

SENATE

Tuesday, March 09, 2021

The Senate met at 10.30 a.m.

PRAYERS



[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

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

SENATOR'S 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. JOHN HEATH

WHEREAS Senator Hazel Thompson-Ahye 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,

UNREVISED

do hereby appoint you, JOHN HEATH, to be a member of the Senate temporarily, with effect from 9th March, 2021 and continuing during the absence of Senator Hazel Thompson-Ahye 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 9th day of
March, 2021.”

OATH OF ALLEGIANCE

Senator John Heath took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Annual Report of the Equal Opportunity Commission for the year 2015. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]
2. Stewardship Report of the Office of Procurement Regulation for the period January 2018 to September 2020. [*Sen. The Hon. C. Rambharat*]
3. The Annual Report of the Anti-Terrorism Unit for the period 2019-2020. [*Sen. The Hon. C. Rambharat*]
4. Annual Report of the Financial Intelligence Unit of Trinidad and Tobago for the period October 01, 2019 to September 30, 2020. [*Sen. The Hon. C. Rambharat*]
5. Report of the Cabinet Sub-Committee appointed to Review the Operations of the Water and Sewerage Authority and to Determine a Strategy for enabling the Authority to Achieve its Mandate. [*Sen. The Hon. C. Rambharat*]

URGENT QUESTION
Vaccination of Adult Population
(Details of)

Sen. Jayanti Lutchmedial: To the Minister of Health: Given the announcement that only 33,600 vaccines will be available by the end of March 2021, via the COVAX Facility, can the Minister indicate when will the majority of the adult population be vaccinated?

Madam President: Minister of Health.

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. Madam President, the vaccination of the population has always been based on the principle of those vaccinated first will come into high-risk, high-exposure groups under the COVAX principle. To this end, in Phase 1, NCD patients, which are part of a general adult population, will be vaccinated in Phase 1; the number of vaccines being the limiting factor. In Phase 1, members of the general adult population to be vaccinated will be those in the long-stay homes. In Phase 2, we move on to also those with NCDs, general population again, plus essential workers. And then in Phase 3, the majority of the adult population will be vaccinated depending again on the number of vaccines that we have.

I think we could realize there is a global shortage of vaccines and we are working assiduously across all platforms to acquire enough vaccines for especially what we call small island developing states, which are being unfairly disadvantaged in the purchasing and acquisition of vaccines. So that is how we plan to do it: Phase 1, Phase 2, Phase 3. We start off with limited numbers in Phase 1, NCDs long-stay homes; we continue with NCDs in Phase 2, and then the majority will be in Phase 3. And I thank you for the question, hon. Member.

Madam President: Sen. Lutchmedial.

Sen. Lutchmedial: Thank you, Madam President. Madam President, given that the Minister's original— Minister, given that your original statement that 120,000 vaccines would be ready by the end of February has not materialized, can you give us an indication as to when the remaining 67,200 that we were guaranteed from the COVAX Facility would be delivered? When we can expect them and in what quantities?

Madam President: Well, one question. So when can you expect them?

Sen. Lutchmedial: When can we expect the remaining 67,200, please, Minister?

Hon. T. Deyalsingh: I welcome the question. When both Dr. Erica Wheeler of PAHO and myself announced 100,000 to 120,000, we were at pains to say all things being equal, because we know there is a worldwide scramble for vaccines, and we did say all things being equal. What has happened, because of the shortage of vaccines, COVAX has made a decision and we have accepted this initial advance of 33,600, all things being equal again. I am told by COVAX and PAHO, we could expect the remainder of 77,000 sometime between the end of April, beginning of May, and the 33,000 we are receiving will see us through that period. But again, all things being equal and we were at pains to say that at the press conferences.

Sen. Lutchmedial: Minister, given that all things are not equal with COVAX, has the Government or can you give us an update on the Government's initiatives to explore other sources of vaccines to help the population reach somewhere closer to what we considered to be herd immunity and what, internationally, is accepted as being somewhere around 70 per cent of inoculated population? Can you give us an update, please?

Madam President: Minister.

Hon. T. Deyalsingh: Sure. Thank you. So we are exploring initiatives with

COVAX, with the African medicine council platform where we are registered as a purchaser for over 400,000 vaccines across three vaccines platforms, AstraZeneca, Pfizer and Johnson & Johnson. We are also exploring, as we have said, bilateral talks with the Government of India, the Government of China, the Government of Germany, France and Canada. We are also exploring bilateral talks directly with Johnson & Johnson, Sinopharm, Bharat Biotech out of India. So we are exploring all available options in the context of an absolute global shortage of vaccines and also, where bigger countries, where the plants are situated, are now embargoing vaccines. Italy has embargoed 400,000 AstraZeneca vaccines bound for Australia, and that is in the news. So in the context of all of that, we are trying very, very hard and I welcome the opportunity—and I assure colleagues here, the Government, all agencies, are working very, very hard on this issue. Thank you very much, Madam President.

ORAL ANSWERS TO QUESTIONS

Madam President: Acting Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, there are three questions on notice and the Government will answer all three. Thank you.

[Device goes off]

Madam President: The device that just made that sound, can you please leave the Chamber and you can come back in five minutes.

PSA and NIB Collective Agreement

(Payment of Outstanding Arrears)

70. **Sen. Wade Mark** asked the hon. Minister of Finance:

Can the Minister indicate when all outstanding arrears arising out of a recently concluded collective agreement between the PSA and the NIB would be paid?

Madam President: Minister of Finance.

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. Madam President, this is a complicated matter since the collective agreement in question was not authorized by the ministerial committee established to monitor the conduct of wage and salary negotiations. This committee is now entitled the Human Resource Advisory Committee of Cabinet which took over from the ministerial committee established under the previous administration. The agreement was not authorized as required by the directions given by the Minister of Finance, through the Permanent Secretary of the Ministry of Finance, to the Chairman of the National Insurance Board on March the 25th, 2011, under the former administration, and it is thus at variance with the provisions of section 9 of the National Insurance Act, Chap. 32:01. The consequences of this agreement are also far-reaching and could result in tremendous expense to taxpayers if used as a precedent. Accordingly, the Minister of Finance is seeking advice on the matter.

Madam President: Sen. Mark.

Sen. Mark: Madam President, through you, to the Minister of Finance: Could the Minister explain to this Senate why was authorization not sought by the parties involved in this collective agreement?

Madam President: Minister.

Hon. C. Imbert: Thank you, Madam President. My investigation so far—well, let us put it this way. The investigations of the Ministry of Finance so far have indicated, as far as we have been told, that the management of the National Insurance Board did not inform the board of the ministerial directive of March the

25th, 2011. That is our investigation so far. So as far I am aware, the management is now being called upon to explain why this letter from the then Minister of Finance was not made known to the Board of the National Insurance. [*Inaudible*]—have at this time.

Madam President: Sen. Mark.

Sen. Mark: Can I ask Madam President, through you, to the Minister: Hon. Minister, is it a normal practice, from your experience, that before collective agreements are arrived at between parties at the NIB, that your Ministry or the inter-ministerial committee on wages must authorize same? Is it a normal practice and this was a breach of that practice? Can you explain?

Madam President: Minister.

Hon. C. Imbert: Madam President, I referred in my answer to section 9 of the National Insurance Act, Chap. 32:01. Section 9 requires the National Insurance Board to comply with directions given by the Minister of Finance, and these directions given in 2011 have never been rescinded and remain in force.

Madam President: Sen. Mark.

Sen. Mark: In light of the breach committed by the management in violation of that section referred to, could the Minister indicate whether the Government would want to consider settling this matter with the relevant players having regard to the fact that the management is responsible and not the workers in question? Would the Government be willing to reconsider its position on this matter?

Hon. C. Imbert: Madam President, those are Sen. Mark's words. Those are not my words. All I said was that I have been informed that the management did not bring the ministerial letter and ministerial directive to the attention of the board. That is all I can say at this point in time. This is an active investigation and it is ongoing, and I expect to get a report from the National Insurance Board in due

course. With respect to the agreement itself, I have made it clear, the agreement has far-reaching consequences for taxpayers, and I can say off the bat that if that agreement—the wage increase that was contemplated by that agreement—was implemented in the public sector, it would cost \$7 billion, and this is why I am seeking advice at this point in time and that is all I can say at this point in time.

Sen. Mark: Madam President, may I ask the hon. Minister the period of the collective agreements involved that would have been signed off by the management of the NIB? Can you tell us which periods those collective agreements would have covered hon. Minister?

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

**MIS-C Among Infants in Tobago
(Measures Implemented to Reduce)**

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

Can the Minister indicate what, if any, measures are being implemented to reduce the incidence of multisystem inflammatory syndrome, MIS-C, among infants in Tobago?

Madam President: Minister of Health.

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President, and I thank my colleague for the question. Trinidad and Tobago is a one-country state, and this Government's approach to the COVID-19 pandemic and all other health related matters is and will always be a national response. As such, the measures implemented to reduce the incidence of multisystem inflammatory syndrome, MIS-C, among infants is one for Trinidad and Tobago. As of March 09, 2021, there are no confirmed cases of multisystem inflammatory syndrome, MIS-C, among infants in Tobago. In order to mitigate any

risk of occurrence, all public health facilities strictly adhere to the public health regulations, protocols and guidelines including, one, the mandatory wearing of masks or face shields, and strict adherence to physical distancing; the increase frequency in the sanitation of all public health facilities; close observation and monitoring of all infants who are COVID-19 positive for the development of any signs or systems suggestive of MIS-C by the medical team; all patients who are COVID-19 positive in state quarantine facilities in order to eliminate the risk of exposure to infant; the closing of day-care centres and schools with effect from March 14, 2020 , and the closure of the airport to nationals and non-nationals on March 22, 2020. Thank you very much.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the hon. Minister indicate—seeing this is a national issue, which I agree with—can you share with this House how many infants have contracted or have become victims of this particular MIS-C in Trinidad and Tobago?

Hon. T. Deyalsingh: Yes. Thank you. There are 29 suspected cases: 28 in Trinidad and one in Tobago—suspected. In Trinidad, there were 21 confirmed cases. So that is the breakdown: 29 suspected cases; 28 in Trinidad, one in Tobago. But on confirmatory testing, we have 21 confirmed cases; all in Trinidad, none in Tobago as of now.

Madam President: Sen. Mark.

Sen. Mark: Hon. Minister, without telling tales out of school and without breaching confidentiality, can you tell this honourable Parliament or Senate, the 21 confirmed cases that you have outlined of infants contracting this MIS-C, have they all recovered fully?

Hon. T. Deyalsingh: Yes. I checked this morning with the doctors in both

Trinidad and Tobago, and I am happy to report that all have recovered and we have had no fatalities.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the Minister indicate what measures are being promoted by the Ministry of Health to alert the population of steps that ought to be taken to ward off this invasion of this particular disease?

Madam President: Minister of Health.

Hon. T. Deyalsingh: So I think I did go through that: the mandatory of wearing of masks, I said that; face shields. Specifically for children, Sen. Mark, closing of day-care centres, we implemented that in March 14, 2020; closures of schools. And at our press conferences we always—but not always—we very often bring a paediatrician in the person of Dr. Joanne Paul, to speak directly to the population about the issue of MIS-C both in Trinidad and in Tobago. So the public education goes on and the policy measures are still enforced with the closure of day-care centres, the closure of primary schools. So those measures are still enforced. So a mixture of policy, public education.

Madam President: Next question, Sen. Mark.

Appointment of Deputy Commissioner of Police

(Details of Investigation)

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

Having regard to the concerns raised by a former Chairman of the Police Service Commission that on December 30, 2020, he received a phone call from “a woman claiming to be from the Ministry of National Security” and seeking a testimonial for a candidate for the post of Deputy Commissioner of Police, can the Minister advise as to the following:

- (i) has an investigation been launched to address the concerns raised by the former Chairman;
- (ii) if the answer to (i) is in the affirmative, what are the findings of the investigation; and
- (iii) will the Minister share the report of said investigation with the Senate?

Madam President: Acting Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President. Madam President, this matter was investigated. It was verified that the phone call received by the former chairman of the Police Service Commission was associated with the security vetting exercise for candidates who have applied for the position of Deputy Commissioner of Police. Thank you.

Madam President: Sen. Mark.

Sen. Mark: Madam President, having regard to what the hon. Minister has said that this call, this mysterious call, that came from a woman in that Ministry, can the Minister indicate what role, if any, the Ministry of National Security had played, did play, is playing in the appointment of three Deputy Commissioners of Police? Can you clear the air on that matter, whether the National Security Ministry—

Madam President: No, no. Just state your question, Sen. Mark.

Sen. Mark: Well, I think I have—

Madam President: Yes. Minister.

Sen. The Hon. C. Rambharat: Madam President, I thought for a while my friend was asking a new question. But what I picked up, Madam President, first, Sen. Mark refers to the call as being a mysterious call. So the call was not mysterious. I

have already said that it was verified that the phone call received from the former chairman of Police Service Commission was associated with the security vetting exercise for candidates who have applied for the position of Deputy Commissioner of Police. So the call was not a mysterious call. The purpose of the call was not a mystery. It was associated with the security vetting exercise. The relationship to the Deputy Commissioner of Police position is not a mystery because the vetting exercise was for candidates who have applied for the position of Deputy Commissioner of Police, and the recipient of the call is not a mystery because it was the former chairman of the Police Service Commission, Madam President.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the hon. Minister indicate what a security vetting has to do with that mysterious caller asking the former chairman of the Police Service Commission for a recommendation? Madam President, I am simply asking the hon. Minister to indicate and explain to this Senate, the difference between a security vetting and a recommendation which was reported to have been the request made by this lady calling from the Ministry of National Security?

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

Sen. Mark: Is the Ministry of National Security involved in the exercise as it relates to the selection of three deputy police commissioners? Can the hon. Minister clarify—

Madam President: The question as you posed it, can be—I can now—Minister.

Sen. The Hon. C. Rambharat: Madam President, I am very happy to report that the call which Sen. Mark continues to describe as mysterious was verified. After the investigation, it was part of the investigation, it was verified that the phone call received by former Police Service Commission chairman was not a mysterious call. It was associated with the security vetting exercise, not a mysterious exercise;

the exercise for the candidates who have applied for the position of Deputy Commissioner of Police. That is the response, Madam President, to the question posed by Sen. Mark.

Madam President: Sen. Mark.

Sen. Mark: Can I ask the hon. Minister whether the former chairman of the Police Service Commission has been written to by the Minister of National Security clearing the air on this matter, as you are seeking to do at this time, seeing that he had written him?

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

ELECTRONIC PAYMENTS INTO AND OUT OF COURT

(AMDT.) BILL, 2021

Bill to amend the Electronic Payments into and out of Court Act, 2018 [*The Attorney General*]; read the first time.

COMMITTEE OF PRIVILEGES

(TEMPORARY APPOINTMENT OF MEMBERS)

Madam President: Acting Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, having regard to the fact that you recused yourself from participating in the matter of privilege raised and consequentially referred to the Committee of Privileges on Tuesday, March 02, 2021, I beg to move:

Notwithstanding the provisions of Standing Order 82(2), that for the purposes of conducting the Committee's work on the said matter only, the President of the Senate, Ms. Christine Kangaloo, be temporarily removed from the Committee and temporarily replaced as Chairman by Vice-President of Senate, Mr. Nigel de Freitas, and that Mr. Clarence Rambharat

be appointed to serve as a member of the Committee in lieu of Ms. Christine Kangaloo.

Madam President: Hon. Senators, the question is that notwithstanding the provisions of Standing Order 82(2) that for the purposes of conducting the Committee's work on the matter referred on Tuesday, March the 2nd, 2021, the President of the Senate, Ms. Christine Kangaloo, be temporarily removed from the Senate and temporarily replaced as Chairman by Vice-President of Senate, Mr. Nigel de Freitas, and that Mr. Clarence Rambharat be temporarily appointed to serve as a member of the Committee in lieu of Ms. Christine Kangaloo. Those in favour say aye.

10.30 a.m.

Sen. Mark: You said, "the Senate". To "be temporarily removed from the Senate".

Madam President: To be temporarily appointed to serve as a member.

Hon. Senator: You said, "removed".

Sen. Mark: You also said, "removed from the Senate".

Madam President: No, be temporarily removed from the Committee.

Sen. Mark: Oh, you said Committee, I thought you said from the Senate. [*Inaudible*]—in error because we do not want to mislead—

Madam President: Thank you very much. So let me just go over the Motion again.

Hon. Senators, the question is that notwithstanding the provisions of Standing Order 82(2) that for the purposes of conducting the Committee's work on the matter referred on Tuesday, March 02, 2021, the President of the Senate, Ms. Christine Kangaloo, be temporarily removed from the Committee and temporarily be replaced as Chairman by Vice-President of the Senate, Mr. Nigel de Freitas and that Mr. Clarence Rambharat be temporarily appointed to serve as a member of the

Committee in lieu of Ms. Christine Kangaloo.

Question put and agreed to.

ANTI-GANG BILL, 2021

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):

Madam President, I beg to move:

That a Bill to make provision for the maintenance of public safety and order through discouraging membership of criminal gangs and the suppression of criminal gang activity and for other related Matters, be now read a second time.

Madam President, we stand in March 2021, merely a full 10 years away from the introduction of anti-gang laws into the body of Laws of the Republic of Trinidad and Tobago. That exercise, in fact, began in the year 2010 under then Prime Minister, Mrs. Kamla Persad-Bissessar. In 2010, the introduction of two Bills, being companion Bills, came to the Parliament to then treat with the scourge of gang activity. The reflections of the Advisor to the hon. Prime Minister then, Mrs. Kamla Persad-Bissessar, one Gary Griffith, was that anti-gang law was good law to be introduced because of the suppression factor that it provided. Accordingly, those two Bills entered into the Parliament and a joint select committee was appointed to consider the introduction of anti-gang law with bail restrictions.

The anti-gang law and bail restrictions were introduced into the House of Representatives on the 16th of July, 2010, and on the 3rd of December, 2010, the Joint Select Committee which was appointed to consider those two pieces of law comprising Members of the House and Senate, then Government UNC, then Opposition PNM, that JSC having sat with 12 Members for eight meetings, we saw on the 16th of—sorry, the 3rd of December, 2010, the House and the Senate

preceding from that date, sitting for seven sessions in the House and six in the Senate, and on the 16th of May, 2011, the Anti-Gang Act and the Bail (Amdt.) Act proceeded with full and unanimous support.

At that JSC, there was unanimity. The Commissioner of Police, then Stephen Williams, acting as he was, addressed the Joint Select Committee and there was fulsome support for the anti-gang and bail amendment. On the 16th of May, 2011, that ended in the Parliament and the assent of both laws happened on the 23rd of May, 2011, and therefore Acts No. 10 of 2011 and 11 of 2011 were born, the Anti-Gang Act and the Bail (Amdt.) Act.

The bail amendments were critical as companion law because what they sought to do in relation to gang activity was to restrict bail. A court was put out completely: you shall not get bail for 120 days in the first instance and if your trial has started, thereafter no bail unless you cross one year and your trial has not gone in the right direction. So the lockdown of bail happened by a complete exclusion of the court.

What was interesting is that the laws were proclaimed on the 15th of August, 2011, and six days later, on the 21st of August, 2011, a state of emergency was declared. In that state of emergency, 463 people were arrested under the Anti-Gang Act. As a matter of fact, it turned out 213 were released with no charge, 142 were charged by the Criminal Gang Investigation Unit and at present, we have had one conviction, 33 now at the Magistrates' Court and 40 before the High Court. That law had a sunset clause in it for five years and that law was intended to come to an end in 2016.

What is very interesting is that the law was passed with a three-fifths majority and that three-fifths majority law was because there was going to be an intrusion of section 4(a) of the Constitution, the right to liberty effectively; 4(b),

the protection of law; 5(2)(a), the detention provisions set out in the Constitution; 5(2)(e), the due process provisions. Because in the anti-gang law in 2011, what happened was the courts were told to come into effect only after 72 hours had passed and then you had a further option for detention and the courts were told, look, you can have no part in releasing these people, they are under investigation. So the three-fifths majority requirement happened under detention.

This Bill we lay here today without a three-fifths majority and I will explain that. Let me flag immediately to hon. Members that there is a critical amendment to be had to clause 15(3). Unfortunately the Bill that came before us today did not have the correct provision of consent for entry into other premises and then warrant after. So to my friends in the Opposition, do not get too excited yet, we spotted that unfortunately in the rush to lay the Bill, the wrong version was laid in respect of that clause and there are a few other amendments that we will ask you to consider.
[*Crosstalk*]

So, Madam President, in Act No. 10 of 2011, the Anti-Gang Act, permit me to reflect upon the Preamble because we have a much shorter Preamble in this Bill. But the Preamble in the 2011 Act is critical because it featured as well in the 2017 and 2018 versions of the Anti-Gang Act:

“Whereas the Constitution of...Trinidad and Tobago”—effectively—“recognizes and protects fundamental human rights and freedoms such as the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law:

And whereas the Constitution also recognizes the existence of the right of the individual to equality before the law and the protection of the law:

And whereas the Constitution places a duty on the State to protect, promote

and fulfil the above-mentioned fundamental...rights and freedoms:

And whereas there has been a rapid growth of criminal gang activity within the Republic of Trinidad and Tobago:

And whereas criminal gang activity infringes on the rights and freedoms of individuals as enshrined under the Constitution:

And whereas it is the right of every person to be protected from fear, intimidation and physical harm caused by the criminal activity of violent gangs;

And whereas criminal gang activity presents a danger to public order and safety and to economic stability, and has the potential to inflict social damage:"

Let those words marinate for a moment and let us reflect upon the state of Trinidad and Tobago 10 years later as there are marches up and down Trinidad and Tobago quite commendably where our citizens are crying for the right of protection. There was an interesting placard that said:

Walk free, not brave. Walk free, not brave.

And whereas we are now regaled by the story anecdotally in the papers of gangs kidnapping our young ladies, a driver in association with a rapist allegedly kidnapping our young ladies, extorting money via someone else, receiving stolen goods in a co-ordinated attempt that has now shown us it is not just one, it is several. So that is Trinidad and Tobago 10 years later from 2011, that there is a relevance.

Today, we seek to reintroduce the anti-gang laws with no sunset clause, no three-fifths majority because we attenuate the rights and I am flagging that an amendment is critical to clause 15(3) of the Bill to make sure that we do not trip the right of property in respect of police entering without warrant. That has to be

amended. But in Trinidad and Tobago, let us look at the effect of the law which we now seek to reintroduce.

We know the history of the law. The history of the law is that it was born out of a joint select committee in 2010, it came into 2011. We know that the expiry of the anti-gang law came up in 2016. We know that the Government came forward, I came forward in 2016 with the Miscellaneous Provisions (Anti-Gang and Bail) Bill, 2016, and I asked the House of Representatives on the 17th of June, 2016, nine months after the election, for an extension of the following laws:

The Bail (Amdt.) Act, No. 10 of 2011, that is the companion to the Anti-Gang; No. 17 of 2008, No. 10 of 2011, that is the Anti-Gang Act; the Bail (Amdt.) Act No. 11 of 2011, 1 of 2014, 7 of 2015. Far-reaching bail companions: no bail for possession of a firearm, no bail for anti-gang law, no bail for child abuse in the terms of raping a child and sexual offences against a child, no bail for kidnapping for ransom.

Unfortunately, on July 01, 2016, the Opposition refused to support the extension of time. We were simply asking for a two-year extension and the Opposition simply said they will not support the law. The Anti-Gang Act died and all of the bail amendments that we had advanced from 1994 straight up to 2015—one strike, firearm, no bail—all died except for the 1994 law as amended by the Act No. 19 of 2005. So kidnapping, no bail, went out the door; serious offences against children; trafficking in persons; charge-charge matters all died because the Opposition's position was, "we will not extend the law".

The Anti-Gang Bill, No. 20 of 2017, came forward. We wrote to the DPP, the Commissioner of Police, the Law Association. We held a meeting with the Opposition on the 18th of July, 2017. We had correspondence with the Leader of the Opposition: 4th of August, 2017; 17th of August, 2017; 28th of September, 2017.

We laid that Bill on the 1st of December, 2017. On the 6th of December, 2017, we deleted the offence of sedition from the Schedule. We said that we would go for 18 months as the condition being dealt with, that was what the Opposition had asked for, we asked instead for a slightly longer period and the Opposition said no. The Anti-Gang Act of 2017 died.

From the Act of 2017, we went into the dance for 2018. In 2018, we came back with a new Bill, there was mounting public pressure. The Commissioner of Police was begging for the law, the society was begging for the law. We sought to waive the Standing Orders with the cooperation of the hon. Leader of the Opposition and we brought forward the 2018 law and the 2018 law, we did some surgery. Very importantly, we added in white collar offences into gang activity, a huge difference, the white collar offences in the Schedule: offences under the Anti-Terrorism Act, offences under the Proceeds of Crime Act, offences under the Prevention of Corruption Act, Trafficking in Persons Act, misbehaviour in public office, offences under the Gambling and Betting Act. Why? Because we were following the money and we said if we cannot catch you for murder in gang activity or kidnapping in gang activity, we will catch you for “follow the money”. The Anti-Gang Act in 2018 came alive, there was a sunset clause hard-fought for 30 months.

In November last year, 2020, we came to the Parliament to ask for an amendment to section 20 of that Act, simply to ensure the extension of the Anti-Gang Act. One effective clause we said with respect to section 20 of the Act, we said this Act is amended by repealing 20, meaning remove the sunset clause. Unfortunately, the Opposition took the position that that law could not be supported. The hon. Members felt there was no position of success under the anti-gang law and therefore we were compelled to watch that law die again. So we have

had a tumultuous history with anti-gang law because effectively the laws as presented required a three-fifths majority and therefore we had to go back to the drawing board to consider how we could make proportionate laws that did not offend the constitutional requirements for three-fifths majority by adjusting the laws so that we are not within the disproportionate realm.

Let us deal with the statistics of anti-gang law. Let us deal with what the Commissioner of Police has said. The Commissioner of Police wrote to me on the 15th of October, 2020. The Commissioner of Police has been in the newspapers. The Commissioner of Police has been the one operationalizing anti-gang units. The Commissioner of Police said that he inherited a CGIU, a Criminal Gang Investigation Unit in 2016. In 2017, that CGIU was combined with the OCNFB, another division of the TTPS, the Organized Crime Narcotics and Firearms Bureau, joined with the Criminal Gang Investigation Unit and they comprised the OCIU. That unit which deals with criminal investigations for gangs, Organized Crime Investigation Unit. In 2018, the Commissioner of Police took the opportunity to decentralize gang management creating a centre post but with individual units across all of the divisions and in 2020, the Commissioner of Police dealt with the Criminal Investigation Bureau.

But the information that comes from the Commissioner of Police is quite important. In 2018, the Commissioner reported that there were 211 gang members—comprising some 2,400 gang members, and in 2020, the Commissioner of Police was able to demonstrate a drop from 211 gangs to 129. That is a 39 per cent drop in gangs. In respect of the number of gang members, the number dropped from the 2018 figure of 2,400 to 1,014. That is a 58 per cent drop in gang membership. The Commissioner reports that gangs dissolved themselves because of the constant police suppression activities—that is why I read the Preamble—to

suppress and deter. The Commissioner of Police informs that in 2018, with respect to murders attributed to gangs, 22 gang-related murders were solved with 28 arrests. In 2019, 30—sorry, 13 gang-related murders were solved, with 10 arrests. In 2020, five were solved, with 13 arrests.

The Commissioner goes further to describe even more successes that gang leaders have been charged and are before the courts. Gangs have been disrupted but let us take a step back. The Commissioner of Police just reported to the country the lowest statistics for serious crimes in 20 years. Let me repeat that. The lowest statistics for crime, serious crime for 20 years without the use of a state of emergency.

Now, I have heard it said, Members of the Opposition included, that COVID is to be thanked for that but I just stick a pin for a moment to say that in every other country around the world with lockdowns—which we did not have because we did not use a state of emergency. In every other country around the world, the numbers went in the opposite direction, crime went up. But in Trinidad and Tobago, we now have because of innovative thinking, “people rushing to check dey tint”, checking demerit points every five minutes, slowing down for cameras, the lowest number of road traffic deaths in 20 years—sorry, 65 years! The lowest number of traffic deaths in 65 years. So here is what the Commissioner of Police tells us—as I ask what time is full time, Madam President?

Madam President: You finish at 11.47.

Hon. F. Al-Rawi: Much obliged. Dismantling of gangs in 2020: G-Shine gang, responsible for murders in the North Eastern Division, dismantled. Princes Town gang, responsible for quadruple murder in the Southern Division, dismantled. Gang-related murders dropping across the year. By way of comparison, the Commissioner reported that in the year prior to 2020, there were 11 gang-related

murders in the month of July and that dropped to one; nine in the month of August, that dropped to three; nine in the month of May, that dropped to two; nine in the month of April, that dropped to three. Tobago gangs: five murders were solved as a result of this dismantling linked to the Port of Spain gang division. Ninety-four million in transnational gangs, eight persons arrested, two persons charged to date. Western Division gang, five murders solved as a result of this dismantling. They were also linked to Port of Spain gang. Murder in Belmont solved through anti-gang work. A particular name which I will not mention in relation to a gang, two gang members arrested and charged for supporting a gang; two gang members arrested and supported as being gang leaders, three of the four gang members arrested and charged for possession of 16.1 kilograms of marijuana found and seized. And the data goes on and on. Stick a pin.

Today we laid the report of the Financial Intelligence Unit with nearly \$30 billion in suspicious activity reported, not by mistake, because of the demonetization of cash, because of the improvements in the law. In fact, it is a direct result of the laws that we put in in the follow-the-money and transparency provisions. Which is why I constantly state, I do not need Transparency International to tell me anything. I could deal with the FIU and the ratings of international agencies in relation to Trinidad and Tobago's performance, not anecdotal data that nobody bothers to check. The transparency says we are going in the right direction because the FIU's compliance relative to this Bill fits in the Schedule of this Bill which is the "follow the money". The same way that a particular murder and savagery to a young lady in this country was found by way of a withdrawal of cash from her bank account into the hands of someone else linked to a taxi driver, linked to "PH", linked to the murderer. Follow the money.

So we have on test here today anti-gang law. What does this Bill say? Why

is this Bill proportionate? Why should it be supported without a three-fifths majority? What are the protections? Why is it different from the 2018 Bill? Why should hon. Members even contemplate this Bill? Let us go to the law. We propose that the Anti-Gang Act come in. We have kept the wording of this law almost exactly the same as the 2018 law, save we have modified in clauses 15, 16 and 17 what would have concerned the three-fifths majority requirement. We have deleted the sunset clause which would have been the old section 20. We have caused some consequential amendments to the Proceeds of Crime Act because of the manner in which we treat with forfeiture of property and we have sought further fulminations which we would like to put on the floor.

I would like to put right now. The intention was to bring the law as close to what it was so that hon. Members would not be too frightened by it, explain the three-fifths majority issues and why we do not need it but to throw out some corn for consumption. Do we want to amend the summary offences to hybrid offences because there is a risk of running the statutory clock? There is a six-month period for a summary offence. "If yuh cross the six months, yuh out of town." Or because there is a combination of indictable and summary and therefore the trial as we move to abolish preliminary enquiries will fall into jeopardy. There are a few things I would like to throw onto the floor because we would like on this floor to consider wider amendments as we hear from hon. Members as well.

So we have no judicial criticism of the anti-gang law. I refer to Mr. Justice of Appeal Nolan Beraux in the case that he dealt with. I will not deal with the case because it is on appeal at the Privy Council, not for gang-related matters but in relation to quantum and sum for damages that were awarded. But suffice it to say that Mr. Justice of Appeal Nolan Beraux, in describing the one case that considered the deeper ramifications of the anti-gang law, said:

Whilst it is no slam dunk—to use the judge’s words—it is good and useful law.

We have in the legislation as well, affidavits to be referred to in litigation, in particular, a very powerful affidavit of then Commissioner of Police Stephen Williams. The courts have taken judicial notice. We have 40-odd matters in the High Court, 33 in the Magistrates’ Court. We have some 35 charges at present for gang leaders and other positions. The law is working. Those matters continue because the offence existed at the time and therefore they will continue to be prosecuted.

So when we get to the definition section at clause 3, we have kept the same definitions. I would like to suggest on the floor today that we cause an amendment to the law enforcement authority:

“‘law enforcement authority’ means”—add the SRPs, add the municipal police and add the PCA.

Because it becomes relevant when you are looking at retaliatory action and we have just amended the PCA law to allow the PCA to go and hunt for white collar crimes against police officers who may be in gang membership and therefore I think it is an appropriate position to throw that out now.

I would like to say that we also looked at clause 4, it is the same as existed at section 5 of the 2018 Act. When we get to offences, clause 5 is the same as section 6 was in the 2018 Act. I do propose that gang membership, “gang leader”, “membership in a gang”, “professes to be...a gang member”, I do propose now for consideration that we ought to consider an amendment to subclause (3) of this clause, specifically to make it hybrid for being a gang member or performance of an act as a condition of membership or professes to be a gang leader, et cetera. Why? Because there is a collision between the six-month limitation period and no

limitation on the indictable side and there are often multiple charges offered and therefore we ought to allow the prosecution and the DPP the ability to harmonize the law, harmonize the charges, harmonize the prosecution.

Madam President, when we get to clause 6 which was section 7, coercing and enticing to be a gang leader or gang member, it is the same offence. When we look to “Retaliatory action”, this was a novel thing introduced into the 2018 law where we said let us protect the members of intelligence agencies and law enforcement from retaliatory action. Let us criminalize retaliatory action because that is what was happening. Prisoners were being murdered. But stick a pin. We have now added in the bugging of prisons. We are now in a different Interception of Communications Act. We have balanced that Act. There is more intelligence coming from one of the most difficult environments which is the prisons, where prisoners are being given access, despite best efforts, to telephones and to communication and therefore we have added in the bugging of prisons and I can tell you that that is flowing very well in accordance with the Bailey principles.

Let us get to person knowingly counselling gangs, clause 8; was section 9 of the 2018 law. Let us get to preventing gang leader or gang member from leaving a gang. That is section 10 of the old law, the 2018 law; it is clause 9.

11.30 a.m.

Clause 10, was section 11, possession of bulletproof vest, et cetera. All of these laws, no criticism, charges offered, cases proceeding, the submission is to leave it as it is. When we get to 11:

“Harbouring a gang member”

It is the same as the old section 12.

At clause 12:

“Concealing a gang leader or gang member”

I genuinely believe that clause 12 can be open to creation of hybrid offences, again allowing the summary and indictable split for the purposes of harmonizing prosecution and charges. And I say the same thing in respect of clause 13, which is:

“Recruiting a gang member”

We go to clause 14, which is:

“Tipping-off”

It stands exactly as it was in the old law. That would have been section 15 of the 2018 law. Let us get to Part III. This is where the three-fifths issue arises. Police powers of officers:

“15(1)A police officer may arrest without a warrant a person whom he has reasonable cause to believe is a gang leader or gang member or who he has reasonable cause to believe has committed an offence under this Act.”

I draw from the existing law, the Criminal Law Act, Chap. 10:04. I deal with section 3 of that particular Act, arrest without warrant. We are safe, no three-fifths required.

I go to 15(2):

“A Magistrate may issue a warrant to a police officer...to enter and search a dwelling house...”

It is the same as the old law; that is warrant. Therefore, we are safe with due process. No three-fifths required. Subclause (3), this is where we had the problem with the publication of the Bill. Subclause (3) should have been followed by a subclause (4). Subclause (3) should have provided that a police officer may enter without a warrant only on consent, just like we do in the Financial Intelligence Unit Act. My learned colleague, Sen. Lutchmedial would be well aware of that provision. And if there is no consent, there must be a mandatory obligation to

obtain a warrant. Therefore, taking us into the realm of due process, this clause will be proposed to be amended with certainty.

Detention of persons, the Constitution provides that you should not be subjected to arbitrary detention. Let me put the principle of law. Section 2 of the Constitution says that the Constitution is the supreme law of the Republic of Trinidad and Tobago. Nothing that we do in this Bill today takes away the right of habeas corpus. You are entitled, as Sen. Welch and Sen. Heath will both know, to approach a court immediately to consider habeas corpus. We preserve the supreme law, the Constitution, the right to challenge your detention by way of habeas corpus, nothing interrupts that.

Secondary to that, we propose in clause 16 that instead of the detention for 72 hours, which is what the old section 17 had, we have gone to what the common law or the standard practice of Trinidad and Tobago says you can be detained for, for investigations, and that is 48 hours. Stick a pin; Baroness Hale, Suratt, it is the easiest case to reference, it is from the Privy Council. You could be fancy all you want and refer to Francis and Northern Construction and this one and that one; irrelevant. Is the law proportionate insofar as it is a feature of law that is known to your democracy in the State that you are in? And the answer to that is quite simply yes. Clause 16, we propose 48 hours for detention. Bear in mind nothing stops your habeas corpus application in law, in the constitutional sense.

We then go on to say that if you want to have the further detention, which the old law provided as well. The old law provided 72 hours, as opposed to 48 hours. We have said if you want a further detention, ask a court to have the privilege to detain someone, not the police, not the “Executive”, the Judiciary, in adherence to the principle of separation of powers. There can be nothing more by way of due process, in the sense of section 5 of the Constitution and its subsets,

and also in respect of section 4 of the Constitution. And we say if you want to detain somebody, ask the court for permission to do that.

I would ask you to note that we are not asking for a magistrate to do that. We are asking for a judge to do that, not a master but a judge. So that we are going for a higher level of scrutiny, which is what the European Court of Human Rights, which is what the Supreme Court in the UK, which is what the Canadian and US courts tell you, go for a higher level of judicial scrutiny in the exercise of due process.

Let us get to Part IV, forfeiture of property, because this is different, clause 17. In the old route, we had provisions of forfeiture, standard, because it is forfeiture on conviction and we had a process of notification, et cetera. But we used a process which was outside of a very good process that we have, a robust and transparent process set out in the Proceeds of Crime Act. So we took the opportunity, as we have been harmonizing our laws, in this version of the law, to say, if you are going to forfeit property, look at clause 17(1):

“Where a person is convicted of an offence...”—that is there is due process—“...the Court may”—that observes the separation of powers, not shall, it may—“order that any property—

- (a) used for, or in connection with; or
- (b) obtained as a result of, or in connection with,

the commission of the offence, be forfeited to the State in accordance with the Proceeds of Crime Act.”

Why have we gone for the Proceeds of Crime Act? Because we took the civil asset forfeiture law, “explain your wealth”, we harmonized that with Proceeds of Crime. We now, in the most robust side of the equation on the anti-gang law—because we want to separate gang members from their property. We want to take

the proceeds of crime away from the gang activity. We want to have them sweating that they are at risk of losing their assets. And what we say here is harmonize that law with the Proceeds of Crime Act, so you can flow into the Seized Assets Fund. Why do you want to flow into the Seized Assets Fund established in fact by this Government? Because we want to take the proceeds of crime and put it to good use in the society, to education, to turning away from crime, to supporting alternate remedies, to making sure that we tackle the concept of recidivism. The proceeds of crime should be used positively. And therefore we think it appropriate, as we are following the money.

And, Madam President, permit me to say now with any interruption of sub judice, we have landmark cases before the courts right now on “explain your wealth”. Let me repeat that. We have landmark cases now before the courts on “explain your wealth”. And when those judgments come to the fore, Trinidad and Tobago will be in a different zone. The same way people are rushing to check their tint, slowing down on the roads; where there is a consequence in law, the new society must be envisioned. That ties into the transparency in the Companies Registry, the transparency in the Land Registry, the beneficial ownership aspects. That translates into the transparency in cash, the financial obligations regulations, the FIU, the mutual assistance in crime matters, the amendments to the Income Tax Act, PCA Act, securities Act. Come on folks, connect the dots. There is a different matrix of laws today. Are people satisfied that that is working for them? No, because the system is now churning and the product is now coming out. We are now seeing matters that were waiting 18 years for trial being over in 15 minutes. We are now seeing visual evidence at work.

We are now in the position where we stop moving 15,000 prisoners every three months and do it in a virtual setting, saving \$25 million a year. This is no

Trinidad and Tobago of yesteryear or of 2015. This is a new Trinidad and Tobago. And yes, it needs to work faster. But I have faith that we are on the right track. So the Proceeds of Crime is harmonized.

The Schedule to this law provides for the reference to Proceeds of Crime. In particular, we begin at items 27 through inclusive to 32. And that is important, “Misbehaviour in public office” is a requirement if we are going to treat with corruption in the public service and amongst more senior people; amongst more senior people.

You see, I am a person that believes that the US exercise in prosecuting Al Capone for tax evasion was a very powerful tool in the US context. And as we go digital, thanks to my colleague Allyson West and my colleague Sen. Hassel Bacchus, as we go digital, as we have records in place, Trinidad becomes a different place, hon. Senators.

“Miscellaneous

18. The Minister with responsibility for national security may by Order subject to negative resolution...amend the Second Schedule.”

That is the standard law. We have had that in the 2018 law. We are now adding that the Minister may make regulations. Because with their move to the Proceeds of Crime harmonization, we think it appropriate to have regulations as companion to this law.

I will propose an amendment to clause 19 to allow for an exception to section 63 of the Interpretation Act. Even though we amended section 63 of the Interpretation Act last year to say that the breach will be at \$100,000, et cetera, I believe that we need to go further to \$250,000 and seven years. So I will propose an amendment to clause 19, when we come to it.

Clause 20 treats with the Proceeds of Crime Act. Because we are

harmonizing the forfeiture of property with the Proceeds of Crime Act, a consequential amendment is necessary. So Madam President, do we need anti-gang laws? That is for us to decide. Have they been working? The Commissioner of Police says they have.

Sen. Mark: Through the hon. President, would you be circulating your amendments as soon as you are through, so we can have sight of them?

Hon. F. Al-Rawi: I had not proposed to circulate those amendments yet because I have come to the Senate to listen to the contributions of all hon. Members. Because it is appropriate that this Parliament considers law in the round. We do not come to pass law for ourselves.

Madam President: Attorney General, you have five minutes.

Hon. F. Al-Rawi: Thank you very much, Madam President. We want to hear the submissions of learned colleagues. We have been through the dance with the Opposition 2016, 2017, 2017, 2018, 2020. We know how that story ends. We had to go back to the drawing board. Back to the drawing board means watering down some of the provisions. We would like to have longer detention periods because the police tell us that that is what works. Longer detention periods work because when you are in the realm of interception of communication you retrieve devices. You have to crack the devices. They may not happen in 48 hours or 72 hours. You may have multiple persons.

We want to attend to the issue of prisoners and detention of prisoners. It is an issue that we have aside from this. And we will come back to the Parliament, if we can, on that. So we would want to have longer detention periods. But unfortunately, that will require a three-fifths majority.

And because the House of Representatives is not populated by the Government with a special majority we have to abandon a few better protections

for Trinidad and Tobago, in terms of the fight against crime, because we must adjust ourselves to accommodate the Opposition's point of view and that point of view plainly stated is that they will not support. They saw no position of support for the 2020 extension. I cannot imagine it would be different today because the law is the same.

I expect to hear the song and dance in relation to constitutionality, et cetera. I am prepared to risk that on the advice that has stood the test of time, in relation to due process and proportionality coming from the Privy Council's decision. It is no risk in my view. It is something which is defensible. We can defend it within the confines of the Constitution and the Privy Council dicta which is supreme law in this country. We dress back detention. We will amend section 15(3). I apologize for the error in that circulated draft. There is no circumstance where you can enter somebody's property without consent. You must have a warrant. If it were otherwise you will require a three-fifths majority. The old law, the 2018 law, provided you could enter any premises without a warrant. That was very powerful. That is the fight against crime. That is what we want. But we do not have the Opposition's support.

So, hon. Members, Madam President, I look forward to the contributions of my colleagues in this House as we fight to demonstrate to the people of Trinidad and Tobago that we are listening, all of us, to their exhortations, to their desire for a better Trinidad and Tobago, to their desire to walk free, not brave; to walk free, not brave. I beg to move. [*Desk thumping*]

Question proposed.

Sen. Jayanti Lutchmedial: Thank you, Madam President. Madam President, the Attorney General never ceases to disappoint. He never disappoints when he talks about Suratt. I look forward to it. I always wait for the Suratt and I waited with

eager anticipation here today to hear the Suratt argument.

Madam President, the Attorney General has also made mention that he has been through this song and dance with the Opposition. But having been through the song and dance with the Opposition, I would have expected to hear a new tune today, since he wants a new dance and a new song. But there is no new tune being played by the Government here today. What the Attorney General has brought before us today, Madam President, is the same arguments that we have heard and the same arguments that we had issues with when the Opposition did not vote to support the extension of the 2018 Anti-Gang Act, and that is empty statistics. Madam President, you cannot pull statistics out of thin air and expect the Opposition or the population by extension to accept that they are relevant.

Madam President, so let me just go back a little bit into some history. The Attorney has made much about the fact that the suite of legislation, anti-gang and bail, were meant to work in tandem together. I accept that. That is true. The People's Partnership Government brought those pieces of legislation together, to work together to deal with the scourge of crime.

Madam President, when the 2018 law came to an effective end and the sunset clause, they asked in the House that it be extended, there was no support for one simple reason. The Government was unable to demonstrate effectiveness of this legislation. So when you stand in the Parliament here today and again say that, for example, on the 15th of October, 2020, the Commissioner of Police said that 211 gangs were in existence before, and 2,400 gang members existed and that that went down from 211 to 129, and 2,400 to 1,014; Madam President, where did they go? Did the gangs go before the court with a winding up petition? Did the gang members migrate? They handed in their membership card? Did they fall off a chair in the police station? What happened to these people? These statistics, which I

have not seen. I have not seen it circulated to Members of this honourable House. I have not seen the source of this data, to date. We had this debate last year November, where the Opposition raised these concerns. The Attorney General has come again, and apart from Suratt he has brought what has become very familiar again to us when we deal with matters that deal with the criminal justice system and criminal laws and legislation when to tackle crime. And it is the rhetoric.

Madam President, how could a responsible Attorney General stand in the Parliament today and say that the death of a young girl was caused by a gang and people working together? That is a matter before the court. It is a matter where people are still innocent until proven guilty and it goes to show how the Government will capitalize on emotions running high amongst the population to have their way.

So they have brought a piece of legislation to the Parliament today, which they intend to pass with or without our support, to say—and I take serious issue with that because yes I will bring the constitutionality issues—but they have come here to say that they will do it.

You know, it is interesting that when the Bill lapsed in 2020, the Opposition was accused of dog whistling. Well, I have heard a lot of dog whistling to the population here today, Madam President, when we are basically saying that without this Bill, crimes such as the ones that are currently affecting the population at such an emotional level, will continue. Madam President, it is irresponsible. It is irresponsible to speak about matters which are before the court where persons died in police custody and there is an ongoing investigation into that, without being able to prove their innocence or their guilt and who had never been charged.

But that is the rhetoric that we are faced with here today. We are not faced with solid arguments to say that this law has been proven effective. We are not

faced with documentary evidence that show surveys and academic studies, and so on, that deal with the reduction in the membership of gangs. We have, “the Commissioner of Police say so”. What is the basis of “saying so”? Well, I realize now that this is the answer to everything. Well, it is based on intelligence because they have CGIU, OCNFB, “OCN-something else-B”, SIU. I think three causes of the problem is we have too many units working together. But up to now, I have not heard anyone establish how. And you cannot say it is intelligence and we cannot tell you. That is a very empty and meaningless response to the questions being posed by a responsible Opposition to ask: Where is the evidence that this law is working? If you want to have laws in place that are infringing upon the guaranteed rights and freedoms of individuals, you must bring better evidence than that to show that the legislation is effective and that it is working. We are committed to supporting good law. We have always maintained that and we maintain that we will support good law.

Madam President, in respect of the Bill itself that is before us here today, the Attorney General has made mention of the fact that the word “suppression” is used a lot by the Commissioner of Police when he talks about the use of the legislation. Madam President, again, what is suppression? Is this meant to just be a holding law? Because the statistics that we were able to obtain talk about a large number of arrests being made, but very few charges. You see, when you come before the Parliament or even in the public arena and you speak about the number of arrests being made, the persons arrested for offences under the Anti-Gang Act, I have it in front of me here, save and except the 2011, as the Attorney General spoke about, when we had the state of emergency where I believe 208 persons were arrested for being members of a gang and in total we had 222 persons arrested in 2011.

The grand total up to 2020, as provided, and this is provided by the Crime

and Problem Analysis Branch of the TTPS, the grand total we had was something like 291 persons arrested. How many of these 291 persons have been charged with offences under the anti-gang law alone? And I say alone because I heard the Attorney General make mention of one conviction. Well, that is very interesting because in a public hearing that deals with gang-related violence, and so on, the question was posed quite recently about convictions under the Anti-Gang Act, and it is my information and I will be subject to correction if the Attorney General can confirm, but has anyone actually been convicted of a crime created by this law, that was in effect from 2018 to 2020, for 30 months? I believe the answer is no.

Because you see, and again we get back into the rhetoric. Last year, when the Act was not extended, “victory for gangsters” was the story being peddled. “Charged criminals to walk free month-end.” And Madam President, this was based on statements coming from persons within the Government. And the Director of Public Prosecutions—and I am happy that the Attorney General said here today that the cases are continuing to demonstrate that this was just empty rhetoric meant to put pressure on the Opposition last year. The Director of Public Prosecutions had to come out and say well, no, the charges that were brought under the old law would continue.

But the fact of the matter is that not a single person to date has been convicted of an offence under the Anti-Gang Act by itself. And that is important for this reason. Every type of activity contemplated by this piece of legislation as gang-related activity is already an offence under the law. And the majority of the time the persons who are arrested and ultimately charged, they may also be charged with, if there is evidence that they have become members of—that they are working in tandem as members of a gang or whatever that evidence may be, they are also charged with being gang leaders or members of a gang, and so on.

But there are existing laws that you can charge them under.

And the DPP last year, and this is from the November the 22nd story carried in the *Newsday*, he noted—and he was being questioned about the lapse of the 2018 law, he said:

“He noted...that police can continue to investigate gang offenders for murder, kidnapping and a host of other serious crimes under...existing legislation.”

This is the person, the subject matter expert, the person with the constitutionally-vested power, to tell the police who to charge and who not to charge and he has agreed that the existing law provides that you can arrest persons for all of these things. So this is why I refer to this Anti-Gang Bill as a holding Bill. Because what you are really saying here is that I want to give the police the power to detain people. I want to give the police the power to lock up people for up to 14 days. And I understand why that may be seen as something that is desirable in circumstances where, for example, you have witnesses being threatened, and so on. But Madam President, has it been effective? Have we seen a reduction in crime?

The Attorney General quoted statistics to say about the number of murders that were deemed to be gang-related that were solved. But the statistics from the police also show that in 2017, you had 495 reported murders and the detection rate was 89. So even though you are saying that some of the detected ones are gang-related, well, what about the others? What about the others, are they gang-related and you are unable to solve them? Or do you not know? What happened in 2018 when we passed the Anti-Gang Act with Opposition support? Murders rose to 517 with a detection rate of 83. So murders going up and detection is going down.

In 2019, murders, reported murders, 536 and a detection rate of 42, Madam President, 42. This is when then anti-gang law was in effect. So to say that we have given the police powers under anti-gang legislation, the holding Act, all the powers to hold and detain persons and it will result in an impact on the situation we face in the country in crime, it is simply not supported by the statistics. It is simply not, Madam President. We had a similar situation with shootings. Shootings in 2018, according to CAPA, it is available online, 711 reported in 2018, 248 detection. In 2019, with the law in effect, the anti-gang law, shootings went down to 607, but the detection rate fell to 146.

So, how is the law being used and how is it—and Madam President, this is not only the Opposition saying so. I want to quote from, again last year when the Opposition did not support the extension of the Bill, the *Sunday Express* editorial of November the 21st says very clearly here now. Now, I know the lowest crime rate in 2020, in 20 years, is a real feather in the cap of all the interested parties that they wish to promote. But it is not just the Opposition that has an issue with this and takes issue. In this editorial itself it talked about the fact that, and let me just quote a little bit from it:

“First introduced by the People’s Partnership government in 2011 and later resurrected by the PNM administration in 2018, anti-gang legislation gives the Police Service extraordinary powers to combat the scourge of gangs...the public agreed to temporarily surrender several basic constitutional rights to allow the police to prosecute and convict gangsters.”

Now, after that it comes down to say—and this is the editorial. This is not the Opposition, this is not the UNC, this is not me:

“It was simply not enough to argue, as Attorney General Faris Al-Rawi did, that gang activity had declined over the past two years with a reduction in

the number of gangs from 211 to 129, and in gang memberships from 2,400 to 1,014.”

The exact same thing that we have heard here this morning, Madam President.

Without context and details these are empty statistics. This is not the UNC, this is not me, this is not the Opposition, this is the *Express*.

12.00 noon

“Further, for the AG to cite arrests in gang-related murders as evidence of the act’s success means equally nothing in the context of existing laws against murder.”

So even the *Express* understands that you have an existing law that allows you to charge someone for murder whether they are in a gang or not.

“The comment by Police Commissioner...that the Anti-Gang Act 2018 has been a major deterrent in reducing murders by over 115 this year compared to the same period last year is facile. The more likely cause is the Covid-19 regime of shutdowns and closed borders which have cut off the country from international drug-trafficking and organized crime networks to which T&T gangs are connected.”

So, you know, to say that it is only the Opposition is arguing that COVID had a reduction in crime; empty, Madam President. We have heard that coming from many persons in the country. The Attorney General says, “We were never in lockdown”. Well, I beg to differ, we are still in a state of semi-lockdown, Madam President. We still have restrictions on what we can do, on gathering. It may not be enforced the way it ought to be enforced, it may be enforced very selectively. It may be enforced—I find the enforcement is quite selective in nature, but the fact is we still have restrictions on the amount of persons that could gather in a particular place.

So, how do you justify those things in the context of arguing that we have seen a reduction in crime, and that this law has been effective? Now, Madam President, I was happy to hear that the Attorney General is open to debating this and what we want to make as a good law, as I said, we will support—we always support good law, but let us look at some of the provisions of this Bill. Let us get to the constitutional infringements.

It appears that the Attorney General has read my mind with respect to clause 5 and the summary conviction. I did have an issue with summary conviction for the offences created by clause 5 and the imprisonment for 25—sorry, on a first conviction imprisonment for 10 years. So I am happy if he is making that amendment, and I will support an amendment to make the offences under clause 5(3) to be triable either way offences. Because I do believe that a person should have the opportunity to go before a jury in order to prove their innocence if they are accused of performing, for example, performing an act as a condition for gang membership.

Madam President, I take—I want to take us to clause 10. Now, this is a clause that has existed before, it deals with the possession of:

“...a bullet-proof vest, firearm, ammunition, or prohibited weapon;”
“Prohibited weapon” is of course defined under the Firearms Act, but, Madam President, clause 10(1)(b) that says it also creates an offence for:

“A person who—

(b) has in his possession...”—any of these items who—“...ought reasonably to know would be used,

in the commission of a gang-related activity, commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.”

Now, the clause goes on to state that the person, it should be a defence for a person

if he is charged under that section where in his possession he ought reasonably to have known that they would be used. For the person to prove:

“...that he did not know or could not reasonably have known that the...”—
item—I will just say the item—“...would be used in the commission of a
gang related activity.”

This is tantamount to something like a reversal of proof. It is not a strict liability offence because the prosecution is still required to prove that “ought reasonably to know”, so there is still that mental element contained in this offence. But I find the drafting of the clause a bit clumsy because I would not want to be the tribunal who would have to adjudicate on this matter of “who ought reasonably to have known” that something would be used, as well as I would not want to have to adjudicate on whether or not someone has proven in his defence that he could not—that he did not or could not have reasonably known.

So I would like the Attorney General to examine clause 10 very closely. I know it is from the existing 2018 law, but in the context of what you are doing and passing a simple majority Bill here today, Madam President, I feel that this clause creates room for persons who are caught in a situation to be faced with very serious charges which carry very serious consequences. So, I would ask the Attorney General to consider looking at clause 10, tidying it up a bit and let us see where we go from there. If it is that the intention is to create something like a strict liability offence, well, then do that. But of course you would, I believe, require a constitutional majority to do so.

For the purposes of persons who want to appreciate what this is about, there is a lot of anecdotal talk all the time when we talk about drug-related offences, and people always say, you know, “When de police come and dey find ah lil bit ah drugs on de premises, is every man, woman, child, dog, and cat that gets taken

down to de police station”.

Well, Madam President, that is what is going to happen here. Now, I make no complaint and I cast no aspersions on the TTPS and I am not saying that they have abused these powers. But if you are creating a clause such as this, we must consider that in the exercise as responsible lawmakers, the balancing of rights. When you have a clause such as this you want to consider how it will affect the person who might be innocently caught up in this. And when you talk about you have created via subclause (2) a mechanism for a person to prove their innocence, that they could not reasonably have known the intention of this item that was found in possession—and of course, possession has been interpreted over the years by the courts as “possession and/or control”, who has control of the premises. This is why you would find that for example, a person who is the owner of property but there is someone, an adult person living on the property who has narcotics in their possession may be charged.

And it is the same thing that would apply here. If someone is residing on your property and you have control of the property, that part of the premises, let us say an adult child who lives with you, has something in their possession, you can be deemed to be in possession and/or control. And therefore you will be caught by the provisions of clause 10.

So in pieces of legislation that could have such far-reaching consequences to the liberty of persons, Madam President, it is important for us to look at this. When you create a defence, yes, it is an extremely challenging defence for someone to prove but you must also look at the context of what we face today.

The Attorney General is boasting about how fast trials are happening and so on, but just last year when we had, I think it was in the budget debate, the DPP talked about how many matters, indictments are waiting for more than 10 years to

be tried. So a person who wants to prove his defence under subclause 10(2), he is looking at doing this 10 years down the road.

So, I strongly recommend that we consider reformulating clause 10 with respect to the “reasonably ought to have known” aspect of that offence because you can be capturing a lot of persons with this clause, and it can be open to significant abuse by law enforcement if they so choose to do so in relation to persons who may be innocent and have to face a 10-year or 10 to 15-year wait before the court to prove that innocence.

Madam President, let us move on if I can, move on to clause—well, the Attorney General has said that he will implement the consent. I am happy to hear that in clause 15(3) because of course entry into premises which are dwelling houses, you must have consent if you wish to go without a warrant. I would accept and welcome that amendment as well.

Clause 16, Madam President. Now, the changes made to clause 16 essentially reduce the time frame that you can be held without a court order from five days essentially, down to three and a half days. Because prior, you could be detained for 72 hours and then the police had 48 hours in order to go before the court and get the order that could detain you for up to 14 days. They have reduced the initial period of detention to 48 hours, but they have given the police the power to go within 36 hours to apply *ex parte*:

“...*ex parte* to a Judge, in the form set out...”

Now, Madam President, this is where I have an issue. I understand the adjustments to the time periods and the need to—as the Attorney General says, “to Suratt” the Bill and to make it proportional, and so he is maintaining that it is now more proportional and so on with the reduction in the time frames. But, Madam President, once we go in to the realm of *ex parte* applications before the court, I do

believe that there is an infringement of natural justice and the due process requirements under the law.

You are essentially saying that the court can go before—that the police, the Executive, that is what the police are, they are a part of the Executive. The Executive is allowed to go before a judicial officer, yes, they must go, evidence on oath but they must simply satisfy the judge that the further detention is justified, and that the investigation is being conducted diligently and expeditiously, and they can get an order to hold you for up to 14 days.

Madam President, when you say that something must be done or that:

“...the police officer may, within thirty-six hours...apply *ex parte*...”
Really, I believe that you need some further protections in this clause. And I believe that the court should have—that a clause could be inserted here to say that the court can exercise the power to convert this initial hearing to an *inter partes* hearing, because that will preserve the right of the accused to come before the court immediately and say why their detention is not warranted. That way you do not infringe the right to liberty without due process. You are not infringing upon the right to be heard which is a fundamental aspect of due process and natural justice.

Subclause (7) says that the person can:

“...make an application to a Judge showing cause why the detention order should be discharged.”

Now, this reminds me of the cash detention orders made under POCA. We have similar provisions there but there is an entire procedure, there is a form set out I believe under POCA, because I think some regulations were passed after litigation was commenced to put it into the law that you ought to have a procedure by which someone can approach the court to have the cash detention order discharged.

Madam President, I would strongly recommend we do the same thing here.

The Attorney General has said that nothing prevents you going by way of habeas corpus to the court. Well, you have created a form that the police need only fill out and provide the evidence on oath and give it to the court in order to obtain this detention order. Respectfully, Attorney General, the same ease with which the police can obtain an order and sign off on a form that is detailed here in the Second Schedule to say:

“I swear to the best of my knowledge, information...that the contents... are true.”

—And simply state the grounds in this form. I think that there should be a form. There should be some sort of a form that an accused person should be allowed to fill out and go before the court and say, “This order ought not to be discharged because”, and be able to state the grounds.

Now, a habeas corpus may achieve the same thing but anybody who knows how these matters go and how they are dealt with, you are looking at time, you are looking at expense, you are looking at retaining an attorney. Do you think that somebody who you lock up for saying that you are a member of a gang knows what is a habeas corpus? He will have to get an attorney, he will have to give instructions, the attorney has to draft the documents, you have to file it in the High Court.

Yes, habeas corpus matters are treated as a matter of urgency but do not simplify the process for the police and for the Executive to lock up people and detain them for 14 days, and at the same time say, “Well, you Mr. Accused”—who supposedly enjoys the presumption of innocence—“you, go the normal route of habeas corpus and find a lawyer and give instructions while yuh lock up”. While you are locked up. So your access to an attorney really depends on whether the

police want to give you or not. And listen, that is the reality, that is the reality. You see your attorney when the police let you see your attorney. You see your attorney when you know that you have a right to see an attorney and you ask for one. And that is the reality of the situation. So create processes that are easy for the accused persons to deal with in this law, Madam President, the same way.

Madam President, as we move on to clause 17, one of my colleagues will deal with this in more detail, but I must say that Proceeds of Crime was passed with a special majority, so if you are importing a special majority clause, a special majority provision to forfeit property from someone, I have serious concerns with the constitutional propriety of doing that by way of a simple majority clause, because you have created offences under this law that did not exist when Proceeds of Crime was passed. You have created offences that a person can be convicted of under this law that did not exist when Proceeds of Crime was passed.

There is a Schedule of offences in Proceeds of Crime, Madam President, and if the Attorney General watches the debates when those 2014 amendments were passed, he would see me sitting right there as the technocrat, so I am very familiar with this. That Schedule of offences deals with “Categories of Offences”. The “Categories of Offences” were taken directly out of the Financial Action Task Force standards. We imported it wholesale as the Second Schedule into Proceeds of Crime and it deals with “Categories of Offences”.

And the first one, interestingly, is organized crime. Now, at the time when we did that in 2014, yes, we had the anti-gang legislation. We had the law being operationalized, but, Madam President, I have a concern about whether or not there is legal certainty being created here by way of this introduction of POCA into the anti-gang legislation. It is not enough I believe, to say that we already have a regime for forfeiture of property, and therefore by this law that creates new

offences, I can simply by simple majority move to forfeit your property. Madam President, may I enquire what time is my full speaking time?

Madam President: You finish at 26 minutes past 12.00.

Sen. J. Lutchmedial: Thank you, Madam President. So I will just move on now. So based on what I have highlighted here today, you know, the Attorney General raised other issues which would be addressed by my colleagues but there are some very important things. When the Opposition, and I must correct the record, when the Opposition did not support the continuation of anti-gang legislation last year, we raised an issue about procurement. Madam President, the link between—and I—the Attorney General was at pains to say that they have introduced white collar crime and they want to follow the money and Al Capone and all of this. Great, I like that. But when you do not have laws working in tandem together, he talked about the fact that the bail restriction and the anti-gang must work together. But what about procurement? Why do we not have a solid procurement Act? Why is our procurement Act not being implemented but instead being whittled down every chance the Government gets? [*Desk thumping*] Why do we not have proper procurement laws to prevent gangs from benefiting and profiting from state contracts? That is the question.

If we want to talk about a meaningful approach to crime, Madam President, and I know my colleagues, we have a list of things that we can assist the Government with if they do not understand how to really tackle the issue of gang violence in this country. Madam President, the DPP mentioned again in his comments how challenging it is when you are dealing with it because of the nature of the people you are dealing with to acquire eye witness evidence and things. You know what would help convict gang members? Working CCTV cameras, that is what would help.

So, when you come here to say that we need to have—this piece of law is the only way; this is no silver bullet, Madam President. I maintain that I have serious concerns about the propriety of bringing this legislation by way of simple majority because there are still despite the adjustments made to POCA, despite the adjustments made to the time frames for detention and so on, I think that the ex parte—and I have put forward some suggestions, I wish to put forward some further suggestions and I will prepare a couple of suggested amendments which I would have circulated shortly. But I do not wish to see a law as important as this, a law which has such far-reaching consequences end up being challenged for a lack of constitutionality because it was not passed with a special majority.

So I am urging the Attorney General to do the right and proper thing and put the special majority requirement back into this piece of legislation. No legislation that gives such draconian powers to the police to offend against the constitutional rights and freedoms, to whittle away those rights and freedoms in relation to persons who are suspected of offences, ought to be brought by way of simple majority.

The second thing I would recommend, Madam President, is that a sunset clause be put back into this Bill. Again, when you have laws such as these that are so draconian in nature it is for a responsible Parliament, a Parliament to sit and examine the efficacy of the measures that it takes. Once you want to get into the realm of curtailing constitutional rights and freedoms, a responsible Parliament ought really to come back and examine the efficacy of the legislation. And that is what a sunset clause is there for. That is what a sunset clause is meant to do.

We asked for the information last year, we asked for more evidence and more substantial proof that the law was working; it was not provided. And that is the single reason why we did not support it. But you have come back here now to

basically say, “Well, we are going to pass it with or without you and we are not going to bring it back here for you to examine by any means, whether it is working or not”. Is that really taking a bipartisan approach and working with the Opposition? It is not. You have found a way around us. You have come here and you have basically said, “I really do not care for your support”.

Now, I do not understand why they laid this Bill here with a simple majority and have gone out and said, “The population needs to pressure the Opposition”. Pressure the Opposition for what? You obviously are not interested in some of our views, otherwise, if you were interested in hearing what the Opposition had to say, and getting our buy-in into this Bill, you would have kept it as a special majority piece of legislation which is to me in my respectful view, constitutionally proper. And you would have also maintained the sunset clause because you give the Opposition, the Independent Bench, everyone, an opportunity to come back and examine the efficacy of the legislation.

Finally, Madam President, I wish to propose that there is a regulation-making power introduced into this Bill and it is done by negative resolution. I firmly believe again that legislation that is so important that can have far-reaching consequences when it comes to the liberty, security, the presumption of innocence, and all of these constitutional rights and freedoms that the citizens enjoy in this country, it ought not to take effect by the simple stroke of a pen of a Minister, and it ought to be subject to the affirmative resolution of Parliament. If you wish to bring regulations to—regulations are meant to operationalize—

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

Sen. J. Lutchmedial: Thank you, Madam President. Regulations are meant to operationalize laws. Nothing that operationalizes such a draconian piece of legislation ought to take effect because it is signed on the Minister’s desk and takes

immediate effect. It should be brought to the Parliament, it should be debated, and again, if the Attorney General is interested in hearing the views of the Opposition in either House, really and truly that is the proper way to bring regulations under this piece of legislation, Madam President.

So those are the amendments that I would wish to propose. I would also say and I would urge the Government to not simply stand here and say that laws are necessary to effect change. Someone from the media asked me today and they used a very interesting analogy. And they asked me whether or not, they said, “Whilst the Opposition may have issues with the taking an AK-47 to kill a mosquito but there is no bug spray, why not give the AK-47 to kill the mosquito”? And I love that analogy because it raises two very interesting points. What happens when the AK-47 does not just hit the mosquito but it hits everybody else that is around it? Do we have sufficient safeguards to prevent that from happening? And that is the question we must always ask ourselves.

The second point I want to raise and I know it will be raised later on by others is, why do we have no bug spray? Why is it that the Attorney General talks about the—what is it—“the people, the processes, the plant and machinery, and then the law”. But we are only hearing about the law. We have heard so many complaints about the resourcing. No piece of legislation will solve crime. Let me repeat it, no piece of legislation will solve crime if you cannot operationalize it, and to operationalize it you need resources, you need resources and the resources have to be placed in the right place, Madam President.

So that is simply just an opening for what I hope to be a productive debate on the part of all Members of this House to really come out of this exercise with a good meaningful piece of legislation that could withstand judicial scrutiny, and that would not only make an impact on crime, but would also protect the rights of

innocent citizens and those who are supposed to enjoy the presumption of innocence even if they are suspected of committing offences. Thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Richards.

Sen. Paul Richards: Thank you, Madam President, for recognizing me and the opportunity to make a contribution to this debate today which is the Anti-Gang Bill, 2021. Let me at this time take the opportunity to wish a happy International Women's Day—although it was celebrated yesterday—to Trinidad and Tobago, and certainly the amazing women who form this Parliament in terms of your good self, Madam President, the Members of Parliament, female, and of course the parliamentary staff who support us all the time.

Again, we are here talking about anti-gang law in Trinidad and Tobago. And let me say from the start, and it is always quite enjoyable to listen to Sen. Lutchmedial, I think she has a brilliant legal mind and any Republic like ours always needs strong Opposition and Independent voices to add to the debate to make what is supposed to be great law.

From the start, I will suggest that—I usually do not go first but because I sit, I have the honour to sit as Vice-Chair of the Joint Select Committee on National Security, and we are currently in the process of an enquiry into gang activity, I think I have quite a bit of contribution to make where this is concerned, and some of the data I will present has already been broadcast in that forum. So, I will not be breaching any regulations regarding divulging of information that comes to the committee.

Let me say from the start that I think that it is untenable in 2021, that any country not have active anti-gang legislation. And I think we all agree with that. [*Desk thumping*] It is given what any researcher will do in any jurisdiction around

the world. We see the damage, the continued damage and mayhem that gangs, organized formally or informally create in any society, and their significant contribution to criminal activity around the world, and Trinidad and Tobago is certainly no different and we have had quite a history of gang activity in my opinion.

We started to see gang activity flourish in Trinidad and Tobago and proliferate in Trinidad and Tobago in a real sense after the attempted insurrection in 1990, by the Jamaat al Muslimeen that went largely unpunished and to me gave almost a pass to persons who feel, well, if you could hold up a Parliament, shoot a Prime Minister and get away with it, well, you might as well run amok because there is no consequence to even the most serious—and that was a gang, let us not kid ourselves, that was a gang, came together to overthrow a country. And that went largely unpunished in Trinidad and Tobago, or probably completely unpunished. As a matter of fact, some may suggest it went rewarded.

And it was the genesis of what I see as a continuing escalation and coalescing of gang activity in Trinidad and Tobago. So much so, that fractions of that situation ended up holding this country at ransom in a fearful significant way, in some instances extorting money from people for business protection, et cetera. So as I said before, I think it is, given the fact that it has escalated significantly, this country having no active gang legislation or law is unthinkable.

What we are debating today however—and I even believe that the Opposition to be fair agrees with that. What is at debate today is the contents and provisions contained in the law that has been serving this country for quite a number of years, of course the sunset clause came. And I agree with Sen. Lutchmedial that I do agree that this legislation should also have a sunset clause installed in it, through you, Madam President, to the hon. Attorney General, so

that—and I do not think it should be three years, I think it should be five years so that the Parliament can examine this again in a fulsome way to ensure that it has fulfilled the mandate that it was intended. So I humbly suggest to you, Attorney General, that you consider including in this a five-year sunset clause.

So, what is the intention of this law? It is intended to prevent, criminalize, discourage gang recruitment, involvement and activity in Trinidad and Tobago; to criminalize the promotion of gang involvement and activity, or from persons criminally benefiting financially or otherwise from gang involvement and activities; and to protect the citizens of Trinidad and Tobago and our visitors.

12.30 p.m.

In doing the research for this, you know, when you go back, we made international headlines in 2011. And I am quoting from *The Guardian* of the UK, an article written by Adam Gabbatt and agencies, Thursday 25 August, 2011, and it is a time stamp of 10.37 Eastern Time where, and I quote:

“More than 100 people have been detained in Trinidad and Tobago after the country imposed the national state of emergency in response to a wave of violent crimes linked to drug trafficking.

The Caribbean nation declared a limited state of emergency after 11 people were killed over the weekend. The move...amid growing concerns that drug gangs are using Trinidad as a transshipment point for South American cocaine heading to Europe and the United States.”

Then—“...prime minister, Kamla Persad-Bissessar, announced a 15-day state of emergency on Sunday...”—which included—“a 9pm”—to—“5am curfew in cities...towns and granted police wider powers of arrest.”

The article went on later on to say:

“Trinidad and Tobago’s”—then—“foreign minister told the New

York Times the move was a ‘limited intervention to deal with gangs and to get guns off the streets’, although he added the state of emergency could only be extended for another 90 days if granted approval by parliament.”

And the country’s Attorney General at that time was, of course, Anand Ramlogan. There are several articles in that vein around the world dealing with gangs.

So we have had a long history of gangs, in many instances, attempting to destabilize this country, as I said before from 1990, then in 2011, most recently in June of last year, when the police killings triggered some protests in Port of Spain but the police—sorry, let me rephrase that. The persons who died at the hands of police in Morvant triggered some protests in Port of Spain, and the Minister of National Security and the Commissioner of Police both indicated that it seemed to have been organized in some way and there may have been some gang activity involved where that is concerned.

Madam President, I want to quote from a newspaper article:

“Anti-gang law defeated as opposition fails to support extension”.

It is on Friday, November 20th, and it is written by Jensen La Vende. And for some reason, I am not seeing the newspaper tag here. I will have to give it to the *Hansard* people. And the title is, of course:

“Anti-gang...defeated as opposition fails to support extension”.

And part of that quotes the Commissioner of Police and Baratara MP, Saddam Hosein, in the other place, saying that the Bill did not address or did nothing to address murders and the feeling of safety by residents. And part of that article also quotes the Commissioner of Police, Gary Griffith, speaking on CNC3’s newscast on that Friday night and said:

“The law was responsible for the reduction in murderers...”—that—

“year.”

And added that:

“...the only time the law was abused was following its introduction...”—of—“the state of emergency in 2011 where over 200 people were arrested under the law resulting in almost all being released without charge and many suing and winning their court cases. At the time...”—interestingly enough, now Commissioner Gary—“Griffith was”—then—“national security adviser to the government.”

So, the interesting thing about it is that one of the points of contention of many persons in the other place and earlier on today is about the effectiveness of the legislation and if the legislation transgresses unconstitutionality, as to whether it should require a three-fifths majority or is it a simple majority as proposed by the Attorney General. I am not legally trained so I am not going down that road at all. I can quite frankly tell you, I am not well-trained enough to making that determination.

But, to me, even with that said, there is no logic in the assertion that well, even if it is less effective than envisioned—and I agree that I would have liked—and I would quote some statistics later on in my contribution—that I would have liked—I would have hoped it was more effective in terms of rounding up and charging—detaining and charging gang members given the number of gang members we hear existed. The Attorney General quoted from some information from the Commissioner of Police and I will also quote some additional information that was divulged and publicly broadcasted in the Joint Select Committee two weeks ago.

In 2018, there were 211 gangs with 2,400 gang members, and by 2020, that was down to 129, which is a 30 per cent reduction according to the Commissioner

of Police, and which resulted in 1,114 gang members, down 58 per cent. But the number of arrests, to me, still pales in comparison to what I would have like to see given the numbers of gang members and gangs that are touted to exist in Trinidad Tobago. But, you see, I will make an analogy here and the effectiveness of gang legislation is not only dependent on the legislation and we have to realize that. What is important is—and I will make an interesting analogy on that—it is not meant to trivialize the issue of crime in Trinidad and Tobago in anyway. It is just an interesting analogy because I am from broadcasting and it is part of what I know.

Let us make an analogy of the criminal justice system, like the music industry, where there are three essential parts in the music business to create a hit song. The hit song, in this instance, we are talking about effectiveness of gang legislation—anti-gang legislation. And I would tell you, if anyone does research, anti-gang law is extremely difficult to prosecute in any jurisdiction around the world, and that is because how quickly gangs evolve and how much they change from time to time. Because as we are debating here, bet your bottom dollar, gang leaders and gang members are listening. So they know what provisions we are trying to provide in law. They are not stupid. They know what the law is, in many instances, and how to try to thwart the law. So they go about and they change and evolve very quickly.

So, the three parts in the music business—if I, by your lead, Madam President—that are analogous to the criminal justice system, first of all—so, if you want a hit song you need good songwriter. Right? So you have to write a great song. We, the legislators, are the songwriters. We are writing the song. The singers are the DPP and the police. Right? So you have a great singer and a great song, possibly you have a hit record. But there is another element that must be

understood in this and that is the criminal justice system, the Judiciary. And if that—all three are not working in concert, if all three parts are not working effectively, then no matter how good we write law in this and the other place, if the other parts are not working and applying the law effectively, in terms of the DPP's Office and the police—and Sen. Lutchmedial spoke about resourcing these agencies effectively, so that they can work. But we also need to hold those agencies to account when they are resourced, including the Judiciary. And I will quote some data that really does not speak well of us as a country at all, in terms of other elements inclusive of legislature working in tandem and in an integrated form to make sure that the law works, and this goes for any or all laws in Trinidad and Tobago. So it is not just—I am not diminishing the importance of passing good law and writing good law but if you write and pass good law, it is also important for the DPP's Office and the police and the Judiciary to do their parts to effectively complete the circle or the cycle of effectiveness.

So, in 2019, Madam President, at the sitting of the Joint Select Committee, National Security, it was revealed by the SSA, the Strategic Services Agency, that there were 8,154 illegal firearms circulating in Trinidad Tobago, that is according to estimates. In 2017, they also spoke about gang prevalence. It was also revealed that a number of 10,000, in 2019—a number of 1,054 firearms, sorry, and 18,000 bullets were seized by police primarily at the hands of gang members. It was revealed that at that time, Trinidad and Tobago had 2,000 gangs—2,000 gangs, averaging 20 members per gang, giving a total of—if you do the calculation, simple math, 40,000 gangsters or gang members in the country.

The Commissioner of Police, more recently, about three weeks ago, at the publicly broadcasted Joint Select Committee on National Security indicated now there are 134 gangs in Trinidad and Tobago, with a total of 1,056 members.

Among the gangs he identified, which was already publicly broadcasted are, “Rasta City”; Muslim gang, “Sixx”, and other smaller gangs such as—and get this name—“ABG” and that is an acronym for “Any Body can Get in.” Is that not interesting? A-B-G, “Any Body can Get in” and also he identified Morvant and Maloney gangs.

And that is very interesting because it kind of dovetails with the information presented by the Attorney General who also said there were 28—22 gang members arrested—or 28 gang members arrested. Also, in 2019, he said there were five gang-related murders and 13 arrests, and the hon. Attorney General went on to give other statistics in terms of the—to identify what he may have been proffering as the effectiveness of the legislation. I will say again, I do not think those numbers are impressive at all given what was at stake but I also know it is not only about the effectiveness of the law, it also speaks, in some instances, to the effectiveness of the police service in the application of the law. So we also need to keep that very much in mind.

What is also interesting to me, and I think this is an interesting part of my contribution today, is the issue of this legislation aimed at dealing with gang membership and gang activity. But information also provided—and it is in the public domain by the Trinidad and Tobago Prison Service administrative department. I will present now a breakdown of persons on remand and the impact of those persons on remand and their indoctrination into gang activity behind prison walls.

So interestingly enough—and this is to me a dark smear on this country that continues to be unchecked and not dealt with effectively at all. So in the Remand in Trinidad Tobago, in prison custody—and this has an impact on what I am about to present in terms of the possibility of gang indoctrination in Trinidad Tobago

behind the prison walls, while we seek to pass legislation, primarily to deal with gang membership and recruitment outside prison walls.

So, persons awaiting trial five years or less, 606; persons awaiting trial six to 10 years, 289; persons awaiting trial in prison custody since being committed to stand trial 11 to 15 years, 161; persons awaiting to stand trial 16 to 20 years, 18, and persons awaiting to stand trial in prison custody more than 20 years, six—20 years, six persons.

So interesting—and the Trinidad and Tobago Prison Service also notes that 60 per cent—and this is a report from the Prison Service, eh—60 per cent, 6-0 per cent of the individuals entering the prison system will be inducted into a gang—not “may”, “will”; 60 per cent. So the longer you keep a person in prison on remand, the higher the possibility of them being indoctrinated in a gang. And we are seeking to pass a law to deal with gangs primarily outside.

So we have a prison system that seems to be a more effective contributor to gang activity than outside. That is a crying shame in this country and it is because of the ineffective criminal justice system that has this extended 20-plus years—and I went through the breakdown earlier on of persons awaiting trial—that we do not seem to have any shame about in this country or seem to have any will to deal it with effectively because it is a constituent that, well—and I will always say, remand means you have been charged but not yet found guilty. But it does not matter to Trinbagonians because, well, they had no right to get in there anyway. If you did not do wrong, you would not get in there. And the report goes on to state that individuals, if not already a member of a gang on entry, are easily influenced into joining a gang within the prison. And some of the main—two of the main factors include—of being recruited into gangs in prison include, time spent in prison custody and overcrowding.

So, we seem to be creating gang members effectively behind prison walls and what are we doing about that? Is this legislation dealing with that? No, because we as a country are contributing to that because of our horrendous prison system. There are 1,861 men on remand awaiting trial in inhumane conditions at the behest of the Judiciary because they are holding these individuals until they can get to trial.

Madam President, through you, I want to make an interesting comparison with a very, very internationally-known case, which was recently highlighted in a movie and a book called *Guántanamo Diaries*. It is a 2015 memoir, written by Mohamedou Ould Salahi who was held in the US without charges for 14 years. He was one of the individuals picked up recently after 9/11 and was suspected of being involved. It is the only case on record that the US has admitted to torturing a detainee or a prisoner. He spent seven years to get to trial, was acquitted, the Barack Obama administration then appealed. It took him another seven years and two months for him to be released. Most of our inmates in our prisons in Trinidad and Tobago would jump at that opportunity to be out in 14 years, because there are some in there more than 20 years. I think it is a crying shame. And while we are debating anti-gang legislation, attempting to give the law enforcement tools to deal with gang involvement, our prison system is violating human rights.

Madam President: Sen. Richards, I just want to give you a little guidance here. We have the Bill before us. You have gone into some detail about gangs in general, you have spoken about the prison system but I will ask you, as you continue, to really get to the Bill as well and link what you are saying to the Bill. Okay?

Sen. P. Richards: Thank you, Madam President, I am guided. Thank you for the guidance. So I will go directly to the Bill now. So—and I went through making some notes while the hon. Attorney General was speaking. Some points I would

like him to, if possible, focus on.

In—“Clause 3...the Bill proposes to define certain key terms for the purpose of this legislation:

A ‘gang’ means a combination of two or more persons, whether formally or informally organised, who engage in gang-related activity;”

And one of the concerns I have with “organised” there is the fact that in the evolution of gangs around the world and certainly in Trinidad and Tobago, in many instances, persons facilitate gang activity in a one-off because they know staying in a permanent arrangement as a gang member can prove to put them at a disadvantage and subject to detention, arrest and charges.

So, gangs are not as formally organized as they would have been five, 10, 15 years ago. They come together to perform a crime and they move aside, and in some instances, a person may facilitate by giving information, et cetera. So I do not know, if we can amend that language where organized—or add some kind of caveat to introduce a wider catchment as it were.

One of the other points of contention I have is in clause 5 where it states:

“A person who performs an act as a condition for membership in a gang”

I would add or suggest, respectively—respectfully sorry, “or knowingly facilitates gang activity or gang functions”. Because as I said before, not many persons who—the way gangs have developed not only Trinidad and Tobago, but around the world—[*Interruption*] I am waiting for the sound effect to pass—do so, in a formal long-term manner anymore, they do not coalesce as gangs as we knew them 10, 15 years ago. They come together, do the deed, and move on. So I think—and in many cases, the involvement may be to give money to rent a car, to loan a gun, to give information and then they are on their way and they are rewarded later on,

so it is not as coalesce as a gang arrangement as it would have been many years ago. So I think that needs to be tightened up based on the evolution of gangs.

Also, Madam President, in—staying with clause 5 and the part that says:

“A person who is a member of law enforcement authority or a person involved in intelligence gathering who commits an offence under this clause”

“On conviction on indictment to imprisonment for twenty-five (25) years.”

I am just wondering and I am asking a question here, if this law enforcement authority includes the prison system—and I think—I presume it does, but I am hoping that that can be clarified.

Also, one of the clauses that I have concern with is clause 11, and I think the Attorney General may have referenced it earlier on. It speaks to:

“Harbouring a gang member”

“On summary conviction to imprisonment for ten (10) years.”

“It would be a defence if the person charged could prove that...”—they had— “not have reasonably known that the person...”—they were harbouring—“was a gang leader or gang member.”

12.50 p.m.

So, to me, in terms of my understanding of natural justice, if you are accusing me, why am I the one to prove that I could not have reasonably known? To me, you should provide evidence that I knew and I was harbouring the person. So, I think the Attorney General may have referenced that but I am not sure. I hope he can deal with it in his rounding up.

In Part III, under 10, “empowers a police officer”, in 15, part (c)—and I see a discrepancy here, although my colleague, Sen. Vieira, tried to explain it to me, but I still have a real concern with it. In (b) says:

“to enter and search a dwelling house, with a warrant issued by a Magistrate, where the Magistrate is satisfied by evidence on oath that there is a reasonable ground for believing that a gang member, gang leader or a person whom the Magistrate has reasonable cause to believe has committed an offence under this Act, may be found in the dwelling house...”

And part (c) says:

“to enter any other place or premises not used as a dwelling house (including a building, ship, vessel, carriage, box or receptacle), without a warrant...”

And I am wondering why the difference in (b) with a warrant and the difference in (c) without a warrant, even if the law generally provides for the sanctity of a home. And I think, what happens if the home is a business place, which happens very often in Trinidad and Tobago? And it falls between a combination of both categories. So I think the hon. Attorney General can address that. Right?

In—“Clause 16(3) requires the police officer upon detaining a person must, without delay, inform the person of the grounds for his detention and record the grounds for his detention in the station diary.”

What is the recourse if this is not done, which is very possible? They hold you, they grab you and they take you away. They do not feel to tell you what you are being detained for. And we have a recent case where it is an investigation, so I would not speak too much about it—you end up not breathing and your heart not beating. So, I do not know what the resource for it, if this is not done. Who does the detainee complain to and what is the penalty if the officer does not subscribe to this?

“Clause 16(4) provides that where a police officer has reasonable grounds to believe that it is necessary to detain a person beyond the forty-eight (48) hour detention period to...”

And I agree with this, because it has now been reduced to, I think, 72 hours to this. What I have heard over and over has happened, and I do not know what the cure for the mischief is. Is it that, okay, police officers know that if this is passed, you have 48 hours to detain a person?

- “a) obtain, secure or preserve evidence relating to an offence under this Act;
- b) prevent interference with an investigation of an offence under this Act; or
- c) prevent the commission of an offence,

the officer may make an ex parte application for a detention order to a Judge within thirty-six (36) hours of the person’s detention, in the form set out in the Second Schedule. This application must be supported by evidence on oath.”

So what has happened in the past, and I have heard countless people complain about this, criminal defence attorneys, is that—and I do not know what the cure is, quite frankly—so the officer holds you for 48 hours and then realizes he does not have the evidence. So he lets you go and then he picks you back up in 12 hours, and he starts the process again. That happens in Trinidad and Tobago, and we have to make law understanding the context that we are living in. So this happens three or four times and before you know it, the person is “in, out, in, out, in, out” and the officer is well within the ambits of the provision, but they are using craft to deal with the situation, as it were, and I do not know what is the recourse that the detainee has. So, to me, that needs to be dealt with more effectively.

So, while I agree with many of the provisions included in this, Madam President—and as I said at the start of my contribution that I think it is unthinkable that any country, in particular, Trinidad and Tobago, given what we have been

dealing with over the last 15 or so years and, certainly, since 1990, with the growth, proliferation and damage that gangs have and continue to cause in Trinidad and Tobago, that we can continue to operate absent of anti-gang law. We need to tighten this.

The Attorney General was quite charitable and said that he came to listen, and that suggests to me that he is open to amendments being put forward in the interest of making what is good and effective law in a really difficulty situation. And one of the issues that I hope we can also deal with is the issue of what has been described in the UK law and Australian law also as making a differentiation between gang activity and criminal enterprise facilitated by gangs, and that is a sort of a merge between what we consider hard-core gang activity and its nexus between white collar crime in Trinidad and Tobago.

So, in principle, as I said before, I support this country's move to reinstating gang law as expeditiously as possible, because of what is happening, and I would shudder to think that we will continue into the future without law to deal with gangs in this country, moving forward, for the next two, three, four years, because that is going to be extremely problematic. All it is going to do is give the gangs a sense of, well, there are other laws that may be applied to them, but no specific laws related to being involved in a gang, recruiting a gang and, in particular, recruiting young persons in gangs, because the recruitment age for gangs in Trinidad and Tobago is between 11 and 14 years, primarily, very often in schools.

So, with those few words, Madam President, I thank you and I hope we can continue to have fervent debate on this in the interest of making anti-gang law that is passed and that can protect the people of Trinidad and Tobago, and our visitors. I thank you. [*Desk thumping*]

Madam President: Hon. Senators, at this stage, the sitting will be suspended and

will be resumed at 1.30 p.m.

12.56 p.m.: *Sitting suspended.*

1.30 p.m.: *Sitting resumed.*

Sen. Nigel de Freitas: Thank you, Madam President, for the opportunity to contribute to this Anti-Gang Bill, 2021. Now, Madam President, I propose in my contribution to respond to the speakers that have gone before me, which is Sen. Lutchmedial and to some extent Sen. Richards, but also to indicate, in as wholesome a nature as possible, what I think the merits of this Bill are and where I think this Bill is turning out to be most effective.

So, let me begin by, in some way, responding to Sen. Richards, who, in his contribution, indicated that the definitions in relation to gang, gang leader and gang member as well as gang-related activity, would have needed to be updated somewhat, because of the way gangs are evolving. Now, before I respond specifically to that, let me just say this. I have come to understand that when doing things like this, utilizing the correct label goes a very long way in terms of helping to find a solution. So, to me, when I looked at the definitions, the four things I just called out, I understood right away that this was the crux of the Bill and by “crux” I mean that if you did not get these four right, well then, you will have problems with the Bill in its entirety.

Now, Sen. Richards, I understood when you said that the way gangs are evolving now is that they are coming together for a short period of time to commit an act somewhat, and then they will disband and they may never come together again in that form. Now, when I read the definition of “gang”, for example, I will just read it out:

“...means a combination of two or more persons, whether formally or informally organized, who engage in gang-related activity;”

Now, to me, that is very, very broad and it needs to be broad, because you did admit that one of the most difficult things when dealing with anti-gang legislation is, one, determining what a gang really is and sort of executing by way of preventing gangs from forming. But, to me, that definition is extremely broad, and you would want it to be broad in that manner because you want to capture as wide as possible different incarnations of what people coming together to engage in nefarious activity would represent.

To me, when I thought of a gang, I thought of it in two types, that is, organized and disorganized. The organized gang, you will see sort of a branding taking place with them, and Sen. Richards would have called out the name of one of the gangs. Anybody can get it. That is a type of branding in that relation to gangs. But the second type, which is the disorganized kind, is the one that captures what Sen. Richards was saying, the ones that may come together to commit the nefarious activity and then they will disband. And you want to be able to capture that because what you are trying to prevent, Sen. Richards, is the nefarious activity.

You see, the problem is when you start to say two people coming together to do something, you can capture all kinds of groups in Trinidad and Tobago, but it is that nefarious activity that you are trying to prevent that becomes very, very important in this definition. And, in that, you go on to describe what a gang leader is based on that, and then a gang member and then you outline what that gang-related activity is.

So it is not so much that the gangs are evolving that they come together to commit one activity. It does not matter. It does not matter if they come together to commit one activity in one year or one year at a time. Label them as a gang, because when you start to investigate that activity and you capture those individuals, per se, then you can charge them under this piece of legislation,

because you came together to form a gang, no matter how long the gang lasted, to commit that activity which is what you are really trying to prevent. So, Sen. Richards, in relation to the gangs evolving to do that, I think this Bill still captures them in this particular definition, so that it could have that kind of effect.

Madam President, let me move on to some of the comments made by Sen. Lutchmedial, and I will go through them one by one as I have them here. Now, Sen. Lutchmedial, early in her contribution, in response to the statistics that the Attorney General gave in relation to the number of gangs being reduced in Trinidad and Tobago asked the question in terms of questioning the statistics as to where did the gang members go. Now, I listened to that question and I did not really understand what the Member was trying to get at because, to me, that is the point. You do not have a gang members association. You do not have a gang members regulatory body. The fact is that you want to prevent gangs from forming in the first place. So if the Police Commissioner is indicating that under the previous anti-gang legislation that you had a reduction in gangs of over 30 per cent and a reduction of gang members of over 58 per cent then, to me, there is some effect taking place there.

The gang members that decide not to collude with each other or to enter into an organized gang, they do not need to tell anybody. They just need to stop. So you do not need to ask the question: Where did the gang members go? What we need to know is that they are no longer engaging in gang activity and that is what the Police Commissioner was speaking to.

Madam President, Sen. Lutchmedial went on to speak to the Government capitalizing on emotions running high, when the Attorney General speaks to the incidents that have occurred in December and January, and saying that under the definitions that we have here, you could say that it is a gang engaging in this

activity. I do not think it is the Government capitalizing on emotions running high. Emotions are high all throughout the country. Everybody wants a solution to this problem. And if to drive this point home, Madam President, just today, the *Guardian* newspaper is reporting another incident in relation to a PH taxi driver and a female passenger. It is not about capitalizing on emotions. It is about solving a problem. What do you expect the Attorney General to do? He is going to bring legislation that seeks to treat with a problem that the entire nation wants solved to the benefit of every single person. So it is not capitalizing on emotions, Madam President. It is just trying to solve a problem beginning with legislation and execution of that legislation.

Sen. Lutchmedial went on to say, as she always does when it comes to anti-gang legislation, that 291 people were arrested and then asked how many have been charged. Now, I understand where Sen. Lutchmedial is coming from in terms of asking that question and she is looking at it from the standpoint of detection. But she is also indicating that because you have arrests taking place and because you are not getting conviction, that is the reason for why the law is not working. But that is not the case, because the law has two effects that we have seen thus far: one is deterrence and the other is detection to which Sen. Lutchmedial is referring to. But, for me, like I indicated at the start of my contribution, if you are going to label something, label it properly. And, in my mind, anti-gang legislation should be as important as the legislation that makes murder an offence.

If it is that the detection rate, in relation to murder, drops to a certain point—5 per cent, let us say 2 per cent, 1 per cent—are you going to call for the removal of the Offences Against the Person Act? [*Desk thumping*] Are you going to call for that? Is it that if people are arrested and let go because you did not have the evidence and whatnot, are you going to call for the removal or it is not working so,

therefore, we should cancel that or repeal that? No. This anti-gang legislation should be as important as that.

And let me just respond in relation to those calling for a sunset clause. I do not fully agree to that. We have had this piece of legislation debated several times since I have been in this Parliament, and each and every time we are going back and forth with the Opposition and the Government. We reduced the sunset clause, we increased the sunset clause and in November the 20th, it was removed and the Police Commissioner had to argue, had to ask and then had to beg for this to be brought back, and I understand why. Because if it is that he is seeing the deterrence effect of the legislation as it was before, then I see why he would be asking for that.

So, Madam President, Sen. Lutchmedial went on to say that—and I took this way—the anti-gang law may not be needed because you could use existing law to solve the gang issue. I will say this. I do not think the Senator understands exactly how gangs work. You have a gang leader. You have gang members separated into different titles, whether it be an executioner, whether it be a driver, whether it be—whatever—a look out. So you are telling me that if one gang member within the gang executes a murder, that under the existing law we pick up that individual, and let us say you get the conviction and you charge that person, you know what happens in that gang, that institution? The gang leader brings somebody else in. There is a new executioner. Okay, let us say you find that person, charge them, convict them and you bring in a next person, it does not really solve the issue.

And, for me, when I am looking at this anti-gang legislation, you know what I am seeing? You pick up the gang member that committed the murder, you pick up the gang leader that did the instruction, you pick up the driver, you pick up the person that bought the gun and you pick up the person that collects the money and,

to me, it is a more holistic approach in terms of treating with the issue of several different individuals who need to be in place to execute that particular crime in relation to the gang. That is the benefit. That is where you would do better than just using the existing law in a silo or in an individualistic manner, because you can take down the entire gang entity doing that with all the offences that have been created in the Bill.

Madam President, let me just respond, because I am hearing this argument all the time. What it is that the Opposition wants? Tell this nation. We bring a special majority Bill, you knock it down. You jump up to say that the Opposition will not support any special majority Bill that this Government brings ever. So when the Attorney General who is trying to do his job, brings a Bill that is a simple majority, you then stand up on the podium and say, change it back to special majority. What is the point? Is it that you just want us to bring special majority Bills so that you could turn it down? The nation is asking for a solution.

We have asked from since 2015, when this Government first came into place, to work together towards solving these problems and at every step of the way it is like pulling teeth. And just by the mere utterances today: special majority, simple majority—we bring one, you knock it down. We bring another, you knock it down. But we cannot sit down and wait for the Opposition to find whatever reason they need to support the legislation. The work needs to be done to the benefit of the people of Trinidad and Tobago. So you can stop saying, bring special majority Bills and then knocking it down when we bring it. We will do the work as is required by us and is mandated by the people of Trinidad and Tobago.

Madam President, the last comment made by Sen. Lutchmedial was that no piece of legislation will resolve crime if the TTPS does not have the resources. Okay, I can understand that, that makes sense. But the biggest advocate for this

Bill is the person responsible for utilizing the resources given to them, which is the Commissioner of Police. From the time that the previous Bill was not passed in the House of Representatives, the Commissioner of Police was the most vocal individual and he did not say we do not have any resources to implement that Bill. He begged, he asked and he pleaded. Up to three weeks ago, when he came before the Joint Select Committee on National Security, he indicated to us what they were trying to achieve and what they were doing and why the Bill is so important. And the question I am asking is: Would he really be asking for this Bill if he did not have the resources to execute anything under the Bill? That is not the case. That is a cop out. That is a cop out to say that they do not have the resources. The Commissioner of Police is fully capable of implementing this; that is why he is asking for it. He is seeing the results and the best that we can do is give him what he is asking for so that he can execute what needs to be executed.

Madam President, I want to respond to Sen. Richards now, which is just one comment he was raising, and he raised the issue of people being indoctrinated into gangs in prison, especially the ones on Remand. Now, I understand exactly what he is saying and he indicated that there was about 60 per cent of people entering Remand ended up being indoctrinated into gangs. And what I am going to do, Sen. Richards, in response to that, the next time we have the TTPS in front of the JSC—either one of us could do it—is find out exactly how many of those people stay in the gangs after their case is disposed of—either the case starts or the case is disposed of in one way or the other—because I could understand why that number is so high.

You are going into a smaller population and survival is key. So I want to suspect you are joining a gang, probably to survive whilst you are on Remand in prison. But the question I really want to ask, and we will get the answer, is: Are

they joining the gang or remaining in the gang when you remove that survival or that necessity for survival once they are on Remand? And I ask that in the context of the numbers that the Police Commissioner puts out. He is seeing a reduction in the number of gangs and a reduction in the number of gang members. So, in my mind, something is not adding up there.

If it is that you have all of these people being indoctrinated behind prison walls, when they are coming out and they are entering the gangs or remaining in the gangs when they are coming out, what is the numbers there? Is that adding to the 1,114 gang members that exist in Trinidad and Tobago now? Or is it that really and truly they are just gang members in the prison and when they come out they let go of that life? Or is it, as you indicated Sen. Richards, it is a factor of time that if they are spending 10, 12, 14 years in Remand that they are really not adding to the number that is outside?

Sen. Richards: [*Inaudible*]

Sen. Nigel de Freitas: Yeah, yeah.

Sen. Richards: [*Inaudible*]—the data suggests, Sen. de Freitas, that the arms of the gangs stretch outside of the prison walls and if you are protected inside of prison walls, you have to continue doing the bidding of the gangs inside the prison walls to continue being safe. So the numbers may be adding to outside.

Sen. N. de Freitas: Okay.

Sen. Richards: It is not as simple as an exclusive zone inside of prison and when they come out, they are free.

Sen. N. de Freitas: Okay.

Sen. Richards: The gangs have tentacles outside of prison as we all know.

1.50 p.m.

Sen. N. de Freitas: Well, we will definitely—the next time the Commissioner of

Police is in front the joint select committee we will definitely drill down into that more in relation to that. So, Madam President, I just want to move on to the Bill that is before us and in reading through the Bill let me just say this, there are three main areas where I think this Bill is properly effective. The first is in relation to clause 5 which treats with the act of being in a gang, whether as a leader or a member and creating that as an offence. So what you want to do, because a gang is an institution like any other and you have to think of it and treat it like that, and so when you create the offence of being a gang member or a gang leader you are effectively putting pressure on that institution that has been set up to engage in criminal activity; first by ensuring that when it is you capture those individuals, you are removing those individuals specifically from that institution. So you are making it an offence. So there is a deterrence factor there because you know if you are caught being a gang member or being a gang leader, well then you have created—that offence has been created and you can be captured and you can be convicted and sent to jail.

So there is a deterrence and then there is the detection factor, which is if you are already a gang member and you are engaging in that activity then the same process applies and those individuals are removed there. But there is a second aspect that speaks more to deterrence and somewhat detection as well but ever so slightly, and we have seen this time and time again but we do not really speak about it and that is the community in which the gang operates. We do not really talk about that. This Bill speaks to it, especially in clause 11 and clause 12 as it relates to hiding or aiding and abetting gang members and gang leaders. To me that is how some of these gangs survive, and I will explain a little later down when I am wrapping up exactly where that connection comes from.

It is almost like a Robin Hood-type mentality that is occurring there. But

within the community that the gang operates you have a sort of protection taking place for one reason or the other and that is what I thought was key in this Bill. When you put forward legislation that makes it an offence to aid and abet or hide gang members and gang leaders, it means that they can no longer rely on their community for any kind of protection whatsoever, especially if that community knows that you can be arrested and charged just for helping out gangs in that regard. And perhaps the biggest example of why that is important—what is the name that we give to gang leaders now? Anybody remembers? Community leaders. Why? Why? There is your connection right there. That is why this section of that Bill, clause 11 and clause 12, is important. It breaks that connection because you do not understand how difficult it is for the TTPS to do their work if they have to enter a community that immediately is against them in protection of those engaging in activity that is detrimental to the community in the first place.

We have to get rid of these labels, stop calling them “community leaders”, break that connection between the gang and the community. Madam President, the biggest effect that this piece of legislation has in relation to gangs comes by way of attacking the one thing that no institution in this planet could survive without and that is human resource. And it does so in four ways; gang members can leave and this Bill makes it an offence to prevent a gang member from wanting to leave. And I will drill down into that a little bit, that is at clause 9. Gang members cannot be recruited, that is at clause 6. The one that we never talk about, gang members die; you live by the gun, you die by the gun. That is the activity that they are engaging in. Gang members do die, we have seen it; rival gangs fighting each other, they get shot, they die. And then you have in relation to the finances which is the forfeiture of property at clause 17.

So when Sen. Lutchmedial asked as to whether the statistics were true in

relation to the move from 211 gangs to 129, there is a way to figure that out. In the Joint Select Committee of National Security, do you know what the Commissioner of Police told us? Gangs are now relying on 14-, 15- and 16-year-olds; that is where they are recruiting. So if you were not inclined to believe the statistics, believe this, that if there is a reduction of 58 per cent in bodies in relation to gangs then that ties in with what we were told by the Commissioner of Police. [*Device goes off*] They are not finding individuals to enter the gangs at the older ages anymore so they are going down to the 14-year-olds, the 15-year-olds and the 16-year-olds—

Madam President: Sen. de. Freitas, you have five more minutes.

Sen. N. de. Freitas: Thank you, Madam President.

Madam President: And if there is someone—I think I heard a device go off, I would ask you to leave the Chamber for five minutes.

Sen. N. de. Freitas: So if they are going down there to intimidate and recruit those individuals it tells me that they are having a problem with the human resource, which is exactly what you want.

So as much as Sen. Lutchmedial is talking about conviction as the indicator as to whether the Bill works, my better indicator is if gangs cannot even form. And if you cannot get the human resource to enter the gangs to execute what it is you want to execute, then is that not a better indicator? So, Madam President, in conclusion let me just say this, the Bill in my mind has had some effect in its prior incarnation, what we need to do is to give this Bill the length and breadth of time to effectively work so that people in Trinidad and Tobago could breathe a sigh of relief in relation to what is taking place. And the final statement that I want to make, and this is to the population of Trinidad and Tobago, we need to stop calling these individuals who enter these gangs, “monsters” and “demons”. Labelling them

as “monsters” and “demons” does not deter them.

I honestly believe that they are embellished, that it builds up their ego when we do that. Do not do that, call them what they are, a cancer to society to be treated with in the exact same way you would a cancer of the body, surgically and specifically dealt with. That is how you treat with them and that is what this Bill hopes to do. Madam President, with those few words, I thank you. [*Desk thumping*]

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

Sen. Wade Mark: Thank you, Madam President. Madam President, the Bill that we are debating today, its short title is the Anti-Gang Bill, 2021, I would like to frame my contribution in the context of consultation, definitions, the whole question of police power and powers, the efficaciousness of the proposed measures that are outlined in this Bill given its past history, and I also want to add some further amendments to this piece of legislation. Madam President, I want to make it clear from the outset that we are committed as the alternative Government [*Desk thumping*] to the promotion, to the formulation of what I call and what we call “good law”. We want good law for our country.

As you know, this Bill was introduced last Tuesday, and this Tuesday, a couple of days later we are debating this Bill. I would have liked to ask the Attorney General who is not here, what element, what level of consultation did the Attorney General pursue in promoting this piece of legislation having regard to the removal of its certificate calling for a special majority? Did he consult with the Law Association? Did he get any comments from the Law Association? What about the Assembly of Southern Lawyers? What about the Police Social and Welfare Association? What about the Prison Officers’ Association? Were these organizations reached out to? Were their views sought? These are questions I

would like clarified, Madam President.

So democratic participation in the formulation of legislation is absolutely essential, Madam President. What I also want to say from the very outset is that no one, including the Attorney General on the Government Bench has dealt with the social measures, the preventative measures aimed at addressing the challenges faced by marginalized youths in our country that find themselves locked in into this gang culture, in being recruited into this gang culture. Where is the investment to encourage these youths to leave that kind of existence and way of life, Madam President?

Madam President, you remember in June of last year there was an eruption of activity in the city and a community recovery committee was established, where is the work of that committee? What opportunities have been advanced by this committee to assist the youths? So, Madam President, when you look even at the newspapers today—not today on Sunday rather, there were some very powerful articles written. There is one particular Forensic Psychologist, Dr. Ayesha Prout, I think, and she said in this article on page 9 of the *Sunday Express*:

“Helping criminals get out of the vicious cycle

Psychologist: Yes, punish...but rehabilitate.”

And she went on to explain what she meant by that. And, Madam President, I would not detain you on this matter, I would like to go to the item of enforcement, law enforcement in the legislation.

If you go to the definition section in clause 3 of the Bill, Madam President—and by the way, before I go into definitions and this one in particular, may I remind this honourable Senate that the Law Association has been consistent in its opposition and rejection of this Anti-Gang Bill. They did it in 2016 when Reginald Armour was its President. They did it in 2018 when Douglas Mendes was the

President. And I think there was another statement in 2020 opposing this particular piece of legislation that has artificially been adjusted but to achieve the same objective. So I do not want it to be said, “It is only the United National Congress that has its reservations about this piece of legislation”, the Law Association of this country is on record as opposing this piece of legislation, along with others of course.

Madam President, the Attorney General in a very flippant manner, very light-hearted manner whilst he was speaking he told this Senate, “I intend to make an amendment to the definition of law enforcement to include”—Madam President, surreptitiously—“the SRP or SRPs, municipal police”, and I understand he said also the Police Complaints Authority. What is the business of SRP in this piece of legislation? I would need clarification from the hon. Attorney General. And up to now as we speak, I have not had sight of the amendment that the Attorney General is proposing for this particular piece of legislation.

Madam President, the Anti-Gang Act or Bill gives to police and gives to police officers significant power under section 16 of the legislation. Madam President, powers are given to the police to arrest persons. They have them detained, this time not for 36 hours, but for 48 hours, and then to apply for further detention for 36 hours and through an ex parte injunction, 14 days. I want to say, Madam President, in looking at this piece of legislation it cannot be viewed in isolation, particularly with what the hon. Attorney General introduced whilst he was speaking. Whenever we have to look at legislation and especially the one that is before us which purports to vest power in the hands of the police, it is our responsibility as parliamentarians to look at that power and to look at it very closely and to see how this power has been used, and in some cases how that power is being abused in our country. Not all police officers are misusing or

abusing their power, but there are police officers with this kind of legislative framework and the clauses contained therein can abuse and misuse their power, unless we have the relevant and necessary checks and balances to ensure that they do not go outside of their remit.

So, Madam President, if what I heard earlier in the Attorney General's contribution is true that he intends to make an amendment to include Special Reserve Police officers, I would like to ask the Government, those powers that we have in section 16 of this piece of legislation that is before us, Madam President—I think it is in Part—let me get the exact—Part III, 15, 16; clauses 15 and 16, Madam President, I would like to ask the Government today whether these powers will also be exercised by the SRP who the Attorney General is saying he wants to be part and to be included under law enforcement? I ask this question because we are concerned with the way in which the Government has been using and abusing the SRP mechanisms in this country. And I hope that the Attorney General will be able to provide us with answers on this matter. [*Interruption*] No, when you are winding up, not now.

Hon. Al-Rawi: Let me explain now.

Sen. W. Mark: No, no, no, no, not now. Not my time. Not my time. My time is limited. [*Crosstalk*]

Madam President, I would like to make it very clear and when we look at this Bill, this Bill is already giving tremendous power to police, to the police to conduct investigations and therefore it is important to consider whether the SRPs would also be enjoying this same power. For instance, Madam President, I have a copy of the SRP Act and I want to tell this honourable Senate the concerns that we have on this side with this proposal that the Attorney General has floated. I have been advised, and the Attorney General when he is winding up can tell this country

what is the strength of the Special Reserve Police today. My understanding is that it is 8,000 strong and growing; 8,500 strong and growing. They are more, as I understand it, than the sanctioned strength of the Trinidad and Tobago Police Service. But the only danger of this is that when you look at the Special Reserve Police Act, Madam President, you will see how these SRPs are appointed, who the Attorney General is indicating he wants included under the law enforcement.

Madam President, there is a fundamental distinction between recruitment, training and the qualifications for SRPs and police officers. I have the evidence right here before me, I know what they are entitled to, Madam President. So when the Attorney General says he wants to incorporate the SRPs into this exercise, then we have to be very, very suspicious about it, Madam President. Madam President, I would ask the Attorney General to desist from making any amendments that would include the SRP in this piece of legislation. The SRP is under the control of the Minister of National Security [*Desk thumping*] and we cannot allow a private police army to be developed in this country under the direct control of the Minister of National Security.

Madam President, let me bring to your attention section 6 of the Special Reserve Police Act to tell you the danger, the fire that we are playing with here. Madam President, section 6 of the SRP Act says:

“Subject to the general order and directions of the Minister, the Commissioner shall have the general command and superintendence of the Special Reserve Police, and he shall”—that is the Commissioner of Police—“be responsible to the Minister”—of National Security—“for their efficient condition and for the proper carrying out of this Act.”

How can a Police Commissioner that is independent under the Constitution in terms of his activities—Madam President, may I invite you to look at section 123A

of the Constitution, and I want to tell you, Madam President, 123A is an entrenched provision under section 54 of our Constitution. The framers of the Constitution wanted to ensure that the Police Commissioner has supreme independence and he is not subject to the general control and directions of a politician, and this is what is taking place with this provision that the Attorney General has threatened to introduce as an amendment to this piece of legislation.

Hon. Al-Rawi: That is not what I said.

Sen. W. Mark: Well, whatever you said you will correct yourself at the end of the day. [*Crosstalk*] Do not intervene when I am speaking. Madam President, may I continue, please?

Madam President: Sen. Mark, please continue to address me.

Sen. W. Mark: Yes, Madam President. Thank you.

Madam President, may I indicate that it is wrong—Madam President, I have been advised that he addresses volleyball players, footballers, cricketers; I have been advised that a QC out of England called Edward Jenkins is an SRP. Could you imagine a Queen’s Counsel is a Special Reserve Police officer in Trinidad and Tobago? And, Madam President, I have been also advised that there are firms out of the United Kingdom whose members are all SRPs with the same powers as a regular police officer. But, Madam President, the only difference here is that the Minister of National Security has a big role to play in that exercise of recruitment. So the Police Commissioner recommends—no, confirms or approves but the Minister of National Security has a big role to play in recommending. So the Minister of National Security is literally in charge of a coercive arm of the State. This is the scene that can lead to a “mongoose gang” being established in our country, Madam President, and we want to make it very clear to the hon. Attorney General, do not seek to bring a “mongoose gang” into this piece of legislation.

Madam President, I believe the time has come for us to amend this Act to make it consistent with our Constitution. Our Constitution under 123A says the Police Commissioner is an independent officeholder and if you go to attack that office you will need two-thirds majority; you will need two-thirds because it falls under section 54 of our Constitution. Madam President, it is friends and family I understand who are in the SRP in this country—

Madam President: Sen. Mark, we are dealing with the Anti-Gang Bill. You have made a point in answer to something that you said the Attorney General raised in his opening statement, and I will ask you know though, you have spoken at length about SRPs, you need to treat with other aspects of the Bill.

2.20 p.m.

Sen. W. Mark: Madam President, there are so many other aspects of the Bill, but with your leave I shall come back to that matter. Let me go on as you have advised.

I want to indicate that legislation for it to be effective and efficacious, as it relates to results and outcomes, must be scientifically grounded and it must be data-driven. You cannot come here and indicate to this country that you are introducing legislation to bring about changes, but the legislation that you are proposing has not delivered anything effectively, as it relates to convictions of the so-called gangs that we are talking about.

Madam President, I have in my possession data which I will share with this honourable House. Data from 2005 to 2020. It deals with 30—30 offences falling under the Anti-Gang Act in this country. The data reveals between the period 2009 to 2020, the total number of gang members being arrested for firearms, one—one. Assisting a gang member in terms of ammunition, for the period 2000 to 2020, zero. That is the data I have. Let the Attorney General dispute my data. He came with just overall figures indicating that the number of gangs has been reduced from

400 to 100, and the number of gang members has been reduced from 4,000 to 1,000. That is not what we want to know. Come better, tell us how this anti-gang law has been working since 2011, when it came into being.

Madam President, assisting a gang, two persons arrested. Not even charged, you know, Madam President, not even convicted you know. Two persons between 2011 right down to 2020. Being a gang leader, 11—11 persons have been arrested for being a gang leader between 2010 and 2020. Being a member of a gang, how many people have been arrested? You brought legislation here today saying that you want support, because this will fight crime and criminality, but the statistics and the data and the scientific facts do not square with your reality. This is all a PR stunt. This is simply legislation by fright, legislation by fear. That is what this thing is about, and trying to mamaguy the population. [*Desk thumping*]

Charges in relation to the Anti-Gang Act, 10. Being a member of a gang, 240. You know, those are people who have been arrested. The state of emergency alone that they condemned had 211 of them being arrested and later on being freed, because the DPP said he was not pursuing that matter any longer, and some of them have been compensated. So from 2010/2011 right down to 2020 September, which is the date of this piece of data I have here, 240. Minus 208 from that, and you will tell me what you get. That is what the Attorney General wants us to support today. We have no problem. We say, if you want to bring legislation, we want legislation to work. We do not want legislation to just be on the statute book gathering dust, and it not having any effect.

To coerce a person to be a gang member, between 2010 and 2020, one person has been arrested—one person. But you come to this Parliament giving the impression that this thing is working. The data does not support your narrative. Counselling a gang, 2009 to 2020, one arrest—one arrest. Madam President, gang

leader and members benefiting from being a gang leader, five persons have been arrested between the period 2010 to 2020, and I have it right here. Gang-member's unlawful shooting, how many have been arrested? One—one. Inviting a person to support a gang, how many persons have been arrested? One, between 2010 and 2020.

Knowingly assisted a gang member in the commission of a gang-related activity. Madam President, how many people have been arrested? Zero, zilch, nada, nothing. We go further, knowingly providing support to a gang. How many people have been arrested? Zero, zilch. Madam President, hear this one: possession of ammunition for the benefit of a gang. How many have been arrested? Zero. And we hear “we swimming” in guns in this country in terms of gangs, and for 10 years not one person has been arrested. Providing instructions to a gang leader, how many have been arrested? One. Providing support to a gang leader, how many have been arrested? Four. Retaliatory action—if you are a gang member and you leave, and I come for you, how many persons have been arrested? Zero. That is what the data is showing. How many people have been arrested for supporting a gang over that 10-year period? Two. How many have been arrested for supporting a gang leader, two.

I have so many others that I will not detain you. But the point I am making is that this Attorney General, and this intellectually bankrupt and visionless, directionless PNM Government has done nothing effectively to deal with crime in this country. It is only artificiality, superficiality and “ol’ talk”. And when we try to provide answers and assistance, they do not want it at times. They do not want it, Madam President.

So we are not convinced that the Government is serious about this matter. So let us go back to the Bill, after I have given you that excursion into reality. Let us

go back to the Bill. You come with a piece of legislation, that is the Government, the burden of proof. I thought we are living in a Republic called Trinidad and Tobago, and I thought under section 5(1)(f) of our Constitution there is a provision that says, an individual, a citizen of this country is innocent until proven guilty. Well, the Attorney General in this piece of legislation has shifted the burden of proof. It is in clause 10, and it is in many other clauses in the Bill.

They say, “You guilty, prove your innocence.” You are guilty, you prove your innocence. That is France. That is the law of France. That is their jurisprudential principle, that in France you are guilty, you prove your innocence. In Trinidad and Tobago, I want to remind the Attorney General, under section 5(2)(f) of our Constitution citizens are innocent until proven guilty, and if you want to reverse that burden you bring a special constitutional majority, because it is entrenched in the Constitution. [*Desk thumping*] Madam President, that is an area we would like to have established very clearly.

When you go to clause 16 of this Bill—I do not believe that the framers of our Constitution ever anticipated that one day in our life we will have a government in power manipulating our Constitution, assaulting our Constitution, assaulting our democracy as this Government is doing.

Madam President: Sen. Mark, your language has become increasingly inflammatory, and I will ask you to dial it back a little bit.

Sen. W. Mark: Madam President, I go to clause 16 and I go to subclause (3). You are detained at the pleasure of the police for 48 hours, according to the law. Liberty is something that you cannot treat lightly in a democratic society. You cannot deprive an individual of his or her liberty easily, but you want to do it in this legislation, but you do not want to put in the requisite constitutional majority to take away the people’s liberty. So you can be detained for 48 hours. When you are

detained, it says in clause 16 subclause (3), and I quote:

“Where a person is detained under subsection (1)...”—that is for 48 hours—
“the police officer...”—no rank eh.

So it could be an ordinary policeman detaining you, a constable, and the SRP, as you know, they do not have any tenure of security, they are contract workers. It reminds me of before slavery was abolished, you had people contracted as apprentices, and that is what is going on with the SRP. My heart bleeds for the SRP, the advantage that this Government has been taking over those SRP officers.

Madam President, I know you have told me I have spoken enough on this matter, but I want to indicate here, I want to call on the Attorney General to pay the SRP, the constables, their back pay—pay them. [*Desk thumping*]

I go on to this section here, Madam President.

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

Sen. W. Mark: Yes. I want to make an amendment. I am proposing an amendment to clause 16. I am adding after (a) and (b), the following:

Provide the person or his attorney-at-law with the custody of his or her station diary record.

I want to have that included in this provision, that is, clause 16(1), clause 16 subclause (3), I am adding a new (c), Madam President.

I would also like to propose the following. Under Part V, clause 6 of the legislation:

The Minister with responsibility for national security may by order, subject to negative resolution of Parliament, amend the Second Schedule.

This Bill is saying with a simple majority that the Minister of National Security, who is interfering in SRP police business, under section 6 and 7 of the SRP Act, which is unlawful, unconstitutional and illegal, that individual, whoever he may be,

is now given the power under this draconian and dangerous, concerning and disturbing piece of legislation in this section, the power to make resolutions, subject to negative, to amend what? The Second Schedule.

Madam President, I invite you to look at the Second Schedule. It is about application for detention order. So the Minister is being given the power to adjust detention orders whimsically, and we are to be rushing for a legal notice to see if we could come and annul it. No, no, no, no, we want an affirmative resolution. We want it come here and be debated. That is what we are proposing, Madam President.

Madam President, I saw the Government introduce offences 47 and 48. You know, I am always concerned about this Government and what their intentions are, particularly when you could recruit a senior counsel called a QC, Edward Jenkins, as an SRP in our police service, to look after white collar criminals in this country. After spending \$66 million of taxpayers' dollars for a firm that he is attached to—

Madam President: Sen. Mark, I am not sure where you are going with this. In fact, I am sure it is away from the Bill that is before us. I will ask you in your last few minutes to wrap up.

Sen. W. Mark: Madam President, thank you very much. I invite you to go to 47—47, under “Offences, conspiracy to defraud the State”. I would like for the Attorney General to tell this Parliament and this Senate whether that is retroactive, or whether that is prospective. Because my understanding, and the attorneys are here, they can advise me—Madam President, you are an attorney, you can advise me as well. When we talk about conspiracy, are we talking back in times or are we talking prospective, or are we talking both? This is a dangerous provision here. If you are going to deal with people's liberty under this section, this is another excursion into adventurism by this administration.

We would like to ensure that the liberties of the people under our watch, the alternative government of Trinidad and Tobago, the United National Congress, under our watch we will not allow the PNM and its Attorney General to come here and use SRP, use municipal police, in order to trample upon the rights of the people knowing very well that under section 6 and 5 of the SRP Act, the Minister of National Security gave directions and control over—he has directions and control over our Police Commissioner. I defend our Police Commissioner today. I stand by his side and I ask the—

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

Sen. W. Mark: Thank you very much, Madam President—to stand by his side.

Madam President: Sen. Vieira.

Sen. Anthony Vieira: Thank you, Madam President. Let me start off by declaring how much I enjoy listening to Sen. Lutchmedial. I always appreciate her insights and her recommendations. I think she is a tremendous asset to this Senate.

Hon. Al-Rawi: I agree. [*Desk thumping*]

Sen. A Vieira: As I was listening to her I thought, you know what would be really ideal on legislation as important as this, was to have the special majority suggested by Sen. Lutchmedial, but an opportunity here for greater collaboration between the Opposition and the Government, to really flesh out, take those recommendations to heart, and come up with really great legislation on something as important as this. And then for the Opposition to really support this Bill if they could negotiate those amendments. That to my mind would be far more productive than looking to challenge the constitutionality of the legislation after the fact. The Attorney General has said he has come here to listen so, perhaps, the Opposition can sound him out.

This Bill has had me on an intellectual seesaw. Initially I was against it, but

now I find that my view has changed. In discussing this legislation with different people, I kind of discerned two competing narratives. One narrative is that the Executive and the police service, an independent organization established under the Police Service Act, have hatched this plot to turn Trinidad and Tobago into a police state, and this Bill is all part of an overarching framework by an out of touch government to dismantle constitutional rights, so that citizens are made subservient, and they are kept in their place by political overlords who serve a greedy oligarchy. That is one narrative.

The second narrative, of course, is, hey, gangs are exceptionally dangerous and well-armed entities, who pose a real and present danger to law-abiding citizens and to the peace, stability and good order of the State. So the purpose of this debate really is to cut through the fog of confusion, and choose the option which best serves the public interest.

Both narratives require us to consider whether on the one hand the proposed anti-gang laws violate the Constitution, in particular, entrenched fundamental rights like freedom of assembly, freedom of movement, the unlawful detention of persons and the rights of the individual. And whether on the other hand this is a legitimate, reasonable and proportionate attempt on the part of Government to protect and keep safe our citizens, our homes, our businesses.

Now, I agree with Sen. Lutchmedial that the safer course is to go for the special majority. But what happens if we do not get that support? Do we abandon this legislation? This is heavy stuff, and the buck stops here with us. Government has carried the baton as far as they can, whether that baton is dropped or whether that baton gets to carry across the finish line, that is on us. That is the burden we carry today. That is the responsibility we signed up for.

So what are the arguments against the Bill? When I first saw the Bill my

initial reaction was one of cynicism. I was then, and I am still concerned, about the number of unsolved crimes, the low crime detention rate, police corruption, bad apples in the police force, and the burning issue of excessive police force and extrajudicial killings. I am also concerned about the social aspects, and whether this legislation can change the underlying dynamics of gang activity in the country. Where joining a gang may be a very natural process for many youth, especially in economically deprived areas. If you feel alone and vulnerable, you have to gang up for survival. Your gang then becomes your family, and we have to deal with the risk factors, where some have a greater chance at joining a gang.

I am aware of studies showing the negative effects of social and economic inequality. How inequality breeds resentment and highlights dissatisfaction. How inequality divides us into different camps and erodes our trust in one another, and how inequality changes the way we think, the way we act, encouraging risky and self-destructive behaviour.

We have many communities in Trinidad where people suffer from both poverty and inequality. In the past, I have spoken about the need for a multifaceted approach and about the State not being a one-note Johnny, where the heavy hand of the law is the preferred or the only tool available to law enforcement. The country needs a wide range of policies if the problems associated with gangs are to be resolved. We need a master plan to effectively deal with crime, ways to improve the economic status of depressed urban areas, ways to improve the education system, and ways to tackle antisocial behaviour, making gangs less attractive.

So if this legislation is out of sync with what is happening on the ground, it may well do more harm than good. A balance of prevention, intervention and suppression strategies are important for success, otherwise, as Sen. Mark has suggested, this Bill may be little more than a cynical ploy designed to create a

tough on crime appearance.

So by itself this Bill is not a panacea. If we are going to solve the gang problem, it must be part of a master plan, making Trinidad and Tobago more equitable for all citizens. But that is a long-term, never-ceasing goal. Poverty and social inequality should not, however, be used as a smokescreen for gangs to hide behind.

Now, as to whether this legislation violates the Constitution, it may be instructive to note that jurisdictions like the United States, which are highly litigious, fiercely protective of their first amendment constitutional rights, such as the freedom of association, they have allowed anti-gang legislation. The United States Supreme Court has made it clear that no group of persons has the right to associate for wholly illegal aims. That court has held that anti-gang legislation is constitutional, because it serves significant and often compelling government interests, by reducing the threat to public health and safety caused by gang activities.

2.50 p.m.

I agree, no constitutional right is absolute. I agree that there is a duty on the State to protect fundamental rights and freedoms and that where gang-activity presents a danger to public order and safety, a danger to economic stability and has a potential to inflict social damage, there is a duty on the State to protect citizens.

When gangs become so strong that normal law enforcement techniques do not work, the claim about protecting individual rights rings hollow especially where gangs have taken over communities through violence and intimidation and yet are able to evade law enforcement because of clumsy, archaic and convoluted laws dealing with accessories and abettors, parties to an offence, the law of criminal complicity.

Closer to home, Jamaica passed anti-gang legislation in 2014. Ireland dealt with gang offences under its criminal justice amendment Act in 2019. In 2010, Australia passed some of the toughest laws, outlawing organized crime and in particular motorcycle gangs. Even peaceful, sedate, stable Canada has introduced legislation aimed at combatting the rise in gang violence, so this is not Trinidad and Tobago going off on some lark of its own.

Now you can ask, but is this overkill? Are we overreacting to the situation? Maybe it is not as bad as has been suggested. Is this Bill disproportionate? When we go downstairs and we see heavily armed paramilitary police protecting us here in this Parliament, is that a case of overkill? Can we honestly say that the deployment of those officers is just for show, and we can safely go back to the days of officers just carrying a baton? I do not think so. I agree with Sen. Richards, we would do well to remember that it was an armed gang who stormed Parliament in 1990 killing and wounding innocent civilians. And again, how many gangs are we talking about?—two, three between 10 and 20. Hazard a guess. According to my research using statistics from the Crime and Problem Analysis Branch of the Trinidad and Tobago Police Service, from papers put out by the University of the West Indies and from reports of international organizations, we are talking about approximately 179 gangs. Now 50 gangs would have been frightening enough; well over 100, that is cause for serious concern. And we are not talking book clubs and friendly associations. This legislation is not targeted at kids “liming” on the block but at thugs and outlaws who pose a danger to communities and the wider society.

Under this legislation you are regarded as being in a gang when you engage in organized criminal enterprises and gang-related activity. Gang-related activity is listed in the First Schedule and is directed towards activities such as drug

trafficking, kidnapping, gun use, prostitution. Think about gang culture. Gang culture requires absolute loyalty. Loyalty to the gang above all others including family, friends, the community, and the State. From the gang member's point of view, if you are not a gang member, you are nobody, you do not matter. And because gang activity is closely related to expanding income from criminal markets, and we heard the Attorney General talking about the white collar crime aspects, gangs are always bidding for territorial expansion, and the desire to expand means that gangs are in a constant state of war with each other. Gang wars turn communities into battlegrounds where bullets fly indiscriminately killing innocent bystanders.

According to the United States Embassy's regional security office report on Trinidad and Tobago for 2020, Port of Spain is seen as a critical threat location for crime, in particular, violent crime stemming from gang and drug-related activities which continue to drive the murder rate.

At a UWI conference not so long ago it was reported that over the past decade one of the challenges facing the small divided society of Trinidad and Tobago is the intrusion of the gangs in the sphere of money laundering and drug trafficking, and it was noted that the violence and intimidation that reigns in certain urban areas are hampering the development of community organizations and ultimately the ability of the population to improve their living conditions and social advancement.

According to a report put out by the Council on Hemispheric Affairs, gangs are the new law in Trinidad and Tobago. In drawing attention to the country's rampant gang problem, reference was made to beheadings as a warning from gang members and the significant brutality of gang activity in Port of Spain. And disturbingly that report suggests that gang activity in Caribbean nations has largely

been ignored, despite the fact that in Jamaica and Trinidad and Tobago gangs have become so ubiquitous that they represent a challenge to state sovereignty.

According to statistics from the police service, gangs are responsible for the murders of at least 2,100 people, as well as numerous woundings, shootings, robberies and other violent crime. More than 460 gang-related guns have been seized since 2010. So that is the stark and frightening reality facing us. Gangs promote violence and crime, they terrorize communities, they intimidate and kill witnesses. They are brutal. And those who play down the statistics or who try to sugar-coat the situation, may be dangerously out of touch with the country's gang culture and how gangs are terrorizing citizens.

So I am satisfied that this Anti-Gang Bill is necessary law, and its provisions have been carefully considered and constructed. I agree with Sen. Lutchmedial, we may need to do some tweaking at the committee stage, but the Attorney General has already indicated, he is leaning in that direction, so I look forward to the proposed amendments in relation to clauses 5, 15(3) and 16.

Sen. Lutchmedial's observations on extending a suspect's detention via ex parte application, very worthy of consideration. I think we must always seek to design provisions which are fair to both parties, fair to the suspect as well. But in general, I find that the mens rea requirement in the offence sections knowingly or could reasonably have known and the imposition of specific intent requirement ensures that only members who are aware of the gangs' criminal activities or who actively participate in these enterprises are punished.

Now, I have heard a lot flak about clause 10(2) and that somehow we have reversed the burden of proof. I disagree with the interpretations that have been given there. 10(2), to my mind, is quite clear, it follows 10(1). 10(1) says, listen, if you have been using a bullet-proof vest or a prohibited weapon, if you have in your

possession a bullet-proof vest or a prohibited weapon in the commission of gang-related activity, you have committed an offence. So what are you doing with a bullet-proof vest? What are you doing with a gun? What are you doing with gang-related activity? The presumption is, if you are caught in that situation, yes, you are in a gang, you are doing gang stuff. But what 10(2) says is, look it is a defence if you could prove that you really did not know. So it is not a situation of just clumsily reversing the burden of proof. It makes perfect sense to me. I have no problems with that clause.

In the United States, their Supreme Court held in the *United States v Chote* that the practice of associating with compatriots in crime is not of protected freedom of associated right. And I believe that our courts will also be reluctant to recognize gang membership as an activity protected by the Constitution.

Sen. Mark spoke about police power and the possibility of abuse. Does this legislation translate into a “bligh” for the police?—of course not. Anyone who suggests that is being disingenuous because there are checks and balances in place. Within the police service there is an internal affairs division that investigates incidents, suspicions of law breaking, professional misconduct attributed to police officers on the force. We have the Police Complaints Authority, an independent body mandated to investigate complaints against police officers involved in criminal offences, police corruption, serious police misconduct.

And then, of course, we have the courts which will carefully investigate claims brought against the police for unlawful detention, breaches of constitutional and civil rights, unfair prosecutions. We have a cadre of judges who stand ready, willing and able to act as guardians of law. So we must have confidence in the legal system and the ability of our judges to determine where the balance lies between the interest of the community and the interest of litigants.

So given all these checks and balances, I do not accept that this Bill is going to somehow turn Trinidad and Tobago into an undemocratic country or anything resembling a police state. And more to the point, at this very moment petitions are being signed across the breadth and width of Trinidad and Tobago by citizens calling for a safer Trinidad and Tobago. We cannot be tone deaf to their pleas. So whether I accept that this legislation cannot by and of itself provide a solution to the problem of gangs, and that unless we improve the economic and social conditions in high-risk areas, it will not change the underlying dynamics of gang activity in those areas, nonetheless, I genuinely believe that this Bill is a much-needed tool to fight what is a serious crime issue and dangerous criminal organizations, and we must recognize that the police service are not just guardians who blindly protect and serve. The police service is a specialized agency with their own intelligence, their own legal and technical expertise. Besides the fact that it is the police who put their lives on the line when they confront well-armed and ruthless criminals, we should have due respect and regard for their expertise, their experience, their information when making recommendations on Bills of this nature.

So before concluding I would remind the armchair philosophers and those who glibly declare that no rights can ever be touched and those who refuse to accept that there are times when the national interest and the interest of the public are more important than individual rights by retelling Aesop's fable about the wolves, dogs and sheep, and this is how it was put over a 1,000 years ago. There was flock of sheep who were protected by a number of guard dogs. The wolves sent messages to the sheep protesting the discrimination which was being levied against them. The wolves said, we only want peace but we are being maligned by these dogs and their human masters, when, in fact, it is the dogs who are

dangerous. It is the dogs who are the slaves of people and it is the dogs who want to enslave, control and use you sheep. The wolves offered to swear a sacred oath of everlasting peace if the sheep would only get rid of these controlling and divisive dogs. The sheep believed the wolves and they sent the dogs packing. But no sooner had the dogs departed that the wolves fell on the sheep, slaughtering them. Unfortunately the sheep did not realize what was happening until it was too late.

Gangs are wolves in every sense of the word and when we ignore or minimize the dangers associated with them, when we demonize and disempower those who would protect and serve us, we do our citizens and we do law enforcement a grave disservice. If we abandon communities and citizens to the inevitable destructive consequences of gangs, we should not be surprised at the result, and if slaughter ensues because we fail to pass this Bill, then we are complicit. Madam President, I thank you. [*Desk thumping*]

Madam President: Minister in the Office of the Attorney General and Legal Affairs. [*Desk thumping*]

The Minister in the Office of the Attorney General and Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal): Madam President, I thank you sincerely for the opportunity to contribute towards this Bill this afternoon. Madam President, the Bill before us today is necessary in a contemporary and a modern society. It is absolutely necessary in a world such as ours where young people, Madam President, and children are amongst our most vulnerable. Madam President, and my brothers and sisters of this Senate, I do respectfully say that this Anti-Gang Bill, it is not an if, it is not a but, it is not a maybe, it is a must if we are to put a handle on criminal activity, especially criminal activity that affects children in this country.

Madam President, I used the word “vulnerable” with certitude. As in my

previous incarnation as a defence counsel and I will share a very personal story with Trinidad and Tobago and this honourable Senate. In my previous incarnation as a defence counsel, I recall, Madam President, appearing in my first criminal matter, a fresh faced attorney-at-law eager to learn. I distinctly recall going to the prison to meet my very first criminal client, a 14-year-old boy.

Madam President, the scariest thing is to look into someone's eyes and see absolutely nothing. The scariest thing is to look into a child's eyes and see almost a soulless being. This young man I will never forget, he said to me, he said to me, "The best he ever felt was when a gun was placed in his waist". He said to me and I will never forget, he said, "The best feeling..." and I will put it exactly as he said. He say, "I will tell yuh". He said, "The best feeling is walking down that square and knowing booi, booi, booi, ah could wipe out a man. I felt like a god." And this story remained with me because it was a 14-year-old boy saying to me that this is what empowered him.

Now this young man, Madam President, he was a part of a renowned gang at that time. And yes, I did secure an acquittal for him, and I applauded myself as a young defence counsel at that time. But now in retrospect I ask myself, did I really save that child? Yes, I secured him an acquittal, but did I really save him? Madam President, honestly in retrospect, I do not believe I did, because what I did is I released him, as Sen. Vieira said, I released him to the wolves that were still existing outside there in our society, the wolves that were waiting with bated breath to bring him back into gang culture.

Madam President, I did not have a full opportunity then to truly save young men like this 14-year-old client of mine but now serving in the capacity in which I do as a Minister of Government in this Parliament, I believe I now truly have an opportunity to save those young men who cannot save themselves. And this

Anti-Gang Bill I truly and completely believe is one way in which we can save our young men especially young men from shattered communities in our country.

[Desk thumping]

Madam President, we must save them. With this legislation we can save them. There are provisions in this Bill to save them. This is our legislative intervention in an attempt to put a handle and suppress crime and criminal activity in this country. You know, I have heard many talks about the stats not looking good, but I want Trinidad and Tobago to ask themselves, I want our citizens to ask ourselves, what are we to do then? Simply sit by and do nothing, because the stats do not look good on paper? We cannot. As a Government it is our responsibility, Madam President, it is our responsibility to use legislation as the current one to, at least, for the very least to suppress criminal activity in this country.

Now, there are many points that Sen. Mark would have made but I would leave this, I will address those comments in my winding up because there are certain areas of the law that I want to address and put into the public record as it relates to this particular Bill.

If I may respectfully, Madam President, take my colleagues to clause 15 of the Bill that appears before us, I will pay specific attention, Madam President, to clause 15(1) and 15(2) of the Bill. Now clause 15, Madam President, in essence it deals with police powers of entry, search and seizure, and 15(1) specifically states that:

“(1) A police officer may arrest without a warrant a person whom he has reasonable cause to believe is a gang leader or gang member or who he has reasonable cause to believe has committed an offence under this Act.”

Now, why I have personally plucked out this particular clause is because I want to deal with the issue of reasonable cause, because for some reason there seems to be

people in the public who believe that we are giving the police unlimited powers and there is no control. So to answer your question, Sen. Vieira, you made a point, Sen. Vieira, and I am starting with this clause because you are correct. There are checks and balances on the police, and even within this legislation there are checks and balances and that check and balance—one of those checks and balances is found in the term, the legal term coined “reasonable cause”.

Now I want the record to reflect, Madam President, that police officers cannot just arrest a man or arrest someone on a vaps. They cannot wake up one morning and just decide, “ah going and take down ah man” because he is a gangster or a gang member. We understand as legislators on this side that the area of contention is that people, as I said before, may believe or the public believe we are giving the police extended powers. But if I may respectfully address the case or allude to the case, Madam President, of *Nigel Lashley v the Attorney General of Trinidad and Tobago*.

Now this was a particular case adjudicated upon by Justice of Appeal Justice Narine. And in this particular case, Madam President, Justice Narine dealt with the issue of reasonable cause and its meaning within the confines of the law. And he stated, he was in full support of the principle of reasonable cause. Now in that very same case of Nigel Lashley, Justice Narine also made mention of another case known as *Dallison v Caffery*. Now, *Dallison v Caffery* was a case which was adjudicated upon by Lord Diplock. And Lord Diplock in that particular judgment, he said that the test for reasonable and probable cause has a subjective as well as an objective element. He went to say that the arresting officer must have the honest belief or suspicion that the suspect had committed an offence and a disbelief or suspicion must be based on the existence of objective circumstances which can reasonably justify the belief of suspicion.

This essence, Madam President, is not an officer operating on a “vaps”. It is not an officer operating on a whim. It is not an officer operating on a fancy. So by us inserting the clause “reasonable cause”, even though we are widening the hub and scope of the powers of the police, it must be done within the confines of reasonable cause.

Now, Madam President, if I may even take us to our jurisdiction. A police officer need not have evidence amounting to a prima facie case but at the same time he must not act on a mere gut feeling. And that was actually taken from the case of *Roopnarine v the Attorney General* which is a local case.

Now the High Court, Madam President, in this particular case of *Roopnarine* went into broad detail as to what was suitable to determine the arresting officer had a reasonable and probable cause to arrest someone. Now, in determining the issue in this particular case, the court took into account factors such as the nature, sources and quality of information. The court illustrated the degree to which police officers had to be cautious in treating information before them. So by quoting these case laws and by defining and explaining what reasonable cause is, Madam President, what I am saying is that and by importing the term “reasonable cause” in this particular piece of legislation, what we are not—what I am saying is, we are not legislating insanity by giving the police wide discretion in arresting. The police officers are going to be guided by the definition of reasonable cause within the parameters of the common law.

Now the brilliant Attorney General, Madam President, in his wisdom understands the parameters within police officers will have to operate. And as a result of that, was very mindful to include that provision in this particular clause of the Bill. So while we are increasing the police powers, we are doing it within the parameters of the reasonable cause.

Sen. The Hon. R. Sagrarsingh Sooklal (cont'd)

Madam President: Minister, if I could just ask you to lower your voice.

Sen. The Hon. R. Sagrarsingh-Sooklal: No problem. Yes, Madam President. I am surprised Mr. Roberts is not here—Sen. Roberts. [*Laughter and crosstalk*]

Madam President: Sen. Lyder, please desist. Continue, Minister.

Sen. The Hon. R. Sagrarsingh-Sooklal: So, Madam President, so that in essence is one of the major reasons why 15(1) I believe was crucial for me to, at least, explain so that, at least, we can place into the public the understanding that we are not simply giving the police an unlimited amount of powers. They are going to be restricted by the definition of reasonable cause within the parameters of the common law, settled common law that exists in our jurisdiction.

Now, the Attorney General, Madam President, would have indicated that there are amendments which would be brought to 15(3), so I will not look at that. I will now respectfully take my colleagues to 15(2) of the Bill that is before us. Now 15(2), clause 15(2), Madam President, I am dealing specifically with the issue of constitutionality here. Now, clause 15 subclause (2) goes on to say that:

“A Magistrate...”—under his hand—“may issue a warrant to a police officer authorizing the police officer to enter and search a dwelling house where the Magistrate is satisfied by evidence on oath that there is reasonable ground for believing that there may be found in the dwelling house a gang leader...”—and so on.

Now again, if I may address my colleagues to another case. There is a case of *Central Broadcasting Services Limited v the Commissioner of Police*. This particular case, Madam President, went on to quote another case by the name of *D.P.P. v Barnes*. This case alluded and explained what the concept of a dwelling house was. And it was noted that a dwelling house is much more, Madam President, than brick and mortar. It is a home of a person and it must therefore be

afforded protection in law.

Now, because again as legislators we have recognized that a house and a dwelling house ought to be treated very differently even though, again, while we are giving the police increased powers, we have ensured within the parameters of this legislation that the powers that the police have is limited when it relates to entering into someone's dwelling house recognizing that that is where we may trip over issues of constitutionality if we just tell the police, "well yeah, you could ride up on a man going to his house and do whatever you want". Right? So we have made provisions within 15(2), Madam President, as it relates to dwelling houses.

If I now may analyse and make a contribution, Madam President, to clause 16 of the Bill which is before us. And this particular clause, Madam President, this clause deals with the issue of detention. Now clause 16(1), Madam President, it speaks to the powers of police officers to detain a person without a warrant for 48 hours. The officer as stated in the Bill must have reasonable cause to believe that the person who he is seeking to detain has committed or is about to commit an offence, and we all have seen the Bill so we know what the clause reads.

3.20 p.m.

Now, Madam President, I understand that the detention of a person it may be argued is a prima facie tortious case, and some may argue that it is even an infringement on section 4(a) of the Constitution of Trinidad and Tobago, and that speaks to the right of a person to liberty. Now, Madam President, I submit respectfully that the justification for 48 hours and the police's ability to detain for 48 hours can be found and is referred to in several international comparators. So, for example, if we look at the General Comment No. 35 Article 9, called "International Covenant on Civil and Political Rights (Liberty and security of person)". We see in that particular article, 48 hours to detain someone was deemed

as reasonable and not being unconstitutional.

Another international comparator, Madam President, is the recommendation Rec (2006) 13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse—it is a very long article. This came out of the European Council. This is another international comparator that spoke about the 48 hours not being unconstitutional to remand someone—to hold someone, sorry. If I may respectfully read Rule 14 of this particular international comparator, it stated that the lapse of time between the detention of an individual and the individual's rights to appear before a judge should be no more than 48 hours. It was stated that:

“The interval between the initial deprivation of liberty and this appearance before such an authority should preferably be no more than forty-eight hours...”

—and they recommended 48 as being a sufficient timeframe. So that is international comparators.

So, in Trinidad by presenting this Bill and speaking to the 48 hours, we are not departing legally from what the international position is. Even if we look at case law, we have the case of *Dallison v Caffery* again. That particular case, Sir Justice Stollmeyer, in particular, said that while there is no statutory provision restricting the period of detention in his wisdom he alluded to the use of 48 hours as a guideline. So again, by us including the period of 48 hours within the parameters of this Bill it has not departed from what learned judges in different jurisdictions would have alluded to. Even recently, Madam President, Justice Lisa Ramsumair-Hinds, I distinctly recall, in a written ruling dated the 1st, 2019. I believe it was the matter of the application of Dinesh Durga for the detention order, I believe it was under section 17(4) of the previous Anti-Gang Act, that was the

2018 Anti-Gang Act.

Now, the clause in which he challenged—the section which Dinesh Durga challenged was section 17(4) of the 2000 Act. That is now clause 16(4) of the Bill which is before us. And Justice Ramsumair-Hinds, in her wisdom, she said *inter alia* that 48 hours is a maximum period that can be used for detention.

“She also advised”—and from the judgement—“that in the case of all detentions under the act, within the first 48 hours of arrest and detention, the police should be acutely sensitive to the need to conduct their investigation diligently and expeditiously.”

And went on to give some suggestions as to what the police should do within those 48 hours of detention.

Now, what is incredible is that if we read lower down into this clause 16, for example if we look at clause 16(3) of the Bill that is before us, we have legislated what the police is now required to do during that time of detention. So, Justice Ramsumair-Hinds would have made mention to this since in 2019, and in this Bill we have legislated that. So we are saying to police officers that while you are detaining a man or a woman for 48 hours these are the checks and balances, these are the things that have to be done during that period of detention, and that is alluded to, as I said, Madam President, in clause 16(3) of the Bill which is before us.

Now if I may take my colleagues to clause 16(4) of the Bill. 16(4), Madam President, it gives the police the right to seek an order for continued detention beyond 48 hours, where it is necessary for preserving evidence and all of that. Now, this also practically is a very fundamental and important provision in the Bill which is before us. That provision where the police now can knock on the door of the court in 48 hours have lapsed, and it is very important from a very practical

perspective. So, for example, you may have cases where the police may arrest someone on a Friday evening.

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

You take them down, let us say under this Bill, if it becomes an Act. And you carry that person down but you have not been able to proffer a charge yet because you are still in the process of conducting an investigation. Now, to be able to lay a charge what may be required is some forensic evidence, some ballistic evidence. You may require substantial amount of evidence to be returned to you as police officers before you could actually proffer the charge. What this extension does, sometimes to get that evidence now may exceed 48 hours, and that is why I used the weekend scenario. So sometimes you might take down a man, you take him down on a Saturday evening, and it is difficult to get a forensic report or it is difficult to get a ballistic report within that 48 period. So what you have now is the police now, Mr. Vice-President, is that what we have is there is now an opportunity of police to knock on the doors of the judicial officer, asking for an extension of time beyond that 48-hour period. And this is absolutely crucial in a practical sense, and therefore we have to again commend the office of the Attorney General. We have to commend the Attorney General for in his wisdom including this provision for an extension of time. I mean, even as lawyers we find ourselves sometimes in a bind. In civil matters, for example, we have a 28-day period to file a defence, and sometimes there are just circumstances, evidence coming in late, the client is unable to get information to us, that we are required to knock on the door of the court *ex parte*, as well to make an application for the court to decide whether they are going to grant us an extension of time.

I think it was Sen. Lutchmedial spoke about her concerns about the *ex parte* application. And even at a High Court level in civil matters we can make *ex parte*

applications, and it is for the court to decide, it is for the judge to decide based on the application that is before him or her, if it is, one, and I have seen where I have made personal ex parte applications and a judge may look at the evidence or the application, and say, “Nah, nah, nah, I need the two parties to appear before me before I grant whatever it is that you are seeking ex parte.” So, we have not locked out in this particular—even though we have said in this provision that an ex parte application can be made. An ex parte is an application—for the public, it is an application that can just be made with one party appearing, not both parties appearing. Even in an ex parte application scenario, a judge still has the discretion to decide that, okay, I am looking at the facts and I do not think this is sufficient evidence, I need both parties to be present in this particular hearing. So this is to allude any concern, because, you know, people may hear the word, “ex parte, ex parte” and do not understand what we are talking about. Certainly we are not tripping over any constitutional rights of anyone by saying this application for a further extension of time can be made by an ex parte application, Mr. Vice-President.

So, this is as it relates to clause 16(4) of the Bill that appears before us. If I may now respectfully take my colleagues to clause 6 and clause 13 of the Bill which is before us, I personally am very, very happy and in full support, a 100 per cent support, I guess being a past teacher, being a mother of a young boy as well, for this particular provision because it refers to the recruiting and coercing of young people into gangs. Now, I would like to consider, as I said before, this clause, clause 6 of this Bill in conjunction with clause 13 as it provides for the recruiting of a gang member. Now, clause 6 specifically states that:

“A person who coerces, encourages, entices, aids and abets another person to be a gang leader or gang member commits an offence and is liable

on conviction on indictment to imprisonment for twenty-five years.”

Clause 13(1) goes on to speak about:

“A person who recruits another person to a gang commits an offence and is liable—

(a) on summary conviction to imprisonment...”

And then clause 13(2) goes on to speak about:

“A person who recruits a child to a gang”—also—“commits an offence...”

And it speaks to what they are liable for:

“(a) on summary conviction to imprisonment for fifteen years; or

(b) on conviction on indictment to imprisonment for twenty-five years.”

Now, this particular provision in particular it pulled every single heart string that I have as it relates to child offenders—as it relates to persons preying over children and trying to coerce children into joining gangs. And the reason for this is because I am not sure if any of us recall the case of Joshua Andrews, and Joshua Andrews was a case in about 2018, and my father at that time he was the Senior Superintendent for the North-Eastern Division. He was in charge of the entire division, and my father for most of my life was a police—well, for my entire life he was a police officer. At that time he was in charge of, as I said before, of North-Eastern Division. And it was the first time in my entire life I ever saw my father come home after a matter, dealing with an issue, and he looked totally winded.

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

Sen. The Hon. R. Sagramsingh-Sookram: Yes, thank you very much. It was as if he could not contain himself. And that particular matter, while he was not the investigating officer in the matter, the child who was killed during a gang crossfire, which is Joshua Andrews, attended a school which fell into the North-Eastern Division, and my father would have had to go to that school to counsel some of

these children. And I would never forget he came home and he said, “you ever hear somebody cry from dey belly? You ever hear somebody cry because they feeling pain from their belly?” And I think it was because the children, the other students in the school who had known Joshua Andrews, that had affected them, that assault and that murder of that child had affected them so tremendously that not even my father who had so many years of experience could have handled that.

And this particular clause, Mr. Vice-President, I respectfully submit, it has the ability to protect our children. It has the ability to protect those little boys who do not have the ability to protect themselves. There are many young men outside there, we all understand, that they lack father figures in their households and they turn to gang leaders because they feel a sense of belonging. It is our responsibility as a Parliament to protect those who cannot protect themselves. And I am saying this to ask my learned brothers and sisters of the Independent Bench to give our Government the full support in this Anti-Gang Bill. Yes, the statistics may not show an insurmountable of convictions, but it could certainly play a part in suppressing criminal activity, it can certain play a part in suppressing gang activity in this country. It is our responsibility, I respectfully suggest, and I will continue to say it, to protect those who are not in a position to protect themselves, and my asking my colleagues, the hon. Senators of the Independent Bench, to please, notwithstanding—yes, we may need to amend certain parts of the Bill. The Attorney General said that he is open to conversation. But the possibility of suppressing gangs and saving a child who cannot save himself, because the adults who were supposed to save him did not save him, or did not protect him. We may very well be able to do that with this Bill that is presented in this Senate today.

So to that extent, I know I did promise that I would respond to some of comments made by Sen. Mark. I know Sen. Mark said that this Government we are

dealing with law and we are not dealing with the social issues as it affects, as it relates to young people. I would say that this Government did not only just develop a social programme to help young people, we created an entire Ministry to help and save young people, and that Ministry is found in the form of a Ministry of Youth Development. I know Sen. Mark spoke about his theory on SRPs and all of that. I want the record to reflect that the recently passed SRP and PCA Bill that was brought and passed last week in the House, it is the intention of that law to place SRPs on the same footing of even police officer. I know he quoted some statistics, but I also have stats which I want to put in the public record. For example in the Trinidad and Tobago Police Service, we have an audit of 524 male officers, 1,859 female officers as opposed to the SRP audit which for males there is 357 part-time male officers and 242 female officers. Also on the SRP audit, and this I need to place in the public record, is that for full-time male officers there are 2,913 officers and 864 female officers. So in total, the TTPS we have about 6,983 officers, whereas the SRP there is 4,376 as the total figures.

Now, Sen. Mark I recall he made a recommendation as to amendment that he wants the police to provide the report, the station diary extract or something to that effect. He wanted us to legislate that. I want Sen. Mark to know that under the standard process of disclosure, this is allowed. So, with these few words, I fully support this Bill, and I ask the learned colleagues of the Independent Bench to give us the support that we require. Thank you very much.

Sen. Damian Lyder: Thank you, Mr. Vice-President. Mr. Vice-President, today we come to this honourable House to bring justice to those who have lost loved ones via gang-related activities. Today we come to this honourable House to give the youth of this nation a fighting chance in surviving in the recruitment into a life of crime. Today we come to this honourable House, Mr. Vice-President, and we

should be putting aside politics to give Trinidad and Tobago a hope for the future in reducing crime. And, Mr. Vice-President, the Opposition is always pleased to participate in any legislation that will deal with the scourge of crime. However, Mr. Vice-President, the Opposition proves time and time again that we will not simply support blindly, legislation which on the surface appears to fix the issues related the gang-related matters simply by the name of the Bill. But rather we will support good law in the best interest of the citizens of Trinidad and Tobago.

So, Mr. Vice-President, during my contribution I will demonstrate some of the challenges of implementation with this Bill, which were anchored in clauses 5 and 6 as it pertains to sentencing and coercion. Clauses 11 and 12 harbouring and conceal a gang member. Clauses 15 and 16 regarding the challenges of the TTPS, as well as the ability of the TTPS to fulfil their duties that they are given in this law. But, Mr. Vice-President, we heard the Attorney General state that this is being passed by a simple majority, because he stated that we, the Opposition, would simply go against it, that we would not agree with this law giving the impression to the people of Trinidad and Tobago that we do not care about crime, and I cannot let that comment pass lightly. Because I must make it abundantly clear to this Senate as well as to the population of Trinidad and Tobago that I for one am committed to any sensible action that will deal with reducing crime. I do not know, Mr. Vice-President, if the Government could say the same. Because, we have a Minister of National Security who is on record publicly stating that he is not responsible for crime. Mr. Vice-President, one only has to look at the *Express* online on January the 20th 2020, when it reads:

“National Security Minister Stuart Young says he is not responsible for crime and does not need to find excuses for the current spate of crime.”

We did not go on record in the papers saying that. What kind of leadership is

that? We all belong to Trinidad and Tobago, and it is all of our responsibilities to fight crime. All of this inside of this House, all of us on both sides and the Independent, it is the responsibility of the police service and other bodies who are responsible to fight crime, to deal with crime. It is the responsibility of NGOs and the private citizens of this country to assist and report when they see crime and gangs in this country, which some of my colleagues will speak more about it in terms of the social aspect. Mr. Vice-President, the average citizen has their part to play. But unfortunately we are saddled with a Minister of National Security who does not believe he has the responsibility to crime. So, if that is the view then what is left for the rest of us?

Mr. Vice-President, in contributing to this Anti-Gang Bill before us here today, we have to look at the history for us to understand where we came from and where were going. Let us not forget that it was the United National Congress-led Government in 2011 that introduced this Anti-Gang Bill, because we saw the need for legislation that would deal with gang activities in this country. But, Mr. Vice-President, you see in any Bill, passing any Bill and beyond that the devil is in the detail, Mr. Vice-President. Mr. Vice-President, Sen. Lutchmedial spoke in great detail about the legislative side of this Bill. She went to great lengths to show some of the shortcomings. I think it was also—and, Mr. Vice-President, the issue I have here today is the fact that we are coming once again, and if you permit me the latitude just to make the context for the rest of my speech, we have come here today to pass such an important piece of legislation by a simple majority. And we want to know something as serious as this, why is it not being passed as a special majority.

Mr. Vice-President, the Attorney General himself has admitted, by his own comments, that he has had to water it down to bring it here, to pass it here today by

a simple majority. So why are we here debating this? When we look at when they brought the Proceeds of Crime Act in the Bill under section 17 to justify the removal of the special majority. We take note that the Proceeds of Crime Act was in fact a special majority law. So no amount of smokes and mirrors that you introduce into this House would prevent us from exposing the craft in silencing and nullifying the voice of the Opposition. Our duty in this honourable House by mandate of the people of Trinidad and Tobago is to call out the Government, and keep the checks and balances there. So, Mr. Vice-President, I am saying that this Bill should be passed by a special majority. The Attorney General himself has said he is going to be open to amendments, and he said he is going to be open to amendments to the Independent side, to the Opposition side, every side. I think I also heard Sen. Vieira brilliantly say it, that we all should be coming here and working together with amendments to pass good law. So what is the fear of passing this by a special majority? If the Attorney General is so confident and his colleagues are so confident that the law is in fact good law, and that he would be giving the opportunity of all sides of the House to contribute, then he should take away this simple majority and pass it as a special majority.

Mr. Vice-President, I told you that the devil is in the detail. And I would not be repetitious in quoting all the different issues within the Bill. I will look at another part of the detail, because I think it was Sen. de Freitas himself who quoted or made reference to Sen. Lutchmedial. Sen. Lutchmedial also made this reference, that no law can be executed successfully unless to protective services are properly resourced. I think Sen. de Freitas said that it was a cut out. But in my humble opinion, it is a reality, Mr. Vice-President. Let us look at the details when it comes to resourcing. Mr. Vice-President, clauses 15 and 16 of this Bill adds a burden to the police service in treating with the offences under that Act. That being said, I am

concerned about the matter in which the Government has treated with the resources of the police service. Mr. Vice-President, as recent as last month we saw the Commissioner of Police before a Joint Select Committee of Parliament stating that they were up to \$182 million in debts to suppliers. But I want to make reference to a *Newsday* article on Monday the 15th of February, 2021. They reported this to the public, and it states here that the:

“Commissioner of Police Gary Griffith said on Monday, the police service continues to function at optimal levels despite owing suppliers \$182 million.”

And, Mr. Vice-President:

“He said Finance Minister Colm Imbert and National Security Minister Stuart Young are doing all they can to...deal with that debt.”

That was in the middle of February.

Mr. Vice-President, nothing has changed. You would be at pains to know that nothing has changed, and while the Commissioner has given us this assurance the operation of the TTPS would not be affected, because we know he goes out there and fights everyday with the members of the Trinidad and Tobago Police Service as best as they can. I am not concerned that if the Government does not address the issues of resourcing the police service then this law, Mr. Vice-President, will all be in vain. This will be in vain, and I will describe what I mean by that as I go along.

The Commissioner should not have to be begging suppliers not to pull the plug on basic services such as the repair of vehicles, fuel, electricity. Mr. Vice-President, there as a video circulating of a man trying to make a police report in Matelot, and when he reached there the two police officers were outside under flambeau, the man say “nah, this cannot be for real.” He “turn around and gone”.

What if that was a report on a gang about information pertaining to a gang that this Bill could address? And the man turned away and walked off. I mean, I am not trying to be facetious, it is indeed a serious matter. When we look at all the other operational equipment or other services that allow police officers to execute their job in an efficient manner, I heard that the Attorney General said when he was coming to the House to say to the Senate that he was going to amend 15(3). I think that I heard him that in their rush to present the Bill they did not get the time to send the amendment. What I am saying, that the Attorney General should not be rushing this Bill, and I ask that the Government first clears the debt of the police service, where officers put their lives on the line every day to protect us so that this Bill would make sense if passed, or when passed, because they would pass it by a simple majority.

So, given all of that, I do commend the TTPS for working on such a shoestring budget. But, Mr. Vice-President, I also heard Sen. Vieira speak about tackling crime with a holistic plan, a master plan. Well, I humbly submit and say to Sen. Vieira, this master plan requires resource. It requires resource from the Government, not just coming here to read out some clauses and pass this Bill. It requires resource for this holistic plan. So in the spirit of Members giving statistics here today, I want to give some actual facts and figures here so that those on the other side when they are ready to—when this is actually passed that they understand what is necessary to make this law work.

When you look at the—Mr. Vice-President, these figures are alarming to say the least. The TTPS allocation for goods and services in fiscal year 2020 was \$515 million. However, the TTPS releases for 2020 were approximately \$335 million, some \$180 million short, putting the TTPS in a debt of over \$150 million to contractors and providers who will be playing a part in assisting the TTPS to

execute these laws. Mr. Vice-President, it gets worse, as for fiscal 2021 the TTPS was allocated a meagre \$324 million, just short of 200 million less than the year before. How can the TTPS be expected to be effective when their budgets are being cut? And, Mr. Vice-President, I am sorry to break this down to the most ridiculous. To date the TTPS has received, six months into the year, the TTPS has only gotten releases of a meagre \$58 million. And as per the financial regulations, Mr. Vice-President, they need to use that money to pay the debts of the year before.

3.50 p.m.

So, Mr. Vice-President, in truth and in fact the TTPS is broke. It is also understood that the hon. Minister of Finance had received approval to utilize a loan for the TTPS to cover the outstanding bills from 2020. Again, there have been no releases. Mr. Vice-President, we are debating a Bill here today that requires the police service being effective and they are not provided with the resources to do so. The TTPS is therefore running on goodwill and credit which will shortly be stopped as a number of service providers simply cannot sustain this any longer.

How can police officers respond to certain matters? When we look at clauses 15 and 16 in this Bill, should the TTPS get information about a gang leader or a gang member and is there to use 15 and 16, somewhere in Arima, Mr. Vice-President. When you hear the fact that more than 30 per cent of the vehicles of the TTPS are now broken down, more than 1,700. What are the TTPS going to do? They get the information on the gang, what? Jump in a red band maxi and go down the road and hold the criminals and bring them back, then jump in a maxi and go to the court?

Mr. Vice-President, another resource problem seen here is this matter about the Automated Fingerprint Identification System. It has come to my attention that

currently this system is not working and this is as a result of the TTPS being unable to pay for the fees of this system. So this system currently, this Automated Fingerprint Identification System is literally shut down. So we are hauling 15 gang members under many of these provisions in the Schedule and we open the drawer, pull out the whole—I mean, I think Sen. Sagrarsingh-Sooklal can talk to her father—

Mr. Vice-President: It is Minister. Minister in the Office of the—

Sen. D. Lyder: Sorry, Minister. My apologies. Could speak to her father for him to remind her about when they used to open the drawer and pull out the “lil thing ah ink with the roller”. “So we go roll we fingerprints and go again.” This is gang members we are talking about, you know. But Mr. Vice-President, the one that gets me is the recent reports coming out of the TTPS that they do not even have toners for their printers in the police station.

Mr. Vice-President: Okay. So Senator, I have given you quite a bit of leeway. I am assuming that—because you have spoken about the point of resource to the TTPS—

Sen. D. Lyder: Yes.

Mr. Vice-President:—at length, giving several examples. So I am assuming now that you have another point you want to generate.

Sen. D. Lyder: Yes. And it is regarding resources, but I will change the point, I will bring it to a different angle now. But if you would just allow me to say this last part because I think it is very pertinent, because the Attorney General did mention, so I am coming from what he has brought to the debate, he has mentioned that they are looking at changing the definition of the law enforcement to include SRPs and so forth. And I believe this would be to help to resource the police service so that they can fight these gangsters. But my understanding, Mr. Vice-President, is that

funds that were allocated in the budget for the recruitment of police officers, some—I think it was reported—300 police officers every six months per batch. This has not been provided to the TTPS. So the TTPS with officers retiring, cannot even bring in regular officers into the fray. And maybe that is why Sen. Mark was so passionate about the SRPS, why he spoke so at length about the SRPs and what could be formed now. We are not bringing regular police into the service, but we are bringing SRPs. But as Sen. Mark has already went at length on that.

But, Mr. Vice-President, another issue of resources for the national security entities that prevents this Bill from being as effective as it should, when you look at the extreme powers given to officers as seen in clauses 16 and 17 to protect the innocent from the few and the very few, because we know the Commissioner of Police has weeded out many of them, but for the very few unscrupulous officers who would be using these clauses, we get concerned when we do not see the resources put in place to protect the innocent. So when we hear—and I hope that it satisfies you as a different angle, Mr. Vice-President, because this is important. Because this Bill could potentially affect the constitutional rights of citizens who may be innocent.

When we look at 800 cameras, CCTV cameras broken down; when we look at the collapse of the DNA Investigation Unit due to the lack of funding for crime scene and forensic investigation consumables; when we look at the fact that there is a DNA lab that has not been commissioned or approved to be commissioned private or a government entity, that is a DNA lab, when we see that that is not there; when we see the lack of resources for the crime scene investigation and especially, Mr. Vice-President, as referred to in this same article, Monday the 15th of February, 2021, the Commissioner of Police stated:

“Once the police receive funding they need, Griffith vowed to make it

mandatory for officers in all the frontline units to have body cameras.”

Mr. Vice-President, this is important, especially when we hear people, the citizens in this country complaining about the possibility of police brutality or a few unscrupulous police officers taking advantage of them. So we do not see resources put in place to protect these people. Because, Mr. Vice-President, every police officer is empowered with this Bill. Everyone from “constable Brown” to “inspector Boy Blue” is coming with or without a warrant to arrest you. We will see if they get the warrant.

But, Mr. Vice-President, many of us remember that song, that reggae song. But why is it relevant here? Because it tells the story of an unscrupulous police officer who beat a man until his eyes were black and blue simply because he said, “what the ‘h’ the police will do”. So where are the resources to protect our innocent citizens when we pass this piece of legislation here today, Mr. Vice-President?

Another very important matter, Mr. Vice-President, as it pertains to resourcing our borders, our porous borders. And this is a completely different topic now. Mr. Vice-President, in the list of offences in the First Schedule, Item No. 30, I think it is here, 30, yes, No. 30, under the Trafficking in Persons Act raises the question of our porous borders, therefore this Bill cannot be considered in isolation. I once again tie the resources of our protected services at the borders to this Bill. Because this Bill standing alone by itself simply cannot stop this activity. We see national security vessels parked up, a lack of patrols, a lack of diesel and the Government starving the national security apparatus of needed resources in this regard. This breaks this Bill down in this matter simply as a plaster to a sore.

Mr. Vice-President, one matter which disturbs me in contributing to this Bill is that we are now in a predicament in our country being the host for Venezuelan

gangs. So it is not just local gangs now, you know; Venezuelan gangs. So I want to ask the Attorney General: How does this law prevent the situation from gangs coming in through the porous borders? We recall the notorious gang leader of the Venezuelan Evander gang, a one Mr. El Culon who was held in Trinidad with guns and ammunition and was sentenced to prison in June of 2019. So we have a situation where Venezuelan criminal gangs have now migrated into Trinidad and Tobago and therefore increasing the criminal element burden on our country.

We also note that the Anti-Gang Act was not needed to apprehend him, you know, or detain him or convict him. However, should we apply the Anti-Gang Bill as proposed under clause 5 where the maximum sentence is 25 years, we will encounter a challenge of an increase in the sophistication in criminal matters of those convicted. That rehabilitation component of our correctional facilities may be blunted by the super criminals from across the Gulf mixing with our local population for a possible 25 years, literally making our prisons a university of gangsterism. Therefore, I ask the Government if—I think I heard the Attorney General talk about incarceration and the prisons. Is the Government prepared to put a separate facility for those international criminals when they are caught by this Anti-Gang Bill? And I put it to the Parliament today that that should be something that should be debated, if not now, in a subsequent Bill.

So, Mr. Vice-President, the members of the Evander gang are here. One would have to assume that they are here illegally and perhaps looking for jobs in the construction sector while they are also engaging in drugs and gun-trafficking and so forth. But they may have co-opted legal Venezuelan migrants into this gang structure. So I make an appeal to the Minister of National Security and the Government to look into this matter urgently. We can have Venezuelan gangs infiltrating the Trinidad and Tobago communities and forming cells in every

community. And I am going to get to a point now about the Venezuelans creating cells.

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

Sen. D. Lyder: Thank you, Mr. Vice-President. This will surely be captured under clause 6 of this proposed legislation, under seeking to cause persons to join a gang. But these international gangsters can be caught by other existing criminal legislation as well in particular when it comes to the penchant of trafficking in guns and narcotics. Mr. Vice-President, it is a recipe for a disaster and we hope it is not too late. In fact, currently going on now, we see the re-registration process of Venezuelan nationals under the Ministry of National Security, it has just begun. So I am going to ask the question, what is the Government doing to screen those persons that are being re-registered to ensure that they are not gang members and do not have the ability to bring gangsterism to Trinidad and Tobago? Is there some Interpol report, is there communication with the authorities in Venezuela? I do not know. What checks and balances are being done? How much resources are the TTPS getting to deal with these gangsters? Because, Mr. Vice-President, many of them speak simply one language and that is Spanish. And so, does the TTPS have the resource to deal with Spanish-speaking gangsters in this country?

We pick up these gangsters under clauses 11 and 12 and we catch persons in gang activity. Do we have officers or do we have somewhere or resources to be able to deal with them in Spanish, to be able to deal with infiltrators who infiltrate into gangs to report back to us, whistleblowers? Do we have those persons? I do not think the Government is taking how seriously the porous borders are to this gang problem we have in this country. And so that is a matter of resourcing. And it is a matter because the work force in Trinidad and Tobago is already saturated with desperate Venezuelans and therefore it represents an opportunity for local gangs

and/or Spanish gangs, for persons who are willing to come on board because they are desperate, they have no money.

So while we have the Evander, maybe the first Venezuelan gang, to be shown in our countries, others will surely follow if measures are not put in place and the borders are not resourced properly to stop the influx of illegal Venezuelans in this country. So I am saying that this Anti-Gang Bill is not enough to deal with the issue of the Venezuelan migrant gangs. In 2019, when El Culon was arrested, the anti-gang legislation was in place but he was not charged under that, rather under the possession of illegal firearms and other charges.

So, Mr. Vice-President, as I conclude, I have shown during my contribution the challenges of implementing this Bill that were anchored in clauses 5, 6, 11, 12, 15, 16, and the inability of the TTPS to do their job without resources. But one wonders why is the TTPS and why is the Commissioner not being given this support. Maybe they intend for him not be there in a year's time. We will see. This Bill on its own will not bring an end to crime. The Government will struggle to identify anyone they have convinced anyone about this Bill bringing a total end to crime. We are not against Bills to crime. We are for good legislation, but we are also for this Government bringing, as Sen. Vieira said, a holistic approach to fighting crime.

So, Mr. Vice-President, I call on this Government to stop bringing plasters for a sore. Ensure proper funding for the protective services in this country. Ensure this Bill being passed by a simple majority today can actually be implemented, because bringing law alone and in isolation will do nothing to reduce gangs and crime in this country. You see, I listened attentively to Sen. Sagrarsingh-Sooklal, her story about defending this 14-year-old child. But it seemed like when Members on that side join the PNM, Mr. Vice-President, they finally find God. So I will say

to the Government, instead of only bringing this Bill to the Parliament they should be focusing on how that 14-year-old boy became a criminal in the first place, preventing 14-year-olds from turning to crime. And, Mr. Vice-President, the Government could start that by giving our children laptops at school. And with that, I thank you.

Sen. John Heath: Thank you, Mr. Vice-President, for the opportunity to contribute on this Bill, short title of which is the Anti-Gang Bill, 2021. Mr. Vice-President, let me say that gangs and gang-related activity is real. And what I have gotten from all the speakers so far is that there is a general consensus that it is a scourge in our society that presently exists. It would be perhaps true to say that the level at which gangs and gang-related activity exists is not mirrored by the detection or it is not mirrored by the number of convictions in relation to the legislation that has been in place in the past. But having said that, I am of the view that we must look upon the proposed Bill and say to ourselves whether or not this proposed Bill is so egregious or so offensive to civil society that we ought not to support it.

I agree with my colleague Sen. Richards when he stated that it is untenable that in 2021, we would not have legislation in place to deal with gangs. At the same time we simply cannot have legislation for having legislation's sake and that is why I would have alluded to the fact that we simply cannot pass anything and call it anti-gang legislation. I am of the view that this is not any piece of legislation. I am also of the view that perhaps the reason why the detection rate is so low and the conviction rate as well, has more to do with the intelligence and information-gathering that presently obtains. And once we get a better handle with respect to intelligence and information-gathering we can see more productivity in the area of the detection.

Now, I propose not to be too long, simply because coming at the tail-end of the line-up, a lot of my colleagues would have echoed sentiments that I wanted myself to say, but to avoid repetition I would simply look to those clauses for which I perhaps have a slightly different take from what would have been advanced. And so that I would leave out those so as not to be repetitious. And the first one I want to touch on is clause 5. Clause 5 when it is read, 5(2):

“A person who commits an offence under subsection (1)(a) is liable on conviction on indictment to imprisonment for twenty-five years.

(1)(a) is a gang leader;”

There seems to be a deliberate attempt to make a distinction between the offence for:

“...a gang leader;”

And the offences which follow for—

“...a gang member;”

And:

“(1) A person who—

(c) performs an act as a condition for membership in a gang; or

(d) professes to be a gang leader or a gang member...”

Now, that is all well and good because usually when offences are strictly indictable it is because they are more serious-type offences. However, what happens in actuality, when several persons are arrested for gang-related offences you could have one being a gang leader, one being a gang member and they share the common offence of being involved in a gang-related activity. However, if one is indictable only and the other one can go by way of summary, what you may find happening is that there may be a split where the person who is charged as a gang member with the gang-related activity will have a summary trial and the gang

leader for the same gang activity would be tried on indictment. You would have the same set of factual matrix and the resources of the State will be stretched.

So what I want to suggest with respect to this, is that, and I think the learned Attorney General had alluded to it, is that with respect to 5(b), (c), all the offences being laid indictably and if need be those offences can be hybrid, so there is the option for it to be done summarily. But a prosecutor seeing persons charged together, gang leader, gang member and one offence of a criminal activity which can be done jointly, is not likely to recommend, because the recommendation has to be made by the prosecutor for it to be done summarily. He is not likely to make that recommendation if he realizes that there is bound to have two sets of trial—well, a preliminary enquiry and a trial, and so that the prosecution will have the say on that having regard to the combination of persons that is before the court.

Mr. Vice-President, if I may now take you to clause 10. Now, I know my colleagues have stated that it is in effect, clause 10(2) is a reverse burden. And I support that view that there is a reverse burden. And is not that a reverse burden is anything new in legislation, however, what must come before the burden is reversed is there must have been a clause which creates a legal presumption. Now, I think my colleague Sen. Vieira would have alluded to (1)(b) creating the presumption. I do not agree with that. (1)(b) says:

“(1) A person who—

(b) has in his possession a bullet-proof vest, firearm, ammunition, or prohibited weapon which he ought reasonably to know would be used,

in the commission of a gang-related activity, commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.”

Now, I do not agree that that creates a legal presumption.

Possession as we know—well, not as we know, sorry—possession can be constructive or actual. Possession here essentially refers to either one or the two—either one, sorry. It is either constructive or actual. A presumption is not created here because there is nothing akin to—and the best analogy I could find right now is—a deeming provision which is akin to section 21 of the Dangerous Drugs Act, where you are deemed to be in possession if it is found in: dwelling house, vessel, vehicle, you are deemed. So that creates a legal presumption which is rebuttable, and so what you then have is the reverse burden placed on the defence to show that the thing, the offending thing was not there with his knowledge or consent. So that is a persuasive burden which reverses to a defendant on the lower burden which is a balance of probabilities.

So with respect to 10(2), it seems to me, this is my view, that it exists, a burden exists sort of in a vacuum because the presumption has not been created before. And so, hon. AG, it is just something to look at whether or not we need to create a presumption first or it is even appropriate in the circumstances. So, for instance, for firearms and ammunition I could well see, I think with respect to possession of a bullet proof vest that is an offence. I cannot remember the exact offence now, but it is just to look at that area and see whether or not you need to create the presumption first before you reverse the burden. Similarly, the same thing would apply to clause 11(3) which says:

“It is a defence for a person charged with an offence under subsection (1) if he proves that he did not know or could not reasonably have known that the person he was harbouring was a gang leader or a gang member.”

You are reversing a burden and I am saying that I am not seeing the creation of the legal presumption for which the burden ought to be reversed.

Of course, hon. AG, what you need to consider here is that when you have a

reverse burden, essentially at trial your right to silence is taken away. Because, for instance, if the presumption is created on the case for the prosecution and you do not give evidence, then essentially you would be found guilty. So again, like the deeming provision in the drugs Act, if you are deemed to be in possession, drugs found in your home, if you do not give evidence in those circumstances to rebut the presumption, then you are going to be found guilty. So your right to silence is also something that comes into play here and that is why we need to get it right in that regard.

If I may now go to clause 15(1):

“A police officer may arrest without a warrant a person whom he has reasonable cause to believe is a gang leader or gang member or who he has reasonable cause to believe has committed an offence under this Act.”

Now, reasonable cause has always been the test with respect to arrest. So nothing is created when we say “reasonable cause” here. What I have some consternation with, hon. Attorney General, is the “without a warrant” and I will tell you why. If police are aware of persons for whom they have reasonable cause to suspect, then they can go and take out a warrant. Now, what the warrant is in essence, it is a safeguard which absolves the police officer from any suggestion of an arrest which has ulterior means. Because when you go for the warrant you are entitled to go on oath and satisfy, usually a magistrate in this case, that a warrant ought to be taken out for the person’s arrest. So that is a safeguard which I do not think we need to get rid of with respect to arrest. But it does not mean, for instance, and it has happened, if police were to see someone and they were to have reason to believe that that is a wanted person, there is nothing precluding the police from arresting that person, taking him back to the station to make an enquiry whether or not that person in fact has a warrant, is a wanted person.

Similarly, if that person is caught in the commission of a crime, there is nothing precluding the police from going straight to arrest that person. He does not simply have to leave the crime scene, go and get a warrant and come back and arrest him. So the law provides for that, but to do it *carte blanche*, to say that “arrest without a warrant”, I think the safeguard of the warrant absolving the police of any suggestion of a—yes, please.

Hon. Al-Rawi: Thank you, hon. Senator, for kindly giving way—do you mind addressing your mind, as I would like to hear it, as to how this runs in accordance with section 3 of the Criminal Law Act for an arrestable offence which is over five years? These offences under this Act all being over five years where there is a liberty to arrest without warrant in the existing law. Because I am concerned about the collision between the two.

Sen. J. Heath: Yes, but you see, I was about to marry 15(1) with 16(1) where you want to further detain the person. And I am suggesting to you that if you—in 15(1), if you arrest the person with a warrant, reasonable cause, then you need not trouble yourself about saying that you do not have a warrant here, because there can be no detention without an arrest. So the arrest is going to come first. Right? So once you have reasonable cause, 10 out of 10 times you are going to satisfy the magistrate that a warrant ought to be taken out.

4.20 p.m.

The good thing about the warrant is it does not die, it does not extinguish. Once it is taken out, it could lie for years and years until the person is found. So it does not have a shelf life. So if the police are aware of persons, their name and their likely address, take out a warrant for them. So the next thing is when they see them, they simply arrest them. And it has happened in the past where police have arrested persons believing—reasonable belief, that that person has a warrant taken

out for them and it turns out that they are right. So that is why I am saying, it is not that you cannot do it. The difficulty is—and I am saying it has been my experience, hon. Attorney General, where persons have been arrested and released, arrested and released without a warrant. It happens. If you put it in legislation, let me say that it would increase tenfold. However, if the policeman knows he has to go for the warrant, which is the proper thing to do, that safeguards him and he is not likely to go through the trouble to getting a warrant for any ulterior motive, save and except that he really has reasonable and probable cause. So I am just suggesting.

I do not think you need to put in here “without a warrant” because the warrant does certain things, and it lies there and it stays there until the person is found. And you could well imagine if there are 100 persons for which there is reasonable cause to believe that they are a gang or gang members, then take out 100 warrants and let it lie until those persons are found, bring them in, and hopefully the information you have gathered is sufficient to be converted to evidence and it could lead to a charge and then that person will have a trial. So that is why I am saying, once—I suppose, hon. AG, the fact that it is in black and white here that without a warrant you can detain someone for 48 hours, causes me some degree of consternation. But I think that might be allayed by simply putting an arrest with warrant up at the top because then the police must have—

Mr. Vice-President: Senator, one second. I think Sen. Vieira wants to ask.

Sen. J. Heath: Sorry.

Sen. Vieira: I want to direct your mind still on this clause 15(3), about the circumstances of hot pursuit where a police officer believes a crime has been committed, the felon has run into a particular premises or place, he does not have time to get a warrant. And so, this authorizes him, in hot pursuit, to gather that first

to go right away and seize that person. If you had to wait for a warrant, he will get away. Also, what about a situation where a crime is about to be committed and again the police officer is seeing them and he wants to intervene, he does not have the time to go for a warrant.

Sen. J. Heath: Yes. So I am not sure if you were here when I had alluded to that, that if a crime is being committed and similarly in the hot pursuit scenario, nothing precludes that officer from going to make his arrest. Nothing precludes him from going to make that arrest. However, what is contemplated here is outside of those scenarios. So that is what causes me some consternation. But even if you have “warrant” inserted here, in those circumstances, you simply do not leave a crime, go and get the warrant while the crime is going on. So you can do that. That is provided for. The law provides for that.

So with respect to clause 16(4), with respect to the ex parte application, I really do not have a problem with that because there is a provision for the person in detention to apply for a discharge of that further detention. Actually, in the application of Sergeant Durga that my colleague, Mrs. Sagramsingh-Sooklall, had referred to, the detention was for a further 11 days and it was of a person who Sergeant Durga had done some good investigative work with respect to satisfy the court, who was not easily satisfied that in those circumstances it was warranted to keep a man in police custody for 11 further days. So that, I have seen it in operation and because, I suppose, it was a High Court judge, it was no easy task in coming before the court asking for that, particularly as it is not every day that that is done.

So that, that there is that safeguard. I have less concern with that. All in the round, hon. Attorney General, I think this Bill is a good foundation from which you can build on. As I have indicated before, that this type of legislation is

required, there is general consensus that there is a problem of gang and gang-related activity in Trinidad and Tobago, and legislation is needed. Legislation can be built on in time, and it is hoped that that is what would happen with respect to this legislation and ideas could come forward. The hon. Attorney General has indicated that he is certainly listening today and he would have heard my colleagues on the Independent Bench, Senators from the Opposition, and so there is much food for thought that can go into coming back with the little tweaks that are needed to make this something that is palatable for all.

Mr. Vice-President, that is the extent of my contribution. [*Desk thumping*]

Mr. Vice-President: Minister of Tourism, Culture and the Arts. [*Desk thumping*]

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): Thank you very much, Mr. Vice-President. Thank you for giving me this brief opportunity to make some remarks on this anti-gang legislation. And like hon. Sen. Heath, I do not want to be too repetitious because hon. Senators who have spoken before have all traversed the areas. And like Sen. Richards, I totally agree that in modern societies, where there is criminal gang problems, that those societies must have anti-gang legislation. So, Mr. Vice-President, I adopt all the submissions of hon. Senators who have spoken before in support of this anti-gang legislation and I welcome the discussion as well, because as the hon. Attorney General has stated, he has come here to listen because the Government is intent on debating and putting forward the best legislation for society.

This Bill is no panacea. Strange word. It means cure-all, and I agree with Sen. Vieira, and I agree with Sen. Lutchmedial, that this is no panacea for crime and criminality in Trinidad and Tobago. There is no magic bullet. This piece of legislation alone will not eradicate murder in Trinidad and Tobago. It will not eradicate rape, sexual violence or violent crime. This legislation alone will not

eradicate financial crime, money laundering, fraud, et cetera. What this legislation does is it makes it unlawful to be a member of a gang and to be engaged in gang-related activity. This legislation provides the tools for the police to suppress gangs and gang-related activities in society. And even so, Mr. Vice-President, I dare say that this legislation alone will not even eradicate criminal gangs and criminal gang activity—not alone. And I respectfully submit that it is unfair to come to this debate and to suggest that in a short 30 months that criminal gang activity ought to have been eradicated.

This piece of legislation that has—this Act, expired as it is, it was used and is to be used with other strategies to discourage membership into criminal gangs. It is just another tool to fight crime. And I agree with Sen. Vieira, the way to fight gang crime, as suggested in the literature, you have three approaches: there is prevention, there is intervention and then there is suppression. And suppression is what we are debating and treating with here today. In terms of prevention, Sen. Lyder said he has not heard anything about prevention, but Sen. Sagramsingh-Sooklal spoke about the Ministry of Youth Development and National Service, an entire Ministry formed specifically to deal with youth, young people and youth development. We have strategies coming out of the Ministry of Education. There are strategies out of the Ministry of Social Development and Family Services. There are strategies coming out of the Ministry of Sport and Community Development. And I would not detain us with those here today, Mr. Vice-President, but under the Ministry of National Security, there are a number of prevention strategies being undertaken, some by the police, right now.

We have the Trinidad and Tobago Cadet Force. That is a prevention strategy targeting young people in schools into this military type of environment. We have community visits by the Trinidad and Tobago Police Service, where they visit

members of the community and interact one-on-one with some of the vulnerable youth. We have school visits by the Trinidad and Tobago Police Service and other agencies such as the National Drug Council. Police youth clubs, all over Trinidad and Tobago, doing excellent work in communities to prevent young persons from entering into a life of gangs and gang crime. We have police town meetings. We have Trinidad and Tobago street talk. And in terms of intervention strategies, Mr. Vice-President, we have pre-release partnerships where the Trinidad and Tobago Prison Service exposes—their partnerships to expose inmates to pre-release programmes, where inmates serving the last six to one year of their sentences are afforded the opportunity to participate in programmes—positive programmes. There are post-release partnerships as well that the Trinidad and Tobago Prison Service engages in to provide assistance to ex-inmates in alleviating unemployment and lack of proper living arrangements, drug rehabilitation programmes, et cetera.

So there are prevention and intervention strategies in a whole-of-government approach that are being undertaken as we speak. But this here today, what we are treating with, is suppression strategy, anti-gang legislation. And Sen. Richards is correct, gang crime is not a Trinidad and Tobago problem. Gang criminality is not a Caribbean problem. It is a problem across the world in major countries. Major countries have problems curbing gangs and gang-related activities, and many of those legislatures across the world have enhanced their traditional laws and brought specific legislation, just like this, to treat with gangs and gang crime. And worse, Mr. Vice-President, we have the problem now of transnational gangs, where gangs interact with each other or gangs spread across borders, and Sen. Lyder spoke about that, with the influx of Venezuelan gangs into Trinidad and Tobago. So how could you speak about that on one hand and then indicate that you will not

support on the other?

So Jamaica, the United States, the United Kingdom, Australia, Canada, they all have very robust legislation to treat with gangs and gang crime, and we are not reinventing any wheel here. We are simply seeking to replace, on the law books, specific legislation to treat with gang crime. And it is not the first time that this legislation was introduced. Sen. Lyder admitted it today, this legislation first came about as UNC policy in 2010, and from that policy was born the Anti-Gang Act that needed special majority support. And today, I could say that in 2011 the PNM—all members of the PNM, supported that piece of legislation in 2011. So what has happened since then? The UNC brought that policy to deal with the scourge of gang crime, gang criminality, the explosion of criminal gangs in society, and society demanded a solution then and they passed the legislation. So what has happened since then?

When the UNC was in government between 2010—2015, you supported the legislation. You worked with the Opposition, the Opposition worked with you, and out came the Anti-Gang Act of 2011. But out of government, you have refused to support the now PNM Government in passing anti-gang legislation, and then you wonder why people in society do not take politicians seriously. What has happened? And, Mr. Vice-President, you would think that the UNC would be the loudest voice in support of anti-gang legislation in 2016, simply on the basis that under that UNC government that produced and foisted upon this population the LifeSport Programme, that worked to proliferate criminal gangs all over this country. Under the UNC, you would think that the United National Congress and the Opposition would be loudest callers for this legislation if only to correct the scourge that that LifeSport Programme caused in society. But no.

Mr. Vice-President, I adopt the submissions of yourself, Sen. de Freitas,

when he spoke, that the loudest call for this legislation is not the PNM Government. The loudest call in society for this piece of legislation to be put back unto the law books to be provided as a tool to combat gang crime is the police service, and they are the best ones. The Commissioner of Police, the police service, they are the best ones to understand what is confronting them outside. They are the best ones to understand the resources that they have or they do not have, the efficiencies that they experience or that they do not experience. They are best ones and they have repeatedly called for the anti-gang legislation to be passed. They are the frontline. And yes, I would not go into it, but within three weeks, the Commissioner of Police appeared before the Joint Select Committee meeting, a public hearing, and repeatedly called for the tool that is the anti-gang legislation.

Mr. Vice-President, we have heard a lot of discussion around constitutional issues, and concepts and principles of law said here today, but let us talk about the reality that is gang crime. And what exactly do these criminal organizations—what are they actually involved in, that countries worldwide would need to bring legislation to treat with the scourge of criminal gangs? Criminal gangs are involved in arms trafficking, robberies, and other violent crimes. Drug trafficking—they are involved in drug trafficking, Mr. Vice-President. I have before me an article, and I think the Attorney General spoke about it: “\$94M drug bust takes international turn, eight in custody”. This was an article on *Loop*, 15th of August, 2020, where it indicated that:

“...eight people who were held on Wednesday during a police operation in Central Trinidad which led to the seizure of...\$94 million in drugs, remain in custody.”

The article went on to say:

“This is because the shipment is believed to have connections to a major

transnational organized drug syndicate with links in the United States, United Kingdom, Canada and Jamaica.

According to reports, at 10.30 am on Wednesday, officers of the Central Intelligence Bureau, the Northern Division Gang Unit, the Inter Agency Task Force...with the support of officer from the Customs and Excise Department and Port Security, intercepted a container at Kolahal Road, Charlieville...”

—\$94 million in drugs.

Mr. Vice-President, criminal gangs are also involved in the morally reprehensible crimes of human and sex trafficking. I have another article here: “Cop charged with being gang member, child sex trafficking”, February 14, 2020.

“...Police Officer”—Vicash Ramtahal—“and a Venezuelan national will appear in the Chaguanas Magistrates’ Court today charged in connection with trafficking in persons and other gang-related activities. Police officer, who was attached to the Central Division, has been charged with the following offences:

Being a gang member.

Supporting a gang in the commission of gang-related activity.

Trafficking in persons (minors).

Inciting or causing a child to engage in sexual activity.

Misbehaviour in public office.”

That is what criminal gangs are up to in Trinidad and Tobago.

I want to touch on some submissions from Sen. Lutchmedial, and as well Sen. Lyder, amazingly said that we should have kept special majority provisions in the legislation, and I wonder if the Senators are arguing that we as a Government should fail in our duty to protect citizens. We should continue—this is what I am

hearing being said—to bring special majority Bills to be defeated by then. And I hear the call by Sen. Vieira and ideally that is what should happen. Government should work with the Opposition as well as Independent Senators to put together the best legislation to go forward, but let me tell you why because we may have forgotten.

Senior members of the United National Congress as recent as in November and December have indicated that they will support no special majority legislation by this Government.

In the *Newsday*, 22nd of November, 2020:

“...Rodney Charles said...Opposition will not be supporting any legislation...”

Mr. Vice-President: Minister, do you have a title of the article? Just a title for the *Hansard* record.

Sen. The Hon. R. Mitchell: No.

Mr. Vice-President: Give it after. That is fine, but just for the *Hansard* record.

Sen. The Hon. R. Mitchell: I have it somewhere, Mister, but on the *Newsday* 22nd of November, 2020:

“...Rodney Charles said...Opposition will not be supporting any legislation...which requires a...”—special—“majority...”

In the *Guardian* on the 23rd of November, 2020, and this was by Gail Alexander, the leader of the United National Congress, the Member for Siparia, indicated:

“No procurement legislation, no Anti-Gang...support!”

“...we’ll isolate you! We’ll not support you!”

This was said during a Monday night forum. And in the daily *Express*, December the 20th, 2020, no other than Sen. Mark said:

“Until the controversial Public Procurement...Bill is withdrawn...the...(UNC) will not be supporting any legislation...”

That is the commitment from the Opposition, the United National Congress. And in going on in commenting on Sen. Lutchmedial’s contribution, it appears as though the UNC keeps moving the goalpost.

First, they would not support the legislation in previous incarnations because it infringed on individual rights and freedoms. So they did not support it. And then, of course, and Sen. Lyder repeated it here today ad nauseam, the resources arguments. He spoke about toner, printer, paper, all these matters within the purview of the police, but totally irrelevant to the Bill that we are debating here today and the provisions that we need to legislation—resource argument. And now we also hear that they do not trust the statistics. And Sen. Mark spoke about statistics, a lot of statistics. Sen. Mark did not say where he got those statistics, but he repeated them. But the unfortunate thing—and this is my belief—that even if between 2018 and 2020, when the previous Anti-Gang Act expired, even if we had 500 arrests and the 500 convictions, Sen. Mark still would not have supported our efforts here today.

Sen. Lutchmedial said that we are pulling statistics out of the air. Of course, these statistics that the hon. Attorney General raised are those that come from the police unit that is responsible for collecting statistics. Sen. Lutchmedial asked: Where is the evidence that the legislation is working? And I sat there and wondered, I do not understand how— if you do not trust the statistics coming from the police service, if you do not trust what the police service is saying with respect to this Bill in support of it, how do we prove to the Opposition Senators that this legislation is working? The goalpost seems to be shifting at every turn. Sen. Lutchmedial said that is it simply a holding Bill, but how do you prove to the

Senator that persons held under the Act for over 48 hours, for example, prevented massive bloodshed, prevented gang wars from breaking out, prevented criminal activity and violent crime? How do you prove that? But that is what the Commissioner of Police is telling us. And if we are not going to believe the police statistics, if we are not going to believe what the police are telling us with respect to their support and respect to statistics and the merits of these measures, who are we really to believe? Sen. Lutchmedial even went on to suggest that she does not trust a judge to apply the rules of fairness in an ex parte application.

4.50 p.m.

Sen. Lutchmedial: I must stand up on that, please, Mr. Vice-President. That is not what I said at all. Standing Order—I am sorry, I will find it because I would like to raise an objection. I did not say that, please, Sir.

Mr. Vice-President: Sorry, I did not get that. Do you have the Standing Order? Yes or no?

Sen. Lutchmedial: I will get back to it.

Mr. Vice-President: Continue.

Sen. The Hon. R. Mitchell: Thank you very much because I have to adopt the position of Sen. Sagramsingh-Sooklal. Sen. Sagramsingh-Sooklal went on to correct Sen. Lutchmedial to suggest that the principles of fairness apply, we cannot ouster the court's jurisdiction and even though the legislation says that you may make an ex parte application does not mean that the judge has to hear your ex parte application. And the hon. Attorney General even spoke to habeas corpus applications being made at any time.

Mr. Vice-President, I will move on to the Bill and Part II, clause 5 of the Bill speaks to the offences and there is nothing objectionable here. I support fully clause 5 of the Bill. But I would like to turn to clause 6 and clause 13 which relate

to “Coercing or encouraging gang membership”.

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

Sen. The Hon. R. Mitchell: Thank you very much. “Coercing or encouraging gang membership” and the recruiting of a gang member. And at this point, I need to support and amplify what Sen. Vieira said because a gang for its survival, they need to recruit more and more members. They need to recruit more and more turf. It is imperative for gangs to increase its membership to compete with other gangs, et cetera, because gang criminality is 95 per cent about profit. It is crime for profit. You need increased membership to increase the strength of a crime and you need to increase your turf to realize increased illicit revenue.

In the last five years, Mr. Vice-President, I have had the distinct privilege to serve as the Member of Parliament for San Fernando East and in the San Fernando area, there are a number of HDC communities and I went into those communities and immersed myself. You have to get deeply involved with your constituents and of course also had interaction with the police and there was one thing that we uncovered over the last five years, that a number of these larger gangs, especially in these so-called hotspot areas, in order to increase their turf, to increase their profits, they would recruit young members in these communities, in these HDC low-income type of communities. And they would give them “ah pound ah weed” or they would give them something to sell and they would have to return some of the profits to the major gang.

And these units, these little gang members in these HDC communities, in conducting their illicit trade, they would terrorize members of those communities and I also was fortunate enough to sit as a Minister of Housing and Sen. John will know this, that every week, you will face a number of requests for persons to be relocated because of the scourge of criminal gangs. We even amended the trespass

legislation to treat with that as well because they would also prevent persons from occupying some of these vacant units. So I support and I have witnessed first-hand where the police, utilizing the anti-gang measures, have gone into some of these communities and work to breakdown the structures of these small little satellite unit gangs.

And it goes into clause 7, “Retaliatory action” because some of the law-abiding members in these communities, the ordinary citizens who speak out, who resist these little gangs, running around, these young boys, they would have their apartment stoned, they would have their young daughters harassed, they would have violence thrust upon them. So I support clause 7 and this is the reality—I know that we are talking about concepts of law, we are talking about constitutional matters but this is the reality that people face while we debate that, these concepts in Parliament. That is the situation that people face. They are prisoners in their own homes because of this type of gang activity. And then of course you hear about harbouring and persons from Port of Spain and persons from other hotspot areas come down into the San Fernando area to hide out.

So, Mr. Vice-President, in closing, I wish to support and commend this legislation to this honourable Senate. The Attorney General has indicated that he will be making some tweaks and I welcome and encourage the discussion. Thank you. [*Desk thumping*]

Sen. David Nakhid: Thank you, Mr Vice-President. Sorry, I was just musing about how wonderful it must be or such a liberating feeling to be a white supremacist or to enjoy the privileges of white supremacy and I will tell you why. Thanks for giving me the opportunity to be part of this debate. Because when I looked at the law and researched it, I tried to find some comparative law, other than the apartheid laws of South Africa, draconian by its nature, I said I will not

use that so I looked again. And you know what I found? I found what were called the black codes law which were actually laws created, and I quote:

By Southern States, even harsher than Jim Crow laws that tried to maintain slavery in the south even after the war.

But listen to this part. Black people could be arrested for just about any reason.

“...restrictive laws designed to limit the freedom of African Americans and ensure the availability as a cheap labor force...

Passed by a political system in which Black people effectively had no voice...the black codes were enforced by all-white police...”

And listen to this beauty:

“...and...”—an increasing militaristic force.

Wow. Mr. Vice-President, if anything exposed it writ large, the difference between that side, the PNM, and the United National Congress, it is this Bill. Fundamental philosophical differences. Because we are not against anti-gang legislation at all. As we stated here repeatedly, we brought it, we recognize it. But what we are against completely is to bring oppressive draconian laws that infringe on our constitutional rights without—as Sen. Vieira and I will get to him after—any holistic context.

Because when we brought these laws, we had social programmes, we had increase in education, we built schools, we provided laptops, so we offered—and then I heard this abysmal reference as the Minister of Tourism always seems to allude to LifeSport. And I would like to ask: Has anybody been charged, arrested or is that just another indication of their failed statistics?

Sen. Mark: No, they paid \$66 million for—

Sen. D. Nakhid: And nothing.

Sen. Mark: SRPs, SRPs, Government police.

Sen. D. Nakhid: Okay.

Sen. Lyder: How much money?

Sen. D. Nakhid: Sixty-six.

Sen. Lutchmedial: Where the pounds, where the pounds going?

Sen. D. Nakhid: So again, Mr. Vice-President, we have a lot of ethic on that side but my concern as always is the reality on the ground and the reality of who this Bill will affect, which brings me unfortunately today to someone that my elder brother Peter went to school with, which was the hon. Sen. Vieira who I thought today, my brother who for the last 25 years, he has worked socially in Haiti helping the disenfranchised there, has his own foundation out of New Orleans and I am getting to the point. And I felt that Sen. Vieira's contribution was quite elitist and I will tell you why. To state that—

Sen. Mitchell: Mr. Vice-President, 46(6) and 46(4) please.

Sen. Mark: [*Inaudible*]

Mr. Vice-President: So—

Sen. Mark: You just talk about LifeSport.

Mr. Vice-President: Sen. Mark, I am—

Sen. Mark: Yes.

Mr. Vice-President: Thank you. So on 46(6), I would just say just temper a bit what you are saying, right, and I am going to ask you just for me now to speak up a bit because the mask is really muffling what you are saying.

Sen. D. Nakhid: Okay.

Mr. Vice-President: And I am hearing it somewhat but like I said, it is coming through a little bit muffled so just for you specifically—I see Sen. Roberts raising his hand, but for you specifically speak up a bit so that I could clearly hear what you are saying. [*Crosstalk*]

Sen. D. Nakhid: “Ah love that, thank you.” [*Desk thumping and crosstalk*] So given that liberal permission, [*Laughter*] I can be myself. Thank you, Mr. Vice-President.

And I will tell you why I felt it elitist, his reference to dogs and sheep and wolves and referring to obviously people coming from the ghetto as wolves who will be a scourge upon our land, the hon. Senator not once referenced the gangs that have facilitated these so-called wolves, because I have never seen a gun-making factory in Laventille or Mount D’or or places where I have come from. [*Desk thumping*] I have never seen a cocaine factory because I know these young black men do not import the cocaine, do not import the guns. He made no reference to any of the gangs that do and have been doing so for decades with impunity in this country. So I did not like his contribution at all. Because the gangs that run the narcotics and have turned this country into a “narco” state, oblivious to the destruction caused to this country and to the ghetto youth that all of us here now seem to want to fit into a penal colonel in Trinidad and Tobago.

So this PNM Government here with imprudence and contempt, let us deal with them on the penal side of things. Well we know, we are not against anti-gang legislation but we want to deal with it from the other side as well, we want to deal with it where we do not have gangs created. And what is wrong with that? That is why we stress on education, that is why we stress on social programmes. So if we want to go into communities and deal with them with “ah LifeSport, who we want to affect”? So when Jesus Christ came to the meek and the humble and the downtrodden, “who he went to”? He went to the rich? He went to the elites? But we seem to lose our Christian values quite conveniently. Disingenuous or hypocritical? Choose which one it is.

Now, the hon. Minister of Tourism spoke about the anti-gang legislation is

not to help to eradicate serious crimes and it is not to deal with serious—so then “wah we coming here for”? We want them to infringe on people’s constitutional rights for littering, for jaywalking? It is either he has a flawed understanding of legislation or he should stick to Standing Orders but “something wrong here”. [*Laughter and desk thumping*] Mr. Vice-President, although we can find humour at someone’s incompetence, inability to understand what is before us, it is a serious point and I was not too bothered by the hon. Minister’s contribution at all. I was more concerned about Sen. Vieira’s contribution.

Because you see, this is the problem in Trinidad and Tobago right now and everybody here know by now that I like to deal with the ground because I have family who might be affected by this Bill. [*Crosstalk*] Yes, I have family. Uncle Rudolph Charles who make Despers, as everybody know, his grandchildren still living up in Picton; “uncle Jerry grandson up in Picton”, they might, all of a sudden, in Abena area and find two guns. Listen, “they find two guns and playing with it”. Are they gang members? Are they prosecuted as gang members? Then I know where we could send “some ah the police cuz I saw some pictures ah somebody children with guns. We hadda be really careful here where we going with this one. Ah hope we going other Picton Street and ah hope we going somewhere other than Bagatelle, ah hope we going somewhere other than Maitigual, other than in The Zone in Tunapuna. Ah hope we have plenty places we could go and is not only black people children we coming for with this.”

So, Mr. Vice-President, I come to the Anti-Gang Bill and some of the points that maybe will give the AG food for thought because the AG normally neat and tidy in his presentation, this is “ah slovenly, sloppy piece ah work” by his own admission, scrambling before the sitting that this was not right or this was or this was not—I mean, come on. The only thing “we eh hear is the dog eat the

homework” and you know what I mean, come on. This is the “business ah the people”, this is serious legislation here. And to have people who should know better trying to find excuses for this and I will tell you what they are.

So we have clause 3. “What exactly is ah gang?” Every offence committed as a joint enterprise will qualify whether or not the participants are in fact gang members or operating as a gang. This will create confusion in the minds of charging officers and is bound to see a number of prosecutions fail with the usual consequences. Gang-related activity, all of what is described in the definition section is already covered by the common law and the common law is flexible enough and continues to develop without limiting language of a statute. We do not need it, it is not necessary. All you do is give a greater latitude to infringe on the Constitution.

Clause 4. Given what is outlined in clause 4, I am now completely more confused to what exactly is a gang. What is outlined in clause 4 is wide enough to affect even those groups which are not gangs and flies in the face of what is stated in clause 3. The words “reasonably shows”, listen again, “reasonably shows” in line 5, page 4 according to the Bill we have, to what legal standard are we referring? Are we abandoning the criminal standard which is a protection in itself and importing a lower standard of proof?

Then we go to clause 4 to the words “shall be admissible”— “shall be admissible” in the very next line. Are we then removing the discretionary power of exclusion from the court and telling the court what evidence is to be admissible? We are saying “shall”, “shall” as we know legally, I think you are a lawyer—no, you are not, okay. “Doh worry, yuh in good company.” Telling the court what evidence—you know “shall” means you must. Right?

Then we go to clause 4(b). Are we creating a new gateway for bad character

evidence without regard to what we already have in the Evidence Act and which was passed with a three-fifths majority? Are we going through the backdoor and circumventing existing bad character legislation? How will this square with the existing jurisprudence?

[MADAM PRESIDENT *in the Chair*]

Madam President: Continue.

Sen. D. Nakhid: Okay. I have permission for my voice. [*Laughter*] Clause 5(1)(d), so the main idea and I want us to pay attention to this if you all have your papers, look at clause 5. This shows such a fundamental lack of understanding of the dynamics of the ghetto. It is unbelievable. Look at this. Clause 5(1)(d), so the mere idle boast of “ah wannabe turn teenager”, like all of us were. “We boast, da wah we do. We teenagers, we boast. Ah could do this, ah could do that. So ah black boy in the ghetto now, he cyah dream. Ent Sen. Roberts? He cyah dream, no, he cyah boast, he cyah play himself, no, that not allowed.” Not allowed in Laventille, in Beetham, in Morvant.

Madam President: Okay, so Sen. Nakhid, I know that you were asked to speak up a little bit but now I am going to ask you to tone it down a little. All right?

Sen. D. Nakhid: Is it possible that we could get some kinda voice monitor here?

Madam President: Please take your seat. It is really possible for someone to speak clearly, articulate clearly without shouting. Okay? And I think the Vice-President was asking you because he was not hearing you through your mask. I can hear you, there is no need for you to shout. Okay?

Sen. D. Nakhid: I was not aware that I was shouting, Madam President.

Madam President: Sen. Nakhid, please. Please take your seat. I am not asking—we are not having—there is no need to converse about it. I have given you my guidance and I would just ask you to heed it.

Sen. D. Nakhid: Okay. So the black boy in the ghetto not allowed anymore like any other youth anywhere in the country to be boastful, to explore his adolescence. And I will be even clearer. This will land him in trouble now. So if he progresses, you know “he want tuh big himself up, he wanna geh ah girlfriend so he profess to be ah gang leader or ah gang member” to get some credibility as they do in any community in any part of the world. All part of growing up. And he could go in jail for 10 or 20 years? Who conceived this? This is such bad legislation, this is such a poor reflection of what comes before us here that this is unbelievable.

And I go on. Clause 8, “ah going through them”. Clause 8(d), what does “provides support” mean? A person who knowingly provides support. All right, so we have in the ghetto, “I go up by Uncle Jerry and I see about five or six youths, four ah them cousins and one ah them, ah doh know”. Who is the gang member? “Uncle Jerry wife cook ah nice dinner, we eat, talk two, three hours.” Is that considered providing support? What is this specification for this? If a mom or dad does that for her son, has his friends over, is this meant, as I said before, in the black codes in the Jim Crow south to completely annihilate the black communities? I do not understand. Or, Madam President, is all of this a political stunt playing on the emotions of the people in this time to try and embarrass the United National Congress? It would have to be because it is such bad legislation.

I go on. Clause 10(1)(b). Who is a reasonable man or what is reasonable? And Sen. Jayanti Lutchmedial referred to it. The law is supposed to deal with the actual mental state of the person charged and not what he ought reasonably to have known. Look at that, (b), look at it here and Sen. Vieira left out that conveniently when he quoted it. I have it marked right here. He quoted the whole thing. He said “ah person who uses ah bullet-proof vest”, firearm, ammunition, prohibited weapon on (b) has in his possession. And he left out and you could go back in the

Hansard:

“...which he ought reasonably to know...”

He left that out conveniently and went on:

“...in the commission of a gang-related activity...”

You cannot leave out that part because that there is the devil:

“...which he ought reasonably to know...”

Who is to determine that, “ought reasonably to know”? Should that not be the law? Should not the law charge the court with the mental state of that person and not up to the discretion of somebody else?

Again, wanting on so many levels, clause 10(2) states that the citizen:

“...if he proves...”—“...if he proves...”

“It is a defence for a person charged with an offence under subsection 1(b) if he proves...”

It is a constitutional protection and safeguard that in criminal law, the burden of proof rests with the prosecution throughout and we have heard this repeatedly here. And what does the other side say? “That we protecting criminals. We asking someone who prove ah negative.” So in other words, I could come up to somebody and tell him, “heh, you tief my watch yuh know. You better doh tell me no. How you go tell me no. You better prove you ain’t tief da watch. Allyuh really doh care nothing about black people in this town na. They asking somebody to prove ah negative. Ah young black boy from the ghetto”, probably barely literate, probably barely knowing his rights, probably no resources to get somebody to come and defend him and tell him to go and prove “ah negative”. And Sen. Vieira was down with that. Sen. Vieira liked that one.

Madam President: Sen. Nakhid, please take your seat. You are very free to criticize any presentation that is made in the Chamber, you are free to do that but

you seem to be personalizing your presentation and I would ask you to desist from doing that. You can criticize, that is your right. Okay?

5.20 p.m.

Sen. D. Nakhid: But, Madam President, I am guided but I am not personalizing anything. I am responding and rebutting—

Madam President: I am not asking you—once again, if I point out something to you, just move on, Sen. Nakhid.

Sen. D. Nakhid: No, because you are not always correct and I have proven to you that you are not—

Madam President: Sen. Nakhid, take your seat. You are not in a position—I am asking you do not be trying to answer. It is almost as if you are trying to answer what I am asking you to do. Please, just move on. Make your contribution.

Sen. D. Nakhid: Clause 11, “harbours”. How does one harbour a gang member if you live in the same compound? Have any of these people gone up to Trou Macaque? Have they gone up at all to St. Barbs? How do these people live, cheek by jowl? What are you telling me about harbour? What does that mean? “If dey living—you could spit and you spit in de neighbour house”. You think they live like you all? Like me? I look outside and I see trees. And so the gangster who is living with his grandmother and grandfather, they live in a—

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

Sen. D. Nakhid: They live in a six-by-four here and just to help their grandson, they put something right next to it, and some of you see it all over the place in the car. “He might have ah early child, set up something fuh him right next tuh it, and dey telling yuh about harbour?” You all make laws without regard for the social conditions of who you all are making laws against. Just make laws to impress the public. So “black people, eat dat”. And we will close our eyes and hope whatever

deal with all yuh, when yuh open it, all yuh gone. Laventille, Morvant clean and your conscience clear”.

In closing, I find the drafting of this legislation entirely, completely, catastrophically political in its intent, meant to embarrass the UNC, nothing else. It is bad law. It is projecting the mood of the county as it is, playing on the emotions of that tragic death of those girls. So let us bring this horrible law. And, of course, the UNC will reject it because they have said so. We have had quotes. And then they will say, “Ha! Look de UNC. Dey doh care”. But this is bad law, sloppy law; by his own admission, the AG. The target is low-lying fruit, easy for everybody to— “doh worry, is Laventille, Maitagual, de Zone. Bagatelle, Scorpion, no problem”. You know why? Because this a group here, PNM, devoid of ideas to socially and economically uplift the people in these areas. [*Desk thumping*] “Black face, White masks”, as Frantz Fanon has famously said. Thank you, Madam President. [*Desk thumping*]

Sen. Charrise Seepersad: Madam President, thank you for the opportunity to contribute to the debate on the Anti-Gang Bill, 2021. This Bill seeks to suppress associations created for unlawful or criminal purposes and for the better protection of the public of Trinidad and Tobago by making it an offence to be a member of a gang, be in possession of a bulletproof vest, participate in or contribute to any gang-related activity, support or invite support for a gang, or to harbour or conceal gang members, or to recruit persons to a gang.

Clauses 5 through 14 of the Act proposes severe penalties for specific gang activities. The intent is to be a deterrent to gang membership and activities. However, in the absence of a comprehensive social and economic undertaking to offer superior alternatives to the young, underprivileged and disadvantaged for opportunities and survival, I have serious misgivings that this piece of legislation

will have the intended outcome. It really seems as though gang-related activity is embedded in our very fabric or DNA of our culture. The novelist Earl Lovelace in 1979 captured the essence of the modern-day description of street gangs in his book, *The Dragon Can't Dance*. He wrote:

“Those were the days when every district around Port of Spain was its own island and the steel band within its boundaries was its army, providing warriors to uphold its sovereignty. Those were the war days when every street corner was a garrison, and to be safe, if you came from Belmont, you didn't let night catch you in St. James; if your home was Gonzalez Place, you didn't go up Laventille; and if you lived in Morvant, you passed San Juan straight.”

Gang-related legislation was—and I quote from the *Trinidad Express* November 21, 2020:

“First introduced by the People’s Partnership government in 2011 and later resurrected by the PNM administration in 2018, anti-gang legislation gives the Police Service extraordinary powers to combat the scourge of gangs. Through their MPs, the public agreed to temporarily surrender several basic constitutional rights to allow the police to prosecute and convict gangsters. In succession, the Partnership and PNM governments received public and parliamentary support by successfully arguing that a suspension of constitutional rights would allow the police to eradicate gang-related crime. Under the People's Partnership government, almost all the cases filed under the Anti-Gang Act 2011 stemmed from the 2011 state of emergency, and were thrown out by the court. In the case of the PNM, there is equally little to show after two years. The law has simply not lived up to the hype to date.”

In February 2019, the *Trinidad Guardian* newspaper reported, based on statistics from the Trinidad and Tobago Police Service, that gangs are a problem. And according to the statistics, it is a growing one. In 2006, there were 95 gangs with 1,269 members. In 2016, there were 172 gangs with 2,358 members. The most recent report indicates that there are 211 gangs with 2,458 members. The gangs are littered across the islands with “Rasta City” and “Muslim” being prominent.

Before 1990, there were few gangs which have now escalated to this seemingly uncontrollable position. As the gangs escalated, so did the gang-related crime with the murder rate increasing from four in 2000 to almost 300 to date. Between 2018 and 2020, there were 36 arrests for gang-related offences. Madam President, that is the reality.

Most commentators on several media platforms ask rhetorically if “Trinidad is a real place”, because our collective approach to national problem-solving is pitiful. So why do we really need this anti-gang legislation? There are other laws on the books which can be energized, including evidence amendments, civil assets recovery and management agency, Evidence Act, Bail Act and the Firearms Act. Are these laws deficient and ineffective?

Police detection and conviction rates: the detection rate increased from 10 per cent in 2018 to 20 per cent in 2020. However, the conviction rate remained at about 1 per cent for the period.

Data from the Crime and Problem Analysis Department of the Trinidad and Tobago Police Service showed that between 2000 and 2020, only 291 persons were arrested under the Anti-Gang Act.

Madam President, as I have said before, a plethora of laws by themselves will not dent the scourge of criminal activity. The hon. Attorney General has listed in this Chamber that many initiatives and pieces of legislation for which he is

bringing to Parliament. But to what end? What is the true measure of success? Is the nation better off because of these laws?

International Women's Day yesterday reminded me of the horrors and heartbreak plaguing this country, despite the best efforts of all. You see, Madam President, we need societal transformation, as well as laws. The root cause of the problem is the day-to-day hell of the uneducated, underprivileged, disadvantaged, jobless citizens. This Frankenstein is of our own making over time and putting the monster back in the bottle does not need more thuggery.

Forensic evidence system: forensic evidence is crucial in criminal justice systems to build cases and support convictions. However, the forensic evidence system in Trinidad and Tobago is not up to standard, despite attempts to improve the system. For example, the Trinidad and Tobago Ballistic Recovery Department opened in January 2021, the Evidence (Amdt.) Bill was passed in February 2021. Evidence collection by the Trinidad and Tobago Police Service and analysis by the Trinidad and Tobago Forensic Science Centre is plagued by systemic issues. This contributes to the low detection and conviction rates, as well as the backlog of cases in the judicial system. What about prevention, Madam President? Do we wring our hands in unspeakable agony every time a monster strikes and wait on law enforcement to solve or not solve the crime, as is more often the case?

The DNA laboratory at the Trinidad and Tobago Forensic Science Centre has been closed for the past two years. While the personnel with the requisite expertise are available, they cannot work until repairs to the lab are done or a new building is constructed. Therefore, until a few weeks ago, DNA evidence was sent to the United Kingdom for testing at a cost of hundreds of thousands of dollars per test.

It has now been decided to use a private laboratory in Trinidad and Tobago

to do DNA testing. There is also a lack of a robust DNA database and forensic evidence system. This means the police rely primarily on eyewitness evidence, with very little reliance on forensic evidence. There is also a lack of adequate financial resources allocated to the Trinidad and Tobago Police Service for the collection of evidence.

Between 2005 and 2010, full-time crime scene investigators were recruited from the UK to train and mentor TTPS officers. However, issues—

Madam President: Sen. Seepersad—

Sen. C. Seepersad: Sorry.

Madam President: Yes, I just need to ask you, you are giving a lot of information about the entire criminal justice system, about all sorts of things about crime. But I need you to be a little more specific to the Bill as well. Okay? So, whatever you are saying, you need to tie it in to what we are treating with.

Sen. C. Seepersad: I just have two more points.

Madam President: But no, just tie in whatever you are presenting to the Bill at hand.

Sen. C. Seepersad: Okay. Clause 3, definition of a “gang”. I find that the definition of “gang” is insufficient. In my research, I found the definition of “gang” used by the US Department of Justice; and Department of Homeland Security; Immigration and Customs Enforcement, which I believe is more robust, and I will give the quote. It says:

“(1) an association with three or more individuals; (2) whose members collectively identify themselves by adopting a group identity, which they use to create an atmosphere of fear or intimidation frequently by employing one or more of the following: a common name, slogan, identifying sign, symbol, tattoo or other physical marking, style or colour of clothing, hairstyle, hand

sign or graffiti; (3)...”—whose—“purpose, in part, is to engage in criminal activity and...”—which—“uses violence or intimidation to further its criminal objectives; (4)...”—whose —“members engage in criminal activity, or acts of juvenile delinquency...”

The association possesses character such as they employ rules, recruit members on a regular basis, provide physical protection, et cetera. Madam President, this matter can be further discussed at the committee stage.

Clause 3, definition of “gang-related activity”

“(d) a conspiracy to commit an offence”

A charge of conspiracy means that there are multiple defendants in the same indictment. Each person is therefore tried together in one joint trial. The advantage of this is that multiple people who may have different levels of criminal responsibility in the case are all grouped together with the danger that the jury may amalgamate the evidence and say that they are all equally guilty. While the judge will instruct the jury to consider the evidence individually against each defendant, the danger of amalgamation of evidence is always present in joint trials, with multiple defendants charged in the same criminal act. I would be grateful if the hon. Attorney General can provide an explanation of how conspiracy to commit an offence will be applied in the Trinidad and Tobago courts.

“Powers of Police...”—clauses 15 and 16. Clause 15, “Police powers of entry, search and arrest”. Powers to enter someone’s property on a reasonable belief that the person is a gang leader or gang member. Clause 16:“Detention of persons”, —to detain a person without a warrant for 48 hours with a further 36 hours allowed.

Madam President, as at December 31, 2020, the Police Complaints Authority had 3,876 complaints against the police; 3,259 investigations were

completed and 77 matters were sent to the DPP. In the *Trinidad Guardian* article entitled: “PCA probes 3,876 complaints”—dated March 06, 2021, I quote:

“The AG acknowledged that the country ‘is properly dissatisfied’ and there’s concern on police killings/shootings and people dying in police custody...”

In the past three years, there have been several investigations into the death of Trinidad and Tobago’s citizens in the hands of the Trinidad and Tobago Police Service. Most of these complaints have been completed by the Police Complaints Authority, which recommended prosecution of the police officers. There are however, several cases which were closed on the recommendation of the Trinidad and Tobago Police Service legal unit, without the input of the DPP.

Madam President, it appears that the police are using brute force to extract information from people instead of getting hard evidence. Further, any member of the police service, based on these sections, including a constable, will be given significant power. The powers provided by these two clauses promote profiling of people and gives the police the wherewithal to detain and search people’s property without a warrant.

There are fundamental constitutional implications, Madam President. We should not implement these measures without first safeguarding the fundamental rights of citizens. Search on suspicion alone is not due process and leaves abundant room for victimization and abuse. Madam President, I am uncomfortable with giving the Trinidad and Tobago Police Service carte blanche powers to search and arrest, based on the belief that the person is a gang or gang member.

Witness protection in Trinidad and Tobago: this is a key component to clause 7 of the Anti-Gang Bill. Data from the Trinidad and Tobago Police Service crime and protection branch shows that between 2011 and 2020, four state

witnesses were murdered. Is the programme safe or is it that these murders are a result of witnesses being careless and not agreeing to participate in or follow protocol?

In the article entitled: “State witnesses worry about safety”, *Trinidad Guardian*, February 25, 2021, a state witness said:

“I told them what the officers were capable of, I brought my fears to them and they took my information and the officers came and lock me up...

The system has failed me from day one. I am not getting work because people are afraid to employ me because of the risks and they keep telling citizens to come forward every day.”

For the system to be effective, witnesses need to have confidence in the criminal justice system, so that they can provide evidence against criminals and join the Witness Protection Programme.

State witnesses need to be assured that they will receive all the support and protection that they need from the criminal groups seeking to prevent them from cooperating with the authorities.

As our crime figures have escalated, an entire generation have grown up facing decayed or decaying infrastructure, parenting challenges, household and community violence, incomplete education, substance abuse, mental health, unequal educational opportunities, to mention a few. Prevention strategies based on sound social and social-psychological research and programmes may have prevented some of this. Unfortunately, what is now referred to as social protection includes stopgap measures primarily of cash transfers of various forms, food cards, grants, short-term work. While it is important in the short term, it is not adequate in the long term.

I do not think we can easily eradicate the scourge of illegal gangs and

criminalities with only the anti-gang legislation. We need social input. Short-sighted, get-tough measures only play into the gangs favour to be more organized. Preventive measures, social intervention and suppression are essential. Gangs bring guns, strategy, technology and community support due to the fear that they bring to the communities they control, which the State does not provide. By itself, severe penalties and constitutional subversion proposed by the Anti-Gang Bill will not be a deterrent by itself. Thank you, Madam President. [*Desk thumping*]

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday, March 16, 2021 at 1.30 p.m. During that sitting, we plan to conclude the debate on this Anti-Gang Bill.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised.

National Gas Company, National Energy Corporation and Kenesjay Green Limited (Details of MOU)

Sen. Wade Mark: Thank you, Madam President. Madam President, I have raised a matter on the Motion for the Adjournment in the public's interest, and that is the need for the Government to explain the benefits of the recently signed memorandum of understanding involving the National Gas Company, the National Energy Corporation and Kenesjay Green Limited for the development of a national policy framework for energy efficiency and green hydrogen.

Madam President, Trinidad and Tobago awoke to a full-page coloured ad plastered on page 11 of the *Trinidad Guardian* of Thursday, February 11, 2021, with a screaming headline which stated, and I quote:

“NGC and the National Energy”—Co-operation—“sign MOU with
Kenesjay Green and NewGen”

Subtitle:

“Moving hydrogen energy forward”

Now, Madam President, this reminded me of WGTL all over again. But in 2004, it was known as the bridge to hydrogen. In 2021, the title is: “Moving hydrogen energy forward”. The only difference, Madam President, the same players are involved; some have retired but their siblings are in charge. So, this is a matter that we want some clarification on. When we look at the directors of these companies they are the same players: Kenesjay Systems Limited, you have Philip Julien. You go to Kenesjay Green, Philip Julien. You go to NewGen Energy, Philip Julien; same players involved in this game that we are witnessing today, Madam President. And when you look at the shareholders, Madam President, again, it is the same players who own and control the particular companies that I have mentioned.

Madam President, time would not permit me to really spend the quality effort at sharing with you and the population what this thing is all about. What we do know is that this Kenesjay Green went into some relationship with Kenesjay Systems and NewGen Energy. And at the end of the day, Madam President, a big advertisement. the National Gas Company, that is leading this charge, along the National Energy Corporation never told this country once that there was a company called Fistera Energy, a Spanish company that was involved in this transaction. That is why we found it very suspicious. And we have brought this Motion today so that the Government can clear the air on this matter, because I do not think that the people are ready to stomach or will ever be ready to stomach

another WGTL, which cost this country over TT 2.5 to \$3 billion.

Therefore, Madam President, I would like to ask the Minister of Energy and Energy Industries to answer these questions. First of all, this full-page coloured ad, which appeared on the 10th, 11th and 12th in the three daily newspapers, could the hon. Minister indicate who paid for that? We would like the Minister to tell this Senate today whether the Chairman of the National Gas Company is conflicted—because there is a Philip Julien, there is a Stephen Julien and there is a Conrad Enill. Is there a relationship between the three? And if there is, Madam President, I would like to ask the Minister to tell us if, as far as he is concerned, when the so-called memorandum of understanding was being agreed upon, whether the Chairman of the NGC recused himself.

Madam President, we would like to know whether this so-called project consultancy was publicly tendered, and if not, why not? Why did the NGC and the NEC, come—how rather, did they come into contact with these two privately-incorporated companies?

5.50 p.m.

Madam President, one of them was incorporated in January of 2020. The other one was incorporated in July of 2020. What is their track record? What is their capital base? What is their experience? But they are in the dance with the National Gas Company. I understand the National Gas Company has cash reserves of about \$6 billion, so not satisfied with destroying the Petrotrin with this WGTL— Madam President, I want to let this Senate know that it was the US 850 bullet payment that was borrowed by Petrotrin on behalf of the World GTL project that had Petrotrin on its knees, and that caused the Government to close down Petrotrin. So we would like to ensure that NGC does not become another Petrotrin.

And could the Minister of Energy and Energy Industries tell us about Fisterra Energy? Could the Minister indicate whether NGC will be building the hydrogen plant on behalf of these two companies that I have mentioned? And I also would like the Minister of Energy and Energy Industries to tell this Senate, does the National Energy Corporation's mandate not include renewables, and the development of hydrogen production? If that is so, Madam President, why is the NEC not developing this hydrogen project? Is the NEC not capable of pursuing this project? But they have the skills, they have the personnel, they have the employees. Why are they not pursuing it?

I would like the hon. Minister to indicate, Madam President, why did the National Gas Company in these three fully paid, full coloured ads, did not tell the country that there was a company called Fisterra Energy that was involved in this exercise and this project?

Madam President, we would like to know whether the NGC was apprised of a partnership between Fisterra Energy SLU and Kenesjay Green Limited to pursue this first major hydrogen project known as NewGen? And Madam President, I want to ask—the NGC and the NEC must take full responsibility along with the Minister of Energy and Energy Industries and the Prime Minister. Do not tell this country that the Prime Minister who is the Chairman of the Energy Committee of the Cabinet, did not know about this situation.

So we want answers the evening on this emerging scandal that may result, Madam President, in hundreds—

Madam President: Minister of Energy and Energy Industries. [*Desk thumping*]

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

by saying, there he goes again. [*Desk thumping*] Every time this administration takes a step forward, the UNC and in particular, Sen. Mark, tries to lasso our neck and pull us back two steps backwards.

Madam President, first and foremost, what the memorandum of understanding that the NGC signed with Kenesjay on the 29th of January, 2021, the MOU is a non-binding and non-exclusive and seeks to explore potential areas of corporation among the entities for the development of hydrogen. Plain and simple. A non-binding memorandum of understanding for potential cooperation. The Kenesjay Fisterra project was already outlined by the companies at the energy conference held a month or so ago.

But you see, when we move forward, the UNC insists to politicize everything and move us backwards. It happened with Dragon. It happened with Loran-Manatee. It happened with Sandals. And every time we put forward an idea to this country it meets with criticism.

Let me explain hydrogen briefly to this Senate, in particular the scientists among us, Sen. Teemal and others. The hydrocarbon industry is by definition hydrocarbon. What does hydrocarbon mean? Hydrogen and carbon. Natural gas is CH₄, chemically. One atom of carbon, four atoms of hydrogen. The industry uses the hydrogen as fuel. So what you do, you split the molecule, extract the hydrogen and it releases carbon dioxide as a by-product. Carbon dioxide is a greenhouse gas. So the world is moving away from greenhouse gases, so that is why they seem to be migrating into what they call a zero-carbon world, away from hydrocarbons. We do not need the carbon in the hydrocarbon, you know, we need the hydrogen. What is the formula of water? H₂O. What you can do is use electrolysis to split the water molecule, get the hydrogen and oxygen is a by-product. That is what clean

energy is about.

This country was one of the first countries in the world to have all its electricity powered by natural gas. This country was the first—one of the first countries in the world to take natural gas, monetize it through the production of petrochemicals. We were the third country in the world after Qatar and Indonesia to get into LNG. [*Desk thumping*] When we built the Train 4 Plant, it was the largest single train of LNG in the world. When we built the M5000 plant in Point Lisas, it was the largest methanol plant in the world. [*Desk thumping*] We are pioneers in this industry. And what we are doing now, we are getting, or attempting to get into the new industry of the zero-carbon world, hydrogen.

I just want to read an article here from *World Oil*:

“Saudi Arabia takes steps to lead the \$700B...”

Hear the figure:

“...\$700B global hydrogen market.”

And it goes on to say, and I quote, Madam President:

“Sun-scorched expanses and steady Red Sea breezes make the northwest tip of Saudi Arabia prime real estate for what the kingdom hopes will become a global hub for green hydrogen.”

But to produce green hydrogen you cannot use electricity from natural gas. You must use renewable energy. That is why we are going into solar, and that solar power will be used hopefully, when the time comes with whosoever the investor is, to produce the green hydrogen. Saudi, the king of oil is going to spend billions of dollars to develop a peninsula in Saudi Arabia with solar power to capture the \$700 billion emerging global hydrogen market.

The world is not sitting down and waiting on Trinidad, you know. If we do

not get up and get conscious of what is happening, we will be left behind. But one thing I can assure you, we will not be left behind with the UNC. [*Desk thumping*] We in the PNM, we are proactive. We see where the new industry lies. We have to transform, as the saying goes, you have to pivot. And we have to go with the global trends.

We lived a happy life under hydrocarbon and hopefully we will continue to for a while. Because, luckily for Trinidad, natural gas is now considered the transition fuel. It is the cleanest of the fossil fuels, but it is still a fossil fuel. And a transition fuel by definition means what? You are transitioning into something. You are transitioning into a zero-carbon world.

BP and Shell have already said they will be net zero-carbon emitters by 2050. Europe has taken the same trajectory. Under President Biden the US has taken the same trajectory. So we just cannot sit down here as morons and think the world will wait on us. And if we go to listen to Sen. Mark, and if you go to listen to the UNC, where they see politics and scheming in every single initiative of the Government, we will go nowhere.

So this Motion, Madam President, is a non-Motion. Like most of the Motions that he has brought [*Desk thumping*] but it gives me as the Energy Minister the opportunity to outline to the public the foolishness that Sen. Mark has come to the Senate here today. And I hope I have elucidated the population as to the merits of the projects like these. I thank you very much, Madam President. [*Desk thumping*]

Madam President: Sen. Deonarine.

**Three to Five-year Economic Sustainability Plan
(Need for Government to publish)**

Sen. Amrita Deonarine: Thank you, Madam President, for allowing me the opportunity to raise this matter, the need for the Government to publish a three to five-year economic sustainability plan, to strategize for the continuous shortfalls in fiscal revenues and worsening debt trajectory since the onset of the COVID-19 pandemic.

Madam President, since the onset of the COVID-19 pandemic we are faced with a situation where the already worsening fiscal and debt path of the last decade is being exacerbated. Government revenues and public sector debt are taking a hit to ensure macroeconomic sustainability is preserved. Recent publication from the Ministry of Finance showed that fiscal revenues after falling short of projections in fiscal 2018—2020, the first four months of fiscal 2021 have recorded a shortfall in revenues of TT \$1.8 billion. This shortfall, if conditions responsible persist, could result in a further shortfall in revenues of \$5.4 billion to the already budgeted deficit of \$8.21 billion for fiscal 2021.

What this means is that our ability to meet our targets established in the fiscal package 2021, such as, to reduce the overall deficit from 11 per cent of GDP to 5.6 per cent of GDP, to meet our ambitious debt to GDP ratio target of 65 per cent by 2023/2024, and attaining a primary fiscal balance in 2021. Now, in order to maintain fiscal and debt sustainability it has become necessary to clean up the inefficiencies that have been festering for decades resulting in leakages that are no longer affordable.

In trying to get a hold of the situation, the Government has begun the introduction of a cocktail of adjustment measures simultaneously. We are all aware of them, such as, the rationalization of WASA, elimination of fuel subsidies and so on. The end result is that the public at large is having to accept a decline—will eventually have to accept a decline in disposable income to the already stagnant if

not declining incomes. As a result, it is important that we present the population with a comprehensive fiscal plan, economic sustainability plan that covers the next three to five years.

In order to be fiscally responsible there is a need to look more carefully beyond the annual time frame using econometric forecasting methodologies to determine whether the decisions made today will be sustainable in the future. But also to ensure that the Government can better be prepared to cushion the potential impact of crises and react to them in an affordable sustainable manner through fiscal stimulus if necessary. Without such a plan there is a risk of overcommitting or even under-committing our resources, and that could further jeopardize our debt, fiscal, and external position.

The plan I am asking for, Madam President, is commonly referred to as a medium-term fiscal framework. It goes beyond the work of the Economic Recovery Committee. It is a framework for setting multi-year fiscal objectives which will then be a reference throughout the budget period. It outlines the macroeconomic environment, the Government's mid-term resource envelopes, its fiscal position, projected debt levels, and financing requirements. For example, making it a continuous exercise to analyze the link between macroeconomic forecasts and revenue forecasts, using elasticities to explain how a change in GDP forecast will translate into a change in our revenue forecast.

To be able to have a sensible picture of the macroeconomic and fiscal environment in the medium-term, the Government needs to work on and develop macro fiscal forecasting skills to plan for the next three to five years. That is, estimation of high level macroeconomic fiscal indicators such as GDP growth, inflation, employment, unemployment, interest rates, commodity prices, government revenues, government expenditure, fiscal balances, public debt, taking

into account what the fiscal deficits imply for the change in debt going forward, as well as the debt services costs or interest expense.

Madam President, we need a plan which first sets realistic macroeconomic forecasts and a set of medium-term projections. Two, we need to provide explanations why the proposed fiscal path is sustainable. Often, longer term debt projections can provide such assurance. Third, complementing these figures with alternative scenarios or sensitivity analysis can help better take uncertainty into account. With revenue projections, Madam President, we would need to include a fiscal rule or objective. For example, suppose we want to achieve a balanced budget by 2025. Madam President, this would allow us to determine the expenditure ceiling for the next couple of years, allowing us to properly assess fiscal space available to fulfil the mandate of the Government. This could come from the *Vision 2020* overarching document, the plans from the Economic Review Committee, or whatever reprioritized policy objectives the Government may have.

In closing, Madam President, the foundation of our economic recovery is contingent upon fiscal management beyond the annual budget cycle. Without this we would continue to shift the goalpost to achieve economic diversification. I thank you, Madam President.

Madam President: Minister of Finance.

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. First, let me correct some misconceptions which may have inadvertently crept into the discussion. If one looks at the *Review of the Economy 2020*, and in particular, Appendix 22, it is not correct that there is a continuous shortfall in fiscal revenues. There was a decline between fiscal 2016 and fiscal 2017, from \$44.9 billion in fiscal 2016, to \$36.2 billion in fiscal 2017, and that was occasioned by the precipitous decline in oil prices in particular. And also, natural declines in oil and

gas production, as well as a gradual decline in the price of natural gas fetched by our natural gas.

However, by fiscal 2018, the recovery had begun with an increase in revenue from \$36.2 billion in fiscal 2017, to \$43.2 billion in fiscal 2018, rising again to \$46.7 billion in fiscal 2019. What this means, Madam President; is that the revenue, government revenue in fiscal 2019, was more than fiscal 2017, '16 and '18. There was an upward trajectory.

What has happened in fiscal 2020 and continuing into fiscal 2021, is COVID-19. And there are some commentators in Trinidad and Tobago who seem to want us to believe that it does not exist. So I would like to refer to—because it is easy to be academic with respect to this these matters. But this is not the time for academics. Let me read from a December 2020 article written by the PES group in the European Committee of the Regions, and in that they quote the Minister, President of Belgium making this statement:

“The COVID-19 crisis has created an unprecedented economic, social and budgetary tsunami. Citizens in the EU are suffering terribly from the pandemic’s consequences. Our wish is thus that the European economic governance is reviewed and adapted to our territories and regions’ realities. Once the pandemic...”—is—“...under control, we cannot go back to the ex-ante status quo nor continue as though nothing happened.”

And the article goes on to say, I am quoting now Elio Di Rupo:

“This opinion puts an emphasis on the fact that a Member State in recession cannot be forced to reduce its spending at the risk of further aggravating the recession.”

And there is a severe warning, if you read all of the learning in recent months, over the last three to four months, there is a serious warning that the worse

thing a country can do, particularly a developing country such as ourselves, is to engage in an austerity programme because we may very well get a double dip recession.

I would also like to read from a paper by UNCTAD, it reads as follows, September 2020:

“UNCTAD warns of a ‘lost decade’ if austerity becomes countries’ winning policy mindset.”

And what this paper tells us is that a lost decade, another lost decade is not inevitable unless we make the correct policy choices:

“An inclusive and sustained recovery will only happen if governments in the advanced countries not only keep spending for as long as it takes for their own private sector to regain the confidence to spend themselves, but also extend financial support to help developing countries tackle the underlying stresses and fractures...holding back their recovery...”—as a result of the pandemic.

The point is, Madam President, we do have a medium-term macroeconomic fiscal policy framework. We have always had one and we revise it every six months. However, in the face of the economic wreckage of COVID-19, the programmes of the past, such as devaluation, reduction of public sector spending, retrenchment, removal of subsidies, wholesale removal of subsidies, those failed policies that were attempted by another government many years ago, are no longer relevant. I have no problem whatsoever in publishing, and the Government has no problem whatsoever in publishing the current three-year macroeconomic framework, and our economic recovery plan. I have no problem whatsoever.

But I want to stress that some of the ideas that are being promoted in the media, in the university, and even in here, Madam President, will simply cause our

economy to go into a tailspin from which it will never recover. All over the world, developed countries, United Kingdom, if one had been following the Chancellor of the Exchequer in the United Kingdom, United Kingdom debt to GDP ratio is now over 100 per cent. It is the highest it has ever been for the last 70 years. And it was at that level because of the Second World War because they had to spend to come out of the issues from the Second World War.

We are in a situation where it is our view that you must spend our way out of this recession. And the old metrics of debt to GDP ratio and debt as a whole are no longer applicable. So I will be very comfortable and happy to publish our three-year macroeconomic medium-term framework for the benefit of hon. Senators. But certainly, what we will not be doing is following the advice of academics who tell us that the only solution is devaluation, retrenchment and recession. I thank you, Madam President. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.15 p.m.