

SENATE*Tuesday, March 17, 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. Dr. Maria Dillon-Remy, both of whom are ill.

SENATORS' APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. NDALE YOUNG

WHEREAS Senator the Honourable Franklin Khan is incapable of performing his duties as a Senator by reason of illness:

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)(b) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NDALE YOUNG to be a member of the Senate temporarily, with

UNREVISED

effect from 17th March, 2020 and continuing during the absence of Senator the Honourable Franklin Khan by reason of illness.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 16th 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: MS. SHERVON IFILL

WHEREAS Senator Dr. Maria Dillon-Remy is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you SHERVON IFILL to be a member of the Senate temporarily, with effect from 17th March, 2020, and continuing during the absence of Senator Dr. Maria Dillon-Remy by reason of illness.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 17th day of March, 2020."

UNREVISED

AFFIRMATION OF ALLEGIANCE

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

OATH OF ALLEGIANCE

Senator Shervon Ifill took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Central Bank of Trinidad and Tobago (CBTT) with respect to the Progress of the Proposals to Restructure CLICO, BAT and CIB for the quarter ended December 31, 2019. [*The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
2. Annual Audited Financial Statements of Tourism Trinidad Limited (TTL) for the financial year ended September 30, 2019. [*Sen. The Hon. A. West*]
3. Annual Audited Financial Statements of Caribbean New Media Group Limited for the year ended December 31, 2017. [*Sen. The Hon. A. West*]
4. Convention concerning the Elimination of Violence and Harassment in the World of Work (No. 190) adopted at the 108th Session of the International Labour Conference of the International Labour Organization (ILO) held in Geneva, Switzerland on June 21, 2019. [*The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus)*]
5. Recommendation concerning the Elimination of Violence and Harassment in the World of Work (No. 206) adopted at the 108th Session of the International Labour Conference of the International Labour Organization (ILO) held in Geneva, Switzerland on June 21, 2019. [*Sen. The Hon. J. Baptiste-Primus*]
- 6.

Tobacco Control (Amendment) Regulations, 2019. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]

7. Annual Report of the Police Complaints Authority for the period 2018/2019. [*Sen. The Hon. C. Rambharat*]

JOINT SELECT COMMITTEE REPORT

(Presentation)

Local Authorities, Service Commissions and Statutory Authorities (Including the THA)

Financial Oversight at Municipal Corporations

Sen. Dr. Varma Deyalsingh: Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Fourteenth Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA), Fifth Session (2019/2020), Eleventh Parliament on an inquiry into the Financial Oversight and Financial Management Systems at Municipal Corporations.

URGENT QUESTIONS

Pandemic Leave

(Implementation of in the Private Sector)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Labour and Small Enterprise Development: Can the Minister indicate how will pandemic leave be implemented in the private sector?

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you very much, Madam President. Madam President, I have only just about 10 minutes ago ended a meeting which I partially chaired in the absence of the substantive chair of the National Tripartite Advisory Council, and those recommendations are to be placed before the Cabinet, so that I

am not, at this point in time, in a position to say what will be implemented in the private sector, but merely to say Cabinet will have to deliberate on it and the information can be brought here subsequently.

Sen. Mark: Madam President, can the Minister indicate how soon those recommendations would be sent to the Cabinet for its ultimate approval?

Sen. The Hon. J. Baptiste-Primus: Tomorrow.

Water Taxis and PTSC Buses

(Sanitization Measures)

Sen. Wade Mark: Yes. Thank you, Madam President. To the hon. Minister of Works and Transport: Can the Minister indicate what specific measures are in place to ensure the regular sanitization of both the water taxis and the PTSC buses?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, NIDCO and PTSC have implemented the preventative measures in accordance with the guidelines of the Ministry of Health. In the case of the water taxi service, NIDCO has enforced preventative measures based on the advisories to avoid the spread of the virus on board its vessels and at its terminal. The specific measures taken are: the number of seating for passengers accommodation at each terminal and every sailing have been reduced by 50 per cent. This is in an effort to implement social distancing among passengers, and is based on a first come first serve basis; cancellation of all tours and chartered service until further notice.

All vessels in the water taxis service are properly sanitized before and after every sailing. All vessels are aired out before and after every sailing to allow fresh air to circulate, which would significantly reduce the spread of the virus. Air-condition will be used only during the sailing.

The frequency with which all handrails, rails, table top and walls are

sanitized have been tripled. Passengers are mandated to use hand sanitizers provided before entering at both terminals; discouraging of all commuters who are displaying flu-like symptoms from travelling on the vessels; increased vigilance by the CSR staff to identify persons who exhibit symptoms of COVID-19; daily safety briefings on preventative for dealing with COVID-19 are done on board. The crew and staff members of the water taxis service were all briefed in the session by representatives of the Port of Spain General Hospital on hygiene and preventative measures.

With respect to the PTSC, a comprehensive bus sanitization plan for the Public Transport Service Corporation was developed and implemented. This include the training of staff in proper sanitization techniques.

Madam President: Minister, your time has expired. Sen. Mark.

Laptops to Students

(Assigning of)

Sen. Wade Mark: To the hon. Minister of Education: Can the Minister indicate whether the Ministry is considering assigning laptops to students so that they can learn remotely while schools are closed due to the COVID-19 virus?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. Mr. President, the Ministry of Education is currently considering providing access to students in some subject areas such as technical drawing, which requires the use of AutoCAD. We are also currently in the process of providing resources utilizing television, online and radio, for all students including SEA, CSEC and CAPE. Details of this initiative will be shared with the public shortly. Thank you.

Sen. Ameen: Yes. A follow-up. I did not hear in the Minister's response specifically with—I appreciate the other information—but specifically with regard

to the use of the laptops that are in the schools for the students, if that is one of the measures being implemented, that they would be assigned to the students during their time away from school.

Hon. A. Garcia: Madam President, I am not sure I fully understand the supplemental that the Senator is asking. Is she asking that laptops would be provided to the students or is she asking that the laptops that are available in the schools will be provided to the students? I need to have some clarification.

Sen. Ameen: Yes, the laptops. Madam President, it is the laptops, whether the laptops in the schools will be made available to the students.

Hon. A. Garcia: Madam President, it is well known that all schools are closed, and the laptops that we have in schools that are available to the students are under lock and key, and this is why I was very careful to report that we are using alternative methods to ensure that our students receive the quality education which we are determined to provide. Thank you very much.

Sen. Ameen: Follow-up. Is the Minister willing to consider this measure during the time the children will be away from school because of the COVID-19 situation?

Hon. A. Garcia: Madam President, we do not think it is necessary to go this way. As I indicated just now, we are utilizing other alternatives, all in an effort at ensuring that our students are well served. Thank you.

COVID-19 Advisory

(Compliance with)

Sen. Wade Mark: To the hon. Minister of Health: In light of reports that some bars have remained open and some churches are continuing services, can the Minister indicate what measures the Government will adopt to ensure compliance with its COVID-19 advisory?

The Minister of Health (Hon. Terrance Deyalsingh): Thank you very much, Madam President. [*Desk thumping*] Madam President, the hon. Prime Minister would have spoken clearly yesterday asking the country to work with us by use of his moral suasion to do the right thing. The Prime Minister articulated his wishes for the country in a very gracious manner. However, I am told by the Minister of National Security that when organizations do not comply that he the Minister of National Security is looking at the following.

The Minister of National Security met with the Trinidad and Tobago Police Service and the Chief of Defence Staff this morning to look at other measures and the Attorney General, I am advised, is looking at legislative measures to address the issue. Thank you very much.

Sen. Mark: Yes. May I immediately read the question?

Madam President: Yes.

Cuban, Interferon Alfa-2b

(Importation of)

Sen. Wade Mark: To the hon. Minister of Health: Can the Minister indicate whether the Government is considering the importation of Cuban, Interferon Alfa-2b which is said to be successful in treating COVID-19 virus?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much. Madam Speaker, Interferon Alfa-2b is already imported into Trinidad and Tobago, but for another use. WHO has not made a formal declaration that this drug is effective. However, we were formally informed as such, and the Chief Medical Officer, who is the Chairman of the Drug Advisory Committee, sent it to the principal pharmacist yesterday Monday the 16th to convene a panel of medical specialists, including thoracic and infectious disease specialists to look at the issue. If WHO and these specialists agree that this drug can be used, the drug is already

certified for use in Trinidad and Tobago, but for other uses, then we simply have to do a new indication use of which the Chief Medical Officer as Chairman of the Drug Advisory Committee advises me the Minister, and within 24 hours once it is cleared, it can be so used. Thank you very much.

Madam President: Hon. Senators, the time for Urgent Questions has expired.

ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, the Government is prepared to answer four of the five questions which are on notice. We are asking for a deferral on question No. 55. Madam President, there are two written questions for response by 13 March, 2020. Those are questions Nos. 120 and 121 and those written responses have been provided to the Parliament. Thank you.

Madam President: Question No. 55 is deferred for two weeks. Sen. Mark.

WRITTEN ANSWERS TO QUESTIONS

Development Loans Act and External Loans Act

(Details of Loan Agreements)

120. Sen. Amrita Deonarine asked the hon. Minister of Finance: As regard all loan agreements made under the Development Loans Act Chap. 71:04 and the External Loans Act, Chap. 71:05 during the period September 2015 to January 31, 2020, can the Minister provide the following:

- (i) the total commitment fees accumulated under each loan agreement; and
- (ii) the status of implementation of each active loan agreement?

Gross and Net Public Sector Debt

(Details of)

121. Sen. Amrita Deonarine asked the hon. Minister of Finance:

With respect to this country's Gross Public Sector Debt and Net Public Sector Debt in TTD value for the period September 2015 to January 31, 2020, can the Minister provide the following information:

- (i) the total outstanding debt in each instance;
- (ii) Central Government Domestic Debt;
- (iii) Central Government External Debt; and
- (iv) Contingent Debt including Guaranteed Contingencies and Letters of Guarantee?

Vide end of sitting for written answers.

ORAL ANSWERS TO QUESTIONS

The following question stood on the Order Paper in the name of Sen. Wade

Mark:

Carifesta 2019

(Details of Sums Owed)

55. Could the hon. Minister of Community Development, Culture and the Arts state: Given reports that hundreds of persons including several suppliers and artistes are owed millions of dollars arising from the staging of Carifesta 2019, can the Minister indicate the following:

- (i) the actual sums owed;
- (ii) to whom said moneys are owed; and
- (iii) when will payments be made?

Question, by leave, deferred

TRHA Medical Chief of Staff

(Dismissal of)

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

Can the Minister verify the November 2019 reports claiming the dismissal

of the Medical Chief of Staff of the Tobago Regional Hospital Authority and the possible circumstances leading to said dismissal?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. Pursuant to section 5(2) of the Regional Health Authorities Act, Chap. 29:05, the Tobago Regional Health Authority is subject to the provisions of the Tobago House of Assembly Act, Chap. 25:03 and, consequently, falls under the jurisdiction of the Secretary of Health Wellness and Family Development in Tobago.

I have been advised by the Board of the TRHA, as a courtesy, that the Medical Chief of Staff of the Tobago Regional Health Authority was dismissed in November 2019. However, since the TRHA does not report to me as Minister of Health, I am unable to shed any light on the possible circumstances leading to that dismissal. Thank you very much, Madam President.

Sen. Mark: Seeing that we are dealing with a sovereign democratic Republic called Trinidad and Tobago, can the Minister indicate whether he would be able to access the report dealing with the factors surrounding the dismissal of the Medical Chief of Staff of the Tobago Regional Hospital?

Hon. T. Deyalsingh: Madam President, it is because we live in a democratic state, as indicated by Sen. Mark, and we respect the autonomy that Tobago has, I have to kindly alert this House that as Minister of Health, I have no authority under law, under law, as a democratic state, to enquire as to the circumstances, and I respect totally the provisions under the Tobago Regional Authority and the Tobago House of Assembly. Thank you very much, Madam President.

Sen. Mark: As a courtesy, hon. Minister, through the hon. President, as a courtesy, would you indicate whether you can nudge the authorities in Tobago to share with you circumstances and the factors that may have led to the dismissal of

this particular officeholder? Can you indicate to the Senate whether you will be able to exercise courtesies in that regard?

Hon. T. Deyalsingh: Madam President, there is a piece of legislation called the Freedom of Information Act. I humbly suggest to Sen. Mark and the UNC that all those answers could be appropriately given to them under the Freedom of Information Act. [*Desk thumping*] Thank you very much, Madam President. [*Desk thumping*]

**San Fernando Hill Robberies
(Measures being Implemented)**

56. Sen. Wade Mark asked the hon. Minister of Rural Development and Local Government:

In light of reports of a number of robberies at the San Fernando Hill over the last several months, what security measures are being implemented to ensure the safety and security of workers and visitors to the Hill?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President. Madam President, I respond to this question on behalf of the Government. Madam President, the San Fernando Hill falls under the Forestry Division which forms part of the Ministry of Agriculture, Land and Fisheries. Madam President, I have been advised by the Conservator of Forest that in the 18-month period August 2018 to November 2019, there were five robberies at the San Fernando Hill. These robberies took place at the main office, the top of the hill, the stores department and the play park area.

Madam President, I am pleased to advise that on each occasion the Trinidad and Tobago Police Service, the Mon Repos Police Station, in particular, responded in a timely and efficient manner to the calls and the suspects were held, charged and they are serving sentences in respect of these robberies.

In light of these robberies, Madam President, several measures were undertaken and I would highlight four of them: one is the installation on an electronic coded door at the main office which restricts entrance into and exit from that area.

Secondly, the area for visitors has been established and designated and it is protected from the area occupied by the staff. The staff interact with visitors through a glass window instead of interacting in person in the main office.

The third is that the collection of cash at the San Fernando Hill has stopped and other arrangements have been made to collect cash payments in respect of activities up at the hill and that should discourage people from coming to that area for the purpose of stealing cash. The last thing is that the Forestry Division has established a very good working relationship with the Mon Repos Police Station. The officers conduct regular patrols during the day and night, and we believe that these four measures among others would improve the security and safety of the employees, the visitors, and also act as a deterrent to criminals who would like to come on the hill to commit their crimes. I thank you.

Sen. Mark: Madam President, may I ask the hon. Minister, since the implementation of these measures, can the Minister share with us and the Senate whether there has been a reduction in the number of robberies in that area since the implementation of those measures outlined by the hon. Minister?

Sen. The Hon. C. Rambharat: Madam President, since the implementation of these measures from November 2019, there have been no robberies at the San Fernando Hill.

Sen. Mark: Madam President, is it the intention of the Government to establish private security for the San Fernando Hill so that persons who use those hills can be assured of a more active security presence when their family visit those hills?

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

**La Plata Gardens ECCE Centre
(Reasons for Delay in Completion)**

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

Can the Minister indicate the reasons for delay in the completion of the Early Childhood Care and Education (ECCE) Centre in La Plata Gardens, Valencia?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. Madam President, the ECCE Centre at La Plata Gardens in Valencia was approximately 94 per cent complete when work was stopped in 2016 due to the financial difficulties facing the country at that time. This project is not on the Ministry of Education's priority list of projects at this time. The construction of this centre is funded by a centralized Vote in the Infrastructure Development Fund entitled "Construction of ECCE Centres". Although this Vote received an allocation of \$15 million in the fiscal year 2019/2020, the full sum of this Vote has already been exhausted.

As soon as additional funds are made available to the Ministry of Education for this centre, arrangements will be made for work to resume. It was previously expected that additional funds would have been made available in the mid-year review in April 2020. However, the present financial crisis caused by the COVID-19 pandemic will have an effect on the Ministry's ability to access funds for non-essential items. Notwithstanding, every effort will be made to resume the completion of construction of this ECCE Centre as soon as possible. Thank you very much.

Sen. Obika: Based to the Minister's response, the ECCE Centre in Valencia has remained—construction has stopped for four years. Can the Minister indicate how

much is the cost that represents this 6 per cent of the construction cost to complete?
What dollar value is that please?

2.00 p.m.

Hon. A. Garcia: Madam President, at this point I am not in a position to give that figure. I want to be careful, I do not want to give any figure that is wrong. Perhaps Sen. Obika can ask me that question on another occasion and I will be very happy to present the answer. Thank you very much.

Madam President: Sen. Obika.

Sen. Obika: Thanks, Madam President. Can the Minister give an undertaking to present to the Senate in two weeks the value that represented 6 per cent of the construction cost of this ECCE centre, please?

Madam President: Well, I think that question was answered by way of the first supplemental that you asked. You can ask another question.

Sen. Obika: Can the Minister indicate if this decision with the ECCE centres is nationwide because there are centres, for example, in Bonasse in Cedros that are 95 per cent complete that remain uncompleted, can the Minister indicate for the past four years if it has been the policy to not complete ECCE centres for our nation's preschool children?

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

Sen. Obika: Can the hon. Minister indicate, Madam President, how many children would have been catered to at this ECCE centre in Valencia that are now deprived of an education?

Madam President: That question also does not arise.

Procurement and Disposal of Public Property Act, 2015

(Reasons for Delay in Implementation)

101. Sen. Saddam Hosein asked the hon. Minister of Finance:

Can the Minister give the reasons for the delay in the full implementation of the Public Procurement and Disposal of Public Property Act, 2015?

The Minister of Finance (Hon. Colm Imbert): Thank you very much, Madam President. Act No. 1 of 2015 pertaining to the public procurement and disposal of public property states at section 63 that:

- “(1) The Minister may, on the recommendation of the Office, make regulations to give effect to the provisions of this Act, including regulations with respect to—
- (a) the conduct of challenge proceedings under Part V; and
 - (b) the addition to, or removal from, an ineligibility list under section 58.
- (2) 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 one million dollars and imprisonment for five years.
- (3) Regulations made under this section shall be subject to affirmative resolution of Parliament.”

I am advised that over the period September to October 2018, the office of the Regulator launched its stakeholder consultations in Trinidad and Tobago on the draft regulations.

On the 30th of November, 2018, the first submission of the draft regulations was made to the Minister of Finance. Subsequently, on various occasions in 2019, draft procurement regulations were submitted by the Regulator to the Minister who sent them to legal counsel for review to determine whether the draft regulations were intra vires the Act. The Ministry of Finance also undertook its own internal review to determine whether the draft regulations were consistent with the aims

and objectives of the Act. The Regulator was subsequently advised of the comments of legal counsel and the Ministry's own views on the draft regulations and the regulations were revised by the Regulator and resubmitted.

There were also discussions and an exchange of views on the wording of the Act itself, particularly the manner in which government-to-government contracts and public/private partnerships should be treated as well as the disposal of public property, and whether further amendments to the Act should be made before it is fully proclaimed. The last correspondence from the Regulator was received by the Minister of Finance on December 18, 2019, in which the regulator indicated among other things that his office should not be responsible for the disposal of public property because the Office of Procurement Regulation is a regulatory and oversight body and should not be involved in matters which it is required to regulate. This point has been accepted and requires an amendment to section 13 of the Act. The Regulator also gave his views on section 7 of the Act in that letter with respect to government-to-government and public/private partnership projects. These views will be considered in the final proposed amendments to the Act.

Naturally the final form of the regulations will flow from the final form of the Act. Following that December 18th letter, the draft regulations and proposed amendments to the Act were submitted to Cabinet and sent to the Legislative Review Committee for final review. Prior to the COVID-19 pandemic it was anticipated that final amendments to the Act would be laid and debated in Parliament in March 2020, followed by the regulations shortly thereafter. The precautionary measures that are now being taken to contain the spread of the virus will in all likelihood affect this schedule, but barring unforeseen circumstances we are still working towards laying the amendments to the Public Procurement Act in Parliament by the end of this month.

Madam President: Sen. Mark.

Sen. Mark: Madam President, through you, can the hon. Minister share with us what were the views expressed by the Regulator as it relates to government-to-government contracts because he did indicate that this was one of the areas that is being addressed?

Hon. C. Imbert: The Regulator sent us examples of what takes place in other jurisdictions, a number of other jurisdictions, and in most of them, government-to-government arrangements are not covered by the procurement legislation in those countries. This is what caused quite a lot of debate and discussion. At the end of it all the Regulator said that he believes that the office may be able to deal with the matter, but that is something that we in the Government are looking at. We believe we need to tighten it up, we cannot just leave it loosely for an interpretation of section 7 of the Act because it is subject to varying interpretations. It needs to be tightened up.

Madam President: Sen. Hosein.

WRITTEN ANSWER TO QUESTION

Sen. Saddam Hosein: May I just seek your guidance with respect to invoking Standing Order 27(16) for Question No. 105 on the written answers list, please, to the Prime Minister?

Madam President: Do you seek my guidance or do you want to invoke the Standing Order?

Sen. S. Hosein: I would like your guidance on whether or not the Standing Order can be invoked because the question was deferred for two weeks on the 3rd of this month.

Madam President: So, yes, it can be invoked, and I take it you want to invoke it?

Sen. S. Hosein: Yes, please.

Madam President: Yes. So that the Standing Order to Question No. 105 is invoked.

DEFINITE URGENT MATTER

(LEAVE)

COVID-19 Countermeasures

(Assistance to Small Businesses)

Sen. Wade Mark: Madam President, in accordance with Standing Order 16(2), I hereby seek your leave to move the adjournment of the Senate for the purpose of discussing a definite matter of urgent public importance, namely the need for the Government to assist small businesses in the wake of its COVID-19 countermeasures.

The matter is definite as it pertains specifically to the announced responses by the Government on Monday, March 17, 2020, to combat the spread of the coronavirus. The matter is urgent because the Government's countermeasures have the potential to cripple small businesses which will in turn lead to further job losses and place a number of our citizens on the breadline. The matter is of public importance because it is the Government's responsibility to assist small businesses who are directly negatively impacted by this coronavirus and the countermeasures and to ensure that the livelihoods of our citizens are not severely affected by the Government's course of action.

Madam President, I thank you for your consideration of this critically important matter.

Madam President: Hon. Senators, I have considered the Motion as presented and I am not satisfied that it qualifies under this Standing Order.

SEXUAL OFFENCES (AMENDMENT TO SCHEDULE 1)

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

Madam President, I beg to move the following Motion:

Whereas it is provided by section 67(1) of the Sexual Offences Act, Chap. 11:28 (hereinafter referred to as “the Act”) that the Minister may by order, amend Schedule 1;

And whereas it is provided by the said section 67(1) of the Act that every order made under this section shall be subject to affirmative resolution of Parliament;

And whereas the Sexual Offences (Amendment to Schedule 1) Order, 2020 was made by the Minister under section 67(1) of the Act on the 26th day of February, 2020;

And whereas it is expedient to approve the said Order;

Be it resolved that the Sexual Offences (Amendment to Schedule 1) Order, 2020 be approved.

Madam President, permit me at the immediate outset of this Motion to indicate my extreme pleasure and privilege at being together with all Senators present here this afternoon, and indeed hon. Ministers that have attended, on the frontline of Trinidad and Tobago’s fight against a pandemic which has gripped our nation. Today we sit in an unusual configuration which is representative of what is called “social distancing”. Today we sit in a rather safe environment but today we sit together to engage in the passage of law for the peace, order and good governance of our society, and therefore I am very pleased and privileged to know that this Parliament and every Senator present will turn up as is required for duty to assist our country on the frontline of this fight in the passage of laws for the benefit of Trinidad and Tobago.

This Parliament, this Senate is no different from the protective services,

from the health care workers that are on the frontline, from the supermarket workers that are on the frontline in a new essential services industry in Trinidad and Tobago, and therefore I am thrilled that every Senator here present is willing to do the duty of Trinidad and Tobago in the privilege that we have to sit in this Parliament, and I thank all hon. Senators for dealing with the matters on the Order Paper here today because we have serious business for Trinidad and Tobago to perform, and I think we are required to be here to do the business of Trinidad and Tobago. [*Desk thumping*]

Madam President, permit me to get to the substance of the Motion before us and the substance of the Motion before us is something that is very important for the business of Trinidad and Tobago. What is that? Madam President, we in Trinidad and Tobago recognized years ago that our country has an issue, just like every other country, to manage the issue of crime, and in managing the issue of crime we of course have to deal with the position of sexual offences. Sexual offences, Madam President, have been a feature of the common law of Trinidad and Tobago since we were a colony. They have been part of the statute law of Trinidad and Tobago since we were a Crown colony. In fact, in 1861 we had the Offences Against the Person Act and in 1861 we dealt with the concept of rape, assault, sexual misconduct.

It was in 1986 that Attorney General, Russell Martineau, came to the Parliament and captured in the Sexual Offences Act, Act No. 27 of 1986, essentially a codification of what the law was treating with by way of sexual offences. In 1986, we dealt with what was then a revolutionary concept of marital rape. Prior to the Act in 1986 being passed, there was this untenable situation that a husband could not rape his wife and there was debate in relation to those matters.

In 1986 that was novel law, today it is axiomatic to our morality that that is unacceptable. In 2012, Madam President, we had another event of change in Trinidad and Tobago as we birthed the Children Act, Act No. 12 of 2012, which is the Children Act, rather interesting passage. I recall sitting then as an Opposition Senator and recall supporting the Government in the passage of the Children Act. On that occasion the Independent Bench did not support, and the Independent Bench did not support the passage of the Children Act. It might be shocking to Members sitting now on the Independent Bench.

The Independent Bench did not support the passage of the Children Act. The three-fifths majority came by the Opposition and the Government passing that law, and I could tell you as a Member of the Opposition, I passed nearly 212 amendments to that law myself by way of recommendation. The Opposition and Government passing the law, the Independent reserved on two very critical issues, and this tells you how Trinidad and Tobago works; one was the age of majority; the second one was the concept of same-sex relationships. Then as Opposition Senator Faris Al-Rawi, I made a vow, if I ever had the privilege of sitting in the chair with responsibility for legislative construction that I would abolish the age of marriage which was the sticking point on the Independent Bench, one of the stinking points, and so was born the Miscellaneous Provisions Act, which we as a Parliament passed under my hand as Attorney General where we said, "18 stone-cold; you are a child, you cannot be married unless you are 18 years of age." And we therefore harmonized the definition of a child.

You see, the Children Act, No. 12 of 2012, defines a child in section 3, quite simply and quite properly as a person under the age of 18 years, but there was this absurdity in law that children could be married, and statistics have shown us a

12-year-old marrying a 55-year-old man, which in any country around the world is paedophilia, the Opposition took a different point of view in relation to the abolition of child marriage. They did not support it in the Senate. We had to strip down the legislation and remove the three-fifths majority clause, but that is now history. I am raising this because it is relevant to the Motion before us. Why? Act No. 12 of 2012, which is the Children Act, abolished by way of consequential amendments contained in Schedule 3, it repealed the following offences. It repealed the very sections that are the subject of today's Motion:

1. Sexual intercourse with a female under 14 years.
2. Sexual intercourse with a female under 14 to 16 years of age.
3. Sexual intercourse with a male under 16 years.
4. Sexual intercourse with an adopted minor.
5. Sexual intercourse with a minor employee.
6. Householder, et cetera, permitting defilement of a minor under 16 years of age.

Now, why did we do that? We did that because the Children Act incorporated a very core concept, the concept is a child is anybody who is under 18 years of age, therefore the disaggregation of whether you are under 14 years or 14 to 16 years, or you are a male under 16 years or a female under 16 years, or you are a minor employee, it became a nonsense because we established a child at 18 years. And quite simply put, the concept of law was dealt with under the Children Act in section 18. Subject to section 20, this is the Children Act of 2012, section 18 says:

“Subject to section 20, a person who sexually penetrates a child commits an offence and is liable on conviction on indictment, to imprisonment for life.

19. (1) Subject to section 20, where a person touches a child and—
- (a) the touching is sexual; and
 - (b) the child is under sixteen years of age,
the person commits an offence.”

Subsection (2) deals with the offence creation there. And then subsection (3):

“...a person commits an offence...touching involves the placing...”

—And we go into the iterations of that. And then section 20 is what we refer to as the “Romeo clause” where you allow for the amorous circumstance of boyfriend and girlfriend essentially in innocent experimentation.

So Act No. 12 of 2012, which repealed the sections traversed in this Motion before us today, and this Motion has a schedule attached to it, again, let me put it on the record, we are looking at section 6 which was repealed: sexual intercourse with a female under 14; section 7 of the 1986 Act as amended, which was repealed, sexual intercourse with a female between 14 to 16; section 8, which was repealed, sexual intercourse with a male under 16 years; section 10, sexual intercourse with an adopted minor, et cetera; section 11, sexual intercourse with a minor and an employee; section 21, householder, et cetera, permitting defilement. These offences in Schedule 3 of Act No. 12 of 2012 were repealed. Why? We incorporated it into the new concepts of offences moving forward with the birth of the Children Act.

Why are we here today? Members would recall that we amended the Sexual Offences Act as a Senate, as a Parliament quite recently and in doing that, Madam President, we sought to unwind a nonsense in the Sexual Offences Act. In the Sexual Offences Act we had a provision in Part III of that 1986 Act, as it was amended by another Government in the year 2000 under Attorney General Ramesh

Lawrence Maharaj, section 34, et cetera, (a) onward was born under a new Part III, and we had notification requirements for sex offenders. So in the year 2000, AG Ramesh Lawrence Maharaj amended the Sexual Offences Act by inserting a new Part III. The Part III effectively said:

“A person shall be subject to the notification requirements...where—

(a) he has been convicted...sentenced...”—et cetera, et cetera.

“34B. (1) A person who is subject to notification requirements shall, within fourteen days of his sentence...notify to the police in the local...area...”

Now, how on earth are you going to be sentenced, taken into custody and find yourself in a police station to find yourself reporting? You understand now what I mean by the nonsense of the law.

What that resulted in is effectively we passed a law in the year 2000 and statistically we ended up in a gross absurdity. There was an excellent legitimate aim in the law, it passed the whole Parliament. I make no criticism of a heavyweight and giant in the legal industry, Mr. Ramesh Lawrence Maharaj, that is not the intent of what I have just said. I am saying the law as crafted could not go into effect because there were certain absurdities in process that we had not thought-out. Statistically in Trinidad and Tobago, Madam President, the Children’s Authority has said to us, and if you look to the child sexual abuse document produced—Children’s Authority of Trinidad and Tobago document entitled “Child Sexual Abuse, May 18, 2015 to October 31, 2018”, we see that we have alarming statistics. We are seeing that in the age range of physical abuse of victims as it relates to children, because remember what we are dealing with in the Schedule now are those offences against children, minors, employees, boys, girls,

all under 18. The Children's Authority tells us, statistically, 2.1 per cent of the abuse occurred to children in the age group zero to 11 months, 2.1 per cent. In the age group 1 to 3, babies, 13.9 per cent of the figure is abuse of babies in the zone one to three years; four to six years the percentages, 18.9 per cent of the abusers. In the age group seven to nine, 19.6 per cent. In the age group 10 to 13, 24.1 per cent; 14 to 15, 13.6 per cent; 16 to 17, 7.7 per cent. What does that tell us, there are some very sick people amongst us in Trinidad and Tobago; that is what these statistics tell us.

Let us get to what happened. Trinidad and Tobago is certainly in the position when we look to the birth of the sex offender registry in the year 2000, under that Part III, in the period the year 2002 to 2019, the number of persons convicted at the Magistracy—let me repeat this, number of persons convicted, not charged, 1,461 convicted; number of persons convicted at the High Court, 232, for a total of 1,693 people convicted for sexual offences. Number of persons ordered to register in the sex offender registry in the Magistracy, zero; in the High Court, zero, for a total of zero. Following upon this Government's insistent work pattern to protect children in particular, it is now a matter of record, we passed the Family and Children Division Act, we amended 19 laws in the Fifth Schedule there, we passed the miscellaneous provisions Act, we amended 23 laws to treat with children and families, and women in particular; we birth the regulations for child rehabilitation centres for children's homes. We opened for the first time in this country Children Courts, Fyzabad, Port of Spain. We opened Tobago, we opened the Family Court in Tobago. We are going to be opening a family court in San Fernando and we are expanding the Family Court in Port of Spain.

That demonstrates a need to constantly pay attention to the work that we are doing. So as Attorney General in recommending to the Cabinet the proclamation of the Sexual Offences Act, because this Government has taken a very dedicated step not only to pass law but to operationalize law, it is now well known: plea bargaining, Criminal Proceedings Rules, Criminal Division, Family and Children Division, Proceeds of Crime, money laundering. We have operationalized the vast majority of our laws and are well on our way to operationalizing all of them. In advocating for the proclamation of the launch of the sex offender register, we did a scrub of all of the litigation matters in the courts and what we noticed is the Interpretation Act specifically preserves a charge before a court once repealed. Let me explain that, if today we repealed a law and you are charged for that law and you have a matter going in court, that is still a valid matter under a law which was validly passed. So matters which concerned offences, charges, trials for an offence against sections 6, 7, 8, 10, 11 and 21 of the Sexual Offences Act, those sections which were repealed in 2012, persons who were facing charges and in trials for those matters still lawfully in gear.

2.30 p.m.

We launched the sex offender registry. The Commissioner of Police under the amendments to the Sexual Offences Act has the authority to publish that. Under the Sexual Offenders Act when you get to the new Part IV, which we inserted to create the operationalization of the National Sex Offender Registry, and you start at section 45 and you move your way forward, you only go on to the National Sex Offender Registry if a court says that you are to go on the register. In other words then, there is no automatic entry. A court says that you must be put on to the register.

We had the benefit of a Special Select Committee of this Senate, which went to work at this law. When we did the amendments in that Special Select Committee we met with a number of stakeholders, and the stakeholders were adamant that the Government was overreaching on a few issues. What were we overreaching on? We wanted to put a stamp in your passport if you are a child sex offender. We wanted sex offenders from other jurisdictions who entered the country to be subjected to this law. We wanted a certain amount of reach into people who were convicted, that we put you on the register automatically.

We were compelled to abandon the first two, so foreigners no longer go on to our register. We were compelled to ensure—and I think prudently so, I think the Senate did good work on that occasion—that we bear in mind the balance of rights issues as it relates to, for instance, the issue of incest. You really want to put the offender in incest where the family has issues to sort out. We had a different approach to that. I think we ended up with a good Bill, which became a good Act, but what we did not spot as a Special Select Committee is that we omitted to include the repealed offences on the Schedule.

So what are we here today to do? We are here to put onto the Schedule to the Sexual Offences Act those offences in Schedule 1 which are determined to be registrable offences; that is pursuant to section 2. A registrable offence is something which a court can say, you ought to, if the court gives permission, be put on to the public register. You will certainly go on the private register, but the court will decide if it is made public.

What do we have? In Schedule 1 we divided them into part (a), (b), (c), and we listed out all of the offences under the Sexual Offences Act. You will see it at Schedule 1. We listed out the offences under the Trafficking in Persons Act. We

listed out the offences under the Children Act. What was not listed here was the repealed offences.

So when we went to proclamation—we went to the court in due diligence fashion for proclamation. We observed that there were still existing matters under the laws which were repealed, and therefore what we do today is we come to this honourable Senate and we ask hon. Senators, who have turned up frontline warriors all, to do the people's business today, albeit in different arrangements of seating. We have asked hon. Senators to consider amending the Schedule, so that if somebody has a matter that comes up at the court and the judge says you are guilty, that there is now an opportunity to register that sex offender.

But the importance of it is obviously critical, because in creating a deterrent to the commission of crime, in creating a public awareness of dangerous people in our country, so deemed to be dangerous by due process in a court of law, having the opportunity by way of appeal to stop reporting by way of appeal, to not going on to the register—and by appeal I mean the aspects by which you may approach a High Court or a Court of Appeal judge, as we amended the law to say, look, I ought not to be on the register. We are reversing that burden in the Bill which we passed and amended the section of the Sexual Offences Act by.

Our society is grappling with a number of issues. It is safe to say crime is number one, right there alongside its twin, which is the economy. The twin of the economy requires us to think outside the box, to find solutions. Ugly words like “taxation” are critically important to Trinidad and Tobago today. As critically important as it is to make sure sex offenders are managed with due process transparency, but with some force of law behind it. We are in trying times locally, regionally internationally. We are dealing with a pandemic. The business of the

country must go on, because the one thing that we do know is that there is a degree of temporariness to it all.

On the pandemic side the heard cure would come in, will flatten the curve as everybody now knows by Google what that means. Thanks to a brilliant degree of communication from the Minister of Health—who I would like to say publicly today, whom I wish to congratulate in glowing terms along with my hon. colleagues and honourable members of society in the wider sense that have learned in to find good measure—the temporariness must be factored by the near surety that nobody could ever do away with crime.

Rape has existed since day one. It will continue to exist; evil mutates. We in this Parliament under section 53 of the Constitution, we can make laws for the peace, order and good governance. We turn up to do our duty as to our part, the same way others do their part, commendably so.

So today we agreed that any amendment to the Schedule should come by way of affirmative resolution. Now you are understanding why I as Attorney General always resist affirmative resolution. You have to move a whole sitting of Parliament to amend the Schedule. We could have done it by way of negative resolution, done the Order, and then anybody who had a point of view could have moved to negative the regulations or the amendments by way of Schedule. That is a by far more simple approach to adopt, rather affirmative resolution, most respectfully, because we could have done this last week. There was no agreement to do it last week. So if a matter fell through the cracks because we did not move in time, we agreed to affirmative resolution.

I spoke to my good friend Sen. Mark urging him on the last occasion for us to do this. He correctly pointed out that there was no notice for it, but you know

sometimes we could agree to agree as opposed to disagree. Sometimes we could agree to take the extra step. So here we are a week later doing something which we could have done by negative resolution, most respectfully. I respect the wishes of the Senate, do not get me wrong, these are my personal views, I make no complaints about the aspects.

So this is: (a), amend the Schedule to include the offences which were repealed because there are still existing matters which are lawfully on the books of Trinidad and Tobago in terms of prosecution, so saved by the Interpretation Act; (b), it is to allow for the population of the sex offenders registry by order of the court as to private and public matters; and (c), it is to allow the Commissioner of Police to continue the fight of crime fighting initiatives by way of deterrence mechanisms and by way of precautionary mechanisms.

“Who yuh hiring at home? Who yuh hiring in de school? Who yuh hiring at your early childhood day-care centre?” Who is looking after the most vulnerable in our society? This allows you a degree of transparency to know a little bit more about who you should be careful about. There is due process, there is positioning.

I genuinely think that this ought not to complicate our matters too significantly, and I beg to move.

Question proposed.

Sen. Saddam Hosein: Thank you very much, Madam President, for giving me the opportunity to rise in this august Chamber to contribute to a very important piece of legislation that we are about to pass which is the Sexual Offences Order. Like the Attorney General I would ask you to permit me to just thank all of those persons who right now are fighting for our country. Those doctors and those nurses and those medical staff on the frontline with respect to this pandemic of

COVID-19, and those families who have been affected, those confirmed cases. Our thoughts and our prayers are with them and their families at this time. [*Desk thumping*]

Now, Madam President, I agree with the Attorney General that notwithstanding that we are in very trying circumstances, and we are in unusual circumstances, the work must go on. But while the work goes on we must be cognizant and we must take the necessary precautions to protect our citizens of Trinidad and Tobago. We must exercise restraint and we must exercise precaution.

Just this morning I would have received a communication via email from the Law Association where apparently the Judiciary has taken a decision whereby courts will be closed, having regard to the COVID-19 situation, save and except for urgent and emergency sittings. That is one the of things that we have to be cognizant about when we are in these circumstances, that while the work must go on we must protect our valuable assets, our citizens of the Republic of Trinidad and Tobago. [*Desk thumping*]

I heard the Attorney General indicate some level of quarrel with respect to the affirmative resolution for the passage of this Order in this Parliament. But we are very consistent with respect to our arguments when we insist that certain pieces of legislation must be subject to affirmative resolution. Because what does that do, Madam President? It offers some level of participation by both Houses of Parliament in order to pass legislation that has gone before. It is not simply a situation whereby we can just pass legislation and allow the Executive to do whatever they like. We must still have some level of contribution and some level of input with respect to carrying this piece of legislation forward, and today that is what we are doing.

We are giving this Parliament an opportunity to debate a very important matter. Because this matter with respect to placing persons on a sex offenders registry is of serious and significant concern. Because you remember, this Bill was introduced in the Parliament in 2019. You would have remembered how many NGOs and how many stakeholders would have come out and give their public opinion with respect to this registry, because it is a very controversial issue. Coming from that, a special select committee of the Senate was convened comprising Members of the Government, Members of the Opposition and Members of the Independent Bench, whereby this Senate was able to take a decision to agree on what is the final Act, which is the Sexual Offences (Amdt.) Act of 2019. That Act would have amended, the Sexual Offences Act, the parent Act.

Madam President, what we are doing today is very simple in terms of what the Attorney General has presented to this Senate. Notwithstanding he would have used a lot of words and a lot of examples, it is a very simple amendment that we are going to bring to this Senate for consideration that deals with capturing offences that were repealed in 2012, so now they are applicable to the sex offenders registry. But we must contextualize how this is going to operate.

The Attorney General gave some statistics, and those statistics are very frightening, because clearly it shows that in Trinidad and Tobago our young people, our children are at risk of sexual predators and sexual offenders. Madam President, if you would allow me to quote from an article in the *Trinidad Guardian* dated 20 November, 2018, it is headlined:

“16,000 cases before Children’s Authority”

And this comes three and half years after the operation of the Children’s Authority.

So you can imagine how frightening a situation it is in Trinidad and Tobago today where children are the victims of sexual offences in this country. It is extremely frightening. The article goes on to say that the number of reports of child sexual abuse and sexual offences against children over the period amounted to 5,737 cases. Oh gosh man, this cannot be our beautiful Trinidad and Tobago. One case is far too many for this country—it is far too many.

What this particular Order is going to do, and the Attorney General was right when he piloted the Order, is that in the year 2012 when the Children Act was introduced in Trinidad and Tobago, Act 12 of 2012, it also repealed offences relating to children that were present in the Sexual Offences Act. So it amended that particular Act and it migrated offences under the Children Act so now you bring all of those offences and all of those matters relating to children under one piece of law, which is the Children Act, the Act of 2012.

But look at the offences that we are now trying to place on the register. We are putting offences on the register: sexual intercourse with females under 14 years, sexual intercourse with females between 14 and 16 years, sexual intercourse with males under 16 years, sexual intercourse with adopted minor, et cetera, sexual intercourse with minor employee and householder, et cetera, permitting defilement of a minor under 16 years of age—very, very serious offences that were not captured under the 2019 amendment.

The Attorney General would always say that the Opposition does not support his legislation, that we are unpatriotic, but we are lending our support in these circumstances, because we too want to ensure that the children of this country are properly protected.

What does this Order do now in terms of section 45 of the amendment Act?

Section 45 is what sets up the registry. This is found in the 2019 amendment to the Sexual Offences Act. If you would permit me to read, Madam President, section 45 states that:

“This Part applies to a sex offender who—

- (a) is a citizen of Trinidad and Tobago or a resident...”—so two categories of persons—“and who was convicted of a registrable offence by a court within or outside Trinidad and Tobago on or after the 25th September, 2000 and who—
 - (i) completed his sentence before the commencement of this Part;”—so that means it operates retroactively—“or
 - (ii) has not completed his sentence before the commencement of this Part;”

So what we are doing now is that we are making all of these offences that are present in the Order that I just listed out as registrable offences, very simple. Because the Attorney General was right in terms of saying that there may be cases that may fall through the crack, and we agree with that, because we do not want these persons who commit such heinous acts to not end up on the registry.

The 25 September, 2000, is an important date because that was the date in which the first registry was set up under the 2000 amendment to the Sexual Offences Act. But what this legislation intends to do is this—and I want to just be very clear and I just ask the Attorney General for some clarification in his winding up with respect to one particular issue, and I would raise it in a few minutes—so what we are doing now is that there are persons who may have been charged pre-2012 when the offences were repealed, but have not yet been convicted because they are still awaiting a trial. So we want to capture those. That is the first one.

Then there are those who may have been convicted prior to 2012 but after September 2000. We also want to capture those. So the question I want to ask the Attorney General is this: Those persons who have served a sentence prior to the commencement of the establishment of this new registry in 2019, what will be their position? Because a person does not automatically end up on the registry on conviction. The court maintains a discretion to determine whether or not an offender, a person who is convicted of an offence that is registrable, ends up on the registry. So those persons who have already been convicted and served their sentence between September 2000 and 2019, what is their position? Is it that we are going to look for these persons and then make the application before the court for them to go before the registry? Because they have already been sentenced.

I could understand what would happen in the cases coming post-2019 that are yet to be tried and convicted and sentenced. That is a very simple matter. The court might use their discretion there to determine whether or not those persons would end up on the registry. Those are the two issues with respect to what I see here.

Madam President, this as I said is a very simple matter. There is not much we can debate on this matter, except to say that on this side we have always ensured that we stand on the side for the protection of children. The Attorney General did indicate that we have the Children Court that is up and running, and we are happy for this. But the Attorney General also does not like to inform the honourable Senate that the Children Court was actually something that started under the People's Partnership Government, and that the UNDP was instrumental in terms of the establishment of the Children Court in this country.

What the Attorney General does not like to tell us also is that under a

People's Partnership Government was the establishment of the very important body called the "Children's Authority of Trinidad and Tobago". That is one of the greatest achievements of our government. [*Desk thumping*] We on this side are proud to have a political leader in the person of Kamla Persad-Bissessar SC, the Member for Siparia, who has always stood on the side of children. Because on the very first day, the very first Cabinet Minute that was passed by this People's Partnership Government was the establishment of the Children's Life Fund, and I commend her.

So this brings me to the end of my contribution. We on this side support this particular Order, and I thank you very much.

Sen. Paul Richards: Thank you, Madam President, for recognizing me to make what I hope would be a short contribution to this Motion. Before I do, by your leave I would just like to say a few words on what we are facing as a country. In these types of circumstances, the situation locally, regionally and internationally really, and with specific reference to Trinidad and Tobago, calls for us to unite. It calls for a different kind of leadership that unites us with our commonalities and against this deadly enemy, the COVID-19. Misinformation and fake news can be equally as deadly as the virus itself. So we need to be responsible as citizens. We need to put aside our differences for our country, because with division if we are divided we will fall. Together I believe we can and will overcome, and this is a time for us to show who we are as a country. [*Desk thumping*]

This Motion piloted by the Attorney General is a very important one, and interestingly enough it coincides—and I fully support it—with a bit of research and piece I was doing for an online portal called Izzo Media on Power 102 online which is titled—because I was able to get some data from CAPA, the Crime and

Problem Analysis related to the TTPS for a piece I was doing called “Trinidad and Tobago’s Sexual Violence Problem”. CAPA was able to very efficiently forward some data that I asked for related to rapes between the years 2000 and 2019, over a 20-year span. What came back to me was shocking in many ways, disgusting and it begs support for this kind of Motion in many different ways. I will just present some of the findings in the exposé.

Between 2000 and 2019 there were 6,047 reported rapes in Trinidad and Tobago—6,047 reported rapes, with 73.2 per cent of these rapes, which is almost three-quarter, between the ages of seven to 24. Madam President, 48.7 per cent of these rapes were between the ages of seven to 17, which means we have a problem in Trinidad and Tobago, a significant problem. And there are predators and rapists roaming our streets in Trinidad and Tobago.

Juxtaposed against the number of convictions over the same period, which were totalled 1,455 which was 24.1 per cent of the reported rapes. If you do research on rapes and sexual violence in any jurisdiction you know that reported rapes fall between 50 per cent, or in some instances 63 per cent of those rapes or sexual crimes are unreported. So you can easily double, and in some cases some criminologists suggest multiply the number of reported rapes by as much as five or six to get an accurate picture, which paints an even more dire and frightening picture in Trinidad and Tobago about what is happening.

It also speaks to inadequacies in the criminal justice system, and that is why it is very easy for me to support these types of Motion and legislation that tightens the criminal justice system’s hold and ability to protect, particularly young boys and girls and women, in this case the rapes went way into the older age groups and older demographics.

It is really sad that this is happening in our country, and when you look at it, seven to 15 age group there were 2,042 rapes which comprised 33.8 per cent, and in the 16 to 17 category 9,004 rapes—reported I am saying here, which means you could easily double this to get a sense of what is happening—14.9 per cent, and in the 18 to 24, 24.7 per cent. So as I said before, in the seven to 24 that was almost three-quarter or 75 per cent of the rapes that are taking place.

This type of criminality is extremely heinous. I was able to solicit some professional information from my colleague on the Bench, Sen. Dr. Deyalsingh, as a psychologist who I have no doubt counsels many of these victims. I quote Sen. Dr. Deyalsingh:

Rape itself warps and corrupts one of the most intimate forms of human action, and as such has a unique likelihood in the survivor. Rape, to put it quite bluntly, linked to a sex act that is usually linked to pleasure, relationship and choice. Psychotherapist Lawrence Miller referred to sex within the notion, no other physical encounter between human beings carries such a desperate potential for good or evil. In rape all positive aspects associated with the sex act are stripped, where it leaves a survivor with emotional, psychological and physical reaction. Most survivors feel a great sense of guilt and self-blame. It damages them for the rest of their lives.

So I thank Dr. Deyalsingh for that.

When you think of around the world, girls and women between the ages of 16 and 19 are four times more likely than girls and women in any other age group to be raped. Madam Speaker, 94 per cent of victims of sexual crimes experience symptoms including PTSD, post-traumatic stress disorder, during two weeks and thereafter. Following the rape, 30 per cent of women and girls report PTSD nine

months after the rape. Thirty per cent of women and girls who are raped contemplate suicide, it so destroys their sense of self and well-being. Thirty per cent of women and girls who are raped actually attempt suicide. So we really have to do more as a country to protect our girls and women in particular. That does not diminish in any way protecting boys and some men who are also victims of rape and sexual violence.

We also have to look at what is happening around the world. When you think of the categories that the Attorney General proffered to become in this Motion eligible for the registry, I think it is extremely easy to approve it. We have to look at the college campus issue, because 25 per cent of college women and 15 per cent of college men are victims of forced sex during their time in college. This is data that is consistent around the world, so we cannot bury our heads in the sand and think it is not happening in Trinidad and Tobago.

3.00 p.m.

So we really need to look at sexual violence, rape, with a different kind of eye given the statistics coming out. And some of the statistics that I have been able to outline today, particularly in the context of those statistics of occurrences or reported occurrences juxtaposed against the level of convictions and the fact that in many cases, persons who are, in fact, repeat offenders, the public has no way of identifying them as repeat offenders and the significant danger they pose coming back into society with a predilection for repeating these heinous acts. So, I fully support these provisions in this Motion and I thank the Attorney General for proffering them today. Thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Ameen.

Sen. Khadijah Ameen: Thank you very much. Madam President, I rise on this

occasion and I want to, like the Members before me, take the opportunity to acknowledge the fact that this Senate is sitting during a time when the Government has asked this country to desist from all social gatherings except those that are—

Madam President: All right, Sen. Ameen, I think I have to intervene here. Prior to this—and put on the record—that just prior to this sitting, there was a meeting with the Leader of Government Business, the Leader of the Opposition Business, the Coordinator of the Independent Bench, and certain things were discussed, and I would ask you and all other speakers to desist from the line that you are now going down. Okay?

Sen. K. Ameen: Well, thank you, Madam President. I am not sure that I had established the line that I was going down. I wanted to draw—

Madam President: Sen. Ameen, yes, take it from me. I know the line that you were going down and I am asking, please, that you move on immediately to the points that you have to make on this matter at hand.

Sen. K. Ameen: Thank you, Madam President. Madam President, I just want to take this opportunity to record that contrary to some of the points raised by the Attorney General, whether he said it explicitly or not, that the United National Congress stands in support of protection of women and children against sexual violence.

Trinidad and Tobago became a signatory to the United Nations charter on children's rights, and the UNC and the People's Partnership Governments led by Prime Minister Basdeo Panday and Prime Minister Kamla Persad-Bissessar brought a number of pieces of legislation to this Parliament to establish the protection of the rights of children.

My colleague before me mentioned the establishment of the Children's

Authority. The Attorney General indicated that he had the opportunity to work with the then Government, when he was in Opposition, to ensure that the legislation was passed where— especially where it required a special majority and, Madam President, that has been the difference in the approach between the different governments.

I have sat here and experienced occasions when the Government, if they feel they would not get the support of Opposition, would make moves to remove that requirement for a special majority, which I have said before and I repeat, is dangerous to democracy.

We are in a situation today where the Opposition and the Government is in agreement with the measure being brought. I know the Attorney General has indicated on numerous occasions, he is not really in favour of having positive resolutions because it does require us to come back to Parliament. It does require a sitting to convene to agree on something that may simply be agreed to automatically but I do believe, Madam President, that having a positive resolution allows for ventilation, allows for input, and allows for the Parliament to take into consideration any change in circumstances. And that is not applied to this piece of legislation alone, it applies across the board, and I am in full support of having greater transparency and greater participation.

Madam President, what I would like to raise at this time is the rate of conviction, the poor rate of conviction of sexual offences in general, and sexual offences against children in the courts of Trinidad and Tobago. I am certain that, just as the statistics are available with regard to arrest versus conviction, I am certain that data is also available to the State and to the relevant authorities with regard to the factors that cause our rate of conviction to be in the vicinity of 20 per

cent.

We have to also bear in mind that not all sexual offences that take place are actually reported. Not all that are actually reported end up with a person being charged and certainly, not all persons charged end up being convicted, and justice for the society and justice for the victim should be of paramount importance.

We, as a state, have to begin to examine the factors that cause low conviction rates when it comes to sexual offences. I do not want to—I do have some information, I do not want to go into it at this time because I get the impression that we want this sitting to be brief but, Madam President, there is a lot of literature available in terms of why conviction rates are so low.

Madam President, I want to take this opportunity to urge the Attorney General, the division in the Office of the Prime Minister responsible for children and gender, which I think should be a Ministry of its own, and the NGOs to come together to make these recommendations to the Judiciary, to the police, to the DPP's Office so that the rate of conviction of sexual offenders could be improved.

I also, Madam President, in the interest of justice, want to stress the importance of—well, I do not want to say mediation, eh, because I do not think this is one of the cases where you want to really have mediation per se but certainly, counselling. Counselling for the victims, the families as well as the perpetrators and their families. Very often, the perpetrator or the accused is vilified, you have a lot of stigma attached to rape and sexual offences. What we often do not take into consideration is the innocent relatives of the alleged attacker or alleged perpetrator, and I feel that there is space in our court system to deal with that.

The victim and the victim's family as well, as a support network, should also

get that support from our courts. Sexual offences is not one of those crimes where I feel that we should only take the hard approach when it comes to prosecution, when it comes to finding victims and perpetrators, and when it comes to sentencing and bringing justice.

This measure, to have a positive resolution, Madam President, may be very small today. However, I am of the firm belief that when the time comes around for this matter to come back to Parliament, if it is necessary—if the Minister finds it necessary to make adjustments, it leaves room for every one of us and every person who will be in this Parliament at that time, to make a contribution to improve the legislation and improve our protection against or protection for those who are victims of sexual offences.

So, Madam President, I am in support of having a positive resolution to the regulations. I am in support of Trinidad and Tobago putting firmer measures in place to protect victims of sexual abuse. And the actions we take in law, in the court and in other spaces must send a strong message to influence our culture in terms of how we treat with sexual offences, how we treat with rape, how we treat with incest, in particular, that happens within the home that is supposed to be a protected space and, Madam President, maybe this is the opportunity for us to ventilate some of those things.

So, I know that there are people who would have travelled recently and thing, I am not looking forward to staying in much closed spaces. I really intended to make a short contribution today but I am strongly in support of this particular measure that is brought. Thank you, Madam President.

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

Sen. Anthony Vieira: Thank you, Madam President. Madam President, this

Motion seeks to amend Schedule 1 of the Sexual Offences Act by adding to the list of registrable offences, persons convicted of sexual intercourse with children, and householders permitting defilement of minors under 16 years of age, or employers who have sexual intercourse with minor employees.

Given that the subject matter of the Motion relates to the discouragement of sexual predators by naming and shaming potential offenders, I expect this Motion will have full support of the Senate. But I rise to speak because I think this is also a very timely Motion, in that it provides a good opportunity to see how affirmative resolutions operate in practice.

It is relevant because in the Trinidad and Tobago Revenue Authority Bill, which is also under consideration for debate at this moment, there are two clauses, clauses 13 and 15, where affirmative resolution features, and that is in relation to the Minister's powers of appointment and revocation of appointment of the board to the Trinidad and Tobago Revenue Authority. So this is a good opportunity to see how affirmative reaction.

Sen. S. Hosein: Resolution.

Sen. A. Vieira: Affirmative resolution. Thanks, Sen. Hosein. According to section 75(5) of the Interpretation Act:

“The expression, ‘subject to affirmative resolution of Parliament’, when used in relation to any statutory instruments or document, means that those instruments or documents shall not come into operation unless and until affirmed by a resolution of each House of Parliament.”

So unless this Order amending Schedule 1 of the Sexual Offences Act is affirmed, the offences identified in the Motion remain inoperative. So the long and short of it, Madam President, is affirmative resolutions are a means whereby

Parliament retains a measure of control over the exercise of power. I think they are an important tool in the democratic process, they are a mechanism for transparency and buy-in. I thank you. [*Desk thumping*]

Madam President: Sen. Mark.

Sen. Wade Mark: Thank you very much, Madam President. Madam President, this particular Motion, which seeks our approval to address an amendment to the Sexual Offences Act through amending Schedule 1 and manifested through an Order that we have before us amending the very schedule is one, Madam President, that we on this side associate with and will give support to.

I want to say, Madam President, that we in the United National Congress have had a very proud history and a very proud record of not only promoting children's legislation, but consolidating and operationalizing those pieces of legislation.

Madam President, whether it had to do with the package of legislation affecting our children which remained literally in abeyance for several years until we, in the period 1995 to 2000, under the administration of the hon. Basdeo Panday and through the leadership of the Office of the Attorney General, Ramesh Lawrence Maharaj, piloted a package of children legislation consistent with our international obligation under the United Nations Convention on the Rights of the Child.

And, Madam President, you would recall that in that package of legislation that would have been passed in— debated in 1999 and passed in early 2000, among those pieces of legislation would have been the Children's Authority Act, the Children Act, the Children's Community Residences, Foster Care and Nurseries Act as well as the Adoption of Children Act.

And, Madam President, in an effort to further consolidate and operationalize

those very important pieces of legislation, protecting children's rights, it took the Kamla Persad-Bissessar's administration of 2010 and 2015 to further consolidate, amend where was necessary, and to establish a committee headed by, I think, Diana Mahabir-Wyatt and Stephanie Daly, among others, to fully operationalize and give effect to the children's legislation in this country. So what we have today and what we are debating today is a very important measure as it relates to further protection of our children, particularly those as outlined in the Order, who may become victims of criminals and aggressors in this land.

And, Madam President, we saw what happened in 2019 when this Sexual Offences Act was amended and given way to a registry to deal with offenders and giving the court of this country, through the judges, the authority to determine whether these persons should be incorporated and whether they should be publicly made available to the citizenry of this country.

Madam President, in 2012, the Children Act was passed and as you recall, this raised the legal age for sexual consent subject, of course, to certain exceptions to 18 years. It is and must be noted, Madam President, that the exceptions would have included, Madam President, non-liability where both parties were children and as regard to sexual touching, the age of consent would have been 16 years, Madam President.

Although that is still an offence for an adult, Madam President, to encourage a person under 18 years to engage in sexual touching thus rendering effectively any sexual conduct with a child under 18 to be illegal in our country.

Madam President, prior to 2012, the Sexual Offences Act included various offences dependent on the actual age of the child with varying legal and/or evidential tests but due to the Children Act, those sections relative to those

offences were repealed, as we were told earlier in this debate, and that is what we are seeking to address today, Madam President.

Madam President, Act No. 19 of 2019 which was assented to in September and to be precise, my date is 26th of September, 2019, the Sexual Offences Act was amended to create what is called, Madam President, the “sexual offenders registry”, as I brought to your attention earlier. It was now required that any person, Madam President, who was convicted of a now Schedule 1 offence on or after the 25th of September, 2000, was required to report to the nearest police station to have his details entered into the sexual offences registry within six months of the passage of the Act.

And, Madam President, the reason why we are here today is that the six months deadline that the Act gave for this to take effect, today being the 17th of March, that period, Madam President, would come to an end on 25th of March, 2020, and hence the reason we are debating this measure today.

I just want to indicate, Madam President, that the Attorney General in his presentation made reference to his approach to my good self last week to have this matter debated last week and, of course, I did indicate to the Attorney General that we needed notice to prepare for this piece of—for this debate, I should say, only to be threatened by the Attorney General—

Madam President: Sen. Mark—

Sen. W. Mark: Okay.

Madam President: I do have to caution you.

Sen. W. Mark: I withdraw that, Madam.

Madam President: Thank you.

Sen. W. Mark: Only to be advised by the Attorney General that if we do not

support this matter, he will make it a public statement and have us, in the UNC, embarrassed. Now that is the kind of bullying tactics—

Madam President: Sen. Mark—

Sen. W. Mark: All right. I withdraw that, Madam President.

Madam President: And, yes, if you continue, the next time and I hope there is not a next time, you will have to withdraw and apologize. Okay?

Sen. W. Mark: But I need to bring to your attention what was done. Do I not? I think my language is what you are concerned about.

Madam President: I am very concerned with your language and therefore, I will ask you to address that as you continue.

Sen. W. Mark: So what I am saying, Madam President, is that we are not the floor cloth or the footstool of anyone. We represent close to 360 to 70,000 people in this country and therefore, we will not be intimidated or harassed by anyone, [*Desk thumping*] whether that person happens to be a direct descendent of the Prophet Muhammad or has links with Iraq.

Madam President: Sen. Mark.

Sen. W. Mark: Madam President—

Madam President: No. Please, take your seat. There is absolutely no need to go down that path. I would ask you, please. Yes.

Sen. W. Mark: I was just trying to respond to the Attorney General who begun this excursion into adventurism but, you know, I am always guided by your rulings. But, Madam President, as I say before I engaged you a short while ago, there is a deadline, Madam President, for this particular matter to be addressed and this is why I suspect the Attorney General is trying to engage me although he knew that March 25th is a little way from today. So we will pass it today and he will

meet his deadline so that those elements in accordance with Act 19, who were convicted would be required under the Act of 2000 to report to the nearest police station upon that six-month period that I have mentioned.

Now, Madam President, the said Schedule did not take into consideration sexual offences that were not then on the statute, meaning that the offences that were removed by the 2012 Children Act were not captured, and this is what the Order is seeking to capture, Madam President, to ensure as we were advised, this Order, Madam President, which seeks to amend section 61(7) of the Sexual Offences Act would bring into being these particular offences that would have been repealed by this Act of 2012 which is No. 12 of 2012 Act and the various offences were listed in this Order. So that, Madam President, those who were found guilty and are convicted for such heinous sexual offences against children in our country would not escape the law that was passed in 2019.

And if I may, Madam President, remind this honourable Senate, we are talking about sexual intercourse with females under 14 years, that is section 6 of this Act of 2012. Then, Madam President, section 7, sexual intercourse with a female between 14 and 16 years, that is going back into the Schedule, Madam President. Then section 8, which was repealed by Act No. 12 of 2012, and that is sexual intercourse with a male under 16 years. Section 10 dealing with sexual intercourse with an adopted minor. Section 11 dealing with sexual intercourse with a minor employee, and the last section, Madam President, section 21 of Act No. 12 of 2012, householder permitting defilement of a minor under 16 years of age.

3.30 p.m.

So, we want to ensure, Madam President, that these offences find their way

in this amendment to the Sexual Offences (Amdt. to Schedule 1) Order, 2020. And that is why I am saying, Madam President, this Motion that we are debating this afternoon seeks to include these offences. So we have to recognize that there was a clear oversight in the initial drafting of the 2019 Act, and, Madam President, we have no difficulty, without going into any lengthy debate on this Motion, we see no ethical difficulty in agreeing to the amendment that is before us. We know it is a matter of urgency to have this particular Order approved, because there is a time limit for registration which, as I indicated, will expire by the 25th of March, 2020, which is a few days away, today being March the 17th.

So we are talking about the few days away to have this matter addressed and approved, and that is the reason why we are in this place today, and that is why we are debating this Motion in order to avoid these aggressors, predators and sexual offenders from escaping due process, and from escaping the will of the Parliament as it relates to the amendments that were brought about as a result of our discussions and debate to the Sexual Offences (Amdt.) Act in 2019. So I say, Madam President, we on this side, as we have demonstrated in the past, have no objection. There is no opposition, there is no question of our unwavering support for the measure that is before us, and we are happy to be associated with this measure today, Madam President.

Madam President, you know I am not normally short in terms of my contribution, but with your leave I would be today. So, I want to thank you very much for allowing me to make my intervention on this matter.

Madam President: Attorney General.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, I thank hon. Senators for their contributions. It is just a few

very small points to refer to. First of all, I just genuinely cannot understand what Sen. Mark was talking about. There is no time limit, there is no compelling force to bring us here to discuss this law other than the fact that in the usual course of scrubbing preparedness for operationalization of law, proclamation of law, we at the Attorney General's office go to the repositories of information and double check what we are doing, and if there is a need to cause amendments or to fine-tune, we then inform the relevant authorities, in this case the Cabinet, and therefore we take a step. I have no idea whatsoever as to what Sen. Mark is talking about. He is entirely on a frolic of his own.

The position raised by Sen. Hosein is one that I think needs to be clarified. Sen. Hosein asked a question which effectively is a logical one, what happens when we treat with the situation as to persons between 2000 and 2019, in this case 2020, 2019 when the law became subject to proclamation. We addressed that very squarely in the amendments that we caused to the Sexual Offences Act, when we introduced the new Part IV for the sex offender registry. The position is complicated. Short answer is we can do nothing. They would not go onto any public register. The amendment Act says that in plain text. *[Interruption]* Yes. So persons who are convicted already and who have not gone onto the register will not go onto the register. That is not to say that the police are not in an exercise right now of identifying all convictions. Because I want to put into the context the fact that we are not just passing law on our team here in team government. We are operationalizing law, and we are digitizing all of the records at the Judiciary, and in particular, the Magistracy.

Sen. Ameen raised the point about talking to the Judiciary about improving convictions. Let me just repeat, we have over 1,600 convictions for sexual

offences none of which are on the sex offender registry. So, “coulda, woulda, shoulda”, that just does not arise. It just was not done under the tenure of the last Government or any other Government since the year 2000. As Attorney General with responsibility, on this occasion I can tell you 1,600 convictions is a lot of convictions. The point is nobody is on the register. We established the register. We brought the law to Parliament, we created the positions, we implemented law after passage, and we opened courts. We anonymized children’s records, we brought in the UN Conventions. It was kind of surprising to say Sen. Hosein that the Attorney General did not give credit to the last Government for the passage of the Children Act. I specifically said, as an Opposition Senator I supported the Government.

And, to disagree with Sen. Ameen, it is not that the last Government worked with the Opposition on the occasion of amending the Children Act, there was not discussion by the then Government, Sen. Vieira was there, he remembers it. I was compelled to put 212 amendments into writing, myself, because the Government would not listen to a word I had to say. So I am not going to accept the reinvention of history today from Sen. Ameen. That is just not the case. In my tenure as an Opposition Senator there was never a marked up Bill provided. There was never a marked up Act provided. There was no data as to what Trinidad and Tobago looked like ever. We now operate in solidly different environment in this Parliament, with a published legislative agenda, where all tools are provided to all Members of Parliament, whether they are in Opposition or Government, because that is just the right thing to do. When I came in as Attorney General and I instructed the Chief Parliamentary Counsel that we will be doing what I just said, marked up Bills, marked up Acts, circulated amendments, and we would listen.

They said, AG are you sure you are doing the right thing? The last Government's approach is that if you gave the Opposition too much they would use it against you. I said for heaven's sake, we are not going to do that; we are going to be transparent in the passage of law.

In the position of answering Sen. Hosein, just to complete the record, I would just like to point out that when we got to section 47 of the Sexual Offences Act as we amended in this Senate and in this Parliament, the register was created under section 47, it is the National Sex Offender Register. The provisions of section 49(4)(c) apply. The information contained in register—this is Part IV, section 47, subsection (4), the information contained in the register referred to in section 34C(2) of the former Part III of the Act, shall form part of the register, but such information shall not be accessible to the public. What is a matter of record is that there was nothing on the register. It just was not done. Nobody was tracking it, nobody was enforcing the laws. We have taken a different approach to track and enforce the laws. I want to warn people that have been convicted, that the police are in fact together with the Judiciary and the Attorney General's office, we are going through by way of combing all of the records at the Judiciary, who has been convicted, who has not, and we have another way to treat with it. There is one other point to address.

I want to reject out of hand, Madam President, Sen. Ameen's statement that the Government is dangerous to democracy because at times I as Attorney General have stripped three-fifths majority requirements. Let me put on the record what was done. Whenever we were faced with the usual position of the Opposition, and I say Opposition alone, that they would not support laws which require three-fifths majority, we have taken the step to remove the clauses in the Bills which require

the three-fifths majority. In other words then, the things which offended the Constitution and the requirement for three-fifths majority, we removed those things, leaving therefore only the things that do not require three-fifths majority. And those have passed, we have managed to treat with it, the classic case/example on that was the income tax amendment, which we had to bring to the Parliament, if you recalled, December last year or earlier last year, we were dealing with the income tax amendment, police access to income tax information was brought together with the requirements to achieve the global forum requirements.

The Opposition refused to support it. We moved the Global Forum requirements, which by the way are a replica of FATCA, we put that in a separate Bill, we passed the simple majority law that went into effect, nobody has challenged it, and they cannot. That which went to Joint Select Committee, which was so burning and urgent that the UNC could not support it, that was the subject of amendment in the Joint Select Committee, and in fact we amended the Bill to delete a semicolon. That was it. So, I am not taking the argument today at all, coming from the Opposition, that there is anything dangerous in that approach. We will just simply shift gears when we meet, a reticence on the part of certain Members to give support for things which are in the national interest. This Government will not be delayed by any of those delay tactics when the people of Trinidad and Tobago are suffering. That is just not what is going to happen. And every tool available in the arsenal of the Attorney General's office, and in the arsenal of the Government will be applied with fair measure and constitutionality for the peace, order and good governance of this society, Madam Speaker. Madam President, forgive me.

Madam President, I do not think that there is anything else to answer, save

that really and truly I do still stick to the prescription that not positive resolution, as Sen. Ameen calls it, that is called affirmative resolution, Sen. Ameen. Affirmative resolution is as good as negative resolution. Negative resolution still has parliamentary scrutiny. You must pass it, put it on the table, it there stands for 42 days, not including recess period and times, so it may be months, and you have the option to negative whatever is brought for negative resolution, move a Motion to say, "I doh want dat", and therefore you have parliamentary scrutiny. So, let us be serious with this. Affirmative resolution is as good as negative resolution, and I rest my case, and in resting my case, I beg to move. [*Desk thumping*]

Question put and agreed to.

Resolved:

That the Sexual Offences (Amdt. to Schedule 1) Order, 2020 be approved.

Madam President: Attorney General.

**MISCELLANEOUS PROVISIONS (AGE OF RETIREMENT
 OF JUDGES, INTERPRETATION AND JUDICIAL OFFICERS)**

BILL, 2019

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): Madam President, I beg to move:

That a Bill to amend the Constitution (Prescribed Matters) Act, Chap. 1:02, the Interpretation Act, Chap. 3:01, and the Judicial and Legal Service Act, Chap. 6:01, be now read a second time.

Madam President, what we do here today is perhaps one of the shortest pieces of law but yet one of the most important features of law that we can deal with in terms of amendment or consideration as a Parliament. Permit me, Madam President, to therefore say that this Bill which is all of four clauses long, and which

proposes, firstly an amendment to the Constitution (Prescribed Matters) Act; secondly an amendment to the Interpretation Act; and thirdly an amendment to the Judicial and Legal Service Act, is part of the crime-fighting manoeuvres, the anti-crime measures that this Government considers critical to the development of Trinidad and Tobago.

As a Government, Madam President, we have taken a very deliberate approach to avoiding the usual pattern of Governments coming to Parliament, passing laws, turning their backs on the laws and not worrying about implementation. We just completed a Bill which demonstrated that we passed a law in the year 2000 and 19 years later, 20 years later not a single person was put on the sex offender registry. Why? There was no conscious reflection upon the following key characteristics for success. What are they? Plant and machinery, people, processes, and then law. As Attorney General of the Republic of Trinidad and Tobago and Minister of Legal Affairs, I have approached the task of legislation with transparency, but we have as a Government led by the hon. Prime Minister, underwritten the laws by plant and machinery, people and processes. What do I mean by that? When you pass a law to deal with money laundering, plea bargaining, kidnapping, bail, whatever it may be, sexual offences, those laws of Trinidad and Tobago have to be dealt with by people in places with processes.

In the criminal justice system, the core of the criminal justice system, was not the subject of proper scrutiny by Governments prior. There was no meaningful appreciation of caseload and case management by the number of persons assigned to work in that system. It is now common place, everybody here knows what I am about to say. In the Magistrates' Court we have a 146,000 cases per year amongst

43 magistrates in 12 courts. We have 26,000 preliminary enquiry cases per year in the Magistrates' Court. Sen. Hosein is buckling under the repetition that I give. Why? If you repeat it over and over again, it sinks into your psyche what the caseload is. And this Bill is designed to treat with exactly that. Why? Who are the people in the criminal justice system? Judges, prosecutors, police officers, prison officers, marshals, registrars, masters, defence attorneys, legal aid, support officers in the Judiciary, probation officers, medical officers, et cetera. But how are you going—how are we going to manage bringing a consequence to a crime if you do not have the capacity to treat with it?

It is true that we have made massive amendments. We have created divisions of court. That never happened before. We have a Family Division, a Children Division, a Civil Division, a Probate Division. When we came into office we had the Civil Proceedings Rules and the maintenance rules. We now have Criminal Procedure Rules, Family Proceedings Rules—sorry, we had Family Proceedings Rules, they were un-amended, and we also have Probate Rules now. When we came in case management was being done by two masters. Today we have 21. In a month's time we would have 31.

When we came in statute provided for 36 high court judges, we are now at 64. Statute provided for 12 Court of Appeal judges, we are at 15. When we came in Clerks of the Peace who were unqualified attorneys managed the legal aspects in the courts, in the Magistracy. That is a feature of the past now, because we have Registrars of the Magistracy. When we came judicial officers in the Magistracy worked in an un-computerized environment. They had no support staff, there was no digital recording. That is now a feature of the past, five to one ratio to the

magisterial support system. Why? They conduct the lion's share of work. When we came in, 146,000 magistrate matters. April 2nd we will delete 104,000 of those cases when we operationalize the Motor Vehicles and Road Traffic Act matters. When we move to the opening of the new civil courts at Tower D, and therefore the birthing of 64 criminal courts at the Hall of Justice, we will be able, with the DPP's consent, to operationalize the abolition of preliminary enquiries. That is another 26,000 cases gone.

December 23, 2019, we decriminalized marijuana and 8,500 cases fell off the radar. Where does that leave us? Eight thousand, five hundred cases per annum amongst the same 43 magistrates, in 12 courts, in a computerized environment with rules of court, with sanctions that can apply. What we are doing about the officers? As a matter of record I want to say today, public defenders are born. Who is the head of the public defenders? UNC Sen. Hasine Shaikh. I take your congratulations Sen. Hosein, because this PNM Attorney General has the courage to hire a UNC Senator, who sat temporarily twice, as the head of the public defenders division. You understand what I am saying? In this Bill, capacity in the judicial system is what we are dealing with. We under the Constitution of the Republic of Trinidad and Tobago Chapter 7, section 99 onward have established the Supreme Court, High Court, Court of Appeal, we have the Judicial and Legal Service Commission, section 111 onward, we have the SRC, the Salaries Review Commission, section 141 of the Constitution, we have section 106 of the Constitution that says:

Judges shall be employed on terms and conditions as may be prescribed.

We have section 111 of Constitution which coordinates with that. We have section

108 of the Constitution. What does all of that mean? We have section 136 of the Constitution of the Republic of Trinidad and Tobago equally in movement. Chap. 7, the Judicature—section 99 establishes the Supreme Court, section 101, the Court of Appeal. Section 106 of the Constitution subject to section 104(3):

“...a judge shall hold office in accordance with sections 136 and 137.”

Section 136:

“The holder of an office to which to this subsection and subsections (3) and (11) apply...shall vacate his office on attaining the age of sixty-five years or such other age as may be prescribed.”

When we get to the prescription we turn to the Constitution (Prescribed Matters) Act, which this Bill treats with, Chap. 1:02 of the laws of Trinidad and Tobago, and in Chap. 1:02 of the law of Trinidad and Tobago we say in section 3, salaries and allowances of certain office holders. We apply to those in the first column in the First Schedule, and we apply to those in the First Schedule, holders of offices, et cetera:

“Salaries and allowances prescribed in this section shall be a charge on Consolidated Fund.”

What is the number one capacity in a courtroom that is of most critical importance? Not the judge? So we in Trinidad and Tobago have judges that retire at 65. Sixty five years old, our capable, hard-working judges who have an experience that the rest of the Caribbean, save for Jamaica, does not have. They have volume, caseload complexity, they have incredible talent at the Bar, they have tested in the fire of our hope and prayer, and they have gone to Privy Council and back in terms of judges being reviewed. We have a robust excellent Judiciary.

They retire at 65 and the other islands up the Caribbean and Commonwealth promptly hire them: Turks and Caicos, Belize, Cayman Islands, you name it. Our judges go at 65 and then work till 75 in some instances. So we just lose capacity. It is true that we amended the law to allow now judges to come from the Commonwealth. If you recall we had amended that law as opposed to just of the Bar of England.

But now we are saying in these measures here in the first part of this Bill, let us keep our talent to age 70. I personally think that 70 is a “lil” low. That is just my personal view. I stand as a member of a Cabinet that thinks that we should feel the views of society, and hence we have come with a Bill today. Let us look to the experience in the rest of the Commonwealth. What do we see in the Commonwealth? We see the following jurisdictions which are of note, if I may put it unto the record. We have in our tour of the Constitution, Australia, retirement age 70; Canada 75; Guyana 65, they have just amended; Jamaica, 70; United Kingdom, they have gone to 75; the United States of America, when you die that is when you go, unless you resign. When you die, unless you resign or are removed from office that is your age of retirement. Seventy, I would like to say as I get older, 70 is the new 50. I genuinely think that.

Our Constitution is robust. Our Constitution allows for removal from office for infirmity, invalidity, et cetera, et cetera. We have mechanisms to treat with what can be considered to be the effects of age and difficulty. Members are entitled to resign if they so choose. We as a Government, without the Opposition’s support, except for Ganga Singh in the House, who had the courage to break ranks with the UNC, we as a Government passed the pension improvements for the Judiciary.

Miscellaneous Provisions
(Age of Retirement of Judges
Interpretation and Judicial Officers Bill, 2019
Hon. F. Al-Rawi (cont'd)

Why? Not only to take care of the indignity that judges were suffering, those who had retired for a long time ago and were receiving not enough care, but to make the attractiveness of office there so we could retain talent. As Attorney General I have invited the Chief Justice to remove the 10-year limitation under the Legal Profession Act, as the Chief Justice can, down to three years. Why? We need temporary judges who can act and permanent judges, and the restriction of 10 years you cannot practise if you become a permanent judge is not apposite to our best interest, particularly in the glorious intellectual inconsistency of a temporary judge serving, coming off the bench and going back into practice immediately. I mean, that is just not on.

So, in treating with judicial capacity we are saying today, let us amend the Constitution (Prescribed Matters) Act, let us amend the Judicial and Legal Service Act, let us move the age from 65 to 70. If we need to think about it again we can always come back and move that age, no problems. That is part one of what we are doing in clauses 2 to 4. Part two of what we are doing is critically important and it is rooted in the Judicial and Legal Service Act. In the Judicial and Legal Service Act, Madam President, what we are doing, we are treating with the elephant in the room. That is what we are doing. This country, I dare say, is the victim of its own Constitution, depending on how you look at it, and I mean this in a very carefully intellectually constructed position. We have in our Constitution certain safeguards which I adhere to. One of our safeguards is our service commissions. I am going to do what I do in many other places and I am going to say, if anybody in this room right now could name the head of all of the service commissions in Trinidad and Tobago, I will give way now. Silence. Why? We

are all—I am a Member of the House, everybody else here is a Member of the Senate, and nobody in this House, this Senate today, including me, could name the chairmen of the service commissions. Why? They are nameless and faceless, their caseload is not known, they are constitutionally separated, and one of the features of lacking in performance in Trinidad and Tobago, is the Salaries Review Commission. For heaven's sake, section 141 of the Constitution says:

“The Salaries Review Commission shall”—adjust salaries—“from time to time.”

Well, they are on an exercise for the last 30 years that cannot finish.

4.00 p.m.

Millions of dollars spent in reviewing terms and conditions. We constantly talk to Singapore and how great they perform, we pay peanuts, we are not holding people accountable and we want to know why things “eh” working. That is anchored to this Bill as well, because the Salaries Review Commission has refused and/or failed to review the salaries of the Chief Magistrate, the masters of the court, the Executive Court Administrator and the registrars. These are the key lynch pins to performance and right now they are paid less than a Permanent Secretary. The Chief Magistrate running the whole Magistrates' Court; the registrars are running the administration à la Permanent Secretary style; the Executive Court Administrator is the person as a receiver under the Exchequer and Audit Act as a Permanent Secretary for the Judiciary. And we are paying these office holders less than what is required, less than the Chief Parliamentary Counsel, less than the DPP, and less than the Solicitor General.

And in the face of the SRC not making a recommendation to Cabinet, and

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remember the SRC makes a recommendation which the Cabinet can reject, consider or do something else with, right. There is the legislative and constitutional ability for this Parliament to adjust the salaries. Are we within parameters? I invite Members to look at the Judicial and Legal Service Act, Chap. 6:01. I look at section 15 of that Act:

“(1) Subject to the Constitution and to any written law, control and supervision may be exercised over—

(a) the Masters of the High Court, the Chief Magistrate and the Registrar and Marshal, by the Chief Justice...”

We are amending that. We are saying delete those words, insert instead “a Chief Judicial Officer”. Who is a Chief Judicial Officer? We are adding that into the definition section. Hear who the Chief Judicial Officer is. The same master, Chief Magistrate, registrar and marshal and Chief Justice—sorry, and now adding in Executive Court Administrator. Stick a pin. I think we need to do a small amendment because the term of registrar needs to now be adjusted. Because we did the Criminal Division, Family Division, we did some adjustments there. So, we are simply adding in the Executive Court Administrator into this. Stick a pin again. Turn to the Second Schedule you would see:

“Judicial Offices

Part I

Part II

Part III

Part IV

Part V”

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You will note in Part III that the Court Executive Administrator falls under the Chief Justice anyway. So all that we are doing is harmonizing what is in the Second Schedule with our definitions clause.

So, legitimate aim number one in the Bill is amend the Constitution (Prescribed Matters) Act, change age of retirement from 65 to 70, spring boarding from section 106 of the Constitution and section 136 of the Constitution. Legitimate aim number two, amend the provisions of section 15 of the Judicial and Legal Service Act, delete the reference to the several officers in section 15, replace with the definition of Chief Judicial Officer. Chief Judicial Officer now captures one more body, that is the Executive Court Administrator that is set out in the Second Schedule, Part III. That is legitimate aim number two of the legislation.

For the record and for the purposes of underwriting constitutionally again, remind that it was in the year 2003 that the public service was divided in its administration by the judicial administrative arm, hence judicial officers, and by the executive arm or government arm which is the other public officers. You have officers that are officers and contract officers. So all that we are doing is we are improving the landscape and clarity of the law.

What is legitimate aim number three of this Bill? Legitimate aim number three of this Bill is anchored in clause 3. That is the ubiquitous section 63 of the Interpretation Act. I have referred to section 63 of the Interpretation Act on so many occasions that I am sure everybody knows what it is. Laws are primary or secondary, subsidiary. A regulation is a subsidiary legislative product. If you breach a regulation or a subsidiary product of law unless the parent Act which allows you to create regulation says what the offence for a breach of a regulation is

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going to be the Interpretation Act kicks in. If you create a parent law, you say that somebody has the power to create a regulation and you do not say what a breach of a regulation equals, section 63 of the Interpretation Act kicks in and you get subjected to a whopping \$500 penalty.

That is why on umpteen occasions I have come to the Parliament and said, notwithstanding section 63 of the Interpretation Act, a breach of the regulations shall amount to summary, indictable, we put a dollar figure, we put a jail term, so that the regs can bite. Where are regs important by way of example?—the securities industry. We cap regs at \$500,000 and recently we had some complaint about certain things as to the cap and ceiling. The point is you need to treat with it.

So we are saying in this law here, in our Bill let us change section 63 of the Interpretation Act, let us say “delete the words ‘five hundred’ and substitute the words, ‘one hundred thousand dollars and a term of imprisonment not exceeding five years’”. I remind those are expressions of maximum range. The Judiciary has the discretion as to what you will get, that may be a reprimand and discharge, that may be zero dollars, you may get community service, whatever the Judiciary in its discretion chooses to offer as a sentence is what you get. This is just the maximum ceiling. We no longer in law use the expression of maximum or minimum indication because the Privy Council has frowned on certain aspects of that.

So, clause 1 is name of the Bill. Clause 2, the Constitution (Prescribed Matters) Act, that is the effect of raising the judicial age, 65 to 70. Clause 3, we are fixing section 63 of the Interpretation Act. Clause 4 we are amending the Judicial and Legal Service Act. We are adding in a definition of “Chief Judicial Officer”. That definition is:

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“...Chief Magistrate...Registrar and Marshal...Court Executive Administrator;”

We are amending section 15 of the Judicial and Legal Service Act, we are substituting the words in 1A by Chief Judicial Officer so defined and we are saying that the terms and conditions of service of Chief Judicial Officers shall be those equivalent to Chief Legal Officers.

Who are Chief Legal Officers? DPP, Chief Parliamentary Counsel, and Solicitor General. We are therefore equating the salary ranges for these officers to other officers that are known to us. It is the difference between L1 and J1 categories in the public service speak for the record and all that we are doing is improving their terms and conditions to what the SRC really ought to be considering but just cannot finish considering. Maybe they need another 30 years. I do not know. I just do not know how to explain that. It has been the subject of serious interrogation by many governments and it is time that we just press on with the work.

In summary therefore, Madam President, this law is designed to integrate in the anticrime plan of the Government. It is designed to preserve capacity in the performing aspects of the criminal justice system. Keep our talent, preserve their rights, “equivolate” and pay terms and conditions equal to standing officers who are well known, who handle functionalities that are as important as, sometimes less heavy than, what certainly the Court Executive Administrator does, the Chief Magistrate, the masters, et cetera. We are just fixing those aspects. It gives me great pleasure to promote this Bill, and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Sean Sobers: [*Desk thumping*] Thank you, Madam President, for recognizing me this afternoon and for giving me an opportunity to contribute this afternoon on:

A Bill to amend the Constitution (Prescribed Matters) Act, Chap.1:02 the Interpretation Act, Chap. 3:01 and the Judicial and Legal Service Act, Chap. 6:01.

Madam President, let me indicate that in principle as it is right now we here on the side of the Opposition definitely do not have any objection whatsoever with respect to the essence of this particular Bill. I think many of us who practice within the criminal justice system or who are lawyers by profession understand and appreciate the vast amount of talent that we have sitting on our Bench. But we must also understand and appreciate what systems they operate within at this current stage that would attract them to leave our shores. And it is a welcomed approach to put measures in place that could keep them tethered to Trinidad and Tobago and continue to lend and assist in terms of their intellectual resource in the advancement of jurisprudence within our country.

But I would also just want to touch on a couple things that was raised by the hon. Attorney General in piloting this particular Bill and I do not intend at all to be lengthy with respect to this Bill because I agree, although it is just four clauses long, there is a bit of depth to it that we should explore and I think other Members of the Chamber would do so as well. The hon. Attorney General indicated that in terms of the approach of the administration, this current administration, they would look at plant and machinery, process and people. And I agree in terms of a holistic approach to treating with legislation and even the criminal justice system, the

issues that plague the criminal justice system. One of the biggest drawbacks that would have plagued several administrations is their inability to operationalize law that would be passed.

And albeit that it may be considered, in my humble opinion, extremely ambitious to do what is being done by this particular administration, we have to, on occasions when given the opportunity, call upon the administration to answer questions with respect to the ability to operationalize legislation that is passed. Because there may very well be a plethora of legislation coming through this House and this Chamber. But being an active member of the criminal justice system, being an active member in practice as well too, there are situations that arise that do not quite mirror what is actually being done or envisioned here in this Chamber or even in the other place. And it brings me back to the same point being made by the hon. Attorney General when he spoke about decriminalization of marijuana.

Now I did not contribute to that particular debate, this is not a debate on that either at all. What I can say is that up to recently I would have been in the Magistrates' Court and the question in terms of decriminalization we consider the load that it puts upon the shoulders of the Magistracy on every Monday morning when persons would come to court charged with offences related to possession of marijuana. And I thought to myself even then when we were having this discussion that somewhere along the lines I think the intention, as pure and as ambitious as it may have been then, is still a bit out of touch with what actually obtains. Because in most instances in any event, just like on that Monday morning that I went to court, most persons who would have been charged for simple

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possession, generally with respect to the quantum or the weight that was contemplated and enacted last year, most of them would either consult with an attorney and based upon their particular history before the court, their CR, they would usually plead guilty. And there are a number of case law, Jackman and Ragoonanan, before the courts that would suggest based upon quantum the court should treat with them in a particular way.

So that in an effort to do or operationalize what we pass we have to appreciate how well it would work within the system. And I would have been privy to that again as I said before when I last went to court recognizing that the majority of people who actually plead not guilty to matters of possession are those who have been charged with trafficking as opposed to simple possession. So the argument advanced in most instances that work that is being done here is actually alleviating problems within the criminal justice system, in reality it really is not doing that. And the Attorney General in terms of his piloting indicated that some of the proponents within this criminal justice system that form part of this plant and machinery, this process and people, he alluded to the DPP's office and to prosecutors. And all of these laws that we are passing call upon the DPP's office as well too, to be actively involved, to be actively participating in terms of their management, in terms of being members within this particular suite of legislation.

And most recently, Madam President, because the DPP generally does not indicate his position very often, but when he does he sends a very clear message with what is actually taking place at his office. And most recently in a *Newsday* article, Tuesday 04 February, 2020, the DPP indicates that—it is entitled:

“DPP pleads with AG for more support”

And that would have been at a symposium speaking specifically with plea discussion and plea agreement which we are not dealing with here today. But the DPP indicates clearly and I quote:

“‘Our ambition must never outpace the support systems,’ Gaspard said. ‘I heard the AG indicate that he would be making certain changes legislatively, and those changes may result in 26,000 cases being taken out of the system. If it is those matters would be taken out of the system and placed at the doorstep of the DPP’s office, all I ask is that the office receives certain attention. Otherwise, the AG’s ambition would remain only that.’”

And there are many other examples where the legislation is passed through this place, is passed through the other place. But in terms of operationalizing those pieces of legislation clearly something is going wrong, we are either talking too fast and passing legislation too fast and not ensuring that the infrastructure is in place. So when on the Opposition call upon the administration to have the necessary infrastructure at least built out, if not before or simultaneously whilst we are debating legislation, you would definitely have a situation as being meted out and proffered by the hon. Director of Public Prosecutions.

And I am saying that we are speaking about building out capacity which this Bill represents by increasing the retirement age for judges who definitely do have a significant role within the justice system within our country, but what about the other significant persons who play a pivotal role within the justice system. What are we putting in place for them? And it should not be that we are saying things and preaching things and proffering things to the public but then those same persons whose names we are calling are calling us out and bluffing, are calling us

out on, not misrepresenting, but are calling us out basically, that are saying to us, listen we are not there yet. It calls upon us to ask the Government, to plead with the Government to keep apace and abreast with the things that they are doing, because you will definitely have a position where you are spinning top in mud. I mean it was not mentioned by the hon. Attorney General in his piloting of the legislation, but the judicial infrastructure as it occurs right now in south Trinidad is in a total mess. [*Desk thumping*]

We are talking about capacity and the capacity of the court system itself, the physical infrastructure is in a mess. We are still on a shift system at the Supreme Court in San Fernando. The Princes Town Court is still closed. This is going on months now. The Rio Claro Court is still sharing that very, very, small building that could literally fit within half of this Chamber is the Rio Claro Magistrates' Court—[*Crosstalk*—]is sharing with the Princes Town Magistrates' Court.

So when we talk about capacity and we legislate to treat with capacity here we must not forget about those other pivotal persons, pivotal institutions, that are suffering because of lack of attention as well too. We are failing them with capacity as well and if we are serious about being holistic in our approach we must consider their plight as well too. And I will make no apology, Madam President, with the greatest of respect, that any time I am given an opportunity to speak in this Chamber I will make mention of those issues. [*Desk thumping*]

So, Madam President, as it pertains specifically to the Bill, I indicated at the beginning that we must consider the environment that judicial officers are placed in. And in reviewing this particular Bill I would have had the opportunity to speak to a couple of judges concerning this particular issue. And, I mean, it is not

beyond us at all, persons involved in the justice system to understand generally when judges retire, before their packages with respect to pension was not as it should have been. That situation has been amended, it has been changed. But apart from that as well too, what also cause them to move on, is, and I would get on that later on in my contribution, is the fact that many of those judges would have expenses still outstanding. They would have children at institutions abroad or even here locally that they would want to support. And at 65 in some instances when they leave they are unable to meet their expenses especially based upon the fact that when they leave the Judiciary they are not allowed to practise privately for up to 10 years. That is in the legislation.

In addition to that, some of them who adopt consultancy roles it just does not pay as it is supposed to especially with someone who has that level of expertise. And so our bright legal minds would tend to leave our shores and go up the Caribbean out into the Commonwealth, sometimes even as far as The Hague and as far as Hong Kong to ply their profession and their trade. And I mean I could speak for myself personally, I heard the hon. Attorney General indicate that the majority of judges that I would have had conversations with they are like fine wine, they get better with age, vintage adds a certain degree of distinction to their judgments, to their understanding to advancing jurisprudence within our country. So any measure that we could implement as a Parliament to tether them, to anchor them here in Trinidad and Tobago, to continue working to the benefit of the people. is something that must be welcomed. But that was the environment that they existed in.

But when we are considering the amendments here, what I just would want

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to put on the record for consideration as a Parliament, holistically we must look at a couple of other things. Because we would be widening capacity because of the myriad of changes occurring in the justice system, there is going to be, as the AG would have indicated, there is going to be advertisement. I think it has already gone out for application for several judges, several individuals to apply for judicial postings. We must also consider then based upon this opening of the gates for persons to enter the arena we have to consider criteria, more robust criteria with respect to those pools of people entering. I know this may very well be for the consideration of the JLSC, but we should put it on the record so that they could also consider it as well.

I also wanted to discuss the fact that we should also consider a review of all activities by judges during their tenure. I mean we do it, those who practice in the employment arena they would be aware of KPIs and performance assessments and it is a discussion that is had between HR in most departments and actively working employees which judges would be. But we should—there should be a discussion with respect to key performance indicators with judges and routine performance assessments to ensure that the work that is being done is really to the benefit of—redounds to the benefit of members of the Judiciary.

We should also consider frequency of judgments being written and outstanding judgments as well too. Because as much as we are widening the pool for judges to continue onwards, past 65, at that juncture we should consider what judgments remain outstanding, how have judges performed in terms of writing their judgments during their tenure? I know there may be some of us that sit within this Chamber who may very well be able to attest to the fact that there have been

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cases that would have been heard and judgments would have been outstanding for years and years onwards. It is something that we really do not like to speak about but it exist. In some instances you have litigants who may very well pass onto the great beyond, and judgments remain outstanding in their matters. So those are things that we should consider as well too and maybe the members of the JLSC should look upon those things when they are considering, keeping persons onwards thereafter.

At that age of 65 as well too I think some degree of an actual medical assessment should be conducted. I know that it would have been discussed at some point in time, but it is something we should consider. As I indicated before, I personally think that the majority of individuals within that profession as they get older for some reason they get brighter, but still at least in terms of appeasing members of the public with respect to the work that they are doing some assessment is done and could very well in fact be made public so that persons would understand and appreciate the caliber of people that we still have at that age, demonstrating their distinction beyond question. So I mentioned at the beginning this Legal Profession Act and it is actually section 54 of the Third Schedule, Part A, located on page 33 of the Act which basically says:

- “(1) A person who previously held a substantive appointment as a Judge of the Supreme Court shall not appear as an Attorney-at-law in any of the Courts of Trinidad and Tobago for a period of ten years commencing on the date of his retirement, resignation or other termination of such appointment.”

And as the AG indicated, quite, I do not know, weirdly enough at part (2) it

indicates:

“(2) This rule shall not apply to a person who is appointed to act as a Judge in a temporary capacity.”

And in terms of that particular section I enquired from judges why?— because I am a young practising lawyer. I enquired from judges and other senior lawyers why would that have been written into the Legal Profession Act? And what they explained to me is that previously in times gone by if a judge was to come off the Bench and then assimilate or attempt to assimilate into private practice there was a perception held by many then that there may have been some bias or unfair or favours being meted out to that individual. In most instances he would be appearing before some of his colleagues, he may very well appear before some of the individuals who make up the Magistracy who a short while ago would have been junior to him in his position. Lawyers at the Bar may have very well treated this judge, now practising attorney again, in a fairly different way from how they would treat other practising attorneys. And so it was written like this that it would allow for a significant amount of time to pass before a judge would go out into private practice.

I would want to commend openly that I think we as a society, we as practising attorneys, members of the Bar, that time has now passed and changed. I cannot see lawyers or even members of the Judiciary or even members of the Magistracy affording any more privilege to an ex-member of the Bench than they would with a normal member of the Bar. So I think it is good that the AG would have indicated that he would have spoken to the Chief Justice for consideration for this to be amended as I think it should. I mean, as it is right now there is no

legislation in place preventing a member of the Magistracy as soon as they finish or they retire from the Magistracy preventing them assimilating into private practice. Magistrates do it all the time. And I can say emphatically that I have appeared in matters before the courts where magistrates would have been, sometimes advocating against myself, ex-magistrate, and I definitely do not feel they are treated any way differently even though they are in front of colleagues that they recently had.

Madam President: Sen. Sobers, thank you. Hon. Senators, the sitting will be suspended. We will return at 5.00p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Mr. Vice-President: Sen. Sobers.

Sen. S. Sobers: Thank you, Mr. Vice-President. Well, I definitely will not be long again at all. There was one other concern in terms of my conversation with one or two members of the Bench, and I would have spoken to the Sen. Hosein about it as well when he cleared it up, was whether or not judges who, for whatever reason, decided to retire at 65—I think the hon. Attorney General would give his position on that as well too, if they decide to leave at 65, if they would still be entitled to their pensions as opposed to going to the full round of 70. I think there is legislation on that. I think Sen. Hosein was indicating that once they serve their 15 years. And I would definitely give way to the AG because there was a question that I asked him on the floor and it would be nice if he could indicate that to the House.

We are considering allowing for the widening of, well, manpower and the infrastructure within the system and we considered judges now, but the AG would have indicated that there are many other pivotal individuals who actively participate within the justice system in terms of magistrates and masters, and what not, and they are not included here in terms of extending their retirement age and some of them do a lot of yeoman service especially with respect to the environment that they exist in, and I wanted to enquire as to why not magistrates and masters? If you—

Hon. Al-Rawi: Sure. I thank the hon. Senator for the question which is an excellent question. The position with respect to magistrates and masters, there are two hurdles that we are juggling. One is the Law Association's view on magistrates and masters and the age of qualification, five years and seven years call in the first instance; two, is the method by which they are born, i.e. creatures of statute. I can say that right now I have drafted a full magisterial protection Bill where I will move magistrates from partial protection to full immunity, à la judge, giving them proper immunity at that end equivalent to what we see in the protection of registrars.

We are looking at the issue. We have to have consultation across the board right now with the Magistracy in particular, and so we have a question mark on that one. It is the intention to treat with issues, but I would have to have clarity on that. First step therefore in summary, give them full immunity; second step, complete the discussions with the Law Association and the Magistracy itself with respect to the age of that aspect and the effect on the public service.

Sen. S. Sobers: Thank you, AG. Because the thing is that very same magistrate

that I indicated earlier on in my contribution, who I would have appeared before as a magistrate and now I am standing side by side before the Bar, I mean in terms of my discussions with him, he indicated he still had many years inside of him to go, to assist, and he sees his former brothers and sisters on the Bench still struggling with respect to the system that we have and he continuously shares their pain.

So, I am glad that we are actually actively considering their position. All in all in summary, again, it is a Bill that I think is well intended in terms of addressing the issues with respect to what causes the members of the Judiciary to leave and placing systems in place to tether them and anchor them to Trinidad and Tobago so they could advance our jurisprudence. The public at large would auger well from such a measure. But again, I just want to urge the Government that they must address or at least address the issues with respect to operationalizing some of these pieces of legislation. We cannot let our ambitions run away from us and not manage it properly with respect to actively amending and fixing infrastructure and systems. When we call upon persons to actively participate, they must have the infrastructure in place to do so and do so efficiently, or else we will be “spinning top in mud” and we will be failing. Mr. Vice-President, with those few words, I thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Vieira.

Sen. Anthony Vieira: Thank you. Mr. Vice-President, clause 3 is uncontroversial. It seeks to amend section 63 of the Interpretation Act. Section 63 of the Interpretation Act says:

- “(1) Where a written law confers a power to make any statutory instrument there may be annexed to a breach of that statutory instrument a

punishment by way of a fine not exceeding five hundred dollars.”

Translating that into simple English, it means that where a regulation is breached and no penalty is specified the fine is \$500. Now, \$500 is nothing in today’s world. It does not even constitute a hard slap on the wrist, and it is certainly not a deterrent.

Clause 4 similarly poses no difficulty. It says two things: first, it is simply defining:

“Master of the High Court, the Chief Magistrate, the Registrar and Marshal of the High Court, or the Court Executive Administrator;”—as Chief Judicial Officers.

And secondly, it provides that the terms and conditions of Chief Judicial Officers will be the same as our Chief Judicial Officers such as the DPP and Chief Parliamentary Counsel. I do not think anybody could have difficulty with either of those provisions. Clause 1, however, merits special consideration, and that is the increasing of the retirement age for judges. It has been said that all lawyers never die. We just lose our appeal. I do not think the same can be said about judges. Now, one of my favourite English judges is Lord Bingham and he writes in his book of *The Business of Judging: Selected Essays and Speeches* at Part I, that the judge’s role in a civil trial is first of all to decide what happened, then to identify the relevant rules of principles of law, and then to apply the law to the facts as he found them. Lord Bingham notes that in practice more often than not there is little argument on the law. The real argument is between the parties about the facts, and then what orders he should make.

The real challenging aspect for judges is about how to exercise their

discretion. Now, in differentiating the role of judges in determining what happened in the past from say, historians, auditors and accident investigators who from time to time are called upon to perform similar functions, Lord Bingham recognizes three unique features. First, judges are always presented with conflicting versions of the events in question; secondly, the judge's determination takes place subject to the formalities and restraints attendant upon proceedings in court such as rules of evidence, rules of procedure, pleadings, and so on; and thirdly, the judge's determination has a practical effect, a direct effect, on people's lives in terms of their pockets, activities, or reputations.

So the takeaway point is that our judges must be sober, reflective and mature. The wolf sack is not a place for hotheads or the puerile. It requires persons who besides being versed in law are seasoned with life experience and understanding. In a word, it requires persons who are wise, a quality usually associated with age. Science now confirms that while we often think of old age as a time of mental decline, it also brings improvements to brain function. In his book *Successful Aging*, neurologist Daniel Levitin explains why as we age aspects of our mental capabilities decline. This is due to plaque build-up in the brain and a reduction of neurochemicals and dopamine. There is no denying that as we get older we experience some slowing of cognitive function, and that is why it takes someone like me a little bit longer to recall somebody's name and why I sometimes forget where I put things.

But it turns out that other neurological shifts in the brain open the door for new positive things as well. For instance, as we age, the area of the brain responsible for memory, decision making and emotional responses, are more

emotionally balanced. Research also shows increased tendencies towards understanding, forgiveness, tolerance, and compassion; good qualities to have in a judge. Another strength that comes with ageing has to do with two important categories of intelligence: practical intelligence and perceptual cognition. In fact, studies show that people over the age of 50 score the highest in both categories. So this means that persons 50 and over are likely to be better at judging within the framework described by Lord Bingham. Sixty I am told is the new 40, and if that is so, then our system requires judges to retire when they may be at their best.

Well, that is unfair to them given that until recently their pensions did not keep pace with inflation and the cost of living, and also as we have heard from other speakers, given the prohibition against them being able to return to private practice until a passage of 10 years, a decade, but it is also a loss. It is a loss to the country who stands to lose some of our brightest and best because of an outdated system. I am thinking of legal luminaries like my pupil master, former Independent Senator, former Chief Justice, First President of the Caribbean Court of Justice, the hon. Michael de la Bastide QC. Thankfully because different rules apply in the Caribbean Court of Justice we managed to hold on to some of our most beloved judges for a little bit longer, but others, as we have heard, were constrained to seek employment abroad, a benefit to other jurisdictions, a benefit to certain international institutions but at our expense.

The idea of retirement at 65, that came about because of pensions. In 1881, Otto von Bismarck of Prussia invented retirement, and at that time it was a very radical idea because back then people worked until they died. Bismarck's experience with the military and the need to provide for the wounded soldiers

carried over into a desire for the State to provide and care for the disabled and the elderly. Bismarck settled on 65 as the retirement age as that was pegged to life expectancy. The calculation was that the State would carry a person for a couple of years, and after they stopped working the life expectancy window being very small at that time and the idea caught on. Today, however, events have overtaken that idea, it has overtaken those good intentions, and it has overtaken related legislation. Today, people routinely live past the age where they got permission to stop working. Today, it is not uncommon for someone who took early retirement at say age 60 or retires at 65, to live well into their 80s, and that is a burden on the State of an additional 20 years.

So the idea of retirement at 65 is no longer a given, and in that context does it make good sense to require able and competent judges to retire or vacate office because of a birthday? In any event, a number of judges are part of the baby boomer generation and we do not believe in retirement. We grow up expecting to continue working or to use our silver years as a time for pursuing hobbies, taking up new interests, mentoring, doing community service. We are, at least I would like to think that we are a lot more adventurous, vibrant, and youthful than our grandparents were when they were our age. I will not go so far as lobbying for judges to be life peers as occurs in some jurisdictions. As you know, in the United States, judges on the Supreme Court are there for life, but even 70 may be too soon for compulsory retirement.

Judges should, of course, be free to retire as and when they choose to do so, but subject to good health, mandatory retirement at age 75, I think, may be more appropriate. In any event, proper judicial temperament, qualities such as patience,

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open-mindedness, courtesy, tact, humility, and common sense, those qualities do not diminish with age, and if the neuroscientists are right, then good judges, just like fine wine, actually may improve as they get older. I thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Hosein.

Sen. Saddam Hosein: Thank you, Mr. Vice-President, for giving me the opportunity to join in this debate which is a very simple piece of law with far-reaching consequences as discussed by the Attorney General, which is a Bill to amend the Constitution (Prescribed Matters) Act, Chap. 1:02, the Interpretation Act, Chap. 3:01, and the Judicial and Legal Service Act, Chap. 6:01.

Mr. Vice-President, what is Bill seeks to do is three things: firstly, it is for the increase of the retirement age for judges from age 65 to age 70; it is to increase fines under the Interpretation Act, section 63, which speaks about the maximum fines that can be made under statutory instruments from the sum of \$500 to \$1,000 and a term of imprisonment not exceeding five years; and to adjust the terms and conditions of the Court Executive Administrator among other offices.

Now, Mr. Vice-President, this is a very critical piece of law that we are about to pass in this Parliament having been discussed at length in the other place. Now, there is a report that was compiled by the Law Association of Trinidad and Tobago. It is called the “Report of the Committee on Judicial Appointments” and it is a June 2018 report. Mr. Vice-President, this report is a very important report and I commend it to all Members of the Senate to have a look at this report, because it was a report compiled that dealt with issues of recruitment selection and appointment of judges as well as their performance assessment, removal,

termination, and generally upholding the rule of law. And this report was compiled after extensive stakeholder consultation with members of the higher and lower Judiciary, and also from members of the Law Association and senior attorneys-at-law, civil society organizations, and former Justices of Appeal, and even former Chief Justice, Justice Michael de la Bastide. So you can imagine the wealth of knowledge that was compiled into one report that we have now available to us in order to discuss matters of such great importance.

Now, if you see my notes on my desk right now, Mr. Vice-President, you would see the Attorney General's song sheet because I came prepared to rebut what the Attorney General had to say with respect to the 146,000 cases in the Magistrates' Court and how he intends to remove those cases. But since the Attorney General did not sing his song today I will just move on from that first point of rebuttal, Mr. Vice-President. Now, there is just one point I would just like to correct for the record in terms of the Attorney General spoke of the number of masters that were existing in 2015, and he is right that there are two masters of the court and that is Master Sobion Awai and also Master Alexander. But the reason why there were only two masters at that time is because under the system, those two masters were really used for assessment of damages that comes after the end of determination of liability in civil matters.

It is only when this Government took the shift in terms of the abolition of the preliminary enquiries by going back to the masters determination of a sufficiency hearing, then there was a requirement that we staff the Judiciary with more masters in order to deal with the caseload that will come to the Judiciary when cases are removed from the Magistrates' Court and the abolition of the

preliminary enquiries take place so that they can now determine whether or not a sufficient case has been made out for it to move towards the Assizes.

Now, Mr. Vice-President, the first point I want to deal with that deals with clause 2 of the Bill, which is the increase in the judges age from 65 years to 70, and this comes from section 136 of the Constitution where a judge is considered of holding a special office in Trinidad and Tobago, and we are now prescriptively amending that age of retirement as is prescribed by the Constitution, section 136(1), because we are allowed to do so from my reading of the law by an Act of Parliament which is called the Constitution (Prescribed Matters) Act. I looked at a report that came out of the UK Parliament with respect to the same issue because they looked at retirement ages of judges in England and before there was no retirement age, but in 1959 by the Judicial Pensions Act, a retirement age of 75 was set. Then, by the Judicial Pensions and Retirement Act, 1993, that was changed to 70. And this UK Parliament committee reported and they looked at why should we adjust the retirement ages of judges? And one of the issues that they raised is that they looked at the advantages and the disadvantages, and we must also look at that here.

One of the disadvantages that they looked at with respect to the increase in the age of judges is that it can block upward mobility for persons who want to enter the Judiciary, because now you will have the Judiciary saturated at one point in time and you just have to await persons to reach the retirement age, and there will be in terms of a lack of upward mobility for persons who would like to become judges. The second issue that they looked at is public perception. So this is a pro that they are looking at now, and the pro that they looked at, Mr. Vice-

President, they are saying—no disrespect to those persons who may be a bit more senior than us, is that they believe that judges at the lower Judiciary, the ones who examine the demeanour of witnesses, and the ones who have to determine facts of the cases, might be more in touch with society rather than some of the older judges. So that is what the report is saying. These are not the words of Sen. Saddam Hosein. I am reporting of what the UK Parliament has said.

Another advantage they looked is that—and I believe many Senators would have said it—you save the talent because at age 65 members of the Court of Appeal who have to now retire, we are going to be giving away that talent when we could retain them right here by increasing the age from 65 to 70. But in all and in conclusion, what this report said is that there should not be a standardized age of retirement in the Judiciary. What they are saying is that you should have different retirement ages. So for members of the lower Judiciary you have an age of 70, while members of the Court of Appeal and the higher courts allow them to retire at age 75. So this is one of the recommendations that was made by the UK Parliament when they examined this issue of retirement age.

Now, Mr. Vice-President, when you look at what the UK is saying, we have to put that in context in Trinidad and Tobago. Now, the report I referred to earlier on also dealt with retirement ages, and at page 52 of that report a recommendation was made and that recommendation was what we are doing now. It reads that:

“The retirement age of judges should be increased to 70 years on a phased basis over a five year period so as not to be inequitable. Phasing of the higher retirement age would be necessary in the interest of equity for incumbent judges who are closer to the existing retirement age.”

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And they went on to give an example, and they said that:

“...the retirement for judges now between 60 and 65 could be increased to 68 and for those currently under 60, the retirement age could be set at 70.”

So as to fix any injustice that may be caused in terms of the age on which the judge will have to retire on the commencement of the law.

[MADAM PRESIDENT *in the Chair*]

They also recommended—and this is a point that Sen. Sobers had made—debarring judges from practice from 10 years to five years. So they indicated a reduction from 10 years to five years. And also:

“The practice of appointing senior attorneys as Temporary Judges for a period of 6 months and up to one (1) year should be revived.”

This is also to help with the clearing of backlog of cases.

This is one of the reports I would have commended the Attorney General to read because what we are doing here is just making one chip in terms of how we are going to deal with the reform of the Judiciary and judges, because increasing the retirement age is one, but there are so many other things that we should also be addressing at the same time and this report addresses quite a host of these factors straight from the time of recruitment, to appointment, to promotion, and it also emphasizes the need for transparency. Because what the report also goes on to say, Madam President, is that you are now going to have judges who serve a much longer time on the Bench. Therefore, there should be increased accountability for those judges because like any other public officer there are appraisals, but in this case what the report is calling for is increased accountability that there must be

periodic performance appraisals being done on judges in terms of how they perform.

There is an article written by Dr. Terrence Farrell in the *Express*, it is entitled “Section 137(3)—get rid of it!”, and he went on to talk about that judges are ordinary people and the job that they conduct on a daily basis comes with extreme pressure in terms of, to be fair, to deliver judgments in a timely fashion, in how they must set their social lives. All of these are issues that come up for discussion when you are determining who become judges. And what he also said, Madam President, is that there must be some sort of reform in terms of how we deal and receive complaints from lawyers and litigants in terms of the conduct of matters by judges, and also looking at economic social or political issues.

So there is also a reform that we need to conduct with respect to how judges are held accountable and how their performance is tracked over the time. You will remember because recently, I believe it was last year, we passed an amendment to the Supreme Court of Judicature Act where we increased the number of judges and also we amended the eligibility criteria for judges not only having to come from Trinidad and Tobago, but now from other parts of the Commonwealth, and this is a very serious issue because now you will have judges who come from different parts of the world sitting here until age 75. So again, it is very important—70, sorry—that we need to have the performance of these judges tracked at all times.

Now, one thing that startled me, and with no disrespect to the hon. Attorney General, is that when he was asked in the other place, Madam President, where did this amendment come out from, the Attorney General said it was by his research and his recommendation. What I would suggest, Madam President, when we deal

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with matters like this in terms of an interference with the Judiciary, notwithstanding it is advantage to some judges who may think it is an advantage, there must be some level of consultation that should take place in terms of he could have met with persons who were on this judicial appointment committee, in terms of how he goes forward with respect to the legislation. We are supporting the increase in the age of judges, but one of the issues we have to look at is process and procedure also. From what currently exists, I know that we are going to increase the complement of judges.

We heard that the Attorney General wants to also increase the number of courtrooms that judges will have now to sit. Through the invent of the Criminal Division, I know the system has changed to now a docket system in the criminal courts. Now, Madam President, I asked someone this morning how many judges they have in the Assizes, in the criminal courts, and I was told that there are only seven.

5.30 p.m.

So if we are to really get serious with respect to pushing and ensuring that the wheels of justice keep turning, the amount of judges with respect to sitting on criminal matters has to increase. While we understand the workload of the civil court, civil matters tend to be disposed of as a much quicker manner than the criminal matters because I was just speaking to Sen. Vieira, most of the civil matters are now determined through ADR. You have an increased settlement in terms of these civil matters that through the invent of these Civil Proceedings Rules 1998 and it was amended over time.

Madam President: Sen. Hosein, I am giving you a little leeway but I want you to

remember what forms the basis of the Bill that is before us. It is not the entire judicial system that we are debating right now. I will give you a little leeway but I will ask you to come back to the Bill please.

Sen. S. Hosein: I take your guidance please, Madam President. In terms of—just closing up this point now, we need to increase the complement of criminal judges in the Judiciary as we go forward with respect to the reform of the criminal justice system. One important point, I know you gave me liberty, Madam President, but look at where we are right now in terms of this pandemic of COVID-19 where the courts are shut down and this also goes to the point in terms of increase of technology. So as we increase the ages of retirement of judges, we must also have constant training for these judges in the use of technology because that is extremely important. Because we could have right now, Madam President, CMCs being conducted, case management conferences, at the offices of attorneys and the judges also need to be aware—

Madam President: So Sen. Hosein, let us just take it that I gave you leeway and it is now time for you to come back to the Bill, please.

Sen. S. Hosein: Yes please, Madam President. When I look also at the increase in the retirement ages of judges, we must also look at whether or not the SRC has to review other terms and conditions with the increase in the retirement age of judges.

Now, I want to move on to clause 3 in the Bill which increases fines to subsidiary matters of regulations from \$500 to \$100,000. Earlier on, we had a debate on affirmative resolution and most of these regulations are made by sometimes negative resolution, but this underscores the requirement for affirmative resolution because you can have such heavy fines being placed on certain

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regulations now, which is \$100,000 and you also have an alternative imprisonment of five years. So it is a point that underscores the earlier point that Sen. Vieira made with respect to affirmative resolution legislation being subject to Parliament scrutiny so that we also have that level of input in terms of the laws that are going to be passed.

Now clause 4, what clause 4 does is that it looks at the office of the Court Executive Administrator and under the Judicial and Legal Service Act, strangely the Court Executive Administrator who performs an administrative role, that office is classified as a judicial office, and that office has no power in terms of making any judicial pronouncements, but under the Schedule, it was classified as a judicial office. And what the amendment seeks to do is confer on the status of the Court Executive Administrator as Chief Judicial Officer.

The Attorney General indicated, and from my reading of the legislation, is that the CEA, which is the Court Executive Administrator, will now be under the direct supervision of the Chief Justice. Now, there is one point I want to raise with respect to this matter, is that the Court Executive Administrator is considered as the accounting officer of the Judiciary. Why are we placing that person under the direct supervision of the Chief Justice? For example, in a Ministry, the Minister is separate from the Permanent Secretary, the Permanent Secretary is the accounting officer of that Ministry, and there are several issues with respect to accounting practices that are listed in the Auditor General's report. I would not go into the details of them but if you look at the Auditor General's report, there are issues with respect to accounting and now you are putting this person under the direct supervision of the Chief Justice.

Now, the other amendment seeks to confer onto the Chief Judicial Officers the same terms and conditions as Chief Legal Officers so therefore the Chief Executive Administrator will now have the same conditions as the Solicitor General, the Chief Parliamentary Counsel and the DPP. I just want to ask the Attorney General in the winding-up also: Is it now that the Chief Executive Administrator, his salary will now be drawn from the Consolidated Fund just like the other offices and what is the reason that we are isolating and giving this Chief Executive Administrator office so much protection as compared to a Permanent Secretary, for example, who is in a Ministry, and quite frankly, both the Chief Executive Administrator is like a Permanent Secretary in a Ministry. So those are the issues that I wish to raise with respect to that part of the Bill.

And, Madam President, before I close, because I do not intend to be long on this point also, is that when I looked at the report there were some very nice quotes and one that caught me especially is this. It is from the case *Ambard against the AG, 1936, Appeal Court 322, Privy Council, Trinidad and Tobago* and it says that:

“Justice is not a cloistered virtue... She must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.”

And I think that is important because while we may criticize sometimes what happens in the Judiciary, we are criticizing so that we can be at a better place so that reforms can be made, so that recommendations can be listened to and we must always remember, while the Judiciary is independent, it is not isolated from criticism. I thank you very much. [*Desk thumping*]

Sen. Wade Mark: Thank you very much, Madam President. This Bill entitled The Miscellaneous Provisions (Age of Retirement of Judges, Interpretation and

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Chief Judicial Officers) Bill, 2019 is before us and there are areas of the legislation that require some clarification. The law or the Bill will see amendments to the Constitution (Prescribed Matters) Act, the Interpretation Act and the Judicial and Legal Service Act.

Now, under 136(1) of the Constitution of Trinidad and Tobago, we have entrenched, Madam President, the offices which are known as special offices of the Judiciary and in this instance, judges. And the Government is seeking to increase the age of judges under the first amendment using what is called the Constitution (Prescribed Matters) Act by inserting a new 3A in order to justify the increase that is being proposed from 65 years to 70 years.

Madam President, the first area that I would like clarified is this. When I looked at the Constitution (Prescribed Matters) Act which is being amended, there are some 23 amendments to this Act which came into existence in 1966, starting from 1968 and ending in 2016. And the only two powerful offices I observed under this Constitution (Prescribed Matters) Act are the offices of the President and that of the Auditor General. I go to the Schedule, both the First and the Second Schedules and I did not see the office of judges, puisne judges that is, nor did I see the office of Chief Justice. So if I go to section 136(1) which deals with the retirement age of a judge and other officeholders enshrined under 136, we see 65 years of age. But when I look at the Second Schedule, I would have thought that the office of the judge would have been reflected in the Schedule and I am not seeing that reflected in the Schedule. So we are amending the Constitution (Prescribed Matters) Act to increase the retirement age of judges from 65 years to 70 years, but nowhere in the Second Schedule is mention made of judges or Chief Justice.

So I would like the Attorney General to clarify for this country how can we be prescribing an age five years more than is in the Constitution but there are no offices identified in the Constitution (Prescribed Matters) Act for that to take effect. So that is an area that requires clarification and some answers from the Attorney General. Because I want to let this honourable Senate know that if section 136(1) of the Constitution is being amended then, Madam President, the Constitution under section 54 says that the Government needs a two-thirds majority because you have to ensure that the separation of powers between the Executive, the Legislature and the Judiciary is sustained and maintained. And therefore, I think it is important for us to get clarification from the Government as to where in this Schedule, after 23 amendments from 1968 right to 2016, there is an absence of offices of puisne judges. So I need clarification on that from the Attorney General.

Madam President, I myself was a bit shocked because when I looked at this matter and I tried to appreciate where did this matter of increasing the age of judges come from, I realized, Madam President, that sometime in November of 2019, there was an article in the newspaper dated Wednesday November 27th in the *Trinidad Guardian* in which the Prime Minister of our country is quoted in a Monday night “Conversations with the Prime Minister” at the Palo Seco Primary Government School indicated to Trinidad and Tobago that and I quote:

“We will increase the number of judges so that more cases could be heard. We have made the decision that judges would no longer retire at 65. We have taken the decision...”

And I am quoting from this article in the *Guardian* of November 27th.

“...to raise the age of retirement to 70.”

This is coming from the Prime Minister. So the Prime Minister, in November, is telling the whole country that the Cabinet has taken a decision to increase the age of retirement for judges from 65 years to 70 years because, Madam President, this was said in November and the Bill that we have before us only came to this Parliament in December. So the question that we have to be concerned about is whether there is some kind of situation that is existing that we need clarification on because we are dealing here with the judges of our country and we are dealing with increasing the age of these judges from 65 to 70.

The question I want to ask the Attorney General, through you, Madam President, when he is winding up: Where did this proposal to increase the age of judges from 65 to 70 come from? Did it come from the judges of this country? Did it come from the Chief Justice? Did it come from the Executive represented by the Attorney General? Where did it come from? We need answers from the Government on this question and I am hoping that we will get those answers from the Government. Madam President, may I say from the outset, we have no difficulty increasing the retirement age of judges from 65 to 70 but what we have a problem with is the process and the procedure involved in that exercise. That is what we have a problem with. And this is why this issue is very critical.

Madam President, I am a former trade unionist like my friend Sen. The Hon. Jennifer Baptiste-Primus and you will know that when you are talking about the terms and conditions of employment or an employee or worker, an inescapable element and/or component of a term and condition of employment is age of retirement. That is an inescapable element or component when you are dealing

with terms and conditions of employment. So let us understand that very early. So when you are saying that you are increasing my retirement age from 65 to 70, it means to say that I will be getting salaries and other perquisites for the next five years so financially I am going to be better off, and if I am not a judge where all my salary, including my substantive salary, is tax free, then I will be subject to taxation as it relates to my pension, and if my pension increases because my age of retirement has increased, my conditions of service would have been altered.

And therefore, it is important for us to understand that it is an inescapable component of one's terms and conditions of employment when it comes to the question of age and retirement age. So the question that we have to ask here: Can we in this Parliament using what is called the Constitution (Prescribed Matters) Act simply insert under section 3 of this Act before us a new provision that simply increases the age of retirement of a judge under 136(1) of the Constitution to 70 years? Can you do that? That is a term and condition of employment. So you cannot whimsically or arbitrarily use the Parliament to adjust the age of retirement from to 65 years to 70 years. That, Madam President, is a responsibility of the Salaries Review Commission.

And what the Government has done and is doing in this Parliament is bringing legislation to alter the terms and conditions of judges without the requisite constitutional majority. That is what the Government is doing here today. And, Madam President, the Attorney General in particular, gave the impression today that he—when I say “he”, the Attorney General that is, Madam—fed up with the length of time it takes the SRC to make determination and job evaluations as it relates to terms and conditions for certain category of officeholders. So you know

what the Attorney General is telling us to do? Bypass the SRC, bypass the Salaries Review Commission, we in this Parliament must have the power to set terms and conditions for judges. That is the conclusion that you have to draw on this matter. And I am saying to this honourable Senate, the Attorney General does not have that power to make those changes that he is attempting to make here.

And, Madam President, I want to repeat, we have no problem in increasing the age of retirement of a judge from 65 to 70 but we must do it properly, we must do it procedurally correct, the process must be above board and we must not undermine, subvert or in any way violate the Constitution of Republic of Trinidad and Tobago. That is a point I wish to make here this evening, Madam President, and I have concerns. This shortcut approach that we are taking to get at this particular age of 70 is worrisome, is worrying, is concerning, and this is why, Madam President, I have brought it to your attention. So that is an area we are very concerned with and I hope that the Attorney General will be able to clarify for Trinidad and Tobago this development that I have brought to your attention.

Madam President, the other area in the legislation that is before us deals with what is called—it is clause 4 of the Bill that is before us that is amending what is called the Judicial and Legal Service Act of Trinidad and Tobago. That is what that is about. So, Madam President, what we have in section—before I go to this matter, I am making the point to you and through you to this honourable Senate that any changes to the age of a judge or judges in our country—

Madam President: Sen. Mark, I think you have made that point and I think you should move on to your next point.

Sen. W. Mark: I am saying, Madam President, the SRC has a responsibility for

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determining one's terms and conditions of employment. So let me go on, Madam President, with your leave. Let us go to the Judicial and Legal Service Act.

Madam President, just to consolidate what I have just indicated to your good self and this honourable House, I want to go to the Salaries Review Commission Report, Ninety-Eighth Report of November of 2013. The offices that we are dealing with now, because I am not going to deal with all the offices, because under this Act that we are amending today, you will see, Madam President, that we are dealing with the following offices. Under clause 4, all of a sudden, we have an amendment to section 2 of the Judicial and Legal Service Act where we are removing the term "Chief Legal Officer" and under the JLSC, it means the Director of Public Prosecutions, the Solicitor General and the Chief Parliamentary Counsel. We are altering that to incorporate a new concept called Chief Judicial Officer and this is in the clause 4 of the present Bill that is before this honourable House. We are being told that the:

“‘Chief Judicial Officer’ means a Master of the High Court, the Chief Magistrate, the Registrar and Marshal of the High Court or the Court Executive Administrator...”

That is what we are being told in this particular amendment to this Act that is before us.

But, Madam President, when we look at this matter very closely, we see under the Judicial and Legal Service Act, the Chief Legal Officer at three offices under this concept.

6.00 p.m.

Madam President, I want to go to section 136(14). Section 136(14) of the

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Constitution says, Madam President, and I quote:

“Subsection (1) and subsections (3) to (6) apply to the office of Director of Public Prosecutions, Chief Parliamentary Counsel and Solicitor General.”

Madam President, let me go to 136(1) of the Constitution. That is where you have the holder and I quote:

“The holder of an office to which this subsection and subsections (3) to (11) apply (in this subsection referred to as ‘the officer’) shall vacate his office on attaining the age of sixty-five years...”

That is what this section says.

So Madam President, the question that we have to ask, and I am asking the Attorney General, through you: How can the Attorney General bring an amendment to the Constitution or bring an amendment rather to the Judicial and Legal Service Act, I should say, to bring into being something called “Chief Judicial Officer” and incorporate the offices of Master of the High Court, Chief Magistrate, Registrar, Marshal of the High Court and the Court Executive Administrator.

Madam President, you know what this amendment is telling us? We are being asked to remove three constitutionally entrenched and protected offices under our Constitution and incorporate four others, Madam President. So we now would have what is called “Chief Judicial Officers” or “offices”. I think offices, Ma’am. So you have three protected constitutional offices and we are now adding four more. So, Madam President, the question that logically follows, and we have to ask ourselves: Is the Attorney General of our country saying that these new offices that we are dealing with here, under this concept in clause 4 of the Bill, are

these four offices now entrenched or are now entrenched as constitutional offices under our Constitution? That is what the Attorney General will have to clarify for us this evening. So instead of three protected offices, we now have seven protected constitutional offices.

Madam President, you know what logically follows here? If you go to section 136(1), you retire at the age of 65. This is now going to 70, Madam President. So if these office holders are now going to be incorporated under this concept called “Chief Judicial Officers”. Madam President, would it mean that those new offices, and I am talking about, again, the Master of the High Court, the Chief Magistrate, the Registrar and Marshal of the High Court and the Court Executive Administrator, would it mean that these offices would now be able to retire at the age of 65 years? Because remember the amendment is to move a judge from 65 to 70, and we are being told that these new offices are now going to be increased from or to that same level of 65 years.

Madam President, you know why I advise that this is the most logical conclusion to draw? Madam President, the Master of the High Court, as I understand it, and if I am wrong, the Attorney General will correct me, the Master of the High Court retires at the age of 60 years. The Registrar retires at the age of 60 years. The Marshal of the High Court retires at the age of 60 years. And the Court Executive Administrator, Madam President, I am not too sure. Again, I would need clarification from the Attorney General. Is the Court Executive Administrator a contractual job or a contractual office? In other words, Madam President, is the Court Executive Administrator on contract? And if the Court Executive Administrator is so on contract, then Madam President, that person can

go at any age. You cannot—you do not need to define that here.

So we need to find out because I have done my research on this thing, Madam President, and I understand the real holder of that office, the substantive holder of the Chief Executive Administrator office is currently acting as a judge in the Industrial Court and the office of Court Executive Administrator has been suppressed, and the same office title is being used by the current holder of the office. And if that is so, Madam President, this is cause for worry. Can we have somebody carry the same title of a public office that has been suppressed? I do not know. I am saying that these are matters that we need to clarify and the Attorney General needs to clarify whether the Court Executive Administrator is a contract job. And if that person is on contract, how can you entrench that person in our Constitution? You cannot have a contract officer in an entrenched constitutional office.

Madam President, you know what is even more alarming and more dangerous in what is being proposed here today? Madam President, let me go to lower 4(b)(ii)(1B) it states, Madam President:

“the terms and conditions of service of the Chief Judicial Officers shall be equivalent to those of Chief Legal Officers’.”

Madam President, that is what we are being told; that everybody will now be on the same level playing field.

Madam President, do you know what the DPP, the Chief Parliamentary Counsel and the Solicitor General get as a salary according to the SRC report? Thirty-two thousand, seven hundred a month. Do you know how much the Court Executive Administrator gets, Madam President? Twenty-eight thousand, seven

hundred dollars. So we are being asked, Madam President, to violate an entrenched office under our Constitution. Madam President, may I ask you to join me in looking at section 141 of our Constitution? And 141(1) of our Constitution, Madam President, tells you and this honourable Senate that:

“The”—SRC—“shall from time to time with the approval of the President review the salaries and other conditions of service of...”—not only the President but—“the holders of offices referred to in section 136(12) to (15), members of Parliament...Ministers of Government...Parliamentary Secretaries, and the holders or such offices as maybe prescribed.”

Madam President, when you go to the SRC report of November of 2013, the Ninety-Eight Report, Madam President, the Salaries Review Commission, under Chapter 18 of their report, the heading is “The Judicial and Legal Service”. Do you know who the Salaries Review Commission determines salaries and terms and conditions of employment? It is the Salaries Review Commission that determines the terms and conditions, Madam President, of the following offices: the Master of the High Court, on page 154, Chapter 18 of the SRC report, Madam President, Ninety-Eighth report. They also determine the salaries and other terms and conditions for the Chief Magistrate. They determine the terms and conditions for the Registrar and Marshal. They determine the conditions of service and terms of the Chief Court Administrator. So, here in the SRC report, all of these offices are determined in terms of salaries and other perquisites by the Salaries Review Commission.

Madam President, may I remind you that this provision, section 141, is entrenched or is enshrined I should say, in our Constitution. The SRC is a

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constitutionally enshrined provision in our Constitution. And it is untidy. It is unhealthy for us in this Parliament—

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

Sen. W. Mark: Yeah. It is unhealthy, it is untidy, it is messy for this Parliament to arrogate onto itself, the undermining of our Constitution and that is what we will be doing this evening if we give the Attorney General the blanket support.

This Bill, Madam President, we are supporting the retirement age to 70 but we are asking the Attorney General to pull back this Bill. Pull back this Bill, go back to the drawing board, do your homework properly and bring the Bill, and if it requires a constitutional majority, you will get our support. Or Madam President, what the Attorney General ought to do is to have these matters, including the age of our judges and the new terms and conditions that he is seeking—that is the hon. Attorney General—to impose on us, through this amendment, for these new office holders. Those matters ought to go back, Madam President, to the SRC and let the SRC determine the conditions and terms of employment of these office holders.

Madam President, are you aware that there is a job evaluation that is taking place right now, as it relates to judges and Members of Parliament? They invited me to a meeting, the consultants, who are doing the job evaluation and they are doing it for all of the offices that fall under the purview of the SRC. So why is the Attorney General, Madam President, bringing legislation to this Parliament for us to alter the terms and conditions of the Chief Magistrate, the Master of the High Court, the Registrar of the High Court, the Marshal of the High Court, among other office holders, that the hon. Attorney General is seeking to advance without doing the necessary procedural exercise that is needed? These matters of terms and

conditions, whether it is age for the judges, those of 65 to 70; whether it has to do with new terms and conditions for these new office holders, that is the responsibility, Madam President, of the Salaries Review Commission which is enshrined in section 141 of our Constitution.

And therefore, Madam President, I want to appeal to the Attorney General, if you want to get this thing right—because I have the Attorney General on the matter of the age going to 70, but I am saying to the Attorney General, Madam President, the process is flawed, it is defective, it is deficient, it breaches the Constitution, and therefore, this matter could be challenged in the courts of Trinidad and Tobago. And we want to ensure, Madam President, that whatever we do in this Parliament, we do it in accordance with the Constitution and the law of the Republic of Trinidad and Tobago.

So Madam President, I wanted to also ask the Attorney General: Did the Attorney General consult, Madam President, with the judges in the courts of Trinidad and Tobago before he brought this here? Did the Attorney General discuss this matter and seek the advice of the Law Association of Trinidad and Tobago before he brought this matter here? Did the Attorney General discuss this matter with the Salaries Review Commission before it was brought here? Did the Attorney General meet with the Chief Personnel Officer to discuss this matter before it was brought here? Where did this come from?

Madam President, in closing, let me tell you, we believe in the rule of law and we must have an independent Judiciary in this country. And the perception must never be given that the Executive arm of the State is trying to curry favour with the Judiciary. I am not saying they are doing it. But they must never give the

impression to the country that they are seeking to curry favour with the Judiciary. That is dangerous for our health, in terms of democracy and the values that we adhere to. This is not a simple matter you know, Madam President. This is a very serious matter that we are dealing with. The lives of our citizens in the next 20 years will be dependent on what we do here today.

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

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

The Attorney General (Hon. Faris Al-Rawi): Madam President, that was sheer torture, Madam President, intellectual torture at its highest. Not only was the volume obscenely loud in the contribution of my learned friend. But it appears that Sen. Mark is not a member of any caucus in his own Opposition. Sen. Hosein, Sen. Sobers and the Leader of the Opposition, one Kamla Persad-Bissessar of Senior Counsel, all apparently share a different point of view to Sen. Mark. We had to listen to Sen. Mark this evening. I had really hope to just stand and say I—the usual words by which one ends a debate. But I am compelled to unfortunately go down the tunnel and fabric of deceit that was just put to us in the intellectual construct that was just mentioned in this honourable Senate—

Sen. Mark: Madam President, Standing Order 46(6).

Madam President: Attorney General, yes, can you just withdraw and rephrase your contribution.

Hon. F. Al-Rawi: Sure, Madam President, I withdraw and rephrase the intellectual argument put before me in the following terms: absurd, nonsensical, lacking in preparation, no form of reflective consideration amongst colleagues in the Opposition, and pure intellectual torture, Madam President. I hope I have done

better justice at characterizing the argument of Sen. Mark.

Madam President, let us get to where Sen. Mark is in the ridiculous submissions put on the floor of the Senate today. Sen. Mark's submission, not made by Senior Counsel, the Leader of the Opposition, not made by Sen. Hosein, not made by Sen. Sobers, both of whom seem to be hanging their heads in shame while he spoke, had, Madam President, an underwriting that we are somehow requiring this Senate to consider a three-quarters majority.

Sen. Mark seeks to hang that argument on the back of section 54 of the Constitution which sets out the degree of entrenchment for legislation. Section 54 of the Constitution properly says the method by which you amend certain aspects of the Constitution. We know that sections 4 and 5 rights require a three-fifths majority, so says section 13 of the Constitution. Section 54 of the Constitution says that you either require a two-thirds majority, with respect to the matters set out at section 54(2) of the Constitution or a three-quarters majority, with respect to the matters set out at section 54(3) of the Constitution. And with respect to the terms and conditions of judges, that entrenchment is a two-thirds, if you are going to adopt any measure of interrupting terms and conditions set out in sections 133 to 137 of the Constitution. So let us deal with that.

Let me break this down, through you, Madam President, to the average listener. Sen. Mark says that this Government is breaching the Constitution. Sen. Mark says that the Opposition wishes to support the move in retirement age from 65 to 70 but his allegation is that we require three-quarters of the support of this House to treat with that.

So let us deal with the law. Section 106 of the Constitution says— and we

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are dealing with the judicial age for retirement. Section 106(1) of the Constitution says:

“Subject to section 104(3), a Judge shall hold office in accordance with sections 136 and 137.”

Section 136(1) of the Constitution says, Madam President:

“The holder of an office to which this subsection and subsections (3) to (11) apply (in this section referred to as ‘the officer’) shall vacate his office on attaining the age of sixty-five years or such other age as may be prescribed.”

Sen. Hosein stood here a short while ago and said he understands the simplicity of this Bill. He himself referred to section 136(1), and then went on to Chap. 1:01 of the Laws of the Republic of Trinidad and Tobago, which is the chapter that treats with 102 of the Constitution of Trinidad and Tobago, Constitution (Prescribed Matters), Act. Sen. Hosein just said it. It is true that we are practising social distancing in this Parliament and Sen. Hosein is now slightly further away from Sen. Mark. But, Madam President, we have the luxury of an audio system in the here. And, Madam President, the Constitution (Prescribed Matters) Act is very clear. The Constitution (Prescribed Matters) Act has in it, listen to this, section 4:

“The age at which the Auditor General is required to vacate his office under section 136(1) of the Constitution is sixty years.”

Let me explain why I have just referred to that. Section 136(1) of the Constitution speaks to the holder of an office and the Auditor General is in there. And generally we say 65, unless otherwise prescribed. But the prescribed aspects coming in the Constitution (Prescribed Matters) Act, Chap. 1:02, makes an exception and puts

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the Auditor General at 60 years. In other words then, this is living proof that the manner in which you prescribe the age of an office holder is by virtue of an amendment to the Constitution (Prescribed Matters) Act. And it is ridiculous to have been subjected to the paucity of research and the flight of fantasy that Sen. Mark engaged in, to come here and say that you need to go and amend the Constitution, section 136 by a three-quarters majority when it does not even say that, because it actually says two-thirds majority in the Constitution, if you read it. But Sen. Mark jumped to the three-quarters majority.

Sen. Mark: “Ah never say three-quarters.”

Hon. F. Al-Rawi:—which does not apply. I took careful notes, Madam President. And Madam President, when you listen to the ridiculousness of the argument coming from Sen. Mark, it is made clear by the very provisions of Chap. 1:02, that the manner in which you prescribe the age, set out clearly in section 136(1), which says:

“...age of sixty-five years or such other age as may be prescribed.”

written in the English language in bold text is by virtue of an amendment to the Constitution (Prescribed Matters) Act.

Madam President, I feel a deep sense of torture on behalf of the citizens of Trinidad and Tobago to have to listen to Sen. Mark put these submissions on the record. So, Madam President, let me just categorically reject, out of hand, the nonsense of that argument. It is ridiculous, quite simply put, Madam President.

Madam President, we are creating in the Judicial and Legal Service Act, a classification of persons now to be called “Chief Judicial Officers”. We are simply saying that the Chief Judicial Officers, as now defined in this Bill, and we see it at

clause 4(a) of the Bill:

“‘Chief Judicial Officer’ means Master of the High Court, the Chief Magistrate, the Registrar and Marshal of the High Court...”—and we are adding in—“the Court Executive Administrator.”

Madam President, I do not know where Sen. Mark was when he was the Minister of Public Administration. Let me repeat this. I do not know where Sen. Mark was when he himself was the Minister of Public Administration. But in 1998, by way of Cabinet Note—let me repeat this, in 1998, by way of Cabinet Note we created the office of Court Executive Administrator. Am I making that up?

Madam President, look to the Judicial and Legal Service Act, Chap. 6:01. Turn to the Schedule to that Act. Look at Part III of the Second Schedule. In black and white, you will see the following words at the middle of the page: “Part III Court Executive Administrator”.

Sen. Mark received remuneration from the taxpayers of this country as the Minister of Public Administration, had responsibility for managing entities like the Chief Personnel Officer, interacted with the public service and comes here today, in 2020 to hold up a straw man and knock it down, shamelessly unaware that the office was created since 1998 and features here, Madam President, Part III, Second Schedule, Judicial Offices.

Further, for the record the office was created as a contract position. Further for the record, the current holder of that office, Michelle Austin was appointed as a judge of the Industrial Court, fully and properly so. That departure on grounds of public service to serve as a judge of the Industrial Court is in gear and therefore,

the office is vacant and can be filled.

Master Christie-Ann Morris Alleyne, who has given her soul and lifeblood to this country, currently holds that position. She was the Court Executive Administrator under Michael de la Bastide Queen's Counsel, who birth the Civil Proceedings reform, carrying it forward by Chief Justice Sharma. These are icons in the history of Trinidad and Tobago. And I take umbrage to Sen. Mark pouring scorn on the work of people who currently hold that office.

And let me tell you this, the scandal put forward today is the ridiculous submission that the Government is currying favour with the Judiciary. For heaven's sake, a Parliament passing a material benefit for office holders, as we do from year to year, when we have taxation benefits, et cetera, as we did in 2013, when the SRC Ninety-Eighth Report was brought and laid in this Parliament, did the PNM stand up in 2013 and say the SRC, the Ninety-Eighth Report was to curry favour with the Judiciary? Madam President, that is a ridiculous submission. It is an obscenity to put forward an argument like that.

6.30 p.m.

And, Madam President, what is end result of what we are saying here? There is an objection to the Court Executive Administrator, the Master, the Chief Magistrate, et cetera, retiring at 65. Really? Did Sen. Hosein not just stand up here and read quite correctly from the reflections in the UK experience where they made a recommendation that you have a graduated scale in respect of retirement ages? Did Sen. Hosein not just do that? And commended it for all of us to read? Should he perhaps have commended Sen. Mark to read it? Is it that Sen. Hosein and Sen. Mark do not speak to each other? To watch the submissions coming and

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the heads hanging in shame while Sen. Mark speaks is torture, Madam President.

Sen. Mark: “Like yuh guilty of something or what?”

Hon. F. Al-Rawi: Madam President, when we look to the provisions of having the holding of office it comes back to the piloting. We want the criminal justice system to work, we want people to stay in the position and not be attracted elsewhere. The management of the Judiciary is a critical aspect for the functioning of the Judiciary. Was Sen. Mark present when we did the Family and Children Division Bill? Was Sen. Mark present when we did the Criminal Division Bill and we entrenched the operation of the Court Executive Administrator and Deputy Court Executive Administrators to say justice must run with HR talent?

Surely Sen. Seepersad, who has an insight into management of a law firm, for instance, would appreciate the need to manage the Judiciary. Surely, hon. Senators in their individual experiences, Sen. Vieira as he reflected upon the de la Bastide icon that he is, understands the benefit in having human resources. That is what we are talking about. Human resources.

Let us deal with the further aspect of gross, unadulterated, unguided, ridiculousness of submission coming from Sen. Mark. Let us turn to section 141 of the Constitution of the Republic of Trinidad and Tobago. Sen. Mark in a shrill tone recommended to this Parliament that somehow the SRC is the be all and end all and the terms and conditions have to be the SRC’s position.

Madam President, here is what section 141 says:

“The Salaries Review Commission shall from time to time with the approval of the President review the salaries and other conditions of service of the President, the holders of offices referred to in section 136(12) to

(15...)"

Not 136(1) eh, which we are amending by prescription, but Sen. Mark forgot to tell us it is section 136(12) to (15).

"...members of Parliament, including Ministers of Government and Parliamentary Secretaries, and the holders of such other offices as may be prescribed.

"(2) The report of the"—SRC—"concerning any review of salaries or other conditions of service, or both, shall be submitted to the President who shall forward a copy thereof to the Prime Minister for presentation to the Cabinet and for laying, as soon as possible thereafter, on the table of each House."

What does that mean? The SRC conducts an exercise, they do a review, and take a report triggered by the Cabinet because "President" under section 80 of the Constitution means "the Cabinet". So the Cabinet tells the SRC to conduct a review, the SRC produces a report, they give it to the Prime Minister, and hear the words, Madam President, "for presentation to the Cabinet". You know what that means? The Cabinet could reject it, amend it, adopt it, manage it, and in fact, Madam President, I do not know where Sen. Mark was in 2013 when the SRC's Ninety-Eighth Report was laid in this Parliament. What happens is, the Government deals with the adoption of aspects of the report by way of a positive statement of what it accepts or rejects.

Sen. Mark perhaps does not remember, the SRC recommended to remove everybody inside of here who enjoys a benefit for taxation relief for their motor vehicles and cars to reduce that. Sen. Mark probably forgot why that was not

accepted. Because there would have been a delegation from a benefit which hon. Members were receiving and therefore had to be rejected. So if you accept Sen. Mark's ridiculous submission that the SRC report effectively is a *fait accompli*, meaning it is a done deal, then why was that not accepted in 2013 when he sat as the Speaker of the Parliament? [*Crosstalk*]

Madam President, why was that not accepted? Why did Sen. Mark not reflect upon surely something he must have gleaned, in his stint as the Minister of Public Administration, that it is the Minister of Finance that operationalizes the SRC report by way of financial instructions through the Ministry of Finance? You see, the ridiculousness in the argument is to pretend—

Madam President: Attorney General, if I may, you have been presenting for quite some time and there are certain words that you keep repeating. I will ask you now to just move on in your presentation without all those adjectives, okay?

Hon. F. Al-Rawi: Madam President, I do not mean to be pejorative, I certainly do want to put on the record that I am not referring to a character or a personality, I am characterizing an argument. I will take your guidance and I will soften the language on that approach, I think the point has been made. I am characterizing an argument, I will do so in slightly different language.

Madam President, the offence to intellect in making the submission that section 141 of the Constitution, which is the SRC position, that that is somehow the only method by which terms and conditions can be improved, is to belie the very formula inside of section 141 which says that the Cabinet ultimately makes its own decisions.

And in answer to Sen. Mark's position as to what was the genesis of this

reform, the genesis as I have said and I can say now, we did consult the CPO, we did—I certainly had consultations with members of the Law Association. I certainly did as Attorney General speak with the Judiciary; the higher and lower Judiciary, the registrars, et cetera, in general discussion. The Cabinet considered the position, and, Madam President, we made enquires of the SRC as to whether they had actually completed their exercise and the SRC said, “They now start”. Because they had to restart and maybe check us in another five to six years’ time.

That being the case, recognizing that the HR, the human resources of the Judiciary are at risk the Cabinet took the decision as it is entitled to do in similar terms to an SRC report presented to it by the President under section 141. The Cabinet took the decision to amend for the advantage of office holders, not the disadvantage, and therefore not derogating from terms and conditions an advantage is always to be accepted, we approved the terms and conditions to a better state and condition, harmonizing the salary range for the respective office holders; Court Executive Administrator, Master, Registrar, Chief Magistrate to the terms and conditions associated with the Chief Parliamentary Counsel, the DPP and the Solicitor General.

That, therefore, underwrites in a proper sense the logic and consistency of approach. Number one, to maintain human resources. Number two, to harmonize the ages of certain office holders. Number three, to take a tiered approach: (a) judges at 70; (b) certain critical office holders at 65, now harmonized with Chief Legal Officers who are at 65; and (c) as I answered in respect to Sen. Sober’s enquiry, and I want say that Sen. Sobers presented a sensible argument here today, I answered the step as to what we were doing about the Magistracy next. So we

have only managed the Chief Magistrate at this point.

Let us deal with Sen. Hosein's enquiries as to the proximity of the Chief Executive Administrator to the Chief Justice. Sen. Hosein made a submission which was based upon, premised upon, what I think is a mistaken view of what we are doing. Sen. Hosein said and I wrote it down that we are now putting the Chief Executive Administrator under the Chief Justice. Just for the record we are not now doing that. That was done in 1998. It is in the Second Schedule, Part III, the Executive Court Administrator; that is point one.

Two, the Executive Court Administrator is the revenue officer under the Exchequer and Audit Act who acts therefore, exactly as a Permanent Secretary does to a Minister.

The second premise which was unfortunate in Sen. Hosein's submission is that the proximity of the Court Executive Administrator to the Chief Justice is somehow different to that of a Permanent Secretary to a Minister. Let me just correct that. That is not the case. The underwriting for that argument, the support for that argument is to be found section 79 of the Constitution. Section 79 of the Constitution says:

“(1) The President, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government of Trinidad and Tobago”—and hear the words—
“including the administration of any department of Government.”

What does that mean? The Minister can give the Permanent Secretary instructions.

So what on earth could be wrong with the Chief Justice qua Minister giving

the Court Executive Administrator that has the exact form and function as a Permanent Secretary instructions? What could be wrong with that? Particularly in the face of section 99 of the Constitution. What is section 99 of the Constitution in Chapter 7 of the Constitution? The separation of powers argument.

Imagine the difficulty you would be in if the Chief Justice did not have control of the Chief Justice's Permanent Secretary, so called the Court Executive Administrator, and instead the Attorney General, who is the coordinating Minister with responsibility to the Judiciary gave that PS instructions. What would we do to the separation of powers? Would that not offend the separation of powers in and of itself?

So, Madam President, number one, I reject out of hand as stridently as one can possibly do the submissions coming from Sen. Mark. They are a flight of fantasy placed with conspiracy none of which have any form of merit.

Secondly, I reject the arguments coming from Sen. Hosein in less strident fashion, I believe that the observations made by the hon. Senator were premised on two false premises, that is, that there is something wrong with the Chief Justice managing the Court Executive Administrator and that somehow that was being done now. That was done in 1998. And I want to remind the UNC had a certain turn at the wheel in its time in government and certainly did not care to do anything about it. So why come today to invent an argument that we need a three-quarters majority, two-thirds majority, SRC is the only entity that could do it and that there is something wrong with the proximity between the Chief Justice and the Court Executive Administrator? That is just wrong. This is just plain wrong.

Madam President, I regret that I had to answer those arguments. It was dangerous to leave them without answer on the record. I had really hoped to be extremely short in this wind-up. There is one small amendment that we propose at committee stage, and that is quite simply, Madam President, with respect to clause 4, instead of using the words “the Registrar and Marshal of the High Court”, it really is not the High Court only, it is the Supreme Court that we are looking at. So propose one small amendment to clause 4 of the Bill if it should please the hon. Members at committee stage.

In those circumstances, Madam President, 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.

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

Clause 4.

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

“4 In paragraph (a), delete the words ‘the Registrar and Marshal of the High Court’ and substitute the words ‘Registrar and Marshal’.”

Mr. Al-Rawi: Should it please you, Madam Chairman, we have circulated an amendment to clause 4. Effectively it is just nomenclature and it is as circulated changing the” Registrar and Marshal of the High Court” to “Registrar and Marshal” as that is the correct term.

Sen. S. Hosein: Thank you very much, Madam Chair. I just want to find out, I know we are amending 4(a) can I raise some issues with respect to 4(b)?

Madam Chairman: Sure.

Sen. S. Hosein: Attorney General, I know this was the last point you made in the winding up, with respect to the supervision of the Court Executive Administrator, who falls under Part III of the Second Schedule and also the Administrative Secretary to the Chief Justice.

If we are going to define “Chief Judicial Officer” to include Court Executive Administrator and you are amending 15(1)(a) to now insert the word “Chief Judicial Officer” are we now making duplicitous because you would have the Chief Executive Administrator being part of 15(1)(a) and also part of 15(1)(b)(iii)?

Mr. Al-Rawi: I do not think that we are making it duplicitous, I think it would be a question of whether we are make a duplication.

Sen. S. Hosein: Duplication, sorry.

Mr. Al-Rawi: Okay. So that is one. So what we are doing is because we have defined the term in (a), so we are saying “subject to the Constitution any written law, control and supervision may be exercised over (a)” this category of people and we are putting the Chief Judicial Officers to capture those who were previously in (a) and we are adding the Court Executive Administrator. I think you question here now, “other judicial officers mentioned in” when we get to Part III, in Part III by the Chief Justice. So here is potentially an issue.

Sen. S. Hosein: Duplication.

Mr. Al-Rawi: So just let me double check with the CPC’s team as to whether we may want to adjust that.

[Attorney General confers with the CPC]

Mr. Al-Rawi: Madam Chair, may I thank, Sen. Hosein, for his sharp eyes on this point. It is in that a duplication, I thank the hon. Senator for noticing that and in those circumstances. Madam Chairman, if I may indulge you with that gratitude

expressed to include as a further amendment to section 4. So what we have circulated would be 4, paragraph (a). We put in a paragraph (b) which would say, and if you would indulge me? Are you ready? It will be, “in Part III, of the Second Schedule, delete the words ‘Court Executive Administrator’.” Is that okay? Much obliged and to Sen. Hosein.

Sen. S. Hosein: AG, did you check to see if anywhere else in the parent Act it would be affected?

Mr. Al-Rawi: No. That in fact when I looked for the Act in trying to find the genesis of the Court Executive Administrator that Cabinet Note amended the Schedule, and the only place the Court Executive Administrator was put was in that Second Schedule. And then we in the Family and Children Division and Criminal Division implemented the deputies, in the Court Executive Administrator and the deputies in those laws. Thank you, Senator.

Madam Chairman: Attorney General, if I would just clarify? The words that you just called out will that be a subsection (c)?

Mr. Al-Rawi: Yes, it should be.

Madam Chairman: Should be?

Mr. Al-Rawi: Yeah. So new subsection (c).

Madam Chairman: Well, it just says subsection.

Mr. Al-Rawi: Yes, subsection (c). So insert—thank you, Madam Chair. So insert—yes. One moment please, Madam Chair.

[Attorney General confers with the CPC]

Mr. Al-Rawi: Madam Chair, if I may, through you. My shoulder has been tugged, sleeve tugged, foot kicked by the CPC’s able assistant, Mr. Milton Sorzano and he said that he is fearful, and I wish to repeat it here, that if we move the reference to CEA, Court Executive Administrator in the third part that we may

inadvertently trip the establishment of the office pursuant to the spring board of section 3. So his recommendation is, even though on the face of it and I certainly agree with what Sen. Hosein had put forward that it may be a duplication insofar as there is a benefit to be had by maintaining it, that we should instead maintain. But I do thank Sen. Hosein for making that recommendation and spotting it.

Sen. S. Hosein: Thank you. Just two observations and I was going to raise this issue with you, Attorney General, because section 16 of the parent Act prescribes the manner in which the First and Second Schedule are to be amended; that is one. And two, is it possible then that at 15(b)(iii) if we delete the words in Part III and just insert the words “the Administrative Secretary to the Chief Justice”.

Mr. Al-Rawi: Understood. So that is what I was referring to, Madam Chair, in answer to the hon. Senator when we looked at how Part III, the offices were created. So that is where we turn to section 3. And section 3 of the parent Act:

“(1) There is hereby established a Judicial and Legal Service.

* (2) The public offices in the public service set out in the First and Second Schedules shall be deemed to constitute the Judicial and Legal Service.”

So it is from that springboard 3, sub section (2) that the CPC’s Department is cautioning me do not inadvertently throw the baby out with the bathwater when on the face of it we all agree that there appears to be potentially a duplication. So for those reasons I would think to leave it as it is, but I certainly think that the observation was a genuine one and I thank the hon. Senator. So may I retreat from the commendation and simply stick with that which was circulated.

Madam Chairman: Hon. Senators, the question is that clause 4 be amended as circulated.

Question put and agreed to.

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

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

Senate resumed.

Hon. F. Al-Rawi: Madam President. I wish to report that a Bill to amend the Constitution (Prescribed Matters) Act, Chap.1:02 the Interpretation Act, Chap. 3:01 and the Judicial and Legal Service Act, Chap. 6:01.was considered in a 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, read the third time and passed.

ADJOURNMENT

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move that this House be adjourned to Tuesday 24 March, 2020 at 1.30 p.m. That is Private Members' Day, Madam President.

[Attorney General confers with the Minister of Agriculture, Land and Fisheries]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.02 p.m.