

You have all of the interception. Look at what happened in Gulf View recently, how many homes were raided because of intelligence and interception. You had the Carnival plot that the Minister of National Security spoke of that ended up in blunders. You had recently three men walking free because the State did not want to disclose that one of the persons fabricated evidence against a next person. And we must never forget in this country, when this Parliament was tarnished by something called emailgate; emailgate was emails. This interception—they are going to intercept your emails, Mr. Vice-President. That was abuse to the highest level in this country. [*Desk thumping*] And if they can do it to sitting Ministers and a Prime Minister, imagine what they can do to ordinary citizens of this country. [*Desk thumping*]

But I want to understand what really the mischief is in this law. What is the mischief? If you have all of this interception taking place—you have persons being charged. What is the mischief? Is there an issue with respect to the

intelligence? Why are you now going to use unwarranted communication to be used against persons in a criminal trial? So, they will get the evidence, charge persons, they will start to prosecute and when it “end up in de court, the matter stuck” there for years. You fail to fix the institutions in which this intelligence will be used. You failed to fix the Judiciary, the DPP office is still in a mess, you did not resource the police, you dismantled the NOC, and put it in some “water down” agency right now.

Mr. Vice-President, we are not on this side going to stand up and allow enshrined constitutional rights to be limited and evaded because of the incompetence of a regime. [*Desk thumping*] We are not going to do that, because every one of us in here took an oath, to uphold the Constitution and the law in this country. We took that oath.

Mr. Vice-President, the Attorney General, he spoke this morning about assassinations, up till this morning that he has intelligence about assassinations. Those are things that—fearmongering, Mr. Vice-President.

5.25 p.m.

Why are you fearmongering to entice the population that there is an issue with respect that we must pass this Bill tonight, that the Opposition must support this? But persons must read the entire Bill. This entire thing does not deal with prison alone, you know. This is a very over reaching piece of legislation, you know. This deals with criminal proceedings, you know, all criminal proceedings, Mr. Vice-President, under very important pieces of legislation.

Sen. Mark: Draconian legislation.

Sen. S. Hosein: Mr. Vice-President, when you see that in particular the definition section of the Bill, which I get to, is that it says that the Bill applies to criminal

proceedings. It will apply to proceedings under the POCA, the Proceeds of Crime Act, it would apply to proceedings under the Extradition Act, under the Anti-Terrorism Act, and under the Civil Asset Forfeiture Recovery and Management Unexplained Wealth Act, those were all passed in this Parliament. But what it says is that it will only apply unless the trial has commenced and is in progress.

So what does that mean? Once a trial under these particular pieces of legislation starts, you cannot use the intercepted data, the prosecution cannot use it. However, if a trial has not started you are allowed to use the information. Let us put this in context. In Trinidad and Tobago, there are hundreds of cases before the Assizes, cases that would have gone through the preliminary enquiry stage, and therefore the prosecution will have led all of their evidence, so that the defense knows the case he has to meet when he gets to the Assizes. Fine, that is the procedure.

Now, we have a situation where information is now intercepted, fresh evidence, they can intercept your current—and monitor your current calls, your emails, text messages, but they can also access your stored data. So now, it can place the defence in a very unfavourable position, because all the prosecution needs to do at the trial before the trial commences is make a fresh evidence application, because at that time, when the evidence was led in the preliminary enquiry, the evidence could not be available because you did not have the procedure in order to capture the evidence. But now, you have the evidence at your disposal, so therefore, you can make that fresh evidence application and admit that to trial. Now, that could lead the prosecution, give the prosecution an unfair advantage in the criminal Assizes. So that is one point with respect to the timing of

this particular legislation.

Now, I also wanted to raise Mr. Vice-President, the other issue with respect to this warrant and the evidence being allowed to be entered with the warrant, and I want to spend some time on that issue because that is very fundamental to this particular piece of legislation. That is what I would consider the crux of the legislation. And that, Mr. Vice-President, on the face of it, it does not only apply to evidence from the prison, so—if I could explain it? Under the current law you have two modes of interception. You intercept using a warrant. You go to the High Court, the authorized officer, he makes an ex parte application, a warrant is granted and he is allowed to intercept via that warrant. That evidence will ultimately be admissible in court.

The second method is that any one of the three authorized officers, the Director of the SSA, the Commissioner of Police, or the Chief of Defence Staff will be able to intercept communication, but that communication that is intercepted will not be admissible as evidence. It can be used as evidence in order to obtain a warrant. And there are various grounds under which they could go under. So, if you would permit me, Mr. Vice-President, I want to explore some of those grounds where they would be able to get— So, Mr. Vice-President, under the warrant you apply under section 8 or section 11 in order to get that particular warrant, and there are certain grounds you have to meet.

Now, the other grounds that you have to meet in order to intercept the communication has to deal with matters of national security, it deals with also where you consent to the communication, and it also deals with—*[Interruption]* Right this is it here, at Section 6:

“(i) in the interest of national security;

- (ii) for the prevention or detection of an offence for which the penalty on conviction is imprisonment for ten years...
- (iii) for the purpose of safeguarding the economic well-being of the State.
- (iv) ...effect”—of giving—“...international mutual assistance agreement”

Or you have:

- (c) ...reasonable grounds for believing that the person to whom or by whom the communication is transmitted consents to the interception;
- (d) the communication is intercepted as an ordinary incident in the course of employment in the provision of telecommunications services;
- (e) the communication is not a private communication;
- (f) the communication is a stored communication and is acquired in accordance with any other law; or
- (g) the interception is of a communication transmitted by a private telecommunications network and is done by a person who has—
 - (i) a right to control the operation or use of the network; or
 - (ii) the express or implied consent of a person.”

So those are the grounds under which you can intercept information.

Now, the amendment is being made for this information, or this evidence, or this communication to be admitted into court. But the leave of the court must be granted in those circumstances. But, Mr. Vice-President, one would wonder, why it is that you are trying to get around going for a warrant? Because that is what it does. It now allows you to get the data, the communication data, without going for

a warrant. Now, to satisfy a judge to grant a warrant under this legislation it is a very high threshold, because when the judge considers the application for a warrant, there are various grounds he has to consider. He considers the duration—there are so many factors, I will want to go through some with you, Mr. Vice-President, and those factors are very important to show a level of security and safeguard to the right of privacy, because this is a serious intrusion into your right to privacy.

So, Mr. Vice-President, the judge shall not—he must satisfy himself that he shall not issue a warrant unless he is satisfied “that the warrant is necessary”. Very strong language “that the warrant is necessary” in the interest of national security, or for the prevention or detection of an offence, or that the information obtained from the interception is likely to assist with an investigation.

It is not willy-nilly that you sit down and “yuh” just go and intercept because “yuh know, I know him but me eh really like him, so I’ll take his data”. You must satisfy the court of very serious factors. One of the other things you must satisfy the judge of which I find is very important, is that there are other investigative procedures that they can use. So, interception really is of last resort. You must exercise, you must exhaust all of those other options before you come to the judge and say, “I want a warrant for interception”.

And Mr. Vice President, would you know that this particular piece of legislation is now actually removing that layer of security and safeguard for this information? He must also then set out on a declaration, he must give a declaration indicating various particulars: his name; the facts or allegation giving rise to the allegation; sufficient information for the judge to issue the warrant; the period for which the warrant is requested; the grounds under which he requested the warrant.

And, Mr. Vice-President, that in itself shows how important this is.

Recently, there was a decision of the Court, a decision by Justice Boodoosingh where he went through the history of warrants in this country. That was the case involving a judicial review matter brought by the Central Broadcasting Services Limited against the Commissioner of Police. That was the case where a search warrant was executed on the premises of Mr. Sat Maharaj, now deceased. And there was a judicial review application for the Commissioner to disclose the search warrant, and Mr. Vice-President, the judge went through in that case a history of how important a warrant is in this country and in any democratic state. And what we see now is that there has been an intrusion into this entire safeguard of the necessity of a warrant. But what frightens me the most, Mr. Vice-President, is that with a warrant you are satisfied that it is for a particular period.

Now, there is going to be indefinite interception of your information that can be admissible in court. Now, that is an extremely worrying circumstance because as the evidence you intercept from now until forever, all of that is going into—that can be admitted into evidence, unlike when you have a warrant you have a specific period in which you monitor and intercept. And that is another safeguard that was removed, Mr. Vice-President. There are other matters with respect to the warrant where the judge will have to consider whether or not the evidence would be admitted through his leave, in terms of whether or not there was any inducement, the reliability of the information, the method, and whether or not it is protected by legal professional privilege.

Now, what was also concerning to me, Mr. Vice-President, is that, now when you look at the situations where there is actually a warrant, there is now a

provision in the Bill where the warrant becomes non-disclosable to the defence. So they do not have an opportunity to see the warrant, even a redacted copy of the warrant. Admittedly, it may have some sensitive information but you do not get a copy of the warrant. What is sufficient is that the witness comes and says that “I got a warrant” and that is it. Your cross examination is also limited. Again, you place the defence in a very unfair position. You are whittling away at his right to a fair trial.

Now, there is a next issue that I really want to deal with, Mr. Vice-President, and that is one of the most troubling aspects of this entire legislation. And I am sure that every Senator who read that particular piece of the Bill which is clause 16, which deals with the advocates, the special advocates, they would have had some serious, serious issues with that, Mr. Vice-President, because when you look at the special advocates under the Bill—under the Bill it is so obscene I would say, Mr. Vice-President, that we are a democratic society. We are in a democratic society, it is enshrined in our Constitution and you now want to tell a person that they are an accused person before the court, but you must not be present for your trial, and your lawyer must also not be present. That the court is now going to appoint someone called a “special advocate” to seek your interest. You do not know who that person is, you are not paying him so he has no retainer with you. The Bill does not specify how much years called he needs to be. The Bill does now specify whether or not he needs to have experience. Who knows that somebody may be appointed, a special advocate who is a conveyancer and knows nothing about criminal law, Mr. Vice-President.

So you have such a big lacuna with respect to this particular provision. But this goes to the heart of the Constitution, this goes to the heart of a democratic

society. [*Desk thumping*] This goes to the heart of a dictatorship, Mr. Vice-President. This is what it does. This particular piece of legislation here, is where they modeled it after England. Mr. Vice-President, sadly, our courts do not function like England. England has a different society from Trinidad and Tobago, Mr. Vice-President. While we may model laws after them, we must look at our own local circumstances. Even the Privy Council in certain decisions will remit matters for us to tell us, you must consider it having regard to your own circumstances.

Now, Mr. Vice-President, this particular clause, I could never, ever, agree to it. It is an absurd unconstitutional attack on democracy, Mr. Vice-President. There is an article in the UK, and you know what that article called these special advocates? It called them the “faces of secret justice”. “Secret justice” and clause 16 is what I will term “secret justice” Mr. Vice-President, because there is no public hearing. You are locked away in a room with the judge, the prosecutor, and a special advocate who you have not retained to seek your interest. Mr. Vice-President, when you look at the definition of a closed proceedings where these special advocates will be appointed, you do not have a proper definition of what a closed proceedings is.

Under the Criminal and Security Act, 2013 in the UK, you see that it was very prescriptive with respect to what closed proceedings are, and interestingly enough, special advocates are mostly used in those proceedings that deal with civil matters, that involve a level of sensitive information. So I would go through a list, I will quote from parts of a report of a committee on human rights in the UK Parliament where they went through it. But I would just like to bring this in perspective, Mr. Vice-President, because when you look at what special advocates

had to say, because they testified you know, they testified in England before a joint select committee Mr. Vice-President, and they had to say that this particular provision in the UK law was in fact unfair to the accused. Because from the time, Mr. Vice-President, that they received sensitive information, they said that they cannot communicate with the defence anymore. But yet you are seeking his interest.

There are also ethical considerations that one must take into consideration, because as an attorney at law you owe obligations to your client. Now, if those obligations are breached the client has the avenue in order to seek redress from that attorney at law. If your special advocate does not represent you to the best of his ability, then what redress does the accused person seek, Mr. Vice-President? And that is an issue that we must look at.

When you look at what the special advocates are used for, I will give the context because this is from a Seventh Report of the Constitutional Affairs Committee of the UK Parliament, and this came about by a case called the Chahal case from the European Court of Human Rights where they said that they must strike a balance between national security and protecting ones fundamental rights. But hear the cases where the special advocate is really used in, in the Northern Ireland Act for the appointment of a special advocate in respect of a field, says specialist security tribunal operating in a field of employment and discrimination law. Under section 5 of the Terrorism Act for determining appeals against prescription of an organization by the home secretary. Under section 70 of the Anti-terrorism Crime and Security Act, 2001, which establishes the Pathogens Access Appeal Commission which hears appeals of people prescribed from working with certain dangerous material. The employment tribunal rules, a special

advocate is appointed in proceedings before the tribunal from which the appellant or his representative has been excluded on national security grounds. A special advocate may represent the interest of a prisoner before the Northern Ireland Sentencing Review Commission and the Northern Ireland Life Sentence Review Commission where the prisoner and his legal representatives are excluded from the proceedings.

So you see the instances in which it is applied in the UK, but in Trinidad and Tobago, you are coming to apply it to any criminal proceedings, you are coming to apply it to the Extradition Act, to the Proceeds of Crime Act, to the Unexplained Wealth Bill that deprives you of your property, Mr. Vice-President. That is what this Government is doing, you know. It is a chopping away, a constant chopping away of your rights and privileges in this country.

Now, there is so much to say about the special advocate in terms of the role that they play, because they have two roles, which is the disclosure function and the representation function. All of that again is not listed in this particular piece of legislation. What will guide them? Is it that the same code of ethics in the Legal Profession Act will guide them? Because now they owe no duty to the client, but yet they protect the client's best interest. Now, that is a very blurry area, Mr. Vice-President, that will lead to a lot of contention in this country. Now, that is with respect to the special advocate and those are some of the points that I want to raise there.

But, Mr. Vice-President, while I was doing my research I came across a case, and I am quoting the name of the case, "*Al-Rawi and others v The Security Services and others 2011 UKSC 34*". Now that is a Supreme Court decision and apparently the person has the same last name as our Attorney General. And it is

quite ironic Mr. Vice-President because in that case the Al-Rawi in the UK was actually fighting against closed proceedings, and while we have Attorney General Al-Rawi in Trinidad and Tobago fighting for closed proceedings in this country. But what I wanted to quote the case for, Mr. Vice-President, is because I just want to quote from a particular part of it which says that in those cases with respect to closed proceedings, Parliament should not—when Parliament is looking at legislation like that they should always keep in mind open justice and natural justice principles. So therefore, you must balance the public interest—

Mr. Vice-President: Senator, you have five more minutes.

Sen. S. Hosein: Okay. You must always balance the public interest in maintaining a fair justice system with the public interest in the protection of national security. That is very important because when you look at this particular section, this clause, you realize it is weighed on one side. It is prosecution heavy rather than defence heavy. There is no balance being struck here. You realize that this is a very unfair clause in the legislation, Mr. Vice-President. And we as an Opposition cannot, absolutely cannot, support this particular clause in particular because it is such an intrusion into someone's fundamental rights in terms of due process and the right to have an attorney at law, Mr. Vice-President.

And let me just give you a take on that because there was a case in Trinidad and Tobago, that is the case of *Garvin Sookram v Conrad Barrows the Commissioner of Prisons*, where in this country a prison rule that indicated that a prison officer must have sight, and he must be in hearing between the attorney at law and the prisoner. That rule, Mr. Vice-President, by Justice Gobin was struck down as being unconstitutional. And what you are doing here right now, is that—you know what you are doing? You are saying that you cannot have

communication other than using the designated line, Mr. Vice-President, do you not believe that designated line is also going to be monitored? Why do they not put a particular clause in this Bill that indicates that that communication between the prisoner and the attorney at law at the prison using the designated areas and the designated device not be monitored?

When you look at the unwarranted communication also, this is what it says, the Bill creates an exception from legal professional privilege evidence from being admitted into evidence. But what it does not say, Mr. Vice-President, is that you can still intercept a telephone call—I am talking about outside prison—between two persons, one person who is talking to his attorney at law, you know what they are saying, but at the end of the day they cannot be admitted into court, but they know what you have said. They know what has been communicated.

When Sen. Sobers raised the point that in New York from the time a person communicates with his attorney at law, the interception must stop. In this case you can monitor but the only thing you cannot do is admit it in court, and that is very dangerous, because now the defence is actually revealing their entire case and all the clients' instructions are going to be intercepted.

Then you have the last clause—one of the clauses in the Bill that deals with you as keeping this evidence—that deals with destruction for contextual purpose. What is “contextual purpose”? Is it that when a letter came out from the emailgate scandal that we must keep emails—that there is a contextual purpose, that is what it is for? To set up political opponents in this country, Mr. Vice-President? What does “contextual evidence” mean in these circumstances?

But, I want to say, Mr. Vice-President, that the Attorney General asked us to be patriotic, and we will be patriotic on this side. We will stand on the sides of the

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citizens, we will ensure that we protect their fundamental rights and freedoms from being intruded by this Government. [*Desk thumping*] That is what we will do. We will drape that red, white, and black flag around us and we will say no to this Government, Mr. Vice-President, when they are coming to trample and abuse the authorities of this State, Mr. Vice-President, [*Desk thumping*] and create no confidence in the institutions that are here to protect us, and I thank you very much.

Mr. Vice-President: Sen. Vieira.

Sen. Anthony Vieira: Thank you. This legislation clarifies and will expand the State's powers in intercepting and using citizen communications, whether via phone, Internet or new media, in significant ways. I think it also softens the parent Act by making additional safeguards and protections for citizens. This is not new law as the parent Act has been around since 2010, nearly a decade now. Nonetheless, because this legislation and its parent Act impacts constitutionally enshrined rights, in particular the right of the individual to respect for his private and family life, and the right to be afforded protection against self-incrimination. It is important to weigh the pros and cons of this interception machine ensuring as far as possible, that citizens' rights are safeguarded and protected, especially those who are innocent of any wrongdoing and where collateral intrusions may occur. And that is why this Bill requires a three-fifths majority.

This Bill upgrades law enforcement capabilities where the interception of communications is concerned by—what I would say “by modifying and improving five gears in the machine”. First, it allows for communications from prisons and prisoner transport vehicles to be intercepted and recorded. I will say more about this later, but I personally have no difficulty with this aspect of the legislation.

Secondly, it provides for authorized officers to apply for a warrant to obtain and disclose stored communications from telecommunication service providers. I would call these the second and the third gears. And they may only be used, they may only be used, in the interest of national security for crime prevention, for detection purposes, and for investigating or detecting unauthorized intercepted communications. Again, once interceptions are made strictly in accordance with the law, and the courts are effectively able to serve as a check and balance. I personally have little difficulty with this aspect of the legislation.

The fourth gear of the machine concerns the special provisions relating to sensitive information, and how such information should be handled, in particular, the Bill makes it a serious offence for persons to intercept communication without lawful authority. Now, this prohibition of interception by unauthorized persons is extremely important given that the State is not the only actor with machinery to spy on citizens. There are persons in the private sector and we have heard even some criminals who also have that capability. So, the provisions relating to this gear in the machine actually guards and protects citizens from being spied upon by other citizens, and against things like industrial espionage. And these provisions in my view are necessary given the lack of a proper privacy law in Trinidad and Tobago.

The fifth gear allows and sets out the circumstances under which intercepted communications, especially those involving sensitive information may be used in court proceedings. All told, I would say that the framers of this Bill have tried their best to strike a fair balance between the interest of national security and crime prevention on the one hand, and intrusions into the privacy of citizens on the other. Now, I do have some concerns about record keeping, copying, and who may have

access to interception material. But before getting to that, let me return to the interception of communications from prisons and prisoner transport vehicles.

5.55 p.m.

Insofar as the measures in this legislation will protect prison guards, court officials, law enforcement and their families, I am fully in favour. We expect prison guards and law enforcement to maintain order and security in prisons. We rely on them to protect society, and for the services they render, they deserve full protection under the law.

Prisoners, traditionally, under lock and key, would pose no threat in the past, but mobile phones and their apps and their many ways of communicating, now allow for death sentences, orders and directions to be issued from behind prison walls. This must be stopped, and there is another dimension to this. In the old days, a lot of information came to the authorities via snitches, plants, informants within the prison and no doubt this will continue, but today, the best informant will be the prisoner himself, especially when he and his confederates communicate in nefarious schemes amongst themselves.

I want to point out, there is no infringement of constitutional rights here as prisoners' rights are already curtailed under the law. While there are human rights such as the right to life, the right not to be tortured, are maintained, many of their constitutional rights are restricted: the right to liberty and freedom, the right to family life, the right to privacy. When you go and you have a client in the prison, letters and communications are read by the authorities routinely, save for those exempt under legal professional privilege.

Prison visits from family members and friends take place within sight of a prison officer. There is no entitlement of being able to communicate with persons

outside, save for relatives and for legal advisors. That is the nature of prison life. And the same way prisoners may not carry firearms and offensive weapons, they should not have communication devices and if they have them, when they use those devices, law enforcement should be able to intercept and use those communications. I have no problem with that. Now, prisoners are one thing, but citizens have the right to respect for their private and family lives and those rights should only be interfered with under carefully defined and very strictly confined circumstances.

But the legislation carefully and precisely sets out the boundaries. The Act, this legislation, applies only to criminal proceedings under the Proceeds of Crime Act, proceedings under the Anti-terrorism Act, proceedings under the Extradition Act and proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act. Further, only an authorized officer—and it is important to note that neither the Attorney General, the DPP or Ministers of Government qualify as authorized officers under section 5 of the parent Act—can apply for an interception of communications warrant. Yet further, the authorized officer must apply for that warrant from a judge of the High Court and before any warrant is issued, the judge must be satisfied that the requirements under section 8 are met.

Let me say what those requirements are. Specifically, the judge must be satisfied that the warrant is necessary in the interest of national security or for the prevention or detection of an offence where there are reasonable grounds for believing that an offence has been or is about to be committed or that the information is likely to assist in investigations and, as Sen. Hosein pointed out, that other investigative procedures are unlikely to yield the critical information, that it would be in the best interest of the administration of justice to issue the warrant

and that the interception of communications to be authorized by the warrant is proportionate to what is sought to being achieved by such interception. As Sen. Hosein rightly points out, a very high threshold indeed. So warrants or interception cannot and will not be granted willy-nilly. First, only a select few can apply for those warrants and, secondly, the applicant must satisfy a judge of the High Court that the criteria set out in section 8 are met. The applicant must also make a declaration under the Statutory Declarations Act in support of the application. And even after all of that, the judge still has to be satisfied that the information cannot be obtained in some other way and that the warrant is proportionate to what is sought to being achieved.

Now, the Bill anticipates at clause 24, that rules to govern proceedings under the Act will be established by the Rules Committee of the Supreme Court. I expect that in those rules and in any event within evolving case law, guidelines on proportionality will emerge. That is to say, that the proposed interception is proportionate to what is being sought. Here is the point. The court is the ultimate gatekeeper here. The legislation requires our judges to maintain the balance between, on the one hand, the rights of citizens against intrusions into their privacy or property and, on the other hand, against the need for the activity in investigations, operational or capability terms.

A warrant will not be proportionate if excessive in the overall circumstances of the case. The action, if it is authorized, should bring expected benefits to the investigation or operation and it should not be arbitrary. Again, as we have heard, if the information can be obtained by other less intrusive means, the warrant should not be granted. So interception warrants will not, they should not occur, as a free-for-all or as a one-size-fits-all activity. I have full confidence in our Judiciary, I

have full confidence in our judges and I expect them to judicially and judiciously weigh each and every application for an interception of communications warrant.

Now, the legislation is equally concerned that intercepted communications, especially where it involves sensitive information, can only be used in court proceedings where the judge is satisfied that it is in the interest of justice to admit it. Again, the Act very carefully sets it out. In making that determination, the judge must consider all the circumstances as to how the communication was obtained, whether the accused was induced to say what he did and any other relevant factors which might render what he said unreliable. And with a view to even further balancing the scales of justice, the legislation provides that unless the court expressly gives leave, no evidence, no evidence may be adduced nor may any questions be asked of the witness that suggest or tends to suggest the disclosure of sensitive information. Again, another set of thresholds. In weighing whether or not to grant leave, the court must be satisfied about a number of things, including the accuracy and the integrity of the intercepted communication.

If and when a court determines that sensitive information may be disclosed, the judge must issue a special measure directive that closed proceedings would be utilized, and it is in these closed proceedings that we get the presence of this special advocate, someone appointed by the court to act in the interest of justice and to represent the interest of the accused and, again, whatever evidence it is looking at, if it is going to be admissible, it must conform with the law of evidence.

Now, it is true, we are not accustomed to having these special advocates, but you have to read about the special advocates in the context of the legislation. Right? They are dealing with sensitive information in closed proceedings. That sensitive information could be things that cannot get out into the public domain—

things pertaining to national security, the disclosure of identifies of key people—and the role of the special advocate is very limited. He is there only to assist the court in determining whether that sensitive information should or should not be disclosed from the point of view of the accused.

I have done a number of Anton Piller injunctions, and in the course of Anton Piller, we routinely used what they call an “independent attorney”, a “supervising attorney”. So, for me, this is not something new. I am personally quite comfortable with the idea of a special advocate in this very limited context, especially if it is going to be a judge or someone of a very senior rank in the legal profession who understands privacy law and things of that nature. So I want to say, in my view, this legislation is as much concerned about ensuring that the rights of the citizens are not trampled upon or abused by agents of the State as it is concerned about intercepting communication in the interest of national security and crime prevention.

Earlier I mentioned though that I have some concerns. I do not know if they are going to be addressed under rules of court, under regulations or case law. My concerns pertain to record-keeping, chain of custody and storage of intercepted material. I would like to be given assurances that these will all be handled and stored securely to minimize the risk of lost and theft. Intercepted material and all copies or extracts of intercepted material should be inaccessible to unauthorized persons. Intercepted material should only be copied to the extent necessary for the authorized purposes. The number of persons to whom any intercepted material is disclosed, the extent of disclosure, that too should be limited and kept at a bare minimum, the minimum that is necessary for the authorized purposes and on a need-to-know basis strictly.

And, most importantly, I am concerned about, as I said earlier, collateral intrusion. Now, collateral intrusion pertains to the privacy of individuals who are not the subject of the intended interception. So, for example, you are talking to your doctor, you are talking to your priest or you might be talking to a journalist; how will the material touching on these people be handled? That does not come out to me in the legislation. An application for an interception warrant should state whether the interception is likely to give rise to a degree of collateral intrusion. I think when they private the warrant, they should be able to indicate that so that the judge is aware of it, and what measures are being taken to reduce the extent of collateral intrusion.

Another concern I have has to do with the request from foreign governments for intercepted communications under the Extradition (Commonwealth and Foreign Territories) Act or an international mutual assistance agreement. Now, I cannot help but think about the Trump-Biden fiasco in the Ukraine and it makes me wonder what sort of factors would come into play under this scenario. Presumably, these extradition requests would come under the same rules and safeguards and principles that would apply domestically, but I would like to know what— if any protocols are in place, and I would like some assurance that such requests are not granted automatically, but must be personally considered and approved by the courts.

Hon. Al-Rawi: Thank you hon. Senator. As the central authority with location for the law, and as you know, but for the record to assist Sen. Hosein I would put it now. The Mutual Assistance in Criminal Matters Act for it to be law, we have to have the treaty and the treaty is only brought into effect by an Act Parliament by amending the umbrella law. Sorry, Sen. Sobers. In that circumstance, the central

authority must consider the position of assistance for mutual legal assistance as well as extradition proceedings and there is a strict protocol and independence. Political interference is specifically debarred from consideration. There is an absolute discretion to the Attorney General as central authority to do that and, in fact, we have exercised that discretion. I have personally, in my tenure, on a few occasions, in terms of actual cases of the type that you are referring to.

Sen. A. Vieira: Well, the point you are making, Attorney General, and I would like to believe that this is the case, is that requests from foreign governments will not circumvent the applicable laws and procedures and those requests would be necessary and proportionate.

Now, the vast majority of citizens use our roads and highways for legitimate purposes, but there are those who abuse them, for example, by driving recklessly or driving under the influence. Some use our roads and highways in the course of committing crime, for example, drug trafficking, human trafficking, smuggling, kidnapping and even drive-by shootings. Over the years, law enforcement has devised ways and means for policing our roads and highways in the interest of public safety and maintaining law and order. Well, our communication networks and systems are the virtual equivalent of our roads and highways. There are essential to life as we know it today.

[MADAM PRESIDENT *in the Chair*]

Most citizens use them for legitimate purposes, but because they can be used by bad guys, criminals and terrorists and we have some real bad guys in this place—organized crime, terrorists—it is essential that our communications network and highways are also policed. Such policing is necessary, but must be proportionate. Checks and balances must be in place to protect and safeguard the rights of citizens

against abuse, but policing is necessary because without it, without this type of legislation, bad guys, criminals and terrorists will have unrestricted freedom to do as they please. Yes, this Bill can be fine-tuned, yes this Bill can be improved, but I am satisfied that the legislation is necessary. I am satisfied that it has a legitimate purpose. I am satisfied that under it, the separation of powers principles will prevail and it seeks to assure full public confidence by being proportionate.

I just want to say one thing about legal professional privileges, because it has come up a few times. Yes, legal professional privileges is a substantive legal right, and it is not the right of the lawyer, it is the right of the client, but legal professional privileges can be lost. Communications are protected when you are obtaining legal advice or for use in actual pending or anticipated legal proceedings, but if you have documents subject to legal professional privileges, where those documents are being used for the purpose of committing criminal activity or fraud, you could lose the privilege and, again, it is not every conversation, it is not everything you have with an attorney that constitutes legal professional privilege. Privilege only attaches where the requirements of legal privileges are met, not just because a document is sent to a lawyer.

If I have a client who is in the prison, I could tell you, I certainly will not be taking any calls from him if I suspect it to be coming from an unauthorized phone. There is a procedure, there is a protocol for taking instructions from clients in a prison, and with those few words, Madam President, I thank you. [*Desk thumping*]

Sen. Deeroop Teemal: Thank you, Madam President, for the opportunity to contribute to the debate on this particular Bill. Madam President, I think undoubtedly, in the crafting of the Act, the parent Act in the year 2010, and the need for such an Act, one of the major factors would have been the rapid change in

communications technology, overall technology, particularly communications technology and the utilization of technology by criminals and criminal elements for the furtherance of their business. And within that 2010 Act, other than the warranted interception of communication, a significant part was the non-warranted interception of communications by the designated authorized officer. And, clearly, at that time, in the crafting of that 2010 legislation, to me, the intent was to be used—this piece of unwarranted interception of communications—the intent was really a means of detecting and preventing crime, rather than prosecuting. And with these amendments that are here before us today in this Bill, Madam President, we can see a marked shift to use non-warranted interception of communications as an evidentiary tool, and in the context of the situation that our country finds itself in, Madam President, I can understand this shift because, as I said before, sophistication and the use of technology, our criminal elements seem to be fairly well-advanced in that regard.

Madam President, thus far, in the presentations, a lot of emphasis has been placed on prisons and prisoners and illegal communications from prisoners through the use of illegal devices or unauthorized devices, but section 4 of the Act that is before us also, other than criminal proceedings as mentioned in section 4(a) and (b), proceeding under the Proceeds of Crime Act and the Extradition (Commonwealth and Foreign Territories) Act, we are dealing also—and need to remind ourselves under this Bill—with proceedings under the Anti-Terrorism Act and proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act and, as such, we have to see this proposed legislation in the context also of the significant impact that it can have on white collar crime and organized crime.

Madam President, I would like to go to clause 15(c) and it comes back again to my point about the non-warranted interception of communications or non-warranted interception evidence, and just to propose for consideration to the Attorney General, whereas 15(c):

“(2B)...contents of a communication that is obtained—

(a) by interception permitted by section 6(2)(b) or section 6(2)(h); or

(b) pursuant to section 6B,”

—it— “shall be admissible as evidence, in any proceedings where the Judge is satisfied that it would be in the interests of justice to so admit it.”

I am looking at subclause (c) section (2A):

“The contents of a communication that is obtained by interception permitted by section 6(2)(c), (d), (e), (f) or (g) shall be admissible as evidence in any proceedings.”

But, Madam President, 6(2)(c), (d), (e), (f) or (g) also falls within the category of non-warranted communications and my concern is, why not submit those aspects of intercepted communications to the same proceedings as section (2B) where it:

“shall be admissible in evidence in any proceedings where a Judge is satisfied...”

Hon. Al-Rawi: Senator? Much obliged Senator. Insofar as this debate will carry over as we indicated earlier, thank you for giving way to answer this. The answer is that when you read those sections of section 6(2), they have expressed consent already provided to them. So there is not a circumstance where the user would ever be in a position that it was private. So the section 6 separation between section 6(2)(b) and section 6(2)(h), those are the circumstances where they will never know that they were being intercepted. The others referred to where there is

non-judicial oversight are a carry-over from the old law and, specifically, because there is consent already provided for the interception by the use of the public network or private network.

Sen. D. Teemal: Okay. Thank you AG. But although it is by consent, it is also not by warrant and that is what my concern is, whether such evidence, even though it is by consent, in terms of a trial that it could be contested in a manner that would work against the prosecution.

Hon. Al-Rawi: Thanks again, Senator. Specifically, the clothing of confidence is destroyed by something being in the public domain with consent. So, for instance, when you call a Scotiabank hotline and they say your call may be monitored for consistency, et cetera, or where you are made aware that the thing is going to be intercepted, you are already in an environment where you could have said that you did not want to participate in the conversation, but you still went ahead knowing that it was actually intercepted by those who were listening. So, there is no requirement because there is no private issue or self-incrimination issue, because you have already agreed to participate in that environment.

Sen. D. Teemal: Thank you for that clarification AG. I would like to just refer to clause 10, 10(b) where it says:

“(b) in subsection (4)—

- (i) by inserting after the word ‘furnish’, the words
‘, at their own cost, such’”.

In piloting the Bill, the AG did refer to this and alluded to that telecommunication providers are obligated under the Telecommunications Act in case of matters of national security to bear this cost. I understand the concern, that it could be a very costly exercise for the State in having to provide cost but—

Hon. Al-Rawi: Thank you so much, hon. Senator. Last time, I promise. It is expensive to the State because the State has to now acquire technology equal to that, that they are intercepting. So, bmobile, TSTT's environment, Digicel, they have the capacity at little or no cost at all, because it is their system to give you the intercept. What they do is they tell you, you come and upgrade to several million dollars, meet our system, then we will give you access. What we are doing is actually we are getting a very negligible cost from them, because it costs them, relatively speaking, absolutely nothing to give it to you. It is only expensive when they tell you, "No you have got to upgrade everything that you have and then you can have access." So, it is avoiding millions of dollars of cost for the State instead.

6.25 p.m.

Sen. D. Teemal: Okay. Thank you, AG. I would just also out of concern for the private telecommunication providers, because in such an instance private telecommunication providers have to account to their shareholders and any exercise that they are engaged in of this nature, if there is significant cost, you know, to the private telecommunication providers, then it would be of concern to that entity. I would suggest in such a situation, that post-investigation, whether that service provider could present a claim of cost for consideration. And with those observations and comments, Madam President, I thank you. [*Desk thumping*]

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I now beg to move that this Senate do now adjourn to a date to be fixed.

Madam President: Hon. Senators, before I put the question on the adjournment,

leave has been granted for two matters to be raised. Sen. Obika. [*Desk thumping*]

Fanny Village Government Primary School
(Government's Failure to Secure Permanent Site)

Sen. Taharqa Obika: Thank you, Madam President. The matter which I seek to raise is the failure of the Government to take steps to secure a permanent site for the Fanny Village Government Primary School in Point Fortin. Now, Madam President, it brings me no pleasure in my third year as a Member of the Senate to bring for a third time this matter, which means that each year that I raise this specific matter, whether it be via questions on notice or via matters on the Motion for the adjournment of the Senate, that this Government has failed. This Minister of Education has failed to fulfil their obligations to the children of Point Fortin in Fanny Village, and, by extension, to the children of this nation.

Madam President, via my 10-minute contribution I would speak to the history of the site being a failed PNM project, the resulting school closure, the inaction and neglect that has resulted, the lack of school spaces because of a general neglect by this Government, by this Minister of Education in a dereliction of duty to the children in Point Fortin by keeping schools closed. And of course I will demonstrate very clearly that under the new regime that will come with the general election to be called this year, that the children of Point Fortin can look forward to better days ahead.

Now, Madam President, I want to submit that by failing to secure this permanent site the children of the nation, the children of Point Fortin, are under attack where education is concerned, whether it be closing GATE access, failure to open schools, removing funding for pre-schoolers; the atrocities are too many to mention in a 10-minute submission, so specifically I focused this matter on the

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children in Point Fortin. What is the history of the site? Now, the former Minister of Education is on record, Dr. Tim Gopeesingh, as warning the current Minister against any attempts to mislead the population in thinking that the sinking Fanny Village Government Primary School was a project of the People's Partnership administration when he reminded him, and this is on the Contractors' Association website, that it was a failed project under the Patrick Manning administration. It was ill-advised in the way it was constructed and the contractor failed in his duty and it was something that was left to be fixed by the People's Partnership administration, and there were some issues with that project, significant issues with that project.

There was also the issue of a fire, but after four-and-a-half years of having moved the children because of this issue of the fire, to the community centre, I hoped that the Government would come with a resolution to this matter, but here we are in 2020, months away—I am hearing the Minister of Trade and Industry asking what happened, but they have had four-and-a-half years, what has this Government done? They have failed the children of Point Fortin. [*Desk thumping*] Now, Madam President, what is the result of the school closure? The school is being housed in a community centre, in a community centre which is less than ideal. It is less than ideal. I have spoken to the principal, I have spoken to members of staff, it is less than ideal. In fact, what is the main issue with not giving the students in Fanny Village that permanent site, is the people of Point Fortin are being denied of the premier community centre which is the Fanny Village Community Centre. I know this because I myself contested and won the opportunity to represent Point Fortin in the arena of “spoken word” at the Fanny Village Community Centre in 2012.

The Fanny Village Community Centre was used for weddings, it was used for community development activities by persons in Fanny Village, TNA Road, Warden Road, Point Ligoure, as far as Cap-de-Ville, Self Help. And, Madam President, do you know why that is the case? It is because the PNM-controlled Point Fortin Borough failed after decades to restore Point Fortin Civic Centre. So as a result of that, we have no community centre in Fanny Village and Point Fortin is suffering from inaction and neglect. Madam President, I want to speak to the main impact on this, which is the lack of school spaces. Every year I have come to speak because the Members of Parliament from the other side who hail from Point Fortin fail to speak at the level of Cabinet, because we have a Minister of Trade and Industry, we have a Minister of Tourism now, and we have a Minister of Housing and Urban Development, all of whom hail from Point Fortin; Member Randall Mitchell, he is also a Point Fortin person, but, Madam President, nothing, nothing for education.

The Minister of Trade and Industry said what did we do, we built—the past administration gifted this Government the Chatham Government Primary School, 90 per cent complete; after four-and-a-half years, nothing. The Egypt Village Government Primary School absorbed the shortage of school spaces, a school built by the People's Partnership Government; all this Government had to do was get a permanent site—and I am hearing the din from the Minister in the Ministry of Finance—Madam President, for the Fanny Village Government Primary School so they can absorb the extra students. So what is the result, what is the legacy of this PNM administration in Point Fortin? You have children who deserve to be in primary school as a right, being kept home, Madam President. They are being kept home.

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It is a choking situation in Point Fortin. So you have joblessness with the closure of Trinmar and Petrotrin and now you have parents not being able to send their children to school; imagine the indignity. And I hope the Minister of Education would not come here to say anything else but that funds have been earmarked, they have been allocated and that they will be spent on a particular site and give us the timeline. Give us the timeline so we can hold their feet over the coals come judgment day when the election is called. Madam President, can you tell me how much more time I have? [*Crosstalk*]

Madam President: [*Laughter*] You finish at 6.35.

Sen. T. Obika: Sorry, I could not hear you.

Madam President: You finish at 6.35.

Sen. T. Obika: Thank you very much. The people of Point Fortin—I am not laughing with you all, you know. The people of Point Fortin are very upset.

So, Madam President, what is the legacy, they asked what did we do, we created the eTecK park; we gifted them that to create jobs. The Point Fortin Highway, I have heard that has been in train since 1962. It is a Kamla Persad-Bissessar Government that did that; the Point Fortin Hospital, similarly; the Chatham Government Primary School, the ECCE Centre in Southern Gardens which is housing the Chatham Government primary schoolers, which is preventing a firestorm from occurring. Education is the ticket out, but under this PNM Government they have closed down the NEC campus in Point Fortin. What are the plans, Madam President, for education in Point Fortin? Under this Government the plan is neglect. The Fanny Village Government Primary School is the picture of PNM neglect in Point Fortin, and only when the people of Trinidad and Tobago have the opportunity to go to the polls, they will have the benefit of a Government

for the people, led by Kamla Persad-Bissessar. I thank you. [*Desk thumping*]

Madam President: The Minister of Education. [*Desk thumping*]

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. I have been frequenting this Senate on many occasions mainly to answer questions and to respond to some statements that are being made by Members on the opposite side, but, Madam President, this evening it gives me great pleasure, perhaps the greatest of pleasures to respond to Sen. Obika, because listening to him, all I can describe his contribution as a monstrous alarm of cacophony. Madam President, he shouted, he barked and he said nothing. All he did was make a lot of noise.

Madam Speaker, he started off by saying he is going to give a history of the site, Sen. Obika has failed miserably as a historian because he said nothing about the history of the site. All he spoke about, he went rambling about what the PNM Government has not done, and so on, without providing one iota of evidence. Madam President, he speaks about a shortage of school places. Madam President, I ask Sen. Obika, instead of making such wild statements, provide the evidence. What is the evidence you have that there is a shortage of school places in that school or in that area? You did not share that with us this afternoon. It just shows how vacuous your contribution has been. [*Desk thumping*]

He tried to introduce other aspects of the argument by saying that the NEC campus has been closed down. Madam President, I have said on many occasions that the reason why the NEC campus has been discontinued is because of poor registration. And if you had known that—when registrations were open there were only two persons who had registered for those courses, only two persons. If you had done your homework you would have known better, and as a former teacher I

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would have put you in detention for one week. [*Laughter*] Madam President, construction work on the new Fanny Village Government Primary School started in 2008, and has achieved an overall completion of approximately 58 per cent by October, 2015, when the said activity was suspended due to several months of delayed payment to the contractor. It was suspended in 2015 due to several months of delayed payments to the contractor. I ask the question, who was in office in 2015 at that time? [*Crosstalk*] Yes.

It can be gleaned from what was just said that the permanent site, and I am stressing, a permanent site for this school has existed for some time, and therefore, I cannot understand where Sen. Obika got his information.

Hon. Al-Rawi: He got it from Wade Mark.

Hon. A. Garcia: I am told sotto voce that he got it from Sen. Mark. [*Laughter*] I could therefore understand the erroneous information because, as you know, this afternoon I had to put Sen. Mark straight; you know that. Members of this Senate would know that. [*Crosstalk*] So I would suggest, Sen. Obika, that you get your facts straight. A permanent site for this school has been in existence for quite some time and therefore there is no failure on the part of this Government of securing a site for this school.

This permanent site is the same site on Dam Road. I am sure you are aware of Dam Road, the same site on Dam Road on which the old school functioned before it was gutted by fire. The new school is being constructed on the same site, albeit on a different section of the site but on the same site. Madam President, the resumption—and this is what Sen. Obika wanted to hear and I will give him the pleasure of listening to me, the resumption and completion of construction of the new school is one of the Ministry of Education's priority projects. It is one of our

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priority projects. Financing has been secured and outstanding payments and other issues are currently being resolved so that works can be recommenced in the very near future. Thank you very much. [*Desk thumping*]

Award of Contracts to Gang Leaders
(Measures to Address)

Sen. Wade Mark: Madam President, the matter I wish to bring to your attention is the failure of the Government to take decisive action to halt the award of state contracts to gang leaders and other criminal elements located in Port of Spain and western areas of our country. Madam President, I want to refer you and this honourable Senate to an article in Wednesday, July the 17th, Trinidad *Guardian*, entitled “\$6 Million Men”, and in this article we were informed by Mark Bassant that a Special Branch report revealed that two PNM-linked corporations were involved with the issuance of state contracts to gangsters in Port of Spain and in Diego Martin. Madam President, the names of the individuals are given in this article. I would not provide them to you, I would leave that for the records because it is there publicly. What I would say, Madam President, is that a total of \$6million would have been paid out by these two corporations in Port of Spain and Diego Martin to several gang leaders. And, Madam President, this took place since the PNM came into office in September of 2015, and continues up to 2019.

This is the same hypocritical PNM Government through their various spokesmen who try to tell this country that the Opposition are in league with criminals, but here it is, Madam President, there is evidence to show, and no one has been able to deny it, that the People’s National Movement, through two controlled PNM corporations have been feeding gangsters in this country. Madam President, you know what is very important about this one? When they asked

certain Members of Parliament from Diego Martin, whether it was MP Darryl Smith, the hon. Member for Diego Martin North/East, Colm Imbert, Minister of Finance and the Member for Port of Spain North/St. Ann's West, every one of them disclaimed ownership. "They doh know nothing." They saw nothing. They awarded nothing. They are aware of nothing. That is how they behave, Madam President, but the reality is that the Police Commissioner has called them to book and has called them to account, and he has asked the PNM Government to sit with the TTPS as well as Special Branch so that they can assist these PNM corporations in vetting state-awarded contracts before they are in fact issued to these shady characters.

Madam President, the Police Commissioner has been saying that it is difficult for the police to provide safety and security for our country when the State continues to facilitate major contracts for gang members. Madam President, no one can argue that the bloodshed, the escalation in gang violence, in criminality in this country, you have to associate it with the PNM; they have been there for four-and-a-half years. They came in with no plans, they are leaving with no plans, [*Desk thumping*] that is the history of the PNM, and they come in their dying moments to see if they can mamaguy the country. So, Madam President, I would like that the Government needs to come clean, "doh do" like Shaggy and say, "Is not me". "Doh blame me. Doh blame me, is not me." The Prime Minister is saying one thing, Madam President, then you have the Minister of National Security saying something else, so they are all giving different answers but no one is getting down to the real truth.

So the Commissioner of Police, Madam President, has called on the Government to work with him to take measures. The Commissioner of Police, Madam President, is saying, "How can you expect the Commissioner of Police and

the TTPS to bring a halt to mitigate and to reduce the level of crime and violence in our country when the Government of Trinidad and Tobago continues to fuel crime and criminality by issuing and awarding contracts to shady characters”? And I raise this matter today because the Government has to account, this hypocrisy must stop. [*Desk thumping*] We have to unmask the PNM for what the PNM is, Madam President. They talk from both sides of their mouths and they are involved, Madam President; I did not say so, it is in a special report issued by the Special Branch. It was in the newspapers and not a single Member of the Government has denied that Special Branch report as we speak.

So, Madam President, I have raised this matter this evening to call on the Government to indicate to the people of Trinidad and Tobago what measures have they taken, what measures are they taking to work with the Trinidad and Tobago Police Service to bring about a massive reduction in this particular activity that is causing headache for the police service in Trinidad and Tobago. And, Madam President, it may not just be happening in this place called Diego Martin or in Port of Spain, it might be happening in every PNM corporation today, and that is why we have to really deal with this matter and confront it, you know, with the kind of ferocity that is required. We need to deal with this matter.

Madam President, it is alarming that when you look at, for instance, between 2015 and 2018, one gang leader obtained some \$2million in contracts from the Diego Martin Regional Corporation that is controlled by the People’s National Movement. Madam President, another one in the same area, between 2016 to 2018, received contracts amounting to \$1.1 million. In Port of Spain, Madam President, a gang leader, alias XY, whatever that is, AW, he or she got a total value in contracts of \$404,000. Another one operating out of—

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

Sen. W. Mark: Yes. Thank you very much, Madam President. [*Desk thumping*]

Madam President: The Minister of Agriculture, Land and Fisheries. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I could say so many things in response to my friend but he seems in his Motion to be preoccupied with the notion of state contracts and criminals being in the Port of Spain area, as he says, in the Motion, Port of Spain and western area, but you do not have to work too hard to remember—and my friend, Sen. Mark, relies on the newspaper. Now, he refers to the newspaper has referred to a Special Branch report that we have not seen, that he has not presented any evidence of contracts to criminals. He has read bits and pieces of a newspaper report, and I find it very difficult to deal with gossip, I prefer to deal with the facts, Madam President. I prefer to deal with the facts.

So let us talk about his comments, Sen. Mark's comments that he is going to unmask the PNM, well, in LifeSport they were not even wearing masks. [*Desk thumping*] And this is no hearsay from Mark Bassant and a Special Branch report that we never saw, this is a statement by Prime Minister at the time, Kamla Persad-Bissessar, for the sitting of the House of Representatives on July 25, 2014, and it deals with the audit report into LifeSport, and these are the findings of the audit report, Madam President, and I quote:

The review as contained in the report has revealed a number of discrepancies which include:

1. Procurement breaches.
2. A deviation from the mandates of Cabinet.
3. The involvement of some persons in criminal activities.
4. Fraud by suppliers.

5. Theft of equipment.
6. Breaches of the Proceeds of Crime Act.
7. Poor control and monitoring by officers of the Ministry.

So the first thing I would say in response to Sen. Mark is that I want to know what your Government at the time was wearing when you were engaged in this level of criminal activity with criminals based on an audit report placed on the *Hansard* by your political leader and Prime Minister at the time? You see, you would not talk here, when you think about criminals and state contracts, you think about the East-West Corridor of Port of Spain, and so on. Why do you not tell the country about the criminals operating in the Couva/Tabaquite/Talparo Regional Corporation, breaking up contracts, giving contracts to employees of the corporations, giving contracts to Ministers and their friends, and so on? Why do you not tell us about the criminal elements in the Mayaro/Rio Claro Regional Corporation doing the same thing? It is not only gang members—[*Crosstalk*]

Sen. Ameen:—Minister of National Security—

Madam President: Sen. Mark, Sen. Ameen, Sen. Mark's contribution was made, everyone listened, it is time to hear the response. Continue Minister.

Sen. The Hon. C. Rambharat: Madam President, I do not even have to refer to any Minister, former Minister shaking any hand of any alleged gang leader; I do not need to do that. I am not even going to gang leaders, I am talking about the well fed, well healed who got a Beetham Waste Water contract I had never seen, somebody with a \$1 billion contract award. He is not even interested in being in Trinidad in collecting on his contract.

We have pipes, we have a rusted 36-inch pipeline piled up from Beetham straight down to Carli Bay and none of you seem concerned about that, about a man with 65 companies that took a former Deputy Political Leader of your party to

court for close to \$70 million, and the judgment of the court says, in relation to the real-time litigation involving Mr. Warner, the judgment talks about half the money being paid by cheques. Well, if you pay half of \$70 million to a political party by cheques, you pay the other half by cotton notes and coins, and if that is not criminal behaviour, why are you—we are as concerned. [*Desk thumping*]

Together with the Commissioner of Police, the Minister of National Security has said on many occasions, we are as concerned with the gangs in Couva as we are with the gangs all over, and we are concerned with the criminals with guns as we are concerned with the criminals who are well healed and well fed and existing in corporations controlled by your party as they are in corporations controlled by our party, and it is about time you start facing up to your sins, starting with LifeSport and your political leader's statement where she said, we did not say, that you spent four-hundred-and-something-million dollars on criminals. Thank you, Madam President. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.57p.m.