

SENATE

Tuesday, March 03, 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. The Hon. Franklin Khan, Sen. The Hon. Robert Le Hunte, and to Sen. Anita Haynes, all of whom are out of the country.

SENATORS' APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. AUGUSTUS THOMAS

WHEREAS Senator the Honourable Franklin Khan is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

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

UNREVISED

of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, AUGUSTUS THOMAS to be a member of the Senate temporarily, with effect from 3rd March, 2020 and continuing during the absence out of the country of Senator the Honourable Franklin Khan.

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 2nd day of March, 2020."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. NDALE YOUNG

WHEREAS Senator the Honourable Robert Le Hunte is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NDALE YOUNG to be temporarily a member of the Senate, with effect from 3rd March, 2020 and continuing during the absence from Trinidad and Tobago of Senator the Honourable Robert Le Hunte.

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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 2nd day of March, 2020."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes
President.

TO: MR. WAYNE STURGE

WHEREAS Senator Anita Haynes 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)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, WAYNE STURGE to be a member of the Senate temporarily, with effect from 3rd March, 2020 and continuing during the absence from Trinidad and Tobago of Senator Anita Haynes.

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 2nd day of March, 2020."

OATH OF ALLEGIANCE

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Senators Augustus Thomas and Wayne Sturge took and subscribed the Oath of Allegiance as required by law.

AFFIRMATION OF ALLEGIANCE

Senator Ndale Young took and subscribed the Affirmation of Allegiance as required by law.

PAPERS LAID

1. Annual Audited Financial Statements of InvesTT Limited 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. Consolidated Audited Financial Statements of First Citizens Holdings Limited and its Subsidiaries for the financial year ended September 30, 2019. [*Sen. The Hon. A. West*]
3. Annual Audited Financial Statements of MIC-Institute of Technology Limited (MIC-IT), formerly Metal Industries Company Limited, for the financial year ended September 30, 2018. [*Sen. The Hon. A. West*]
4. Response of the Teaching Service Commission to the Fourteenth Report of the Joint Select Committee on Human Rights, Diversity and Equality on an inquiry into Sexual Harassment in the Education Sector. [*Sen. The Hon. A. West*]
5. Sessional Report of the Fourth Session (2018/2019), Eleventh Parliament of the Republic of Trinidad and Tobago. [*The Vice-President (Sen. Nigel De Freitas)*]
6. Ministerial Response of the Ministry of Rural Development and Local Government to the Twentieth Report of the Public Administration and Appropriations Committee on the Examination into the Approval Process for

7. Land Use in Trinidad and Tobago. [*The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein)*]
8. Annual Report on the operations of the Interception of Communications Act, Chap. 15:08 for the year 2017. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]
9. Second Ministerial Response of the Ministry of Community Development, Culture and the Arts to the Twenty-Seventh Report of the Public Accounts Committee on the Examination of the Expenditure and Internal Controls of the National Carnival Commission of Trinidad and Tobago for the years 2010 to 2018. [*Sen. The Hon. C. Rambharat*]
10. Sexual Offences (Amendment to Schedule 1) Order, 2020. [*Sen. The Hon. C. Rambharat*]
11. White Paper on the National Cultural Recognition Policy for Trinidad and Tobago. [*Sen. The Hon. C. Rambharat*]

1.40 p.m.

SPECIAL SELECT COMMITTEE REPORT

Evidence (Amdt.) Bill, 2019

(Presentation)

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

Third Interim Report of the Special Select Committee on the Evidence (Amdt.) Bill, 2019, Fifth Session (2019/2020), Eleventh Parliament.

JOINT SELECT COMMITTEE REPORTS

(Presentation)

Cannabis Control Bill, 2019

UNREVISED

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

Interim Report of the Joint Select Committee appointed to consider and report on the Cannabis Control Bill, 2019 in the Fifth Session, Eleventh Parliament.

National Security

Crime: Security, Safety and Protection of Citizens

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

Interim Report of the Joint Select Committee on National Security, Fifth Session (2019/2020), Eleventh Parliament, on an Inquiry into Crime: the Security, Safety and Protection of Citizens.

State Enterprises

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

Community-Based Environmental Protection and Enhancement Programme

Twelfth Report of the Joint Select Committee on State Enterprises, Fifth Session (2019/2020), Eleventh Parliament on an inquiry to assess the performance of the Community-Based Environmental Protection and Enhancement Programme (CEPEP) and its operations.

MIC Institute of Technology

Thirteenth Report of the Joint Select Committee on State Enterprises, Fifth Session (2019/2020), Eleventh Parliament on an inquiry into the operations

of MIC Institute of Technology (MIC-IT) with specific reference to the high drop-out and failure rate of its trainees.

URGENT QUESTIONS

Response to COVID-19 in Tobago

(Management Systems)

Sen. Dr. Maria Dillon-Remy: Thank you, Madam President. To the Minister of Health: Having regard to the recent resignation of the THA Secretary for Health and the dismissal of the CEO, TRHA, can the Minister advise as to what management systems are in place in Tobago for the response to COVID-19?

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

The Minister of Health (Hon. Terrence Deyalsingh): Thank you, Madam President, and I thank the hon. Senator for the question so I could bring clarity to the issue. For the record, as Minister, I am unable to comment on the resignation or dismissal of the Secretary and the CEO. The post of Secretary falls directly under the Tobago House of Assembly Act, 25:03, and the appointment and dismissal of the CEO falls under the Tobago House of Assembly Act, section 5.20, and the RHA Act, 29:05. The bigger question which I have responsibility for is the national response. The systems in place for Tobago to respond are this, the Chief of Staff and the County Medical Officer of Health are the focal points for COVID-19 or any other infectious disease. They are part of the national response plan under the Chief Medical Officer, Dr. Roshan Parasram. They are in constant communication with the Chief Medical Officer to ensure consistency and continuity of a national response plan.

Finally, this Government has been very proactive in appointing for the first time a standing committee to respond to COVID-19 and any other infectious disease as approved by Cabinet last week Thursday, and the Tobago House of

Assembly and TEMA, Tobago Emergency Management Agency are integral parts of that national plan. So the plan to deal with Tobago falls squarely within the national plan and Tobago has an equal place around the table to respond. Thank you very much, Madam President. [*Desk thumping*]

Shortage of N-95 Masks for COVID-19

(Measures to Address)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Health: Given the reported shortage of N-95 masks which are required for use by health care providers attending to COVID-19 cases, what is being done to address said shortage?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you again, Madam President, and I thank Sen. Mark for the question. This question in my view is generated by two articles appearing in today's newspapers, one which deals with shortage of masks and one which deals with an article attributed to Professor Brian Copeland, Principal of the University of the West Indies where he is quoted to be saying, there are gaps in the national plan. Professor Brian Copeland called me in shock this morning to say he never made those statements, absolutely never made those statements which are carried in a national newspaper, and we had to divert our attention this morning to deal with that because we are trying to action Couva which is now owned by UWI. So I want to urge all now, not only social media but mainstream media, that the reputational damage done to Professor Copeland and the university and the Ministry of Health cannot be repaired and puts panic into the country.

The other article which deals with N-95 masks, that has to do with a shortage in the private sector. There is absolutely no shortage in the public sector. We have more than enough stock and in the event that an epidemic or an outbreak

should happen in Trinidad and Tobago, as a signatory and a financial member to PAHO and WHO, Trinidad and Tobago has access to PAHO's strategic stock of emergency in PPE in Panama which can be rushed to Trinidad within 48 hours if required. So as far as the public sector is concerned there is absolutely no shortage. We even have a further shipment of 25,000 masks coming in from 3M in about a week to add to the already 20,000, 23,000 we have in stock. So as far as the public sector is concerned, for which I have total responsibility, there is absolutely no shortage. Again—

Madam President: Minister, your time—

Hon. T. Deyalsingh: —this is being driven by social media and mainstream media. Thank you very much.

Madam President: Your time is up. Sen. Mark.

Sen. Mark: Madam President, in light of the fact that the Minister has stated that there is no shortage of N-95 masks in stock, can he then explain to this Parliament why nurses in this country are threatening to withhold their services because of critical shortages within the health care sector? Can the hon. Minister explain?

Hon. T. Deyalsingh: Thank you very much. Madam President, I hate to be political but the UNC is driving a narrative which is untrue. The Ministry of Health has a stockpile, we will make PPE available when there is an outbreak or if there is an outbreak. You do not distribute that right now and then it gets lost in the system and if you have a positive case, you have none. We have it, it will be made available to the public sector frontline people when there is a confirmed or even a suspected case for their protection. There is absolutely no fear that any doctor, nurse, attendant could have, but everybody wants their five minutes of fame and glory in this issue.

Madam President, if we do not stand together as a country, because the

coronavirus is not yellow, it is not red; it does not belong to the PSA, it does not belong to business, let us stand firm and fight this common enemy with resolve. I am urging the national community, let us all be responsible, because I am taking 40 calls a day now refuting social media, refuting what Professor Brian Copeland said, which he never said, and distracting the Ministry and the university from protecting the country. Forty calls every morning. I cannot be on the phone refuting social media largely driven by the UNC. Thank you very much, Madam President. [*Desk thumping*]

Madam President: Sen. Mark.

Sen. Mark: Tell the operator, telephone operator that is what you need. [*Laughter*]
Madam President, may I address you, if the loquacious Minister—

Madam President: No, Sen. Mark.

Sen. Mark: All right, if the Minister—

Hon. Senator: No.

Sen. Mark: All right, let me withdraw. If the Minister is telling this Parliament and the country that everything is in place, that everything is in order, did the Minister hold discussions with the nurses council or the nurses in Trinidad and Tobago who have been accusing the Minister and the Ministry of not supplying or not being able to provide these critical equipment for these nurses, Madam President?

Madam President: Minister of Health.

Hon. T. Deyalsingh: Madam President, let me reiterate, talking to any health care worker falls under the direct remit of the RHAs, GMs of Nursing, Chief Nursing Officer, Chief Medical Officer. Those discussions have been held. Let me reiterate, all PPE will be made available from our stock if and when required. It makes little sense to distribute all of that now bearing in mind that global supply chains have

been affected so we have to protect our stock. It will be made available to nurses, attendants, doctors, all frontline people when required.

It makes little sense to distribute it now when there is no outbreak, when there is no confirmed case, but there are supplies in the event that there is one. But if we have an outbreak then the strategic stock will be activated and more will be made available. Let me assure the country, ignore the UNC rhetoric on this, there is enough stock of PPE to supply to nurses, doctors and all frontline people. Everybody wants their five minutes of fame and glory on this issue. [*Crosstalk*]

Madam President: Sen. Mark, you have to move on to the next question.

Sen. Mark: Yes, I am going on to the next question, with your leave, Madam.

Madam President: Yes.

Sen. Mark: Thank you.

**Caribbean COVID-19 Cases
(CARPHA Course of Action)**

Sen. Wade Mark: To the Minister of Foreign and Caricom Affairs: In light of the Caribbean having recording its first set of COVID-19 cases, can the Minister advise as to CARPHA's intended course of action to avert a regional epidemic?

Madam President: The Minister of Foreign and Caricom Affairs. [*Desk thumping*]

Minister of Foreign and Caricom Affairs and Minister in the Ministry of National Security (Sen. The Hon. Dennis Moses): Thank you very much, Madam President. CARPHA is the Caribbean Public Health Agency. Its membership goes beyond Trinidad and Tobago and it deals with monitoring infectious diseases in the region, promoting, protecting health amongst other areas. I in such instance, I would not want to arrogate onto myself a confidence which properly resides elsewhere. Should the question be directed properly, I am sure, I

have very little doubt an ample response would be forthcoming. Thank you. [*Desk thumping*]

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

ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, there are nine Questions on Notice for response today, the Government intends to respond to seven of those nine questions and we respectfully ask for a deferral for two weeks of Question No. 87 to the Minister of Education and Question No. 101 to the Minister of Finance.

There are also, Madam President, two questions for written response and the Government would be providing a written response to Question No. 100 to the Minister of Housing and Urban Development today, and we are respectfully asking for a deferral of the response to Question 105 to the Prime Minister. Thank you.

Madam President: Questions No. 87, 101 and 105 are deferred for two weeks.

WRITTEN ANSWER TO QUESTION

Construction of Housing Units

(Details of)

100. Sen. Saddam Hosein asked the hon. Minister of Housing and Urban Development:

As regard the construction of housing units for the period September 2015 to January 31, 2020, can the Minister indicate the following:

- (i) the number of housing units under construction as at January 31, 2020;
- (ii) the number of housing units allocated and distributed;

- (iii) the location of each site in relation to (i) and (ii) above; and
- (iv) the projected date of completion with respect to (i) above?

Vide end of sitting for written answer.

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper:

La Plata Gardens ECCE Centre

(Reasons for Delay in Completion)

- 87.** Can the hon. Minister of Health indicate the reasons for delay in the completion of the Early Childhood Care and Education (ECCE) Centre in La Plata Gardens, Valencia? [*Sen. T. Obika*]

Procurement and Disposal of Public Property Act, 2015

(Reasons for the Delay in Implementation)

- 101.** Can the hon. Minister of Finance give the reasons for the delay in the full implementation of the Public Procurement and Disposal of Public Property Act, 2015? [*Sen. S. Hosein*]

Questions, by leave, deferred.

Construction of new ANR Robinson International Airport

(Reasons for Cancellation of Request for Proposals)

- 38. Sen. Wade Mark** asked the hon. Minister of Works and Transport:
In light of reports of the cancellation of a request for proposals (RFPs) for the construction of the new ANR Robinson International Airport, can the Minister provide the Senate with the reasons for the cancellation of said request for proposals?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, a request for proposals was issued in November 2018 by NIDCO for a contractor for the construction of a new terminal

and upgrade works at the ANR Robinson International Airport in Tobago using a design/finance/construct model. Tendering closed on 01 March, 2019. Only one bidder submitted a proposal. NIDCO entered negotiations with the bidder but it was determined that the price offered by the bidder was much too high and this was in part due to the cost of obtaining financing for the project from the contractor. The tender price at this time was US \$182,940,379; TT \$1,000,243,994.

As a result, the project client Ministry, the Ministry of Finance advised that due to the high price of proposal and the single proposal received, the RFP should be cancelled and the project should be re-tendered to be financed by the Government of Trinidad and Tobago instead of the contractor. The tender was cancelled in May 2019. In June 2019, NIDCO undertook a pre-qualification exercise for prospective bidders for the new tender and the project was re-tendered as two separate contracts; one for the new terminal and associated works and one for the upgrade of the existing terminal, both to be funded by the State via a loan from the CAF Development Bank.

These were tendered via a two-stage process with open pre-qualifications and issue of RFP to entities which pre-qualified. There were five pre-qualified entities but only one bidder elected to submit a proposal. The 2019 price for the two projects and the upgrade of the existing terminal and the new terminal was US \$135,941,000. This was US \$46,998,000 lower than the previous combined price resulting in a reduction in the price of TT \$319 million. As a result of the wise decision to cancel the 2018 RFP process and re-tender, it should be noted that the reduction in the 2019 price is now within 1 per cent of the original engineer's estimate of \$134,404,000. This is yet another way this Government is finding a way to do more with less. I thank you. [*Desk thumping*]

Madam President: Sen. Mark.

Sen. Mark: Through you, Madam President, could you inform this Senate of the name of the bidder that initially proposed the exorbitant price that you identified a short while ago? Could you identify the name of this bidder in the first rounds?

Sen. The Hon. R. Sinanan: Madam President, unfortunately I do not have the name of the companies with me, but if a question is posed for future I will—
[*Interruption*] Yeah, but I do not have the name of the company.

Sen. Mark: You do not have the name of the company?

Madam President: Sen. Mark, the Minister has responded. Do you have another question?

Sen. The Hon. R. Sinanan: Madam President, unfortunately this Minister does not get into the bidding process. This is not the UNC—

Madam President: All right. Minister, Sen. Mark. Sen. Mark, it is either you want to ask a next question on this or we move on. Next question, Sen. Mark.

Sen. Mark: When you say next question, Madam President, you are talking about supplement?

Madam President: I thought that you had waived any further questions. You want to continue questioning on Question No. 38?

Sen. Mark: Of course, Madam.

Madam President: Continue then, Sen. Mark, in a relevant manner, please.

Sen. Mark: Thank you, Madam. Madam President, can I ask the hon. Minister, what is the name of the successful bidder for the new project given what you have identified to this honourable Senate?

Sen. The Hon. R. Sinanan: Madam President, unfortunately, the question as posed did not ask for the name of contractors. I am not in a position to answer about the name of the contractors. Again, this Government's policy is Ministers do not get into any bidding process. Thank you.

Madam President: Sen. Mark. [*Crosstalk*]

Sen. Mark: Madam President, may I ask through you, if the Minister could tell this honourable Senate what is the final cost of both the new terminal, the final cost for the new terminal as well as the upgraded old one? Can you tell us what is the combined cost?

Sen. The Hon. R. Sinanan: Madam President, I answered that in my original answer but I will repeat it, \$134,404,000. Thank you. [*Crosstalk*]

Increase in Squatter Settlements in Toco/Sangre Grande

(Measures Taken to Address)

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

In light of reports of an increase in squatter settlements in Toco and Sangre Grande, where the Toco Port and the Cumuto to Manzanilla highway projects are to be constructed, can the Minister advise as to what measures are being taken to address said issue?

Madam President: Acting Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you for the question. Madam President, the first point I would make is that while the question links the increase in squatter settlements in Toco and Sangre Grande to the proposed Toco port and the Cumuto to Manzanilla highway projects, the squatting in north-east Trinidad, Madam President, has been with us over 25 years. In fact, it is pervasive to the point that in previous debates on legislation dealing with land law, I made the point that the most recent surveys in north-east Trinidad shows in that area called the “Valencia long stretch”, which is Valencia going up to the Toco Main Road, there are about 5,300 structures there of its 3,800-and-something are residential structures. Many

of them are around 25 years old, and as people have had challenges in housing themselves and their families, and as the people who are paid by the taxpayers to oversee and to make sure that squatting does not take place on state land, and in particular in forest reserves, as they have failed to do their job, squatting has become pervasive and north-east Trinidad is a classic example. But in relation to the recent increase in squatter settlements the Land Settlement Agency is the agency of the Ministry of Housing and Urban Development responsible for working with the Commissioner of State Lands to curtail the increase in the squatting, and there are officers of the Land Settlement Agency who are out daily serving notices and taking steps to curb the squatting.

But I also want to make the point, Madam President, that every time the Commissioner of State Lands— it does not matter who is in Government— every time the Commissioner of State Lands take the final action, which is to demolish particularly newly constructed houses on state land and on places where it should not be, we have politicians who intervene. Sometimes they are politicians who are lawyers and they go to court and that, in my experience since the 1990s, has been the number one stumbling block in finally dealing with the squatting issue. So to answer the question, the LSA continues to do their job. The Commissioner of State Lands is the person responsible for executing the removal. There are several matters in the court and this is a problem in north-east Trinidad that is over 25 years old. I thank you.

Sen. Mark: Madam President, to the hon. Minister, as it relates to the two specific projects, can you indicate what is the number or amount of persons who might be in the pathway of these two important projects, both the port and the highway project? Have you been able to make any kind of estimation of the numbers involved in that particular area of these projects?

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

Sen. Mark: May I ask, Madam President, as it relates to these two projects, what impact and what cost can the Minister identify with delays of these two projects as a result of the increase of persons on those lands currently occupied? Can you identify to us? Has the Government been able to estimate the cost of any delays of these two projects as it relates to the starting of this exercise?

Madam President: Sen. Mark, that question does not arise. Any more questions? [*Crosstalk*] Yes, next question.

**Rise in Incidence of Elder Abuse
(Measures Taken to Address)**

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

In light of reports of a rise in the incidence of elder abuse in which some 12 cases are allegedly recorded every month, can the Minister state what measures are being taken to address this social issue?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I thank Sen. Mark for this very important question. The first point I want to make, Madam President, is to say that while there has been—the question refers to a continuous increase in the number of street dwellers, and I want to make the point that between 2017 and 2019—
[*Interruption*]

Madam President, permit me to get the right script, Madam President. Thank you very much, Madam President. I may have saved us from a motion on the adjournment later. Madam President, the Ministry's Division of Ageing is the umbrella body for ageing initiatives and the Ministry acts as the advocate for older

persons in Trinidad and Tobago. The Ministry also administers the Older Persons Information Centre, a programme originally established as a help desk referral facility for information on activities, programmes, products and services for older persons.

Every reported allegation of elder abuse received by the Ministry via calling, walk-ins or social media are logged through the OPIC and assessed by inspectors assigned to the Division of Ageing in the Ministry. The data compiled by the Ministry confirmed that over the years, and especially in 2018, 2019 there has been an increase in a number of reports and incidence of elder abuse. The Ministry treats all reported cases of elder abuse as priority and towards this end, the Division of Ageing has implemented a rapid response strategy that employs the application of a time frame of between 48 to 72 hours as far as possible for responding to reports of elder abuse which are lodged with the OPIC.

The inspectors attached to the Division of Ageing conduct assessments of the allegations that are received by the Ministry and based on the details of the allegations, relevant resources, both within and outside the Ministry are co-opted for investigation and resolution of these cases. In reported cases of physical, financial, sexual abuse immediate referrals are made to the police service for criminal investigation. In 2019 alone, 18 cases were referred to the TTPS. Where allegations of elder abuse are reported against homes for older persons or geriatric homes, the Division of Ageing refers such cases to the Ministry of Health and inspectors from the unit accompany teams from that entity in the investigation and determination of such claims.

2.10 p.m.

The Ministry can confirm the following: Of the 101 reports received in 2017, 51 were confirmed cases of elder abuse. Of the 110 received in 2018, 56

were confirmed as cases of elder abuse, and of the 285 received in 2019, 119 were confirmed cases of elder abuse.

I thank you, Madam President.

Sen. Mark: Madam President, can the Minister indicate, in light of the increase in the number of cases reported on elder abuse—as a result of the measures taken to address these abuses, can the Minister report to us whether there has been a reduction in cases of elder abuse in Trinidad and Tobago? Can the Minister advise on that?

Sen. The Hon. C. Rambharat: Madam President, based on the numbers that I called out you would see that in 2017 there were 101 reports received of which 51 were confirmed cases of elder abuse and when you go to 2019, 285 reports received of which 119 were confirmed cases. So what it shows—the data shows that there are increasing numbers being reported of which increasing numbers are elder abuse. But I would say that two things may have caused an increase in reporting. One has to do with the new legislative framework for homes which house elder persons, geriatric homes and homes for the elderly, and new legislative framework is in place and there have been public consultations in 2019 on the implementation of that legislation, which may have brought a lot of attention to the issue of elder abuse, and may have alerted families and persons connected to elder persons to make the report. That is the first thing.

Secondly, the Ministry itself has been on outreaches across the country bringing attention to this issue of elder abuse, and that may have prompted an increase in the number of reports of which a significant percentage are reports of elder abuse. I thank you.

Sen. Mark: Can the Minister indicate the number of inspectors that you referred to attached to the Division of Ageing? Can you share with this Senate the number of

inspectors attached to the Division of Ageing to deal with these cases that would come to their attention from time to time? Could you share with us?

Sen. The Hon. C. Rambharat: Madam President, I do not have that information.

Madam President: Sen. Mark?

Sen. Mark: I asked a question.

Madam President: He answered.

Sen. Mark: What did he say?

Madam President: Do you have any other supplementary questions, Sen. Mark?

Sen. Mark: He did not answer the question. I did not hear him answer the question.

Sen. Ameen: He responded but he did not answer the question.

Madam President: Minister.

Sen. The Hon. C. Rambharat: Madam President, most respectfully to you and to Sen. Mark and to the House, I do not have that information with me.

Sen. Mark: “Well say dat.”

Madam President: Sen. Mark, I heard the response that was given by the Minister. So, are there any other questions to be asked?

Sen. Mark: Of course, Madam President, you know I will always have questions for the Minister. Hon. Minister, in light of the fact that you do not have the evidence before you at this time, would you give an undertaking to this honourable Senate that you would provide the evidence to the President?

Madam President: Evidence, Sen. Mark?

Sen. Mark: The information. I asked how many inspectors.

Madam President: So, here is the story, Sen. Mark. There is at least one person in this Chamber paying attention—one. So I understand what was asked, and I was just qualifying. So Minister, just answer what Sen. Mark has just asked.

Sen. The Hon. C. Rambharat: Madam President, in light of the fact that Sen. Mark failed to frame the question in a way that would give rise to me having the information before me, I undertake to provide the information to the House in the public interest. Thank you.

Madam President: Any more questions, Sen. Mark?

Sen. Mark: Can I ask him through you, as to when he would be so kind to do so?

Sen. The Hon. C. Rambharat: Madam President, I would do so by Friday, which is Friday the 6th of March, 2020. Thank you.

Nigeria and Ghana Bilateral Air Services Agreement

(Status of)

85. Sen. Taharqa Obika asked the hon. Minister of Foreign and Caricom Affairs:

Can the Minister advise as to the status of the Bilateral Air Services Agreement with Nigeria and Ghana?

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dennis Moses):

Thank you very much, Madam President. Legislation and conclusion of bilateral air services agreements fall under the remit of the Ministry of Works and Transport. Currently, a draft bilateral air services agreement between the Government of the Republic of Trinidad and Tobago and the Government of Nigeria is under review by both countries. Similarly, a draft Bilateral Air Services Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Ghana is currently receiving consideration by both countries. Thank you, Madam President.

Sen. Obika: Madam President, given the Minister's response, can the Minister indicate when on the Trinidad and Tobago side would be the draft bilateral air services agreements be expected to be completed?

Sen. The Hon. D. Moses: On the part of Trinidad and Tobago, we are not only abreast and up-to-date with the expectations on our side, but we have completed all that is required as of now. Thank you very much, Madam President.

Sen. Obika: Can the hon. Minister indicate to this House what would be the possible timeline for ratification of any eventual bilateral air services agreement between both countries?

Sen. The Hon. D. Moses: The need to complete the process in its entirety does not only depend on Trinidad and Tobago, and in that context I am unable to specify with any precision, the time frame for completion. Thank you.

Sen. Obika: Madam President, can the Minister indicate what steps the Government would be making then to ensure that there is a completion of the agreement between Trinidad and Tobago, Ghana and Trinidad and Tobago and Nigeria?

Sen. The Hon. D. Moses: Thank you very much, Madam President. Coercion is not an integral part of our relationship with friendly countries. We continue to persevere to have the completion as rapidly as possible. Thank you very much.

National Energy Skills Centre

(Details of Enrolment)

86. Sen. Taharqa Obika asked the hon. Minister of Education:

Can the Minister advise as to the number of students enrolled in NESC programmes in academic years 2016, 2017, 2018 and 2019?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. The number of students that were enrolled at the National Energy Skills Centre for the academic years 2016, 2017, 2018 and 2019 are as follows: 2016, 1,891; 2017, 1,364; 2018, 779 and 2019, 627. Thank you very much.

Sen. Obika: Can the hon. Minister account for the precipitous decline by over 60 per cent enrolment in the National Energy Skills Programme under his tenure?

Hon. A. Garcia: Thank you very much, Madam President. The reason for the decline can be attributed to two major factors. One is, over the years a large number of persons were trained, and as a result of that the pool from which you would get persons who are interested in training, that pool has declined considerably.

The second aspect is that there are a number of service providers or training providers who have been providing similar training to what is being done by the NESC. For example we have COSTAATT, we have MIC, we have YTTEP and we have the UTT, and in some instances we have the University of the West Indies. So all of these providers have been training our persons in many areas, and this is why in this area we have found that there is a decline.

In addition to this, Madam President, when the NESC was established it was originally intended to service the energy industry. After that, it veered into other areas like construction and the trades and so on, and this is why there are other competing agencies that are providing similar training. Thank you very much.

Sen. S. Hosein: Madam President, can the Minister whether or not the decision taken to reduce the number of trainers and instructors at the NESC centres would have contributed or attributed to this decline in the amount of persons from the centre for period 2016 to 2019?

Hon. A. Garcia: Again, I am very happy to respond to this question. There was no decision that was taken to reduce the number of instructors and so on. It is simply because of the applications that were received by the NESC, the decline in applications. Let me give you an example.

For example, for the Morvant centre for the period 2017 to 2018 there were

no applicants. Palo Seco for the same period, there were no applicants. Point Fortin for the same period, there were no applicants. And if there are no applicants, who would teach in a room filled with nobody?

Thank you very much.

Sen. Obika: Madam President, the information the Minister has given is a little contrary to what he presented before.

Madam President: Question please.

Sen. Obika: The question is then, can the Minister indicate what outreach the Ministry would have engaged in to create or increase the attractiveness of the NESC programmes in these areas that he mentioned: Moruga and Palo Seco and Point Fortin? **Madam President:** That question would not be allowed. Another question.

Sen. Obika: Madam President, can the hon. Minister indicate if this significant decline from over 1,800 students to just about 600 students in the NESC programme, what would be the impact on the energy sector in this country as a result of that failure?

Hon. A. Garcia: Madam President, you know sometimes it gives me cause to really think of what goes on in the minds of some of the persons across there. I have been at pains to explain the position.

The NESC was originally established to provide training in the energy industry. A large number of persons have been trained over the years, and of course there must be a halt to this training or a decline to this training. You cannot continue training everybody over and over and over, and this is exactly what has happened. We have sufficient numbers of persons who have been trained. So to come here now and try to make it appear as though it is some fault on the part of the Ministry of Education, that is not thinking correctly.

Thank you very much, Sir.

TT Spirit, Cabo Star and the Jean de la Valette

(Insurance for)

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

As regard the *TT Spirit*, the *Cabo Star* and the *Jean de la Valette*, can the Minister advise as to the following:

- (i) whether the abovementioned vessels have been insured;
- (ii) the cost of insurance for each vessel; and
- (iii) the name of the insurer(s)?

The Minister of Works and Transport (Sen. the Hon. Rohan Sinanan): Madam President, the following information relates to the vessel, the *T&T Spirit*, the *Cabo Star* and the *Jean de la Valette*. All three vessels are insured.

The premium for the *T&T Spirit* which covers the liabilities relating to operation of the vessel, inclusive of protection, indemnity, hull and machinery, is US \$919,000.

The *Cabo Star* and the *Jean de la Valette* which are chartered vessels and not owned by the Government of Trinidad and Tobago are required to be insured by the owners, and are covered by the charterer's liability insurance.

The *T&T Spirit* and the *Cabo Star* are ensured with Lloyd's of London and London Underwriters, while the *Jean de la Valette* is insured with EF Marine PTE Limited.

Thank you.

Estate of Satnarayan Maharaj v the Attorney General

(Amount of Legal Fees Paid/Invoiced)

99. Sen. Saddam Hosein asked the hon. Attorney General:

Can the Attorney General indicate the amount of legal fees paid and/or

invoiced for the attorneys representing the Office of the Attorney General in Claim No. CV 2019, 02271, Vijay Maharaj substituted on behalf of the estate of Satnarayan Maharaj for *Satnarayan Maharaj and Central Broadcasting Services Limited v the Attorney General of Trinidad and Tobago*?

The Attorney General (Hon. Faris Al-Rawi): Madam President, the services of very well-known constitutional lawyer, Mr. Fyard Hosein SC, was retained to defend the Attorney General of Trinidad and Tobago in the matter of claim Nos. CV 2019 02271, that is Vijay Maharaj substituted on behalf of the estate of *Satnarayan Maharaj and the Central Broadcasting Services Limited v The Attorney General*.

To date Mr. Hosein SC has not invoiced the Ministry of the Attorney General and Legal Affairs for his services rendered in this matter and therefore no fees have been paid.

Sen. S. Hosein: Can the Attorney General indicate whether or not any fees have been paid to instructing attorneys in the matter?

Hon. F. Al-Rawi: Madam President, the question was not asked in that particular way, but as far as I am aware no fees have been paid. This is a matter touted by the UNC to be a loss for the Attorney General personally. Mr. Fyard Hosein SC conducted the case for the Attorney General, and I am very pleased to also inform the country, contrary to UNC's exhortations, that that case has in fact been very successful in the stay granted by the Court of Appeal in rejecting the decision of Mr. Justice Kokaram. So, please again, stop the fake news.

Sen. S. Hosein: That is Justice Seepersad if I may correct the record for the Attorney General also.

Hon. F. Al-Rawi: Is that a question?

Madam President: Could you please ask a question, Sen. Hosein?

Sen. S. Hosein: Yes please, Madam President. Can the Attorney General indicate whether or not he would give an undertaking that when the matter is invoiced, whether or not he would provide that information to this honourable Senate?

Hon. F. Al-Rawi: No, Madam President, because there is a process of asking questions, and I am not going to do your work for you. The litigation of Trinidad and Tobago is very simple. These matters are of public record. Where was the UNC's concern when there were legal fees abuse and positioning in that form? It is obscene of the UNC today to pretend to want to know about legal fees in this country.

Sen. Ameen: Standing Order 46(1).

Hon. F. Al-Rawi: Is there a Standing Order, Madam President? Is there a Standing Order?

Sen. Obika: Bringing the House into disrepute.

Sen. Ameen: Standing Order 46(1).

Madam President: Attorney General, Sen. Obika, Sen. Ameen, we seem to be proceeding on a wrong footing here. I will ask all Members—all Members—who are present to please remember the Standing Orders, and we will treat with matters that you want to raise on the Standing Orders accordingly. Sen. Obika, I do not uphold your invocation of the Standing Order. Attorney General, are you finished with your answer?

Hon. F. Al-Rawi: No, Ma'am. Madam President, I have been asked whether I would give an undertaking to provide legal fees information. I will not. There is a mechanism for asking questions, and I find it distasteful for the UNC to pretend to the country that they are concerned about legal fees, when this matter is the subject of scandal which has reached the courts of Trinidad and Tobago.

Sen. Mark: When will you hear about yours you will hear scandal.

Hon. F. Al-Rawi: Babble, babble, babble, little boys.

Madam President: Sen. Hosein, please; Attorney General. Members, please, I would ask that we start right now. Please, let us observe the Standing Orders. I do not want to have to intervene again on this matter.

**MISCELLANEOUS PROVISIONS (REGISTRAR GENERAL,
REGISTRATION OF DEEDS, CONVEYANCING AND LAW OF
PROPERTY, REAL PROPERTY, STAMP DUTY AND REGISTRATION
OF TITLE TO LAND) BILL, 2020**

Bill to amend the Registrar General Act, Chap. 19:03, the Registration of Deeds Act, Chap. 19:06, the Conveyancing and Law of Property Act, Chap. 56:01, the Real Property Act, Chap. 56:02, the Stamp Duty Act, Chap. 76:01 and the Registration of Title to Land Act, 2000 [*The Attorney General*]; read the first time.

**JOINT SELECT COMMITTEE REPORTS
(EXTENSION OF TIME)**

Evidence (Amdt.) Bill, 2019

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Interim Report of the Special Select Committee appointed to consider and report on the Evidence (Amdt.) Bill, 2019, I beg to move that the committee be granted an extension to April 30, 2020, to complete its work and submit a final report.

Question put and agreed to.

Cannabis Control Bill, 2019

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Interim Report of the Joint Select Committee appointed to consider and report on the Cannabis Control Bill,

2019, I beg to move that the committee be granted an extension to April 30, 2020, to complete its work and submit a final report.

Question put and agreed to.

INTERCEPTION OF COMMUNICATIONS BILL, 2020

[Second Day]

Order read for resuming adjourned debate on question [February 11, 2020]:

That the Bill be now read a second time.

Question again proposed.

Madam President: Those who have spoken on this Bill are, the hon. Faris Al-Rawi, MP, Attorney General, who moved the Motion, Sen. Sean Sobers, Sen. Charrise Seepersad, the Hon. Stuart Young, MP, Minister of National Security, Sen. Saddam Hosein, Sen. Anthony Vieira, Sen. Deeroop Teemal.

Sen. Paul Richards: Thank you very much, Madam President. Good afternoon again colleagues. It is my distinct honour to be able to make a short intervention into this debate on an Act to amend the Interception of Communications Act, Chap. 15:08.

There were several speakers in our last session who made contributions on this Bill, which really speaks to what, from my research, has become basic standard procedure across many jurisdictions across the globe, because of the extremely pervasive issue of contraband, and in particular communications contraband in prisons across the globe. In fact, when you do the research you would realize that even developed countries, so-called “First World” countries, are struggling to deal with this paradigm. Some of the states in the US have astounding figures for in particular cell phones, which obviously is the main area of concern in this Bill.

But I do not want us to use that as a premise to not look at the issue

holistically, because at the end of the day there has been some progress, quite a bit of progress made in some jurisdictions in terms of the intervention and interdictions of cell phone contraband, and the use of cell phones by inmates to commit heinous crimes in many jurisdictions, which is one of the biggest problems that corrections systems around the world are facing.

Even with that said, much of the research points to jurisdictions doing and providing quite a bit of information to the general public and to stakeholders, including parliamentarians, as to how cell phones are getting into those prisons, the frequency of use of cell phones by specific locations. Because once you have a cell phone you can have a GPS positioning of the communication from that cell phone, so you know in modern technological advances specifically what cells are using or what areas in the prison are using the cell phones to help with your intervention methodologies as opposed to, okay we have a problem with cell phones—and I will tell you from the start that this is an easy Bill for me to support, because it is standard procedure around the world. We are actually late on the draw where this is concerned, but that does not mean we should not look at the problem holistically as I said before.

I do not want us to say, well, okay, we are seeking to amend the Interception of Communications Act to intercept communication do be used as evidence in trials, so let us just leave the problem as it is, because it is a problem. And in the words of the hon. Minister of National Security, who made a contribution when the debate was piloted last time we were here, on the day he made the contribution, the Minister of National Security that is, he said, and I quote, “Up to this morning a shot was called from inside the prison disrupting and shots”, and he said, “Several”—and he used the word “shot” figuratively—“shots are called disrupting Port of Spain and disrupting the operations of the country on a regular basis”. That

to me is a very disturbing statement for a Minister of National Security to be making, and he is being honest. He is being very candid about the information that is available to him as Minister of National Security, that high risk, high profile inmates have regular access to cell phones, and are using this access and the use of these cell phones to disrupt Trinidad and Tobago as if they were outside. So then what is the point of us putting them in prison?

The Minister, through you Madam President, was speaking about a specific inmate, from my interpretation of his delivery, who is a high-risk inmate, known to prison authorities, the Ministry of National Security and stakeholders, to be a high risk inmate, and still is getting cell phones. That tells you a lot, because that person should be the least person who has cell phones available to him, or her, to make it wide and if we cannot lock down a high-profile, high-risk inmate in the prison system, we have real problems. Because, from my understanding that person is—without going into the case—known, and in the words of the Minister of National Security, to be still intricately involved in calling shots and the commission of crimes in Trinidad and Tobago. So we have real issues there.

There are several—and I will go through them later on in my contribution—we have to ask the questions about step by step, phase by phase, what are the shortcomings in the system. We will never be able to eliminate them because it is one of the most disturbing problems corrections in prison systems face in the world. But we still cannot throw up our hands in the air and pretend that we have no methods or no options available to us as a country.

As I said before, one of the things we need to start doing in addition to passing Bills like this, in my humble opinion, to be able to use the information that is intercepted in terms of the commission of these crimes or these interactions between the inmates and their cohorts or their agents outside, is to start to gather

the data. I would have really liked the Minister, and maybe the Attorney General can do so, to provide, if he has the data available to him, how frequent these communications are, if they are located primarily in Port of Spain, Golden Grove or other facilities in the country, so we can use that, and the high frequency times these correspondences take place. Because the authorities can use that data to get a sense as to, one, who it is, because I am sure they have a sense of who it is, who they are speaking to, in addition to getting the evidence that could be used in prosecutable court proceedings.

One of the issues in talking to one of the stakeholders, who I should not call, is in particular, and I have said this before, in the Port of Spain Prison and Golden Grove, and in particular Port of Spain, that facility needs to be condemned. Because my understanding is that we have heard months and months and years and years of spending money and plans to use jammers, “scrammers”, et cetera, but I understand you almost cannot even put up the infrastructure on the walls of the Port of Spain Prison, because it is so old that the walls crumble when you try to put equipment in the walls. You cannot even put the screws in the walls to put up the equipment because the walls fall apart.

The Port of Spain Prison needs to be condemned. It is inadequate in modern correction systems, and it is part of the problem we are facing here, which is why we have to pass Bills like this in Trinidad and Tobago. The same goes for Golden Grove, and we need to look at that, the issue of the prison structures themselves and their complicity in propagating the problem.

2.40 p.m.

I would also like to know through you, Madam President, what is the present information on the grabbers, jammers, scanners and the search protocol for inmates and officers, and how effective they are? Because there are several methodologies

for getting contraband into prison, but the primary, if you look at all, if you research all over the world, the primary ways are through visits, through prison officers, and sometimes throwing things over fences which actually is the easiest one to curtail. So the primary methodologies are actually officers and visitors to inmates themselves.

We have a different situation in Trinidad and Tobago which is also, I know from my information and it has been cited as a loophole, where the transfer of inmates from the institutions into the transportation vehicles through the private company which is primarily the company that is used, and the transfer of contraband in that process. And I know part of the Bill speaks to intercepting communication in vehicles in prison, correction centres, and also on the road, but we also have to look at, well, if we are paying a private contractor millions of dollars and they are part of the problem, we need to fix that because it is part of a deficient service. And my understanding is, that is one of challenges facing the prison systems when inmates are being moved from, on a daily basis quite frankly, Monday to Friday, from Golden Grove or from the Port of Spain Prison into these vehicles to the courts and back, they get access to this contraband, and that to me also needs to be looked at.

We also need to ask ourselves and analyze what protocols are being used in the transfer of these inmates and in these processes, and if we find out that, well, many of the transmissions that are sought to be intercepted in this Bill are coming from inside those transportation vehicles, we need to put some sort of sanction on that company or that system that is being used because it is certainly being used as a loophole in our criminal justice system and a dangerous loophole at that, because as the Minister of National Security said, shots are being called by inmates inside these systems.

Also, the Bill proposes monitoring calls of the prisons and it identifies specifically—I did a little bit of broadcast engineering in my very early years, and one of the concerns I have and I hope the AG can address this is, in terms of the interception of communication, and I do not want to go into the tropospheric scatter and the engineering terminology, but if you are seeking to intercept communication in and around prison, there is some technological scatter and fallout from surrounding areas, so private citizens can have their communications also intercepted, and I just want to know that those persons' information is secure, and the system is not to be abused because it is not an exact science. You cannot say from these two, three or four square feet is the only area that the equipment will pick up that, and also in particular when you are talking about vehicles moving to and from the nation's prisons, so I am hoping the Attorney General through you, Madam President, can address that in terms of the provisions in the Bill to protect the information of private citizens in the process of intercepting this communication which, as I said before, quite frankly, is vital and standard procedure in any jurisdiction around the world.

I did not see it specifically mentioned, but I will tell you, and there is a book I will recommend to everyone, it is called “codes of communication by criminals”, I will get the name of the author later on. I am not going to quote from it, so I do not need to read it into the *Hansard*, but it speaks to new codes while advances are being made by legislators and criminal justice systems in intercepting communication between inmates and their cohorts outside. We also have to put systems in place for new methods of communication.

And the inmates and their cohorts are in every jurisdiction around the world, are not only using cell phones and verbal communication, they are using fake Facebook profiles where they would put up two pictures of three rabbits, and those

pictures of three rabbits mean, “hit is on”. It may seem innocuous and benign to the general public because it is just a Facebook profile, but they have a cell phone in the prison and they have social media accounts which are fake; I see the Attorney General perked up with this one, and they send codes via social media. They are not going to say, “I am going to kill X or go and kill X”. They will send a lot of coded information through their Facebook profiles. And do the provisions in this Bill provide for picking up those and analysing those as prosecutable evidence, because this is the general foundation of what this is about, and I know it is a great concern in other jurisdictions because of how pervasive social media is, and when you think about it, it really makes sense.

If I am an inmate, I am not going to pick up the phone and say, “X and Y, we are on for tomorrow, you know, 2.00 o’clock”. I am going to send it in a code on the most pervasive communication in the world now which is social media, that makes sense, and are we keeping up with those trends in terms of what we are trying to do with this Bill. And I did not see specific references to that, but I am hoping that it is part of what we are considering when we are trying to stay ahead of these developments in our country in terms of managing our criminality.

The other issue I would like the Attorney General to address and it comes because I am going to declare my interest straight on: I am a media practitioner, and in the British system and the Australian system in their interception of communication legislation they have specific protection for journalists and journalistic practice, just like the legal profession and the privilege that is expected between clients and inmates in those situations. They have in the public interest carving out where, for example, I have received three calls myself over the last 15 years from inmates.

From the time you tell me where you are calling from, I am hanging up on

you, but that does not mean they got my number and they try to call me because they know I am in the media and they try to report alleged atrocities that are going on the prisons which is, to me, a valid journalistic practice. They have a right to report, and in many of the cases where inmates are trying to report atrocities going on inside the prison walls, the officers are not going to allow them access to communication to say, “Well, they are beating meh or they are starving me”, so they will use illegal means. I am not by any means endorsing the use of illegal means, but they have to find a way to get the information out, and they call journalists or media practitioners to get the information out to report on these atrocities so that they can have redress and the perpetrators of these alleged acts must be brought to justice.

So they call a journalist X and they indicate, “Well, X and Y is going on and please do something, publish this, broadcast this so that we can get some redress”, and they develop some sort of temporary relationship. How liable is the journalist in that regard?

And in the BBC situation, according to a part of the BBC journalist Academy, “Industry, theory and practice”, Journalism (CCEA), in the public interest provisions are clearly carved out and provided for in interception of communication legislation. So I just want the Attorney General to comment on that because I know one of the responses may be, well, it will go to a judge and the judge will determine if the journalist broke the law, and he has—the judicial officer had the final say, but that does not mean that the journalist’s private information and correspondence is now subject to purview by the officer or whoever is investigating the alleged crime, so I just want some clarity on that for my journalistic colleagues around the country who may be caught unwittingly and not covertly, not overtly but by chance in this because they—somebody called

them and they are trying to do their job as the fourth estate in Trinidad and Tobago. So, I am hoping the Attorney General can shed some light on that when he presents his wrap up.

What I also want to bring to light in my contribution is the issue of—because it is an Interception of Communications (Amdt.) Bill, it also can be used—and I know there are provisions in it because it is aimed at gathering prosecutable evidence, and the evidence is now—hopefully it would be admissible in court if the Bill is passed.

One of the—as I said before, the two main conduits of contraband in the prison are visitors and prisons officers who, in our situation, the head of the Prison Officers' Association, President Mr. Richards, has said on several occasions that he knows that like in any other sector in the country, there are rogue officers who are facilitating these contraband devices in the nation's prisons. And I know we have some severe penalties in other bits of legislation, but I did not see any mention of the information, the Bill providing for the—and I am not a lawyer by any means, so there may be some sort of provision that I may not have identified as specific to that, but if there are provisions for those officers who are caught in the web in terms of these interceptions, who are shown to be major players in this debacle or in this tragedy or in this travesty, and if this is the place in terms of this Bill or if it resides in some other piece of legislation where they are dealt with in a really severe manner, because I think that area is something that we need to look at in Trinidad and Tobago.

And I am not in any way casting negative aspersions on the whole prisons officers system, but certainly the ones who are involved in this, need to be brought to justice through this, the ambits of this Bill and also dealt with in a more severe manner, because as the old saying goes, “To whom much is given, much is

required” in terms of responsibility, so we cannot allow them to just get away with that at all.

I know my colleague Sen. Vieira is really big on legislation and provisions and clauses in the legislation that protect trade secrets and business documents. And as I said before, because interception of communication is not an exact science in terms of who may be caught up in it, I am hoping that there are parts of this Bill that I may not have identified that protect trade secrets that may unwittingly come to the attention of those who are operating this equipment to intercept the communication because that is a very possible scenario in this case when you are thinking that, well, prisons are in particular locations but the transportation moves and there are businesses around those areas that may fall within the scope of the equipment that is monitoring and intercepting the communication, so I am hoping that is also taken into consideration in some aspect of this legislation.

And finally, I just wanted to go into a document as I started by saying, while we are looking to enforce a particular option for the courts in terms of the evidence gathered in this Interception of Communications Bill, we still cannot just throw our heads in the sand and do nothing about the contraband that is entering our prisons, in particular the cell phones which as the Minister of National Security said can cause a shutdown in the capital or several parts of the country at a moment's notice and seems to be happening on a regular basis, if not shutting down the country certainly contributing to crime.

And this document, “Controlling Contraband Cell Phones: Interception and Detection in Prisons, Correctional and Secured Facilities” by Scott Schober, wireless detection in cyber security expert. And it goes on to say that, you know, the contraband and smart phones, as I said before, since the early '90s, are one of

the most difficult aspects of correction systems in prisons to monitor and regulate. They are used to pass orders to accomplices, and a cell phone is the most valuable currency in a prison according to all the experts because of what you can use a cell phone for obviously. They can be used to:

- “orchestrate escape attempts
- run identity theft and drug rings
- intimidate witnesses
- run scams and extort money
- coordinate riots and protests
- take out contract hits”

—and in some instances as we have seen in Trinidad and Tobago, to live stream parties from inside the prisons; to live stream parties and events inside the prisons, we have seen that already; so they are very, very dangerous.

So the document goes on to say that jammers really do not work, and in many jurisdictions they have been found to be illegal and they are inconsistent in terms of their application because the technology changes all the time and then you are left with old hardware of the jammer that has not kept up to pace with the new technology of the cell phones and the social media and the access to online, because once you have access to online through the device in the prison, well then, that is where you can cause your ruckus.

So they went on to outline in the document, even managed systems have major loopholes, even as fervent as the American Federal Communications Commission, the FCC, is, they are still struggling to deal with this issue in terms of working with law enforcement and prison systems to monitor the intervention of these communications. They say deliveries, visitors, throwing over fences, as I have said before, and prison officers are the biggest culprits.

In recent times they have been using drones to drop cell phones into prisons, and we see how many drones we have in Trinidad and Tobago, so a drone is not—and if I am not mistaken, there is some sort of restricted flying area over prisons or maybe not, but we do not know what is happening in Trinidad and Tobago.

And the thing about the document, and this is an expert, he says that several different types of contraband travel together. So if they are doing cell phones which is the remit—or communication devices—of this Bill, they are doing drugs, marijuana, they are doing knives, they are doing money, sometimes they are doing food, you know, to have a different kind of life inside the prison, so it is an opportunity, and there are some cigarettes, so there is an opportunity to look at the system holistically and deal with it.

The detection methods that are shown to be the most effective include cell phone sniffer dogs, and the price of one trained cell phone sniffer dog is US \$10,000, so that may be prohibitive. The advantage includes the phone can be on or off, the animal will find the cell phone. They require specifically trained handlers, and there is a cost of upkeep in terms of vets, et cetera. There is also the radio frequency detectors which are very affordable, but they have to be maintained by an independent operator, because if you allow the prison system to operate them, it becomes compromised by the very system that you are trying to intervene into. So radio frequency detectors, budget US \$500 to US \$2,500, they are long ranged, they can triangulate phone position. Some units are also concealable under clothing, so the officer, specifically trained officers who the system trusts can have these and walk through the prison and actually detect exactly what cell or what inmate has a cell phone whether it is on or off, so that is also good.

Ferromagnetic detectors, budget US \$600 to US \$6,500, phones can be on or

off when they are short-ranged, so they must be inside the prison walls for detection. Metal detectors which we all know about that, but they have to be applied by some system that one can trust. And the most effective way is effectively scanning all visitors and all staff inclusive of family members who go in, and in very many instances are right on their bodies, take out information via normal human interaction. So they come in for a visit and they go out and they speak to whoever they have to speak to because they are part of the criminal enterprise quite frankly, they are not benign in the situation, they may be just seen as a girlfriend who they were with, but quite frankly in many cases, in most cases the fact that they keep coming back to visit this high-risk prisoner or inmate is because they are part of the criminal enterprise and they are the conduit of information in and out. So, I do not know if the ambits of this Bill are going to stop that because inmates have rights of visitation, and if I tell X, "Come and visit me tomorrow", and I tell X, "Well, go out and tell Charlie to do X and Y", that is a difficult prospect to monitor although there are other laws to deal with that.

And also a general attitude where we do not accept it as normal, because I would hate for us to be going into this or continuing this debate on "an Act to amend the Interception of Communications Act, Chap. 15:08", and looking at this as a cure-all, that would be a rather pugilistic approach to dealing with this issue, and it is not a holistic approach in terms of trying to look at the entire system from start to finish and seeing where the loopholes are and holistically and collectively looking at ways to stop and intercept the information, one, to be used as prosecutable evidence, in addition to significantly curtailing the availability and the occurrence of contraband in any case.

And as I said before, one of the areas that we need to look at, as I close, is the issue of these social media conduits of information which are the new ways

that criminals communicate with their cohorts on the outside, and if we are looking at all aspects of that new development or that new paradigm in terms of these sorts of indecorous activities. And with those few words, Madam President, I thank you.
[*Desk thumping*]

Madam President: Sen. De Freitas. [*Desk thumping*]

Sen. Nigel De Freitas: Thank you, Madam President, for the opportunity to contribute to the Bill that is engaging the attention of the Senate today. And I just want to start by agreeing with a lot of what Sen. Richards would have said in relation to this Bill that is “an Act to amend the Interception of Communications Act, Chap. 15:08”.

And, Madam President, I want to begin by saying that we must take this Bill that is in front of us today in context with all of the other Bills that this Government has been bringing to this Chamber and the other place in relation to fighting crime. It cannot be taken by itself. And one of the reasons for that is that, in conjunction with the other Bills that have come before, it allows us to fight crime consistently to the benefit of the people of Trinidad and Tobago. And I will go into just a brief description of what crime is and how it takes place, and how this particular Bill along with the others can affect that and reduce it.

And one of the ways in which crime takes place, Madam President, in a very simplistic explanation is that, you have the targeting of a victim, you have the executing of the act, and then you have the escape by the perpetrator, and then the repeating of the crime act over and over again. And so when any institution or administration comes up with a strategy or creates a strategy to fight crime, what it is effectively trying to do is to interrupt, stop or make impossible the process of crime to take place as I have just simplistically outlined it.

And so, Madam President, over these last four years you would have heard this

administration speak to the five pillars of fighting crime which are, prediction, deterrence, detection, prosecution and rehabilitation. And so the Bill before us treats with dealing with detection and prosecution. And so, Madam President, in order to really and truly deal with crime in this country you have to ensure that the systems put in place at various institutions tasked with fighting crime are indeed operating efficiently and smoothly, and that is what this Bill speaks to as it relates to the prison system.

And so, Madam President, Sen. Richards spoke to in his contribution the possibility of private citizens' communications being intercepted and that it must be protected. And what I would say to Sen. Richards in response to that is, from my very layman's understanding of how these interceptions take place, it is very specific to the devices that you want to intercept. So as much as you may be able to by way of technology, pick up that there are cell phones or other devices being used for communications, especially when you are going for the warrant—now, remember there is a warrant to be done with this Bill, and the warrant will identify exactly what it is you want to intercept. So if it is that the interception technology that is being used happens to pick up anything else, then that cannot be disclosed or used for the particular case that you are trying to build, and so it is not valuable in relation to what you are trying to do here, and therefore, the privacy of those citizens' communications can still be effectively kept in that regard.

What I also want to say with the other comment that you made in relation to the Facebook messages is that, and I will start here as I go through the Bill. If you look at the definitions, Sen. Richards, in the Bill as it relates to addresses, you would note that it says:

“‘ address’ includes a telephone number, an electronic location or a physical location;”

And then it goes on to further explain what an “electronic location” is, which

“...includes any e-mail address, Internet Protocol address, website...”

—and you have to remember Facebook is a website, as much as they may have apps to—go ahead.

Sen. Richards: There is this wonderful bit of technology called a VPN that can mess up all of that.

Sen. N. De Freitas: Right. So I understand what a VPN is, and just for those who may be listening, what a VPN is, is it hides your identifier for your Internet, and it will take your particular Internet protocol location, and pretend as though you are in the States or any other country in the world.

The fact of the matter is, Sen. Richards, these VPNs you can get that information that you require from the VPN services, it is just an added step to literally talk to the VPN services to find out especially in a criminal case the information that you require, so you are not really protected in that regard. Once a case is being built, you do have the ability to link with these institutions that provide that service to get the identifying information that you need.

And what I was saying, Sen. Richards, is that the Bill speaks to by way of definition, all of these addresses and locations to which Facebook, a website, would be captured under what is going on in this Bill here. So as much as they may be sending information whether it be through Facebook messages and whatnot, whether they use a VPN or not, the fact of the matter is, we still can access that identifying information to build the case that you require moving forward. So, I just want to continue on with the definitions, Madam President, as we go through.

So what I have realized in reading the Bill is that a lot of the definitions try to bring us into the modern world in relation to information technology. So it goes on to explain what the address is, which I explained already, it goes on to explain

what a device is, which:

“...means any electronic programmable apparatus used, whether by itself or as part of a computer network, an electronic communications network or any other apparatus or equipment, or any part thereof, to perform pre-determined arithmetic, logical, routing or storage operations...”

—and it goes on to include:

- “(a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) a computer data storage medium;
- (e) a programme; or
- (f) equipment...”

Now, when I read that, I myself am hard-pressed to think as to where we would be in the future to not be captured in that particular definition; just think of it for yourself. The only way I can see that this Bill, even going forward into the future as technology advances, does not capture any data or interception that could occur on those kind of devices is if we go back to the Stone Age and start using paper. And, because we came from there, I am absolutely certain that what we are doing is moving forward. So what I would say is that that definition captures every possible thing that I could think of by which way communication can take place.

Madam President, it goes on to speak to prisons, and the Attorney General spoke to that when he moved the Bill in the Senate, so what I would do now is I would go on to clause 7 of the Bill which is on page 9 which deals with the crux of the matter, and that is the interception in prisons.

And I just want to remind individuals because I think a lot of people have said it thus far, Members of the Independent Bench, Members on this Government

Bench. The importance of this Bill in relation to the interception of communications, Sen. Richards just spoke to it and I will just elaborate further.

A lot of people would remember that in the past there was organized crime and they used to call it the Mafia. What we are seeing today is a different version of that organized crime by way of gangs. Now, one of the hardest things to do, as was then and is now, is to prove that somebody is a member of gang. And one of the best ways to do that is by intercepting communication that proves there is some sort of collusion taking place towards a particular criminal act.

Now, if you remember correctly, let us use this well-known criminal in the US, Al Capone, and one of the reasons that they were not able to prosecute Al Capone for what they knew he was doing which was organized crime, was because, one, he had the money to pay the lawyers to get him off on every single charge that he was brought up on. What he was eventually prosecuted on was tax evasion, nothing to do with the organized crime that he was dealing with.

What we are dealing with now is the prevalence of gangs, and as Sen. Richards alluded to, you have individuals, gang leaders who for one reason or other end up in jail, prosecuted and are still running these organizations from the prisons, and he made a question in his contribution which I want to reiterate.

I spoke to the five pillars of crime which we are trying to deal with which is deterrence and prosecution. So when it is that you arrest someone and anybody else sees that person being arrested for a particular crime, it helps with deterrence. When you deal with prosecution, it is to prevent the repeat of that act by that individual, but if that individual could be in the prison, not even present in the community where the gang is set up and still is able to manage the affairs of that criminal organization from the prisons, then prosecution is moot, there is really no point for it.

3.10 p.m.

And that is why this Bill is extremely important, and I just want to raise the point here because those listening inside and out may ask, “Well, what about the jammers?” If you turn on the jammers then they stop all communication in the prison. But just think about this for a second, if you turn on the jammers and all communication is stopped, then what you lose is valuable information, valuable information which you can pick up if you were to intercept that communication. You are able to get information on acts to be committed, acts that have been committed, but most importantly, you are able to get information on players in the criminal world. Just imagine for a second, with all of the information that the SSA is able to get, added to the intercepted communication from coming from within the prisons, what would be able to happen in relation to crime in this country? You would be able to then unravel the web, and the hierarchy of the organizations that these individuals belong to, whilst increasing the level of deterrence and possible prosecution.

So, Madam President, that is what clause 7 of this Bill treats with, and it speaks to treating with it in a very specific matter, so that legal professional privilege is not also interrupted in this. And one of the things I liked about clause 7 was that it identifies that when you are dealing with legal professional privilege, that by the order of the Minister, or by the Commissioner of Prisons you are able to identify the devices which the accused is able to speak to their lawyer with, in a designated location. And with that, you are also able to ensure that all the employees of the prisons as well as the prisoners, as outlined in this particular clause, can be notified that any recording that comes from the prison, that is outside of those designated devices and the designated location can be intercepted.

Meaning, as Sen. Richards outlined, that those engaging in bringing

contraband into the prison, those engaging in running nefarious activities out of the prison will now know that any recording can be intercepted, and it will have one of two effects, it is either you give up your rank as gang leader and you are in the jail, or as we have seen when they found out about the jammers, as Sen. Richards has alluded to, that they are going to try to get the communication out regardless, and therefore you are going to have that interception taking place. But at least they would be notified, and the prison officers who thought they could have gotten away before, will know now that that interception can be communicated, and that they can be prosecuted as well. But it also adds that level of protection for the prison officers, because we have dealt with in the past, recently as last year, where prison officers were complaining that hits were being put out on their life. So here you had that intimidation process taking place in the prisons where you can just imagine criminals dealing with prison officers indicating if you do not do this, if you do not do X, Y and Z, you could be killed. So when you are thinking of this Interception of Communications (Amdt.) Bill, think of it from that standpoint as well. That is what clause 7 is basically telling you. Designated devices, designated locations to protect that legal privilege, and anything outside of that could be intercepted. So that if you pick up any kind of communication that speaks to any harm to befall any prison officer, it could be treated with to the benefit of all the prison officers.

Madam President, in clause 9 they are treating with the warrant for interception, and it is at this point that I want to respond to Sen. Sobers who spoke on the last occasion, and one of the points he had made was dealing with the chain of command in relation to the intercepted communication, and the fact that there was no chain of custody on that intercepted communication that was laid out. And, what I want to say, what he also indicated was that there was no established

reporting structure in the Bill, and he was saying that there was no supervising officer that would determine whether the communication is being fruitful or not, and I would just direct Sen. Sobers to that clause 9, and where it states at clause 9(a)(ii):

“To disclose the intercepted communication to such persons and in such manner as may be specified in the warrant.”

And it is in that warrant, Sen. Sobers, where it would be indicated or the beginning of the chain of command would be there. So the warrant outlines the authorizing officer that treats with the interception of communications. And then it also outlines to who in that warrant that information can be given. But I just want to add at this point, I think everyone should have had the amendments proposed by the Attorney General circulated to them already, and those amendments go further in treating with that chain of command, Madam President, in relation to the Commissioner of Police, and more importantly any individual who may come into contact with the warrant in order to execute that warrant. So for example a telecommunication provider who receives the warrant and has to provide the information, as well as the Commissioner of Police, and it dictates in that amendment exactly how that would take place, but I would leave the specifics for the Attorney General to treat with when he wraps up this debate.

So, Madam President, as I indicated, the chain of command is outlined and begins in the warrant in terms of the authorizing officer and to who that information would come to. It also indicates at same clause 9(b), subsection (2)(a)—(c) that:

“A person who discloses the existence of a warrant or an application for a warrant, other than to a person to whom such disclosure is authorised”—as I indicated—“for the purpose of this Act, commits an offence and is liable

on—

- (a) summary conviction, to a fine of fifty thousand dollars and to imprisonment for three years; or
- (b) conviction on indictment, to a fine of one million dollars and to imprisonment for fifteen years.”

So, Madam President, it also speaks to the fact that that information that you are collecting cannot be disclosed, and it can only be disclosed in a very specific manner.

Madam President, at clause 15 it speaks to process again, because this is not about and some people may be thinking with the interception of communications what happens to that information, can anyone just go and ask for a warrant on anybody to whom a case is being built because it is only dealing with criminal matters? And there is a component of judicial review and oversight in this Bill in relation to the issuance of warrants, and it speaks to the circumstances by which you would be able to receive a warrant, and whereas a judge would be able to issue a warrant, and it is not just a matter of making, I would call it crazy cases, to get interception done on somebody. To me it would say that this cannot be abused because you do not like somebody and you know that their case may be going on and therefore you want to intercept communication in that regard. There is that component of judicial review in here, whereas to get that warrant, you must speak to a judge, but not just speaking to a judge to plead a case, the just must take into account certain circumstances as it relates to that interception of communication and whether it would be valuable to the ongoing case.

Madam President, that information can be found, like I said, clause 15, subsection (2A) all the way down to (2C). And it says:

“In making a decision under subsections (2A) and (2B), the Judge shall

consider all the circumstances concerning the obtaining of the communication, including communication data and stored communication obtained under section 8, whether the defendant was induced to say what he did and any other relevant factors which would render what he said unreliable and he shall consider, in respect of the communications that—

- (a) nothing was done to induce or trick the accused or defendant into saying something;”.

And goes on to outline other circumstances which the judge must take into account when treating with the interception of communications and issuance of warrants.

So, Madam President, at clause 16, we treat with the protection of privacy in relation to the communications. And what is taking place here at this clause, which is on page 21. It says:

“17A. (1) Where the Court considers it appropriate to determine whether sensitive information should be disclosed, the Court shall issue a special measure direction that closed proceedings be utilised.”

And this really is in response to—because if you understand interception communication you may naturally think it is between two people and two people alone. But that may not necessarily be the case. When dealing with interception of communication you may end up with several individuals caught within that nexus of what you intercepted, and to me when I read this particular clause and the use of the special measure direction, to me if any individual is caught in the nexus of that interception that has nothing do with the case, then it means that that information is not going to get out to the wider public in relation to all of the individuals who may be involved in the case. Because that special measure direction treats with very specific individuals who would be allowed in the courtroom to treat with that evidence, and to me having that done in relation to this really does protect any

sensitive information that may come out that has nothing to do with the case in relation to that.

But, because of other information which you may be hearing and picking up which is relevant to the case, which must be heard, it means that you can treat with that in that context in front of the individuals who are supposed to be hearing it, and move forward as it relates to evidence in the case and to the prosecution of a case. Anything else that is heard, whether it be in the background, whether it be just as subsidiary noise, would not get out to the detriment of anyone else who may be heard there, or who is not under prosecution of charge. And that is why I like that particular clause, and that is why I agree with the special measure that should be put in place there, because it allows you to treat with that information in the way that it should be treated with, and always remembers that is regardless of what the information is being used for it is sensitive information.

Madam President, I move on to clause 22, and it deals with tipping off. Now, as much as the Bill treated with the individuals and making offence of individuals who are in the know in relation to a warrant, which is the authorizing officer, which is the institution that individuals to whom you need to speak with to intercept the communications. This deals with individuals who may have come into, by whatever means, the knowledge that there is a warrant, and therefore may be inclined to tip off individuals who are the subject of that warrant. And I think that that is important, because there are a lot of people who are involved in the process of intercepting that communication, and that is why we have to think of it from that standpoint, because all of this would be null and void if the individual is tipped off. The very key to this Bill being effective is anonymity. And I can tell you that achieving that is difficult the more people that are involved. But nonetheless, it does not mean that it should not be done, and making that provision

of tipping off an offence is extremely important.

Madam President, it was Sen. Sobers that spoke to chain of command of the information, and I understood where he was coming from, because when we were doing the DNA Regulations, if you remember, the exact chain of command in relation to the DNA that we were collecting was put into the regulations. And if you look at clause 23 it speaks to:

“Section 25 of the Act is amended by inserting after subsection (2), the following subsection:

(3) Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of two hundred and fifty thousand dollars and imprisonment for two years.”

And, I point that out to say that the chain of command of the information can be dealt with in relation to the regulations. If you remember when we were doing the Evidence (Amdt.) Bill, you would remember that it was prescribed in there exactly how the process was to take place. And I can say here too, that within regulations you can prescribe more specifically or as specifically as you can, because the interception of data is a complex deal in terms of the use of technology that is needed to intercept that communication. But the passage of the information along, from the authorized officer to the Commissioner of Police, right up to the judicial officers, being the judge, can be prescribed for in regulations. But more importantly, the disposal of the information when the case is done can also be described for in the regulations. And that is really in direct answer to Sen. Sobers who was speaking to in his contribution the absence of that chain of command and the passage of that data.

So, Madam President, as I indicated, I agree with Sen. Richards and Sen.

Teemal, the Attorney General, the Minister of National Security, all whom spoke to the importance of this Bill in the crime fighting initiative that we have put forward in Trinidad and Tobago, and as far as I am concern anything that helps us deal with the scourge of crime in this country, anything as important as this that gives us the kind of information that can tell us about the structure of the organized gangs that are taking place here in Trinidad and Tobago, that gives us the players, that gives us the acts that are being committed, that could be added to the SSA data, to help us eradicate what is taking place, is something that should not be taken lightly, it should be taken seriously, and I implore with all Members in this Chamber to give the institutions in this country tasked with fighting crime every single tool that they can get their hands on, to give them a one-up on the criminals in this country, and to give Trinidad and Tobago a fighting chance.

Based on what I have said in my opening statements, any ability to find out what these individuals are doing prior to the act will increase our ability to deter the act. They must not be able to make a move. If they are in jail, whatever position they may hold in the gang should be forfeited. They must not be able to, from the prisons, control an organization, give orders or make moves to the detriment of citizens of this country. It is a simple connection. If we know what they are doing we are able to stop them. That is essentially what the Bill is about. If we know what they are going to do we will be able to stop them. And when you add this Bill to anti-gang legislation, to Evidence (Amdt.) Bill, to all of the Bills that we have put forward and passed to make the Judiciary more efficient, you can understand how we would be able to reduce crime consistently in this country in the coming years.

So I implore all Members, support this Bill, give us that fighting chance. It is not for the Government, it is not for the Opposition, it is not for the Independent

Senators. It is for that group to which we all belong before we ever entered these chairs, and that is the group that is the citizens of Trinidad and Tobago. Do it for them. Madam President, with those few words, I thank you. [*Desk thumping*]

Madam President: Sen. Sturge.

Sen. Wayne Sturge: [*Desk thumping*] Thank you, Madam President, for giving me the opportunity to lend my voice to this debate, and let me just say prior to receiving the actual Bill, I like everyone else following the debate in the media, would have been under the impression that this Bill targeted prisoners who are making calls or having communications, unauthorized communications, that this Bill was about lawyers engaging in unauthorized communications, and that this Bill somehow was meant to deal with another aspect of that, which is legal professional privilege.

But when I got the Bill I realized that this Bill has very little to do with any of that. That might be an aspect of the Bill, but that is the smallest aspect of the Bill. And when I read in the media what was said by the mover of the Motion, a hit, or the “calling of ah shot” was intercepted the very morning before the Bill was to be debated. So I looked in newspaper from a follow up, because I know the Commissioner of Police would normally announce these things. I saw no story about anyone being detained for “calling ah shot”, anyone being charged for “calling ah shot”, and the thing is these are offences. And if they were called by someone in the prison the easiest thing to do would have been to get a warrant, and that could have been used. The evidence could have been used. But all I have heard since that, particularly from the Government Bench, and others could be forgiven for being drawn in to this great alarm, all I have heard is about the calling of shots and so on, but this Bill has very little to do with that.

This Bill has far-reaching consequences. It is extremely intrusive and

draconian, and it is not limited to prisoners or lawyers. It applies to every single citizen of this country. [*Desk thumping*] So let me deal first of all with this problem about shots being called from prison, and I heard all of the explanations and excuses for why jammers do not work. From my experience in driving past—every time I drive past the prison on Frederick Street I have to switch off my phone and switch it back on, because the jammers it seems as though only when I pass the jammers are working. The jammers interfere with your ability to receive communications or to send communications, and the only way it can be restored is by switching off your phone and switching it back on. So, if there is an issue about shots being called from the prison, you do not need legislation to deal with that. It is very simple. You switch on the jammers. If you have to update them, you update them. But, I have heard, honestly, from my colleague on the other side, Sen. Nigel De Freitas, because the real reason why calls are still being permitted is that national security wants information. So, you have to make up your mind, is it that you want information at the risk of leaving communication lines open so that a shot could be called so that somebody could be killed? It is a balancing act. And it was really refreshing to hear Sen. De Freitas admit, because before that you would have felt that there were myriad excuses as to why the jammers are not being used, because the jammers solve those problems, if the problem is prisoners communicating, or unauthorized communications. But we have heard all sorts of excuses, and the truth is as long as the jammers are on, you cannot send or receive from the prison. [*Desk thumping*]

So let me again praise my colleague Sen. De Freitas, on the other side, because for the first time in following this debate I heard something other than prison. I heard something that was not alarmist, and that I find was refreshing. But the truth is, there is a great deal of alarm that we all should have as citizens, and we

cannot say well this targets criminals and nobody else. It targets anyone and everyone, and to understand that you have to understand the history, to understand how we have gotten here. Prior to the Interception of Communications Act, passed in 2010, I think it is, the SSA did not concern itself to its sole remit, which was trying to deal with drug interdiction and so on. And because of the limited capacity, if it had concerned itself with that you may have seen less bloodshed on the streets. But what the SSA did prior to the coming into force of this Act, and it is on the record in *Hansard*, is that citizens were being spied on. The President at the time was being spied on; judges were being spied on; parliamentarians were being spied on; the media being spied on; lawyers being spied on. It seems as though the SSA was more concerned with everybody else but the drug dealers.

And then we came in 2010 and we established section 6, and it is amazing that no one has picked up that we are actually amending section 6, and section 17. And section 6 in essence—if we go to the Act, section 6(2), subsection 6(2)(a), sorry subsection (2)(a) deals with intercepted communication where a warrant is issued by a judge to permit such interception. And where you proceed under section 6(2) there are safeguards. The first safeguard is that it is not any magistrate or Justice of the Peace that is granting an intercept warrant. It is a judge. And when you look further in the Bill, the factors that the judge ought to take into account before he grants that intercept warrant, those are outlined. They are safeguards, those factors.

3.40 p.m.

And as long as you intercept the communication by virtue of the warrant, which is one regime in section 6(2)(a), then whatever you obtain as a result of that warrant was admissible in court. But subsection (2) allowed for another regime, section 6(2)(b) which has nothing to do with a warrant. And it says in essence that

where:

“(b) communication is intercepted by an authorised officer...”

—and it gives a number of factors, whatever.

“...communication so intercepted may be used for the purpose of an application under section 8 or 11, but shall not be admissible as evidence in any criminal proceedings.”

But where have we reached now? So we move from listening to everybody else but the criminal, there is an Act now and now we have come to amend it. The Act provides the benefit of the intercepted communication, get a warrant. If you do not get a warrant you can still garner information but you cannot use it in court in criminal proceedings. But what we have come here to do today is to amend that. So two things, two important changes appeared in this Bill that are extremely intrusive and draconian.

The first thing is, by virtue of this Bill all intercepted communications are now admissible in a court of law whether you have a warrant or not. A warrant is a safeguard. A warrant issued by a judge is a safeguard. So prior to—or as we speak while this Act—is still a Bill—you limit yourself to evidence obtained by virtue of the warrant and if you do not get a warrant you cannot use it. Now we come before the Senate to amend this and information that you intercept and you store without a warrant, without all of the safeguards in place, this Bill now seeks to make that admissible. That is frightening. That is downright frightening. And what is even more frightening is this. One would be forgiven if you say, listen, we need this to go after the criminal element. But now we are amending the limitation which says that whatever evidence you get you use it in criminal proceedings. Now we have removed that and now the amendment says you can use it in any proceedings.

So what does any proceedings mean? Well, it means just that. Of course, if

you adopt a purposive approach to the Bill you would see that, of course, it is not limited to criminal proceedings, it also extends to civil proceedings. So is that a proportionate, is that a proportionate aim when hitherto you limited yourself to intercepting conversations or communications that you can use to prosecute the criminal element and now not only do you not need a warrant, you can go without a warrant and not only are you not limited to criminal proceedings, it now extends to proceedings that are not criminal proceedings, for instance.

And when you look at the very early part of the Bill there is something even more worrisome because it says in essence this Bill and the tenets of this Bill apply to proceedings in existence before the coming into force of this Act. And the only proceedings it does not apply to would be proceedings which are live where evidence has already started being led. So let me show you how insidious that is, both in criminal arena and the civil arena and then we will go to how expansive the search is.

If you want to be an alarmist you just read this and understand how far reaching it is. So it applies to any proceedings before a court, not just criminal, that has not yet started in terms of taking evidence. So let us say, for instance, civil proceedings have been commenced, let us say the Attorney General commences proceedings against you, civil asset forfeiture or whatever it is, and before the trial a number of things happen. Pleadings have to be filed, you have to file your defence, you can argue for things to be struck out evidentially, you can strike out pleadings and then there are witness statements to be filed. And whilst you are doing all that and you hire a lawyer to defend you, to take points to protect you, what this Bill allows is that every time you advance and you knock out a pleading that is against you or a witness statement or you are able to answer an allegation in your witness statement comprehensively, what it allows then is trial “ent” start yet.

So since trial “ent” start yet we will continue to dig and dig until the trial eventually starts. So every time you think you win on some procedural point or you strike out some pleading or you strike out some witness statement they are able to come back. So how do you really defend yourself from the might of the state where they keep coming at you in civil proceedings? But what about criminal proceedings when they bring criminal proceedings against you? As I understand it when they bring criminal proceedings against you then as it stands you have a number of pretrial hearings, preliminary enquires which may soon be out of the window and now they require you to file defence statements and so on.

And whilst you are in the business of protecting your own interest and safeguarding yourself from what may be a death sentence or a lengthy term of imprisonment in criminal proceedings, whatever you file they are able to dig and dig and rebut. And a fair trial requires that you lay on the table what evidence you have against me and I answer it. But how fair is it that every time I answer something the goalpost shifts. You are now saying, well we are not saying this, this is no longer our allegation because you answered that, let us proceed in this direction, which means you have to answer that too all the way up until the trial actually starts. That cannot be fair.

Now, how intrusive is this? Just look at the definitions of stored data. And just before we came in we got a package of new amendments, because I was going to argue that this Bill has very little to do with interceptions. And I see they have amended the side note of one of the sections so that it is not limited to interceptions. Because as it is if you are limited to interceptions you intercept something that is taking place now or whatever is taking place in the future, you listen to the calls and so on and you gather your evidence. What this Bill does, because the Government or the authorities can now look at stored data, then it is

not that they are intercepting anything, they are going backwards and there is no cut off period. So all of your communications which you felt were private are no longer private once this Bill is passed.

But look at the definition of “stored data”, “communications data” and so on. Well what is it? If you think BBM no longer exists, whatever you have in your Blackberry they can go back digging in it. Private communications, WhatsApp, you think that is encrypted? They will go looking at it. That is your private communications, not for the purposes of a criminal case you know, because it is no longer limited to a criminal case. It extends to civil cases: BBM, WhatsApp, Messenger, text messages, emails, Facebook, Dropbox, iCloud, all of your mobile banking apps, all of your internet banking, none of that is subject to privacy. And you already heard in 2016 from the Attorney General that we do not have a right to privacy although the past Chief Justice de la Bastide corrected that.

So now citizens have to ask themselves and I think it is time citizens start paying attention to what is going on in the Parliament. Because a simple example like this Bill is the coming into force yesterday, postponed to a month, the Motor Vehicles and Road Traffic Act and so on, and the new demerit point system. All of a sudden people are complaining. And you have to ask: Why are you complaining now? You did not know to complain to your MP when it was going through the Parliament? So right now the public has to be sensitized that—and we know we all have our biases—that all of our biases all of our protected communications are now open to the scrutiny of police officers some which they may use against you, some which they may just look at and snicker. And who is to say it is not shared? How do you prove that it is shared? Who is coming to say it was shared? So all of the secrets you thought you had you no longer have it once this Bill is passed.

Sen. Mark: Big brother is watching you.

Sen. W. Sturge: Big brother is watching you. [*Desk thumping*] This might be appropriate in a place like Afghanistan or Iraq or Iran, but this is not appropriate here. Because if you are operating on the basis that you had a constitutional right in the 2000 or 2001 and all of a sudden the Government passes legislation which means they can dig way back then how fair is that? And not to use against you or anyone else in criminal proceedings you know, but to extend it to civil proceedings. Something must be wrong with that.

But let me deal with an issue that my friend on the other side, Sen. De Freitas, raised dealing with the special counsel. Because—before my brother, Sen. De Freitas mentioned it, it seems as though nobody was paying attention to this at all. These are things that the Bill happens to be about. It is not about prisoners only. But this one in particular is a bit disturbing since it does not limit itself to criminal proceedings and extends to civil proceedings. Here you have, and let me start with criminal proceedings first. As I understand it and subject to correction from anyone else, in a criminal trial everything in a criminal trial must happen in the presence of the accused. That is the man you are going to send to death row. That is the man you are going to send away for a lengthy term of imprisonment. You cannot have any aspect of the proceedings behind his back.

But here you have now a procedure where you have a special counsel or a special advocate. Now who is appointing that special advocate to look after the rights of the accused? The accused has his lawyer, he hires a lawyer, and unless there is a legitimate basis for excluding him from the process, whether it is pretrial or during the trial, then he ought to be present with his client, his accused man. You are just limiting that to criminal proceedings now. And here we have this Bill saying, outlining, well there will be a special measure direction and the only persons who can be in court will be the judge, the prosecution, if there is need for

an interpreter well that person is present, mind you the accused is absent. So I do not know what he or she is going to interpret. So the judge, the prosecutor and a special advocate who was not hired by the accused. What is he there for? And how effective can he perform his role? Because for him to perform his role he has to take instructions.

So the accused is going to have to give instructions to somebody he did not hire, somebody he may not trust, somebody he knows little about, he may not feel comfortable with the quality of that advocate but the judge appoints the advocate and that advocate makes representations in the absence of the accused. I do not know how feasible is that? How do you take instructions whilst arguments are going on and you may need to and the accused is somewhere else?

I have to ask myself, if someone is charged with the risk that he may go to prison for a substantial time or with the risk that he may have a death sentence imposed upon him, how fair is it that any aspect of his trial is heard behind his back? That cannot be fair. [*Desk thumping*] Because the truth is he who pays the piper calls the tune. Who is paying this special advocate? And given that we heard in the past that the criminal bar is so small, and less than 10 attorneys control 90 per cent of the work, where are you going to get a special advocate whom the accused can have confidence in?

You know, Madam President, there was something similar that was tried with that special counsel, but it had nothing to do with the accused. That was in a decided case, Vindra Naipaul I think it was, where the witness had to have his own counsel, and could not afford one and the court appointed someone who incidentally was not a criminal lawyer to look after the interest of this witness accomplice *vel non*. And now we are going to have a special advocate who is going to supposedly look after the interest of someone who he has no fiduciary or

any other relationship with. How passionate is this man going to be in defence of that man's right if that man is on trial for his life. That is criminal.

But in civil, is it necessary in civil proceedings where you might be seeking to forfeit someone's assets and so on. How feasible is it that the court, for no good reason, wants a special advocate. You have to have a very good reason why that lawyer ought not to be present to defend the interest of his client. If for instance you have information that this lawyer is engaged in criminal conduct and cannot be trusted, then that is a very good reason and maybe something like that should go into the legislation and make it an exceptional circumstance where you get a special counsel. But you cannot at first call be using a special counsel to advocate for someone he has no real interest in defending.

Now, I want to make it clear there is another thing that disturbs me about this legislation. It deals with the cost of de-encrypting and so on. I think it is clause 12. And clause 12 of this Bill puts the cost of de-encrypting and assisting the police with their investigations, not just in a criminal matter, in a possible civil matter, it puts the cost of this not on the State, but on the person who is doing the de-encrypting, on the company who is doing the de-encrypting, on the company who is assisting the police or assisting the State in retrieving information. The cost has to be borne by that private company. I thought slavery was abolished. You are going to ask someone to work for free and in criminal proceedings you are going to ask him to work for free to deal with the criminal element who incidentally may find out that you assisted and then you are going to expose this private citizen, because there is nothing secret in Trinidad and Tobago. You would like to think so. But the persons most times spreading the information happened to be part of the investigative team.

So if you think that you are helping the police to de-encrypt and to dig up

and search for old BBM information and so on to assist them in an investigation and that the accused who is targeted would never find out that is wishful thinking. And you are going to expose a citizen to someone who might be a very dangerous element. But what about civil proceedings? If the State is going after a citizen, is it not the State's responsibility to bear the cost of the investigations? Why any aspect of an investigation by the State against a private citizen must be borne in terms of the economic cost. Why must that be borne by a private citizen? I have not heard a justification for this, because all we have been busy talking about was prisoners and so on, and so on.

But I want to deal with a part of so that we put this thing about prisoners to rest because they said in essence that if you have this conversation and you are talking about crime and so on and so on, then it is not covered privilege. The common law says in essence that if a lawyer is engaged in any conversation with an accused person discussing the commission of a criminal offence, not for which he is charged, for which is to be carried out, whether it is hiding money for him, laundering, whether it is which witness to kill or anything like that, those things are ready no covered by legal professional privilege. So you do not need this legislation to deal with that.

And before I leave this point, because I mentioned earlier about the jammers, there is a real easy way to deal with lawyers who you say might be communicating or having unauthorized communications with prisoners. It is a charge that already exists called interfering with a prisoner. So if you want to stop it, the next lawyer who is engaged in talking with a prisoner in an unauthorized way, charge the lawyer with a criminal offence and let us see if that would continue. That would be the end of that. You do not need legislation for that. There is a lot that exists that we can deal without legislation.

Now, just before we came in, I know I have very little time, we will pass another set of amendments which further whittles down the safeguard to the citizen, which deals with stored communication, not the subject of an intercept, where this Bill now makes it admissible in court in spite of there being no safeguards and one would have thought that in going after the criminal element at least we look at the interest of the law abiding and to protect them. But what we see here in this new bit we were given just an hour before coming in, it seems as though the Act is now being amended to allow for a constable to get this information, this stored data and who does this constable go to? He does not even go to a judge, he goes to a magistrate.

So we have whittled it down further. We have moved from the protection of a judge and the statutory guidelines that the judge must observe before granting a warrant to now saying forget about that, forget about all those safeguards, you just intercept a way and we will use it in court any way and we do not need all these authorized officers and so on, a constable can go get it. Something must be wrong with that. How do you move from a judge down to a magistrate? How do you move from an authorized officer down to a constable? And one thing that also troubles me is the test that will be used for interceptions done without warrants that are now going to be admitted into criminal proceedings, civil proceedings and as they say any proceedings. You know what troubles me?—the test for admissibility is not that the judge may admit it you know. They are saying the judge shall admit it. So judicial discretion is removed. But here is the test. The test is not what they used in other progressive jurisdictions where you can only have it admitted if it would not unfairly or adversely affect the proceedings. The test is now in the interest of justice. What is that? That is not a safeguard. That has no regard to the common law in *Sang*, it has regard to all that was said in *Malone v Metropolitan*

Police Commissioner, the leading cases. It has no regard to any safeguard. And it is after the fact.

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

Sen. W. Sturge: Five more minutes. So let me—I do not know if wind-down is the appropriate word. So let me close by saying that before we get caught up in all this talk about prisoners calling shots, because we all hate lawyers, we all hate criminals. That is a distraction. The minute you say lawyers are engaged in something they hate the lawyer until they need one of course. But let us look away from that. Of course, consider it, but let us consider the other aspects of the Bill which now legitimizes spying on citizens without a warrant and not in a way that is prospective going forward, but in a way that allows the State to go backwards years ago to the things you said 10, 15, 20, 25 years ago and suddenly used it against you, not just in criminal proceedings, but in any proceedings.

So before we say, “I am concerned how the public would look at me if I vote against this Bill”, consider all of these things because it is not about prisoners it affects every citizen. Every citizen is liable. [*Desk thumping*] And if after you consider how intrusive and far reaching this Bill is and you consider that in spite of all that that your right to privacy ranks lower to the government’s ability to look at citizens’ private affairs, not in the interest of national security but in the interest of even going after you in civil proceedings. If you are satisfied that you are comfortable with all of your private communications being exposed not to an authorized officer but down to a constable then by all means vote for the Bill. But I would urge that you take pause and look at it and consider seriously whether this sort of machination is necessary in a society that has respect for the rights of individuals. Madam President, I thank you. [*Desk thumping*]

Sen. Dr. Varma Deyalsingh: Thank you, Madam President. I must say that when

I looked at this Bill I somehow got the impression that it is trying to legitimize or legalize using contraband to entrap certain citizens. So I got that impression. So somehow I felt uncomfortable with this because there is contraband, which is a phone. We had passed legislation before to look at these devices in prison and see how we can go after prison officers and even prisoners who have theirs; so.

So legislation was passed already in this House to actually, you know, see if we can somehow stymie this event that occur that puts persons at risk, persons outside, prison officers who, as we heard, hits would be put down on certain individuals. We heard that what was allowed to occur, we had to try and see if we can stop it and somehow the legislation was there. So I also looked at the fact that legislation was there and also the fact that we had the situations where the State bought jammers.

And it was mentioned already if we had the jammers operationalized, if we had the legislation that we put in place before for the implementation of that legislation, the execution of that legislation, I think we may not have needed to come to Parliament to discuss this Bill.

4.10 p.m.

So you see it also shows me a failure of the State to ensure persons who are heading our prisons, or the failure of persons who are in charge of ensuring the prisons be kept as it is where you find you have the prisons there, you have the prisoners there, you make sure it is shut down, certain rights they may not have, and you know you protect society from the prisoners somehow, or doing hits as we have heard. So the failure of the State I am looking at as something that you know—even though I love you guys on the other side, I am thinking that this is something we have to work at. We have to work at how do we start executing the laws, how could we start executing the policies that we have put in place, how

could we start putting these events in place where at least we can start cutting down these events that we spoke of.

So therefore, I must say that I was critical, and in my knowledge of the failure of the State to actually protect our prisons I am saying if you cannot shut down our prisons, how can you shut down our borders, how can you protect society on the whole? So I looked at the prison situation, which is maximum security, and if you are failing to ensure that there is protection there, if you are failing to ensure that things cannot come in now, how could we protect our borders, how could we protect our country?

However, I was very—so that put a damper on me knowing that how we handled crime, how we handled national security. But then when the Minister of National Security actually quoted some articles from Washington—I think he quoted an article—where we see it is just not a problem in Trinidad, it is not just a problem of a failure of the State to execute its mandate by protecting our prison. But I actually looked at the article that the Minister of National Security quoted and one of the articles was “Contraband cell phones in prisons quickly becoming a national crisis” by Anne Emerson on the 12th of December, 2018, and it did show that Washington DC and the nation on the whole, the United States, has a similar problem. So it is not just Trinidad. So it is a global problem.

I have to commend the Government at least, yes, we have recognized there is a problem. There is a problem in the United States where—there is all the wealth there that they can implement certain measures and yet still it is a problem there. I think two articles were actually quoted and I think one by Jane McGrath on an article how the telecommunications work. So the articles how prison telecommunications work, I realized it is a problem and I realized it was the Government’s duty to try to bring this legislation here to curb this problem. So

therefore, when I looked at the fact that, yes, the problem occurs, is there a need to curtail it? I said, yes, we have to curtail it because we know what happens globally as well as here. We have to also ensure that we are curtailing this problem which affects national security, affects the rights of the citizens, it involves drug trafficking, it involves criminal activities, terrorism. So definitely, there is a need for this legislation, but we also have to balance this need with the rights of privacy, the rights of the citizens.

And so, that balancing act is something I think is a job that we in this Chamber may have to say, yes, if there is a need, what sort of mechanisms are there in place to ensure that those rights are not abused. And so, when I heard the presentation by the Attorney General, he made mention of the Leader of the Opposition's press conference and public utterances, and he made mention of it early in his presentation and in closing. He also said that we should reject what the Leader of the Opposition made as open domain. So then I felt it was my duty to see what were her concerns because, Madam President, even though this piece of legislation will definitely help curtail crime, help cut down the atrocities that we are seeing, yes, I am saying that the concerns of the Leader of the Opposition—she is a Senior Counsel. She has a following of people out there—her concerns may be reflected in the concerns of many persons in our population.

Therefore, if she has some concerns and we are passing pieces of legislation, we should ensure that somehow we are able to satisfy or somehow make some sort of a proposition to the Attorney General that we do put things in place that could satisfy her fears, could satisfy the concerns, satisfy the concerns of her members who are citizens of Trinidad and Tobago also, a large section of the population. So I am thinking it is our duty to look at that. So therefore, part of her concern, Madam President, and if you would allow me to just read some of her concerns. It

was in February the 7th, 2020, “Kamla: Government planning to use ‘Gestapo tactics’ against Opposition members”, and in this article—

Madam President: Sen. Deyalsingh, could you just identify where that article is? What newspaper or what you are reading from?

Sen. Dr. V. Deyalsingh: Thank you. This was an article that was in the *Express*, Madam President. So in this article when I looked at it, she makes six mention that it gives powers to the authorities to retroactively look at people’s phone records and date, and this was made mentioned also by Sen. Sturge. That was one of her concerns. And another—well she mentioned it was dictatorial, draconian, and also she accused the Government of now wanting to embark on a fishing expedition and it was dangerous and spells trouble for professionals including journalists and attorneys.

So, yes, she has that concern, but, Madam President, when I looked at the other pieces of articles that came out in the past, I realized there were other Governments in place, other Attorneys General in place, other Prime Ministers in place, and it seems to be that whenever you are in Opposition you may have concerns, when you are in the Government you may different ways of spinning this information. So there is a host of information that we have seen, that even up to recently—and I want to just quote an article published in May 19, 2016, in the *Daily Observer*, “Acting Police Commissioner and DDP urged to investigate possible breach of Interception of Communications Act”, and in this article, again, the Leader of the Opposition had called for the Acting Commissioner of Police then, Stephen Williams, and the Director of Public Prosecutions to investigate possible breach of the Interception of Communications Act. So this was one.

Then there was a leader in Tobago, Madam President, where we had instances where persons mentioned that they felt that they were being spied upon,

they were being looked, their communication was being actually somehow intercepted to be used as a political tool. And you see in this time that we have general election so close, I think we have to tread carefully when we are passing pieces of legislation and when there are concerns voiced and concerns mentioned that this legislation could be used, and it could actually be used against Members of the Opposition. Now, is it far-fetched? Madam President? I ask: Is it far-fetched? And I say no, because even if you look at the paragon of democracy in the United States you will remember the Watergate scandal where persons went and actually—you know, you went to spy on your Opposition in their headquarters.

So the fact remains is that once there are persons in power, there may always be a tendency to misuse the power. There may always be the tendency to somehow misuse it, and therefore, we have to look at concerns and we have to look at certain avenues we could implement to prevent that or curtail that, and it goes on both sides. There is an article in the *Guardian*, Peter Christopher, Wednesday, November 13, 2019, the headline, “Young, a clear breach of Interception of Communications Act”, where allegations were made by our present Minister of National Security against the previous Government of using certain information and giving it out to communications expert.

So there are allegations on both sides. So how could we ensure that somehow this piece of legislation, which I think is needed, would satisfy certain persons? Now I was a bit alarmed when Sen. Sturge mentioned the fact that a constable now may have the powers to be able to go and intercept communication. So it is like a watering down of this requirement to get that information. Madam President, when I came here actually one of my solutions in trying to appease the fears of the Opposition Leader is to make the requirements of getting this information a little more difficult. You see, Madam President, as it goes now, there

are certain guidelines like you have to exhaust the natural supply. So an investigator has to exhaust the natural supply of trying to get the information, trying to gather information, and when that is exhausted then you apply to a judge, convincing the judge, “Hey, this is a last resort and because it is a last resort we need to get this permission where we can intercept”.

But you see, Madam President, with great hesitancy I looked at this applying to a judge, and I have looked at what has been going on in the past and I want to cast no aspersions, but we have to look at what is happening in the Judiciary in the sense that you have cases where the Law Association is now questioning certain actions of the Chief Justice. We had cases where among themselves certain judges come out openly and say certain things about the runnings of the Judiciary. We had cases where persons may make claim that when certain individuals want certain cases heard in a particular way they go to south.

So we have allegations on both sides where you know we may get the impression that as a Chief Justice once said, Sir Isaac Hyatali, that there may be more water in the brandy. So we are getting the impression that if things are not right in the Judiciary, or if people think there are certain judges who may be more, I want to put it more amenable to suggestions by certain individuals—and this is out in the public domain. It is not about what I am saying. This has been out there. You may have that level of confidence in the Judiciary, somehow people may question it. So let us say there is a scenario where a past Opposition member, there is a case against him and they go before a particular judge, who knows if allegations may be made that that judge may be biased? And we want to prevent this.

We would certainly want to prevent this, and my suggestion is when I looked at that these are the normal situations that might come about in the

situation. So my logic, it is okay. Instead of having one judge, my suggestion would have been we have three judges, three judges who would look at the information. And you see if we want to have it in a fair way, I say whoever is sitting in Tobago, or if there is more than one judge, let it be a way where you can pick which judge there, that the registrar of the court may choose that judge, or somehow we have it coming up in the computer. There are judges in San Fernando. So it is not you go towards a particular judge, but if there are five judges there out of that pool you get one, and if in Port of Spain you get one. So in a sense you are getting three judges who would look independently at the application. None of them would know what the other judges are thinking, but based on what comes before them one will give that opinion in south, one will give that opinion in north, one will give that opinion in Tobago, and when those three come together the majority decision will now decide, hey we can go forward with this interception of communications.

So I am thinking it is a safeguard that if we want to protect the Judiciary from any sort of allegations, if we want to protect persons from political fallout, I am thinking it is a safeguard. I am thinking not to water it down to a constable level, but to give it a level where we are giving a little more sort of protection if you are actually going to apply for this information, the right to go after someone's private information. And again, it is certainly a very important issue where you are looking—you know the privacy issue comes into place, even in years ago Aristotle who had a distinction between the public's sphere of political activity and the private sphere of domestic family life. So the individual's right to privacy is something that we cannot easily go after. Yes, there may be needs to go after certain persons.

So if you deem someone a criminal and you may be only thinking the

traditional criminal, how are we to protect someone in jail, a prisoner, Madam President? Remember Nelson Mandela was a prisoner. How can we protect someone in the prison, put in there with a case where you may have the case made out against that person, but you do not have enough evidence? So now you have a prisoner and you now want to get more information on that prisoner, you now say well we want to apply to the judge or the judges to see if we can now go back in that record to make a case. So this I think could somehow give lazy policing, lazy investigative tools before you can actually make case. So you may make a case, you come forth with a case, but you are still hoping now you can deem this person a prisoner. By deeming him a prisoner, deeming him that we have to explain your wealth, or assets, or whatever, and because of that you now make a case back in time; a retroactive case being made. And I think that to me is something we have to guard against, and I am thinking to guard against that the whole idea of having three judges sit might somehow give a little more comfort to certain individuals who this may somehow affect.

So I also would like to mention, Madam President, the fact that when I looked at the proposed Bill here I wanted to just get some clarification from the Attorney General where—I am looking at the interpretation, clause 5, and in clause 5 when we look at a rehabilitation centre it means:

“...residence for the rehabilitation of youthful offenders, in which youthful offenders are lodged, clothed and fed as well as taught...”

And I think this is something that we are probably looking at for the young offenders who may be in certain institutions and we will have to bring in that. But I wondered when you are looking at the areas, the geographical areas whereby the place may be deemed a place like a prison where you can look at certain areas where you can now make representation to say individuals there if they are using

their phones you can tap into that information.

I wondered, Madam President, that sometimes we see—we have seen the list when I looked at Chap. 13:01; I looked at the definition. We are looking at the definition of “prisons”, and prisons include Port of Spain Prison, Golden Grove Prison, et cetera, rehabilitation centres, immigration detention centre, and then any other convict depot appointed by the order to be such by the Minister under section 4 of the Prisons Act. I remember there was a case in Port of Spain hospital where a prisoner was seeking medical attention, handcuffed, there were police guards present, but that individual was using a phone. So I just wanted to know if somehow this would also be a place, you know, the hospital setting, would fall into an area where we could intercept that communication because somebody who is shot—

Madam President: Sen. Deyalsingh? Hon. Senators, at this juncture the sitting will be suspended and we will be resumed at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Mr. Vice-President: Sen. Deyalsingh, you have 18 more minutes.

Sen. Dr. V. Deyalsingh: Thank you, Mr. Vice-President. As I was mentioning that I looked at the concerns of the Leader of the Opposition and I am thinking with a political year ahead we need to somehow put mechanisms in place where we would not cause any sort of a major disruption in society if perchance someone on the Opposition happens to be in breach of any laws and end up being in a situation where this Interception of Communications Act may be necessary to be meted out to get certain information. So that is why I am suggesting that the mechanisms in place really would try to allay the fears of the public that as far possible we have

gone in to put things into place to prevent any sort of abuse or misuse that may occur.

That is not to say if there is a Member of the Opposition, or any politician, who is involved in any sort of corrupt practices and find themselves in breach of the law, I am thinking yes, I will support the full extent of the law to go after such individuals. Because a corrupt politician to me takes away from the population, the means of—the monetary means, the economy where people may have to—moneys that would go into public health, in CAT scans, moneys that would go into getting basic devices. So by all means if this legislation can go after corrupt politicians go after it, and some legislation, Mr. Vice-President, in different countries like China they have the death penalty against politicians. I am saying here we may have to consider to curb that, that we may have to look at a life sentence sometimes for any sort of corrupt politician.

So if, be it as it may, I will support legislation like that if the Attorney General decides to bring it. So looking at this Bill, Mr. Vice-President, we have to remember even in the case where people may say “Could there be a potential for abuse?” I say there could be. There are men in power; persons may want to maintain power. Even in the UK Malone case, we looked at where the wiretapping and surveillance occurred, and in cases like that you found that the UK court said there was no right of privacy that was recognized at common law. Thankfully, this case was appealed to the European Court of Human Rights where they now actually said a breach occurred and they actually forced the UK Government to enact a statutory framework to have the Interception of Communications Act.

So even UK which we are now looking at their legislation, and the Attorney General has looked at that and other pieces of legislation, their Parliament was forced in a position where they did in fact have to put a legislative framework into

looking at the individuals and intercepting any sort of communication. So definitely, the need for this is there because we have seen, as I put it, failure of the State to execute certain things in prison to protect society. So there is a need for this legislation, because you see we have to understand there is a gap, there is still a failure in implementing safety measures for our prison officers and for others out there and witnesses. So there is still a gap, and you see the fact that people can call hits, this to me would certainly somehow add as a plan B. So plan A is really to have a fully operationalized prison system, prison officers, in force, looking at what goes in and out. Plan B, if there is a failure, we may be able to use this piece of legislation to see if we could at least prevent any sort of breaches.

So definitely the benefits are there in the Proceeds of Crime Act, the Extradition (Commonwealth and Foreign Territories) Act, the Civil Asset Recovery and Management and Unexplained Wealth Act, Anti-Terrorism, and explained wealth. I could definitely—if we are able to intercept communications in a manner that may be very fair, a manner that persons will have less chance to point accusatory fingers at, I think we could come a long way with this. You see but sometimes they say we have to appreciate the fact that mischief can still occur because if you find, as certain Members stated, that there are criminal lawyers, and lawyer criminals, and you know there are cases where—*[Interruption]* Criminal lawyers. *[Interruption]* Well yes, but remember those statements were made by persons who are holding high offices. So what I am saying is a breach can still occur where in your conversation with your attorney, or your conversation with your relatives, you could carry out information outside, and you can still somehow get that information outside, who you are going to put a hit one, what you are going to do, how you are going to run your business. So there are still avenues there.

So I am thinking that even though we are attempting by legislation there would still be gaps, there will be a continuation because the criminal mind is such that they would be innovative and they would be able to try and see other means and ways around it. So if I am going to a prison and I know that the phones are tapped I would not use it, because according to the legislation it is a duty for the Commissioner of Prisons to warn the prisoners that you are being monitored or you will be monitored. So if I know I am being monitored, I will just try to get another means. So I am not thinking that this piece of legislation would prevent in a big way, but what I am saying it could be utilized I am saying to get, you know, if you have an information and you want to backtrack on those people's conversation, it could be used and it could also be misused as certain Members say.

So therefore, my problem here is the accountability issue. We have to—I think clause 24 actually brought to the fact that there is a report that is supposed to be laid in Parliament by the Ministry of National Security, and I think Sen. Seepersad mentioned to that report and the fact that it was delayed. I think the last report came in 2016 where the National Security Minister is supposed to have laid in Parliament the interpretation of communications Act, and if those reports are not made you find that we may have to wonder—you know you are coming here asking us to give up some of the rights of these individuals, the freedom, the privacy issues, but little things in terms of accountability I think the State should at least come on board, give us those reports. Because you are asking us for one thing, but where you are supposed to be showing us that there is accountability there was a gap, and I think the Minister of National Security did mention to the fact that it was late and he would in fact try his best to bring it, and I am thinking this is a level of accountability we have to ensure as a Parliament it does not lapse

because it really is important as it goes against the principle where you are going against the privacy issue and against certain aspects of our Constitution.

5.10 p.m.

I also wondered, Mr. Vice-President, that if you are looking at the infringement of rights, complaints and concerns, somehow I would have loved the Inspector of Prisons to be on-board with this because the Inspector of Prisons would have been someone who would look and hear concerns from the prisoners, the prison officers and look to see if there is any breach in any sort of their rights. And I am thinking somewhere along the way, he should be factored in whereby he could ensure that proper procedures are followed, ensure that the prisoners are informed of their rights and I think— out of respect for his office— I think he should be factored in somewhere into this piece of legislation.

I would like now to mention that, as I had mentioned before when we took that break, that I was a bit concerned about the areas where we may be able to intercept the communications and I just needed some clarification. Would hospitals that house prisoners also be factored in? As I mentioned, in the St. Ann's Hospital, we have a forensic ward where the courts will send prisoners to us who— they may be deemed mentally ill to get an assessment. Some of those chaps may come in there, they may not be mentally ill, they may be pretending. If they are using phones, I am thinking the forensic wards, I am thinking Port of Spain General Hospital, if there is a prisoner housed there for some injury, somehow we have to extend that interception that could occur there so that has to be something that should be factored in.

So I would like to say that the safeguards that were put in— I was concerned about the safeguards but what I am looking at is the fact that if you are going after the private information and you have exhausted all forms of getting that

information, I am thinking the safeguard with the judge. As I mentioned before, I would have liked that extended.

As I close, Mr. Vice-President, I would like to say that you know, we have to be careful that we do not erode the rights of the individuals. We have to be very, very careful with that. We have to ensure that we put things in place where it does not cause a political turmoil in the country as far as possible. Legislation that could say we went a little further, we did some greater checks and balances so if people may feel aggrieved, we have put something in place to prevent this comess. You see, politicians on either side may always say, "The other side did it, this side did it", we have hosts of information. Whoever is in power or in Opposition, they will accuse one another. But it is the population at large who will take the words of their leaders and may feel that sense of aggression and disappointment and those are the persons, who I am thinking, that we need to put legislation in place that as far as possible, they can say that we have tried and we have attempted to put legislation where people would have a less chance of pointing fingers and saying there is political interference or political mischief occurring.

I would like to end by quoting a Lord Browne-Wilkinson where he observed:

"The dossier of private information is the badge of the totalitarian state."

So I am thinking yes, we are treading in certain grounds where we are hoping we can get at the private information of certain individuals to help the State, to help our country and I am saying I will support a lot of pieces of legislation that would actually give us a safer Trinidad and Tobago. I will support legislation that the Attorney General and the Ministry of National Security will come on-board and say, "Hey, this is a piece of legislation that will make the place safer for myself and my family." I will support those pieces. But again, we also have to know that

there are men in power and we have to put legislation in place where no sort of abuse or potential abuse can occur. Thank you. [*Desk thumping*]

Sen. Ndale Young: Mr. Vice-President, I want to thank you for the opportunity to contribute on this Bill this afternoon and my contribution, I assure you, will be very short, only to put into perspective some of the things that have been said but more importantly, the feeling and temperament of the country as a whole.

Mr. Vice-President, quite often when we sit here, because the chairs are so comfortable and the place is so nice, we can get lost into the banter of the law and the legalese and the jargon and what is otiose and what is this and sometimes, you know, the legal speech evades me. However, I believe that when we sit here, both sides, all sides, we sit here to try to create a better Trinidad and Tobago. We may disagree with how it ought to be done, when it ought to be done. We may have differences in parts of the law but generally, we are here to make the thing better, the place better. There are times and particular things that I feel strongly about. I think that when we sit here, it is just as bad to be a Government of tyrants as it is to be an impotent Government, as it is to be Parliament that has no real effect on the community.

Because the fact remains is that most of the country, I think because the Parliament does such a good job and the Parliament channel is very popular these days, but most of the country believes that what happens in Parliament is above their heads and it does not really affect them. But in reading this law, looking at the Bill and looking at the country, I think this is one of the times that we can say to people like Ms. Asha Boodram who lost her husband last year, I want to say to Ms. Boodram, we are a year too late but we take into consideration your case. You see in the *Guardian* of August 2019, the article came out about a young man on his way, have a night out with the boys, was gunned down. He was a prison officer,

Officer Boodram, and at that point in time, he was the third one for the month and about 19 within the decade, and it is usually expressed that the law does not really make a difference and “well nothing go change” because all of it is the same and the parliamentarians do not know what is going on. But in this case—and it is not only about—I want to disagree with some of the positions that what? Jammers and that kind of thing will work. We need more because the criminals do not have any boundaries. While the police have to do it by this and they cannot foul the law and they cannot do this, the criminals have no boundaries.

I wonder if most of the colleagues in here understand that the second highest currency in the prison are phone cards. The first are cigarettes. Ask anybody. I have received calls from inside the prison walls asking me to send a \$100 or \$200 phone card. [*Crosstalk*] “How you feel dey paying for de hit?” But if you follow the money and if you stop the money, you stop the crime. So the money inside is a little bit different to the money outside. [*Crosstalk*] Mr. Vice-President, the things that I say, I try to be as real as possible in this place because some of us, when “we drive off in de nice vehicles and we go home and we have de security, we could joke and laugh and fun”, but to somebody else, this is serious business because “what is joke for chirren, is death for crapaud”, so I am serious while I am on my legs.

And I am saying that this situation, this Bill that is before us has the expressed ability to save some lives. I heard the hon. Senator talked about “just turn on the jammers”. That is not good enough. “Dey passing in dey vehicles outside and ah man sending ah call, who dropping”, we heard about drones and that kinda thing. Jammers would not work by itself, we require more. [*Continuous crosstalk*] I do not know if I could be protected and be able to continue. I will sit until it is time.

Mr. Vice-President: Continue, continue, Senator.

Sen. N. Young: Because the fact remains that without making this a political thing, Ms. Asha Boodram today is without a husband because somebody made a call from inside a prison and somebody paid for that, either with phone card, cigarette, something, some means, but if we follow the money in the prison, this has a serious effect outside. A serious, serious, effect. You wonder how dey buying de cell phones? Is phone card". You wonder how they are doing this? And it is more liquid than cigarette because you do not have to transmit it, it takes nothing. The same way you can credit somebody's phone, "yuh credit dey phone" inside the prison.

More importantly, is that this legislation is not a silo; it is not a stand-alone legislation. I can say as a Member of this House and as a citizen, this comes on the heels of a number of legislation. We have had plea bargaining that we have seen the results of in the courts. I mean, to the detriment of some of our former colleagues but we have seen, it works. We have anti-terrorism, bail restriction, Firearms Act, sex offenders registration. All of these legislation with the combination of having interception brings us into maybe the 20th Century, "ah doh even know if it is the 21st" because we are behind time.

And for the people that— while we sit here and "we play" and we understand that you are going to have to trample on some rights, we understand that but the fact remains is that, according to my scriptures, Romans chapter 13 I think it is, we that bear the sword—the Ministers, the people who sit here—would bear not the sword in vain but we are to be a terror those that do evil and we have to be good to those that do good, so we ought not to be afraid. We do so measure. There are senior counsels and other people amongst us that would make sure that we are not going too far but something has to be done. We cannot all stand around

the pot and wonder how to pick it up, somebody “ha tuh get their hands burnt” and we have to get it done, if for nobody else, for Ms. Boodram and also Ms. Walters who was shot dead because of her husband being a prison officer two days after and we have a nice funeral, the Prime Minister, at the time, attended, “it nice” and after that, the heartache and pain is with Ms. Boodram up to today while “we joking”. But the fact remains is that this is a very serious legislation. I not only support this, I thank God for it and for the intervention now because if one of my sons decides to be a prison officer, I would not want to have to look over my shoulder to wonder what will happen to him.

So I want to thank you for the opportunity and I want to thank this House for being sober in this decision making. [*Desk thumping*]

Sen. Taharqa Obika: Thank you, Mr. Vice-President. I want to thank my colleague on the Government Bench for saying one thing that stood out to me very poignantly because Sen. Ndale Young said something has to be done and I want to encourage the Government that at this stage, they are a Government that has run out of time and what has to be done is to call the elections now. [*Desk thumping*] Because Sen. Young also said that we have to trample some rights but this is not a trivial matter. The freedom and liberty of persons in this Republic is by no means a trivial matter. The rights that are being trampled by this Bill in clause 6, clause 4, retroactivity, clause 7, professional privilege. I mean, the clauses of this Bill are far-reaching. Sen. Sturge went at pains to illustrate exactly where the rights being trampled would be deleterious to the system of justice that we adhere to in this country.

Now, the principle of fairness. So I want to show how saying some rights need to trampled is an insufficient analysis of the negative impact of this legislation. Because the principle of fairness, Mr. Vice-President, when one

considers the full illustration rendered by Sen. Sturge regarding the impact of the retroactive nature of the clauses of this Bill, the Interception of Communications (Amdt.) Bill, 2020 and in particular, one new offence, tipping off, which seeks to make it an offence to disclose information or any other matter which is likely to prejudice any investigation which may be connected or related to an interception where such an offence, in the way it is described in this legislation, was not before an offence considered in a similar manner.

You have a situation where persons, Mr. Vice-President, could be caught. The reality is, when you go in a retroactive manner—that is just one example—when you go in a retroactive manner, there are things that you may not conceive and therefore, it will give rise to many suspicions. Because trade unionists may wonder whether or not this is the “Watson Duke Bill”, whether or not this is the “David Abdullah Bill”, whether or not this is the Bill that is targeting the leaders of the nurses association or any other trade union or workers’ association that we have defended workers’ rights in this country. And of course, when a Government running out of time, facing a general election in a few short months, seeking to bring such a very dangerous piece of legislation to the House, it begs the question whether or not this is politically motivated or political persecution. [*Desk thumping*] Now, again, we in this country understand that the rights of the people of Trinidad and Tobago is no trivial matter.

When you turn to clause 6 of the Bill, it speaks to authorized officers and Sen. Sturge spoke at length on that so I will leave that particular matter there, only to say that one cannot fault Sen. Young for thinking that some rights need to be trampled, especially when one reads clause 6 because one will think, well okay, Sen. Young reading it would feel well, that this is a simple matter that only requires a police officer of the lowest rank and if it is a matter that requires the

intervention of a police officer of the lowest rank, then it clearly cannot be a significant issue. Therefore, the rights that are so trampled clearly are not that big of a deal. So one cannot fault Sen. Young who, by his own admission, declared that the legalese may evade him to think, despite having caucused on this Bill on his side, that it is not a big deal. Because the Government, through this Bill, Mr. Vice-President, places significant powers at the hands of officers who before would never have seen those powers at their disposal. Therefore, again, this is serious legislation and there are significant errors in it.

Now, the jammers and the policy of the Government to stop the jammers and then the statements uttered by the Minister of National Security, the actions of the Minister of National Security on Facebook, where the Minister of National Security, Mr. Vice-President, was found to have, after seeing a Facebook commenter by the name that I would not give but it is the name of an intoxicating beverage. He went by Alias, that commenter, that is his alias. And the Minister of National Security proceeded to disclose that person's Government name, "as we say" in Trinidad and Tobago, his real name, his place of work, his contact details, his residence, the addresses of his residences and his place of work for the entire world to see on Facebook.

Now, we are very intelligent in this country and it does not take anyone with much education to understand that it is obvious that the Minister of National Security used the resources at his disposal as Minister to pursue a personal issue with someone on Facebook and then [*Desk thumping*] in an act of the highest level of irresponsibility, recklessness and abuse of power, disclosed this information on Facebook. And I saw the post and the running commentary myself. Now, are we saying that this Minister of National Security that has done such a reckless act would be the person that we want to give the powers—

Sen. Singh: 46(6).

Sen. T. Obika:—under this legislation to, Mr. Vice-President? [*Crosstalk*]

Mr. Vice-President: Senator, the line that you are going down where you are attributing certain things to a Member of Parliament is boarding upon that Standing Order 46(6), so I would ask you to be very cautious as you are moving forward and do not impute improper motives on Members. Continue.

Sen. T. Obika: I thank you, Mr. Vice-President. Now what is the lesson for us in this society? To whom great power comes, we know—the old adage goes, there is much responsibility that comes along with that power and I want to say that it is reprehensible in the least for us as a Parliament to bestow this type of power on such a person.

I want to refer to matters that have been in the public domain as of yesterday. *Express* newspaper has reported, Mr. Vice-President, the results of that Joint Select Committee that the Minister of National Security appeared before. It was all over a very popular radio station that I find myself listening to. I am not sure if—anyway. So I am sure thousands of citizens have heard the programme. It was on Power 102 and the programme aired from 3.00 p.m. to 5.00 p.m. and the person on the programme was reading verbatim from the *Express* newspaper article. And what they were doing, they were juxtaposing statements of the Minister about getting reports from the police officers, private and confidential reports, through specific channels and then contradicting statements of the Commissioner of Police who is saying that no such thing is authorized to happen in the first place. So, Mr. Vice-President, are we saying that this individual who is the Minister of National Security doing this thing that is contradictory to what the Commissioner of Police is saying should happen by law and proper process, that we want to bestow upon this individual these powers?

Now, what are the powers that we are speaking about? When we look at this Bill, we see the Strategic Services Agency, the SSA referenced specifically. You have the Commissioner of Police, you have the head of defence and you have the head of the SSA and it has to do with being an authorized officer in the interpretation section. So you have an authorized officer who is appointed and whose remit has to do with a specific relationship with a Minister of National Security. The SSA head and the organization interrelates with the line Minister via the Executive of course, but the line Minister is very important and instrumental in the relationship between the Executive and the SSA, and the SSA has significant powers under this law. Now, the only recommendation that one could give the Government for this is to take it, put it in “ah nice bow” and discard it immediately. That is the only amendment that is of value to this piece of legislation. But if we wish to continue the debate to see where we shall arrive at, let us look at what exactly is trampled upon.

You have privacy rights which were spoken about at length. What about family rights? What about family rights? In the marriage Bill that was debated when I was not a Member of this place, the issue of the rights of the family to determine their destiny and the decisions that their children take was contemplated. It was taken into account for even though the age of marriage was maintained at 18, was raised to 18, it was taken into account because it would have been taken into account before when the marriages would have been set at a lower level. So what about the rights of the family? Because, Mr. Vice-President, I would not want—and I am sure the 1.35 million citizens of this country will not want their private family communication, which would have nothing to do with crime and criminality, which would have nothing to do with fraud, to be ventilated publicly.

Now I want to illustrate how this can be important to citizens, even though it

may seem a trivial matter by way of an example. Many persons accuse, whether it may be totally false or not, accuse some law enforcement officials of taking advantage of their home situation when they visit them, when there is a complaint by one spouse on the other. All right. Now can we imagine if some persons now have their entire familial conversations at the disposal of officers somewhere being shared and then in the process of investigation, this information is disclosed to either spouse? Now, it does not take much of an imagination, Mr. Vice-President, for you to arrive at the possible conclusion that that type of communication could lead to marriages being dissolved, broken up, dismembered because the communication that was done in private becomes shared with their spouse or partner. That may seem a trivial matter to many, except if it happens to them. Again, what about the rights of the family?

Then you go on to the freedom of expression. Now, many times, persons say things—so I am just showing Sen. Ndale Young where in my mind, simple rights that should be trampled are not “ah small thing, is ah big thing”. These are real issues that would affect people. Freedom of expression. In this country, we may say things which we may wish on our lives to remain private. It may not necessarily be statements that you may wish to act on but it may have just been things that we are thinking about in private conversation with someone.

5.40 p.m.

Should that private conversation be available now to the powers that be, it could be taken entirely out of context. And then, because it is in front of them, in the way that this law presents itself, it may require the authorities to even conduct an investigation.

Now, the point I am arriving at is, the way in which this law prescribes a catch-all, it spreads too wide on it. It bestows too many powers on persons who are

under the control of the Executive, via the SSA, under the control or at least influence or relationship to a Minister who, by the two examples, I showed at the beginning of the debate, can be accused of being reckless in administering his duties.

And then, of course, you move to freedom of the press. Now, I was listening for ways in which the media may have significant issues with this piece of legislation. And I want to point out a couple that I find should have been focused on a little more. One has to do, not just with the sources of information to the media, but what happens with that information when it returns in-house. Because the conversation seems to be focused only on the journalist who gets information from a source, whether it be from an underworld source or a source in the prison, based on the clause that speaks to communicating with persons behind prison walls.

But what happens when that journalist who gets this information—as Sen. Richards mentioned that persons may have tried to communicate with journalists in the past, and continue to do so, from behind prison walls—what happens when that journalist decides to not ignore, but actually act on the information and prepare a brief and get that brief approved and passed by their editors, their subeditors? Are these people also going to be culpable, Mr. Vice-President? That is a question that I would want answered. Because then it is not just that eager journalist who is trying to write a good story, who is trying to shed light on the truth. It may implicate the entire media house, by extension. The question is: Where do we draw the line, and how do we cater for the fourth estate, as we call the media?

Now, Mr. Vice-President, I think there are lessons to be learnt from history. There are lessons to be learnt from history and I want to point to an example that is very relevant, given that on Ash Wednesday we marked the 50th anniversary of the

commencement of the revolution of the people of Trinidad and Tobago of 1970, which also is known as the Black Power Revolution.

Because, Mr. Vice-President, “hmp”, you would be very surprised to know—not you of course, because you are well read, but persons in this country would be very surprised to know that if you were caught from 1970 to 1974, with a book written by, researched by, and published by the Prime Minister, the first Prime Minister of Trinidad and Tobago, Dr. Eric Williams, you would have been charged for sedition and arrested and imprisoned.

Now, there are other books and articles and stuff that you would have been charged with. And I want to crave your indulgence to read a short excerpt from an article, all right? I am trying to find the name of the journal. I ask to provide the name of the magazine afterwards. But it was published; this is from 1974. And the article starts:

Crackdown starts on subversive literature.

One person, Kirkland Paul of San Juan has been charged with possession of subversive literature following a police raid on his home on September 1st.

In a recent search on the home of Dr. Michael Camps, police asked about copies of *Tapia* found in his house.

—I believe this was from the *Tapia* newspaper, right, I cannot remember the exact year—

It is therefore clear what is actually subversive literature is left to the discretion of the authorities who in fact can arbitrarily declare any publication subversive, or an individual issue of any publication. For example, the copy of *Tapia* you are reading now.

For instance, Kirkland Paul was charged for possession of several books, including *Conventional Politics or Revolution?* Published by the National

Joint Action Committee, and *Revolution in the Revolution?*—by Régis Debray, which sells at several bookstores around the country—and *Modern Politics*, a compilation of series of lectures delivered at the public library by CLR James while a member—hear this—of the People's National Movement.

During the 1970 state of emergency, a UWI student spent four days in jail, received an unmasked haircut—unmasked, so unsolicited haircut then—and a cut—I cannot say the other part—because he was picked up in a roadblock with a book entitled *The Sugar Revolution*.

Now, 50 years ago, Mr. Vice-President, the police officers would have had to find you with the books on you or have someone put the books on you. But they had to find the books on you. So you could have been imprisoned for having in your possession speeches read at a PNM convention by CLR James. You understand, Mr. Vice-President, how dangerous the law is? The law sometimes does not mean justice. So just as you could have been charged and imprisoned, locked up, for having speeches delivered at a PNM convention in 1970, whilst PNM was in power, if you are in possession of articles, because the sedition law has not yet been struck down, articles that could be considered seditious, at least in the mind of the State, on your phone, or via email or anything, then, Mr. Vice-President, that could cause the State to charge you for sedition. So, many citizens in this country could be doing as Kirkland Paul in San Juan would have done in 1970, being charged with sedition.

I want to list the subversive free radicals. This is from the T&T *Gazette*. I have this source too. T&T *Gazette*, Vol. 6, No. 91 of the 20th September.

Mr. Vice-President: As much as you have made your point and attempted a connection to the Bill that is before us, to go deeper into what you are trying to

explain brings you outside relevance. The point has been made but I ask you to move forward now.

Sen. T. Obika: Thanks, Mr. Vice-President, thank you. So, the point is, persons are saying how it is simple, these are innocuous clauses that can help protect people in this country. But what we are not examining is one, the fact that the clauses are dangerous; and two, we have a history of state-sponsored violence against our citizens in this country called Trinidad and Tobago, and we must not be part of the continuation of an oppressive regime against the very citizens that put us here in this country. At least you do not expect us on this side to be part of that to help a Government who is out of time with a few months left before election.

What is the purpose of this Bill? It is dangerous. The retroactive aspect I said is dangerous. It will shut down journalists. It will make journalists so fearful of being caught that it will prevent them from doing their job.

Now, what are the mitigants that they could have utilized? You are hearing none of that. Destruction of evidence, clause 19 harkens back to “emailgate”. Now, under the changes being envisaged by this Bill, they could keep your information as long as they feel that they may be able to use it to build a case against you. Everything is admissible. Everything is possible. Everything can become that thing that the State uses against you. So basically the odds are stacked against you, even with a simple procedural thing, such as destruction of evidence.

Now, Mr. Vice-President, I want to close on this point, and I want to totally stand opposed to the statements made by Sen. Young prior, that it is not a simple matter of some rights being trampled on. It is the rights of the citizens of Trinidad and Tobago that are being discarded and trampled upon by this very legislation.

I want to submit that this Government has proven itself to be bankrupt of ideas. This Minister of National Security who would be the person to execute the

things under this Bill, via the SSA in particular and via the police indirectly, has proven to be reckless, and we will not support this Government in this Bill. We will not support this Government in the changes they wish to make, and we definitely will not support this Minister of National Security. The time has come. They have run out of time and I thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Sophia Chote SC: Thank you, Mr. Vice-President, for the opportunity to speak on this proposed piece of legislation. Now, I agree with Sen. Obika that this is not an easy piece of legislation to digest. But I think we have, up until this point, heard enough about the man in prison calling shots, and we have heard enough about political targeting and that kind of thing.

And, perhaps at this stage of the debate, what we can do is try to pull back a little bit, look at the legislation and consider whether it is a quality piece of legislation, which will enhance the security of citizens of the country as a whole. Now, I begin by saying that we must appreciate that an act such as this, in a way, protects us. The reason for that is any government in power, whether this one or any other, can and probably already may have equipment to monitor people's data and conversations and communications. And I do not know, maybe there are people who do monitor. When you have legislation though, which says that if you have to intercept and monitor, you have to fall within the ambit of an Act, then the citizens are protected by legislation of this kind. [*Desk thumping*]

[MADAM PRESIDENT *in the Chair*]

Now, I do not say, however, I do not take the point further, to say that I necessarily find that this piece of legislation, as drafted, accomplishes the kind of protections for the citizens that I think we ought to see in this kind of legislation. So, let us first put it in context. It is better to have a regulatory law for this kind of investigatory process than not to have any law at all.

Now, in my research for this contribution, I came across a report which was organized by Caricom, in conjunction with the European Commission. It took place in—the meeting or the workshop or whatever it was, took place in 2010, and Caricom countries were all represented, including the Republic of Trinidad and Tobago.

A report was prepared and it is actually published on the Internet and it is dated 2013. It is called “Harmonization of ICT Policies, Legislation and Regulatory Procedures in the Caribbean”. Now, I suspect this was kind of an answer to the—what people refer to as the “Five Eyes Alliance” amongst the five big countries which basically have agreements to monitor security issues; the US, Canada, the UK, Australia—I cannot remember what the fifth one is. So Caricom got together and decided that we are all going to implement—as far back as 2010, Caricom had decided that we are going to implement legislation to regulate the interception of this kind of data. And it is very useful because it provides precedence as to what the legislation should contain, what kinds of protections should be included, and it gives you the reasons for all of these things. So it makes good reading and was very helpful to me in my preparation for this debate.

Now, I am not going to look at this piece of legislation section by section. I just have a few comments that I wish to make, with respect to certain aspects of it. I feel that the legislation gives too much power to three public officials to make an application for the interception of communication. And there are other agencies with investigatory powers who may very well benefit from having such power given to them and permitting independent investigations to take place.

I use as an example the Director of the Police Complaints Authority. When our murder rate contains a significant number of killings, which fall under the rubric of police killings, then it means that the Director of the Police Complaints

Authority ought to have, as part of his arsenal, to investigate such crimes, if they are crimes. Because if you kill someone, whether you are a police officer or not, if you murder someone, whether you are a police officer or not, you need to be held to account for it. So the Director of the Police Complaints Authority, I think, is one such person. His powers would be enhanced by that. He should be included in “authorized officer” to permit him to go to a judge and make an application for access to this kind of information from service providers.

Another person, another independent office holder I think would be important, and this would be useful, especially since there is the fear that this information might be used for political purposes, and so on, but the Director of Public Prosecutions certainly should be included as one of the authorized officers.

At first I did not quite understand why the Chief of Defence Staff was there. But then I appreciated that with national security issues, such a person must possibly be one of the applicants. I cannot understand though, why both the Commissioner of Police and the head of the SSA must be authorized persons. Because presumably if the SSA wishes to make such an application, the SSA would go to the Commissioner of Police. That is how I understand it. Perhaps I am wrong. So I am just thinking that perhaps we could give a little more or focus a little bit more on that.

With respect to what happens when an application is made for—I cannot remember if the word used is “warrant” or an “order of the court”—I think we must be careful in the legislation to ensure that what happens there before the judge should, as far as possible, remain confidential until such time that a judge decides that it should not, or parts of it should not. So, what I suggest—and again, all of these ideas are not new. I must say they are largely borrowed from that report, which I looked at.

What we can consider including, respectfully, is that when someone goes to make an application for such an order, that there be some sort of record kept, date, time. You do not want to have the persons involved in the application necessarily named, because then, depending on the nature of the offence, you may put their lives at risk, and so on. But certainly you are caught here with a difficult problem. Because if for some reason that information comes out, if these people are not named, how do we know where the security breach came from?

So what I am respectfully suggesting is that there should be more focus on setting out the process of what occurs before the judge, during the course of the application, and that after this consideration is given to the application, that the documents be sealed and kept in the custody of the Registrar of the Supreme Court. It should be made an offence for anyone to break that seal without the authorization of a Judge of the Supreme Court, with the attendant penalty.

I move on very quickly. I see that the legislation attempts to protect someone from being made to talk, you know, being induced or tricked, and so on, entrapped in other words, to have a conversation which may breach his privilege against self-incrimination. But I think, perhaps, if entrapment is what we are looking at, then perhaps we should include the words “promised” and “coerced” to “induce” and “trick”.

Now, while I say this piece of legislation is difficult is because we are saying that essentially you can go to a judge and you can make an application for material to be collected over a period of time, if you are looking at an offence which attracts a penalty of over 10 years.

Now, unfortunately, because some of our laws have not yet been amended, for example the Sexual Offences Act, is it that there is a possibility that—I do not know, how should I put it? Same sex conversations happening between two people

may be collected and may be used for purposes such as blackmail and that kind of thing. I think that is a weakness in the legislation that we need to consider and plug the hole. If we see it, let us try to plug the hole instead of waiting for it to happen and then everyone becoming aghast that it has happened. The thought came to my mind, actually, when Sen. Obika was talking about private life, and I was thinking that this was one of the things we may look at.

Now, new section 17 in particular is a big section and quite significant, and it talks about the special measures which may be taken. And it talks about, I believe, the special advocate representing the person, in terms of the admissibility of evidence. I was thinking that this, perhaps, should be the exception rather than the rule. Because if you have someone who is appointed a special advocate by the court, essentially you are acting, I would assume, amicus. So you would be there to assist the court on the law. Your problem is someone who is acting amicus often has the full factual context of the case in which he is assisting the court. And I am not quite sure, in the absence of rules and regulations, I am not quite sure how this is going to operate for a special advocate to make submissions or to take arguments on the question of admissibility, without having a full factual background.

A specific advocate acting in those circumstances may very well run the risk of being possibly in breach of the Legal Profession Act. I have not looked at that aspect of it closely enough. But certainly, if you are making a legal submission and it is going to affect the due process, rights, or the fair trial of someone charged with a criminal offence, then the special advocate certainly might have good reason to get cold feet when called upon by the judge to assist in such a case.

Disclosure. Now, at some point, as we saw in the Dudus case in Jamaica, at some point, when you have this kind of collection of evidence, of electronic evidence, the material and how it came about and so on, may become significant in

the course of a criminal trial. And in that case, what the judge ordered, I think what had happened is the criminal judge had said no, you are not entitled to get anything, and then a constitutional Motion may have been filed. I cannot recall the nature of the Motion. But the decision was that part of his fair trial entitlement was to have some of the material used in the investigation, accessible to him. So he got some information and it was redacted material, so that people's identities were protected, and so on. But it means that disclosure is going to be one of the issues which must be considered when we look at this Act. And I say perhaps if we had more rules and regulations, or if we already had the rules and regulations, I may not be making the comments that I am.

I read another interesting article, thankfully introduced to the website by the Senator who sits to my left, Sen. Vieira. It is the Lexology website. And there was a publication on the 10th of February, 2020, called "The Future of International Crime". And essentially what the article was saying is that when we have legislation or when we create legislation to intercept communication, we have to keep abreast of how communication is evolving. I did not know, but apparently we have 5G facilities here.

And for some reason it seems though it is more difficult to monitor 5G meta-data, I do not know if I am using the right terminology. And this has caused a problem for law enforcement in other territories. So one of the things the article was saying is that when you legislate make sure you keep in mind that this is an evolving world in terms of the creation of methods of communication.

6.10 p.m.

But I was thinking of a platform that my daughter often uses and it is this one where you type in something and it disappears—

Hon. Senator: Snapchat.

Sen. S. Chote SC: Snapchat. So do we have the facilities to have that? [Interruption] I am quite happy to hear Sen. Richards tell me that we can get it back, I will keep that in mind. [Laughter] So I do not know if those things are capable of being monitored. In addition to which artificial intelligence, for example, can one Alexa speak to another Alexa?

Sen. Richards: Yes.

Sen. S. Chote SC: Can communication be done by that? Can criminality be conveyed through those methods? And do we have the facilities or do our providers have the facilities to give us that kind of information,—that kind of device to device communication.

Now what I strongly recommend, because it actually happened in a case that I was doing, and it was not a case where conversations and texts and so on had been recorded. It was a simple fact of trying to place someone at a certain time in a particular vicinity, process of triangulation, I think they call it, and the service providers came and gave their evidence. But what became apparent in all of this, is that really it is not as precise as you would like it to be. It all depends to some extent on the number of towers, for example, you have in the area. If you just have one tower, well then you stand a better chance of getting an accurate idea of where in the triangle the person was. But if you have several towers, that information might be mixed up and unclear.

Now if we are having this legislation created, we need to know that the information we are going to get from these service providers is quality information. I think we also have to put in something to say that it must be given in a timely fashion, because that also has been my experience. Because sometimes the order of the court is to the company. The order is served on the company and the head of IT takes it or some other person and then it passes around as a piece of paper and

there is no compliance. And the investigating officer is running around in circles trying to get information which is ageing as he goes along.

So we ought to include in the legislation a timeframe for compliance and if the agency cannot comply within a timeframe, they must provide the judge or the applicant with a reason for not being able to comply. Because they are carrying out a very important function. They must also take the responsibility of ensuring that their equipment is up to standard, so that what they produce to investigating officers is material that can be used in a court of law. Because we would just be wasting our time if we have stood here for two days and debated this piece of legislation and then cases are falling down in court because of the quality of the material or the product provided by service providers. So, I do not know, maybe perhaps the TATT could do an audit every year to ensure that these companies are up to standard in terms of equipment and their ability to do what they are required to do.

Now section 22, let me see if I have it right. Yes, it is Part III under “General Provisions”. It says that:

“The Minister shall be informed—

a) of an interception under section 6(2)(b)...”

Let us see what 62(b) says so that I can make sense.

Hon. Al-Rawi: Unwarranted.

Sen. S. Chote SC: Yes. Where it is without a warrant; within 96 hours of the commencement of the interception.

I could not understand what the reason is for the Minister getting involved in the process. Because as far as I am concerned, especially if we are broadening the scope of the persons who can apply. If we are broadening the scope to include people like the Director of Public Prosecutions, the Director of the Police

Complaints Authority then certainly we would not want it to have a Minister involved. I think the Minister would become involved if the application is made by the Chief of Defence Staff or we could qualify it by saying, “where it is in relation to a national security issue”. That will take away any suspicion of use of the material for political purposes. And I think perhaps that was the intention, it is just that maybe the language was a bit broader than intended.

So, Madam President, these are my respectful comments with respect to this piece of legislation. I think it is a good piece of legislation. I can see the need for it, but I think there is some work to be done on it to tighten it up and I hope that we are able to accomplish that. Thank you very much. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): [*Desk thumping*] Thank you very much, Madam President, and let me thank my colleague Sen. Chote for her distillation of certain parts of the Bill, and for her tone, and for her approach to this piece of legislation that is obviously needed.

Madam President, over the Carnival period some colleagues of mine in Port of Spain were very distressed as they related to me the morning after the all-inclusive fete at CIC, also known as St. Mary’s College. Quite a few people ended up at the police station breathalyzed and carried down, and I understand it was about 50 or 60 persons. Now there might be persons who say, the police were wrong to do that. But what better place to breathalyze than outside an all-inclusive fete? Because I always wondered how all those cars that are parked outside the fete get home. Somebody has to be breaking the law. And what better way to find out who is breaking the law than implementing the law outside the fete. Something like that does not distress me at all.

Many years ago my niece as soon as she turned 18 and found her way in

UWI, introduced me to the “Rum Shuttle”. A 12-seater that the students paid for and they got themselves to and from the fete. I say that to say, what better place to use legislation like this than the prison and the prison vehicle. Because what would the prisoners be talking about? They would be talking about crime. If you have read at least one of the John Grisham novels, I have read all of them, he writes a lot about this, and the issue of somebody in jail called a “jail snitch”, somebody being planted. All of these things have been tested in the law and have found with certain safeguards to be absolutely necessary. And these are the times that we live in, these are the things that are appropriate and it is in that context I welcome Sen. Chote’s contribution as I welcome the contributions of my colleagues on the Independent Bench.

The fact is that this is not simple legislation. Any piece of legislation that interferes in the manner that this Bill seeks to do is not simple, creates a lot of liability and a lot of risk. In fact it asks of us to put legislative cover to what would normally be criminal conduct. And whether you believe that privacy is a constitutional right, it interferes with privacy. And this Bill touches on still emerging risks in the law. I made a note when I was reading the Bill for the first time, I made a note on Jeff Bezos. And if you have not understood the power of somebody who wants to invade, well ask Bezos. With all his wealth and knowledge of technology, he could not protect himself. So on the one hand we have those who want to interfere including us and on the other hand we have those who need to be protected, including us. And part of what Sen. Chote has spoken about is striking the appropriate balance.

And part of that balance is found in clause 7 and I will get to that, striking the balance because in clause 7 we get to this thing we call “legal professional privilege”. And when I was taught legal professional privilege at university, it was

almost something that was absolute. It was unthinkable that the law will knock on your door, or the door of an attorney or get a warrant to search the files of attorneys, or search the person of an attorney, search the phone of an attorney. But legal professional privilege has been whittled down in a way that it exists in the minority now. It is not something—I learnt early in law school the concept of a cloistered virtue, legal professional privilege is not a cloistered virtue any more.

But this Bill still strikes something of a balance by protecting some element of legal professional privilege. The Bill also deals with penalties for disclosure and tipping off, because that is one of the dangers in giving anybody access to information there is always the risk of the information being used inappropriately. And the fine is a very hefty half a million dollars. And some of us might argue that it is too hefty.

And then also the Bill broadens the scope of some of what exists already. So I will say six things, Madam President. Some of my colleagues have argued, for example, Sen. Obika, Sen. Sturge, who I am happy to see here. I think everybody knows how fond I am of him. And Sen. Sturge used the expressions extremely intrusive and extremely draconian. That is exactly what it is and that is why this Bill is being passed with a special majority. It is intrusive and it is draconian, but it is also necessary. That is the part that he left out.

It is not a unique piece of legislation. From time to time, particularly in the realm of criminal law, we are called upon to pass legislation which is inconsistent with the Constitution and I have made the point many, many times, we are not here to argue constitutionality, we could debate constitutionality. But in the context of the law we are here to put in place what we believe best protects citizens of the country. And there is another place where the constitutionality could be challenged for those who wish to do that. So for those who say it is intrusive and draconian

and dangerous, I agree with you and that is why we have taken the approach of coming—requiring a special majority.

I want to go to something Sen. Obika said, however, in relation to this Constitution and fundamental rights and so on. He says that, of course, he opens with the now usual cry the sixteenth, seventeenth, eighteenth and nineteenth words of his contribution, “call the election now”. Well when it was called in 2010 and you had five years you did nothing, you did nothing like this. If it is called now and you get back into office, nothing could tell the population that you will do anything like this. But you say that we are seeking to bring a very dangerous piece of legislation to this House.

You know, I have listened to the few speakers on the Opposition so far and they create this sense of fear. Something to be worried about in this, I frighten about this legislation. And I use it very sparingly on you because I know how it hurts. I know there is one thing that hurts you terribly so I use it very sparingly because I love you. But Resmi Ramnarine did not hurt you. That is what troubles me you are worried, you are saying that this is a dangerous piece of legislation that is being brought to the Parliament. The Parliament is the place where you bring dangerous pieces of legislation and this is not brought here capriciously. I have asked you many times to read the legislative agenda. The Attorney General my colleague and friend, Faris Al-Rawi, created history how many times I will tell you that. Created history by placing in this Parliament a five-year legislative agenda.

And if you look on the legislative agenda in the first section which is red so it will catch your attention because you love red, you would see short-term 2015 to 2017 and item number 10 is Miscellaneous Provisions (Firearms Interception of Communication, Financial Intelligence Unit of Trinidad and Tobago, and Exchange Control) Bill, 2016. We telegraphed to you via a legislative agenda,

which is still on the website of the Parliament, our intention to bring legislation to deal with interception of communication. We telegraphed that to you.

We did in fact debate a Bill; we brought the Miscellaneous Provisions Bill and did not have the interception of communication element in it, we had FIU, we had exchange controls, we did not have firearms because we decided to treat with firearms in a separate piece of legislation and we decided with interception of communication in a separate piece of legislation. So the Miscellaneous Provisions Bill, 2017 was assented to in May 2018 and it covers those things that we said we would do except for firearms and interception of communication. And thereafter we brought by separate legislation, Firearms (Amdt.) legislation.

And now we have brought the interception of communication piece into the Parliament. This is not Resmi Ramnarine, a computer clerk elevated, the word is “tsar”. If the read the SSA legislation you would see that the head of that agency develops and implements a counter narcotics strategy for Trinidad and Tobago in the context of a regional plan to counter narcotics in the region. And you had no fear of doing that. You did it in the dark of the night in the most capricious manner, in the most ill-informed manner with absolutely no oversight and no care and concern to the citizens of this country.

And you have the gall to come here in this Parliament today and talk about a government that puts on its parliamentary agenda the intention to bring this piece of legislation and not only brings the piece of legislation but brings it requiring the support of the two Houses. Because you may refuse to support it here, and the votes of the Independents may get it through here. The question is if it would pass in the other place. And we have not offered a slim version of the legislation that would require a simple majority. We place ourselves under the glare of every legislator in this House and everyone in the other House, making it very clear what

is required in the context of what is happening in the prisons. A scanner will not solve the problem.

For the last 25 years complex crime has been fought using technology and we are way behind, we are way behind. But, you know what? This legislation in 1986 the US introduced stored communication legislation and it has not developed much since then. This piece of legislation will put us close to the forefront of what has to be done. And if you are worried about the special advocate, 1997 was the first time in the English law the concept of “special advocate” was introduced, 1997. I was two years out of law school, this year I celebrate my twenty-fifth year in this profession.

So we are behind and this helps us not tomorrow and not when my friends over there claim they are going to win but tonight. Tonight we decide to put this in the hands of law enforcement agency. The power to listen to the calls because Sen. Sobers said to us, “you are encouraging a cell phone problem in the prison”, that is what he said. He said by bringing law to intercept calls you are encouraging a cell phone problem. What did you do about it?

I have seen searches in the prisons, I have seen the results of searches with thousands of boxes of cigarettes and cartons of cigarettes and all kind—what you put in place to deal—you come and you ask for scanners now. What did you do? What are you asking the population when you cry every time you get a chance you stand up and say call the election now? What are asking them to allow you to finish? To bring a Resmi, where? To bring a next unqualified person as unqualified as you were, to put where?

The fight against crime is a fight that is people and legislation and this is an important piece of legislation. Just like outside St. Mary’s fete, CIC, after the all-inclusive finish, you would not want to hear what is being discussed in a prison

van?

What else we have, what other ways we have of reaching the information that is required? And when we gather it what use would we make of it. What is the sense of gathering the information? It is you. The party that the six of you represent, you who failed to bring to the Parliament the reports, the annual reports on interception of communication. You failed to bring the reports. And you had one of your, there is a word that they use in the US politics it went out my head.

You had one of your friends take the Minister of National Security to court and compel him to lay in Parliament all the reports that you failed to lay. And I was shocked as a Member of the Parliament and a citizen of the country, as a member of the Cabinet to see every report say that nothing was done with the interceptions. There were thousands of interceptions, every report—go back and check the reports you would see. Thousands of interceptions and the report said zero, zero follow up, zero action, or zero use.

We have not brought this legislation with the intention that it would be put to use and nothing will come out of it. The intention is that what is gathered through the force of this piece of legislation will be offered as evidence in the court, because we cannot do that now. We have talked about inferring with private citizens. Well, I will tell you this. Nothing in this legislation adds to what a private citizen is already at risk in this country nothing in here adds any additional risk. The power of law enforcement to be able to listen to conversations to be able to access information, to be able to use the devices to know what is—it exists already. *[Interruption]* It exists already. And nothing in this legislation, nothing in this legislation adds to that.

You talked about using it as evidence. Well what is the sense of gathering the information if it cannot be used or it cannot at least be offered as evidence?

What is the sense of it and then I listened to Sen. Sturge as he talked about the word “shall”, shall and suggesting that the law will force a judge to accept something as evidence. Well the judge always has the discretion and there is a line that he used there that he made it sound as though it does not exist already in the law and has been subject to so much interpretation.

In the interest of justice, the expression “in the interest of justice” has been tried and tested just as balance of probability and all of those things. It has been tried and tested and it is for the judicial officer to make a determination ultimately. But as Sen. Chote has rightly said if we are going to do this let us do it by statute in the full glare of the public and with the knowledge that we are not doing it by simple majority. But we are placing it squarely on the shoulders of the legislators in this House and the other place. That is what we have to do.

The Bill itself, as you know, applies to five categories and the proposed clause 4, the AG, hon. AG has circulated an amendment and the amendment intends to insert after what is now clause 4 of this Bill a new 4(a). But the Bill intends that the Act applies to criminal proceedings, proceedings under POCA, the Proceeds of Crime Act, extradition proceedings, Anti-Terrorism Act proceedings and the most recent one the civil asset recovery, what we call “explain your wealth” legislation. And, of course, excepts out cases where the trial has already commenced.

The definition part of the Bill is the part of the Bill that is very critical if we are to achieve what we want to achieve. And as I said before, the US finds itself unable to apply its stored communication legislation to some of the modern scenarios that have developed.

6.40 p.m.

And to do that you have to continue, as the technology has changed, you

have to keep updating your legislation. So we find ourselves coming here on many occasions to add to the definition or to build the definition. Even in the Cybercrime Bill, which is being considered by a JSC, every time you feel that you have made progress and you have reached a point, new scenarios or an expert or somebody gives you advice which tells you, “Well, it does not cover this and it does not cover that.”

So, it is vital, but the point I want to make in relation to the definition of communications data and stored data is this— I think Sen. Chote used the expression “meta data” because there is always a fear or concern that the granular data, the information, the information that is personal to people is the information that is being accessed, but the intention of the law is to deal with what I describe as “meta data”. And it is important, for example, when you look at the definition of device to know that these things are constantly changing and we have to understand that we will keep coming back to the Parliament to deal with situations that we had not envisaged, or to deal with changes in the technology.

I had referred to the issue of tipping off and I will refer you to the proposed clause 6, which seeks to amend section six of the Act, and that deals with the disclosure of information which is intercepted and the disclosure that is intentional. And that, in my mind, seeks to strike the balance between accessing, making use of, disclosing information and on the other hand, disclosing information in a capricious manner, or disclosing information in a manner it was not intended when the decision to collect the information was made. The change that is being proposed again in clause 6 under 6(b)(ii) is a very important change, and that has to do with what I spoke about before, this issue of admissibility by deleting the current provision which says that the information:

“...shall not be”—accessible—“as evidence in any criminal

proceedings”—and in its place— “substituting the words ‘may subject to Section 17(2B) and’”—17—“(2C)...admissible as evidence in any proceedings”

I had referred to clause 7 where I said it strikes the balance and that is clause 7 seeking to introduce a new 6A and 6A(1) provides for the Commissioner of Prisons to inform prisoners and members of the staff of the prison that:

“...any communication transmitted to or from any device, which is in a prison”—vehicle—“or a vehicle used to transport prisoners may be intercepted...”

And that is, as I said before, balanced by what is provided in the proposed:

“6A (2) Notwithstanding any law to the contrary, communications”—shall not be— “subject to legal professional privilege...”—shall not be unless it takes place—

“(a) on a designated device; or

(b) in such places within the prison as may be specified by the Minister...”

In other words, unless the communication takes place on a designated device or in a place that is designated by the Minister by order, the communication will not be protected by legal professional privilege, and that is important. It is as I say a further whittling down of this legal professional privilege.

I know Sen. Sobers had spoken about the reference to rendering assistance under the Mutual Assistance in Criminal Matters legislation or giving effect to the provisions. I did not quite gather the point that he was making. I felt that the legislation was doing what it is supposed to do, what it is meant to do, to give effect to the undertakings that we have given in our mutual assistance agreements. I did not quite grasp the point he was making. But a lot of what was said by my

colleagues, I did not really grasp the point they were making, notwithstanding my best efforts. And towards the end, Madam President, you see the introduction of all safeguards because, of course, not everything that is intercepted could be intercepted without warrant. You have things that are going to be intercepted without warrant but you also have things that are set out in the Bill that are to be intercepted with warrants. And again, striking the balance and trying to preserve notwithstanding the need and the desire to be invasive to try to preserve some sort of process in which the existing rights are protected.

So, Madam President, I am very happy to have been able to be involved in first, the drafting of the Bill along with the AG and his team, to see the Bill make to the Parliament having been promised on our legislative agenda in 2015. And to see it reach to the point of this debate where it has enjoyed support from our colleagues on the Independent Bench. This is important legislation. I said it before, you know, you want us to be hard on crime but you want us to be soft on the criminals. Prison is not a place for foolishness. A lot of things are happening in the prison.

I will never get it out of my memory the thought of that little boy in Santa Cruz leaving his graduation. A little boy leaving his graduation with his mother, and somebody reaching there to execute her, and notwithstanding the graphic details published in the *Guardian* about the fact that that hit was called by a prisoner communicating with somebody on the outside, by a prisoner being visited by somebody frequently, I have seen nothing where anybody has dismissed that as something that is untruth. The *Guardian* carried it in graphic detail and it became clear to me, as a citizen of this country, that that is the truth of the matter, that that little boy leaving his graduation with his mom, lost her, at the hands of a prisoner who was able to call a hit from the prison. And if this legislation does one thing, it

protects some child, or some children or some family, because the prisoners— you have people in the prison, even when they get there, they would not change their ways.

It is just like even when the police breathalyze you outside CIC, you will still go to the other fete and “drink up ah storm” and exceed the limit, and then “cuss de police” for coming outside and breathalyzing you so that you could do the right thing. I thank you very much. [*Desk thumping*]

Madam President: Sen. Ameen.

Sen. Khadijah Ameen: Thank you very much, Madam President. I thank you for this opportunity to contribute to this debate on an Act to amend the Interception of Communications Act. Madam President, so many things have been discussed, so many different perspectives have been given. In my humble view, Madam President, the Members of this House will be called upon to vote based on conscience and based on patriotism. Patriotism is a devotion to and a vigorous support for one’s country. It takes courage to stand for what is right, what is fair, and what is good for country and not for individual. It takes courage to stand for truth and justice. And, Madam President, it is said that the cancer of authoritarianism gets into the veins and organs of society and it is not easy to get out. It can begin the collapse of a democracy. It can paralyze the political mechanism and dismantle fundamental human logic and, Madam President, I am afraid that that is what this Bill seeks to do, dismantle our democracy and cause that “autharian” that “authorit”—

Sen. Mark: Authoritarianism.

Sen. K. Ameen:—authoritarianism to seep in to governance and our society, and we must not allow that. [*Desk thumping*] We must stand firm against it. Madam President, this Government has absolutely failed in the war against crime. They

seek to abdicate their responsibility to the nation by blaming the Opposition and more recently, by the Prime Minister asking the people of this country who are victims of crime, not to judge his Government on their failure to deal with crime. In my humble view, Madam President, if I am permitted to say so, I think this Government has sought to mislead the Senate in this debate. The Members on the other side wanted to make us believe—

Madam President: Well, Sen. Ameen, actually that is not something that you should put in the way that you have, so I will ask you to withdraw and—

Sen. K. Ameen: Thank you, Madam President. Madam President, on listening to the Members on the other side, I got the impression that the Interception of Communications Bill was about intercepting communication from prison and prison vehicles in order to prevent and to solve crime and particular gang-related crime and murders. And that the invasion of privacy should not be a concern to those who have nothing to hide.

Madam President, the Minister of National Security indicated that, you know, this Bill was specifically to deal with communication from prison and I felt that that was misleading to me as a Member of this House. Madam President, we were told that the Bill would deal with telephone conversations and other forms of communication from prisoners to people outside of the prison, and it would deal with—would allow the authorities to intercept communication between attorneys and accused persons, as well as accused persons in prison, as well as accused persons who were not in prison. But this Bill also allows the interception of communication between two ordinary citizens. The interception of the communication of holders of public office. The interception of communication of journalists, social activists, and quite frankly anyone who disagrees with the Government could have their communication intercepted. This Bill is in fact a Bill

to allow the authorities to access text messages, phone calls, telephone calls, e-mails, WhatsApp, Instagram direct messages, Facebook Messenger, of every single citizen of this country.

Madam President, I felt sick to my stomach to hear two members on the other side refer to persons who lost their lives. Reference to a prison officer who was slain on the streets of our capital city, Port of Spain and reference to a lady who was leaving the graduation with her son, who was a state witness in a matter, in an ongoing matter who was gunned down in front of her son. And hearing—I am not aware that the matters surrounding the case has been determined. But I know that it would have been widely reported in the newspaper, but I do not think anyone of us here has the authority to indicate that it was actually—what the circumstances were. They are allegations and the trial is not completed.

But, Madam President, I listened to the speaker before me and one before that, condemning the heinous act, and I join with them in condemning the criminal who carried out the act, in condemning the criminals who took the life of the prison officer and that mother who was a state witness. Madam President, had the jammers been in use, that prison officer and that state witness could have been alive today. And the Government has to take responsibility for the loss of those lives. [*Desk thumping*]

Madam President, the Government has to take responsibility for the loss of control that is leading to increased criminal activities in this country. [*Desk thumping*] At present, murder is out of control, robberies and home invasions are on the rise, kidnapping and kidnapping for ransom in Trinidad and Tobago has returned. We were told that the Anti-Gang Act— the Attorney General had indicated that the Government or the authorities has the name of every gang leader, and that they can take them off the streets once that legislation was passed. We, the

people of Trinidad and Tobago, are still waiting and while we wait, we are being are terrorized and every day that this Government fails on the job, the people of Trinidad and Tobago are getting more and more desperate for a solution. And that desperation and that fear that is being created in the country, is what this Government is using to infringe on the rights of citizens.

Even in the face of the fear that we in this nation face, Madam President, we in this Parliament have a duty to vote to protect all the citizens of Trinidad and Tobago. Let us not be so desperate that our thinking becomes clouded, that we are willing to sacrifice our rights to allow our personal, private, and confidential communication of all types to be intercepted, to be accessed, and to be used against us at any time, whether it is now or in the future.

Madam President, as much as we say we can balance— the request and the permission we will give for that invasion of privacy in this Bill, based on the need and the violence we see in our society, it is very clear that the mechanisms for checks and balances and the political influence on the interception of communication in our present system leaves much to be desired. The protection of data, the protection of any data that could be intercepted, the protection of the identity of persons regardless of their walk of life, now hangs in the balance.

Madam President, in legal proceedings where the State is bringing action against a private citizen, or an entity, a company, any communication from parties involved in that matter can be intercepted and can serve whether—even if it is not used as evidence, can serve to inform the State and put the State at an unfair advantage. Madam President, my colleague, Sean Sobers spoke about attorney-client privilege. The trouble he as a practicing attorney had with the fact that a designated device— the communication there would be protected, but very often when he goes to see his clients. the designated area is not available, and he would

be directed to another area that by law will not be protected with this attorney-client privilege. So, Sen. the Hon. Clarence Rambharat who is an attorney but may not have the practice as Sen. Sobers in terms of dealing with clients of that type, may have a different perspective with regard to law and with regard to the practical aspect of the criminal justice system. So, Madam President, that is one area of concern.

Another area, Madam President, that we have seen played out is the likelihood of political mischief being created. Madam President, we have had—not now—we have had instances of spying brought forward, brought to the public. We have had political prosecution as far back as the 1970s which my brother, Taharqa Obika touched on and shared with us. We have had under a previous PNM Government, similar allegations. In the last few weeks, in fact, in the media, the Government has been accusing the Opposition of criminal involvement, insinuating that the Opposition was involved in murders in Port of Spain. A fact that has been disputed by the Commissioner of Police who has set the record straight that no such investigation exists.

Madam President: Sen. Ameen, let me caution you here. I do not think you should go down that path, okay? So, I think you should now move on to another aspect of your contribution.

Sen. K. Ameen: Madam President, I was referring to a newspaper article where the Commissioner was quoted. I just want to say that for the record, a newspaper article where the Commissioner of Police was quoted as saying that the police is not investigating members of the Opposition for any involvement in crime. [*Desk thumping*]

Madam President, national security is serious business. The Government has a responsibility to protect citizens. For any government, any government to use the

apparatus of state, whether it is intelligence, whether it is data, whatever information to target political opponents is reckless and dangerous, and it must never be condoned regardless of who does it. This country, Madam President, has seen the scandalous accusation of emailgate which turned out to be baseless. And now, we are seeing a narrative being put forward by the Government at a time when we are discussing the Interception of Communications Act, making allegations that Opposition Members are involved in crime and that too, Madam President, will prove to be baseless. And I think the population has already dismissed it because they do not trust the Government, and they have seen their modus operandi.

In my case, Madam President, I can tell you it is almost laughable. For the past few weeks I know the Minister has been making some allegations and earlier in this debate, the Minister of National Security made reference to a UNC Deputy Political Leader who I do not know is—

Madam President: Sen. Ameen, I am going to ask you not to deal with this issue in your contribution. I am going to ask you, I have just asked you before, move on to something else in your contribution, please?

Sen. K. Ameen: Yes. Madam President, the Minister said that in this debate, so I thought I could respond—

Madam President: Sen. Ameen—

Sen. K. Ameen:—because I am a Deputy Political Leader—

Madam President:—have a seat. Sen. Ameen, please have your seat. I am making a ruling here and I am making a ruling based on—I am making a ruling, I would ask you, please, to abide by the ruling, okay.

Sen. K. Ameen: Madam President, I just want to state for the record that in spite of allegations made in contributions, previous contributions here, as well as

allegations made elsewhere, I personally, I do not now or have I ever had any criminal association or any criminal involvement. [*Desk thumping*] For any person, any Minister to suggest, state, or insinuate otherwise, is to indicate a total fabrication and total untruth.

Madam President: Sen. Ameen, I am asking you once again to move on. And I am not going to ask you again.

Sen. K. Ameen: Thank you, Madam President. Madam President, also under attack will be journalism. For those in the business of exposing the truth, that will always offend those who wish to cover it up. [*Desk thumping*] Madam President, investigative journalism—

Hon. Al-Rawi: I rise on Standing Order 53(1)(b). All of these have been said umpteen times already. [*Interruption*]

Madam President: Sen. Obika, please do not start to go down that road, okay. The Attorney General has invoked a Standing Order as he is entitled to do, and I will make my ruling, okay. Sen. Ameen, please continue.

Sen. K. Ameen: Thank you, Madam President. Madam President, my concern with investigative journalism in Trinidad and Tobago and the risk that this Interception of Communications Act will pose. In this country we have seen over the years the development of investigative journalism as a field. There are certain persons who have developed a reputation as journalists who uncover all kinds of activities in public life, in private life, in government, and in fact, I am sure that some of those persons may have experienced intimidations and threats and threats to their lives. However, I am concerned that access to the conversations of these journalists would not only put them at risk but also their sources at risk.

The content of any communication intercepted can lead to approaches being made to induce them: money, bribes, maybe government houses, or government

jobs. Attempts to intimidate, to threaten the lives, the well-being, the livelihood of these persons. Attempts to harass, not only the journalist but the sources and their families, or, Madam President, you can see an attempt to defame that journalist and to undermine their credibility in the eyes of the nation, based on this new access that the authorities will have in this Interception of Communications Act. Whereas before, that privilege that journalists had with their sources would have been protected, it is no longer protected. That, Madam President, to me is very dangerous to our democracy as freedom of speech, and freedom of expression in journalism will be threatened.

Madam President, this Bill creates an offence. There is a fine for tipping off where information is obtained by the authorities, by those authorized to intercept the communication, and that I could understand. I agree that any person who is privy to confidential information should face a heavy penalty if they, in fact, tip off the person who is investigated. But, Madam President, I now want to raise the question, what about if the information is used not to tip off but if the information is misused or abused in any way, as we are seeing presently unfolding in this country? We must be grateful that as much as we in the Opposition and members of the public may disagree with how certain information is being treated with at present, that it allows us an opportunity to reflect. So we could very early see what would go wrong if a person who is privy to information is reckless and irresponsible. That person can be a member of the SSA, it could be the director, it could be a person in the Judiciary, it could be a Minister of Government, but Madam President, the abuse and misuse of this information should also carry a very heavy penalty.

7.10 p.m.

We must not forget, Madam President, that it was the PNM who was

exposed for spying via telephone on the Leader of the Opposition, on judges, on Members of the Opposition, on any persons who spoke out against them. I remember there was a female comedienne who is a talk show host and it was revealed that her phone was also tapped, and that is the extent the Government at the time went to interfere or to intercept the communication of any person who spoke against them. Where is that leading? Is that leading to dealing with criminal activity or is that leaning towards political prosecution and taking action against any person who speaks out against this Government? We must ask ourselves that and I do not think it is a hard answer to get.

Madam President, I also want to express concern with clause 15 where they would delete the word “criminal” and now allow these communications to be used as evidence in any proceedings. Madam President, several of my colleagues before would have expressed concern with that. I want to, for the sake of the citizens, indicate how far-reaching it can be. When there is an industrial dispute, when there is some issue with regard to employment and it goes to court, it goes to the Industrial Court, that is a matter that is not a criminal proceeding, that is not a criminal hearing, that communication that was intercepted, communication that was stored from either party can be used against you, the citizen.

If you end up before the court with regard to a property dispute, if there is a constitutional matter, if there is some judicial review matter, if you as a citizen sue the State for negligence or any wrongdoing, if you have cause to sue the State for a breach of contract, any of these actions if it ends up with a legal proceeding, interception, your communication, whether it be by email, text message, phone call, could be used against you. So to tell the population that this Bill is about dealing with criminals and reducing crime and dealing with gang violence and communication in prison is misleading.

I want to plead with Trinidad and Tobago, do not be held to ransom. This Government has refused to implement key measures to fight crime. They come and they talk as though they are sympathetic with those who have lost their lives. They condemn those who would have called the hit and those who pulled the trigger, but by refusing to use the jammers in the prison to prevent the communication that gives the direction to end those people's lives, you pulled the trigger on those people, you are responsible. Madam President, this—

Madam President: Sen. Ameen, in addition to using somewhat inflammatory language you are now starting to go back to parts of your contribution that you had delivered earlier, so I would ask you to move on, please.

Sen. K. Ameen: Madam President, no part of this Bill changes the law that makes the possession of a mobile phone, an electronic device, or a camera in prison illegal. The Government seems to be indicating from the contributions of several speakers on the other side that instead of preventing these communications with persons in prison, they find it useful to monitor these conversations instead and to use whatever information or intelligence it gathers in the hope of solving cases, cracking criminal rings and putting more prisoners behind bars. But it is also putting prison officers and others at risk and the legal minds will have to tell us, and I suspect, Madam President, that we will see it tested.

What is the legality of using evidence obtained from an illegal act? If communicating on an electronic device, a cell phone is illegal, is not permitted; if the possession of that very device is not permitted and the Government wants to allow an illegal act to continue so that they can get evidence, I am concerned about the danger they are exposing all of us to. So my friends in the Opposition, on the Independent Bench and in the public, the Members of the Government have already predictably all supported, expressed support for the Bill. We must be

guardians of the rights of our citizens. We must be devoted to a vigorous support for our country. We must stand for what is right and fair and good for country and not for individual. I am a patriot of Trinidad and Tobago and I cannot support the erosion of the rights of the citizens of Trinidad and Tobago. [*Desk thumping*]

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

Madam President: Sen. Thompson-Ahye. [*Desk thumping*]

Sen. Hazel Thompson-Ahye: Thank you, Madam President, for the opportunity to say just a few words. I have heard it said here that the Bill is dangerous. I agree, it is dangerous, but I will say that we live in dangerous times and amongst dangerous people. I heard it was intrusive. It is intrusive but we are living with desperate situations which require desperate remedies. I was really surprised that there are so many other jurisdictions that have this type of legislation. It should not be because in this world it really is a global village, there is so much that is going on that is criminal and that is so common to so many of us. So I looked near and far and one legislation that I found useful that was not included, because they are very few that were included with the Bill Essentials and I found the Interception of Communications Act, Bill of the same name, from Zimbabwe and I found it was useful for the few things I wanted to say.

When I looked at clause—now, it is nine in one Bill and it is eight in the other Bill, so perhaps we can term it in the consolidated version nine, the one that deals with the amendment of section 8, and it deals with the circumstances for the grant of the warrant, and I found in the Zimbabwe Bill eight different circumstances and I would like to commend those circumstances to the Attorney General, many of which are repeated in our particular Bill. But one I would like him to look at, and I do not think it is replicated in our Bill, is that the application shall contain the following information, one of which is:

“The basis for believing that communication relating to the ground on which the application is made will be obtained through the interception;”

When you look at the various guidelines I note that they are rather bare in terms of what you have to state to the court to move the court to make a decision in your favour so that you can say a number of things but the basis on which that communication is made, the fact that you make a positive statement it does not seem to be there. And I see the Attorney General looking through frantically and he is probably saying like Shylock, it is not in the Bill. So look at that. And the other thing I saw is that in the process there was an appeal. Now, you may say there is always a right of appeal in law, but this is actually written into the legislation, appeal to some administrative tribunal, maybe in the nature of a judicial review and it is a one-month if you agree by the warrant that you can appeal to the court within one month of being notified or becoming aware of it as the case may be. So at what stage, you know, you can appeal? Perhaps the Attorney General could look at that and see if something could be put in there.

Now, one provision that occurs again and again is the review of the exercise of the power and it is almost identical in the legislation that we have generally, the review, but in this case, in the Zimbabwe legislation—in our legislation the review is done by Parliament and in Zimbabwe legislation the review is done by the Attorney General. So the decision, the actions, and so on, is by the Minister who is in charge of National Security. I know there might be a bit of uneasiness if you have a provision to say, “Well, look, before we bring it to the Parliament perhaps what can happen is that the Attorney General can look at the legislation and at the end of the calendar year and see whether, you know, the exercise of the powers was done in a proper way and what recommendations can be made and the Minister shall comply with those recommendations.”

So those are the few things that I saw that may improve the legislation. I know one does not like to go back to the drawing board, but it may be useful to have another look at it and see how we can improve it so that we can make people a little happier. Nobody is going to be happy with this legislation, very few people, but unless you are on the—I do not want to say, the right side of the law, but we do not like to see people's rights being whittled away, [*Desk thumping*] but one recognizes—I had not finished—then you would understand that there are times when it is necessary. So now you can stand, now you can hit the table. [*Desk thumping*] Sometime it is necessary to whittle down one's rights in the interest of the society and in the interest of good governance. Thank you, Madam President. [*Desk thumping*]

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

Sen. Wade Mark: Thank you very much, Madam President. Madam President, the Bill that is before us serves to erode, severely erode the citizens' fundamental human rights and freedoms and threatens in its current incarnation to completely and fundamentally remove privacy interests. Now this is being advanced, Madam President, purportedly on the ground of fighting crime and addressing national security. Maybe, Madam President, it is also, or it has been said, I should say, that the road to hell is sometimes paved with good intentions. Madam President, if this Bill were ever to become law it would eviscerate privacy, rights and it would humiliate the individual, and this is a typical technique that has been used by the Nazis in Germany under Adolf Hitler. It is what can lead to what I would like to describe, Madam President, as a move towards a totalitarian state.

Madam President, that is at stake in this piece of legislation is what I would like to describe as the mass or bulk interception of private information and communication. That is what is at stake in T&T, and I am so happy that we have in

Trinidad and Tobago today the United National Congress. [*Desk thumping*] It is only the United National Congress that can stop this Government in its tracks. [*Desk thumping*] You may get your support here tonight, but I want to tell you tonight, this evening, the United National Congress, Madam President, will never undermine and agree to legislation that will establish what I would like to describe as a Gestapo-Nazi political arrangement in Trinidad and Tobago. [*Desk thumping*] We will never ever do that. We will die first than to have that ever established.

So I want, Madam President, to invite you to understand, a lot of points have been made, and I will demonstrate in my contribution, absolutely no safeguards have been established in the legislation. Madam President, may I tell you where this Government extracted and what inspiration for most of the provisions that we have in this piece of legislation? Madam President, it came from the Investigatory Powers Act of the United Kingdom of 2016, and before that it came from something called the Regulation of Investigatory Powers of 2000, and the parent to this is called the Interception of Communications Act of the United Kingdom. But, Madam President, I would demonstrate a little later on in my contribution the amount of safeguards and oversight mechanisms that are established in these pieces of legislation to protect the rights and freedoms of the people of the United Kingdom against arbitrariness and against abuse of power by anyone within that society, and particularly officials.

So, Madam President, the Bill in its current form is absolutely far-reaching, sweeping, dangerous, intrusive, draconian and invasive. [*Desk thumping*] And, Madam President, I will invite you to join with me to look at our Constitution, the sacred document that governs Trinidad and Tobago as a nation. Madam President, I will demonstrate in the various clauses of this Bill where this piece of legislation violates the section 4(a), that is the enjoyment of property of the individual. It

violates section 4(b), equality and protection before the law. It violates the right of the individual to respect for his private and family life, Madam President. It violates the freedom of thought and expression, and it violates the freedom of the press. Madam President, not only does it stop there in its violation, what it does as well it actually deprives a person under section 5(2)(e) to a fair hearing in accordance with the principles of fundamental justice in our country. Madam President, it also deprives a person or denies a person to a fair and public hearing by an independent and impartial tribunal.

Madam President, it does not stop there. The inequality, or I should say, the equality of the arms of the prosecution and the defence have been breached. So what we have in the legislation today, Madam President, is the prosecution being given an unequal status as it relates to the adversarial system that we have in the justice arrangement in T&T. Madam President, this legislation, I will show you and I will demonstrate how it violates the separation of powers where we are legislating and directing the Judiciary to do what we know it ought not to be asked to do, and as I said, Madam President, absolutely no safeguard. Madam President, we have before us this evening a piece of legislation that when you examine it very carefully you will see where, initially before the amendments arrive here today, new sets of amendments, there was no role outlined for the magistrate; there was no role outlined for the constable; there was no role outlined for the Commissioner of Police; there was no role outlined for the attorney-at-law defending his client, but in today's amendment these elements have now be introduced, Madam President. What the Government is seeking to do, Madam President, is to engage in what I would like to describe as mass interception of communication in Trinidad and Tobago.

Madam President, that is only associated, as you know, with states and

governments that has no respect for fundamental human rights and fundamental freedoms, and you have a Government in its dying moments—the Government in its dying moments comes to Parliament so that we can give them a lifeline. [*Desk thumping*] You want us in the Opposition to support legislation that will compromise the rights and freedoms of every citizen of our country and to allow any police constable to interfere and intercept and invade my private spaces, to listen to every conversation I am having on my telephone or snatch my messages that I am sending via email without a warrant, without any judicial oversight?

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

Mr. Attorney General, I want to tell you tonight and this evening, this Bill, Mr. Vice-President, is not only deceptive and insidious, this Bill is deliberately calculated to undermine the fabric of our democracy. That is the intention of this Government.

Hon. Al-Rawi: I rise on Standing Order 53(1)(b).

Mr. Vice-President: Sen. Mark, just in terms of the descriptive language which is what I have heard at the beginning of your contribution, it is now more than 10 minutes in, just rein that in and continue along.

Sen. W. Mark: Yes. Mr. Vice-President, I want to indicate to you and to this honourable Senate that when we are dealing with legislation that is designed to handcuff, kidnap, incarcerate the citizens of this country we will not support it. We will not give life to this Government.

Mr. Vice-President, let me invite you to understand what we are saying here this evening. I want you to go to the definition section of the legislation to understand the danger that this Government poses. The PNM in its present manifestation, Mr. Vice-President, poses a clear and present danger to our democracy in this country. [*Desk thumping*] They pose a danger. Mr.

Vice-President, hear what this Government is proposing in legislation; hear how they described “stored communication” in the definition section:

It—“means any communication or communications data which has been”

—Mr. Vice-President —

“...which has been transmitted...”

Not “to be transmitted”, you know, Mr. Vice-President:

“...which has been transmitted...”

So what this Government is saying, Mr. Vice-President, communication data which has been transmitted by a telecommunication network and it is stored on any facility capable of retaining—

Hon. Al-Rawi: Mr. Vice-President, I rise on Standing Order—

Sen. W. Mark:—such communication or communications data.

Hon. Al-Rawi: I rise on Standing Order 53(1)(b), this is tedious reputation. This was the full submission of Sen. Sturge.

Mr. Vice-President: Senators, by now in relation to Bills that are engaging the attention of the Chamber would understand that the lower down in the order that you are to speak, as much as you are entitled to does become increasingly difficult as you are making a contribution and fall prey to repeating some of the comments that have gone before. Sen. Mark, I would rule that that is what is occurring here, and if you have anything new to bring at the argument at this point in time, I do invite you do to so. [*Crosstalk*] Sen. Mark. [*Crosstalk*]

Sen. W. Mark: I am not repeating, Sir.

Mr. Vice-President: So we know the procedure.

Sen. W. Mark: Okay.

Mr. Vice-President: Continue.

7.40 p.m.

What the Government is seeking to do is to access retroactively all your private information and communication in order for them to build a case. A case, Mr. Vice-President, against your good self or against someone else. What we are saying, a legislation ought never to be designed to be retroactive in nature because as you know, an individual when charged is not guilty. It is only when he goes to trial and evidence is proffered and a decision is arrived at, then the person can be found by a jury of his peers to be guilty or not guilty. When someone is charged, you charge them on the basis of evidence. You cannot charge somebody without evidence.

But what the legislation is saying is once you are charged and the evidence at the level of the trial has not begun, then interception of your communication can now commence.

Hon. Al-Rawi: Mr. Vice-President, I rise on Standing Order 53(1)(b). Sen. Sturge gave us all of that. He called it “insidious”. This is really a complete rehash of what we have heard already, most respectfully for your consideration.

Mr. Vice-President: Again, Sen. Mark, I am advising. The commentary in relation to the retroactivity to which you are speaking was indeed and in fact heard before. Therefore, the Standing Order raised in relation to tedious repetition does hold. So I am going to ask you once again, as you are going forward, please bring forward any points you may have that are new to the debate at this juncture. Continue.

Sen. Mark: Mr. Vice-President, I know the Attorney General is anxious to wind up this debate, so hence his interest in interrupting my contribution. [*Desk thumping*]

Mr. Vice-President, now that you have given me an opportunity to raise

some additional points, I want to go to the contribution made by Sen. Clarence Rambharat. He said that on the legislative agenda of the Government, the Interception of Communications Bill was stated for the session or period 2015 to 2017. Therefore, it has now arrived, and the hon. Senator said he was very happy to be associated with this piece of legislation he helped draft.

Mr. Vice-President, I got in my mailbox a piece of legislation called the Interception of Communications (Amdt.) Bill, 2018. This is not the Bill that is before you, Sir. This was the Bill that was sent out in 2018. And I looked at this Bill carefully that I got in my mailbox, and nowhere in that Bill was any mention made of any prisoners, or intervening from a telecommunication perspective or from an interceptive perspective, prisoners' conversations, whether they are in prison or they are out of prison. Nowhere in this 2018 legislation that was sent out by the Office of the Attorney General did the Attorney General indicate in this legislation that he was going to introduce civil proceedings as it relates to interception, evidence, admission, at the level of matters of a civil nature or any other proceedings. That was in 2018, Mr. Vice-President.

Hon. Al-Rawi: Mr. Vice-President, I rise on Standing Order 46(1). Whatever the hon. Senator is referring to is not before this House, nor can any of us speak to it, therefore it is directly in part of relevance, and I therefore challenge on the ground of relevance.

Sen. W. Mark: You cannot get up and give this long thing. Mr. Vice-President, the Attorney General either gets up and says so and so, and sits down. He cannot be getting up here and talking things like—[*Desk thumping*] He cannot be talking. He cannot be.

Mr. Vice-President: Sen. Mark, you have brought up the fact that you received a Bill prior, and I assume there is some connection to what is before us now. What I

am going to ask you to do is to make that connection, if you are doing so, now. You do not need to explain anything that was there before, because we are not debating the 2018 Bill.

Sen. W. Mark: I am not debating the Bill, Sir. Give me a chance.

Mr. Vice-President: Sen. Mark, continue.

Sen. W. Mark: Mr. Vice-President, what I am simply saying is that this Bill—

PROCEDURAL MOTION

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Mr. Vice-President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand, inclusive of the matters on the adjournment.

Question put and agreed to.

INTERCEPTION OF COMMUNICATIONS (AMDT.) BILL, 2020

Sen. W. Mark: I am asking the Attorney General if he is aware of this 2018 Bill.

[Hon. Al-Rawi rises]

No, not now. You will get up—when I get up, you sit. So, Mr. Vice-President, I am asking where the changes came from. Who did he consult to bring all these changes? Because in the 2018 Bill he did not have these things. The prisoners were not there. So where did this come from? Only criminal proceedings were included, civil were not there. Where did it come from? The Attorney General has to answer that.

Mr. Vice-President, when we come to the whole question of the rights of the citizens, we have in the legislation that is before us, it is the Interception of Communications Bill, 2020, which is amending the parent Act, we are being told that the Bill is designed to fight crime and to deal with serious crime and to deal with complex crime. I have in my possession the 2017 Annual Report of the

Interception of Communications Act which was laid today in this honourable House. We are seeing where the evidence before us is showing the opposite. We are seeing where the Government is trying to present a fig leaf to cover something in order to achieve a particular objective.

So here it is we have before us Table B on page 12, headed “Director of Strategic Services”, and we are seeing where 163 warrants were issued to the Director of Strategic Services Agency. Out of 163 warrants that were issued, you know how many mobile cellular calls they were able to listen to, with these 163 warrants? Mr. Vice-President, 972,232, almost one million intercepts. This is in 2017, you know. So almost one million telephone mobile conversations were intercepted with 163 warrants. We do not know how many individuals are involved because that is not given here. One warrant might have 10 individuals. We do not know.

So, in addition, the Commissioner of Police requested and got the SSA to intercept 551,466 mobile cellular conversations in Trinidad and Tobago. That was in 2017. In terms of data, your email, they are able to extract 348,602 data, they pulled from your system in 2017. And for the CoP, that is the Commissioner of Police, 35,080. When you add up it is almost 1.4 million interceptions in 2017, and this is before this Bill arrived here.

So what I am saying to you, Mr. Vice-President, when you look at, for instance, the number of persons arrested whose identity became known to the authorized officer, five. When you look at the number of criminal proceedings commenced by the State in which private communications obtained by interception under a warrant were adduced, nil. So the question that we have to ask is whether we look at 2016 or we look at 2017, we are seeing where the Government is intervening through an agency called the SSS, whose Director is politically

appointed, not independent. He is not independent, he is appointed by the Minister of National Security, and that is why we as a nation have to be concerned. When you put so much power into the hands of these people, what is going to happen to the rights and freedoms of our citizens?

There are so many cases internationally that deal with invasion, intrusion and abuse by overzealous officials. That is why in places like the United Kingdom there have been established a lot of safeguards in order to protect the rights and freedoms of the citizens from abuse.

They want us to give them a blank cheque without any safeguards. Under the parent legislation, warranted, a judge; unwarranted, intelligence.

Mr. Vice-President: So, Sen. Mark, at this point in your contribution that exact statement has been made before. The argument in relation to warranted and unwarranted—

Sen. W. Mark: You are intervening before—

Mr. Vice-President: Sen. Mark. We all have been here all day, and we all have heard the contributions that have gone before. We have heard certain words and statements being made repeatedly along the lines of what you are saying now. At this juncture and at this hour what I am looking for are new arguments.

Sen. W. Mark: I draw to your attention, it is said that in a democracy the Government will always have its way, but the Opposition must have its say. [*Desk thumping*] That is what democracy means. But anyway, I will be guided by your statement, Sir.

Mr. Vice-President, let me go to what no one has spoken about and I hope that I get my freedom to do what I have to do. I go to the amendments, and I want to ask the Attorney General of this country, 28, page 9 of the amendments I have before me, it reads:

“The Indictable Offences (Preliminary Enquiry) Act is amended by inserting after section 5 the following...”—and it is stated what is proposed.

I thought that in Act No. 20 of 2011, which has been assented to and which has been partially proclaimed, I thought I read something called an Act to repeal and replace the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01. So I want to know why the Attorney General—because under 33(1) of this Act 20 of 2011, a decision in writing to repeal that Act is taken, is outlined. So why if the intention is to repeal the law, the Attorney General has come to this Parliament to amend the law? I would like the Attorney General to explain to us, because I have Act No. 20 of 2011, which says we are repealing, and we have repealed this Act called the Indictable Offences (Preliminary Enquiry) Act. But here in the legislation we are being told in these amendments this Act has now been given new life. Something that is dead, that we have repealed, is now given new life. So I want to know if the Attorney General could explain this magic for us this evening. We want answers.

Mr. Vice-President, we also would like to know why is the Minister—and I guess the Minister of National Security—is being given the power in accordance with the amendment here on page 10 to direct:

“...such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made.”

Why is the Minister inserted in this legislation? That is the first thing. Why is he inserted in this legislation?

The second thing I am asking, when you talk about mutual agreements it could be criminal or it could be of a tax nature. In this legislation that we are proposing to amend there is no mention of criminal. So is it tax, and why is the

Minister involved in this? Mr. Vice-President, I see not even the Commissioner of Police has escaped. The Commissioner of Police is now under surveillance by the Government of this country. And it is the first time I have seen in legislation where the Commissioner of Police is being told do not do this, do not do that, and if you do it, \$300,000 or five years in jail. Where is this thing coming from?

So in other words, the system that is being established here under this dictatorial regime called the “PNM” under the Dr. Rowley Administration, you know what is being established here? Not even you shall escape; none of them shall escape. Because if the Commissioner of Police who is responsible for law and order is now under the surveillance of the PNM, can you imagine? It is right here. I do not have to spend too much time on it.

What this is saying is that:

“A constable shall not disclose any communications data or stored communication obtained pursuant to this section, except-

(a) to the Commissioner...”

Fine, no problem. But they go on to say:

“(d) for the purposes...”

(7) The Commissioner of Police shall not disclose any communications data or stored communication obtained pursuant to this section, except-

(a) in connection with...his duties;”

Well, that is obvious. Why are you putting into legislation a provision to tell the Commissioner of Police that if he does this, he is going to end up in jail for five years or \$300,000 or both? I am accusing the Government of Trinidad and Tobago of establishing a mass surveillance, “macoing” mechanism, to spy on every citizen in this country including the Commissioner of Police. [*Desk thumping*] That is

what I am accusing the Government of this evening.

Mr. Vice-President, I know that my time is rushing on, but I want to tell you as I have a few seconds again to wind up, I remember a very famous song in my youthful days, “Born to Shine”. You know, when I listen to that song and I look at the reality of our country at times, I come to the conclusion that there are people who seem not to be born to shine, but they are born to “tief”. Some of “dem” born to lie.

Sen. Ameen: “It fall in yuh garden.”

Sen. W. Mark: And some of them are born to deceive—some of them. But as Sam Cooke said in his famous song of ’63—Mr. Vice-President, if you remember that, I guess you were not born yet, I was—and I could tell you Sam Cooke gave us a famous song, and I keep playing it at times, “A Change is Gonna Come”. [*Desk thumping*] A change is going to come. I want the Attorney General to understand that, because the law that you pass today or you seek to pass today will come to haunt you. [*Desk thumping*] I want to tell you, if the United National Congress was on that side and they were on this side, and we had introduced this piece of legislation, section 34 would have been a joke in terms of how they would have mobilized the country against the UNC.

Sen. Ameen: “You self would have objected to this!”

Sen. W. Mark: But you come in 2020 with this piece of draconian legislation, and want us to support it? Mr. Vice-President, I want to tell you, in the dying days of this Government they will not get any support. In fact, I want to serve notice on you all, all of you, we will not cooperate with you any longer.

Mr. Vice-President: Senator, your time is up.

Sen. W. Mark: We will isolate you.

Mr. Vice-President: Senator, your time is up.

The Attorney General (Hon. Faris Al-Rawi): Mr. Vice-President, I thank you for this opportunity—[*Crosstalk*]

Mr. Vice-President: Okay, could we allow the Attorney General to begin his wrap up? Attorney General, continue please.

Hon. F. Al-Rawi: Thank you, Mr. Vice-President. Today was a day of interesting positions. We have been two days at this legislation over the course of several weeks. We started our journey on the consideration of this law on Tuesday the 11th of February, 2020. We are now Tuesday the 3rd of March, 2020. Indeed, we saw significant consideration by Members of the Independent Bench. I wish to thank them wholeheartedly for the contributions made. I think that there were some fulminations that bring us somewhat closer to first of all identifying issues which need to be ventilated somewhat more, so that we can satisfy the concerns that hon. Members have raised. I think that we have also had a consideration of certain amendments that we ought to take, not necessarily in this law, but also in other laws, for instance the telecommunications authority legislation and certainly in subsidiary legislation, including Rules of the Supreme Court. That somewhat fits into the first point that I made of the need to ventilate some of the concerns.

Certainly Independent Senators raised a number of questions which have to be answered.

On the Opposition Bench I think that Sen. Mark's contribution pretty much encapsulated the concerns of the Opposition. They, put quite simply are, an allegation that this law is unconstitutional, an allegation that this law targets the media and other persons in Trinidad and Tobago in a dangerous and draconian way, an allegation that this law is not for the peace, order and good governance of Trinidad and Tobago.

Indeed, we saw the return of Sen. Wayne Sturge, as fundamentally ill-

prepared today as he has been in the past on certain of the laws that he came to contribute on. [*Desk thumping*] But, I do not mean that in any way other than—

Sen. Obika: Standing Order 46(4). That type of speaking is offensive.

Mr. Vice-President: Okay, Sen. Obika. Continue, Attorney General.

Hon. F. Al-Rawi: It was certainly very offensive to listen to a contribution from a very ill-prepared Senator, but I will get to that in terms of the response given by Sen. Sturge.

Sen. Obika: Mr. Vice-President, the Attorney General has repeated the claim. He is out of place in that regard.

Mr. Vice-President: Sen. Obika, can I bring this House to order. You are raising the Standing Order again and I am again allowing the Attorney General to continue. Continue, Attorney General.

Hon. F. Al-Rawi: Thank you. Permit me, Mr. Vice-President, to go through some of the concerns raised. Perhaps if you would permit me to address it in somewhat the order that was given by hon. Members in contribution over the two days, but let me begin by first of all stating what this law is and what this law is not intended to be. So let us start with what this law is.

Mr. Vice-President, for the record, interception of communication by the State, the Government of the Republic of Trinidad and Tobago in its executive form via the SSA, has been a feature of this country's factual matrix since the early '90s. It was Prime Minister Basdeo Panday and Attorney General Ramesh Lawrence Maharaj that purchased the first intercept suites for the SSA. In fact, the history of this country will demonstrate that the interceptions by the UNC, under the SSA managed by the UNC, that involved a stand-off between Prime Minister Basdeo Panday and Attorney General Ramesh Lawrence Maharaj. That cross-interception that was going on between a UNC Attorney General and a UNC Prime

Minister was all over the circumstance of the Piarco Airport enquiry. So significant was the position that Mrs. Persad-Bissessar was made Attorney General for a month.

Sen. Obika: I want to rise on Standing Order 46(1). This is totally irrelevant to the matter that we are debating today.

Mr. Vice-President: Continue, Attorney General.

Hon. F. Al-Rawi: In watching the allegation coming from Sen. Sobers on the first day, that the PNM is to be watched in a particular way, and Sen. Saddam Hosein raised it, made an allegation that the history of this country, and I want to address this directly, Sen. Hosein's submission was that the PNM Government was engaged in spying. The hon. Senator referred to the *Hansard* debates in December 2010, where an allegation was made and it was repeated today again by the Opposition Members, that supposedly a President was intercepted, politicians were intercepted, et cetera.

I want to put on record, that interception of communication by the executive, the SSA, was something which started under a UNC administration. I can tell you as Attorney General of the Republic of Trinidad and Tobago, that the officer in charge of the SSA that delivered files to Mrs. Persad-Bissessar's home in December 2010, has certified that what has been said by Prime Minister Kamla Persad-Bissessar, the Member for Siparia in December 2010, is untrue. [Interruption] I am putting that on the record of this Parliament, Mr. Vice-President.

Sen. Obika: Mr. Vice-President. Mr. Vice-President! The Attorney General is out of order.

Hon. F. Al-Rawi: Mr. Vice-President, I am not going to—

Sen. Obika: How can you sit in front of this House and say—[Crosstalk] He must

correct himself. He must apologize.

Sen. Mark: Totally untrue. You cannot be accusing somebody in their absence.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Where is the evidence?

Sen. Gopee-Scoon: Where is the Standing Order?

Hon. F. Al-Rawi: No Standing Order.

Sen. Ameen: Mr. Vice-President—[*Interruption*]

Sen. Mark: Mr. Vice-President, 46(6). What you have with Kamla? [*Crosstalk*]

Mr. Vice-President: Members! Members! I am on my legs. This Chamber will fall to silence, now! This method that has been adopted in terms of raising Standings Orders, where several Members are raising Standing Orders and shouting across the floor at each other is not the way it is done. The Standing Orders raised in relation to what the Attorney General is saying, do not apply. Continue, Attorney General. [*Desk thumping*]

8.10 p.m.

Hon. F. Al-Rawi: Mr. Vice-President—

Sen. Obika: I rise on Standing Order 46(6).

Mr. Vice-President: Sen. Obika—

Sen. Obika: It is imputing improper motives—[*Crosstalk*]

Mr. Vice-President: Okay. So, I am going to suspend because it is obvious that my rulings are not being taken seriously therefore I will suspend the sitting for 10 minutes. We will return at 8.20 p.m.

8.11 p.m.: *Sitting suspended.*

8.20 p.m.: *Sitting resumed.*

Mr. Vice-President: Hon. Members, let me be absolutely clear. The Standing Orders and the procedure as set up in this Chamber are there for a reason, they are

to be followed. At this point I will just draw Members' attention to Standing Order 52(2) and Standing Order 53 in its entirety. Let me just say that as much as it is the right of every Member to raise on a point of order, there is a way to do so and that must be followed. Anything outside of that is going to lead to chaos. Let this be the last time it happens. Attorney General.

Hon. F. Al-Rawi: Thank you, Mr. Vice-President. Mr. Vice-President, I was dealing with responses to the submissions of hon. Senators and I have made a few submissions so far. Permit me to continue with what I was saying which is what this Bill is and what this Bill is not.

Mr. Vice-President, in dealing with the history of this legislation, it is important to note that in December 2015 when this law came into effect, it was passed on the 3rd of December, 2010, forgive me, on the 17th of December, 2010, there were certain amendments which followed on December 20, 2010, so there were three rounds of consideration in 2010. This law brought into effect, Mr. Vice-President, the ability on a statutory regime basis to control the interception of communication.

Now, Mr. Vice-President, it was said and hon. Members asked a question, Opposition Members asked a question about, well rather they made an allegation that you cannot have an illegal act permit a lawful thing. And they were saying if a cell phone is deemed to be a prohibited article under the Prisons Act, that possession of a cell phone is an illegal thing, and that intercepting the illegal thing is in and of itself something which is not permissible. That, Mr. Vice-President, is entirely the opposite of the law of the Republic of Trinidad and Tobago.

I wish to put on record that it is trite law coming out of the case of *R v Sang*, that is, 1980 appeal cases 402 that the decision of the courts put in this, that in absence of statutory provision to the contrary, irrelevant to the admissibility of

evidence is the manner in which it was obtained. So effectively, it matters not how you got evidence, whether evidence was obtained illegally even, evidence as a matter of law is a matter for the judge to consider in the context of admissibility. So the submissions coming from hon. Senators opposite are, in fact, flying in the face of settled law in this jurisdiction and throughout the Commonwealth.

Mr. Vice-President, it is material to note that the interception of communication right now is done in two ways. First of all, interception of communication in the context of the law is only to be an offence if you are intercepting communications over a telecommunications network. Let me make this clear. Intercepting communication via listening referred to as eavesdropping, bugging or recording, that is not the concept captured under the Interception of Communications Bill. Let me repeat that. The Interception of Communications Bill only makes it unlawful to intercept communication which is going over a telecommunications network.

It is important to bear that in mind because the law, if you have a warrant to intercept in section 8 of the parent Act, allows you to intercept telecommunications over the network, and if you go on the basis of a section 6(2)(b) intercept that is unwarranted, you can intercept anything that is over a telecommunications network. And therefore, to listen to Sen. Mark and the entire Opposition Bench say that this law is doing something, this Bill is doing something which is draconian is entirely and most respectfully nonsensical, because the existing law in section 6(2)(b) allows everyone to be intercepted, media, personalities, politicians, anyone.

So how could it be that Sen. Mark's submission could find any favour, Sen. Hosein's submission, Sen. Ameen's submission, for them to say respectfully, these hon. Senators, that this law is exposing the media to some draconian position, this law will intercept and condemn the rights of freedom of the press, is a nonsense to

make that submission, Mr. Vice-President.

And I therefore, answer Sen. Richards' concern as to the protection of the media to say, the media in this particular existing law is already intercepted under section 6(2)(b). It can be done for national security purposes, for breaches of the Bill, et cetera. What we are doing today, hon. Senators, we are making the existing law constitutionally stronger. Let me explain what I mean by that.

The submission in the Bill that is most relevant to Independent Senators' minds here today, because the Opposition has said they are not supporting, so I am speaking respectfully to the Independent Bench. What is critical in this Bill is treating with the admissibility of evidence. Right now, the existing law can potentially be challenged as being unconstitutional. What do I mean by that? The potential challenge to constitutionality comes from an ouster of the court's jurisdiction.

When we deal with the admissibility of evidence in section 17 of the existing law, section 17 of the existing law tells us in mandatory language that both for section 17 and for section 19 the law actually says that "the evidence shall be admissible". The law actually also says that you cannot get, mandatorily cannot get the sensitive information. Let me break this down. The existing law section 17, section 19 does not allow a court to consider whether the evidence ought to be admitted or not. It just says to the court you, Mr. Judge, you accused before the court, you have no right to actually consider whether this evidence can be admitted or not, you must admit it; that is dangerous, hon. Senators.

So what this Government comes to do today, it does not come to intrude upon the rights of the media; that was done in 2010. In 2010, the UNC and the Parliament with the PNM support and the Independent support, we allowed the media to be intercepted in 2010; fact, section 6(2)(b).

What we have come now as a result of the learning and experience over 10 years of using this law, is we are saying to this country, we need to preserve this law. We need to ensure that if there is a constitutional challenge to this law that law does not fall. Why?—because there are cases before the courts where this issue can arise potentially, this is of general application. The last thing that we want to see happen in this country is to see people who are accused and who the State believes are guilty of serious offences from murder come down, walk free. Which one of us here would want to see the law collapse on ground of lacking constitutionality? And therefore, what we propose today in the amendments to section 17, the amendment to section 19 of the Act, the inclusion of a new section 17A, we introduce for the first time that a judge of the High Court shall be the only entity to consider admissibility of evidence in every circumstance. What could be offensive to the Opposition, hon. Senators? Why would an Opposition claiming to be patriotic, as Sen. Ameen has, want to interrupt a move towards constitutional?

Sen. Mark: We do not trust you.

Hon. F. Al-Rawi: And, Mr. Vice-President, that is why in the amendments that we have circulated we are looking at this concept of preserving constitutionality for those matters that are considered in the whole of section 6, whether it was with expressed consent that you were intercepted, whether it was with implied consent, whether it was for national security, whether it was for the discovery of a crime, whether it is in a prison, we want to ensure that a judge is always the arbiter for the admissibility of evidence. Let us cut a finer point on that.

We say that it would almost be impossible to admit intercepted evidence if we do not do this as a matter of law. Why? How can you admit evidence if you do not know the maker of the evidence is, when it was produced, the state and condition of the device that was used, it was in good and proper order, you have to,

if you want to admit evidence other than by accepting the hearsay exceptions and rules, you have to lead the evidence into admissibility, and this is what this law does as a matter of law, hon. Senators. I therefore ask you to ignore submissions of the Opposition Bench because, Mr. Vice-President, it is in the face of constitutionality that we bring this amendment.

Sen. Mark: That is old talk.

Hon. F. Al-Rawi: Mr. Vice-President, I am not here to educate Sen. Mark on the law, I am here to make submissions on the law. Mr. Vice-President, let us get to another point. There was a song and dance, hopping and screaming, bawling and wailing, gnashing of teeth over the concept of “stored communication” and “stored data”. So what does this Bill propose? This Bill proposes a number of things in relation to that. First of all, we acknowledge that the existing laws of the Republic of Trinidad and Tobago allow for access via the courts of Trinidad and Tobago to stored communication, and to stored data. Let me explain that.

A cell phone that has information on it, the existing law of Trinidad and Tobago, the Preliminary Enquiry Act section 5, the Proceeds of Crime Act section 32 and section 33 and, in fact, the entire civil law regime Norwich Pharmacal orders, Anton Piller orders, the general powers and provisions under section 242 and section 245 of the Companies Act, all of them permit a court to order data to be accessed, historic data.

Today, the Opposition arrives to rewrite the laws of the Republic of Trinidad and Tobago to that that does not happen. That is not true, this is trite law, and I am astounded that Sen. Hosein and Sen. Sobers and Sen. Sturge, all three of whom are members of the Bar of Trinidad and Tobago would not have the intellectual courage to say what I just said, worse yet to allow Sen. Mark to go on the wild frolic intellectually that he ventured upon to say, that this is draconian. So let me

make it clear.

Stored communication, stored data section 5 of the Indictable Offences (Preliminary Enquiry) Act, section 5 of the Administration of Justice, Preliminary Enquiry Act, section 32 of the Proceeds of Crime Act, section 33 of the Proceeds of Crime Act, the general law of Norwich Pharmacal as it has been applied in civil cases and, in fact, many other provisions expressed in Anton Piller, et cetera, all permit that.

That is why in section 4, clause 4 of the Bill we insert a savings position to keep the method of obtaining a magistrate's warrant, because a magistrate's warrant is under the Proceeds of Crime Act and the Indictable Offences (Preliminary Enquiry) Act and the Administration of Justice (Indictable Proceedings) Act. We must preserve it. Why?—because the rule of law is something called “implied repeal”.

If a government comes forward with a law today and does something that commits us to go on the left hand only, it is understood in law that you may have stopped the method of going right, I am breaking it down simply, and that is called “implied repeal”. A subsequent law can implied repeal an existing law if it is not expressly preserved.

And therefore today, out of an abundance of caution as a responsible Government and as a responsible Attorney General, clause 4 of the Bill in the amendments you will see, we are specifically saving the Proceeds of Crime Act, section 32 and section 33, the Indictable Proceedings Act as we preserve section 5. I have pointed out to the CPC's Department that we need add the Administration of Justice (Indictable Proceedings) Act, because that law is going to become law in its full form, it was already proclaimed when that unholy proclamation of section 34 happened, so that law actually exists side by side. Let us deal with another

point.

There was a most unfortunate if not intellectually ridiculous submission made here this afternoon by Sen. Sturge. Sen. Sturge came to this Parliament and told this Parliament and told the country that we were going to broaden the application of this law of civil proceedings. For heaven's sake, Sen. Sturge has had the benefit of the printed material that this Government and country and taxpayers have paid for, it is in fact the legislation before us, and I want to confirm, Mr. Vice-President, that this Act only applies to the following, criminal proceedings and it is clause 4 of the Bill, criminal proceedings, proceedings under the Proceeds of Crime Act Chap. 11:27, proceedings under the Extradition (Commonwealth and Foreign Territories) Act, Chap. 12:04. Stick a pin; that is criminal matters. Proceedings under the Anti-Terrorism Act, Chap. 12:07, that is as close as you can get to very serious criminal matters, but there is the section 22B civil proceedings for listings aspect there, so it is quasi-criminal in that regard.

E, the proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Act, No. 8 of 2019, that as you are well aware is a law which we passed as a Government which allows you if you are the subject of specified offences listed under the Proceeds of Crime Act, in other words then, criminal proceedings to be caught under that legislation. So it is irresponsible and a downright untruth for Sen. Sturge to say as bold-facedly as he did that this law is to broaden into the civil arena, that is not true, Mr. Vice-President, and must be rejected, that is fearmongering at its highest. Mr. Vice-President.

Mr. Vice-President, the fact is that the issue of the special advocate has arisen, and in this Government opening the constitutionality and improving the constitutionality of the law we are saying, do not oust the court's jurisdiction, make all matters of admissibility of evidence subject to the court's discretion, do not give

a statutory automatic admissibility of evidence, go the due process route, the right to fair hearing route, improve the right to fair hearing, but when you come to sensitive information, and what is sensitive information?

Sensitive information as previously defined in section 17 of Act, the existing law which we have moved to the interpretation section, sensitive information is, who was intercepting you, what circumstances they intercepted with, who has the warrant for the interception. That sensitive information as a matter of national security ought to be very carefully and jealously guarded, but we accept as we improve the constitutional parameters of this laws that it may be in the interest of justice for that information to be disclosed. It may very well be that a defendant is entitled to that information, but let a judge decide that.

And in improving the constitutionality we say, if you are going to disclose the warrant which will have that information, if you are going to disclose the workings of the interception of communication, let a special advocate in a special procedure deal with that. We did not pluck this out of the sky, we pulled this from umpteenth jurisdictions, we pulled it from the United Kingdom, from Canada, from the New Zealand experience, from the United States, from the European Union, we pulled this law of the use of special tribunals and special procedures so that a judge could consider what ought to be considered in the admissibility of evidence, put in safeguards.

Now, it may very well be that one wishes to consider the introduction of special advocates coming a step away. In other words then, let the regular attorney engage in that process, but as pointed out by one the Senators this afternoon, the criminal bar in Trinidad and Tobago is extremely small, that is why Sen. Chote was on the ball in referencing clauses 23 and 24 of the Bill. Let me explain what I mean by that.

We anticipate that rules of the Supreme Court will have to be promulgated to define the special measures procedure, that is why we have put in the provisions for the rules committee, the Chief Justice and the several members including the Attorney General, the Bar Association in the Law Association representation, et cetera, to sit and draft the rules, that allows for a flexibility of approach, it allows the law to change from time to time. It is also why we included a new section for regulations to be made under the Act.

And I can tell you now the Attorney General's Office, the LRC, we have drafted the regulations already for the data storage, for the chain of custody, for the destruction pursuant to section 20 of the Act, all of that has been drafted already. What was missing was the force of law, because in the 2010 Act, the breach of regulations would only attract a \$500 fine. Why? Section 63 of the Interpretation Act says, if you are guilty of a breach of a regulation and the law is silent as to what that breach is in terms of consequence, you are subjected to \$500 fine. That is why you will see in the clause 24 before us—

Sen. Thompson-Ahye: I hate to interrupt when the Attorney General is in full flight although he does it to me from time to time, but in the sections that he spoke about 17 and 19, I would like his assistance, please, because what I am hearing him saying is that the court did not have any discretion. And I am seeing the court may exclude such disclosure written in 17 and also in 19. So perhaps if he can assist my understanding, I would be exceedingly grateful.

Hon. F. Al-Rawi: Sure. If I could just finish the point on the regulations first and I will come to that. So in clause 24, Mr. Vice-President, where we insert a new position for regulations, we are amending clause 25, you will see are providing for a breach of the regulations to attract a criminal offence. That criminal offence in the amendments to clause 25 will then result in us having a summary offence

exposure together with, and I just want to get this right, a fine of \$250,000 as maximum up a limit, and imprisonment for two years.

8.45 p.m.

So the regulations which would deal with chain of custody, processes, procedures, who is entitled to hold, et cetera, we have that in regulations. We have an offence now for the first time of meaningful worth, but more particularly, is we have set out in this law very careful safeguards as to when a judge ought to do certain things. Before I come to Sen. Thompson-Ahye's position, permit me to deal with the safeguards issue. In the safeguarding issue I wish to point out that we are insistent in the new sections to be inserted around section 17, that is the new section 17A, and that springboards from section 17 and then flows to section 19. In section 17, we are saying in this section and in section 19, we protect the warrant for the interception, the warrant for the interception of communication, the warrant for interception of stored data, the warrant for the interception of stored communications. The three categories.

We then protect the details and identity. We say that a judge is mandated to consider—this is in the new 17(2)(c). A judge must consider if he is going to make an order in (2A) or (2B), that all of the circumstances are to be considered concerning the obtaining of the communication, communications data, stored communication, whether the defendant was induced to say what he did and any other relevant factors which would render what he said unreliable, and he shall consider in respect of such communications and then we go through Items A through E, whether you were induced or tricked into saying certain things, the integrity and recording was sound, the use of the recording device was proportionate to the gravity, et cetera. These come from the case law and statutory provisions of the United Kingdom. Contrary to what Sen. Sobers submitted in his

contribution, we are not really close to the RIPA legislation. We are in fact in a different regime. We are not mirrored to the Regulation of Investigatory Powers Act, 2000, as it was amended in the United Kingdom. We are in fact much closer instead into the investigatory powers route. We are looking at the 2016 law, Investigatory Powers Act, 2016. It is in that law that we treat with prisons intercept.

Now, a very important point for hon. Members to bear in mind. I pointed out previously interception of communications was only in the context of telecommunications network. This law for the first time treats with bugging not over a telecoms network. Prior to this amendment, eavesdropping or bugging, which is not over a telecommunications network is arguably outside the law and unregulated. We have introduced it in a very careful place. We have introduced it in a prison, and even though the European Court of Human Rights has recognized certain parameters of rights for prisoners under Article VIII of that Convention that binds them, even though we have the right to private life recognized in section 4 of our Constitution, it is a foregone conclusion recognized internationally that prisoners do not enjoy the same extent of protection of rights as do citizens who are not in prison. That is not to say that we have not captured that carefully in our law.

We have introduced proportionate mechanisms, there must be a warning, you must be informed, there must be signs up to that effect. You must be provided with a room to speak to your attorney-at-law which guarantees the protection of legal professional privilege, and what we say inside of this law, is that for the first time we are saying that this law is to be regulated. That is why CCTV systems exist in prisons right now, they exist on public roads, they exist in buildings, you call a bank right now and you will hear a recording on the phone saying, "This call

may be monitored for quality and consistency concerns.” They are monitoring you right now. They did not bring a three-fifths majority law to do that. Why? Because they can, and I did not say that there is no right to private life and no ex-Chief Justice had to correct me. There is no absolute right to private life, and that is recognized by the very Constitution that we have where section 13 of the Constitution allows you to abrogate section 4 and section 5 rights of the Constitution. So, we have introduced very proportionate mechanisms. We have said that judges need to have regard to the whole of circumstances, but very importantly—is it 59 I end?

Mr. Vice-President: Yes.

Hon. F. Al-Rawi: But very importantly, we have preserved a critical piece of law which is in the common law. Section 20, subsection (9) is being introduced which is to allow the public immunity exceptions. We are saying for the first time, destroy all information that is not relevant immediately. If it is a warrant for stored communication, if it is a warrant for intercepted communication, if it is outside the parameters of what you need destroy it, but we have said if that information reveals the commission of an offence by somebody else, you cannot destroy it, a prosecutor can keep it and then argue why he must keep it under the parameters of public immunity interest, and that is a nuclear provision of balancing the rights inside of here.

We have heard about the balancing of rights. Let me be very bold here. One could carefully argue that this law in fact, if it is slightly modified, does not need a three-fifths majority. What do I mean by that? We certainly do not need a three-fifths majority to invite the court to consider the admissibility of evidence. We do not. We do not need a three-fifths majority to say that you can have interception under national security purposes. That is there already, section 6(2)(b). So, I want

to caution the Opposition in the exuberance of their own inebriation, that we can quite safely treat this law in different ways, you know. But we have approached this Senate, and approached the Parliament in a very careful way. We want to clothe this law with the maximum extent of constitutionality permitted. [*Desk thumping*] And hon. Members need to be certain, you will recall there have been occasions when because of the position adopted by the Opposition, the Government was compelled in making sure that we are not blacklisted by the FATF to strip off certain clauses that offended three-fifths rights and go with others, and that happened in the Income Tax (Amdt.) Act, when—[*Interruption*] Mr. Vice-President, ask Sen. Mark to behave, “nah”.

So, we were extremely careful to understand the parameters that we are operating under. There is little to cause concern in this law. In this law we are in fact improving the constitutionality, and I was dealing with the concept of balancing of rights. Whilst Sen. Mark is insistent upon protecting the rights of prisoners, and there are certain limited rights for prisoners, I accept, but that seems to be Sen. Mark's goal, the Government of the Republic Trinidad and Tobago is concerned about your primary right to the right to life, in section 4(a) of the Constitution. We are at war with criminality [*Desk thumping*] and we must be careful as the Legislature of this country to give a fighting chance to the Trinidad and Tobago Police Service, the courts of Trinidad and Tobago, in a fair and balance process.

And, Mr. Vice-President, we are adamant that the UNC will be exposed when we look to the position of exposure in refusing to support the bail amendments, which this Senate passed without their support. It is the same on point position here today, because, Mr. Vice-President, who in their right mind wanting Trinidad and Tobago to be safe when all of us are exposed to crime will

say, “go ahead and let criminals occupy the space of this country with impunity”. Mr. Vice-President, right now the intercept evidence is available. I have heard the Opposition Members say with a plum, put on the jammers. Mr. Vice-President, the fact is that we have criminalized the taking in of prohibited articles, meaning telephones, in Act No. 25 of 2019, the miscellaneous provisions where we amended the prisoners Act, but it is also a fact that criminals masquerading as prison officers to the detriment of their hardworking colleagues and the citizens of this country in a betrayal to the Prisons Officers Association and the people of Trinidad and Tobago, they are taking phones into the prisons. Worse yet they are taking legal phones, their own phones, into the prisons.

So we could ban all the phones possible, but the Commissioner of Police has said to us, it is by far better from an intelligence perspective to use the interception as evidence in a court of law. I confess, as I have said openly in this Parliament, I received a telephone call from F12 in the Port of Spain maximum security end of it, telling me as Attorney General, where grenades, guns and ammunition was to be found in the prisons, and we found it. And Sen. Sobers was decent enough, the hon. Senator, to admit that he is aware of these circumstances. But Sen. Mark who sits on the bench with him “doh want to hear none ah dat”. Prisoners’ rights matter in this country. It did not matter in 2010 when the law was being passed. Media rights matter in this country. It did not matter in December 2010 when the entire media core was subjected to section 6(2)(b) which allows everybody to intercept the media’s communication. It did not matter then, two-faced arguments coming from Sen. Mark and the Opposition, Mr. Vice-President.

And therefore I urge hon. Senators to reject the distractions created this afternoon, this evening and tonight, and also on the occasion in February when we were last here, because this is a matter of writing the scales of constitutionality.

This is a matter of writing the scales of justice. There are adequate safeguards in the law. We have incorporated the learning coming to us in the courts of Trinidad and Tobago over the last 10 years, we have incorporated the learning coming from the European Courts of Human Rights, the courts coming out of the United States, the United Kingdom, New Zealand, Australia. It is good enough for the whole world to do what we propose today, but it is not good enough for the UNC. That is the definition of insanity, if we accept the Opposition's point of view. So, Mr. Vice-President, no matter of bawling, crying, gnashing of teeth would allow me to be distracted. Sen. Mark's histrionics intellectually will not distract the right-thinking people of this country into their position. No amount of taking home T&TEC chairs for the comfort of your wife, in making sure if a prisoner does that, Mr. Vice-President—

Mr. Vice-President: AG, as much as you are wrapping up, just be very careful about the line that you are going down.

Hon. F. Al-Rawi: Obligated, I am speaking about offences, Mr. Vice-President. When we deal with offences of taking home public—*[Interruption]*

Mr. Vice-President: Continue! Continue! Sen. Mark, okay!

Hon. F. Al-Rawi: So, Mr. Vice-President, I think Sen. Mark is uncomfortable, but I do not know why. Maybe he knows something else. Mr. Vice-President, what I would like to say is that I am certain of the constitutionality of the amendments that we are making. I believe that this law is for the best intention of the people of Trinidad and Tobago. It for the peace, order and good governance within the meaning of section 53 of the Constitution, and I beg to move. *[Desk thumping]*

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Okay, hon. Members, there are 26 clauses and a preamble in this Bill. The Attorney General would have circulated earlier in the day amendments. Is everybody in receipt of those amendments? Yes?

Sen. Dr. Dillon-Remy: Which one?

Mr. Chairman: There was a second set, the one at 6.00 p.m.; 3rd of March, 2020, 6.00 p.m. revised, top right hand corner.

Mr. Al-Rawi: And, Mr. Chairman, I could indicate that I introduced it in my winding up, but there is a small tweak to this which I can give orally, as to two certain aspects of what has been circulated. So the draft that we are working with is that circulated at 6.00 p.m. which are the amendments to clause 4, et cetera.

Mr. Chairman: You want to just indicate the particular clause in the amendment that you want to tweak so when we get there we would know.

Mr. Al-Rawi: Yes, Sir. We are looking at clause 4, if you turn to the second page of clause 4. Hon. Members we are on the draft—I see Sen. Dillon-Remy hands up.

Sen. Dr. Dillon-Remy: I have two copies of the 9th, 2.00 a.m., I do not have a 6.30.

Mr. Chairman: I see, can we have Sen. Dillon-Remy furnished with a 6.00 p.m. copy of the amendments? Is anybody else? Is everybody else in receipt of that amendment at 6.00 p.m.?

Sen. Mark: 6.00 p.m.?

Mr. Chairman: There was one that was circulated Sen. Mark at 6.00 p.m. Can we have one for Sen. Mark as well too?

Mr. Al-Rawi: Sen. Mark we are waiting on?

Mr. Chairman: No, he did not have the 6.00 p.m. one.

Mr. Al-Rawi: Oh, I see.

Mr. Chairman: Right, so AG just in the meantime, so clause 4 will be tweaked?

Mr. Al-Rawi: Yes.

Mr. Chairman: Just the clause, you do not have to go into the actual—

Mr. Al-Rawi: Clause 4 subclause (4) on page 2. So there will be a small amendment to subclause (4) on page 2.

Mr. Chairman: On page 2?

Mr. Al-Rawi: Yeah. And then what we are proposing, Mr. Chairman, would be at the very last page where we are doing consequential amendments. Okay? So at the very last page we are going to—it will be a new clause 28? It would be a new clause 29. Right. So, we are proposing a new clause 29 which would deal with a certain amendment to the administration of justice legislation.

Mr. Chairman: All right, so let me just say, as we are about to start, as much as the debate itself would have generated a bit of contention, going through this committee stage in the interest of time I would just remind everyone to operate with a little bit of discipline and tolerance so that we can engage in maximum production. Okay?

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

Clause 4.

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

4 Delete and substitute the following:

"Section 4A 4. The Act is amended by inserting after section 4,
inserted the following new section:

Application 4A. (1) This Act applies to—

(a) criminal proceedings;

Chap. 11:27 (b) proceedings under the Proceeds of Crime Act;

Chap. 12:04 (c) proceedings under the Extradition (Commonwealth

and Foreign Territories) Act;

Chap. 12:07 (d) proceedings under the Anti-Terrorism Act; and

Act 8 of 2019 (e) proceedings under the Civil Asset Recovery and

Management and Unexplained Wealth Act,

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.

(3) For the avoidance of doubt, all communications data obtained by a constable prior to the coming into force of this Act

Chap. 12:01 and lawfully obtained pursuant to section 32 or 33 of Proceeds of Crime Act or section 5 of the Indictable Offences (Preliminary Enquiry) Act shall continue to be admissible into evidence.

(4) On the coming into force of this Act, the provisions of the Proceeds of Crime Act and the Indictable Offences (Preliminary Enquiry) Act relative to obtaining warrants under those Acts shall continue to apply.

Mr. Al-Rawi: Mr. Chairman, if I could indicate that clause 4 as circulated, if you would indulge me in indicating where I proposed that there is a further amendment? It is to be found in subclause (4). So, in subclause (4), which is at page 2 of the circulated amendments, which starts off with the words, “On the coming into force of this Act the provisions of the Proceeds of Crime Act and the Indictable Offence (Preliminary Enquiry) Act”, just after that word “Act”, if we can insert reference to another piece of law, and that law to be inserted is “The Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011”—no, the bracket closes just after “Proceedings”. So, it would be insert “The Administration

of Justice (Indictable Proceedings) Act, No. 20 of 2011”. Yes, so that is just after the word “Act”. [Interruption] I see. Mr. Chairman, I am told that it is tidier, and forgive me, that we insert the reference to that Act after the Proceeds of Crime Act. So if you would just look at it, insert the very same thing I said, just after Proceeds of Crime Act, and when you get to the position of allowing me to explain I will explain why. Okay?

Mr. Chairman: You can go ahead and explain clause 4, the amendments.

Mr. Al-Rawi: Yes, please. So, hon. Members, through you, Mr. Chairman, you would note that clause 4 of the Bill says, “4(1), this Act applies to”—in effect it was floating without a root, because we did not amend a section in the parent Act. So, what we have here, up to subclause (2) we are repeating in the circulated amendments, but we are tying it now to insert into the Act a new 4A. It needs to be rooted into the parent Act. So, what you see in the circulated amendments 4A(1) and 4A(2) is exactly as appears in the Bill, except it is now rooted to a new 4A in the Act.

So this Act will only apply to criminal proceedings, proceedings under POCA, proceedings under Extradition (Commonwealth and Foreign Territories) Act, which are criminal proceedings themselves, proceedings under the Anti-Terrorism Act, and proceedings under the Civil Asset Recovery and Management and Unexplained Wealth Order Act. Then we go, subsection (2) stays the same; subsection (3) is a very important position, and this says, as circulated for the avoidance of doubt all those things which were obtained under section 5 of the Indictable Offences (Preliminary Enquiry) Act, and sections 32 and 33 of the POCA regime, that those things were lawfully done, because we do not want the argument that there was an implied repeal. As a matter of fact, there has been umpteen warrants obtained over the last 10 years, since the passage of this law,

they have all been validly entered, we want to strictly preserve that position.

In subsection (4), we are making it abundantly clear, this is now the implied repeal argument. We are making sure that we do not remove the existing law provision under Proceeds of Crime, under the PI Act. I remind hon. Senators that we are in the process of moving to repeal the Indictable Offences (Preliminary Enquiry) Act, and we will be replacing it with the now fully amended Administration of Justice (Preliminary Enquiry) Act—Administration of Justice (Indictable Proceedings) Act, forgive me, and therefore that section 5 warrant needed to be preserved, hence the insertion of the language that I just suggested. Those are the reasons for the proposed amendment, Mr. Chairman.

Mr. Chairman: Okay? Hon. Members, I shall now put the question. If you follow along carefully. The question is that clause 4 be amended as circulated and further amended at subclause (4) after the words, “Proceeds of Crime Act”, insert “,” and the words “The Administration of Justice (Indictable Proceedings) Act, No. 20 of 2011.”

Sen. Vieira: Vice-Chair.

Mr. Chairman: Sen. Vieira, you have a—

Sen. Vieira: I do not think you need to put the number of the reference, because that would be done in the marginal note, and we should be consistent with the way it is done throughout.

Mr. Al-Rawi: Thank you for legislative drafting expertise.

Mr. Chairman: I can take out No. 20?

Mr. Al-Rawi: Yes, Sir.

Mr. Chairman: Okie-dokie, I will do it again.

Hon. Members, the question is that clause 4 be amended as circulated and further amended as follows, at subclause (4) after the words “Proceeds of Crime

Act” insert “,” and the words “The Administration of Justice (Indictable Proceedings) Act of 2011.”

Mr. Al-Rawi: No, just Act.

Mr. Chairman: Just Act?

Mr. Al-Rawi: Yes.

Mr. Chairman: Okay.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

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

5 In the definition of “stored communication” insert after the word “transmitted”, the words “in whole or in part”.

Mr. Al-Rawi: There is a circulated amendment. There is an amendment circulated to clause 5. Mr. Chairman, we just want out of a caution, insofar as stored communication can be in whole in part—whole or in part, to insert those words. So in the definition of “stored communication” after the word “transmitted” to insert the words “in whole or in part”.

Mr. Chairman: That is it?

Mr. Al-Rawi: Yes, Sir.

Mr. Chairman: Okay, if there is no further additions?

Question put and agreed to.

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

Clauses 6 to 8 ordered to stand part of the Bill.

Clause 9.

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

9 Insert after paragraph (c), the following paragraph:

“(d) in the marginal note, by inserting after the word ‘interception’, the words “, stored communication or stored data”.

Mr. Al-Rawi: Mr. Chairman, we are simply just adding the marginal note in. There are two schools of thought that you need to amend the marginal note by the Law Revision Committee or by this method. So just out of an abundance of caution we are adopting this method.

Mr. Chairman: Okay, if there are no extra additions?

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

9.15 p.m.

Clauses 10 to 14.

Question proposed: That clauses 10 to 14 stand part of the Bill.

Sen. Teemal: Through you, Chair, to the Attorney General. Clause 10(b)(i), the words:

“...at their own cost...”

I had raised this in my contribution, the legality of imposition of such cost and the telecommunications service providers, AG.

Mr. Al-Rawi: Sure. I thank the hon. Senator. There are two forms of legality for this. Number one is under the concession licence, which is the licensing regime under the Telecommunications Authority. That is legislation. The licences permit the imposition of costs, particularly when one is concerned with national security. So it is not your right, without restriction or without condition, to operate in this jurisdiction. So there is under the telecommunications regime an absolute right of the State to deal with this.

Number two, the cost has become an issue because the interception

capability on the Government's part has to be modified at great cost to integrate with the telecoms network. On the other hand, the telecoms network, if it were to just give you the information requested is basically at no cost because they are at capacity already. So this is a mechanism at relatively little cost, if any at all, to allow for the provision of that which has been warranted and that which has been allowed, and it removes the need for massive expenditure on the part of the taxpayers to meet certain standards and integration, but the legality of it is purely under the TATT regime, the telecommunications regime.

Sen. Teemal: Thank you.

Mr. Chairman: Sen. Teemal, you good?

Sen. Teemal: Yeah.

Mr. Chairman: Okay, if there are no other submissions.

Question put and agreed to.

Clauses 10 to 14 ordered to stand part of the Bill.

Clause 15.

Question proposed: That clause 15 stand part of the Bill.

- 15 A. In paragraph (a), in the proposed subsection (1)(b), insert after the words “under this Act”, the words “or any other written law”
- B. In paragraph (c), in the proposed subsection (2A), insert after the words “shall be admissible in evidence in any proceedings”, the words “where the Judge is satisfied that it would be in the interests of justice to so admit them”.
- C. In paragraph (c), in the proposed subsection (2C)-
- (a) insert after the word “recording” wherever it occurs, the words “or interception”; and

(b) in paragraph (e), delete the word “which”.”

D. Delete the words “communication data” wherever they occur and substitute the words “communications data”.

Mr. Al-Rawi: Mr. Chairman, at clause 15, the amendments as circulated are intended for us to capture the fact that there may be interception permitted in other laws. So for instance, at present, we have the Administration of Justice (Indictable Proceedings) Act; at present we have the Indictable Offences (Preliminary Enquiry) Act; at present we have the Proceeds of Crime Act, those are three known laws as at this point.

What we are making sure is that firstly, at paragraph A, we insert the concept of any other written law. In paragraph B, where we are inserting an amendment to the new proposed subsection (2A). If hon. Members look to that particular provision, (2A) did not have the qualifying safeguard of in the interest of justice. If you look at (2B), this is at page 17 of the Bill, you will see that the words:

“...in the interests of justice to so admit...”—are present.

We wanted to make sure that the judge had an overriding discretion in both (2A) and (2B), in circumstances where it was even a foregone conclusion that consent was given, we still want to put in the safeguard of in the interest of justice.

So (2A) refers to section 6(2)(c), (d), (e), (f) or (g), those are all the circumstances in the existing law where you did not need to have consent or a judge consider the admissibility of evidence:

- (a) because it was given by consent;
- (b) it was expressed;
- (c) it was implied;
- (d) it was in the cost of a private network, where there was an expressed

condition, et cetera.

Those are all the circumstances in those particular subsections.

We figure that it is by far a better safeguard to put the interest of justice and make (2A) and (2B) all subject to judicial discretion for admissibility of evidence. So we are giving the judge the final position. That is what B in the circulated amendment refers to.

In paragraph C as circulated, we are tightening up what we called the Bailey conditions. So, Mr. Chairman, if you were to see at page 18 of the Bill, 17 and 18 of the Bill, in (2C) where we have references to ensuring that the judge had to have in mind that the person was not tricked, induced, et cetera, these all come from a very famous case called “Bailey”. In the Bailey case, the judges had set out what were conditions to be included but in our Bill, we only speak to recording. We want to also include the position of interception. So that there are Bailey, B-A-I-L-E-Y, is the case name, there are Bailey conditions of safeguards included for not only recordings, meaning bugging, but also for interceptions, and that interception includes all forms of interceptions. There are three species of interceptions: interception of communication over a telecommunications network, interception of stored communications and interception of stored data.

In subparagraph D, we had inadvertently used the singular of communication data. It really is communications data as it is properly defined. That is the rationale for the proposed amendments. Those are the various grounds of rationale.

Sen. Dr. Dillon-Remy: Mr. Chair, on page 2 of the revised— of the revision amendments, you had new clause 12A, will that be considered after?

Mr. Al-Rawi: Yes. So new clauses come at the end. I apologize for inserting it that way.

Sen. Vieira: Thank you, Chair, C(b) where you have:

“in paragraph (e), delete the word ‘which’.”

Should it not also be “which occurred”? Because you would now read: no recording of any conversation subject to legal professional privilege occurred in a place

Mr. Al-Rawi: Yes, you are correct. Thank you, again.

Mr. Chairman: For which occur?

Mr. Al-Rawi: Hold on, hold on. One moment. I am being tugged by the CPC’s Department. Okay so, Mr. Chair, just out of caution, if you would permit me. So (2C) says:

“In making a decision under”—these sections—“the Judge shall consider all circumstances”—et cetera, goes a little further down to say—“whether the defendant was induced...he did...which would render what he said unreliable and he shall consider, in respect to the communications, that—”

If we go to (e):

“no recording of any conversation subject to legal professional privilege which occurred in a place specified by the Minister under section 6B (2).”

So we are proposing the deletion of the word “which”. So if we read that, chapeau, in making a decision, the judge shall consider in respect of the communications that, no recording of any conversation subject to LPP, occurred in a place specified by the Minister under section 6B(2), so we keep the word “occurred”. So it is correct.

Mr. Chairman: If there is no further submissions, I shall now put the question.

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill

Clauses 16 and 17.

Question proposed: That clauses 16 and 17 stand part of the Bill.

Sen. Deonarine: Thank you, Mr. Chair. Just a point of clarification for clause 16(2), 17A(2). In terms of the appointment of the special advocate, what level of familiarity with the existing case the special advocate usually has? And also, if the level of familiarity with the case is almost none, would there be a time duration that the special advocate would be allowed to become familiar with the case so that they can truly represent the accused in the closed proceedings?

Mr. Chairman: Attorney General?

Mr. Al-Rawi: Yes, Sir. This question dives to the heart of the concept of fair trial and procedures. So I welcome the recommendation to consider this and to explain. First of all, I would like to take the hon. Senator to subsection (4) where we have a definition of the special advocate.

“...‘Special Advocate’ means an attorney-at-law—

- (a) appointed by the Court to represent the interests of the accused or the defendant, as the case may be, in closed proceedings;
- (b) who acts in the interest of justice; and
- (c) whose function is to represent the interests of the accused or the defendant, as the case may be, by making submissions to the court adducing evidence and cross-examining witnesses, making applications to the court, seeking directions from the court, and generally assisting the court.”

That is materially tied on to the clause 24. And clause 24 which inserts a new section 25A allows:

“The Rules Committee of the Supreme Court established by the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make Rules to govern proceedings under this Act.”

It is intended that the Rules of the Supreme Court will be expressed in the processes for the special measure and the special advocate. The special advocate will usually come into the matter in the fresh form. In other words then, will be appointed and then there will be a process via the rules for the special advocate to take instructions. Those instructions would be granular in nature. Fortunately, we have the rules in existence from many other jurisdictions which tell us what the special advocate does and the process by which the special advocate engages in taking instructions and representing the rights of the accused.

It is at that point that the advocate goes into position and takes the interest of the accused before the court. This is not too far off the concept of supervising attorney who represents a court in Anton Piller orders. An Anton Piller order is a very draconian measure in the civil law remedy which allows for the court to ex parte without the other party who is being affected to make an order, allowing for search and seizure of anywhere, any place, all documents, et cetera. It is a very brutal process. The court appoints a supervising attorney and that supervising attorney provides a report to the court, et cetera. So this is not uncommon to us in very draconian circumstances in the civil law. In fact, extremely draconian circumstances and there is a lot of case law on it. So we intend that the rules of engagement for the special advocate will be granular in the Rules of the Supreme Court so that this is properly exercised in the right interest.

Sen. Seepersad: Mr. Attorney General, who pays this special advocate?

Mr. Al-Rawi: The State pays. The same way the State pays for judges, the State pays for the prosecutor, the State pays for the special advocate. The State will be paying for public defenders very shortly, in a matter of weeks, the State will be paying for public defenders who will represent the accused by way of appointment. Competent counsel as opposed to counsel of choice. If your counsel of choice is

not available, one, two, three times, the State will appoint an attorney for you as a public defender so that the State pays for your lawyer.

Sen. Seepersad: Okay, thank you.

Sen. Thompson-Ahye: I was just wondering if there is a particular reason why court was downgraded from (a) to (c), four places it becomes common.

Mr. Al-Rawi: This is in the Bill? I am sorry Senator, your microphone is a little away from you so I did not hear, clear.

Sen. Thompson-Ahye: Yes, it is in the Bill.

Mr. Al-Rawi: Would you say that again, please?

Sen. Thompson-Ahye: Are you at clause 16, section 17A(4), page 22?

Mr. Al-Rawi: What I can say is that in the proofing of this, the capitalization and common will be dealt with. So the proof that comes from the CPC's Department in the Bill, as amended, will tidy up the inconsistencies between capital "C" and common "c" which ought not to be there. So duly noted.

Sen. Thompson-Ahye: Noted.

Mr. Al-Rawi: Thank you so much.

Mr. Chairman: If there are no further submissions.

Question put and agreed to.

Clauses 16 and 17 ordered to stand part of the Bill.

Clause 18.

Question proposed: That clause 18 stand part of the Bill.

18 In paragraph (c), in the proposed amendment to section (2)(d), delete the words "communication data" and substitute the words "communications data".

Mr. Al-Rawi: There is a circulated amendment at page 6 of the Bill for 18, 19 and 21.

Mr. Chairman: Really?

Mr. Al-Rawi: Page 6 of the circulated amendments. In the rush to prepare this, Mr. Chairman, I want to apologize. We really should have put all the new clauses at the end. So I am a little bit buried and I apologize for that, but I only got the chance to look at this on the floor.

Mr. Chairman: Yes, okay, go ahead.

Mr. Al-Rawi: Yes. Mr. Chairman, the amendment proposed to clause 18 is really quite simply. We are going from “communication data” which is not the proper define term to “communications”, in the plural, “data” which is the correct term and that is the circulated amendment to clause 18.

Mr. Chairman: Okay, if there are no further submissions.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

19 In paragraph (a)(ii), insert after the words “or a notice under section 18”, the words “or pursuant to any other written law”.

Mr. Al-Rawi: Yes, Sir, be amended as circulated at page 6. Mr. Chairman, we are proposing to insert after the notice under section 18 in (a)(ii) the words, “or pursuant to any other written law” so that we can contemplate where warrants may be issued under other law for this type and category of communications data or stored data. Those are things which other laws currently contemplate can be obtained by way of warrant. For example, the Preliminary Enquiry Act, the Administration of Justice (Indictable Proceedings) Act and the Proceeds of Crime Act.

Sen. Deonarine: Thank you, Mr. Chair. A point of clarification as well.

Subsection (9), I believe it is.

Mr. Al-Rawi: Yes.

Sen. Deonarine: Right. Which speaks to the public interest immunity application. Now, I am just seeking some clarification in the sense that how—in the event that a conversion is intercepted and a third party is—information is being discovered by a third party which indicates that it may be a threat to public interest or national security. Is there a time frame in which this application for the public interest immunity would be submitted and should it be stated in the law?

Mr. Al-Rawi: Okay. So the public interest immunity is a very careful term of art in law and it is—the immunity granted to the prosecution not to disclose something. So, subclause (9) that we are adding into section 20, section 20 is where you are obliged to destroy. So section 20 of the parent Act is where you have a positive obligation upon the people that have intercepted or received warranted information either by way of warrant or non-warrant to destroy information which is not relevant to the process immediately. And then there are safeguards for destruction.

In fact, we took a lot of time to put that into the regulations which will be laid in this House in a matter of days. What this is here is an exception to the rule for disclosure to the defence. So:

“...information which may reveal the commission of other offences by other people”—that is not the accused—“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.”

So we are putting the prosecutor on a public—on a positive obligation statutorily which exist in the common law in any event, we are now putting it in

statute to say you can apply to the court for the court to consider why you should not disclose this information because it might prejudice some other enquiry that is going on or the commission of an offence somewhere else, you let the court consider under the public interest immunity provision why you should not disclose that. Because the rules of disclosure in criminal proceedings oblige the prosecutor to disclose the worst version of his case, effectively put. And this is the reason to say why you not disclose everything to the accused. It is not the prosecutor's decision. The court must consider it.

Sen. Deonarine: Then point of clarification again. It says here that it:

“...shall not be disclosed to the accused but shall be retained...”

How long would it be retained for?

Mr. Al-Rawi: Because there is no statutory limit for crimes, it could be retained indefinitely. But in these circumstances the court would be aware of the process and therefore, some degree of judicial supervision is in there. In any event, under the Interception of Communications Act, there are annual reports and when you see the regulations that are coming for the first time—and we have had the Interception of Communications Act for quite some time right now and we have had the SSA Act which allows the SSA to do interception since 1995. We have actually laid the regulations for the SSA Act; they came in February; they were published by Legal Notice in February. So we have the regs for that for the first time since 1995 and we are bringing this in. But because there is no statutory period of limitation for the commission of an offence and the State can act at any point in time; that really is potentially as far as indefinite.

Sen. Vieira: Sen. Deonarine, when the prosecution makes a claim for public interest immunity, it is still for the judge to decide whether it should be upheld or not. So the court does have a surprising function.

Mr. Al-Rawi: Thank you, Senator.

Mr. Chairman: If there are no further submissions.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20 ordered to stand part of the Bill.

Clause 21.

Question proposed: That clause 21 stand part of the Bill.

21. Delete and substitute the following:

“Section 23 amended	21. Section 23 of the Act is amended- (a) in subsection (3), by deleting the word “criminal”; and (b) in subsection (6), by inserting after the words “section 8 or 11”, the words “or pursuant to a warrant under any other written law”.
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Mr. Al-Rawi: Mr.Chairman, we propose an amendment to clause 21 which is to make sure that we have this tight. In clause 21 which amend section 23, we are deleting the word “criminal”. What we wanted to do was to broaden that and substitute in subsection (6) by inserting after the words “section 8or 11 or pursuant to a warrant under any other written law”. It is in keeping with what we have done to preserve the warranting approach, Proceeds of Crime Act, Preliminary Enquiry Act, Administration of Justice Act and any other law that may come forward. So it is for consistency with the previous amendments that we have adopted.

Mr. Chairman: Okay. There are no further additions.

Question put and agreed to.

Clause 21, as amended, ordered to stand part of the Bill.

Clauses 22 to 26 ordered to stand part of the Bill.

Mr. Chairman: Hon. Senators, we shall now go on to the new clause.

New Clause 12A.

New clause 12A read the first time.

Question proposed: That new clause 12A be read a second time.

New clause 12A Insert after clause 12, the following:

12A. The Act is amended in section 14-

- Section 14 (a) in paragraph (a)-
amended
- (i) in subparagraph (i), by inserting after the words “intercepted communication” the words “stored communication or stored data”; and
 - (ii) in subparagraphs (ii), (iii) and (iv), by deleting the word “communication” and substituting the words “intercepted communication, stored communication or stored data”; and
- (b) in paragraph (b), by deleting the word “communication” and substituting the words “intercepted communication, stored communication or stored data”.

New clause 12A read the first time.

Question proposed: That new clause 12A be read a second time.

Mr. Al-Rawi: Mr. Chairman, thank you. In preparing this Bill, we omitted to include the confidentiality protection for stored communication and stored data in the same way that it has been done for intercepted communication. And therefore,

as a ground for safeguard protection for the rights of all persons involved there, we wanted to add the confidentiality provisions to cover stored communication and stored data.

But very importantly, what we are doing as well is that we are applying that across the board under any other law. It could be under proceeds of crime, preliminary enquiries, administration of justice. We think it is imperative that confidentiality apply. Right now, there is no protection in terms of express confidentiality for the section 5 preliminary enquiries warranted information or the proceeds of crime information and this is a huge step in preserving the rights of the accused and other persons intercepted.

Mr. Chairman: Okay, if there no further submissions.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 12A added to the Bill.

New clause 17A.

New clause 17A Insert after clause 17, the following new clause:

Section 17A. The Act is amended by inserting after section

18A 18, the following section:

Inserted

Power to 18A. (1) Nothing in section 8, 11 or

obtain 18 shall affect the power of a

constable

communications to obtain a warrant or production

order

data or stored under any other written law for the

communication
 by a search purpose of obtaining any
 communications
 warrant data or stored communication which
 may be in the possession of a person
 or entity.

(2) Sections 13 and 14 shall
 apply with the necessary
 modifications, for the purpose of
 obtaining communications data or
 stored communication, pursuant to a
 warrant referred to in subsection (1).

(3) Subject to subsections (4)
 and (5), the person or entity who has
 been served with a warrant referred to
 in subsection (1) and any individual
 associated with that person or entity,
 shall not disclose to any person the
 existence or operation of the warrant
 or any information from which the
 existence or operation of the warrant
 could reasonably be inferred.

(4) The disclosure referred to in
 subsection (3) may be made to-

(a) an officer or agent of the
 person or entity for the purpose of

ensuring that the warrant is complied with; or

(b) an attorney-at-law for the purpose of obtaining legal advice or representation in relation to the warrant.

(5) An attorney-at-law referred to in subsection (4)(b) shall not disclose the existence or operation of a warrant referred to in subsection (1) except to the extent necessary for the purpose of his duties as an attorney-at-law.

(6) A constable shall not disclose any communications data or stored communication obtained pursuant to this section, except-

(a) to the Commissioner of Police;

(b) in connection with the performance of his duties;

(c) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government

an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made; or

(d) for the purposes of criminal proceedings.

(7) The Commissioner of Police shall not disclose any communication data or stored communication obtained pursuant to this section, except-

(a) in connection with the performance of his duties; or

(b) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made.

(8) A person who contravenes subsections (3), (4), (5), (6) or (7)

commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for five years.”

New clause 17A read the first time.

Question proposed: That new clause 17A be read a second time.

Mr. Al-Rawi: Mr. Chairman, this is a critically important addition for covering what goes on in the existing law right now. As I have been saying all night long, you can get interceptions, you can get warrants for the production of material under the Preliminary Enquiry Act section 5; under the Administration of Justice (Indictable Proceedings) Act under section 5 when that becomes operational; and right now under sections 32 and 33 of the Proceeds of Crime Act. And there is nothing which generally speaks to any other law which may produce administration interceptions, interceptions in any other law which may be future.

So what we wanted to do in this Interception of Communications Act was to put down an anchor. The anchor is the new section 18A which this new 17A proposes and this provides, specifically you must have the confidentiality provisions in section 14 apply; you must have the assistance provisions in section 13 apply; you must have the entity being served with the warrant associated not disclosing, et cetera; you must have the disclosure being permitted in certain circumstances which subsection (4) allows; the permission to disclose to your attorney at law in subsection (5); the position of a constable not to disclose other than to certain persons in subsection (6) and the Commissioner of Police not disclosing other than to certain persons in subsection (7); and then the creation of an offence in subsection (8).

Right now what is happening under the Proceeds of Crime Act,

notwithstanding section 51 of the Proceeds of Crime Act which prohibits tipping off, there is no criminalization for breach of this kind of information. So this is very targeted at ensuring that there is tight management of interceptive material, particularly stored communication, where your phone may be in the possession of the police and they just basically rip it up, pull the information and then you find it on the Internet. That is a huge lacuna in the law right now. This section solves that and criminalizes police, even up to the Commissioner of Police for improper disclosures because we must maintain the rights of the individual in a careful way. So this is a tremendously important provision to better the laws of Trinidad and Tobago which does not find itself in feature in law right now.

Mr. Chairman: Okay, if there are no further submissions.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 17A added to the Bill.

9.45 p.m.

New clause 27.

Insert after clause 26 the following new clauses:

Chap. 11:27 27. The Proceeds of Crime Act is amended by inserting after amended section 33 the following new section:

Non- 33A. (1) The provisions of sections 13 and 14 Disclosure of the Interception of Communications Act for the Chap. purposes of obtaining communications data or 15:08 stored communications pursuant to a warrant, shall apply to this Act.

(2) Subject to subsections (3) and (4), the

person or entity who has been served with a warrant under section 33 and any individual associated with the warrant shall not disclose to any person the existence or operation of the warrant or any information from which such existence or operation could reasonably be inferred.

(3) The disclosure referred to in subsection (2) may be made to—

- (a) an officer or agent of the person or entity for the purpose of ensuring that the warrant is complied with; or
- (b) an Attorney-at-law for the purpose of obtaining legal advice or representation in relation to the warrant.

(4) An Attorney-at-law referred to in subsection (3)(b) shall not disclose the existence or operation of a warrant referred to in section 33 except to the extent necessary for the purpose of his duties as an Attorney-at-law.

(5) A constable shall not disclose any communications data or stored communication obtained pursuant to this section, except-

- (a) to the Commissioner of Police;
- (b) in connection with the performance of his duties;
- (c) if the Minister directs such disclosure to a

foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made; or

(d) for the purposes of criminal proceedings.

(6) The Commissioner of Police shall not disclose any communications data or stored communication obtained pursuant to this section, except-

(a) in connection with the performance of his duties; or

(b) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made.

(7) A person who contravenes subsections (2), (3), (4), (5) or (6) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for

five years.

(8) In this section, “communications data” and “stored communications” have the meanings assigned to them under section 5 of the Interception of Communications Act.

New clause 27 read the first time.

Question proposed: That new clause 27 be read a second time.

Mr. Al-Rawi: Mr. Chairman, it is good enough to have the new 17A—it is good enough to have the new 18A, forgive me, where we put in the general safeguards in the parent Act, the Interception of Communications Act, but as a matter of law we need to go to the Proceeds of Crime Act, we need to go to the Indictable Offences (Preliminary Enquiry) Act, and we need to go the Administration of Justice (Indictable Proceedings) Act and put the same safeguards in those laws so that it adds for ease of reading and judicial interpretation in those individual pieces of law. So new clause 27 is the first one. It is to replicate the provisions for confidentiality, assistance, limited disclosure and offences in the circumstance of the Proceeds of Crime Act.

Question put and agreed to.

Question proposed: That the new clause 27 be added to the Bill.

Question put and agreed to.

New clause 27 added to the Bill.

New clause 28.

Chap.	28. The Indictable Offences (Preliminary Enquiry) Act
12:01	is amended by inserting after section 5 the following
amended	new section:

Non-	5A. (1) The provisions of sections 13
------	---------------------------------------

Disclosure and 14 of the Interception of
of warrants Communications Act for the purposes of
Chap. obtaining communications data or stored
15:08 communications pursuant to a warrant
shall apply to this Act.

(2) Subject to subsection (3) and (4), the person or entity who has been served with a warrant under section 5 and any individual associated with the warrant, shall not disclose to any person the existence or operation of the warrant or any information from which such existence or operation could reasonably be inferred.

(3) The disclosure referred to in subsection (2) may be made to—

(a) an officer or agent of the person or entity for the purpose of ensuring that the warrant is complied with; or

(b) an Attorney-at-law for the purpose of obtaining legal advice or representation in relation to the warrant.

(4) An Attorney-at-law referred to in subsection (3)(b) shall not disclose the existence or operation of a warrant

referred to in section 5 except to the extent necessary for the purpose of his duties as an Attorney-at-law.

(5) A constable shall not disclose any communications data or stored communication obtained pursuant to this section, except—

- (a) to the Commissioner of Police;
- (b) in connection with the performance of his duties;
- (c) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made;
or
- (d) for the purposes of criminal proceedings.

(6) The Commissioner of Police shall not disclose any communications data or stored communication obtained pursuant to this section, except—

(a) in connection with the performance of his duties;
or

(b) if the Minister directs such disclosure to a foreign government or agency of such government, where there exists between the State and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made.

(7) A person who contravenes subsections (2), (3), (4), (5) or (6) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for five years.

(8) In this section

“communications data” and “stored communications” have the meanings assigned to them under section 5 of the Interception of Communications Act.

New clause 28 read the first time.

Question proposed: That new clause 28 be read a second time.

Mr. Al-Rawi: Mr. Chairman, I adopt all of the submissions for new clause 27 and applied them to new clause 28. We are doing exactly what we did there, this time for the Indictable Offences (Preliminary Enquiry) Act. This is the Act where we put in confidentiality, assistance, limited disclosure, and offences. In that parent law it is effectively a consequential amendment across.

Mr. Chairman: Okay. If there are no further submissions—Sen. Seepersad.

Sen. Seepersad: Mr. Chairman, through you, to the Attorney General: in my contribution in February I raised the issue of a sunset clause given the nature of this Bill but you did not address it in your wrap up and it is something I really would like you to tell me whether you agree or disagree, but give me some answers to how we proceed.

Mr. Al-Rawi: So, insofar as what we are effectively adding to the safeguards that did not exist in the original law, which had no sunset clause, and which has been in existence for 10 years, I apologize I omitted to mention this in my wrap up. It was the gap between February and March that caused that, but number one, the December law 2010, brought this law into effect. It has now been on the books of Trinidad and Tobago and for nearly 10 years. There was no sunset clause. Number two—because what we are doing today is really adding constitutionality to the Bill that did not exist before. I would think it somewhat difficult to put a sunset clause on constitutional savings. If it were the original law well then that would be

different, but now we have seen the test of time that we did not need a sunset clause for the original law. So to put the soothing balm and the savings for constitutionality on a time clock, a limited time clock, I think it would not be in our best interest to erode that aspect.

Sen. Seepersad: And you are comfortable with that?

Mr. Al-Rawi: Oh most definitely. Why would I want to limit a benefit as opposed to a constitutional benefit? Without this amendment today somebody could actually go to court right now and challenge this law and strike it all out. So I would not want to put that on a time clock and then have that subjected to difficulties.

Sen. Seepersad: Thank you.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 28 added to the Bill.

New clause 29.

Mr. Al-Rawi: Mr. Chairman, if I may? I had indicated earlier—it is not in your circulated amendments—there were a few tweaks to the circulated amendment, we dealt with that clause 4A. This is the other one now and this is to add a new clause 29. In the earlier 4A, I alerted to the fact that we had not proposed because we had omitted to amend the Administration of Justice (Indictable Proceedings) Act. If I could explain that to the—

Mr. Chairman: AG, before you go into the explanation, I do have to add the clause to the Bill first.

Mr. Al-Rawi: But because it is not circulated, I needed to explain it.

Mr. Chairman: So we are going to add the clause to the Bill and there is a part

where you will be able to explain it once we get to that section.

Mr. Al-Rawi: Okay, I apologize.

Sen. Mark: I have not seen that, Sir.

Mr. Chairman: Say again?

Sen. Mark: I have not seen the amendment.

Mr. Chairman: He is going to explain the new clause 29. He is making the amendment on the floor. That is what he is doing. But before he can do that it is not part of the Bill right now, so I have to add it to the Bill first which is the procedure that I am following. So I will start again.

New clause 29 read the first time.

Question proposed: That new clause 29 be read the second time.

Mr. Al-Rawi: Mr. Chairman, the wording will be as follows:

The marginal note will be Act No. 20 of 2011 amending 29 with the following words.

The Administration of Justice (Indictable Proceedings) Act is amended by inserting after section 5 the following new section:

(Non-disclosure as a marginal note), and then it will be 5A.

And, Mr. Vice-President, the wording will be an exact replica of what we did for clauses 27 and 28. In other words then, we will be lifting exactly what is appearing at pages 9, 10 and 11 of the circulated amendments. Where you see 5A(1), (2), (3), (4), (5), (6), (7), (8), that is the exact wording. The only thing that would be different is the chapter number. Sorry, that actually stays the same.

Sen. Mark: Mr. Chairman, may I?

Mr. Chairman: Hold on!

Mr. Al-Rawi: Mr. Chairman, if I could give you what the wording of section 29 will be if you were to use the following template to do it. Are you with me?

Through you, Mr. Chairman, to all hon. Members, if you look to the draft that is circulated as an amendment, if you just look at page 9—everybody is with me?—at clause 28—this is the new clause 28—the wording for clause 29—the new clause 29—will be as follows:

At the marginal note where you see “Chap. 12:01 amended”, you are going to instead put “Act No. 20 of 2011 amended”. Then where you see the number “28”, it will be “29”. Then the words “The Indictable Offences (Preliminary Enquiry) Act”, you will change that to “The Administration of Justice (Indictable Proceedings) Act”, and then everything else is exactly the same.

So that is the wording of the new clause 29, and it is to capture the same safeguards that we did for the Proceeds of Crime Act and the Indictable Offences (Preliminary Enquiry) Act. Are you with me, Mr. Chairman?

Mr. Chairman: I am with you. Sen. Mark, you wanted to say something?

Sen. Mark: I am just suggesting that if the Attorney General could have circulated this thing because I mean to say everybody here is at a disadvantage.

Mr. Chairman: So is it that you do not understand what the Attorney General just said?

Sen. Mark: What I am saying is that I would prefer to see something before me. This is a very important matter.

Mr. Chairman: That is understandable. Unfortunately, it is not possible at this point in time.

Mr. Al-Rawi: Cabildo Chambers is far away from here, you know.

Mr. Chairman: Now not only that, we have in the past, and in other Bills that we have done, had some amendments put on the floor. Maybe they were left out or just basic discussion. I have accepted new clause 29 specifically because this particular situation is similar to that. That is why I have allowed the Attorney

General to explain in great depth exactly what that clause is going to look like, and what he has indicated is that in terms of the formula and what is being used it is the exact same as a matter of fact—that is 27 and 28—except what he has called out by way of the chapeau and the marginal note. If everybody understands that, then we can move forward with clause 29 in this manner. The procedure is correct in that sense. You are okay with that, Sen. Mark?

Sen. Mark: I do not understand that, Sir. But if you are happy Sir, that is your choice.

Question put and agreed to.

Question proposed: That new clause be added to the Bill.

Mr. Chairman: I will read it out again just for the benefit of Members. Clause 29 will read:

Act No. 20 of 2011, and the marginal note, the Administration of Justice (Indictable Proceedings) Act, and is amended by inserting after section 5 the following new section as appears on pages 9, 10 and 11—

Mr. Al-Rawi: In exact word form—

Mr. Chairman:—in exact word form from 5A—

Mr. Al-Rawi:—as circulated.

Mr. Chairman:—as circulated. Everybody follow?

Sen. Richards: Mr. Chairman, that is very confusing to me.

Mr. Al-Rawi: Mr. Chair, could I assist? So new clause 29 which proposes an insertion into the Bill will read as follows and it is in the following words if you would turn to page 9 of the amendment that have been circulated. If you are with me, Sen. Richards?

Sen. Richards: Yes.

Mr. Al-Rawi: Okay. Where the marginal note says “Chap. 12:01 amended”, it will

read:

“Act No. 20 of 2011 amended”

Where the number “28” appears, it will read “29”. Where the words “Indictable Offences (Preliminary Enquiry) Act” are, strike that out and instead you will put “The Administration of Justice (Indictable Proceedings) Act”.

And then the exact wording from the word “is” at chapeau there, straight down page 9, straight down page 10, straight down to page 11 ending in subparagraph (8) with the full stop “Interception of Communications Act”, that is the exact wording for the new clause 29.

Sen. Richards: All right.

Mr. Al-Rawi: Because what this does is that there are three laws that permit warrants to obtain stored data or communications data. The laws are the Indictable Offences (Preliminary Enquiry) Act, we did that in new clause 27; the second law is the Proceeds of Crime Act. Sorry. The first one is the Proceeds of Crime Act, we did that in new clause 28; the second one is the Indictable Offences (Preliminary Enquiry) Act, we did that in clause 28; and the third one is the Administration of Justice (Indictable Proceedings) Act. That is the law that is going to repeal and replace the Indictable Offences (Preliminary Enquiry) Act. So we wanted to capture that law at the same time and it is also a new section 5A. So that is the wording for it in perfect word form as just described.

Sen. Richards: Thank you.

Mr. Chairman: Everybody is good? So just for procedure I will repeat that. Hon. Senators, question is that clause 29 stand part of the Bill as follows:

In the marginal note, “Act No. 20 of 2011 amended”, also to say the Administration of Justice (Indictable Proceedings) Act is amended by inserting after section 5 the following new section, if you look on page 9 all

the way to page 11, starting at 5A and ending at subparagraph (8), copied exactly.

Question put and agreed to.

New clause 29 added to the Bill.

Preamble approved.

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

Senate resumed.

Hon. Al-Rawi: Mr. Vice-President, I wish to report that a Bill entitled an Act to amend the Interception of Communications Act, Chap. 15:08, was considered in committee of the whole and approved with amendments. I now beg to move that the Senate agree with the committee's report.

Question put and agreed to.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

Mr. Vice-President: Hon. Senators, this Bill requires a special majority. The Clerk will now conduct a division.

The Senate divided: Ayes 22 Noes 6

AYES

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Cox, Hon. D.

Singh, A.

Cummings, F.

Lester, Dr. H.

Dookie, D.

Thomas, A.

Young, N.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms., C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

NOES

Mark, W.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Sobers, S.

Sturge, W.

Sen. S. Chote SC abstained.

Mr. Vice-President: Hon. Members, the result of the division is as follows: 22 Members for, six Members against, and one abstention. [*Desk thumping*]

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday, March 10th, 2020 at 1.30 p.m. Mr. Vice-President, on that day we propose to deal with the Trinidad and Tobago Revenue Authority Bill. Thank you.

Mr. Vice-President: Before I put the question on the adjournment, leave have been granted for two matters to be raised on the Motion for the Adjournment of the—*[Interruption]*

Sen. Mark: Mr. Vice-President, as far as I understand the Revenue Authority Bill is in the other place and awaiting a decision. That is in the other place, so I cannot see how a Bill could just come from the other place up here for debate.

Sen. The Hon. C. Rambharat: So how do you know it—

Sen. Mark: I do not know how it arrived there. All I am telling you, Mr. Vice-President, that Bill is in the House of Representatives waiting on a vote. So I do not know how it can arrive here. No decision has been taken in the House of Representatives.

Mr. Vice-President: So, Sen. Mark, if you take a look at the Order Paper that all Senators have before them, at item 15, Government Business, you would see at position 5, 6, 7, 8, a Bill entitled an Act to establish the Trinidad and Tobago Revenue Authority and formulated matters by the Minister of Finance.

Sen. Mark: Mr. Vice-President, let us be serious here. This is not a Mickey Mouse arrangement you know. This is a Parliament. In the House of Representatives there is a report that is to be debated and a vote taken. So you cannot come with some—*[Interruption]*

Mr. Vice-President: So, Sen. Mark—*[Interruption]*

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

2020.03.03

Sen. Mark: Yes.

Mr. Vice-President:—in relation to what I just said and the fact that the Bill is on the Order Paper, this Bill was introduced at the sitting of the Senate held on Tuesday, November the 26th, 2019. Okay?

Sen. Mark: You need to get guidance. [*Crosstalk*]

Mr. Vice-President: Acting Leader of Government Business, could you please just do the procedure once again?

Sen. The Hon. C. Rambharat: Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday, March 10th, 2020, at 1.30 p.m., and on that day we propose to take the Trinidad and Tobago Revenue Authority Bill to the next stage.

Mr. Vice-President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised on the Motion for the Adjournment of the Senate. Sen. Seepersad.

New Trinidad and Tobago Passports

(Government's Intervention re: Delivery Time)

Sen. Charrise Seepersad: Thank you, Mr. Vice-President. I wish to raise the following matter on the adjournment: the need for the Government to immediately address the long waiting period for and delivery of new and renewed Trinidad and Tobago passports. Earlier this year the unacceptable delay in processing the application and issuance of passports by the Immigration Department was widely reported in the media. The editorial in the *Trinidad Express* newspapers of February 16, 2020, stated in part that it defies logic how a public service as critical as passport processing should have fallen into such sustained crisis without any attempt by the Government to address the problem.

The Government in the persona of Minister of National Security visited the passport offices and decreed that the time from application to delivery such be

reduced from five or six months to one month. This action alone is not adequate to ensure that the service will immediately and automatically improve by at least 80 per cent. This is all well and good, and to generalize, Mr. Vice-President, you are already familiar with the many complaints from diverse sources about the poor quality of customer service which the general public must endure for most of the offices of the public service.

Mr. Vice-President, it is widely known that not too long in the past the efficiency by the Passport Processing Department was professional and passable. To revert to such a level of service cannot be done in an autocratic manner. Strong and effective leadership as well as modern digital process engineering techniques must be deployed to achieve lasting change for the better. It is not an overnight event.

Today, however, I would like to speak specifically about the length of time it takes citizens to obtain or renew their passports. The current wait time is a drastic decline from a few years ago when a Trinidad and Tobago passport was processed in two weeks. The situation is even worse for foreigners applying for residence based on marriage and other grounds.

10.15 p.m.

Mr. Vice-President: All right. Just allow Sen. Seepersad to move her Motion on the Adjournment. If you all would like to speak to each other, I invite you to step behind the Chair to have your conversation. Continue, Sen. Seepersad.

Sen. C. Seepersad: I cannot understand how the significant improvements made in what was a notoriously inefficient service have been allowed to fall into such a state of crisis. Based on my research and notwithstanding the appointment process presently, it takes about two months to get an appointment and a further one to two months to receive a new or renewed passport. As a result, many people renewing

passports select the expedited option at an additional cost of \$300. In my view, this is like extortion. Citizens' expectations must be to pay the regular fee of \$250 for efficient service.

Another wrinkle in the system is citizens are forced to scout the various passport offices in search of better turnaround times. The Tobago office is one such option with all the related additional costs for travel and accommodation. The fact is, Mr. Vice-President, comparatively speaking, passport processing in Trinidad and Tobago is more tedious than in any other English-speaking Caricom country. The wait time for passports in some Caricom countries are as follows: Antigua and Barbuda, three weeks to one month; Bahamas, five to 10 days, no appointment; Dominica, three weeks, no appointment; Grenada, three days, no appointment; Guyana, five working days; Jamaica, seven days, no appointment required—they also have an expedited option of same day, next day and three days at the passport department's head office. St. Vincent and the Grenadines, seven working days, no appointment required; Barbados, 10 business days, appointments are available within a week. Mr. Vice-President, this malaise and inefficiency has real costs.

In many businesses, the time value of money is vital to their survival. Also, citizens who need to travel for business, education or medical treatment must face this ineptitude in order to obtain their passports. Without being overly dramatic, lives and businesses are at stake and this administration must care and must act decisively to delve into the root causes and find and deploy lasting solutions to the benefit of all. I therefore ask through you, Mr. Vice-President, that the Minister of National Security not only amplify the reasons for the inordinate delays but to provide the Senate in a timely manner, a policy and strategy document for the type of clinical and professional service from the Immigration passport department

which must be available to all citizens. Thank you, Mr. Vice-President. [*Desk thumping*]

The Minister of Foreign and Caricom Affairs and Minister in the Ministry of National Security (Sen. The Hon. Dennis Moses): Thank you, Mr. Vice-President. As a caring and responsible Government, we strive to meet the tenable needs of our population. Whatever the pathway that leads us to such needs, we endeavour to treat with them in a compassionate and responsible manner.

As regards the concerns raised about the backlog in passport delivery, a decision was taken to increase the production hours by calling out additional staff to the passport production system. We continue to persevere in marshalling the required resources to address this matter.

As of today's date, first-time passport applications which were received towards the end of January are now being processed. Passports in favour of these applicants are ready to be issued in short order. Applications for renewal of machine-readable passports are now being processed in a period of one month or even less time. We anticipate that this delivery time will be sustained in the short term and further reduced until the objective of one-month delivery time across the board is achieved.

Allow me to thank you, Mr. Vice-President.

Presence of Street Dwellers

(Government's Need to Address)

Sen. Anthony Vieira: Thank you, Mr. Vice-President. The matter I wish to raise on the Motion on the Adjournment is: the need for the Government to appropriately address the persistent presence and continuous increase in the number of street dwellers and the threat they pose to themselves, the public and to public property.

Mr. Vice-President, I have been noticing of late an increase in the number of vagrants around Port of Spain. Now, I do not know what obtains in other parts of the country. This is not a new problem but it may be getting worse in the face of ever-increasing job losses, the cost of living getting higher and the stresses and strains of life today. My dictionary defines “vagrant” as a wanderer who has no established residence or visible means of support. I do not know what the Government has in place towards addressing the issue but it seems to me, there should be a policy to prevent vagrancy.

Some weekends ago, I saw a very tall vagrant walking around Newtown stark naked. He was approaching people in cars and he was asking them for money, and not long after that, I saw another vagrant relieving his bowels in the Augustus Williams Square in Woodbrook. Children were nearby in the playground. Vagrants are sleeping in public places. They soil and spoil the covered waiting areas for buses. Some even damage and interfere with property. In my neighbourhood, there is a problem every time a certain individual is released from prison. It is a cycle that has been going on for years now. He is regarded as a pest but he is a human being and he is homeless. This is not a problem neighbourhoods can easily solve. It would be wrong to physically harm him if he is caught trespassing or stealing but if he is fed and if he is offered shelter, there is a concern that more vagrants might come or that he will betray the trust of the good Samaritans in the neighbourhood who want to help him.

So what is to be done? Vagrants are citizens and the Government is responsible for all citizens. It is shameful to ignore the problem. Now, it is easy to turn a blind eye and to stereotype vagrants as lazy or crazy but there are multiple reasons for vagrancy: mental illness, drug addiction, breakdown in family and community support, insecure work, job losses or just poverty. The point is every

vagrant has his or her own unique set of circumstances and may require help of a different nature. The problem is further exacerbated by the fact that many reject help, seeing intervention as an imposition on their freedom.

I used to help a deportee from the United States who eventually died of AIDS. I would give him food, sometimes shelter, occasional work, clothes, but he would refuse to stay in any shelter preferring to live in a cemetery. Now, this poses a real difficulty for outreach groups like Living Water Community, Salvation Army, St. Vincent de Paul. So what to do? Vagrants, should they be put on an island like Carrera where they can opt to either be indoor shelter or to sleep under the stars as they see fit? Are there sufficient shelters in the country? Are the shelters up to speed? There should be shelters for the aged and elderly, for those who are unable to find work or have no financial means. For those who lack basic accommodation. Perhaps, the poorhouse or something like that may be in need of resurrection.

The issue is empathy and respect. Do we treat vagrants as lesser beings or do we care for them as fellow citizens treating them humanely? Should the solution be a mix of providing care for them on the one hand and protecting the public from them on the other? Is this a matter of benevolence or one of national pragmatism? Is legislation necessary? Is vagrancy regarded as a problem by the authorities and if so, is there an agenda for reform? Can Government indicate whether the problem is being addressed and solutions towards effective resolution?

I thank you. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Mr. Vice-President. I thank Sen. Vieira for raising this very important issue. I want to make two points as I open. That is to say that between 2017 and 2019, there was a 6.5 per cent increase in the number of street

dwellers, as the Motion refers to persons who are found on the street. So in raw terms, the number increased from 414 in 2017, to 441.

The second point I want to make from the outset is that, as Sen. Vieira has pointed out, the experience so far has shown that about 30 per cent of the street-dwelling population suffer from some form of mental illness. Now, I can tell you as the Minister responsible for the Queen's Park Savannah, we contend with them often. The presence of street dwellers in the Savannah fluctuates. Sometimes it is because they are moving from somewhere else and they have temporary shelter in the Savannah. My own experience has been that they range from perfectly normal persons with jobs who appear to be completely homeless, to those who are mentally ill, and at least one case, one who is extremely violent.

So the issue of street dwelling, the experience of the Ministry of Social Development and Family Services is that the issue requires an integrative and collaborative approach, comprising interventions not only from Government Ministries as you correctly pointed out, but from civil society including the private sector and NGOs like Living Water Community. The Ministry is closely collaborating with the Ministry of Health in relation to mental health issues and the Ministry of National Security in relation to national security issues and I would provide some detail in relation to the involvement of the police and the Attorney General in relation to law reform.

The strategy is really based on four elements. The first is prevention and provisions are made under the Community Care Programme of the Ministry to prevent socially-displaced persons in various hospitals from moving to the streets. In fact, some years ago, you may recall in the San Fernando General Hospital, it was discovered that you had people living in the hospitals. Some of whom were patients who upon discharge, never left the hospital and some of them who were

never patients but found their way in the hospital. So the Community Care Programme is designed to reduce the occurrence of persons who are socially displaced living in the hospitals or persons who are in the hospitals moving onto the streets. To deal with that aspect of the prevention, the Ministry has engaged several privately operated homes across the country to provide care and accommodation to persons who have nowhere to call home. At present, there are 101 persons in homes under the Community Care Programme and some persons are waiting to be placed.

The second element in relation to prevention is that the Ministry provides assistance under the rental assistance programme managed by the Social Welfare Division to households which are facing eviction as well as those that are at risk due to natural or man-made disasters.

Thirdly, recognizing the need to facilitate collaboration of key government agencies to address the issues, the Ministry continues to work through a working committee with the various NGOs and various entities which have under their ownership or control, shelters. In fact, the Ministry currently provides a monthly subvention to three shelters and the other Ministries, such as the Office of the Prime Minister, have established new facilities to target vulnerable groups who are likely to become street dwellers unless there is some form of intervention.

To support the prevention, there is an on-going exercise of data collection and it is as a result of the most recent exercise in October 2019, I was able to provide you with that information on the current number which was 441 persons. Now, the count was done over a two-day period in October and of course, it all depends on people being—as I said, they move and the count was done in areas such as Port of Spain, San Fernando and Arima.

The second approach of the Ministry of Social Development and Family

Services relates to the voluntary engagement of street dwellers through field officers in an effort to move them off the streets and move them into different types of facilities where they could have places to live and long-term care.

Recognizing this percentage, 30 per cent being persons having some form of mental illness, the Ministry has had to reengage the Trinidad and Tobago Police Service in what was known as the “move along” strategy to get them off the streets and into places where they could be cared for. In the case of the people who are suffering from some form of mental illness, they would have to be removed involuntarily. The Police Service, under the Summary Offences Act, 1921; the Police Service Act, 2006; and the Mental Health Act of 1975, have the legislative authority to involuntarily remove persons from the streets. The Ministry is also presently working with the Office of the Attorney General to address other legislative issues which include the finalization of a policy for the proclamation of Act No. 59 of 2000 which is the Socially Displaced Persons Act.

Thirdly, in relation to accommodation for street dwellers, the Ministry has made significant investments to ensure that provisions are made for the care and well-being of this population. The Ministry provides two NGOs with subventions for the operation of shelters. That is the Centre for Socially Displaced Persons in Port of Spain operated by the St. Vincent de Paul Society and the CSDP in San Fernando, operated by Court Shamrock. And my colleague, Minister Hosein, former Mayor of San Fernando, has had a lot of experience with Court Shamrock. In fact, he introduced some hair cutting and other services to the persons who use that facility. The Port of Spain location has a capacity of 200 and the centre in San Fernando has the capacity to accommodate 78 persons. In addition, a subvention is paid to Nazareth House to provide accommodation and other support services particularly to the mentally-ill, socially-displaced persons who require help.

The next area that the Ministry operates in, is in relation to assessment and the Ministry continuously with the support of other agencies, including the British High Commission, provides assessment services to identify the continuing risks of persons ending up becoming street dwellers.

And finally, the area of rehabilitation and reintegration, the Ministry works with the Ministry of Health and other facilities including the New Horizon facility rehabilitation centre for homeless persons which was handed over to the Ministry of Health in October 2019. The Ministry operates the Piparo Empowerment Centre. That is the centre that was famously acquired through the handling of the estate of Mr. Dole Chadee and it is a therapeutic community established for persons who are substance abusers.

Mr. Vice-President, this issue of homelessness and street dwelling, mentally ill and persons who sometimes roam the street—I have seen the naked man. He has an incredible physique but he should be fully clothed and put in a place where he could be cared for and taken care of. It is something that used to be prevalent in the city in the days of Rambo and some other extremely muscular men who refused to put on clothes but it is something that cities around the world grapple with as people face the high cost of living, the stresses of life, the pervasiveness of mental illness and the Ministry of Social Development and Family Services continues to grapple with these issues while making sure that the Government has the appropriate policies to deal with it.

Sen. Vieira, I thank you very much for raising this Motion. We would not ordinarily have an opportunity in this House to share information on what is happening with our street dwellers, and I thank you very much. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Presence of Street Dwellers
Sen. The Hon. C. Rambharat (cont'd)

2020.03.03

Adjourned at 10.35 p.m.