

Report of the
Special Select Committee (Senate)
on the
Sexual Offences (Amendment) (No. 3)
Bill, 2021



**Second Session (2021/2022),
Twelfth Parliament**



SECOND SESSION OF THE 12TH PARLIAMENT (2021/2022)

**REPORT
OF
THE SPECIAL SELECT COMMITTEE OF THE SENATE
APPOINTED TO CONSIDER AND REPORT ON
A BILL ENTITLED, “AN ACT TO AMEND THE SEXUAL
OFFENCES ACT, CHAP. 11:28”**

MP PARL: No. 14/2/33

Senate Paper No. 14 of 2022

[Ordered to be printed by the Senate]

Date Laid in the Senate: June 14, 2022

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Committee Mandate

Pursuant to a resolution of the Senate on Tuesday January 11, 2022, a Special Select Committee was established to consider and report by February 01, 2022 on the Sexual Offences (Amendment) (No. 3) Bill, 2021.

Interim Reports

The Committee's First Interim Report was presented in the Senate on Tuesday February 08, 2022 and its Second Interim Report was presented on Wednesday May 25, 2022.

Committee Membership

Mr. Reginald Armour, S.C. - Chairman¹
Mr. Randall Mitchell
Mrs. Renuka Sagrarsingh-Sooklal
Ms. Jayanti Lutchmedial
Mr. Paul Richards

Secretariat Support

Mr. Brian Caesar, Clerk of the Senate (Ag.)	Secretary
Mr. Johnson Greenidge, Procedural Clerk Assistant	Assistant Secretary
Mr. Brian Lucio, Procedural Clerk Assistant	Assistant Secretary
Ms. Rebecca Rafeek, Procedural Officer Intern	Assistant Secretary
Ms. Katharina Gokool	Researcher

Contact

The Secretary
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¹ The Senatorial seat of Mr. Clarence Rambharat was declared vacant with effect from March 16, 2022. Mr. Reginald Armour, SC was appointed to serve as Chairman of the Committee by resolution approved in the Senate on March 22, 2022.

CHAIRMANSHIP

1. Pursuant to a resolution of the Senate on March 22, 2022, **Mr. Reginald Armour, SC** was appointed to serve as a Member and as Chairman on the Special Select Committee on the Sexual Offences (Amendment) (No. 3) Bill, 2021 in lieu of Mr. Clarence Rambharat.²

MEETINGS

2. Since its appointment, your Committee held **nine (9) meetings** on the following dates:
 - Friday January 14, 2022;
 - Friday January 25, 2022;
 - Friday January 28, 2022;
 - Friday February 04, 2022;
 - Friday February 11, 2022;
 - Monday February 21, 2022;
 - Monday March 07, 2022;
 - Friday March 11, 2022; and
 - Friday June 10, 2022.
3. The Minutes of the Meetings are attached at **Appendix I**.

REPORTS PRESENTED

4. Your Committee presented the following Interim Reports:
 - (i) The Committee's First Interim Report was presented in the Senate on February 08, 2022. This report recommended that the Committee be granted an extension to March 31, 2022 to continue its work; and
 - (ii) The Committee's Second Interim Report was presented in the Senate on May 25, 2022. This report recommended that the Committee be granted an extension to June 30, 2022 to complete its work.

COMMITTEE'S WORK

5. At its **First Meeting** held on Friday January 14, 2022, your Committee agreed to:
 - (i) issue requests to the following stakeholders for comment on the Bill and advise on the possibility of an invitation to appear before the Committee:

² Mr. Clarence Rambharat served as Chairman of the Committee during the period January 11, 2022 to March 16, 2022.

State Agencies

- The Judiciary;
- The Director of Public Prosecutions;
- The Ministry of National Security;
 - The Trinidad and Tobago Police Service;
 - The Trinidad and Tobago Prison Service
 - Immigration Division;
 - Strategic Services Agency;
- Office of the Prime Minister - Gender and Child Affairs Division;
- The Children's Authority of Trinidad and Tobago;
- The Ministry of Foreign and CARICOM Affairs;
- The Ministry of Social Development and Family Services; and
- CreativeTT.

Non-Governmental Organisations

- The Law Association of Trinidad and Tobago;
- International Criminal Police Organization (INTERPOL);
- Coalition Against Domestic Violence;
- Rape Crisis Society;
- Caribbean Center for Human Rights;
- The Network of NGOs of Trinidad and Tobago for the Advancement of Women;
- Child Welfare League of Trinidad and Tobago;
- Women's Institute for Alternative Development (WINAD);
- National Organisation of Women;
- Womantra;
- Feminitt Caribbean;
- Institute of Gender and Development Studies, UWI;
- Organisation for Abused and Battered Individuals;
- Trinidad and Tobago Carnival Bands Association;
- Trinidad and Tobago Promoters Association;
- Photographers and Videographers Association of Trinidad and Tobago;
- The Modelling Association of Trinidad and Tobago;
- Caribbean Association of National Telecommunication Organisations (CANTO);
- Media Association of Trinidad and Tobago (MATT);
- Copyright Organisation of Trinidad and Tobago (COTT);
- Trinidad and Tobago Association of Psychologists;
- Southern Assembly of Lawyers; and
- Trinidad and Tobago Publishers and Broadcasters Association (TTPBA).

6. At its **Second Meeting** held on Tuesday January 25, 2022, the Law Reform Commission and the Criminal Justice Unit, AGLA³ made a presentation to your Committee on the provisions of the Bill.
7. During the course of its consideration of the Bill, your Committee received and considered submissions from the following stakeholders:
 - i. The Ministry of Foreign and CARICOM Affairs
 - ii. The Ministry of National Security
 - iii. The Office of the Prime Minister (Gender and Child Affairs)
 - iv. The Children's Authority of Trinidad and Tobago
 - v. The Ministry of Social Development and Family Services
 - vi. Public Defender's Department
 - vii. Director of Public Prosecutions
 - viii. CreativeTT
 - ix. Feminitt Caribbean
 - x. Trinidad and Tobago Promoters' Association
 - xi. The Centre for Nonviolence, Research and Development (formerly the Organisation for Abused and Battered Individual)
 - xii. Alliance for State Action to end Gender based Violence (ASA) which incorporated comments from the following entities:
 - a. Coalition Against Domestic Violence;
 - b. CAISO: Sex & Gender Justice;
 - c. Institute for Gender and Development Studies, UWI;
 - d. CEDAW Committee of Trinidad & Tobago;
 - e. Caribbean Association for Feminist Research and Action (CAFRA) TT;
 - f. Mamatoto;
 - g. The Shelter for Battered Women and Children;
 - h. WOMANTRA;
 - i. Caribbean Centre for Human Rights;
 - j. Network of NGOs of Trinidad and Tobago for the Advancement of Women;
 - k. Conflict Women;
 - l. Women's Institute for Alternative Development (WINAD); and
 - m. The Center for Nonviolence, Research, and Development
 - xiii. Feminitt Caribbean
 - xiv. Caribbean Centre for Human Rights (independent submission)
 - xv. Law Association of Trinidad and Tobago
 - xvi. Media Association of Trinidad and Tobago
 - xvii. Rape Crisis Society of Trinidad and Tobago
 - xviii. Trinidad and Tobago Association of Psychologists
 - xix. Child Welfare League of Trinidad and Tobago
 - xx. Independent Journalist, Ms. Sunity Maharaj
 - xxi. Public Submission on the Bill
8. Your Committee received oral submissions (in public) from the following stakeholders:

³ Office of the Attorney General and Ministry of Legal Affairs

MEETING	DATE	STAKEHOLDERS
Third Meeting	January 28, 2022	• Trinidad and Tobago Prison Service; and • Trinidad and Tobago Police Service.
Fourth Meeting	February 04, 2022	• Office of the Prime Minister – Gender and Child Affairs; • Ministry of Foreign and CARICOM Affairs; • Ministry of Social Development and Family Services; • Ministry of National Security; • Children’s Authority of Trinidad and Tobago; and • Trinidad and Tobago Creative Industries Company Limited (CreativeTT).
Fifth Meeting	February 11, 2022	• Trinidad and Tobago Promoters’ Association; • Feminitt Caribbean; • Caribbean Centre for Human Rights; • Center for Nonviolence, Research and Development; • Law Association of Trinidad and Tobago; and • Media Association of Trinidad and Tobago.
Sixth Meeting	February 21, 2022	• Public Defenders’ Department; • Alliance for State Action to end Gender-based Violence (ASA); and • Trinidad and Tobago Publishers and Broadcasters Association.
Seventh Meeting	March 04, 2022	• Director of Public Prosecutions; • Rape Crisis Society of Trinidad and Tobago; • Child Welfare League of Trinidad and Tobago; and • Trinidad and Tobago Association of Psychologists.

9. Your Committee’s consideration of the Bill was informed by comments submitted by stakeholders and which were listed in a Stakeholders Matrix (**Appendix V**). In this regard, the Law Reform Commission was directed to draft and present the relevant amendments and once approved, to subsequently reflect same in a Consolidated Version of the Bill.

10. At its **Eighth Meeting** held on March 11, 2022, your Committee examined the proposed list of amendments and commenced its clause-by-clause examination of the Bill.
11. At its **Ninth Meeting** held on June 10, 2022, your Committee continued and concluded its clause-by-clause examination of the Bill.
12. During its consideration of the Bill, your Committee considered the following key issues:

Issues	
Clause 4	
Amendment to definition for equipment	Whether the term ‘device’ should be used instead of ‘equipment’
	The inclusion of mirror in the definition of ‘equipment’
Amendment to definition for “internet service provider”	Whether the Bill covers responsibility for monitoring material for any potentially local social media platforms in the definition for “internet service provider”.
Amendment to definition for “intimate image”	Whether the offences only relate to digital images or can they apply to intimate images created by paintings, drawings etc. of individuals without consent
	The term “manner or context that is sexual” needs further clarification.
	The need to tighten the language in the definition of “intimate image”.
	The need to clarify the term “privacy” in the Bill.
Amendment to definition for “law enforcement officer”	Whether the definition for law enforcement officer should include Immigration Officers and Prison Officers
Amendment to definition for “private act”	Greater clarification needed regarding public/private spaces particularly as it pertains to the taking of photographs during Carnival.
Amendment to definition for “private parts”	The inclusion of ‘mouth’ in the definition of “private parts”.
	The need to clearly define the term “private parts” to ensure there is no vagueness.
Amendment to definition for “sexual act”	The need to clearly define the term “sexual act” to ensure there is no vagueness.
Amendment to definition for “visual recording”	Whether the Bill capture audio recording and the threat of sharing same.
Inclusion of definition for “sexual gratification”	Whether “sexual gratification” should be defined in the Bill.
	The term ‘sexual gratification’ was very wide and should be tightened.
Inclusion of definition for “underwear”	The need to define the term “underwear” in the Bill to prevent ambiguity, as some persons may view a carnival costume as being underwear.
	Expand the meaning of underwear to include swimwear, particularly in relation to children. Consider an amendment to the Children Act.

Issues	
Inclusion of definition for “consent”	The word ‘consent’ should be defined. Section 91O NSW Crimes Act, 1900 No.40 defined ‘consent’. Recommended inserting instances when consent is deemed to have been given and when it cannot be given. This would protect, for example, under-aged persons, persons with limited mental capacity or persons who may have been threatened or coerced to give consent. This insertion would make the legislation more operational The defining of “consent” is not only important for clarity, but also cultural change and socialising young people into understanding what is consent. Also consider the concept of ‘conditional consent’ – where consent for the taking and sharing under specific circumstances is given, but the sharing has happened outside of the specific consent given.
Inclusion of definition for “reasonable expectation”	The need to define the term ‘reasonable expectation’ given that what may be ‘reasonable’ during the everyday context may change during carnival Given that the following terms were cited: ‘reasonable person’, ‘reasonably know’, ‘reasonable actions’, a definition for the ‘reasonable’ should be provided or a different word used to help persons understand what this means. Concern over the word ‘reasonably’ in Section 22 A (3)(d) There is no need to further define the term ‘reasonable person’.
Inclusion of definition for “authorized persons”	The term “authorized person” should be clearly defined to prevent any abuses of the wide-ranging exceptions at 22A, B, & C (3)(b). Consider the NSW precedent where, in terms of exceptions/statutory defences, one must have regard to the nature and content of the image, the circumstances in which it was taken/shared, the circumstances of the person depicted in the image (age, intellectual capacity, vulnerability, other relevant considerations), the degree to which the actions of the accused affected the depicted person’s privacy, and the relationship between the accused and the depicted person.
CLAUSE 5	
Distinguish adult offenders from child offenders in the Bill	Adult offenders should be distinguished from child offenders. There should be reference to s.20 of the Children Act to guide the Courts in treating with victims and perpetrators who are children
Higher penalties where the victim is a child	Higher penalties where the victim is a child and should include mandatory imprisonment as well as their inclusion on a register of sex offenders which should be made available
Treatment of offenders with diminished capacity in the Bill	Offenders with diminished capacity were not captured in the Bill and should be treated differently
The treatment of consent under various	Suggested that where a relationship deteriorates consent should be immediately diminished or automatically revoked.

Issues	
circumstances is not adequately addressed throughout Bill	Whether consent should be reconsidered under circumstances where a person was vulnerable at the time of giving consent.
Sentencing of Youth Offenders	The sentencing approach under the Bill is punitive but with respect to youth offenders, consider an approach that aligns with restorative justice.
The need to include reckless intention in the Bill	Reckless intention to commit the acts should be included even if it leads to a lesser sentence upon conviction.
The exemptions for educational purposes are too broad	There is need for further restrictions to ensure privacy and confidentiality is protected .

13. At the Committee's June 10, 2022 meeting, and in response to a matter raised regarding provisions for the issuance of Interim Orders in respect of the offence of voyeurism, the Committee agreed that the Attorney General would propose the requisite amendment during the Committee of the Whole.
14. Following its examination, your Committee resolved to finalise its report to Parliament, along with the Proposed List of amendments to the Bill and Consolidated version of the Bill via round-robin email.

REPORT

15. Your Committee wishes to report that, in accordance with Standing Order 104, and in keeping with its mandate, consideration of the Bill referred has been completed. The **Proposed List of Amendments to the Bill** is attached at **Appendix III** and these are incorporated in the **Consolidated version of the Bill** attached at **Appendix IV**, for ease of reference.
16. The Committee is grateful to all those who assisted it in its work.

RECOMMENDATION

17. In accordance with Standing Order 64(3), your Committee recommends that its report on the Sexual Offences (Amendment) (No.3) Bill, 2021 be adopted by the Senate, at the earliest opportunity, subject to the amendments listed in **Appendix III**.

Respectfully Submitted,

Sgd.

Mr. Reginald Armour, S.C.
Chairman
June 14, 2022

Sgd.

Mr. Randall Mitchell
Member

Sgd.

Mrs. Renuka Sagarsingh-Sooklal
Member

Sgd.

Ms. Jayanti Lutchmedial
Member

Mr. Paul Richards
Member

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APPENDIX I

ATTENDANCE RECORD AND MINUTES OF PROCEEDINGS

ATTENDANCE RECORD
SPECIAL SELECT COMMITTEE ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021

Members	1st Meeting 14.01.2022	Rescheduled 2nd Meeting 25.01.2022	3rd Meeting 28.01.2022	4th Meeting 04.02.2022	5th Meeting 11.02.2022	Rescheduled 6th Meeting 21.02.2022	7th Meeting 04.03.2022	8th Meeting 11.03.2022	Rescheduled 9th Meeting 10.06.2022
Mr. Clarence Rambharat (Chairman)	√	√	√	√	√	√	√	√	
Mr. Reginald Armour, S.C. ⁴									√
Mr. Randall Mitchell	√	√	√	√	√	exc.	√	√	exc.
Mrs. Renuka Sagramsingh -Sooklal	√	exc.	√	√	√	√	√	√	√
Ms. Jayanti Lutchmedial	√	√	√	√	√	√	√	√	√
Mr. Paul Richards	√	√	√	√	√	√	√	√	√

*exc- excused
abs- absent

⁴ The Senatorial seat of Mr. Clarence Rambharat was declared vacant with effect from March 16, 2022. Mr. Reginald Armour, SC was appointed to serve as Chairman to the Committee by resolution passed in the Senate on March 22, 2022.

**MINUTES OF THE 1ST MEETING,
2ND SESSION (2021/2022), 12TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021
HELD VIRTUALLY ON FRIDAY JANUARY 14, 2022**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Mr. Randall Mitchell	Member
Mrs. Renuka Sagrarsingh-Sooklal	Member
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richards	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer (Intern)
Ms. Katharina Gokool	Graduate Research Assistant

CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 10:02 a.m. and welcomed Members present.

ANNOUNCEMENTS BY THE CHAIRMAN

- 2.1 The Chairman referenced letter dated January 13, 2022 from the President of the Senate, in which, the President, in concurrence with Standing Order 85 (3) of the Senate, directed that the quorum of the Committee shall be three (3) Members inclusive of the Chair.

TERMS OF REFERENCE

3.1 The Chairman reminded Members of the Committee's terms of reference, viz.:

- i. to consider and report on a Bill entitled "The Sexual Offences (Amendment)(No.3) Bill, 2021"; and
- ii. to report to the Senate by February 01, 2022.

3.2 The Chairman also reminded Members that:

- i. In accordance with **Standing Order 67(1)** of the Senate, "*any Committee to which a Bill is committed after second reading shall not discuss the general merits and principles of the Bill, but only its details*";
- ii. In keeping with **Appendix III, Number 9** of the Senate Standing Orders on the General Rules for the conduct of proceedings of Committees, Members should inform the Secretariat of any Senator who wishes to attend Committee meetings to ensure that the leave of the Committee can be granted;
- iii. In concurrence with **Appendix III, Number 10** of the Senate Standing Orders on the General Rules for conduct of proceedings of Committees, "*the Minister or Member in charge of a Bill may take part in the proceedings of the Committee even though not a Member of the Committee but may not vote on any question put to the Committee.*"

Members took note of the relevant Standing Orders.

DISCUSSIONS ON THE WAY FORWARD

4.1 The Chairman confirmed that Members were in receipt of packages containing the following:

- i. A List of Members of the Committee;
- ii. A copy of the Sexual Offences (Amendment)(No.3) Bill, 2021;
- iii. Bill Essentials re: Sexual Offences (Amendment)(No.3) Bill, 2021;
- iv. The Hansard extracts of the debate on the Second Reading of the Bill dated Tuesday January 11, 2022; and
- v. A List of Possible Stakeholders re: Sexual Offences (Amendment)(No.3) Bill, 2021.

4.2 The Chairman invited Members to consider the List of Possible Stakeholders prepared by the Secretariat. After some discussion, the Committee agreed to request written submissions from the following stakeholders:

State Agencies

- i. The Judiciary;
- ii. The Director of Public Prosecutions;
- iii. The Trinidad and Tobago Police Service;
- iv. The Trinidad and Tobago Prison Service;
- v. The Ministry of National Security;
- vi. Immigration Division;
- vii. Strategic Services Agency;
- viii. Office of the Prime Minister - Gender and Child Affairs Division;
- ix. The Children's Authority;
- x. The Ministry of Foreign and CARICOM Affairs;
- xi. The Ministry of Social Development and Family Services; and
- xii. CreativeTT.

Non-Governmental Organisations

- i. The Law Association of Trinidad and Tobago;
- ii. International Criminal Police Organization (INTERPOL);
- iii. Coalition Against Domestic Violence;
- iv. Rape Crisis Society;
- v. Caribbean Center for Human Rights;
- vi. The Network of NGOs of Trinidad and Tobago for the Advancement of Women;
- vii. Child Welfare League of Trinidad and Tobago;
- viii. Women's Institute for Alternative Development (WINAD);
- ix. National Organisation of Women;
- x. Womantra;
- xi. Feminitt Caribbean;
- xii. Institute of Gender and Development Studies, UWI;
- xiii. Organisation for Abused and Battered Individuals;
- xiv. Trinidad and Tobago Carnival Bands Association;
- xv. Trinidad and Tobago Promoters Association;
- xvi. Photographers and Videographers Association of Trinidad and Tobago;
- xvii. The Modelling Association of Trinidad and Tobago;
- xviii. Caribbean Association of National Telecommunication Organisations (CANTO);
- xix. Media Association of Trinidad and Tobago (MATT);

- xx. Copyright Organisation of Trinidad and Tobago (COTT);
- xxi. Trinidad and Tobago Association of Psychologists;
- xxii. Southern Assembly of Lawyers; and
- xxiii. Trinidad and Tobago Publishers and Broadcasters Association (TTPBA).

- 4.3 Members agreed to submit any other proposed stakeholders via email to the Secretariat.
- 4.4 The Secretariat was instructed to include in its letter to stakeholders that they may be invited to attend a stakeholder engagement meeting.
- 4.5 The Committee agreed to meet next on Friday January 21, 2022 at 1:30 p.m. to discuss the submissions from the following Stakeholders: The Director of Public Prosecutions, the Trinidad and Tobago Police Service and the Trinidad and Tobago Prison Service. The Secretariat was instructed to send invitations accordingly.

OTHER BUSINESS

- 5.1 The Committee agreed to:
 - i. engage Government stakeholders followed by non-governmental organisations; and
 - ii. request the assistance of the Law Reform Commission to conduct a presentation on the Bill, including an outline of the relationship between the Sexual Offences (Amendment) (No. 3) Bill, 2021 and the draft Cybercrime legislation.

ADJOURNMENT

- 6.1 The meeting was adjourned to Friday January 21, 2022 at 1:30 p.m.
- 6.2 The adjournment was taken at 10:30 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

January 24, 2022

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**MINUTES OF THE 2ND MEETING,
2ND SESSION (2021/2022), 12TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021
HELD VIRTUALLY ON TUESDAY JANUARY 25, 2022**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Mr. Randall Mitchell	Member
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richards	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer (Intern)
Ms. Katharina Gokool	Graduate Research Assistant

Office of the Attorney General and Ministry of Legal Affairs

Mr. Faris Al-Rawi	Attorney General and Minister of Legal Affairs
Mrs. Farzana Nazir-Mohammed	Director, Criminal Justice Unit
Ms. Farah Abdool	Senior Legal Officer
Mr. Jason Dass	Legal Officer II
Ms. Ria Brereton	Legal Officer I
Ms. Nalini Ramjit	Legal Officer I
Ms. Janelle Smith	Legal Counsel II

Law Reform Commission

Mrs. Shireen Khan-Hyder Ali	Senior Parliamentary Counsel
Ms. Tamara Dookran	Law Reform Officer

EXCUSED

Mrs. Renuka Sagrarsingh-Sooklal

Member

CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 9:35 a.m. and welcomed Members present.
- 1.2 The Minutes were confirmed on a motion moved by Ms. Jayanti Lutchmedial and seconded by Mr. Paul Richards.

ANNOUNCEMENTS BY THE CHAIRMAN

- 2.1 The Chairman advised that Mrs. Renuka Sagrarsingh-Sooklal asked to be excused from the meeting.

CONFIRMATION OF MINUTES OF THE 2ND MEETING HELD ON TUESDAY JANUARY 25, 2022

- 3.1 The Chairman invited Members to consider the Minutes page-by-page and inquired whether there were any amendments.
- 3.2 There being no amendments, a motion for the confirmation of the Minutes was moved by Ms. Jayanti Lutchmedial and seconded by Mr. Paul Richards.

MATTERS ARISING FROM THE MINUTES

- 4.1 **Per Item 4.2.** The Chairman informed the Committee that:
 - a. all stakeholders had been contacted with the following exceptions, as the Secretariat was unable to make contact with:
 - (i) The Network of NGOs of Trinidad and Tobago for the Advancement of Women;
 - (ii) National Organisation of Women;
 - (iii) Photographers and Videographers Association of Trinidad and Tobago;
 - (iv) Trinidad and Tobago Photography Society;
 - (v) Modelling Association of Trinidad and Tobago; and
 - (vi) Trinidad and Tobago Publishers and Broadcasters Association.
 - b. the Secretariat received written comments from the Trinidad and Tobago Prison Service which was circulated to Members via email on Friday January 21, 2022 and uploaded to the Rotunda; and
 - c. written comments from the Trinidad and Tobago Police Service and Office of the Director of Public Prosecutions remained outstanding and will be circulated to the Members once received.

PRESENTATION BY THE LAW REFORM COMMISSION

- 5.1 The following officials from the Office of the Attorney General and Ministry of Legal Affairs, the Criminal Justice Unit and the Law Reform Commission were invited to join the virtual meeting room:

i. Mrs. Farzana Nazir-Mohammed	Director, Criminal Justice Unit
ii. Ms. Farah Abdool	Senior Legal Officer
iii. Mr. Jason Dass	Legal Officer II
iv. Ms. Ria Brereton	Legal Officer I
v. Ms. Nalini Ramjit	Legal Officer I
vi. Ms. Janelle Smith	Legal Counsel II
vii. Mrs. Shireen Khan-Hyder Ali	Senior Parliamentary Counsel
viii. Ms. Tamara Dookran	Law Reform Officer

- 5.2 The officials from the Criminal Justice Unit and the Law Reform Commission presented an overview of the Bill, its relationship with the Cybercrime Bill and explanations of each clause of the Bill.
- 5.3 The officials from the Criminal Justice Unit and the Law Reform Commission concluded their presentation at 10:25 a.m. and the Chairman thanked them for their attendance.
- 5.4 The officials left the virtual meeting room.

DISCUSSIONS ON THE WAY FORWARD

- 6.1 The Committee agreed to meet next on Friday January 28, 2022 at 10:30 a.m. (in camera) and at 11:00 a.m. (in public) for the first stakeholder engagement session with the following entities:
- i. Office of the Director of Public Prosecutions;
 - ii. Trinidad and Tobago Police Service; and
 - iii. Trinidad and Tobago Prison Service.

ADJOURNMENT

- 7.1 The meeting was adjourned to Friday January 28, 2022 at 10:30 a.m.
- 7.2 The adjournment was taken at 10:26 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

January 27, 2022

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**MINUTES OF THE 3RD MEETING,
2ND SESSION (2021/2022), 12TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021
HELD VIRTUALLY ON TUESDAY JANUARY 28, 2022**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Mr. Randall Mitchell	Member
Mrs. Renuka Sagrarsingh-Sooklal	Member
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richards	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer (Intern)
Ms. Katharina Gokool	Graduate Research Assistant

CALL TO ORDER

- 1.1. The Chairman called the meeting to order at 10:32 a.m. and welcomed Members present.

CONFIRMATION OF MINUTES OF THE 2ND MEETING HELD ON TUESDAY JANUARY 25, 2022

- 2.1. The Chairman invited Members to consider the Minutes page-by-page and inquired whether there were any amendments. The following amendments were made:
- **Items 5.1, 5.2 and 5.3, page 3** – insert the words “Criminal Justice Unit and”, before the words “Law Reform Commission”;
- 2.2. There being no further amendments, a motion for the confirmation of the amended Minutes was moved by Mr. Paul Richards and seconded by Mrs. Renuka Sagrarsingh-Sooklal.

PRE-HEARING DISCUSSIONS

3.1. The Chairman informed the Committee that:

- a. The following stakeholders confirmed their attendance for today's meeting:
 - (i) Trinidad and Tobago Police Service; and
 - (ii) Trinidad and Tobago Prison Service.
- b. The Office of the Director of Public Prosecution (DPP) indicated via email at 7:00 p.m. on Thursday January 27, 2022, that the DPP was not available to attend a meeting of the Committee until mid-February. The Committee agreed to invite the DPP to a later meeting.

3.2. The Chairman indicated that:

- a. The Secretariat was in contact with the DPP's Office and would provide an update on its written comments.
- b. The Trinidad and Tobago Police Service indicated by email dated January 27, 2022 that it was in agreement with the content of the Bill.
- c. The Trinidad and Tobago Prison Service made a submission to the Committee by letter dated January 20, 2022.
- d. Written comments were also received from the following stakeholders which were circulated to Members via email on January 27, 2022:
 - (i) Ministry of National Security; and
 - (ii) Ministry of Foreign and CARICOM Affairs.
- e. The Children's Authority requested an extension to January 28, 2022 to make a submission.

3.3. Members agreed on the approach to be taken during the public hearing.

OTHER BUSINESS

Interim Report

- 4.1. The Chairman reminded Members that the Committee was required to report to the Senate by February 01, 2022. The Chairman also informed Members that the Senate would not be sitting until February 08, 2022. Therefore, the Committee would continue its work in the interim and present its Interim Report at the sitting of the Senate of February 08, 2022.
- 4.2. The Committee agreed to submit an Interim Report to the Senate requesting an extension to **March 31, 2022**.
- 4.3. The Chairman advised that the Interim Report of the Committee will be drafted by the Secretariat and forwarded via email for Members' consideration and approval.

Next Meeting Date

4.4. The Committee agreed that the next meeting of the Committee be scheduled for **Friday February 04, 2022 at 10:00 a.m. (in camera) and thereafter 10:30 a.m. (in public)** with the following stakeholders:

- (i) Ministry of National Security;
- (ii) OPM - Gender and Child Affairs Division;
- (iii) Children's Authority;
- (iv) Ministry of Foreign and CARICOM Affairs;
- (v) Ministry of Social Development and Family Services; and
- (vi) CreativeTT.

SUSPENSION

5.1. The meeting was suspended at 10:43 a.m.

1ST VIRTUAL STAKEHOLDER ENGAGEMENT MEETING

6.1. The meeting resumed (in public) at 11:00 a.m.

6.2. The following officials joined the meeting:

Trinidad and Tobago Police Service

- | | |
|--------------------------|----------------------------------|
| • Mr. McDonald Jacob | Commissioner (Ag.) |
| • Ms. Sharon Cooper | Assistant Commissioner of Police |
| • Ms. Claire Guy-Alleyne | Superintendent (Ag.) |

Trinidad and Tobago Prison Service

- | | |
|-------------------------|-----------------------|
| • Mr. Dennis Pulchan | Commissioner |
| • Mr. Hayden Walcott | Chief Welfare Officer |
| • Mr. Mustaque Mohammed | Legal Officer |

Office of the Attorney General and Ministry of Legal Affairs

- | | |
|-------------------------------|---------------------------------|
| • Mrs. Farzana Nazir-Mohammed | Director, Criminal Justice Unit |
| • Ms. Farah Abdool | Senior Legal Officer |
| • Ms. Ria Brereton | Legal Officer I |
| • Ms. Nalini Ramjit | Legal Officer I |
| • Mr. Carl Esdelle | Research Officer |

Law Reform Commission

- | | |
|-------------------------------|------------------------------|
| • Mrs. Shireen Khan-Hyder Ali | Senior Parliamentary Counsel |
| • Ms. Tamara Dookran | Law Reform Officer |

6.3. A summary of the issues raised/comments made during the stakeholder engagement meeting can be found in the **Appendix**.

ADJOURNMENT

- 7.1. The Chairman thanked officials, Members, staff and the viewing /listening public for their participation in the proceedings.
- 7.2. The meeting was adjourned to **Friday February 04, 2022 at 10:00 a.m.**
- 7.3. The adjournment was taken at 10:43 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

January 28, 2022

Summary of Issues Raised/Comments made during the Stakeholder Engagement Meeting

Issue	Details
The adequacy and clarity of definitions (private act, private part, share, store)	<i>TTPS's Response:</i> ▪ The TTPS generally does not have any difficulty with the definitions as they are an extension to that in the Children's Act Chap. 46:01 and Sexual Offences Act Chap. 11:28.
Whether the TTPS will encounter challenges with enforcing the law given some of the cultural practices that exist e.g. the taking and sharing of Carnival images	<i>TTPS's Response:</i> ▪ There will be need to raise awareness on what is permissible especially as it relates to the cultural use of images; ▪ "Consent" will be based on the situation/circumstances; ▪ The TTPS will be guided by its Legal Unit in addressing challenges as it pertains to "consent"; and ▪ Apart from Statutory law, Case law will assist Officers with making decisions as it relates to charges under various circumstances
The inclusion of "audio recordings" in the Bill	<i>TTPS's Response:</i> ▪ The inclusion of audio recordings in the Bill would assist with compiling evidence cases, although it may be challenging to identify a person's voice in some instances and will require the relevant expertise and technology. ▪ Cybercrime personnel are prepared to treat with audio recordings.
Whether Police Officers should be of a certain rank when treating with sensitive images	<i>TTPS's Response</i> The TTPS was of the view that it was not necessary for Police Officers to be of a certain rank for the following reasons: ▪ Specialized Officers will be assigned to treat with such issues; ▪ Within the Police Service there are checks and balances and Standard Operating Procedures were established and placed in the Departmental Orders; ▪ At all levels in the Police Service there is supervision and action can be taken departmentally if a violation occurs; ▪ The Cybercrime Unit would play an important role in treating with sensitive images; ▪ Limiting the issue to a certain rank will result in further complications because of how units are structured; ▪ The focus is not on rank but on Officers with the relevant expertise to perform the task; and ▪ Officers with no less than 3 years of service are appointed to specialised units such as the Cybercrime Unit therefore only experienced Officers will be assigned to such tasks.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
Exceptions for law enforcement officers	<i>TTPS's Response:</i> ▪ Apart from the exculpatory section in the Bill, the procedural and reporting requirements on the activities of Officers that exists in the Police Service would assist to protect Officers from the possibility of being accused of acts of Voyeurism; ▪ The TTPS expressed concern over the word "reasonably" in Clause 5, proposed Section 22 A (3) (d); ▪ It is anticipated that queries on Officers committing acts of voyeurism in the conduct of their duties may arise initially. However, the operating procedures at the Police Service will assist to protect such Officers as any form of monitoring/observation would be linked to supervision and will be documented. ▪ The TTPS supports the need for Prison Officers to be granted exception as law enforcement officers. <i>Prison Service's response:</i> ▪ There is the need for Prison Officers to be granted an exception similar to law enforcement officers as it pertains to the taking/use/storage of intimate images of inmates, which are documented for identification and evidential purposes for example, intrusive searches, extensive DNA sampling of inmates, taking images of tattoos which may be located at private parts and sharing such intimate images of inmates with other law enforcement agencies. ▪ The Prison Service is not covered under (f) of the definition for "law enforcement officer". ▪ The Prisons Service has the relevant firewalls and IT provisions including an IT Department and Photography Department to keep private images of inmates safe.
The sufficiency of the penalty for a law enforcement officer guilty of an offence of voyeurism	<i>TTPS's response:</i> ▪ The penalty in the Bill for the offence of voyeurism is stiff. ▪ Even without the provision in the proposed legislation, there are penalties/consequences e.g. attached via the Police Service Regulations for officers who are found in breach of use/handling of private images. ▪ An officer found in breach of his use/handling of private images will also be subject to a higher sentencing threshold if found guilty, therefore, the penalties are sufficient.
Whether there has been an increase in use of technology such as cellphones with cameras by law enforcement officers that is likely to constitute a breach	<i>TTPS's Response:</i> ▪ There has not been an increase in breaches by law enforcement officers, however, there have been isolated instances. ▪ There have been increase in breaches by members of the public.

Issue	Details
	<i>Prison Service's Response:</i> ▪ There have been no instances of prisons officers transmitting private pictures of inmates. ▪ The Prison Service has challenges with inmates sending images of themselves externally, an offence which is governed by Interception and Communications Act, Chap. 15:08 and Prisons Act, Chap. 13:01.
Whether there is need for an additional clause to treat with breaches by law enforcement officers as it relates to unauthorized sharing of crime scenes/private images (not meeting the threshold of a criminal act)	<i>TTPS's response:</i> ▪ There is no need for an additional clause to treat with breaches to the Police Operating Manual or Standard Operating Procedures. ▪ There are legal provisions which treat with breaches by police officers including the Police Service Regulations, the Professional Standards Bureau, Complaints Division, TTPS. ▪ Once a breach reaches the threshold of a criminal act it is dealt with by the courts as provided for in the Bill. ▪ The issue of taking and sharing crime scene footage and other material for broadcast has been raised by the TTPS. The TTPS sought advice from the DPP in this regard. ▪ An education training programme was implemented for Police Officers as it relates to the taking and sharing of crime scene footage and other materials for broadcast. ▪ The Commissioner of Police has the power to dismiss a Police Officer from the Police Service who has committed a breach as it pertains to the taking and sharing of crime scene footage and other material. ▪ There have been instances where Police Officers were found in breach of committing an act of voyeurism via the sharing of images and was dealt with by the courts. ▪ The current arrangements to obscure law enforcement officers from abusing their powers are sufficient notwithstanding, the TTPS will not prevent the inclusion of any other provision in the Bill to deal with such situations. <i>Prison Service's response:</i> ▪ There are strict laws for prison officers' guiding the use of cell phones. ▪ The sharing of unauthorized footage of crime scenes should carry a stiffer penalty because it adds trauma to the lives of victims and their families. ▪ The taking of unauthorized footage of police officers and crime scenes in the execution of duties by members of the public should be an arrestable offence and a stiffer penalty is needed.

Issue	Details
Sentencing	<i>Prisons Service Response:</i> ▪ The Prison Service is sorely lacking a mandatory rehabilitation programme. ▪ Consideration should be given to a mandatory rehabilitation programme for all persons committing a sexual offence. ▪ The Prisons Service is in need of adequate psychologists/counsellors. ▪ Where a period of counselling is recommended for a period longer than a prison sentence, it should be mandated that the counselling continue for the prescribed period. ▪ The Prisons Service supports mandatory psychological evaluation before sentencing as it would assist in determining an appropriate risk profile and treatment. <i>TIPS's response:</i> ▪ For adults who commit acts against children the TIPS was of the view that the penalties should be increased, as a hefty fine will act as a deterrence. ▪ Perpetrators who are children/minors should be subject to a different sentencing regime which would allow for fines that are less harsh and with more of a rehabilitative component. ▪ The TIPS supports the call of the Prison Service as it pertains to mandatory psychological testing of perpetrators. ▪ Profiling and Similar Fact Evidence assists in the prosecution of perpetrators.
The adequacy of the Cybercrime Unit	<i>TIPS's Response:</i> ▪ Although the Cybercrime Unit is short in manpower, it has the necessary capabilities (expertise and technology) to enforce the legislation. ▪ The Unit also has the assistance of the Research and Analytical Unit, which works in collaboration with the Cybercrime Unit. ▪ The TIPS also has the support of other law enforcement agencies such as the technological support of the Ministry of National Security to deal with issues related to cybercrime. ▪ The Unit may face challenges with finding the originator of the transmission of private images but that this is a challenge that occurs internationally as well.
The adequacy of the Chain of Custody of evidence	<i>TIPS's response:</i> ▪ The TIPS noted that they had a secure Chain of Custody with reference to the documentation of evidence and that evidence was not generally contaminated (except perhaps at the early evidence gathering stage). Most evidence was stored at a facility in Cumuto.

Issue	Details
Signage indicating Surveillance of premises	<i>TTPS's Response:</i> ▪ Signage indicating the surveillance of premises was generally seen to be a crime deterrent and thus an advantage.
Sharing of intimate images of a deceased person	<i>TTPS's Response:</i> ▪ The TTPS can look into charges for the sharing of intimate images of deceased persons. ▪ An officer can be charged departmentally for the sharing of an intimate image of a deceased person. ▪ Depending on the circumstances, the charges can run from the basic charge of publishing to discreditable conduct.

**MINUTES OF THE 4TH MEETING,
2ND SESSION (2021/2022), 12TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021
HELD VIRTUALLY ON FRIDAY FEBRUARY 04, 2022**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Mr. Randall Mitchell	Member
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richards	Member
Mrs. Renuka Sagrarsingh-Sooklal	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer (Intern)
Ms. Katharina Gokool	Graduate Research Assistant

CALL TO ORDER

- 1.1. The Chairman called the meeting to order at 10:02 a.m. and welcomed Members present.

CONFIRMATION OF MINUTES OF THE 3RD MEETING HELD ON FRIDAY JANUARY 28, 2022

- 2.1. The Chairman invited Members to consider the Minutes page-by-page and inquired whether there were any amendments.
- 2.2. There being no amendments, a motion for the confirmation of the Minutes was moved by Mr. Paul Richards and seconded by Mr. Randall Mitchell.

MATTERS ARISING FROM THE MINUTES

- 3.1. The Chairman informed the Committee that:
- (i) **Per Item 3.2 (a), (page 2):** The Secretariat had been in contact with and was still awaiting an update on the written comments from the Director of Public Prosecution (DPP).

- (ii) **Per Item 3.2 (e), (page 2):** The Secretariat received written comments from the Children's Authority of Trinidad and Tobago. Same was circulated via email dated February 02, 2022 and **uploaded** to Rotunda. The Committee also received written comments from the following stakeholders on February 03, 2022. Same was forwarded to Members via email dated February 04, 2022 and uploaded to Rotunda:
 - i. Feminitt Caribbean;
 - ii. Trinidad and Tobago Promoters' Association; and
 - iii. The Centre for Nonviolence, Research and Development (formerly the Organisation for Abused and Battered Individual).
- (iii) The Secretariat was directed by the Chairman to formally request written comments from the Public Defenders Department of the Legal Aid and Advisory Authority. The request was sent via letter dated February 03, 2022.
- (iv) The list of stakeholders was updated accordingly and uploaded to the Rotunda.

CONSIDERATION OF DRAFT INTERIM REPORT

4.1 The Committee agreed:

- a. that the Committee's Draft Interim Report be circulated subsequent to the meeting with a deadline of February 07, 2022 for Members' feedback; and
- b. to consider and approve the Interim Report via round robin to facilitate the presentation of the Interim Report in the Senate on February 08, 2022.

PRE-HEARING DISCUSSIONS

Consideration of Stakeholder Submissions

- 5.1. The Chairman advised that the following stakeholders would be in attendance for the day's public hearing and all written comments received from these entities were circulated to Members via email dated February 02, 2022:
 - (i) The Ministry of National Security
 - a. Immigration Division;
 - b. Strategic Service Agency;
 - (ii) Office of the Prime Minister- Gender and Child Affairs Division;
 - (iii) Ministry of Foreign and CARICOM Affairs;
 - (iv) Ministry of Social Development and Family Services;
 - (v) Children's Authority of Trinidad and Tobago; and
 - (vi) CreativeTT

- 5.2. Members agreed on the approach to be taken during the public hearing.

OTHER BUSINESS

Next Meeting Date

- 6.1. In anticipation of the Senate's agreement to an extension for the Committee to continue its work, the Committee agreed:
- (i) to next meet on **Friday February 11, 2022 at 10:00 a.m (in camera) and thereafter at 10:30 a.m. (in public)**; and
 - (ii) that the Secretariat recommend the appropriate stakeholders to be invited at the Committee's next meeting and provide an updated List of Stakeholders to the Committee.

Public Call for Submissions

- 6.2. The Committee agreed to issue a Public Call for Submissions with a deadline date of **February 18, 2022**.

Request for Matrix of Stakeholder Comments

- 6.3. The Committee agreed to write to the Law Reform Commission requesting a Matrix of Stakeholder Comments to assist the Committee in its clause-by-clause examination of the Bill.

SUSPENSION

- 7.1. The meeting was suspended at 10:14 a.m.

PUBLIC HEARING WITH STAKEHOLDERS

- 8.1. The meeting resumed (in public) at 10:32 a.m.
- 8.2. The following officials joined the meeting:

Office of the Prime Minister – Gender and Child Affairs Division

- Mrs. Jacinta Bailey-Sobers Permanent Secretary
- Ms. Nicha Cardinez-Rostant Director, Legal Services
- Ms. Ann Marie Quammie-Alleyne Coordinator, Gender Policy

Ministry of Foreign and CARICOM Affairs

- Ms. Reita Toussaint Permanent Secretary (Ag.)
- Ms. Sumita Harrikissoon Director, Legal Services
- Ms Chayanti Lal Legal Officer II

Ministry of Social Development and Family Services

- Ms. Jacqueline Johnson Permanent Secretary
- Ms. Jennifer Juteram Senior Legal Officer

- Ms. Kathleen Sarkar Assistant Director, National Family Services Division

Ministry of National Security

- Mr. Gary Joseph Permanent Secretary
- Ms. Ryanka Ragbir Legal Officer II
- Mrs. Charmaine Gandhi-Andrews Chief Immigration Officer
- Mr. Abdul Mohammed Legal Officer
- Ms. Cherisse Nixon Assistant Director, Legal Services – SSA
- Ms. Kelisha Bello Senior Legal Officer – SSA

Children's Authority of Trinidad and Tobago

- Mrs. Sharon Morris-Cummings Director Ag.
- Ms. Sabrina Satram Legal Services Manager Ag.
- Ms. Kinda Jacob Senior Legal Associate
- Ms. Patricia Bascombe Investigation and Intervention Unit (IIU) Manager South Central Ag.

Trinidad and Tobago Creative Industries Company Limited (CreativeTT)

- Ms. Dionne Mc Nicol Stephenson Director

Criminal Justice Unit, Office of the Attorney General and Ministry of Legal Affairs

- Mrs. Farzana Nazir-Mohammed Director, Criminal Justice Unit
- Ms. Ria Brereton Legal Officer I
- Mr. Mr. Carl Esdelle Research Officer

Law Reform Commission

- Mrs. Shireen Khan-Hyder Ali Senior Parliamentary Counsel
- Ms. Tamara Dookran Law Reform Officer

8.3. A summary of the issues raised/comments made during the stakeholder engagement meeting can be found in the Appendix.

8.4. The Committee requested additional information from the following stakeholders in writing:

Ministry of National Security

- Provide a list of Acts and subsidiary legislation that are decriminalised by legal notice, specifically for the Carnival period for added protection for example for photographers.

Ministry of Foreign and CARICOM Affairs

- From your review of international instruments and treaties, please indicate whether the Sexual Offences (Amendment) (No.3) Bill, 2021 falls short of the right to privacy and personal space in public settings.
- Indicate whether proposed Section 22C is in accordance with international treaty obligations given that it does not include 'reckless intent'.

- (iii) Indicate whether Section 22B(1)(d) is sufficient for treating with threats to expose intimate images.

CreativeTT

- (i) Provide information on the laws relative to photography in public spaces.

ADJOURNMENT

- 9.1. The Chairman thanked officials, Members, staff and the viewing /listening public for their participation in the proceedings.
- 9.2. The meeting was adjourned to **Friday February 11, 2022 at 10:00 a.m.**
- 9.3. The adjournment was taken at 12:07 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

February 07, 2022

Appendix I

Issue	Details
Issues Raised with the Ministry of National Security	
Private monitoring devices used under the guise of security monitoring	▪ The MoNS contemplated the difficulty for a victim of voyeurism where a person uses private monitoring devices under the guise of security monitoring in proposed Section 22A(3)(c) to commit acts of voyeurism as outlined in proposed Section 22A(1)(a)
Whether the expectation of privacy in a home will be sufficient to cover the monitoring of private areas in a home e.g. a bathroom	▪ The expectation of privacy will be sufficient however, the infringement of privacy rights will need to be considered. ▪ Consideration should be given to restricting the use of cameras or specifically hidden cameras in private areas where there is an expectation of privacy.
Whether there is need for the owner of a property to declare that the property is monitored by camera surveillance	▪ Notice of a property being monitored can be an option in the Bill that will be useful in informing persons that a property is under camera surveillance.
Whether the Bill is clear as it pertains to the capturing of images for the purpose for sexual gratification given that images may be captured unintentionally	▪ Instances where images are captured unintentionally will be covered by the Bill. ▪ The MoNS examined instances where a homeowner uses his/her private monitoring cameras for the purpose of sexual gratification /acts of voyeurism and whether this will be an offence covered by the Bill.
The possible inclusion of the word 'reckless' in the Bill	▪ The Canadian Criminal Code made reference to the word 'reckless' and same can be included in the Bill to cover situations where persons are reckless in obtaining consent or are careless about consent. ▪ A person in proposed 22C (1) (a) can be considered as acting recklessly however the inclusion of the word 'reckless' in the Bill will apply to various situations. ▪ The use of the word 'reckless' is challenging and will be difficult to prosecute e.g. to prosecute the person who triggered the sharing of the image where an image is shared by numerous persons.
The reason for the need to include 'immigration officer' in the definition for 'law enforcement officer'	▪ There is no need to identify immigration officers under the definition for 'law enforcement officer' because: i. they are already covered under the definition for 'law enforcement officer' in the Bill and Section 12 of the Immigration Act chapter 18:01; and ii. other law enforcement officers are not specifically named in the Bill therefore there is no need to name immigration officers.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
The suggestion to change the wording in proposed Section 22 A (1) (B)	▪ Instead of expounding on the definition for private parts in Section 22 A (1) (B), consideration should be given to changing the wording to “in circumstances where the private parts would not otherwise be visible” similar to Section 67A (1) of the UK’s Sexual Offences Act, 2003.
Issues Raised with the Ministry of Social Development and Family Services	
The need for additional definitions in the interpretation section of the Bill	▪ There is need to include in the interpretation section of the Bill, definitions for the following terms: - ‘Complainant’; - ‘Consent’; - ‘Accused or Defendant’; and - ‘Spouse. ▪ Incidences of voyeurism are widespread and may be under reported. ▪ To protect persons including children, there is need to expand the group that can be of assistance to the victim for example religious persons in the development of the definition for the term ‘complainant’. ▪ Any evidence of sexual abuse of children should include voyeurism. ▪ The Children’s Act mandates that all sexual offences against children be reported and also makes provision for pornography. ▪ Expanding the group can be of assistance to the victim, it may assist in reducing possible occurrences of voyeurism and to place more responsibility on persons to report where evidence is available. ▪ The word ‘sexual’ in the definition for ‘sexual act’ can be subjective, and requires further clarity so that there is no room for its misinterpretation. ▪ The definitions for complainant, defendant and spouse are already established in the Summary Courts Act Chapter 4:20 and Distribution of Estate Act, 2000. ▪ Consideration should also be given to the issue of <i>locus standi</i> which once established, does not prevent any party or parties from bringing action relative to the law. ▪ In Section 31 of the Sexual Offences Act, Chap 11:28, there is a list of reporting obligations as it relates to sexual offences involving children.
Persons living in vulnerable housing/shelter provide opportunity for acts of voyeurism	▪ There is need to consider that a person’s living situation/accommodation can create opportunities for committing an offence of voyeurism.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
	There may be need to examine ways to assist such persons so that they do not create the opportunity to be violated and to ensure that these persons are not excluded in any way from coverage under the amendments.
Reconsideration of 'consent'	The MoSDFS reflected on whether 'consent' should be reconsidered under circumstances where a person was vulnerable at the time of giving consent.
The reason for the recommendation not to extend the exemption for professional legal advisor under proposed Section 44B (4) (a)	- The MoSDFS is recommending that the exemption under proposed Section 44 B (4) (a) not be extended to professional legal advisors because of the existence of the Children's Act and the fact that children cannot give consent. - Given that children cannot give consent; the MoSDFS was also of the view that very high fines should be imposed on persons who commit such offences against children.
The need to consider that street dwellers may service voyeurism	It should be considered that street dwellers is a vulnerable group and may service perpetrators and there is need to address this issue at the level of legislation.
Issues raised with the Children's Authority of Trinidad and Tobago	
Whether the definition for 'sexual act' under proposed Section 44E of the Bill and the definition of "sexual" defined in the Section 3 (2) (b) Children's Act, 2012 treat with an objective standard of reasonableness in terms of what is deemed sexual and not	- The Children's Authority is of the view that the definitions are objective and of simple standard, however, there is concern that there may be dual definition when the definition for 'sexual act' is included in the Children's Act. - In the Children's Act, 2012 the definition for 'sexual' is broad. - There is need to ensure that the proposed definition will not be inconsistent with the definition in the Children's Act, 2012. - It is suggested that there should be one definition in the Act as opposed to a definition for 'Sexual Act' with regards to voyeurism in the Bill.
The need to reinsert sections similar to Section 29, 30 and 31 of the Children's Act, 2012	- It is the position of the Children's Authority that sections similar to Section 29, 30 and 31 of the Children's Act, 2012 should be included to capture persons in positions of trusts, hold them to a higher standard of accountability and impose a higher sentence once found guilty. - The Children's Authority is of the view that a breach of trust should attract more accountability, particularly when dealing with vulnerable groups, particularly children.
The substitution of the word 'equipment' with the word 'device' in proposed Section 22	The word 'equipment', is included under the definition for the word 'device' therefore it is suggested that word 'device' be used instead of the word 'equipment' in Section 22.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
The inclusion of the Children's Authority in proposed Section 22 A (3) (b)	The Children's Authority is of the view that they should be included under this exemption.
Issues Raised with the Office of the Prime Minister- Gender and Child Development Unit	
The recommendation that adult offenders should be distinguished from Child Offenders and the exact factors that should be distinguished in terms of the type of behaviors that are either not punishable offences but punishable but not with imprisonment	- The treatment of a juvenile offender should be different to that of an adult offender. - In the Children's Act, 2012, the penalties for treating with juvenile offenders differ to adult offenders. - A young person cannot consent to the use of their image or pornography being shared. - Younger persons might engage in acts of voyeurism for example at school. - A proper sensitization programme that is geared toward that young age group is necessary.
Whether there is need to make that clear distinction of child victim and child perpetrator in the Bill	- The penalty for voyeurism should be higher if the victim is a child. - Where a child offender is also a child, there should be reference to the provisions set out in the Children's Act, 2012 to guide the courts in treating with such matters.
The clauses that warrants reconsideration as it pertains to "influence" by peers	- Influence is a social issue and does not require amendment to the legislation. However, a public education campaign is needed to address this issue. - The Children's Act, 2012 addresses the issue of children who are "close in age" which also falls under the definition for child pornography.
Whether the Office of the Prime Minister is advocating for an exemption in the Bill similar to the construct in Section 20 of the Children's Act, 2012	The Office of the Prime Minister does not want to adopt the policy position of making a defense that the perpetrator is a child, however, it would prefer compliance in terms of not sharing images.
Clarification on the definition for 'sexual gratification'	In proposed Section 22 A, there is need to determine whether there is need to define 'sexual gratification' or whether it is defined elsewhere.
The treatment of persons with diminished capacity in the Bill	Perpetrators of voyeurism with diminished capacity were not captured in the Bill sufficiently and should be treated differently given that they may be suffering with illnesses such as dementia.
The treatment of 'consent' under different circumstances	- The treatment of 'consent' under different circumstances is not adequately addressed in the Bill. - Where a relationship deteriorates consent should be immediately diminished or automatically revoked.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
Issues raised with the Ministry of Foreign and CARICOM Affairs	
Whether the Bill falls short of the right to privacy and personal space in public settings	The MoFCA will have to examine the instruments/treaties to determine whether the right to privacy and personal space in public settings will be covered.
Whether the MoFCA is suggesting that a more serious offence/penalty be applicable for the sharing of images for financial gain	- The MoFCA is suggesting that a higher penalty be applicable for offences where an image is shared for financial gain. - Crimes against an adult who is of diminished capacity, mentally should also carry a stiffer penalty.
The inclusion of reckless intention in the Bill with respect to international and treaty obligations including how and where it can be applicable	- In considering reckless intention, state of mind where a person willfully pursues a course of action was deliberated. - Reckless intention will be in relation to persons who triggers the sharing of an image. - In review of international treaties that Trinidad and Tobago has signed on to it was discovered that gender based violence does not only entail physical abuse but also psychological harm. - The intent of sharing should also be captured in the legislation.
The sharing of intimate images created by painting, sketches	There is need to consider whether the Bill will cover adequately or at all intimate images created by drawing painting, sketches or similar form that are shared without consent.
The capturing of audio recording in the Bill	There is need to determine whether the Bill will capture audio recordings of persons engaged in private acts without consent and or used as a threat of sharing.
Clarity on whether Social Media platforms are covered under the definition for internet service provider in the Bill	There is need to determine whether the Bill cover the responsibility for monitoring material for any potentially local social media platforms.
Issues Raised with CreativeTT	
Whether CreativeTT will have a role in ensuring that photographers are aware of how the Bill applies to them	- CreativeTT see itself as having a role in ensuring that photographers are aware of how the Bill applies to them. - It is within the purview of CreativeTT to ensure that all of its practitioners are aware of all of the legislation that impacts photographers. - CreativeTT has many webinars and workshops directed at photographers around the Carnival period.
Whether the lack of privacy in the street will be an issue	- This is a social issue. - CreativeTT can sensitize photographers in terms of flouting the law.

**MINUTES OF THE 5TH MEETING,
2ND SESSION (2021/2022), 12TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021
HELD VIRTUALLY ON FRIDAY FEBRUARY 11, 2022**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Mr. Randall Mitchell	Member
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richards	Member
Mrs. Renuka Sagrarsingh-Sooklal	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer (Intern)
Ms. Katharina Gokool	Graduate Research Assistant

Ministers

Hon. Faris Al-Rawi, MP	Attorney General
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CALL TO ORDER

- 1.1. The Chairman called the meeting to order at 10:00 a.m. and welcomed Members present.

CONFIRMATION OF MINUTES OF THE 4th MEETING HELD ON FRIDAY FEBRUARY 04, 2022

- 2.1. The Chairman invited Members to consider the Minutes page-by-page and inquired whether there were any amendments.
- 2.2. There being no amendments, a motion for the confirmation of the Minutes was moved by Ms. Jayanti Lutchmedial and seconded by Mrs. Renuka Sagrarsingh-Sooklal.

MATTERS ARISING FROM THE MINUTES

3.1. The Chairman informed the Committee that:

- (i) **Per Item 3.1 (i), (page 1):** The Director of Public Prosecution (DPP) indicated via telephone conversation held on Thursday February 10, 2022 of his intention to request an extension of time to two weeks to submit his written comments. The Committee agreed to grant same when received.
- (ii) **Per Item 3.2 (ii), (page 2):** The Secretariat received further written comments from the Children's Authority of Trinidad and Tobago. Same was circulated via email dated February 11, 2022 and uploaded to Rotunda.
- (iii) **Per Item 4.1, (page 2):** The Committee's Interim Report was presented at a sitting of the Senate held on Tuesday February 08, 2022, and an extension of time was granted to March 31, 2022 to submit a final Report.
- (iv) **Per Item 6.1, (page 3):** The Secretariat circulated the updated List of Stakeholders to Members via email dated Friday February 04, 2022.
- (v) **Per Item 6.2, (page 3):** A Public Call for Submissions was published on the Parliament's social media pages (Twitter, Facebook and YouTube) on Tuesday February 08, 2022.
- (vi) **Per Item 6.3, (page 3):** By letter dated February 10, 2022, the Secretariat wrote to the Law Reform Commission requesting a Matrix of Stakeholder Comments to assist the Committee in its clause-by-clause examination of the Bill.
- (vii) **Per Item 8.4, (page 3):** By letters dated February 10, 2022, the Secretariat wrote to the following entities requesting additional information:
 - Ministry of National Security;
 - Ministry of Foreign and CARICOM Affairs; and
 - CreativeTT.
- (viii) The Secretariat received and circulated written comments from the following stakeholders:
 - Public Defender's Department; and
 - Alliance for State Action to end Gender based Violence (ASA) which incorporated comments from the following entities:
 - o Coalition Against Domestic Violence;
 - o CAISO: Sex & Gender Justice;
 - o Institute for Gender and Development Studies, UWI;
 - o CEDAW Committee of Trinidad & Tobago;
 - o Caribbean Association for Feminist Research and Action (CAFRA) TT;
 - o Mamatoto;
 - o The Shelter for Battered Women and Children;
 - o WOMANTRA;
 - o Caribbean Centre for Human Rights;

- Network of NGOs of Trinidad and Tobago for the Advancement of Women;
- Conflict Women;
- Women's Institute for Alternative Development (WINAD); and
- The Center for Nonviolence, Research, and Development.

(ix) The Caribbean Centre for Human Rights and The Center for Nonviolence, Research, and Development made independent submissions to the Committee. Both entities were in attendance for the day's meeting.

PRE-HEARING DISCUSSIONS

Consideration of Stakeholder Submissions

5.1. The Chairman advised that the following stakeholders would be in attendance for the day's public hearing and all written comments received from the following entities were circulated to Members via email dated February 10, 2022:

- Trinidad and Tobago Promoters' Association;
- Feminitt Caribbean;
- Caribbean Centre for Human Rights;
- Center for Nonviolence, Research and Development;
- Law Association of Trinidad and Tobago; and
- Media Association of Trinidad and Tobago.

5.2. Members agreed on the approach to be taken during the public hearing.

OTHER BUSINESS

Next Meeting Date

6.1. The Committee agreed to maintain its routine of meeting on Fridays at 10:00 a.m.

6.2. Accordingly, the Committee agreed to next meet on **Friday February 18, 2022 at 10:00 a.m. (*in camera*) and thereafter at 10:30 a.m. (*in public*)**; with the following stakeholders:

- Public Defenders Department;
- Alliance for State Action; and
- any other stakeholder who makes a written submission by Monday February 14, 2022.

6.3. Written Comments remained outstanding from the following stakeholders:

- INTERPOL (request made through the TTPS);
- Rape Crisis Society of Trinidad and Tobago;
- Child Welfare League of Trinidad & Tobago;
- Trinidad and Tobago Carnival Bands Association;
- Photographers and Videographers Association of Trinidad and Tobago;
- The Modelling Association of Trinidad and Tobago;
- Caribbean Association of National Telecommunication Organisations (CANTO);

- Copyright Organisation of Trinidad and Tobago (COTT);
- Trinidad and Tobago Association of Psychologists;
- The Assembly of Southern Lawyers; and
- Trinidad and Tobago Publishers and Broadcasters Association (TTPBA).

6.4. The Secretariat was instructed to follow-up with organisations in relation to outstanding written comments. The Committee agreed that any outstanding comments received after its next meeting could be considered during the Committee's clause-by-clause examination of the Bill.

SUSPENSION

7.1. The meeting was suspended at 10:16 a.m.

PUBLIC HEARING WITH STAKEHOLDERS

8.1. The meeting resumed (in public) at 10:30 a.m.

8.2. The following officials joined the meeting:

Trinidad and Tobago Promoters' Association

- | | |
|-----------------------|-----------|
| • Mr. Jerome Precilla | President |
| • Mr. Colin Miles | Secretary |

Caribbean Center for Human Rights

- | | |
|----------------------------|-------------------|
| • Mrs. Diana Mahabir-Wyatt | Founder/President |
|----------------------------|-------------------|

Center for Nonviolence, Research and Development

- | | |
|---------------------------------|------------------|
| • Ms. Sherna Alexander Benjamin | Founder |
| • Mr. Masudah-Muhammad Baptiste | Counselor/Liason |

Feminitt Caribbean

- | | |
|----------------------|---------------------------|
| • Ms. Ashlee Burnett | Founder/Managing Director |
| • Ms. Anna McEwan | Member |

Media Association of Trinidad and Tobago

- | | |
|-------------------|-----------|
| • Mrs. Ira Mathur | President |
|-------------------|-----------|

Criminal Justice Unit, Office of the Attorney General and Ministry of Legal Affairs

- | | |
|-------------------------------|---------------------------------|
| • Mrs. Farzana Nazir-Mohammed | Director, Criminal Justice Unit |
| • Ms. Nalini Ramjit | Legal Officer II |
| • Mr. Carl Esdelle | Research Officer |

Law Reform Commission

- | | |
|-------------------------------|------------------------------|
| • Mrs. Shireen Khan-Hyder Ali | Senior Parliamentary Counsel |
| • Ms. Tamara Dookran | Law Reform Officer |

8.3. A summary of the issues raised/comments made during the stakeholder engagement meeting can be found in the *Appendix*.

8.4. The Committee requested the following additional information:

- (i) from the Law Association of Trinidad and Tobago on whether “legal proceedings” in the exculpatory sections is too broad and whether it extends family law proceedings. Additionally, whether including “legal proceedings” as a defence would allow persons to capture private acts and be exempt from committing an offence under the Bill.
- (ii) from the Trinidad and Tobago Promoters Association and the Media Association of Trinidad and Tobago on whether the definition for “private parts” proposed by the Ministry of National Security in their written submissions dated 26 January 2022, is helpful in exculpating media photographers and professional photographers in their functions.

ADJOURNMENT

9.1. The Chairman thanked officials, Members, staff and the viewing/listening public for their participation in the proceedings.

9.2. The meeting was adjourned to **Friday February 18, 2022 at 10:00 a.m.**

9.3. The adjournment was taken at 12:05 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

February 15, 2022

Appendix I

Issue	Details
Private Security Monitoring	<i>Law Association of Trinidad and Tobago:</i> ▪ In terms of whether there is need to amend the exculpatory section as it pertains to private security monitoring to ensure that a person monitoring for security purposes is not captured by the offence of voyeurism, the Law Association is of the view that this will be captured by the drafting technique that is used. ▪ The Association is concerned with the ambiguity of the chapeau and is of the view that there is need to make the wording clear in the Bill to ensure that an act of monitoring/surveillance that begins with legitimate intention does not end with an act that the Bill intends to prohibit. ▪ The Association is not concerned with how the drafting is achieved and is satisfied with the drafting technique that is utilised. ▪ As it pertains to creating a section or provision for the monitoring of private areas such as a changing room or bathroom, the Association indicated that: - the issue of persons using private areas to commit criminal acts will be an issue; - it agrees that there is a difference between public and private areas and the Bill should reflect this; - it agrees that the display of warning signs should be included in the Bill to indicate that a private area such as bathroom or changing room in a public place is under surveillance. ▪ As it pertains to whether there should be further differentiation in the Bill between a commercial public space (that is accessible to the public) and privately owned space (that a person may or may not have access to) and the respective expectations as it pertains to surveillance, the Association indicated that cameras are usually placed outside the home unless nanny cameras are used however it should be included in the Bill that there should be notice of warning that a private area is under surveillance given that there is an expectation of privacy. ▪ With regard to whether the law should indicate the presence of nanny cameras in private spaces such as a bedroom, the Association was of the view that this is a different situation. <i>Caribbean Centre for Human Rights:</i> ▪ With regard to the issue of notifying surveillance of an area deemed to be private, the CCHR was of the view that: - if the surveillance will be allowed under the Bill, a distinction should be made as to whether pictures or videos are being taken or shared; - there are logical reasons for surveillance in private areas of public spaces for example using a public restroom to hide stolen items; - there should be notification that a private area is under surveillance; and

Issue	Details
	- It is almost impossible to prove a negative as it pertain to the intention of an act. Media Association of Trinidad and Tobago: ▪ Indicated the need to determine the meaning of ‘security monitoring’ in the context of the exculpatory section and whether it should be linked to legal proceedings and to be clear whether anyone can claim to monitor a premise and therefore not in breach of the law. ▪ Indicated the need to clarify how the prosecution will be able to prove the intention of a person was for sexual gratification. Centre for Nonviolence, Research and Development: ▪ Agrees with notifying a person that a private residence is under surveillance. ▪ Is of the view that crimes are committed even though they cannot be seen. ▪ Informed of cases of surveillance of spouses/partners in private areas for example bathroom in the home. ▪ Indicated the need for amendment to protect persons who own a home and those who enter a home. FeminiTT Caribbean: ▪ Is of the view that: - It should be considered that a person does not automatically give consent where notification that a private area such as change room is under surveillance. - There is need to determine how the issue of the sharing of images of a person who is monitored in a private area will be treated with given that the person does not consent to the sharing of his/her image(s) even though there is warning/notification that the private area is under surveillance.
Surveillance for legal proceedings	Law Association of Trinidad and Tobago: ▪ In terms of whether there is need to define legal proceeding because it may be too wide in the Bill and whether difficulty may arise in the use of surveillance for raising a defence in legal proceedings as it pertains to intrusion of privacy, the Law Association indicated that: - There are rules governing the admissibility of video recordings and documents taken without consent in the courts. - The section regarding the use of surveillance in legal proceedings is very wide. - The Legal Proceedings or the Administration of Justice Acts allows video evidence to be admissible and used in legal proceedings once it is relevant to the matter and will affect family proceedings. ▪ <i>The Committee was concerned that persons might feel that they are permitted to commit acts of voyeurism for use in legal proceedings.</i>

Issue	Details
	The Committee also expressed that the use of such types of evidence in legal proceedings may provide exceptions for private investigators e.g. monitoring of spouses in pursuit of family law.
Sharing of an intimate image without consent	Media Association of Trinidad and Tobago: - In terms of whether the Association accepts that Clause 5, proposed Section 22 B (1) (a) potentially affects media photographers, the following was stated: - The way the media will interpret this section will be vastly different to others interpretation of same. - The Media Association generally has no issues with the Bill save as it pertains to photographers. - The Media Association felt that the Bill does not sufficiently inform on the protection of photographers who can face prosecution based on the photos they capture. Trinidad and Tobago Promoters' Association: - As it relates to consent and whether verbal consent will be considered as 'consent' in the Bill. - The Association therefore is seeking a definition for the word 'consent' in the Bill. Centre for Nonviolence, Research and Development: - The Center was of the view that: - There is need to amplify the meaning of the word 'consent' as it pertains to protection for photographers and persons whose images are being taken. - A person has the right to revoke consent during and after an act. - There is need for the Bill to make provision for the prevention of acts and protection of victims who are coerced into a sexual act against their will. - Theoretically, it is easy refer a victim to the police but realistically such acts place a person in an incapacitated space, there is also need to consider other extenuating factors. FeminiTT Caribbean: - FeminiTT Caribbean expressed that: - There is need for greater consideration to be given to the monitoring of private acts for example at guest houses and how this can be regulated. - There is need to define what consent is. - There are conventions that Trinidad and Tobago has signed and ratified and there is need to keep consistent with same. Law Association of Trinidad and Tobago: - Consent is clearly defined in the Sexual Offences Act.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
	▪ The law provides in the Interpretation Act for reference to masculine/feminine to refer to a person. ▪ Consent must be free and cannot be tainted by any sort of threat, fraud or representation. ▪ A person who is forced into an act against their will should make a report to the police. ▪ Where a person is not of free will to consent it is not considered consent. ▪ There is need to look at proper consent in the law. <i>The Committee accepts that photographers have an established standard and procedure of receiving consent.</i> <i>The Committee indicated that it may not be able to legislate every circumstance however, there is need for implementation and to determine how the balance or rights is captured in the Bill.</i>
The need to define private parts in the Bill	Trinidad and Tobago Promoters' Association: ▪ There is need to clearly define "underwear" to remove any ambiguity in the Bill considering that it may be interpreted to include a carnival costume or a person may be clad in underwear in a private space such as a bedroom in a music video. FeminiTT Caribbean: ▪ Indicated the need to: - Expand on what underwear denotes and whether it includes swimwear. - Include swimwear in the Children Act, Chap. 46:01. - Define what is meant by private parts. <i>The definition for private parts as proposed by the MoNS which suggest that private parts would not be visible should be sent to the Trinidad and Tobago Promoters and the Media Association of Trinidad and Tobago and other stakeholder for comment on whether the definition is helpful in exculpating media photographers and professional photographers in the course of their duties.</i>
Clause 4 Definitions	Media Association of Trinidad and Tobago: ▪ There is need to clarify the meaning of 'sexual' ▪ Greater clarification is needed for the terms 'public place', 'private place' and 'reasonable expectation of consent'. ▪ The MATT was uncertain whether the Bill adequately covers provisions for up skirting or down blousing particularly during Carnival and covers photographers under the reasonable expectation clause. ▪ There is need for a broader definition for 'public interest' especially as it pertains to Carnival.

Issue	Details
	- There is merit in defining certain words such as ‘reasonable expectation’ and ‘public good’ especially as it pertains to photography during Carnival, mentally ill persons, and of pornography rings including child pornography. - The Association is concerned that the definitions are not board enough to protect photographers and the media sufficiently. - Media personnel have authorization to take photos but may not be protected against the offence of voyeurism in the Bill. <i>The Committee noted that photographers will be affected by the taking and sharing of images provision.</i> <i>The Committee accepted that the exception for ‘in the public interest’ may not attach to photographers.</i> Trinidad and Tobago Promoters’ Association: - There is need to clarify how ‘sexual gratification’ will be determined. FeminiTT Caribbean: - It is important for the word ‘reasonable’ to be clarified or substituted for another word so that people will know what it means. - There is need to define what ‘sexual gratification’ is in the Bill. Law Association of Trinidad and Tobago: - A ‘reasonable person’ is a concept that dates back to 1920’s and exists in both criminal and civil law. It is a matter for the courts to determine and does not need to be further defined. - Agrees that sexual gratification needs clarification but proof of intention is needed.
The need to include a survivor centered approach	FeminiTT Caribbean views: - There is need to consider: - whether the Bill is survivor-centered; - whether images will be destroyed after a case has ended; - how victims can be assisted in cases where an act unintentionally causes harm to a person; and include in the Bill provisions for a victim’s survival. Law Association of Trinidad and Tobago - Agrees that provisions for victim survival is needed in the Bill. - For victims the courts require impact statements to be made available by the prosecution and a request can be made that any image that is offensive may be destroyed if found illegal. Centre for Nonviolence, Research and Development - There is need for the law to protect the survivor and contain trauma informed approaches.

**MINUTES OF THE 6TH MEETING,
2ND SESSION (2021/2022), 12TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021
HELD VIRTUALLY ON MONDAY FEBRUARY 21, 2022 AT 10:12 A.M.**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richards	Member
Mrs. Renuka Sagrarsingh-Sooklal	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer (Intern)
Ms. Katharina Gokool	Graduate Research Assistant

ABSENT/EXCUSED

Mr. Randall Mitchell	Member
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CALL TO ORDER

- 1.1. The Chairman called the meeting to order at 10:12 a.m. and welcomed Members present.

ANNOUNCEMENTS

- 2.1. The Chairman indicated that Mr. Randall Mitchell asked to be excused from the meeting.

CONFIRMATION OF MINUTES OF THE 5TH MEETING HELD ON FRIDAY FEBRUARY 11, 2022

- 3.1. The Chairman invited Members to consider the Minutes page-by-page and inquired whether there were any amendments.

- 3.2. There being no amendments, a motion for the confirmation of the Minutes was moved by Ms. Jayanti Lutchmedial and seconded by Mr. Paul Richards.

MATTERS ARISING FROM THE MINUTES

- 4.1. The Chairman informed the Committee that:
- (i) **Per Item 3.1 (i), (page 2):** The Office of the Director of Public Prosecutions indicated that his written comments will be submitted by February 28, 2022. The Committee agreed to schedule a meeting with the DPP once the written comments were received.
 - (ii) **Per Item 3.1 (iv), (page 2):** The Committee received one submission from its call for public comments which was circulated to Members and uploaded to Rotunda on February 21, 2022. The Committee agreed to extend the deadline for receiving public comments to March 18, 2022.
 - (iii) **Per Item 3.1 (vii), (page 2):**
 - a) By email dated February 18, 2022, the Secretariat received and circulated the additional information received from:
 - Ministry of Foreign and CARICOM Affairs; and
 - CreativeTT.
 - b) Additional information from the Ministry of National Security remained outstanding.
 - (iv) **Per Item 6.3, (pages 3 and 4):** The Secretariat tried to make contact with all stakeholders with outstanding submissions. As at February 18, 2022, no comments were received.
 - (v) **Per Item 8.4, (page 5):** By letters dated February 18, 2022, the Secretariat wrote to the following entities requesting additional information:
 - Law Association of Trinidad and Tobago;
 - Trinidad and Tobago Promoters Association; and
 - Media Association of Trinidad and Tobago.

PRE-HEARING DISCUSSIONS

Consideration of Stakeholder Submissions

- 5.1. The Chairman advised that the following stakeholders confirmed their attendance at the day's public hearing:
- Public Defenders' Department;
 - Alliance for State Action to end Gender-based Violence (ASA); and
 - Trinidad and Tobago Publishers and Broadcasters Association.
- 5.2. Members agreed on the approach to be taken during the public hearing.

OTHER BUSINESS

Next Meeting Date

- 6.1. The Chairman reminded Members that the Committee is mandated to report by March 31, 2022.
- 6.2. Accordingly, the Committee agreed to next meet on **Friday March 04, 2022 at 10:00 a.m. (in camera) and thereafter at 10:30 a.m. (in public)**; with the following stakeholders:
 - Office of the Director of Public Prosecution;
 - The Rape Crisis Society; and
 - any other stakeholder that makes a written submission.
- 6.3. The Committee also agreed to commence its clause-by-clause analysis of the Bill at a meeting following the meeting of March 04, 2022.

SUSPENSION

- 7.1. The meeting was suspended at 10:18 a.m.

PUBLIC HEARING WITH STAKEHOLDERS

- 8.1. The meeting resumed (in public) at 10:30 a.m.
- 8.2. The following officials joined the meeting:

Officials of the Public Defenders' Department

- | | |
|-----------------------|---------------------------|
| • Ms. Hasine Shaikh | Chief Public Defender |
| • Mr. Raphael Morgan | Deputy Public Defender |
| • Ms. Khadija Beddeau | Public Defender II Junior |

Officials of the Alliance for State Action to end Gender-based Violence (ASA)

- | | |
|------------------------------|--|
| • Ms. Roberta Clarke | President, Coalition Against Domestic Violence T&T |
| • Ms. Terry Ince | Founder, CEDAW Committee |
| • Ms. Sherron Harford | Member, The Shelter, a safe house for victims of domestic violence |
| • Ms. Angelique Nixon | CAISO |
| • Ms. Adeola Young | CAFRA |
| • Dr. Carol Pitt-Braithwaite | Member, The Halfway House |

Trinidad and Tobago Publishers and Broadcasters Association (TTPBA)

- | | |
|------------------------|----------|
| • Mr. Douglas Wilson | Director |
| • Ms. Suzanne Sheppard | Member |

Criminal Justice Unit, Office of the Attorney General and Ministry of Legal Affairs

- | | |
|-------------------------------|-------------------------------------|
| • Mrs. Farzana Nazir-Mohammed | Director, Criminal Justice Unit |
| • Ms. Solange De Souza | Director Legal, Legal Services Unit |
| • Ms. Farah Abdool | Senior Legal Officer |
| • Ms. Ria Brereton | Legal Officer II |
| • Ms. Nalini Ramjit | Legal Officer II |
| • Mr. Jason Dass | Legal Officer II |
| • Mr. Carl Esdelle | Research Officer |

Law Reform Commission

- | | |
|-------------------------------|------------------------------|
| • Mrs. Shireen Khan-Hyder Ali | Senior Parliamentary Counsel |
| • Ms. Tamara Dookran | Law Reform Officer |

- 8.3 A summary of the issues raised/comments made during the stakeholder engagement meeting can be found in the *Appendix*.

ADJOURNMENT

- 9.1. The Chairman thanked officials, Members, staff and the viewing/listening public for their participation in the proceedings and informed that the Call for Public Submission was extended to **March 18, 2022**.
- 9.2. The meeting was adjourned to **Friday March 04, 2022 at 10:00 a.m.**
- 9.3. The adjournment was taken at 12:18 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

March 04, 2022

Appendix I

Issue	Details
Penalties	Public Defenders Department Proposed the inclusion of an amendment to proposed Section 22D to give teeth to the Bill by empowering a court to penalize a person who does not comply with its orders.
Sentencing	Public Defenders Department Is of the view that: - A wider approach should be taken with regards to sentencing to allow for the root cause of deviant behavior to be identified and addressed. - The current sentencing regime in the Bill allows for deterrence but does not allow for rehabilitation and therefore will not curb the likelihood of re-offending. - An approach involving counselling or psychological evaluation should be included in the Bill. - The sentencing approach should contemplate that offenders are likely to be persons under the age of eighteen (18) and should be dealt with in a manner suited to youth offenders that aligns with restorative justice. Alliance for State Action to end Gender-based Violence (ASA) - Apart from the identification of harm, the criminalization of conduct, there is need for gender-responsive psycho-educational interventions for all offenders so that offenders understand their actions and consequences. - Gender-responsive psycho-educational interventions should be mandatory particularly for minors under the age of eighteen (18). - The Bill should take into consideration survivors, including the experiences survivors.
Incorporation of references to 'up skirting' and 'down blousing' and equipment used for same in the Bill	Public Defenders Department - Direct reference to offences of 'up skirting' and 'down blousing' should be incorporated in the Bill given that there is a possibility of underreporting the offence of voyeurism. Also, 'up skirting' and 'down blousing' is common particularly among children. - Reference should also be made in the Bill to the type of equipment used e.g. the use of mirrors to engage in 'up skirting' and 'down blousing'
Offensive Conduct in Bill	Public Defenders Department: - The categories of offensive conduct as established in proposed Section 22B of the Bill should be expanded to include the motivation for example, 'joke' or 'coerce'. Alliance for State Action to end Gender-based Violence (ASA) - As suggested by the Public Defender's Department, there is need to expand on factors of motivation including motivation of exercising power and control and motivation of harassment which applies to proposed Section 22A and 22B.
Hearing of cases summarily	Public Defenders Department: Consider trying cases summarily to allow trials to take place at a faster rate as is done in New South Wales, Australia.

Issue	Details
Consent	Public Defenders Department: - Consideration should be given to defining consent as was done in New South Wales by inserting instances when consent was deemed to be given and including provisions to protect under aged persons. - Proposed Section 22D does not consider unlawful consent for example, persons with limited mentally capacity, threatened or coerced into giving consent. Alliance for State Action to end Gender-based Violence (ASA): - Defining 'consent' is important for cultural change and not only for clarity. - Consideration should also be given to 'conditional consent'. - Agrees with the Public Defenders Department that there is need to consider circumstances and 'conditional consent' can assist with same.
Make separate provision for youth offenders	Public Defenders Department: - The Bill does not adequately address youth offenders. - The offence of voyeurism is particularly common among the teenage age group. - Consideration should be given to the New South Wales example where the DPP considers the approach and a rehabilitative approach is taken for youth offenders in circumstances involving voyeurism. - When treating with acts of voyeurism committed by minors, consideration should be given to the circumstances under which the images were taken to determine whether the conduct is one of criminal conduct, such as: the nature and content of the image, age, intellectual capacity, vulnerability, degree to which the accused person is affected, privacy of the victim, and other relevant circumstances. - Is of the view that the Family and Children Division Act and the Children Act are sufficient in determining the sentencing of minors. - Proposes that matters involving minors be forwarded to the DPP's Office to consider the circumstances and to determine whether the act is of the level of criminal conduct as opposed to laying charges on a minor who will then be subjected to a court's processes as is done in the UK with The Crown Prosecution Service (CPS). <i>The Committee was of the view that consideration should be given to the fact that the involvement of the DPP is a practice and not a law and that the process might be protracted if matters are forwarded to the DPP's office given the current resource constraints of that office.</i> Alliance for State Action to end Gender-based Violence (ASA) - Agrees that there is need for the Bill to consider how it treats with young persons with evolving capacity and sexuality. - Agrees with the Public Defenders Department that children need to be protected and that there is need to take into account their evolving capacities. - Strongly suggest staying away from criminalizing children as much as is possible. - Similar to the Public Defenders recommendation, recommends a screening process before criminal proceedings are commenced against minors.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
	Suggests that the screening process should not only entail the DPP but also Social Services, Children's Authority and an institution that understands the behavioral evolution and capacity of children.
Further define 'authorized persons' in the Bill	Public Defenders Department - Is of the view that authorized persons are not adequately defined in the Bill. - Although an authorized person is captured in the Bill as persons under a wide range of fields e.g., the educational or medical fields, consideration should be given to: - redefining authorized persons in the Bill; and - deeply examine various scenarios, circumstances, the nature and content of the image, age, vulnerability and other relevant factors as in the New South Wales legislation instead of applying a broad blanket exemption in order to prevent abuse of this section particularly against children.
Barring dissemination of an image once a matter is raised in courts	Public Defenders Department - In its research, the Department did not encounter an interim remedy to destroy images save at the end of proceedings via Destruction Orders e.g. in the New South Wales jurisdiction. - It is possible to legislate for interim orders given that there is precedent for same in the domestic violence legislation. - An interim order will be useful in preventing dissemination during a matter however, there will be difficulty in providing standard of proof at the interim stage of a matter. Alliance for State Action to end Gender-based Violence (ASA) - Agrees with the removal of content at the moment a person is charged to protect victims, especially child victims.
The provision that should be put in place for persons who are taking images not for the purpose of voyeurism	Public Defenders Department - New South Wales considers factors such as: the nature and content of image, the circumstances under which an image is recorded or distributed, age, intellectual capacity, taking and sharing, relations, persons depicted in the image and whether the intention was malicious or not. - A provision in the Bill that allows for a closer examination of a matter will assist in determining whether a minor should be charged. Trinidad and Tobago Publishers and Broadcasters Association - The sharing of images directly impacts on Journalism. - The emergence of social media has brought with it concerns that were not of previous concern. - People seek the media's assistance to draw attention or to get action on an issue. As a result, the media finds itself being a recipient of images although it may not share same. - It is of concern how practitioners could be affected by being recipients of images particularly when investigating in-depth pieces. - The Association is concerned about the vagueness of the exemptions and whether any exemptions are provided for journalists in the course of their duties for the purpose of publishing or broadcasting. - The media is very impacted by the taking and sharing aspects in the Bill.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
	- The media is protected and governed by certain laws and cannot publish images of minors. - The Association does not see media as having difficulty with the laws in place but with the use of social media by the public. - The Bill does not consider the role of telecom providers or providers of software and must include same. Alliance for State Action to end Gender-based Violence (ASA) - There is a gap in the Bill as it concerns an offence where adults use children to capture and disseminate materials without consent and therefore it is recommended that an offence be created for same. - Causing a child to take images should be criminalized. - Apart from taking and sharing, the Bill also needs to include provision for 'copying'.
Taking and sharing of criminal content not for the purpose of voyeurism	Public Defenders Department - Is of the view that a person who uses social media to highlight a criminal act can be penalized by the law for example, a girl of school age at a bar with a Police Officer. - In considering such situations, the nature of the intention needs to be considered. <i>The Committee was of the view that:</i> - the intention to humiliate as opposed to the intention of detecting and preventing a crime will be captured; - An image of an exposed child which is captured to detect and prevent a crime, will be incriminated under a separate law and will give rise to other offences; and - what is done with the material is of significance and will determine whether the act warrants a criminal offence. Alliance for State Action to end Gender-based Violence (ASA) - There is need to determine the nature of the circumstances. - There is need to be ahead in technology considering that children are engaged in certain conduct because of access to information on cellphones. - There is need for the Bill to be clear about the sharing of images on the internet. - The focus on private/public space may obscure the harm being experienced by many in what is viewed as the public sphere. Private space should not be over privileged. - There is also a need to look at 'public space' and consider the potential harms.
Provision for gender-based violence in Bill	Alliance for State Action to end Gender-based Violence (ASA) - The Bill is gender specific and not gender neutral, there is need to put an end to this outdated and discriminatory practice. - There is need for the Bill to address in its content that sexual offences disproportionately target young girls and women. - There is need for a full scale approach to end gender based violence.
Creation of a sexual offence of dissemination of unsolicited and	Alliance for State Action to end Gender-based Violence (ASA)

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
unwelcomed messages with sexually explicit content through emails and other personal messaging services.	Harassment of a sexual nature is not addressed in the Offences Against the Persons Act Chap. 11:08 and should be included in the Bill.
Private Security Monitoring	<i>Alliance for State Action to end Gender-based Violence (ASA)</i> - Is of the view that a person should be informed that a home is being monitored for the purpose of security monitoring. - The Bill does not sufficiently disaggregate taking from sharing. - In proposed Section 22 A and 22B, there is need to be more specific in the Bill as it pertains to the circumstances under which security footage is taken and shared e.g. sharing footage with the police.
The need to amend Section 20 of the Children Act Chap 46:01	<i>Alliance for State Action to end Gender-based Violence (ASA)</i> - There is need to amend Section 20 of the Children Act Chap 46:01, which violates human rights, by criminalising same sex intimacy between consenting children and young adults. Reference was made to the Jason Jones v the Attorney General judgment. - There is need for comprehensive sex education training and gender sensitization and to activate the whole of society and State responsiveness to the issue.
Exemption for Journalist	<i>Trinidad and Tobago Publishers and Broadcasters Association</i> - The solution to protect the media practice is to ensure the Bill specifically provides for journalists as opposed to merely implying that journalists are covered. - There needs to be clear definition of what journalism is in the Bill. - Journalists are knowledgeable and are provided with guidance and training regularly. - Journalism is as compared to what at one time was broadly defined as "citizen journalism" and "activism". - Some individuals and independent organisations that do not fall under the definition of traditional media lack knowledge and training in defamation laws. - Journalists are vulnerable to criminal liability under the Libel and Defamation Act. - The Association commenced timestamping and watermarking content posted on social media platforms. - The media is governed by legislation that is dated more than 170 years old - Journalist engage in legitimate acts when building a story. - As responsible media houses, certain images are not posted. - The media is challenged with the simplicity of being able to share an image by use of smartphones. - The Association has rules and regulations which governs its members. - Similar to concerns expressed in discussions on the Cybercrime Bill in 2014, there is a concern that the proposed Voyeurism Bill will criminalise the day-to-day practices of Journalists e.g. in the performance of its duties such as gathering information. - Agrees that there is now a broad range of people who claim to be media. - It is not difficult to differentiate between practicing journalists from other persons. - There is need for specific definition in the Bill for practicing journalist.

Issue	Details
	There is need for the legislation to be tighter on persons or entities not registered through the Trinidad and Tobago Publishers and Broadcasters Association. <i>Noted that a defence can be raised in the public interest.</i> <i>The Committee was concerned that all aspects of media are not homogeneous.</i> <i>The Committee was also concerned that creating an exception for media, which is an unregulated body, would not protect the interests of victims.</i> <i>It should be considered that if an exemption is created for the media it will extend/apply to every person/entity who identifies as media.</i> <i>There is need for media personnel to be aware of the offences of voyeurism and stay clear from same.</i>
Definition of intimate image	<i>Trinidad and Tobago Publishers and Broadcasters Association</i> - As it pertains to the issue of intimate images and invasion of privacy, the media already operates with the respect of the privacy of others. - There is concern that the coverage of Carnival can allow for the accusations of journalists for committing an offence of taking and sharing of images that are criminalized under the Bill. - Understands the intent of the Bill. - Agrees that everyone should not be identified as media. <i>There is need to consider that Carnival takes place in a public setting and the Bill concerns acts in private and the specific intent.</i> <i>The intention of the Bill is not to criminalise the taking of Carnival footage.</i> <i>What is ethical and unethical practice is well defined and known.</i> <i>Once the public interest requirement is met, there will be a defence.</i> <i>Journalists are not defined and this will be a roadblock for the legislation to determine how it should be defined in the Bill.</i>
The need to make Bill consistent with Human Rights Law	<i>Alliance for State Action to end Gender-based Violence (ASA)</i> - Urges drafters to make use of Human Rights law particularly as it pertains to clearly articulating the process for convicted offenders being placed and removed from the Sexual Offenders Registry. - In addition to the registry, a protocol for sex offender management including assessment, treatment, supervision and community notification for re-entry into society should be included in the Bill. - The management of sexual offenders is key in monitoring and evaluating the State's strategies to prevent the offence of voyeurism.

**MINUTES OF THE 7TH MEETING,
2ND SESSION (2021/2022), 12TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021
HELD VIRTUALLY ON MONDAY MARCH 07, 2022 AT 1:33 P.M.**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richard	Member
Mr. Randall Mitchell	Member
Mrs. Renuka Sagrarsingh-Sooklal	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer (Intern)
Ms. Katharina Gokool	Graduate Research Assistant

CALL TO ORDER

- 1.1. The Chairman called the meeting to order at 1:33 p.m. and welcomed Members present.

CONFIRMATION OF MINUTES OF THE 6th MEETING HELD ON FRIDAY FEBRUARY 21, 2022

- 2.1. The Chairman invited Members to consider the Minutes page-by-page and inquired whether there were any amendments.
- 2.2. There being no amendments, a motion for the confirmation of the Minutes was moved by Ms. Jayanti Lutchmedial and seconded by Mr. Paul Richards.

MATTERS ARISING FROM THE MINUTES

- 3.1. The Chairman informed the Committee that:

- (i) **Per Item 4.1 (i), (page 2):** The Office of the Director of Public Prosecutions submitted his written comments. Same was circulated by the Secretariat by email dated March 04, 2022 and uploaded to Rotunda.
- (ii) **Per Item 4.1 (ii), (page 2):** The deadline for the submission of public comments was extended to March 18, 2022. No additional comments were received from the public.
- (iii) **Per Item 4.1 (iv), (page 2):** The Secretariat received, circulated and uploaded to Rotunda written comments from:
 - Rape Crisis Society of Trinidad and Tobago;
 - Trinidad and Tobago Association of Psychologists; and
 - Child Welfare League of Trinidad and Tobago.
- (iv) **Per Item 4.1 (v), (page 2):** No additional comments as requested from stakeholders were received.

PRE-HEARING DISCUSSIONS

Invitation of Independent Journalists

- 4.1. The Chairman informed Members that:
 - (i) Dr. Sheila Rampersad, a journalist, expressed interest in appearing before the Committee in an independent capacity to provide comments on the Bill.
 - (ii) The Secretariat was directed to invite Dr. Sheila Rampersad and two (2) other journalists to appear before the Committee.
 - (iii) By email dated March 06, 2022, the Secretariat was informed that:
 - a. the journalists would not be able to attend due to one of the journalists falling ill; and
 - b. the journalists requested to appear before the Committee at a later date or to make a written submission.
- 4.2. After a brief discussion, the Committee agreed to accept a written submission from the journalists.

Consideration of Stakeholders Submissions

- 4.3. The Chairman reminded Members of the Committee's decision:
 - (i) that the day's meeting will be the last stakeholder engagement session. As such, any further stakeholder submissions will be considered in writing.
 - (ii) to commence the clause-by-clause consideration of the Bill at its next meeting.
- 4.2. The Chairman advised that the following stakeholders confirmed their attendance at the day's public hearing:

- Director of Public Prosecution;
- Rape Crisis Society of Trinidad and Tobago;
- Child Welfare League of Trinidad and Tobago; and
- Trinidad and Tobago Association of Psychologist.

4.3. Members agreed on the approach to be taken during the public hearing.

OTHER BUSINESS

Next Meeting Date and Agenda

- 5.1. The Committee agreed to next meet on **Friday March 11, 2022 at 1:30 p.m. (*in camera*)** to commence its clause-by-clause examination of the Bill and if required, to continue its examination on **Tuesday March 15, 2022 at 1:30 p.m. (*in camera*)**, provided that the Senate does not meet on that date.

SUSPENSION

- 6.1. The meeting was suspended at 1:42 p.m.

PUBLIC HEARING WITH STAKEHOLDERS

- 7.1. The meeting resumed (in public) at 2:00 p.m.
- 7.2. The following officials joined the meeting:

Officials of the Office of the Director of Public Prosecutions

- Mr. Roger Gaspard, S.C. Director of Public Prosecutions

Officials of the Rape Crisis Society

- Ms. Kimiko Scott Project Manager

Officials of the Child Welfare League of Trinidad and Tobago

- Ms. Dawn George President
- Mrs. Cheryl Alleyne Ross Western Division Coordinator

Officials of the Association of Psychologists of Trinidad and Tobago

- Mr. Charles Collier President
- Dr. Karen Moore Chair, Ethics
- Mr. Allister Sandy Member

Officials of the Criminal Justice Unit, Office of the Attorney General and Ministry of Legal Affairs

- Ms. Ria Brereton Legal Officer II

- Ms. Nalini Ranjit

Legal Officer II

Law Reform Commission

- Mrs. Shireen Khan-Hyder Ali
- Ms. Tamara Dookran

Senior Parliamentary Counsel
Law Reform Officer

- 7.3. A summary of the issues raised/comments made during the stakeholder engagement meeting can be found in the *Appendix*.

ADJOURNMENT

- 8.1 The Chairman thanked officials, Members, staff and the viewing/listening public for their participation in the proceedings.
- 8.2 The meeting was adjourned to Friday March 11, 2022 at 1:30 p.m.
- 8.3 The adjournment was taken at 3:18 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

March 07, 2022

Appendix I

Issue	Details
Sentencing and Penalties	Rape Crisis Society of Trinidad and Tobago - Is of the view that mandatory counseling for offenders will be useful and should be included as part of the sentencing process. - Some perpetrators have requested counselling from the Society and based on the progress shown, the implementation of treatment counselling is recommended. - Although there are no statistics available to determine the effectiveness of counselling, it will be beneficial if one perpetrator is able to benefit from counselling. - Recommends treatment as opposed to stiffer traditional penalties such as jail sentences for crimes related to children. Association of Psychologists of Trinidad and Tobago - In terms of the importance of psychological assessment in the diagnosis of different degrees of the voyeurism disorder, the Association is of the view that: - A psychological assessment will not be able to identify a perpetrator/alleged perpetrator nor differentiate the disorder in terms of seriousness/ degree of the offence. - There are assessments that examine the likelihood of recidivism. - There may be assessments to deal with progress of treatments. - Treatment for sexual offenders is difficult and often not effective, especially if the offender is not compelled to do so via the courts. - There will be need for the courts to ensure that the persons administering the assessment are adequately trained and supervised in doing so. - In terms of whether stiffer penalties for child offences and whether judicial officers should have wider jurisdiction in the determination of policies, the Association is of the view that: - this raises further questions; - there is need to discuss training for judicial officers so that they are aware of the complexity and dynamics of such issues; - there is a need to discuss whether or not judicial officers have a propensity for gender-based discrimination that they may not be aware of; and - There exists evidence worldwide that sexual offences tend to be treated differently according to gender not only perpetrators and victims but also persons involved in adjudicating. Director of Public Prosecutions - Suggests the implementation of the two tiered approach to sentencing as used in Section 15 (1) of the Sexual Offences Act Chap 11:28. - Agrees with the need for severe penalties in respect of offences committed against children in comparison to offences committed against adults.
The number of cases of voyeurism involving children referred to the Rape Crisis Society	Rape Crisis Society of Trinidad and Tobago - Children who commit acts of voyeurism are referred to the Society by the Children's Authority of Trinidad and Tobago or by the court. - Acts of voyeurism is usually only part of the behavior and reason a child may be referred to the Society.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
	Children who are referred to the Society for counselling are those who have committed worse acts than voyeurism.
Whether survivors referred to the Society have a history of exposure of voyeurism	Rape Crisis Society of Trinidad and Tobago - There is an escalation in the number of survivors of sexual crimes who have had a history of exposure to voyeurism, particularly when the perpetrator is known. - Voyeurism is one of the steps leading up to committing a more grievous sexual offence.
Amendment to proposed Section 22B	Rape Crisis Society of Trinidad and Tobago - The Society is of the view that the idea of vindictiveness is not adequately captured in proposed Section 22B. - Agrees that revenge may be too harsh and there will be need to prove the intention of a person. <i>The Committee was of the view that establishing a revenge motive makes the offence more difficult to prosecute as opposed to knowing that the act will cause humiliation and distress.</i> Director of Public Prosecutions - Is of the view that proposed Section 22B (1) (b) and (c) are covered in (a) and are not necessary.
An injunction to bar an image when a matter is raised in courts	Rape Crisis Society of Trinidad and Tobago Is of the view that an injunction to prevent the further circulation of intimate images will be useful to prevent further harm to victims, particularly to children.
Suggested amendments to Clause 4 of the Bill - Definitions	Association of Psychologists of Trinidad and Tobago - As it pertains to the definition for private parts, the Association suggests covering the transsexual persons in this Section of the Bill. - The rationale for including the words 'clinical therapeutic' after the words medical in the proposed Sections of 22 A (3) of the Bill is to provide coverage for any exposure or generation or taking of an image. - There is some dispute among members of the Association as to whether there is any valid clinically therapeutic basis under which such an image might be taken. Director of Public Prosecutions - The inclusion of certain commonly used devices such as cellphones, video recorders and cameras will make for less complicated prosecutions and strengthen the prospect of convictions. The DPP explained that less technical terms in the Bill will make for not only easier prosecution, but more particularly easier investigation and will attract the attention of investigators more readily. - As it pertains to the definition for private parts, Section 16 of the Interpretation Act Chap. 3:01, the word "person" includes both male and female and reference is made to genitals in the definition for private parts in the Bill which will apply to any gender.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
Inclusion of psychologist in the exculpatory sections of the Bill	Association of Psychologists of Trinidad and Tobago As it pertains to the rationale for including Psychologists as an authorized person in the Bill, the Association indicated that there was no consensus by members of the Association on this matter.
The concerns as it relates to the use of images in legal proceedings	Association of Psychologists of Trinidad and Tobago The concerns as it relates to the use of images in legal proceedings is that persons might use the legal framework to take images and be punitive with them as observed in matters involving children, for example, a child may encounter an image which may be used against a spouse as proof of being an unfit parent.
Whether sexual gratification can be assessed by psychological assessment for use by the courts	Association of Psychologists of Trinidad and Tobago - There are different motivations to sexual offending, the closest analogue being addictions, compulsive behaviours often driven by obsessive thinking and beliefs, emotional experiences that are not intrinsically sexual. - The use of the language of sexual gratification can create a misleading perception of the umbrella behaviour. - There are many motivations and elements involved in sexual behaviour which make assessments difficult.
The capturing of other motivations beyond sexual gratification in the chapeau of the Bill	Association of Psychologists of Trinidad and Tobago - In terms of whether the wording of the chapeau in proposed Section 22 A can be modified to capture other motivations to go beyond sexual gratification, the Association is of the view that: - Sexual gratification is not the only reason for voyeurism. - There are wider motivations for sexual gratification e.g. the pursuit of power, to humiliate and punish, a form of emotion regulation and management. - There are far fewer reasons or circumstance where a person would intentionally view an image of someone else without their permission that would be considered appropriate or acceptable. - There is need to consider the category of persons who would not be in this category of voyeurism. - There is need to include in the Bill that the intention of an act is motivated in some way by some factor e.g. sexual gratification, humiliation, distress otherwise there will be many acts that are classified as voyeurism which is not the intention of the Bill. - There is need to give serious consideration to the list of motivations that may be an exhaustive list.
Explanation on proposed Section 22A (1) (a), (b) and (c) being out of sync	Director of Public Prosecutions - The DPP is of the view that: - In the Sexual Offences Act Chap. 11:28, as it pertains to offences such as rape and sexual grievous assault, the mental element that the prosecution or State will be required to prove does not accord with the mental element in the Bill.

Issue	Details
	- The law is settled as it pertains to the mental element that is required for prosecution that is a person must have knowledge of non-consent or is reckless of consent. - The inclusion of 'reasonable knowledge', 'knows' or 'ought to reasonably know' creates complexity that makes for difficult prosecution. ▪ As it pertains to clarity on the term 'recklessness' the DPP indicated that a reckless act is committed when a person who knows that another person has not given consent and he/she proceeds nonetheless. ▪ It might make for easier prosecution if the <i>mens rea</i> for the offences in proposed Section 22 A (1) of the Bill are simplified and conform to the <i>mens rea</i> obtained in the parent Act, namely, the offence of sexual grievous assault and rape under Section 4 (a) (1) and 4 respectively of the Sexual Offences Act. ▪ The <i>mens rea</i> is that the offender knows that the victim does not consent or is reckless that the victim is consenting. ▪ The prospect of conviction will be enhanced if the <i>mens rea</i> is simplified.
Security Monitoring	Director of Public Prosecutions ▪ As it pertains to the following issues: a. whether a person should be informed that a home is being monitored; b. whose right should be protected, the owner or person visiting a private premise particularly with regard to the use of nanny cams; c. whether an owner can be charged for secretly monitoring a sexual act, if the intent is not for voyeurism; d. what will happen if monitoring is used for the purpose of sexual gratification. the DPP is of the view that: - Clause 22 A (1) of the Bill recites a person commits an offence if done for the purpose of sexual gratification and or for humiliation or distress therefore, a person cannot be charged if these are not the intent. - Additionally, a built-in statutory provision at (c) provides immunity from prosecution by allowing for monitoring to be carried out for the purpose of security monitoring. - The use of security monitoring for sexual gratification will be based on evidence. - Evidence external to security monitoring will be prosecutable. - The mandating of signs indicating a premise is monitored will affect a person's right to the enjoyment of property and privacy. - There is statutory cover for private monitoring under subsection (c) which treats with security monitoring. - Subsection (c) should include the words "this excludes homes". - People have a right to enjoyment of their property and therefore the DPP does not support notices of security monitoring on private homes. ▪ In terms of whether sexual gratification as stated in the Bill should be wider, the DPP offered the following: - Difficulty was encountered in proving the offence of serious indecency created by Section 16 (3) of the Sexual Offences Act Chap. 11:28 as it pertains to proving the intent of the act. - Charges were able to be brought under Section 15 of the Sexual Offences Act which treats with indecent assault because it is easier to prove.

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Issue	Details
The extent of difficulty in prosecuting an act done in the public's interest	Director of Public Prosecutions - The term 'public interest' has been amorphous and nebulous and poses challenges in terms of proof, especially where the prosecution is required to prove its case beyond reasonable doubt. - Agrees that 'public interest' can provide an opportunity for persons with malfeasant intentions because there is a huge element of subjectivity if not convenience in its applicability. - With respect to children, the public interest factor does not apply.
The inclusion of voice recording in the Bill	Director of Public Prosecutions - There may be difficulty in identifying voices compared to visual identification. - If the intention of the Bill is to widen the offence, the rational for the inclusion of identification by voice is justified. Association of Psychologists of Trinidad and Tobago - The issue of the difficulty in identifying voices by the DPP is valid. - The identification of voice is technically possible but also requires significant technological advancement and a database of voices.
Clarification on the Association's proposal on indecent exposure and obscenity	Association of Psychologists of Trinidad and Tobago The Association did not have consensus as it pertains to this matter.
Enhancement of provision in the Bill so that a child cannot give consent in law	Director of Public Prosecutions Section 15 (2) of the Sexual Offences Act Chap. 11:28 can be tailored to meet the needs of the Bill under proposed Section 22 A so that a child cannot consent to an act of voyeurism.
Taking and sharing of an image by children	Director of Public Prosecutions - In terms of whether there is need for specific provisions in the Bill to cover instances such as where a person publishes an image originated by a child and whether such persons can be prosecuted, the DPP is of the view that the person who is re-sharing an image can be prosecuted. - The prosecution of a child offender ought not to take place, if the public interest does not suggest that the child should be prosecuted. - There is need to be clear about the extent to which the Bill would like to embark on the prosecution of children. - Agrees that the power granted to the courts under the suite of legislation is sufficient to deal with offences of voyeurism committed by children as well as the role played by other agencies including the Probation Department.
The need for training of prosecutors	Director of Public Prosecutions - Agrees with the need for further training for prosecutors given that the offences are new in this jurisdiction. - Is of the view that training will benefit all stakeholders involved in the process.
Voyeurism as a disorder on the spectrum of disorders and a	Association of Psychologists of Trinidad and Tobago Is of the view that:

Issue	Details
possible gateway to rape offences	▪ Sexually abusive and exploitive behavior is complex and is not as a straight gateway leading to other behaviours. ▪ Voyeurism should be taken seriously. ▪ Voyeurism is part of a range of behaviours. ▪ Voyeurism is included in all the behaviours a person is engaging in for example touching, indecent assault, rape of a child, watching. ▪ Voyeurism is a serious aspect and must be addressed in law in such a way that it is viewed as serious. ▪ The impact of voyeurism on victims is a serious impact and should not be viewed as a lesser offence. <i>Rape Crisis Society of Trinidad and Tobago</i> ▪ Agrees that Voyeurism is a disorder on the spectrum of disorders and can be a gateway. ▪ Is of the view that other things can be gateways to sexual offences and finding the measure to implement by law will be complicated.
Closing comments in relation to Bill	<i>Child Welfare League of Trinidad and Tobago</i> ▪ Agrees with the Bill as is. <i>Association of Psychologists of Trinidad and Tobago</i> ▪ Underscored that the Bill makes specific reference to the breast of a female. ▪ With regards to revenge porn and the concerns about the inclusion of that language in the Bill, consideration should be given to how malice is accounted for in other similar offences and if there is a model for addressing malice as a component of sexual offence of this nature. ▪ There is no indigenous scientific research regarding sexual offences and conduct in Trinidad and Tobago and there is need for such to inform policy development. ▪ Consideration should be given to the provision of appropriate resources for a study in Trinidad and Tobago. <i>Director of Public Prosecution</i> ▪ Section 116 of the Children's Act Chap 46:01 requires the consent of the DPP before a child offender can be charged. ▪ It is proposed that in the Bill that forms part of Part 8 (A) of the Children's Act Chap 46:01 it should be made clear that where the offender is a child, the consent of DPP should also be required before proceedings are instituted.

**MINUTES OF THE 8TH MEETING,
2ND SESSION (2021/2022), 12TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021
HELD VIRTUALLY ON MONDAY MARCH 11, 2022 AT 1:36 P.M.**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richard	Member
Mr. Randall Mitchell	Member
Mrs. Renuka Sagrainsingh-Sooklal	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer (Intern)
Ms. Ria Rampersad	Graduate Research Assistant

Ministers

Hon. Faris Al-Rawi, MP	Attorney General
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CALL TO ORDER

- 1.1. The Chairman called the meeting to order at 1:36 p.m. and welcomed Members present.

CONFIRMATION OF MINUTES OF THE 7th MEETING HELD ON MONDAY MARCH 07, 2022

- 2.1. The Chairman invited Members to consider the Minutes page-by-page and inquired whether there were any amendments.
- 2.2. There being no amendments, a motion for the confirmation of the Minutes was moved by Ms. Jayanti Lutchmedial and seconded by Mr. Randall Mitchell.

MATTERS ARISING FROM THE MINUTES

3.1. The Chairman informed the Committee that:

- (i) **Per Item 4.1 (page 2):** By email dated March 07, 2022, the Secretariat notified the journalists who expressed a willingness to make a submission before the Committee to make their contribution in writing by March 14, 2022.

COMMENCEMENT OF THE CLAUSE BY CLAUSE EXAMINATION OF THE BILL

4.1. The following representatives of the Law Reform Commission and the Criminal Justice Unit, Ministry of the Attorney General and Legal Affairs were invited to join the proceedings:

Law Reform Commission

- | | |
|-------------------------------|------------------------------|
| • Mrs. Shireen Khan-Hyder Ali | Senior Parliamentary Counsel |
| • Ms. Tamara Dookran | Law Reform Officer |

Criminal Justice Unit, Office of the Attorney General and Ministry of Legal Affairs

- | | |
|-------------------------------|---------------------------------|
| • Mrs. Farzana Nazir-Mohammed | Director, Criminal Justice Unit |
| • Ms. Ria Brereton | Legal Officer II |
| • Ms. Nalini Ramjit | Legal Officer II |

4.2. The Chairman:

- (i) drew Members' attention to the Matrix of Stakeholder Comments, prepared by the officials of the Law Reform Commission and the Criminal Justice Unit, AGLA;
- (ii) reminded Members that the Matrix of Stakeholder Comments was circulated to Members via email dated March 10, 2022 and uploaded to Rotunda; and
- (iii) advised Members that clause-by-clause consideration of the Bill will be done in accordance with Standing Orders 67(3) and 68.

4.3. The Committee agreed that Clauses would be considered *en bloc* and only those that required further clarification would be examined. The comments and feedback relevant to those Clauses are outlined in the Appendix.

4.4. The Committee agreed to seek the comments of the Director of Public Prosecutions on the issue of interim orders and the offence of breaching an interim order.

OTHER BUSINESS

Next Meeting Date and Agenda

5.1. The Committee agreed to next meet on **Tuesday March 15, 2022 at 10:00 a.m. (in camera)** to complete its clause-by-clause examination of the Bill and consider the:

- (i) Proposed List of Amendments and Consolidated version of the Bill, to be submitted by the Law Reform Commission and the Ministry of the Attorney General and Legal Affairs; and
- (ii) Committee's draft Report.

ADJOURNMENT

- 6.1. The meeting was adjourned to **Tuesday March 15, 2022 at 10:00 a.m.**
- 6.2. The adjournment was taken at 3:09 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

March 14, 2022

Appendix I

Clause	Issue Raised	Decision Taken	Action to be Taken
1-3	N/A	Agreed	N/A
4	Amendment proposed to the definition of 'law enforcement officer' to be more reflective of the definition used in the Ant-Gang Act, 2018		LRC Team to include the amendment in the marked up version of the Bill.
	Definition of the term 'device' should be amended to include specification of 'devices' e.g. cellphones, video-cameras etc.	The word 'device' was selected because of its use in international cybercrime legislation, to ensure technological neutrality and to accommodate rapid changes in technology. The approach taken in the legislation is one of generality and not of specificity, a general approach is more suited to capture all possibilities in this regard.	N/A
5	- Recommendations were made to amend 22 A, B and C to provide for the interim orders. 22 D will be re-numbered as 22 E and provisions for an interim order inserted at 22 D. - Further amendments to 22 A, B and C will allow the Court to make further orders for probation or community service as well as the inclusion of considerations for mental assessment at the discretion of the Court.		LRC Team to include the amendment in the marked up version of the Bill.
	Proposal for the inclusion of a standalone clause to exculpate the Internet Service Provider, relevant to Clauses 22 A, B and C		LRC Team to include the amendment in the marked up version of the Bill.
	Proposed amendment to Clauses		

	22 B and C- use of the term 'reckless' instead of 'reasonably believing' to provide a more attainable standard of proof for the <i>mens rea</i> From jurisdictional evidence, there is use of the terms 'knowing' and 'reckless' in combination and proposed Clauses 22 B and C may be re-drafted to reflect a similar position		
6	Proposed amendment to proposed Section 44C(1), after the words 'in which' include the following: "a) <i>The depicted child was doing a private act;</i> b) <i>The private parts of the child was not visible to the public;</i> c) <i>The parent/guardian of the child has reasonable expectation that the intimate image of the child will not be publicly shared"</i>		LRC Team to include the amendment in the marked up version of the Bill.
	Proposed Amendment to include Interim orders and provisions for breach of said orders as well as corollary provisions for mental assessment		LRC Team to include the amendment in the marked up version of the Bill.
	Proposed new 44 G to outline the circumstances wherein the child is considered not to have committed an offense		LRC Team to include the amendment in the marked up version of the Bill.

APPENDIX II

VERBATIM NOTES

VERBATIM NOTES OF THE VIRTUAL THIRD MEETING OF THE SPECIAL SELECT COMMITTEE (SENATE) ON THE SEXUAL OFFENCES (AMDT.) (NO. 3) BILL, 2021, HELD (IN PUBLIC) ON FRIDAY, JANUARY 28, 2022, AT 11.00 A.M.

PRESENT

Mr. Clarence Rambharat	Chairman
Mrs. Renuka Sagramsingh-Sooklal	Member
Ms. Jayanti Lutchmedial	Member
Mr. Randall Mitchell	Member
Mr. Paul Richards	Member

TRINIDAD AND TOBAGO PRISON SERVICE

Mr. Dennis Pulchan	Commissioner
Mr. Hayden Walcott	Chief Welfare Officer
Mr. Mustaque Mohammed	Legal Officer

TRINIDAD AND TOBAGO POLICE SERVICE

Mr. McDonald Jacob	Commissioner (Ag.)
Ms. Sharon Cooper	Assistant Commissioner of Police
Ms. Claire Guy-Alleyne	Superintendent (Ag.)

**OFFICE OF THE ATTORNEY GENERAL AND
MINISTRY OF LEGAL AFFAIRS**

Mr. Faris Al-Rawi, MP	Attorney General
Mrs. Shireen Khan-Hyder Ali	Senior Parliamentary Counsel (Ag.)
Ms. Tamara Dookran	Law Reform Officer (Ag.)
Mrs. Farzana Nazir-Mohammed	Director, Criminal Justice Unit
Ms. Farah Abdool	Senior Legal Officer
Mr. Jason Dass	Legal Officer II
Ms. Ria Brereton	Legal Officer II
Ms. Nalini Ramjit	Legal Officer II
Ms. Solange De Souza	Director Legal, Legal Services Unit
Mr. Carl Esdelle	Policy & Research Officer

11.00 a.m.

Mr. Chairman: Good morning. Welcome to the third meeting and the first public stakeholder engagement meeting of the Special Select Committee of the Senate on the Sexual Offences (Amdt.) (No.3) Bill, 2021. This hearing is broadcast on Parliament channel 11, Parliament radio 105.5 FM, and the Parliament's YouTube channel *ParlView*.

I am Clarence Rambharat, I am the Chairman of this Committee and I now invite my colleagues who are all Senators, this is a Senate Committee to introduce themselves.

[Introductions made]

Mr. Chairman: Okay, thank you very much. The Committee is also supported by a secretariat

comprising Mr. Johnson Greenidge and Mr. Brian Lucio and we are also supported by the technocrats from the Office of the Attorney General and Ministry of Legal Affairs and other agencies. I now invite the members who have accepted our invitation to be here, we have representatives from the prison service, the Trinidad and Tobago Prison Service and the Trinidad and Tobago Police Service. So, I now invite first the prison service led by the Commissioner of Prisons and then the Police Service led by the Acting Commissioner of Police.

[Introductions made]

Mr. Chairman: Okay. Thank you very much. I would invite the Trinidad and Tobago Police Service now to introduce themselves.

[Introductions made]

Mr. Chairman: Okay. Thank you very much, Commissioner. So, Acting Commissioner of Police, I would now invite you to make your opening remarks to be followed by the Commissioner of Prisons.

Mr. Jacob: So again, good morning to all who are participating, Mr. Clarence Rambharat, chairperson of this Joint Select Committee, Special Select Committee and all other distinguished members. I want to give thanks to you for the Trinidad and Tobago Police Service, giving us this opportunity to participate in this process as it relates to this important piece of legislation that actually targets towards the protection of vulnerable men, and women, and children in our society.

Looking at the stakeholders present today, it emphasizes the point that crime-fighting is everybody's business, and if we see something, we should say something. It is my hope that our contribution here today facilitates the proclamation of this important piece of legislation, and allows for the smooth transition into law enforcement in enforcing the law. That will not hinder law enforcement in its investigation, instead it will allow us to charge the perpetrators of these serious sexual offences and protect our citizens.

As we all know and anticipate with this legislation becomes to be more enforceable it will certainly be an essential tool in the fight against crime and to protect the communities. We also believe that it will add serious legitimacy to the police because most of these reports when made to the police, there is an expectation by the victims that the police respond, and respond in an effective manner. The legislation will put us in a position that we can provide that service that is required to our citizens, and that sort of confidence that is required in the police service will be enhanced.

So again, on behalf of my team here we are prepared to assist and contribute to this process this morning so that we can help to protect and serve the vulnerable as was mentioned earlier. Thank you very much.

Mr. Chairman: Thank you, Acting Commissioner of Police. I now welcome the Commissioner of Prisons to make your opening remarks.

Mr. Pulchan: Thank you, Mr. Chair, members of the Committee, all protocols observed, pleasant morning to you all. I want to say that this is a wonderful piece of legislation introduced. It shows our country's maturity with respect to treating with offences of a serious nature. It also deals with the protection of a child, which is particularly important to our country.

I dare say that I am a bit concerned, as you know we have the police doing detection, arrest, the courts will do sentencing, but there comes a very important part which is rehabilitation and that is where that falls in the jurisdictions of the prisons. What is unique at this point in time is that we need to beef up or rather look for more robust retraining rehabilitation programme at a professional level to deal with persons who would have been convicted of sexual offences. The regular treatment— they will require unusual treatments or more professional treatment than what gives in the prison service today.

I am also concerned on the legislation the list of persons and agencies that are being

considered law enforcement officers. The prison service was not included in that list because of the fact that—I do not know. But what I will like to see is prison officers included in that list because of the fact that we now have to do extensive DNA sampling of inmates, we have to do intrusive searches of inmates that may affect us in the performance of our duties. So, it is something that I am throwing out there for consideration. Other than that you have the prison service’s full support and my officers stand by, and we are very happy to be here today to support in any way and contribute in any significant way for this meaningful legislation. Thank you.

Mr. Chairman: Thank you very much, Commissioner Pulchan and we appreciate what you have highlighted. Now, the purpose of this Committee—the debate on this Bill was completed in the Senate and the Committee was appointed to engage stakeholders including the stakeholders who are before us today, and those who would be before us later on, and those who would make submissions in writing. Even members of the public who are following. We have not made a formal call for submissions from the public as yet, but members of the public who are listening or viewing can indicate or join. Even if it means joining the chat on social media to indicate your thoughts, because a lot of important things in relation to the public interest would be discussed.

Now, I want to open up now to the other members of our Committee, and I want to say that in relation to two of my colleagues, Sen. Richards from the Independent Bench in his contribution in the debate raised a number of issues, including the issue of private acts for example, in a public place, the issue of rehabilitation which Commissioner of Prisons you have raised, rehabilitation and other matters relating to some of the detailed aspects of the Bill. But one of the areas Sen. Richards raised was the issue of rehabilitation.

And then, in connection to what both the police and the prison service are engaged in, Sen. Lutchmedial in her contribution raised a number of issues including the issue of sentencing, and the recommendation that at the point of sentencing the consideration should be given to reference or referring the accused for a psychological or other professional assessment. And Sen. Dr. Varma Deyalsingh the Independent Senator, on the issue of sentencing, also raised the possibility of in addition to fines and compensation, the possibility of bonds, a person being put on a bond. And one interesting one was the person being prohibited from use of or access to the Internet for a prescribed period.

So I now invite first Sen. Richards, to be followed by Sen. Lutchmedial.

Mr. Richards: Thank you, Chair. Good morning everyone. Thank you to the stakeholders who are with us today. I will start with the Trinidad and Tobago Police Service Acting Commissioner Jacob. Commissioner—Acting Commissioner, I used the word Commissioner—do you have an issue with any of the definitions or does your team have an issue with any of the definitions as stated in the Bill presently? Including specifically, “private act...private part...and share or store...” in the context of the TTPS executing their duties in this intended law which readily deals with a very, very sensitive issue for the persons who would have been victims in the past but certainly whom this legislation is intended to protect? And if you could disaggregate the children’s aspect versus the adult aspects of this kind of legislation please? That is the first question.

Mr. Jacob: Well, as you are aware this basically is an extension of our Sexual Offences Act that existed before, and some of the said terms and situations that exist here, also exist in those Acts. And in our normal enforcement over the years we had no significant issues so we do not expect in these circumstances. So when it comes to the definitions, and looking at it we felt that it was clear. In some instances there were some questions here and there, but when we go back to the notes at the beginning where it explained a lot, it cleared up a lot of issues that we had when we went through the legislation itself, the proposed legislation. So we do not have much issues in relation to the definitions that were

used, and the whole aspect of private and public.

Mr. Richards: Now, what are your thoughts? And I know your—I think, is it Inspector Guy? Am I wrong?

Mr. Jacob: Guy-Alleyne.

Mr. Richards: Guy-Alleyne, sorry. If I am not mistaken, she is with the Gender Affairs Unit in the TTPS?

Mr. Jacob: Yes. She is sitting here with me.

Mr. Richards: Yes, I know. I am just trying to get her location in the service at the time. Given what you have been able to gleam from the legislation, do you think that there will be challenges in the police executing this law effectively? Because while it is an amendment of the Sexual Offences Act there are expectations for some levels of privacy with persons with regard to taking of photographs and sharing of photographs and “private parts”—I am quoting from the Bill here in the definition:

“means—

- (a) the genitals...”—the—“...buttocks...”—“area...buttocks of a person;
- (b) the breasts of a female person, whether or not the breasts are sexually developed;”

In the context and:

“‘share’ means—

- (a) publish, distribute, transmit, stream, sell, make available or advertise;
- (b) sharing online, including...websites, via email, live-streaming or through private messaging services;
- (c) sharing offline, including through the post or distribution...”

We have entered a realm in the world where the digital domain is extremely pervasive in everyone’s lives. And if one takes the proposed definitions here to the natural conclusion in the context of Trinidad and Tobago, there are person who may not have a sexual gratification intention, but may be caught up by the law in some of our cultural practices in the country. And if you have given thought to that in terms of how you think the legislation can be adjusted to ensure that persons who do not intend to or who do not have a sexual gratification component as is intended by the law, are not caught unwillingly? For example, carnival photographs, carnival streaming, people who are scantily clad and their breasts, buttocks, et cetera, may be exposed to one degree or another and persons who are taking pictures and sharing or streaming may fall within the dynamics of the Bill.

Ms. Guy-Alleyne: Good morning again, Superintendent Guy-Alleyne here. Mr. Richards, you raised some really—you have my mind bubbling at the moment. Because when we look at the legislation it looks simple, and I am seeing where police officers during an investigation, we can follow the law because it is an extension of what we have before in the Children Act as well as the Sexual Offences Act. But you have brought some issues to the floor which can be entangled in this entire new law.

It means that as a society, the police, we would have to do a lot of—if the law goes forward in its current stage, it means that as law enforcement we would have to do a lot of sensitization to make our society understand the new law, and understand new behaviour within our society. So it appears as though the narrative within our society would have to be changed, and we have to be very cautious about our acts.

I see no problem with law enforcement conducting investigations relative to reports made and, you know, pursuing and following the law at this time.

Mr. Richards: There are parts of the law that also deal with police officers and their exemption from prosecution in the execution of their duties. Do you think, and this is for Acting Commissioner Jacob, do you think that these officers should be of a particular rank when being enabled with the powers to search particular suspects in terms of the digital storage of these devices, the apprehension of suspects

who may be suspected of being guilty of contravening the law, and the storage and management of this sort of evidence because of the possible sensitive nature of some of this content? Should it be any rank or do you think there should be a particular rank level that is applied to this?

Mr. Jacob: It can be and should be any rank. But what is happening within the police service, we will have persons who are specialized for the purpose of carrying out that exercise. In the police service we have our check and balances and within the operations we in fact establish standard operational procedures which we place in our departmental orders. And if that is violated, you know, we can in fact take action departmentally to deal with the particular individuals.

At all levels we have a level of supervision and because we are dealing with the whole aspect of digital issues, we will have our Cybercrime Unit playing a very, very important role in relation to this aspect. So when we have these situations you will find that our Cybercrime Unit will be the persons responsible and they are the experts in the area. If we go to limit it to some, a rank, it will create numerous problems for us because the way how the unit is structured. You may have one inspector, you may have one First Division officer, and you have a series of Second Division officers. But we are not dealing with rank in this instance we are dealing with the persons with the relevant expertise. Right. And I just want to impinge on the question that was asked to Ms. Guy-Alleyne and one of the keys that we need to look at is the word “consent” that was highlighted in the Act.

So when we talk about persons in relation to the whole aspect of having the whole carnival events and things like that, the question, the word “consent” comes up there in inverted commas, and whether or not and there is an expectation that during the course of things persons will in fact record persons. However, you will have instances where things would happen that the person may not have planned that their—as you used the word “breast” may be exposed. That may not be the plan and someone did something unbecoming. Yes, we will have challenges there but we know that our legal persons will guide us accordingly, because everything is based on the circumstances and the situation. It not just clear-cut. And as I said, we are accustomed dealing with situations like that. And when we sit down and look at it, we are not even just guided by the statutory law before us, but also case law will assist us in making the decision. So it does not matter how we try to couch the legislation, it is just the foundation and this is where the case law and other authorities will assist us in making the decision whether or not to charge in different circumstances.

Mr. Richards: Before I refer to my colleague Sen. Lutchmedial, going back to the issue of the rank of the police officer, do you think a police officer who is just out of the Barracks just graduated from the Police Training Academy should be included in this sort of exercise given their possible inexperience, and the sensitivity of the content and the information and the types of situations that may be involved here?

Mr. Jacob: Well, in the first instance, according to our Standing Orders that no police officer without more than three years’ service cannot be really in a specialized section within—like to be in the Cybercrime Unit which might be the specialized unit to conduct such activities. So the question of someone just coming out of the training college having access to do that, it will be virtually impossible because we try not to put persons in specialized sections until after they have a certain amount of experience in the job.

Mr. Richards: Thank you. I defer to Sen. Lutchmedial at this time.

Ms. Lutchmedial: Thank you, and good morning everyone. Let me start off—let me get right down to the concern that I think would greatly affect law enforcement. I will start with TTPS. Commissioner, do you have any challenge with the exceptions and how they are worded? So if you have the Bill in front of you I will point you specifically to clause 5 and we are dealing with the new 22A subsection (3). Now, this deals with what we call the innocent infringers and of course, there is

the exception created for law enforcement officers. Do you think that the way it is worded is sufficient to protect your officers from being accused of committing acts such as voyeurism and so on when they are performing their duties? Do you see any challenge arising for our law enforcement officers?—[Pause]—Let me—it basically just says that where:

“A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

(a) performed by a law enforcement officer in the lawful execution of his duty;”

And then it goes on to say that—

“(b) carried out by an authorized person for medical, forensic, scientific or educational purposes;”

Now, I am thinking about undercover operations, monitoring, whether or not sometimes the police may be conducting surveillance and may engage in, you know, viewing someone without their knowledge for the purpose of—and it may involve viewing them in situations that are—well, they have an expectation of privacy. Do you think the section is crafted in a way that would protect the officers from being accused of acts of voyeurism?

Mr. Jacob: Yeah, but not just the section in itself, it is the procedural aspect that exists within the police service.

Ms. Lutchmedial: Right.

Mr. Jacob: And that is reason why we have things organized in a particular way and persons need to be supervised and things are documented. So if you are having an official exercise and it is organized and they will in fact be protected, you know. And we were looking at—we had some concern in relation to (d)—

Ms. Lutchmedial: “Um-hmm.”

Mr. Jacob: Because you know (d) talks about the:

“acts that the person reasonably believed...”

And we were dealing with the whole aspect of the reasonableness we were considering it, you know:

“...were necessary for the purposes of—

i) preventing, detecting, investigating or...crime;

(ii) legal proceedings; or

(iii) the administration of justice; or

(e) in the public interest.”

You know.

Ms. Lutchmedial: Yeah. So for example, as you mentioned that, the reasonableness, because that is such a—you know, subjective and results really in a court making that determination:

“...acts that the person reasonably believed...”

If for example, an officer is accused of let us say committing on act of voyeurism, that reasonable belief you are saying would be substantiated based on instructions coming from seniors and so on, and it is an official operation and all of that, right? In the absence of that type of formal instruction and, you know, a clear plan, do you think that officers who may be conducting surveillance or any type of monitoring on their own—I mean, in practical policing I am talking about, do you think that they may run into a problem if for example they might be following someone or following up a lead and commit an act of voyeurism or accused of committing an act of voyeurism?

Mr. Jacob: Initially, there may be a question would be raised, but all persons involved would have persons who we call handlers. Handlers are basically whether it is your Corporal, your Sergeant who must have knowledge of what is happening. Then your handler, I have to put it like in our terms, will be exposed. Meaning to say your handler now will come forward and say, yes I have permitted X, Y

and Z. So initially, there could be a query but it will be handled in how we have things organized within our operations concerning surveillance and otherwise.

Ms. Lutchmedial: Okay. With respect to—well, this is really, this is something I guess I will throw out to both yourself and the Commissioner of Prisons. If for example, someone with a predisposition for voyeurism or one of those types of—a penchant for taking photographs and sharing and so on. Let us just say someone like that exists or we find out, we do not detect them right away within the prison or police service, and they end up abusing that power and authority that they have by sharing these images or, you know, abusing the power to engage in this type of activity. Would you support a higher penalty for persons who are law enforcement officers who commit these acts not in the performance, legitimate performance of their duties?

Mr. Jacob: The penalties stipulated in the proposed legislation are quite stiff in relation, but remember this is a double situation for an officer. An officer if found guilty will definitely be out of the job.

Ms. Lutchmedial: Sure. “Um-hmm.”

Mr. Jacob: Right. So other than the stiff penalties that I am seeing here, there are other consequences, you know. So in that regard I will feel that it is in fact sufficient. And I do not believe that there is need to really increase the penalties per se. And also we had situations already where officers used their cell phone and actually made photographs of things—we had an example in Tobago, you know, and he photographed in fact an accused person who was hospitalized and sent it out and that person was charged and was in fact convicted right, even without this legislation.

Ms. Lutchmedial: “Um-hmm.”

11.30 a.m.

Mr. Jacob: Okay? So I am saying that we will, in fact, deal with things in a particular way and I do not see the necessary need—

Ms. Lutchmedial: Right.

Mr. Jacob:—to increase the penalties.

Ms. Lutchmedial: Just out of curiosity, could you just tell me, in that scenario you described, what was the offence that the person—the officer was charged with for taking and distributing the photographs?

Mr. Jacob: I will just ask my team around to help me because I cannot remember offhand. Yeah.

Ms. Lutchmedial: I just wanted to know that, you know—what else exists in the law that could—

Mr. Jacob: Yes, yes, yes.

Ms. Lutchmedial:—assist with these things in the event that it does not fall within here.

Mr. Mitchell: Jayanti?

Ms. Lutchmedial: Sorry.

Mr. Mitchell: Mr. Chair, Jayanti, could I just piggyback on one of your questions, please?

Ms. Lutchmedial: Sure, sure.

Mr. Mitchell: Just to ask, in your experience—and perhaps somebody else could answer—where an officer commits such a crime, would it be seen at sentencing if he is found guilty as an aggravating circumstance, so that he goes to the higher threshold in terms of penalty?

Mr. Jacob: Yes, definitely, that is what the person who is dispensing justice will take into consideration. Because when you look at the position that the officers hold and their responsibility, the magistrate or judge who is making the decision will take that into consideration in deciding what sanction is to be placed against the particular officer.

Mr. Chairman: Okay. Thank you very much, Acting Commissioner of Police and Commissioner of Prisons. I think my colleagues have brought the discussion to very, very important area. I myself

made a note to engage both of you on this issue because law enforcement officers, particularly the ones that you are responsible for, can both be involved in the enforcement of the law and essentially that is how you see yourself, but can also be perpetrators and the jobs—maybe particularly police officers put themselves in a unique position to be both an enforcer and a perpetrator.

As somebody following the media and social media, I have observed where images are available on social media of crime scene of things that ordinarily should form part of the gathering of evidence but the part of what we see on social media. So I think my colleagues, both Sen. Lutchmedial and Sen. Mitchell, are really getting to that point, one, of whether you see the need to have higher penalty or more serious sanctions for persons whose job it is to protect and serve and to enforce actually becoming perpetrators. That is the main question. But I want to ask both of you, Acting Commissioner of Police and Commissioner of Prisons, whether you have seen or have had to deal with an increase in the use of the technology, particularly, cameras—cell phones with cameras by law enforcement which are likely to constitute breaches of the expectation of privacy by citizens, including those who are incarcerated?

Mr. Pulchan: If I may, Mr. Chair?

Mr. Chairman: Yes, Commissioner Pulchan.

Mr. Pulchan: Yes, Sir. From the prison's perspective, I think we have had no cases where an officer would have used his cell phone to send images of any inmates on the outside. We, however, have a unique situation where inmates are actually sending images of themselves in various states on the outside. A glance at social network can reveal this. So while it is an offence, some people are actually committing an offence by sending images of themselves outside and that is governed under the Interception of Communications—under Prisons Act No. 13:01. So we have our challenges with that in that regard. But very rare we have any situation where an officer uses his cell phone to photograph an image of an inmate. There are strict laws governing officers and their cell phones in the prison and it is tightly enforced. So that is how our position on this matter, Sir.

Mr. Richards: Member, could I just add one to your question? Because something occurred to me when you were delivering your question. Can I go ahead?

Mr. Chairman: Yes, Sen. Richards, go ahead.

Mr. Richards: Following your question—and this is both to Acting Commissioner Jacob and Commissioner Pulchan. We have seen situations in the past where access to crime scenes, as you indicated, have resulted in live broadcasts of persons who are not part of the TTPS broadcasting information, interfacing with evidence on crime scenes and the question is: Does the Acting Commissioner and Commissioner Pulchan think there should be included some clause, although it may be a breach of the police operating manual or the prison operating manual and a breach of their standard operating procedure, to allow external persons some sort of access to these sort of scenarios and thereby facilitate some sort of breach of the law but themselves not using their devices or doing it themselves? Do you think that should be included here to capture those sorts of situations? So while they may run afoul with the police operating procedures and disciplinary issues within the police service, they may not be criminalized acts allowing that kind of unauthorized access.

Mr. Jacob: Well, basically the way how the—when you read the Act and how it is couched, once the police officer falls outside of—remember, we have our Professional Standards Bureau and we also have our complaints division. And if an incident occurs, the Professional Standards Bureau will first conduct the investigation and once it reaches the threshold for the criminal in violation of this proposed legislation when it becomes law, the persons will be charged and placed before the court. Because when you read it, you would see that it caters for those situations, in the sense that if a police officer went about and went outside of his normal duties and published or sent this viral anywhere

and we have that evidence, he can be charged criminally. The only time it reaches and goes down to the threshold of the police complaints to deal with our Police Service Regulations where there are about three different areas within that regulations that cater for persons who publish items in that way, they will be charged departmentally.

So I strongly believe that the way how things are couched, we will be able to capture police officers who choose to cross the line in the circumstance. Right? I looked at the proposed legislation and as far as I am concerned—the persons next to me may advise me otherwise. But as far as I am concerned, at this time, I am seeing where we will be able to capture situations like that if police officers choose to cross the line. Once they cross the line and they go into the criminal arena, they will be dealt with accordingly.

Ms. Lutchmedial: Commissioner, sorry, if I could just interject here. I think what Sen. Richards is asking, let me break it down in the simplest possible terms. There is an exculpatory section here for law enforcement officers who are performing their legitimate duty and they are allowed to do certain things. But what if they themselves are not doing it but they are permitting somebody else to do it? This is a country where you have people—police officers and wannabe police officers—who have live shows and they record things to go on their programmes. We have an evening show hosted by a police officer who uses unofficial camera footage to give his views and opinions on crime scenes—

Mr. Richards: And broadcasts it.

Ms. Lutchmedial:—others who are civilians who do so. And this is a situation now where we do not want all of these people to—for their personal gain, because that is what I believe it is, and financial gain—to be falling under this exemption. Will the police service have a challenge in terms of all of these persons and drawing the line? Where is the line going to be drawn in terms of performing your duties, the execution of your duties, allowing someone else onto a crime scene to participate in recording or to do whatever it is and with the, let us say, acquiescence of the police officer?

Mr. Richards: And, Sen. Lutchmedial, also partaking in the surveillance of what should be private acts exculpated for the police officers in the execution of their duty.

Ms. Lutchmedial: When what they are really pursuing might be a private aim for popularity.

Mr. Richards: And a personal gratification.

Mr. Chairman: Okay. Thank you, Members. And Acting Commissioner of Police, before you respond, I just want you to answer whether you have seen an increase in complaints by the public or in complaints generally in respect of the issue of police officers in conducting their duties, taking and sharing images which may constitute an interference with the privacy expectation of citizens?

Mr. Jacob: We have not necessarily seen an increase in relation with that aspect with law enforcement officers. We have one or two instances that were dealt with but what we are seeing in—why this Act—why this legislation is necessary, we are seeing that within—generally within the communities we are seeing that that is happening among our citizens other than police officers. So we have isolated situations in relation to police officers and law enforcement officers but we have a significant increase in that situation with persons coming to make reports to the police in relation to exactly what we are dealing with here. But we have not seen that significant increase to say police officers are doing it on a regular basis.

Mr. Chairman: Right. And the other point raised by my two colleagues, it is not directly related to the subject matter of this Bill, except insofar as it relates to taking and sharing and it is an overall concern. So the question they have asked is this practice of having access to information; having access to material; using your position to access the material to do recordings, to take images and among the many uses of it, use it in broadcast, is it something that has been raised before in the Trinidad and Tobago Police Service and is it something that is likely to engage your attention?

Mr. Jacob: It has been raised and we, in fact, were looking at it carefully and were getting advice from the DPP in some instances to guide us in relation to those sort of releases that may be even on that programme that they referred to. We had situations that we had to call in the host and speak with him because some of the some of the items may be evidential and may interfere with our investigations when it is released and placed out there and might affect the case later down the road.

So we have, in fact, run an educational programme within the police service for police officers as it relates to that aspect. Right? And as I said, sometimes when they cross the line, the regulations—our Police Service Regulations, in spite of persons believing that the penalties are not strong enough but depending on the situation if it amounts to discreditable conduct, the Commissioner can dismiss someone from the police service as a result of some of those actions when they actually cross the line.

But again, as I said, there are instances where persons cross the line and they were charged criminally for those situations when they use the images in such a way, as stipulated in this legislation here, and police officers were charged and taken before the court. I asked my colleagues here to try to research so that I can actually refer to the cases and I will get it very soon so that I can refer it. So I want to assure them, if there is something else they believe that can be included in the legislation, that can add force to the situation in case law enforcement crosses the line, we will not at all do anything to prevent it. But on the surface from looking at it, we believe that it may be adequate to deal with those situations.

Mr. Chairman: Okay. But before I invite my two colleagues who have signalled, Sen. Mitchell and Sen. Richards, your references to training and education in the police service—and I am sure it applies in the same way to the Trinidad and Tobago Prison Service—I just want to refer very quickly to three areas raised by our colleagues, Senators, who are not on this Committee and invite your comments on it.

The first is in relation to matters raised by temporary Sen. Walker, Sen. Deyalsingh and Sen. Sobers, the issue of sentencing—and this may be of interest to the Commissioner of Prisons, in particular—the issue of sentencing and whether the Bill should really treat with offences relating to children by having more significant penalties than those relating to adults. That is on the matter of sentencing.

The second was raised by Sen. Sobers and other Senators on the issue of the Cybercrime Unit and something that always arises, whether the Cybercrime Unit is equipped to deal with the offences set out in this Bill. And Sen. Richards has also raised that issue and Sen. Sobers raised the issue of training because we hear references to training and the need for training and education.

And the third area was raised by Sen. Walker—temporary Sen. Walker and Sen. Sobers and this had to do with putting in this Bill a provision relating to—sometimes you see in certain public spaces, a sign or signage that says that these premises are under surveillance. And I wanted to know if you have an opinion on that, putting it into the Bill, that these premises are under surveillance and the legal consequences which flow from that.

So I will just invite both of you, Commissioner of Prisons and Acting Commissioner of Police, to comment on those three areas: sentencing; two, the ability or the preparedness of the Cybercrime Unit to deal with the offences created in this Bill; and the issue of making provisions for having signage, addressing the issue of premises/public spaces being under surveillance. Thank you.

Mr. Pulchan: Commissioner of Police, if I may, Chair, before I attempt to contribute in this last regard, there was something I raised my hand previously that I need to comment on, if you do not mind, with your permission, Chair?

Mr. Chairman: Yes. Please go ahead.

Mr. Pulchan: With your permission?

Mr. Chairman: Please go ahead.

Mr. Pulchan: Right. I want to support the Commissioner of Police in the fact that more rigid legislation, one; two, training and development of police officers. But I do share a concern and one of my concerns is—and I will bring it in an example. Recently, last year, one of my officers was shot in Siparia and footage of a three-year-old child was seen running hysterically. Before I was able to contact the family to explain to them that their loved one has passed, the image was all over social media and I am of the strong view that instances of these should face a very stiff penalty because it adds trauma to the lives of victims and families out there.

My second point, there are times when police officers seem to be doing their job and in the execution of their duties, the civilian population seems to feel it is okay to put a cell phone on the face of the police officer without permission. And I think that should be an arrestable offence and some consideration should be given to a stiffer penalty on that because it makes the police officer's job much more difficult. So those are my two contributions to the previous discussion.

With respect to sentencing, I believe that consideration should be given to sentencing with respect to a proper rehab programme—a mandatory rehab programme, one that the prison service is in dire need of. I think that people who would have committed sexual offences should require professional counselling. This is one of the things we do not have in the prison service and it is sorely lacking. So it is an area of concern for me that we should have adequate counsellors and adequate psychologists to deal with the rehabilitation programme that when a person offends—commits an offence and comes to the prison, we must send them out a better human being than when they came in here or give them the opportunity for a behavioural change. So that is my contribution at this point in time, Sir.

Mr. Chairman: Okay. Thank you very much. And Acting Commissioner of Police?

Mr. Jacob: Yes, yes. Thanks very much, Chair. In the first instance, I want to deal with the last issue first in relation to the aspect of signs concerning a surveillance. Now, when you go abroad, you will see in a lot of instances that persons have, you know—in the United States and other places you have these signs but it is used in the context of providing a situational crime prevention measure in the sense that when persons are aware that these signs exist, it will or should act as a deterrent. In some instances, some people use it and they may not even have, in fact, proper working cameras at all but it just acts as a deterrent. And I believe that when you look at the law, I do not believe it will be causing any sort of distress or interference with the law if these signs are existing. It is something that we can, in fact, practise in Trinidad and Tobago because, as I said, it acts as a significant deterrent and under the whole aspect—under criminology they actually promote that, you know, as a significant deterrent for persons who may look to embark on dealing with any kind of deviant or criminal act.

The aspect of our Cybercrime Unit: our Cybercrime Unit, yes, they may be short of a bit of manpower but they in fact have the necessary expertise and technological support to deal with the situation and they are also enhanced by our RAU. We have a Research and Analytical Unit within the Trinidad and Tobago Police Service which basically is an upgrade of the Cybercrime Unit and goes a little deeper in dealing with all aspects of issues with cybercrime. I know a lot of persons may not be aware of that Research and Analytical Unit but it is a unit that was formed about two years ago and it works hand in hand with the Cybercrime Unit.

Also, the Trinidad and Tobago Police Service has support from other agencies within the law enforcement where there is in fact other technological support. The software that we use and some of the very expensive licences, I have to say, that is maintained is even given support through the

Ministry of National Security in order that—and some of our international partners to ensure that we are able to deal with the issue of cybercrime in Trinidad and Tobago. So I believe that we are there. As I said, they may need some additional manpower but we are up to our game when it comes to the technology.

As it relates to the sentencing, I will pass it on to Ms. Superintendent Guy-Alleyne who will deal with the aspect of sentencing concerning young persons. Ms. Guy-Alleyne.

Mr. Chairman: Okay. Thank you very much, Commissioner of Police. Superintendent Guy-Alleyne.

Ms. Guy-Alleyne: Thank you very much, Sir. When it comes to the sentencing for perpetrators that are adults and the victims are children, we would really like to see an increase in the penalty. Children are one of the most vulnerable in our society and we have a responsibility to protect them. So with the hefty fines, it would act as a deterrent to “would be” perpetrators in Trinidad and Tobago.

Another consideration, if the perpetrator is a child, a different penalty and different circumstances should be laid down by the courts when it comes to a child as a perpetrator. So in a child perpetrating, we would like to see where the fines are not so hefty and there is a sort of rehabilitation and a process to bring that child back into society where that child would not be recommitting these acts.

Mr. Chairman: Okay. Thank you very much. What I want to do now is we have three of the Committee members. I would ask each of them to ask their closing questions or have their closing reflections and then I would ask the Commissioner of Prisons and the Acting Commissioner of Police to make their closing remarks. So after each member makes their intervention, you will have the opportunity to respond. We will start with member Mitchell, followed by member Richards and then member Lutchmedial. Thank you.

Mrs. Sagrarsingh-Sooklal: Chairman—

Mr. Mitchell: Thank you very—

Mrs. Sagrarsingh-Sooklal: Respectfully, Chairman, if I may also be given an opportunity? Member Sagrarsingh-Sooklal.

Mr. Chairman: Yes, sure. We would start with member Mitchell.

Mr. Mitchell: Yes. Thank you very much, Chairman. Chairman, please permit me to go back to the issue of sharing of crime scenes. In my understanding, unless clarified, there is a bit of a lacuna. Now, with respect to the sharing of these crime scenes, that could be very macabre and that also share the private parts of the victims, many of these victims—these persons are deceased and therefore, they may not fall within the confines of the law. So to the Commissioner of Police, Acting, would the Commissioner of Police—because I am hearing him talk about discreditable conduct without really specifying an offence. Would the Commissioner of Police agree to an amendment of the law where the sharing of the intimate image, that is the private parts of this victim, deceased, fall for consideration within this law?

Mr. Jacob: Well, in responding, in the first instance when we had a situation where the person was in fact alive, we had charged for malicious publishing under the Libel Act, section 8, right?—16, we had charged the person when I referred to the incident, that is in relation in Tobago. And that person was all also subjected to our Police Service Regulations, as I mentioned, for publishing and releasing such information.

The question of dealing with the deceased persons that is a possibility that we can in fact look at. But even so, if it is done on this occasion, they will, in fact, be charged departmentally. And depending on the circumstances, it can run from the basic charge of publishing to the other aspect of amounting to discreditable conduct depending on the circumstances and the investigation that is done.

12.00 noon

Mr. Chairman: Okay. Thank you.

Mr. Mitchell: Thank you. Thank you, Chair.

Mr. Chairman: Thank you very much. A very important point raised by member Mitchell. Member Richards.

Mr. Richards: Thank you, Chair. Just a couple of comments before I pose my final question. I just want to put on the record that I disagree vehemently respectfully with Commissioner Pulchan that the public recording situations in the public space should be an arrestable offence. Very often those recordings have been able to provide clarity when there were police alleged—police abuses perpetrated. So I disagree with that vehemently. Under some circumstances this may be warranted but certainly not in our circumstances, public space is public space. Two, I am surprised to hear that the Acting Commissioner said that there were situations where the broadcast of a content that may be evidentiary had to be dealt with behind the scene in terms of the content being broadcast and then guidance given about the issue of it being possible evidence, and that not being a process that is legally vetted before it is taken and broadcast internationally. So that is surprising to me.

And three, the question now is—and also I want to put on the record that children should be a totally different regime, and I think the hon. Attorney General spoke to this at some lengths in his presentation where these laws are concerned, where adults are concerned. And I agree with the rehabilitation that Commissioner Pulchan spoke about because voyeurism is a disorder in the DSM, the Diagnostic and Statistical Manual, and is subject to rehabilitative processes. So in many cases these people will come back in society and if they are not rehabilitated the likelihood of the offence reoccurring is very high because voyeurism is stated in the DSM as one of the most increasingly pervasive offences globally.

The question I have in closing is that—so rehabilitation to me is critical, it should be mandatory. And the question I have in closing is, it was a suggestion from, I think, Sen. Dr. Dillon-Remy, and I think temporary Sen. Walker, and someone else who escapes me now, that the legislation as projected does not have consideration for audio recordings—and it is Sen. Lutchmedial, it now comes back to me, that suggested that people may have distinctive voices and interactions that may be private and quite intimately intense, may be the subject of recording and sharing and have the same effect as a video recording being published, stored or shared, and if the Commissioner of Police thinks that—Acting Commissioner of Police thinks it should be included in this legislation because it can do the same damage as a video recording if released, shared or published. Thank you, Chairman.

Mr. Chairman: Thank you.

Mr. Jacob: *[Inaudible]*

Mr. Chairman: Commissioner of—

Mr. Jacob: *[Inaudible]*

Mr. Chairman: Go ahead.

Mr. Jacob: Yes, again, Chair, thanks. Yes, we believe that it can be included. It will be significantly helpful because we even go along to do, sometimes in some instances where the identifying of persons by the voice, you know, by voice recording and we believe it can assist tremendously because sometimes it may not be just the voice alone, it may be a combination. It may be the voice together with other aspects, putting together—to put together the evidence in order to charge the persons. Right? I just need to indicate that in some of these instances in gathering the evidence tend to be challenging and it really takes persons with the relevant expertise, even with the basic aspects of what we are talking about digitally. Because sometimes we will see footage by WhatsApp or other things

and it is being forwarded, forwarded, forwarded, and then sometimes to find who is the original person, it tends to be challenging for the Cybercrime Unit with the work that they are doing. And someone will want to indicate, “Well, look, how the police and everybody is seeing this and the police is not doing anything?”, and the experts in the cybercrime, whether it is in Trinidad or international, will tell you of some of the challenges. And that is the reason why whatsoever evidence that we can get to put together to assist, whether it is voice and otherwise, we will advise that, yes, it should be included, although it will be a challenge because we will have to get that person with recording previously and thing to do the comparison and we will have to take it by an expert to say, “Yes, this is the voice of the person.” We will have to use other persons who have been interacting with this person for a period of time and they have to be willing to come forward in order to identify the person’s voice.

So I am just indicating, putting it in and having it there, it is not so simplistic to say, “We have it and it will”, it will take a certain amount of effort but we are prepared in that way in order to bring law and order in Trinidad and Tobago. We are prepared to go the extra mile to deal with it and our cybercrime persons are in fact prepared to go that extra mile.

Mr. Chairman: Thank you very much. Commissioner of Prisons, do you have any views on this?

Mr. Pulchan: Yes, Sir. I want to say thank you to the members and you, Chairman, for allowing us to participate in this important discussion. I also want to say that one of the things we are looking at in sentencing—and Sen. Richards hit it on the nail head, is rehabilitation, and, you know, voyeurism is a disorder indeed and a person might receive probably a six months sentencing, but if we were to acquire a counselling period it may not be sufficient time to have that person properly counselled. So what I would like to say is that in the sentencing we would like to see that the training or the counselling continues for that person on the outside so he completes the training necessary for his rehabilitation; that is one area.

A second area that we are looking at, Sir, is the issue of the prison officers’ protection under this new Bill, Act; law enforcement officers and while protections are afforded for law enforcement officers, it does not include prison officers and what I want to say is, prison officers do intrusive searches with inmates, it involves doing DNA test on inmates, so it could work against the—and it could work against the prison officers. So they need some level of protection and I would really love to see this included in this new Bill. Thank you, Sir.

Mr. Richards: Are prison officers required to take images and/or video of inmates in these searches or these interrogations?

Mr. Pulchan: Yes, Sir, they are required to do that for evidential purposes.

Mr. Mitchell: Well, therefore, would they not be covered in the definition, where the definition touches on:

“...any other agency...”—that are—

Sorry, I am trying to find it:

“...any other agency...”—that—

“a member of any other agency of the State in which investigative and intelligence gathering powers, similar to those exercisable by a police officer...under the Police Service Act, are lawfully vested;”?

Would you be covered under that?

Mr. Pulchan: I do not think we will be covered over that because it says on—the exercises, the powers of a police officer. The prison service does not enjoy the powers of a police officer, so that is my intention to have it included.

Mr. Chairman: Thank you—

Ms. Lutchmedial: Now—

Mr. Chairman: Sen. Lutchmedial, before I invite you, thank you very much, Commissioner of Prisons, for raising two—I realize that you were doing your closing comments and responding at the same time, that is fine. So we have taken note of your two—those are two very important areas; one we raised in the debate, rehabilitation, and raised in relation to sentencing too, and the second one is one that you have raised that was not raised in the debate—I do not recall it—in the designation of prison officers as law enforcement officers for the purpose of this Act and making sure that it is specified. So I now invite my colleague, Sen. Lutchmedial.

Ms. Lutchmedial: Thank you, Chair. Well, firstly, I just want to make a comment and I want to endorse exactly what Sen. Richards has said that, you know, the public being able to tape things that happen in public spaces whilst—but I find it unfortunate that, you know, it might be viewed as obstructing police officers in the execution of their duties and that it should be an arrestable offence. That is a layer of protection that the public enjoys and I—you know, police officers also enjoy it too because I have seen police officers put out their own version of events via recordings on their own cell phones, and with the introduction of body cameras which we eagerly await, from the police service, that would be their level of protection. So we have to balance those scales. So that is just a comment on something that would have arisen.

Let me deal with the issue of the prison service being considered a law enforcement agency. You raised specific examples, Commissioner, of having to take samples and so on, intimate samples, and all of that, but this Bill is really dealing with someone who—you are conducting monitoring or you are taking something without consent, images without consent and sharing it or sharing images that were even taken with consent. Now, a person is not entitled once they are in your custody to object really to images being taken—and photographed—if it is of course that the—it is necessary for the purpose of them being in prison. I do not know that you have to take intimate images unless it is, you know, a medical examination and you are required for evidential purposes, but in any event I think that would be covered. I think that with respect to the voyeurism aspect if it is that the prison service do—does the prison service have a requirement that they need to conduct video surveillance within the prison that may include areas where persons enjoy privacy, like showers and so on, that I can see the issue arising there, that perhaps there may be need to carve out an exemption for law enforcement officers, prison officers to be exempted from it if they are doing it in those circumstances.

But let me ask you a question coming out of that, does the prison service have sufficient capacity to ensure that this data is stored in a manner that is secure so that it is not shared because the last thing we want is a Facebook live video of inmates taking showers or committing private acts in the shower as may be the case sometimes. You know, there are a multiplicity of things that perhaps occur within prison walls that may be subject to video surveillance and, you know, do you have the capacity? So that is my first question. The second one that I wanted to—that I think you have kind of answered, but would you support—and I just want to couch it based on what you all have said about rehabilitation and so on, would you all support—and this goes to the TTPS as well—mandatory psychological evaluations before a sentencing for any of the offences committed under this law? Not just for voyeurism, that is a precursor to other things, but also perhaps the—you know, if someone is engaging in behaviours where they seek to slut-shame someone by sharing intimate images after a break up and all of that, would you support mandatory psychological evaluations as part of the sentencing process to be included in this Bill?

Mr. Pulchan: Thank you very much, Senator. I think I will and I think it is in all best interest to have mandatory psychological sentencing. It would give us an idea and it will help with our assessment

process in the treatment of the inmates. So if we have information coming to us based on an assessment that was done at a different level, it could give us an opportunity in attending to the needs and the risk level of the individual. It also will give us the opportunity to place that individual in a location that, you know, it would be safe for him and those around him. So that is—yes, I support that. And your second question I believe would have been video, storage or storage of—

Ms. Lutchmedial: Yeah, the capacity to keep these things safe—

Mr. Pulchan: The capacity—

Ms. Lutchmedial:—without having leaks and so on.

Mr. Pulchan: We do have a photography department, we do have an IT department and we do have our various firewalls in place to protect the data that is stored there. But let me just add one more thing, sometimes persons come into the prison system with tattoos at various parts of their body and we are required for identification purposes to photograph these tattoos. It is in this context I am speaking of for the protection of the prison officer.

Ms. Lutchmedial: And sometimes you may have to share that with other law enforcement agencies and so on, like let us say—

Mr. Pulchan: Definitely, we would have to.

Ms. Lutchmedial: Okay.

Mr. Pulchan: Definitely.

Ms. Lutchmedial: So I think we perhaps could look at the—even if it is in a limited way if we need to create some exemptions for prisons. Yeah. Okay. Thank you so much, Commissioner, that was helpful.

Mr. Pulchan: Thank you, Senator.

Mr. Chairman: Thank you. Thank you very much. And our last member, Sen. Sagrarsingh-Sooklal, I now invite you to ask your closing question.

Mrs. Sagrarsingh-Sooklal: Chair, I just want to apologize for my outburst, I forgot the “raise hand” feature. Anyway, that being said, as it relates to the Commissioner of Prisons, you know, I would have listened to some of the concerns, not just made but the earlier comments, and, you know, I just want to remind respectfully, or put on the record respectfully that this is indeed a Sexual Offences Bill and of course many issues that were raised, respectfully I submit that it falls within the ambit of cybercrime and that is why, you know, unfortunately this is not a cybercrime legislation. So when we are looking at putting safeguards in this Bill as it relates to sharing of certain images and all of that, we have to remember that at all times it is limited to the scope of the Bill that appears before us which is a sexual offences Bill and not a Bill that relates to all offences that may be created in a cyberspace. So that is just one of the first things that I wanted to say.

Now, Chair, through you, I know—well, the Commissioner of Police Acting would have focused a lot—and a lot of questions would have come to this Committee relative to evidence and the leakage of evidence—and not just evidence but images that the police may have. Commissioner, respectfully, I believe, in the interest of the public, in my previous incarnation of course as a defence counsel, I would have been exposed to understanding the chain of custody of evidence when it comes to the police and the layers of protection that that chain of custody provides. And the protection I am talking about is a—systems that are in place within the police service as it relates to the custody of evidence that prevents the leakage of that evidence into the public domain. Because, of course, some of the concerns would have been, “Okay, we have intimate images that are held by the police, we have videos, and that being released”—maybe just for the benefit of the public who is listening on, if you could just briefly reiterate the chain of custody of evidence so that at least the public understands that through this chain of custody there is a layer of protection as it relates to the evidence and it not going

out there where persons have access, you know, anybody could just have access to it. That is of course if time permits and of course if the Chairman is minded to allow that question.

And that being said, I know a question was also raised relative to audio recordings, what I do know is that we have in America—I know Sen. Lutchmedial in her contribution when she would have proposed the audio recordings, she would have mentioned that at the debate in the Senate, she would have looked at America, and I, myself, after that contribution I would have looked because it was something that I am also, you know, minded to support, but I know South Carolina, Delaware and Indiana, for example, there are audio recordings that are included in their legislation as it relates to voyeurism and so on, and I know the Commissioner of Police was mentioning his concerns and challenges as it relates to audio recording. But what I can just add to your concerns or just add is that I know that there are comparators that if we do decide to look at audio recordings and include it in the offences in this Bill, there are, you know, comparators that do exist that could probably and possibly guide us in making that inclusion. So, Chair, I know time is of the essence and that is just my—[Inaudible]

Mr. Chairman: Okay. Thank you. Thank you very much. I want to ask you, Commissioner of Police, you engaged us on a wide range of issues, I would ask you to make your closing comments now taking into consideration what Sen. Sagramsingh-Sooklal has just raised, in particular whether—you know, whether you are satisfied with the way in which this sort of material is handled within the police service, whether you believe there is an opportunity to improve, particularly as it relates to the expectation of privacy of the citizens of the country particularly when data or information may be in the hands of police officers. So I ask you to make your closing comments and to address that particular issue if you can. Thank you.

Mr. Jacob: Thank you again to all and Chair. It is very, very important for us to recognize that the Trinidad and Tobago Police Service jealously protects the whole aspect of the chain of custody which is the core aspect in us presenting evidence before the court and if that chain is broken, most of our time the case is broken. So it is totally necessary that we guard it. Some of the situations that we will have is in the early stages at the gathering of evidence. Our crime scene officers, our cybercrime officers, they operate under particular guides in relation to our standard operational procedures and how things should be documented and move from one step to the other. In fact, in order to enhance that process, recently we established a one-stop shop at our main centre at Cumuto and the basic reason for setting up that one-stop shop is that officers will not have to take particular exhibits or even with the process to take it from one place to the next, from one area to another area in order to get all the testing done. It would be done under one roof with a one-stop shop and that is also to maintain that chain of custody.

The Cybercrime Unit and the RAU have their methodology that they use and I cannot say within recent time at all to hear that particular evidence that came into their custody was late. As I said, most of the issues is at the beginning of the particular circumstances or situation someone may record some information and send it out in the earlies. Once it comes under the control of our officers, it tends to remain there because it can affect our cases easily. Again, our special victims department which consists of our Child Protection Unit consists of our gender unit and the Sexual Offences Unit has been established for exactly what you all are talking about where the officers are trained and with a certain level of expertise and that is the reason why we support the call by the Prison Commissioner in relation to the psychological testing. And these officers will in fact make note and they do the interim assessment and screening of these perpetrators and that documentation is taken and can continued through the case to assist at the end of the day in helping with the whole aspect of sentencing and the sort of treatment that persons should be met with.

Ourselves now are constructed in a particular way, and I think a special select committee from the Parliament was involved in that aspect also, that even our CCTV cameras cannot in fact access the areas where our detainees and prisoners are—they may be taking a shower or so, you cannot access where the CCTVs are. So we view that in a particular way to deal with that aspect of the recording which will link to this legislation. We also have the situation that we are required to take photos, intimate photos of persons who are gang leaders or so, if they have tattoos and other things because it goes to the aspect of putting together our evidence to prove that there is in fact some sort of gang affiliation which is identified by these tattoos, and at least the law in this sense is in fact protecting us and we want to support the prisons in that regard.

The other aspects that we pay a lot of attention to is where we look at—we do profiling; not in a negative way—I know some people when I use the word “profiling”—but some of these perpetrators may have in fact a pattern in how they operate and the profiling of them tends to help and we try our best to utilize the whole aspect of similar fact evidence to help in the prosecution of these persons. So we are looking forward for this legislation to become law and we know there are some simple amendments that can be made to enhance it and again we are in support of it, and especially our special victims unit is looking forward for this because it will assist them tremendously and assist the police service. As I said at the beginning, I would come back to the police legitimacy and the confidence because numerous reports are made to us concerning these particular issues and we are unable to respond effectively because the law in itself is not there to support us and this legislation would assist us in dealing with it and providing our citizenry a better service. So again, we want to thank Chairman and all who were involved in putting together this legislation and we are looking forward for it to become law. Thank you very much.

Mr. Chairman: Thank you very much, Acting Commissioner of Police. I want to first thank both the Acting Commissioner of Police and the Commissioner of Prisons and your respective teams for attending and participating in such a very important manner bringing your experience to bear on the discussions. I want to thank my colleagues on this Committee for their insightful contributions and comments and questions. I want to thank the members of the media, following and reporting on today’s proceedings; the Law Reform Commission representatives and other representatives from the Office of the hon. Attorney General; our parliamentary staff, both those in the Secretariat and those in IT in particular, providing the important technical support in these hybrid meetings that we have. And most importantly, I want to thank the viewing and listening audience who have followed and will follow on the rebroadcast and they will also continue to make comments on our social media pages.

We have taken note of what has been said, and I want to say, Commissioner of Prisons and Acting Commissioner of Police, that you have the opportunity to make further submissions in writing in respect of matters which have been raised today or matters which you believe you should address. I know you have not provided all the expertise and experience that you could have in terms of this broadcast but you would have the opportunity to make submissions if you wish to do so. And with all of that said, I want to adjourn this meeting at this time and thank you very much.

12.29 p.m.: *Meeting adjourned.*

**VERBATIM NOTES OF THE VIRTUAL FOURTH MEETING OF THE SPECIAL
SELECT COMMITTEE (SENATE) ON THE SEXUAL OFFENCES (AMDT.) (NO. 3)
BILL, 2021 HELD (IN PUBLIC) ON FRIDAY, FEBRUARY 04, 2022, AT 10.30 A.M.**

PRESENT

Mr. Clarence Rambharat	Chairman
Mrs. Renuka Sagrarsingh-Sooklal	Member
Ms. Jayanti Lutchmedial	Member
Mr. Randall Mitchell	Member
Mr. Paul Richards	Member

OFFICE OF THE PRIME MINISTER - GENDER AND CHILD AFFAIRS

Mrs. Jacinta Bailey-Sobers	Permanent Secretary
Ms. Nicha Cardinez-Rostant	Director, Legal Services
Ms. Ann Marie Quammie-Alleyne	Coordinator, Gender Policy

MINISTRY OF FOREIGN AND CARICOM AFFAIRS

Ms. Reita Toussaint	Permanent Secretary (Ag.)
Ms. Sunita Harrikissoon	Director, Legal Services
Ms. Chayanti Lal	Legal Officer II

TRINIDAD AND TOBAGO CREATIVE INDUSTRIES

COMPANY LIMITED (CREATIVETT)

Ms. Dionne Mc Nicol Stephenson	Director
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MINISTRY OF SOCIAL DEVELOPMENT AND FAMILY SERVICES

Ms. Jacqueline Johnson	Permanent Secretary
Ms. Jennifer Juteram	Senior Legal Officer
Ms. Kathleen Sarkar	Assistant Director, National Family Services Division

MINISTRY OF NATIONAL SECURITY

Mr. Gary Joseph	Permanent Secretary
Ms. Ryanka Ragbir	Legal Officer II
Mrs. Charmaine Gandhi-Andrews	Chief Immigration Officer
Mr. Abdul Mohammed	Legal Officer
Ms. Cherisse Nixon	Assistant Director, Legal Services, SSA
Ms. Kelisha Bello	Senior Legal Officer, SSA

CHILDREN'S AUTHORITY OF TRINIDAD AND TOBAGO

Mrs. Sharon Morris-Cummings	Director (Ag.)
Ms. Sabrina Satram	Legal Services Manager (Ag.)
Ms. Kinda Jacob	Senior Legal Associate
Ms. Patricia Bascombe	Investigation and Intervention Unit (IIU) Manager South Central (Ag.)

Mr. Chairman: Good morning. Welcome to the second public stakeholder engagement meeting of the Special Select Committee of the Senate on the Sexual Offences (Amdt.) (No.3) Bill, 2021. This hearing will be delayed. The broadcast will be delayed on Parliament channel 11, Parliament radio 105.5 FM, because of the Sitting of the House, but there will be a live broadcast on Parliament's YouTube channel *ParlView*.

My name is Clarence Rambharat. I am the Chairman of this Select Committee and I would now invite my colleagues on the Committee to introduce themselves.

[Introductions made]

Mr. Chairman: Thank you very much. We have six groups before us this morning and I want to first thank them for making their written submissions, we received the written submissions, and for appearing this morning before us. The stakeholders who are before us today are: the Ministry of National Security, the Ministry of Foreign and Caricom Affairs, the Ministry of Social Development and Family Services, the Gender and Child Affairs Unit of the Office of the Prime Minister, the Children's Authority of Trinidad and Tobago and CreativeTT. I would now invite these stakeholders to introduce themselves, starting with the Ministry of National Security.

[Introductions made]

Mr. Chairman: Thank you and I now invite the representatives from the Ministry of Foreign and Caricom Affairs.

[Introductions made]

Mr. Chairman: Thank you very much. I now invite the representatives from the Office of the Prime Minister.

[Introductions made]

Mr. Chairman: Okay, thank you very much, and we would be joined shortly by the representatives from the Ministry of Social Development and Family Services and by the representative from CreativeTT. I see Mr. Lewis. Mr. Lewis is from OPM, right?

Mrs. Bailey-Sobers: Mr. Lewis is not going to be attending.

Mr. Chairman: Okay, all right. So thank you very much.

Mrs. Bailey-Sobers: We also have the Children's Authority, Chair, which is under our remit.

Mr. Chairman: Right. So thank you very much. I want to proceed with the discussions that the stakeholders would engage in with the Committee members. And I want to first invite my colleague, Sen. Paul Richards to—in fact I want to invite member Jayanti Lutchmedial to lead us off.

Ms. Lutchmedial: Thank you, Chair. Good morning everyone again. So I will start with the submission we received from the Ministry of National Security. What stood out to me, and thank you very much for your submission, but in the cover letter what jumped out at me is you raising sort of the issue of what we call Nanny Cams in common language. Basically, what I am understanding is that you are saying that someone may actually be committing all the elements of the offence inadvertently if they install something in their home and they say it is for security purposes, but it could, perhaps, be used for voyeurism. Am I reading correctly into what you are basically raising here? Anybody from national security can answer.

Mr. Joseph: Ms. Nixon, was that comment made on your end?

Ms. Lutchmedial: It is in your letter, PS, signed by you. Let me just say it here.

There is one scenario that may arise that may pose some difficulty for a victim where a homeowner installs security cameras or hidden cameras within his home for the purpose of voyeurism of persons he invites into his home as contemplated but installs same under the guise of security monitoring as contemplated by section 22C(3).

So the homeowner in such a situation may fulfil all elements of the offence of voyeurism but has a

full defence for the crime. So this is the letter sent under your hand, PS, it is included in that cover note. And then there are some section by section comments as well. So, I am asking now, is this specifically what you are saying is that if someone were to install cameras inside of the home and they capture a private act, you think that they may be able to raise a defence saying that it is for their own security, even when the person who is committing the act is invited in.

Mr. Joseph: Just one second, member. Ms. Ragbir, are you on?

Ms. Ragbir: Yes, PS, I am here.

Mr. Joseph: All right, could you respond to that submission?

Ms. Ragbir: Yes, that is correct. It was contemplating the situation with Nanny Cams.

Ms. Lutchmedial: So, do you have any suggestion or have you all considered any other options that could prevent, or do you have any suggestions as to how we could treat with that issue within the Bill?

Ms. Ragbir: So far, we have not had any suggestions quite as yet. We had just raised the issue to determine if this would be something that would be contemplated, that would be covered by the particular section. But we were still trying to figure out a way in which it would be worded to be able to circumvent that particular issue.

Ms. Lutchmedial: What is your view on creating something within the Bill that would prevent persons from having monitoring in private areas of the home, where you would expect, you know, like the bathroom, for example, something like that, that you basically prohibit? I mean is it sort of imposing. There is a balancing issue there of rights. You are telling someone what they can do in their private home, but it is also that, because, they invite someone in, the expectation of privacy. Do you think that that would be sufficient to cover it?

Ms. Ragbir: Yes, that can be sufficient to cover it. However, you correctly raised the issue of privacy whether that would infringe rights to privacy and all that. Maybe something along the lines of preventing hidden cameras, maybe, like you said, in certain areas of the home as well as, probably the cameras that cannot be seen by the naked eye or something like that. I am not sure if that might be a viable suggestion.

Mr. Richards: Could I ask a related question, Chair, through you?

Ms. Lutchmedial: I give way.

Mr. Chairman: Yes, member Richards.

Mr. Richards: Does the team at the Ministry feel that there could be the inclusion of the requirement for the owner of the home or premises to declare that the premises is monitored in some way by a camera, so that there is an understanding that well, you should not expect privacy in X area because I am surveilling my private property for my purposes of whether I want to protect my child or protect my property from invasion, et cetera, and if that could be included as some sort of caveat and documented that the person understands this, so they do not inadvertently expose themselves and put the owner in a liable position, as is done in some jurisdictions where you see. I know it is kind of wide-stretched but the area is surveilled by CCTV camera, it is usually on premises walls. But in the private home it could be a discussion or documentation so that when you take on the job, you know the home is surveilled by CCTV cameras or cameras to protect their children.

Ms. Ragbir: Yes, member. I do think this could be an option that could be available, as least giving a heads-up as to the presence of cameras on the premises itself. That could be a way that we could work around the provisions of the Bill in looking at that.

Ms. Lutchmedial: Right. One other thing, Ryanka. When you talk about—the challenge with that is people who install surveillance inside their home, they usually do not want the nanny, the caregiver, to know that it is there because that is the whole point is for them not to know that they are being

watched while they care for children, or whatever. But a key element of the offence really is that the proof of what is being done is for the purpose of obtaining sexual gratification. So, I mean, I would think that that would be the defining line between genuine Nanny Cam monitoring, as opposed to, you know, looking at someone, depending on the location of it. If it is not—even if what ends up being captured ends up being something that could be sexual in nature, if there was no expectation that that sort of thing would happen.

Let me be very blunt and very frank, you have a monitoring system in your house because you are looking, you want to watch and see what is happening with your child during the day and you did not know that the babysitter is inviting the boyfriend over to spend the day with her and you end up capturing something you do not expect in a place in your home that you do not expect. Is that—there is no intent on the part of the homeowner to capture these images for sexual gratification. Do you think that the Bill as it is, is clear enough that once that element of, for the purpose of sexual gratification is there that it is, you know, satisfactory?

Ms. Ragbir: I think so, member. I think in a situation that could be covered by the Bill. But what we had contemplated when we were looking at that general comment is a situation where the homeowner themselves might be—well, the cameras would be installed for the overt purpose of monitoring, you know, the child and how the babysitter would take care of the child. But then there is a hidden covert purpose where the homeowners themselves may be using it for, like, some sort of sexual gratification.

Ms. Lutchmedial: Gratification.

Ms. Ragbir: Yes, like the voyeurism itself. So the situation contemplated by yourself, that could be covered, I think, by the provisions of the Bill itself and there are—an offence could be made out in a situation like that. But in the other situation where the homeowners themselves are using the camera for that particular purpose, that is the one that we were still having discussions about.

Ms. Lutchmedial: Okay. All right, so we will flag it and, perhaps, have a look at it a little bit further. Okay, so moving on, Immigration. I know Mrs. Gandhi-Andrews is on. The definition as it currently stands—

Mr. Richards: Ms. Lutchmedial, just before we move on, because there is another issue that the Ministry raised about the word “reckless”. Could the office identify what the issue is with being reckless there?

Ms. Ragbir: Sure. The word “reckless”, in considering the Canadian Criminal Code, the Canadian Criminal Code specifically made reference to the word “reckless” and it was a suggestion for this to be included as well, which will contemplate situations whereby the provision could cover situations where the offender themselves, they are careless about attaining the consent of the person.

However, it is noted that section 22C(1)(a) did contemplate the situation whereby the offence would be committed without reasonably believing the person consents. That could cover all situations. But the inclusion of the word “reckless” is just to cover like a more specific scenario where the person was careless about consent.

Mr. Richards: Thank you.

Ms. Lutchmedial: Now, as Sen. Richards jumped forward to that one, let me just ask you, Ryanka, a situation that like that though, if you include someone being reckless about the sharing of the image—we have the situation now where everybody forwards things on WhatsApp and it is forwarded multiple times. You could have a scenario arising there where you would have hundreds of people, perhaps, being guilty of the offence. Because how does anyone, when you receive a WhatsApp message, know whether or not the person consents to their image being shared, whether they themselves put it out there or whether it is recklessness? So you understand the challenge with placing something—

Ms. Ragbir: Yes.

Ms. Lutchmedial: I understand the reasoning behind it of course. You want—it is not an imagine that is put out there by the person and you do not want it to be shared, but how does anybody know, when they receive things in this form, whether a person is consenting, whether this person voluntarily made this video or took these photos and wants it to be out there or whatever? So it raises that issue. And I have a—my pet peeve is putting things on statute books that really just cannot be implemented or cannot be enforced, or cannot be, you know, you cannot get a conviction on it. So I am just wondering about that sort of a clause. How do you anticipate being able to prosecute people for this offence if you include that element of being reckless as to consent?

Ms. Ragbir: Yeah. I understand. I think the thinking behind that was just to cover all different types of scenarios given the issue we have these days with pictures and videos and stuff being shared on social media. But I understand the point that is being made and it will be difficult to prosecute in a circumstance like that.

I do think that the Bill, as it is drafted, could cover a wide range of scenarios with the inclusion of that provision where it says “without reasonably believing that the person consents”. So the inclusion of the word “reckless” is neither here nor there, I think. I just think it was just for clarification and for more specific situations.

Ms. Lutchmedial: Yes. It would be, perhaps, useful in the case of the person who initially obtains the image and shares it. But, as I said, it will also be applicable to anybody who is sharing it. And what you do not want to have, perhaps, or at least in my perspective, you do not want to have the one person who does not even know this person, does not know anything about it, no malice or whatever intended, but they get this thing and they think it is interesting and they forward it, that they could actually be prosecuted under this. I mean, everybody should probably, you know, be more responsible. But at the end of the day the person who triggers it is the person you want to go after and, perhaps, it just does not make, I do not know, it would be a bit of a storm brewing if everybody who shares something is captured by the Bill. Right.

Ms. Ragbir: Yes.

Ms. Lutchmedial: Okay. So back to the definition section with the immigration. The definition of “law enforcement officers”, you all thought about including Immigration Officer. However, as you all correctly noted, there is that subsection (f), any government agency that has investigative powers. Do you think it is necessary to be more specific and include immigration officers in the definition? Do you anticipate that will pose a challenge if they were not included, or? I mean, I am neither here nor there about it, but I am just asking if there is anything, any reason why you think it is absolutely necessary to have it there. Because I will tell you this, the broader the definition of “law enforcement officer” becomes, it is the more people that are basically having this exculpatory type thing, section, apply to them. They have a lot of powers to be able to commit acts and do things. And then it raises the issue of whether they are doing it in the course of their duties and all of that. So I just wanted to hear from you on that.

Mr. Mohammed: So, just to address that point, I believe the intent from our response was to indicate that you our interpretation of the interpretation section of the Bill, in specific “law enforcement officer” seems to include, by necessary implication, the definition of an Immigration Officer under the Immigration Act, specifically section 12 of the Immigration Act. So I do not believe there is any need to specifically identify an Immigration Officer as a law enforcement officer. I believe Immigration Officers are covered, within the scope of their duties, of course in the exemption created under the Bill.

Ms. Lutchmedial: Okay. All right, so again, perhaps, for clarity, if you wish, we could look at

including it. I will ask them to include it and we will have a discussion about it later on. I do not know if anybody else?

Mr. Mohammed: Just to point out, my simple view is that if no other law enforcement authority is specifically named, I do not think that there is a need to specifically name an immigration officer.

Ms. Lutchmedial: Okay, sure. All right. The Ministry also asked about including something that is applicable in the UK, the definition. Do you want to, or anybody from the Ministry of National Security, if you all want to give us an indication as to why you believe it was—the substitution of the words “private parts” and naming the parts itself, that you thought this that wording would be more applicable? This is where we are dealing with section 22A(1)(b) and the act of, the part, how you are viewing the person.

Ms. Ragbir: Actually, it was not to substitute private parts for genitals, buttocks or underwear. It was basically to include this particular line that was highlighted, in the circumstances where—well, in the UK legislation they had “in circumstances where the genitals, buttocks or underwear would not otherwise be visible”. So it is to include that line. But instead of actually stating genitals, buttocks or underwear as stated there, since we defined “private parts” in the definition section, we could just put it as in circumstances—

Ms. Lutchmedial: You want to say in circumstances where the private parts would not otherwise be visible.

Ms. Ragbir: Yes. Correct.

Ms. Lutchmedial: This may actually be useful in cases where like carnival, I mean, where people are wearing—

Mr. Richards: If we could add.

Ms. Ragbir: That particular section, because if somebody takes a video or a picture on Carnival Tuesday you want to make sure that those types of things would be—so this would just further clarify that particular section.

Ms. Lutchmedial: Yeah, because we do have a concern about what, how do you balance what is our culture and the norm of what would be acceptable during carnival days, as opposed to normal days and how do you balance that sort of thing, so, Sen. Richards—

Mr. Richards: I do not know if it was answered. Because that clause presumes a particular—when you say “what would not otherwise be exposed” and we keep referencing carnival. But I am seeing evidence more and more where what we would consider normal dress is getting more and more risqué.

Ms. Lutchmedial: Well, it comes back down to the expectation of privacy and if someone dresses in a particular way to reveal, I guess, certain body parts then there is no expectation of privacy in a public place and the photographs that are taken cannot—it is just my respectful view, but if someone takes a photo of you wearing something risqué, as you say Paul, in a public space, and then it is shared, I do not think the Bill is meant to cover that. Because you have, by choice, worn something that exposes particular body parts in a public place. It may still be humiliating to a person if it is that those photos and so on end up on the front page. We do not all dress, whether it is, you know, sometimes it is not even just about the way that you are exposed, it is just the way that you look. You do not always want to end up in the newspaper but it happens and once you are in a public place you run that risk. So, that is something that we have to consider. But I do not think the Act would be able to address that issue. That is a totally different issue.

I mean, with respect to it being a sexual offence, because that is what we are looking at here, I think we just have to find a way to ensure that persons who are unhappy with photos taken of them in a public place, dressed a particular way, is not prosecuted. Because we do not want to over-criminalize

things that are not—

Mr. Richards: I lost connection there for a second. I apologize.

Ms. Lutchmedial: I am sorry. I am talking about over criminalizing things.

Mr. Richards: I agree.

Ms. Lutchmedial: If you are dressed in a particular way in a public place and that photograph ends up being published somewhere or shared, you know, and you do not like it, you do not like the way that it looks, then you ought not, I am not saying that you ought not, but this Act is not meant to give you redress for something like that. That is my point.

Mr. Richards: My issue with people, exactly the point that you are making, member Lutchmedial, is that persons do not use the law for instances it was not intended to be used.

Ms. Lutchmedial: Correct.

Mr. Richards: Yes.

Ms. Lutchmedial: Yeah. Okay. So we could look at that wording about—I think that is a useful suggestion coming from the Ministry of National Security in the circumstances where the private parts would not otherwise be visible. So we can, perhaps, look at if we want to use that wording somewhere into the section, so that we will cover the cases where the photograph may—or the video or whatever it is maybe exposing a person but it is not in a situation where they have that expectation of privacy. Because I think we do have to address that and I guess we will hear later from other persons.

Ms. Ragbir: Yes, sure.

Ms. Lutchmedial: I think member Mitchell wants to—

Mr. Mitchell: Yeah.

Mr. Chairman: Member Mitchell.

Mr. Mitchell: Sen. Lutchmedial, I completely support your submission. I think it is extremely useful. It introduces a concept of implied consent, where persons dress in a particular way and they go out and they, you know, they participate in the proceedings but, of course, you know, may feel a different way when photographs are published. And I think it is extremely useful and it takes care of that.

What I wanted to ask of national security—and if you do not have the answer now you can, perhaps, submit it in writing later on. I know that prior to the carnival period, there are certain legal instruments that are put into effect that decriminalizes certain aspects that are normally criminalized, for example, the wearing of masks and other certain things. I just want to know if that proclamation or promulgation can impact further on persons dressing in a particular way but for that period of carnival where these items may be decriminalized, that they would not apply. I do not know if national security understands me.

Ms. Ragbir: Sorry. Could the question be repeated please again just for clarity?

Mr. Mitchell: Okay. Could you take us through—a normal carnival period, there is something that is promulgated, some sort of Legal Notice or legal order or something to that effect, could you tell us what that is? The police?

Ms. Ragbir: So during carnival time, like you said—

Mr. Mitchell: Yes, during the carnival time.

Ms. Ragbir: Yes. So certain things would be decriminalized—

Mr. Mitchell: For example, out of carnival time, it would be a criminal offence to walk around wearing a mask covering your entire face. I mean, we are in a pandemic now, so mask wearing is allowable but there are certain things that are criminalized. You cannot walk around wearing a mask, for example.

Ms. Ragbir: Yes.

Mr. Mitchell: But during the carnival period, there is some Legal Notice that decriminalizes certain things. And I am just asking—you do not have to give it now because I am sure I am springing something upon you that you are not prepared to answer at this time but if you can give us an answer in writing. Is it possible, for example, for some of these items to be decriminalized during the carnival period for that added level of, I guess, protection against the photographers and other persons? Because we live in the digital age, everybody takes a picture and everybody posts a picture, et cetera. So if you could just give us that in writing.

Ms. Ragbir: Yes, sure. Certainly.

Mr. Mitchell: Okay. Thank you.

Ms. Ragbir: Yes. Okay. Thank you.

Mr. Chairman: Okay. Thank you very much, member Mitchell. I just want to invite Sen. Paul Richards now to lead us off. We have a submission from the Ministry of Social Development and Family Services, and the submission proposes—I want to say amendments and changes to about 12 parts of the Bill. So I want Sen. Richards to lead us off with the discussion with the Ministry of Social Development and Family Services.

Mr. Richards: Thank you, Chairman. Good morning, again, everyone. The Ministry, in its quite extensive submission, red-flagged quite a number of issues. I would like to start with some of the definition concerns that the Ministry has identified, including the interpretation section of the Bill, complainant, consent, accused or defendant, spouse. And also, the Ministry is not the only entity that has flagged the definition of “sexual act” and if the Ministry can add some clarity to their concerns in these regards, please?

Ms. Johnson: Thank you, Chairman—[*Technical difficulties*]

Mr. Chairman: Do we have Permanent Secretary, Ms. Johnson?

Ms. Johnson: Good morning, Chair, members of the Committee.

Mr. Chairman: Right. I give you the opportunity, before you respond to Sen. Richards, to introduce your team.

[*Introductions made*]

Mr. Chairman: Thank you very much and welcome. So you could proceed with your response to Sen. Richards.

Ms. Johnson: Okay. So we thought that, at the interpretation section of the Bill, we needed to add those definitions that we have indicated there: complainant, consent, accused or defendant, and spouse. We felt that there were some weaknesses in that section, in terms of the definition there and who are these people as defined in the amendments to the Bill.

The other areas that Sen. Richards asked about would include—

Mr. Richards: Ms. Johnson, if I could say, before you move on, you also added that the complainant can include, but be not limited to, a victim regardless of age, parent or guardian, teacher, child, care provider, social worker, health care worker attending to a minor and has found evidence of sexual abuse, and religious leaders. Do you think that opens the door to possibly a plethora of—and I understand the intention—[*Technical difficulties*]

Ms. Johnson: Chair, we thought that the incidence of this kind of activity is widespread and it may be under-reported in a lot of instances and therefore, in order to protect those who are vulnerable, including the children, we may need to include religious persons as complainant. As well as in the case of a minor, if there is any evidence found of sexual abuse, it may include voyeurism as well.

Mr. Richards: But does the Children Act mandate that all abuses against children be reported as a legal responsibility? I am not sure. I am not an attorney but maybe some other attorney can answer that, by my memory of the Children Act.

Ms. Johnson: Yes it does, Chairman. And there is a specific area which reflects issues surrounding pornography in the Children Act. But to keep it tight and to prevent all possible occurrences of these kinds of events, we thought consideration should be given to its expanding the group which can make a complaint on this matter.

Mr. Richards: Is part of your intention to put more of a responsibility on these persons identified to report if evidence presents itself? Is that part of your—

Ms. Johnson: Yes, it does.

Mr. Richards: Okay.

Ms. Johnson: Yes, it does, Chair.

Mr. Richards: Thank you. And the part of the word sexual, in the Act—and I am going to the definition section:

“‘sexual act’ means”—and I quote—“an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, considered to be sexual;”

What is the challenge with that? I think it may be in conflict with other Acts. It may have been taken from other Acts. Is there an expansion of that, that you have a recommendation for?

Ms. Johnson: I will just pass to Ms. Juteram to give a little bit more on that issue.

Ms. Juteram: I think we were of the opinion that it could be subjective, in terms of what could be deemed to be sexual. So we just wanted to have—recommend a little more explanation on it.

Mr. Richards: [*Inaudible*]

Ms. Juteram: It is subject to various interpretations. And we just wanted a little more clarity so it would not leave any room for misinterpretation.

Mr. Richards: Okay. Understood. Thank you. Also, you cited clause 5, where you had concerns about section A.

“...a person commits an offence of voyeurism if, for the purpose of obtaining sexual gratification for himself or another person, or causing humiliation or distresses to a person, he knowingly—

- (a) observes, whether with or without the use of equipment, that person doing a private act and he knows or ought to reasonably know that the person does not consent to being observed;”

You think that is, I guess, too wide because you say:

Persons living in vulnerable circumstances, housing or shelter which may have visible access inside because of the circumstances of the person can be violating because their homes are dilapidated.

Is it that you think that because of the condition of the house, the owner of the house or the main occupant of the house may be caught in the offence intended here? Is that the concern?

Ms. Johnson: Because of their particular living situation, Chair, we are of the view that maybe they would have created an opportunity for someone to commit the offence. And our intention there really is to indicate that we may need to look at ways that we can help those people in such conditions, so that they do not create the opportunity to be violated. I think that that was our thinking there.

Mr. Richards: The owner of the premises you are talking about here?

Ms. Johnson: Yes. The person who is living in a dilapidated condition. We see homes where, you know, there are situations where the occupant may be missing walls, parts of walls, windows and stuff like that and that creates an opportunity for persons to access their privacy. And therefore, the intention here is really not to make any amendments but to take cognizance of the fact that these situations do occur and maybe we need to ensure that those persons are also captured, you know, not because of their particular circumstance of not being able to fully secure their privacy, that they are

excluded in any way from coverage under the amendments.

Mr. Richards: Just before I yield to my colleagues—because there are other issues I have that I can come back to later. I am sure my colleagues have other issues on what we have covered so far. Something occurred to me when I read this concern that you identified in clause 5. Do you think consideration should be given to expressly include in the Bill persons who may be in extremely vulnerable situations, in some instances, people who are extremely poor, or who are migrants or illegal migrants and struggling, that persons may ask them to take pictures or exploit their vulnerability and use those pictures and say, well, I got permission but the permission was not under duress but it was under a particular vulnerable state at which a person who is not under that state may not have ordinarily consented?

Ms. Johnson: Chair.

Mr. Richards: Unusual circumstance.

Ms. Johnson: Yes. Those are some of the circumstances that we thought about and a good example was some pictures which we saw taken of some Venezuelans who were living in some galvanized kind of facility. And it is their vulnerability at that point that may create some problems here with the legislation because anyone can see through the facility and we do not know how they can use those pictures for nefarious types of—

Mr. Richards: I am speaking of something a little more sinister where persons are in vulnerable situations, they are invited to a home and the person who owns the home or property says, “You know what? I am filming, eh. Do you agree? If you do not agree, you could leave.” But the person is in such a desperate state that they agree, not possibly having, at that time, agency, as it were because of their vulnerability and they agree to that and have problems down the road. And I think as the Ministry of Social Development and Family Services, at this stage, we have a responsibility to protect persons in those levels of vulnerable states from that kind of exploitation, even though they may agree at the time because of their situation.

Ms. Johnson: Yes. That is exactly another case.

Mr. Richards: I will yield to my colleagues, Chairman, at this time.

Mr. Chairman: Okay. Thank you, member Richards. I want to invite member Mitchell or member Sagrarsingh-Sooklal. Do you have any questions for the Ministry?

Mrs. Sagrarsingh-Sooklal: Thanks, Chair. If I may jump in before Mr. Mitchell. It is not really a question. It is rather a comment. Right? It is just relative to the concern that the Ministry would have had on the definition of complainant, consent, accused or defendant. I just want to respectfully submit—and I am sure your legal team would guide you accordingly. But when we looked at the mindset or what was considered in the drafting of this Bill and the inclusion of the term “complainant”, “defendant” and even “spouse”, I just want to put forward that the definition of this is already established in the Summary Courts Act, Chap. 4:20. Even when we look at the distribution of estates Act, 2000, we would have had a clear definition of what complainant, consent, accused, and so on. So for the purpose of that interoperability of law and to standardize the position, that is why in the current amendment there was no further amendment made to what the term “complainant” is deemed as.

And, of course, the complainant, when we are looking at a complainant as someone who can bring an action, we must also bear in mind the issue of locus standi, simply referring to the fact that once someone can establish that they have a cause of action, you know, of course, that person, whether it is a parent, whether it is a guardian, whether it is a teacher, of course, it does not prevent—based on the current definition, it does not prevent any party or parties, once the locus standi is established, it does not prevent the parties or any party from bringing that said action relative to the law in its current

incarnation.

Now, I just want to also remind or respectfully submit that in section 31 of the Sexual Offences Act, there is also a list of reporting obligations. So if the Ministry of Social Development and Family Services is concerned about persons—the vulnerable persons and persons who has an obligation to put forward a complaint, if you may respectfully revert to section 31 of the Sexual Offences Act, in which there is a list—an exhaustive list, for want of a better word, of persons who have a reporting obligation, especially as it relates to sexual offences, as it relates to children.

So, Chair, that was just relative to those definitions. I just wanted to put that forward and, perhaps, the Ministry may be minded to consider or reconsider its position in wanting us to further define what a complainant, and so on, is.

Mr. Chairman: Okay. Thank you, member Sagramsingh-Sooklal. At this time, I want to invite member Mitchell to lead us off in respect of the submission from the Children’s Authority. Member Mitchell.

Mr. Mitchell: Thank you very much, Chair. To the Children’s Authority, I see in your comments—and think it was raised before:

Ensuring that the definition of “sexual act” is consistent in both the Children Act as well as in this Act that we are now proposing.

But do you not accept that both definitions deal with an objective standard of reasonableness, in terms of what is sexual and what is not sexual? And in terms of that objective standard that it is an easy one to achieve and to determine?

Mrs. Morris-Cummings: Good morning, member Mitchell. Good morning, Chair, hon. members. Relative to this question, I would wish my Senior Legal Officer, Ms. Satram, to answer, Ms. Sabrina Satram.

Mr. Mitchell: We are looking at definition in the Children Act at section 3(2)(b), and in there, there is an objective standard of reasonableness and within the definition section in this current amendment Bill, there is a reasonable standard as well as to what is sexual and what is not sexual. Do you believe that it is an objective and simple standard?

Ms. Satram: Good morning, hon. member. Yes, we do believe that. What we were trying to aim at is that when it is inserted into the Children Act, we do not want to have a dual definition. We want to make sure it flows and it is incorporated. Because in the Children Act it is broad enough to incorporate and it seems to be a reflection. But we just want to make sure that it flows and it is not inconsistent, because we do not want to end up with a dual definition, in terms of what is the definition for sexual or what is considered as sexual activity. So that was the intention with respect to that comment, please.

Mr. Mitchell: But do you still believe that there is such a danger or is it your position that the Committee should consider whether there is a danger in there being a separate definition from the Children Act from this present Bill that we are discussing?

Ms. Satram: I believe that when it is inserted into the definition there should at least be one definition, not that we have to look at what is considered sexual under section 3(2) of the Children Act and then go to voyeurism that has what is considered sexual under voyeurism, just to clarify and to make it simpler when we are looking at the learning and interpretation of some of these sections, and that will be helpful.

Mr. Mitchell: Okay. Thank you. So we will certainly put those to the CPC and ask for their advice.

Ms. Satram: Thank you.

Mr. Mitchell: Now, moving on, with respect to persons in a position of trust. Now, we had discussed previously, with some different witnesses, the concept of aggravating factors and mitigating factors,

persons in positions of trust being mentioned. But it is your submission today that in the consequential amendment in new section 8A of the Children Act, you believe that we should insert or reinsert sections similar to sections 29, 30 and 31? Is that your submission; to capture persons in positions of trust, hold them to a higher accountability and signal that these persons, once found guilty, should attract a higher sentence?

Ms. Satram: Yes, please. It is our intention because positions of trust, as you rightfully said, a breach of that should attract more accountability because—just of the very nature of it and the relationship. And when you deal with children particularly—this is a vulnerable population and to have that violated where you have people who should be looking out for them instead took advantage of that situation. So we just made the suggestion in terms of just having it very specific and very clear, so there is no doubt with respect to voyeurism.

Mr. Mitchell: Okay. Thank you. Chairman, I think it is a useful consideration. And on to your other comment, your comments with respect to the definitions of “device” and “equipment”. That comment actually touches, not just on the consequential amendment 44E to be inserted into the Children Act but it also touches on the 22A in the parent amendment Bill.

Chairman, I wish to submit that I agree with the Children’s Authority that we should use the word “device” and not “equipment”. If you look at 22A(1)(a), we identified the word “equipment”. But when we go into the definition, equipment falls to be defined under the word “device”. So I wish to agree with the Children’s Authority and that could, perhaps, be considered. Yeah? And those are all the questions I have, Chairman.

Mr. Chairman: Thank you very much, member Mitchell. I want to invite—we would come back to the Children’s Authority and the other members. I want to invite member Sagrarsingh-Sooklal to lead us off in relation to the Office of the Prime Minister, Gender and Child Affairs and their submission.

Mrs. Sagrarsingh-Sooklal: Good morning, everyone, again. What I will do is—it is three major points that were put forward by the Office of the Prime Minister. So just for us to be able to ascertain and for me to get some clarity, I will go through each one individually and I just have a few questions that may require just some further explanation and clarity.

So one of the first positions advanced was:

Adult offenders should be distinguished from child offenders. While children must take the responsibility for their conduct, they generally lack the experience and maturity to form a malicious intent.

Right? So my first question is relative to that particular position advanced. I just wanted to know, in terms of distinction from child offenders to adult offenders, what exact factors do you believe should be distinguished in terms of, let us say, the type of behaviour that are either not punishable offences or are punishable but not with imprisonment? Maybe you could add some clarity for the Committee’s consideration?

Mrs. Bailey-Sobers: Yes, member, Ms. Cardinez-Rostant would respond on behalf of Gender and Child Affairs. Thank you.

Ms. Cardinez-Rostant: Yes. Thank you, member. Member, I think the scenario we envisaged is one where you have children who are not only victims but also perpetrators and who may really—the treatment of the offender—so we will refer to him as a juvenile offender in this case—should be different from that to an adult offender. So I know that in the Children Act there is provision for the court to treat with child offenders in a different way than adult offenders, meaning the penalties are various and they have the right to look at supervision orders, probation orders, and so on, because as you would appreciate who the younger person is, in terms of their development, they may naturally

gravitate to engaging in this kind of behaviour, especially in the school setting that they share photographs and videos of behaviour that would be considered sexual in nature.

In addition to which, I think it has also to be said that young persons cannot consent to pornography being shared. So even though they may consent, meaning they may not object to it, in law, they cannot consent to the use of their image. This is something that even adults have to give permission when you are using a child's image in an advertisement or in some other magazine or ad, you need to give consent, the adult has to give consent because the child cannot consent. So that is one of the things you want to look at.

And I think, in terms of a proper public sensitization geared towards that age group will be necessary. Because at this stage it would really be floodgate—a floodgate argument for the number of young persons who can be found guilty of that offence. I think there would need to be a strong public awareness campaign for that to be addressed. But we are talking about the treatment of the child offender being treated differently from that of an adult offender.

Mrs. Sagrarsingh-Sooklal: Now, there is a critical point here that you would have advanced. And during the course of the Senate debate on this Bill, actually two of our colleagues, Sen. Thompson-Ahye and Sen. Sean Sobers, they raised two issues relative to distinguishing a child offender and a child perpetrator, and you did make mention of that previously. What I want to solicit from you and the Office of the Prime Minister's position, based on a clear—is it that you would recommend to this Committee that we consider looking at, in the law, in the amendment, making that clear distinction as well as look—so how we treat—so, for example, I recall Sen. Sean Sobers would have made the point that, for example, the penalty for children, once a child is a victim of the offence, that that should probably be reconsidered. So it is at a higher end of the pendulum, for want of a better word. Right? So I am trying to—so tell me what are your thoughts on that?

Ms. Cardinez-Rostant: Okay. So you are talking about a scenario where you have a victim that is a child—

Mrs. Sagrarsingh-Sooklal: A victim and a child perpetrator—[Inaudible]

Ms. Cardinez-Rostant: Yes. It should you be that the penalty is higher for a child victim for the simple reason that no one can reasonably expect that a child consents to having their photograph or their video used unless the perpetrator, or as we referred to it, the child offender, is also a child. So an adult should know that a child cannot consent to the sharing of their image or video of them engaged in a sexual act. So, yes, the penalty should be higher if the victim is a child.

However, on the converse side, if the child is the offender, then the response that is set out in the Children Act, in terms of how the court treats with the child offender, should be put into place and there should be a reference to it. Because then, you would be able to guide the courts as to what are the responses available to magistrates and judges when dealing with the child offender who has shared the image or the video.

Mrs. Sagrarsingh-Sooklal: Okay. That is just one thing I wanted to solicit.

Now, a point that was also made, on the issue of being influenced by their peers and in line of contemplating an amendment now, which clause would you say in the Bill, the amendments that appear before you, warrants our reconsideration? So your position advanced was the influence. Now that, to me, respectfully is a policy decision. Right? But if we could translate that now into clauses that you may want us to reconsider, do you have anything to advance relative to that?

Ms. Cardinez-Rostant: I do not think that the issue with respect to influence by peers is something that we dealt with in the legislation.

Mrs. Sagrarsingh-Sooklal: Right.

Ms. Cardinez-Rostant: Right? It is really a social issue. So I think education is what would have to

be looked at and sensitization, as I referred to it before. I do not think that is something that would require an amendment to any particular clause in the Bill for the simple reason that, again, you are criminalizing behaviour that is naturally occurring between children. And having regard also to their exposure to, especially during the pandemic, the use of online classes and the availability of phones and Instagram and all of these devices that they use, it would be a public awareness campaign that would need to be adopted to really address that.

I think also, with respect to close in age, I think we have that—we usually refer to as the “Romeo clause”. So if you have children who are close in age, one is the perpetrator and one is the victim, that is addressed in the Children Act as well, as to how to deal with that particular situation because, again, children cannot consent. It really does not matter whether or not they wish the behaviour to take place. In law, they cannot consent to the sharing. It would also fall within the definition of child pornography and sharing child pornography which is an offence created as well.

Mrs. Sagrainsingh-Sooklal: Okay. Thank you very much. Of course, your submission is duly noted. If I may respectfully refer to section 20 of the Children Act. Right? Now, I know that is not what is before us but it is pertinent to the amendment that appears—that this Committee is called upon to look at. Now, section 20—so, as I said before, if we could refer to section 20 of the Children Act—I am just trying to pull it—it provides for exemptions for offence of sexual penetration of a child. Right? I just want to solicit from you whether or not OPM is advocating or may be advocating for a similar construct as used in section 20 to be applied to this Bill. Is that something that would be considered?

11.30 a.m.

Ms. Cardinez-Rostant: Well, I had not really thought of it. What you are asking is whether or not we want to make it a defence that the perpetrator is a child, if I am correct?

Mrs. Sagrainsingh-Sooklal: Right.

Ms. Cardinez-Rostant: Right. I do not think that is the policy position that we want to adopt because we would want to more have compliance in terms of not sharing what is pornography. It would be contrary to pornography then, the criminal activity that is prohibited under the clause, under the offence of pornography. So, I do not think the two things would be aligned.

Mrs. Sagrainsingh-Sooklal: Okay. I just wanted to advance what the position would have been there. Now, in the Bill that appears before us, if we would go to—if you may respectfully go to the proposed section 44C(1), proposed section 44C(1) as it relates to children it speaks to—so if I may read it:

“Subject to subsection (3), a person commits an offence if he knowingly shares an intimate image of a depicted child in circumstances in which the depicted child has a reasonable expectation that—”

—and it goes on to say what the child may have a reasonable expectation of. Right? What I want to know is whether or not—I just want to solicit your opinion as it relates to that inclusion of a reasonable expectation that children may have. Do you agree with this particular—with the construct of a child having that reasonable expectation as it is placed here in this particular section or do you believe that it is something that warrants consideration of removing that reasonable expectation?

Ms. Cardinez-Rostant: Are you speaking about voyeurism? I am trying to look—follow in terms of the section.

Mrs. Sagrainsingh-Sooklal: The sharing of an intimate image—as it relates to the sharing of an intimate image?

Ms. Cardinez-Rostant: And the section is that you referred to?

Mrs. Sagrarsingh-Sooklal: Yeah. Clause 44C, subsection (1).

Ms. Cardinez-Rostant: 44C.

Mrs. Sagrarsingh-Sooklal: Even though it was not within the comments that you all would have identified, the reason why I am asking of course it is a child-related issue and as we have the benefit of having you all appear before us just to solicit briefly what your position is.

Ms. Cardinez-Rostant: I do not think I follow quite clearly the submission.

Mrs. Sagrarsingh-Sooklal: Okay. So—

Mr. Chairman: Member, maybe we could come back to it because it is not in the written submission and maybe we can give Ms. Ragbir the opportunity—not Ms. Ragbir, Ms. Rostant the opportunity to reflect on it and in the interim, I want to move to the submission from the Ministry of Foreign and Caricom Affairs and I want to invite member Lutchmedial to just lead us off on those discussions.

Ms. Lutchmedial: Thank you, Chair. Thank you to the Ministry for your comprehensive overview of the international conventions that would be tackled here. So, I gather from your submission that you are pleased that we are fulfilling some of our treaty obligations. Let me get straight to your comments and recommendations contained in your submission on page 4; at paragraph 16 you mentioned:

People also have the right to expect privacy of their bodies and personal space even in a public setting.

Now, we kind of had a little discussion about this before about the public setting and so on, do you feel that the law needs to have stronger or—well, this really does not apply at all to a public setting. Do you feel that in your knowledge, extensive knowledge of our international obligations and treaty obligations that the Bill falls short with respect to the right to privacy and personal space in public settings and what would you suggest? How would you suggest that that be dealt with and could it be dealt with in this Bill?

Ms. Toussaint: Thank you, member. Through you, Mr. Chairman, that is indeed a very valid question and we would have to perhaps look again at some of the instruments to see whether—and if so how deeply it may be covered in the international instruments.

Ms. Lutchmedial: Okay. So, would you be minded to do a review and send us further submissions in writing on that?

Ms. Toussaint: Yes. Certainly, member.

Ms. Lutchmedial: Okay. Thank you. You mentioned as well at paragraph 19, you made a few—you asked us to take into account certain things. You wanted to see perhaps an offence for financial gain—when you said:

The creation of an offence for sharing for financial gain—
—now, it is an offence to share, whether it is for gain or not, are you asking here a more serious offence or a more serious penalty be imposed when there is evidence that this thing is done for financial gain or that there is hacking of your devices, specifically targeting a person in order to—like let us say it is a celebrity or something and the information is hacked or the images are obtained through hacking for financial gain?

Ms. Toussaint: Yes, member, that is the intention.

Ms. Lutchmedial: Right. So not necessarily in your offence but a higher penalty than you think should be applicable?

Ms. Toussaint: Certainly.

Ms. Lutchmedial: Right. We had that same conversation with respect to when you have minors being the victims, whether you would want a stiffer penalty. The TTPS when they appeared before us and we asked about whether or not we should have a stiffer penalty for law enforcement officers

who breached the law, they thought the penalty was sufficiently high to cover because there would be, you know, other repercussions such as job loss and all of that. But do you feel that—I mean, and this is a high penalty included in this Bill, you think it needs to go higher or do you think we need to create categories within the range so that someone who does this for financial gain would be automatically at the higher end?

Ms. Toussaint: Yes, member, that is in fact our opinion. If I may also add—forgive me if it is already in the Bill but for persons, for example, who perpetrates one of these crimes against an adult who was of diminished capacity mentally, in such circumstances I hope as well—I think perhaps penalties should be stiffer. I am not in a position to say which should be the highest and so on but I think that category is what should be addressed and certainly when it is done for financial gain.

Ms. Lutchmedial: Okay. Well, I will take a note of that. I think with someone who does not have the mental capacity of an adult they would be treated in the same way as a child, but I would have to verify how the courts would deal with that under the Mental Health Act and all of those things would come into play. But I take your point there so thanks for that, a suggestion. Your second suggestion was similar to what National Security said about “reckless intention”. When I raised the concern before about that being a little bit difficult to prosecute and the range of people that you may capture where you deal with “reckless intention”—if you include “reckless intention” as part of the offence where people are just sharing things forward. What was the thinking behind—and let me hear from you, what was the thinking behind the inclusion of “reckless intention” and do you think it would assist us better and could you specify where it would assist us, if so, with respect to international obligations and treaty obligations?

Ms. Toussaint: If I may ask Director, Legal Services to provide a response?

Ms. Lutchmedial: Sure.

Ms. Harrikissoon: Well, the Ministry of National Security had responded to this aspect of it earlier, you know, because when we looked at “reckless intention” we are looking at the state of mind where the person deliberately pursues a course of action of disregarding the risks that follow. And in our discussion this morning, you know, you rightly raised the point that it is difficult from person to person sharing the image, but, you know, what we had in mind was that it would be more in relation to the person who triggers the sharing to cause distress to a victim. And what we felt is that, you know, in terms of the treaties that we have signed on to what we find is that, you know, these offences against women, you know, the gender-based violence, they are not only in relation to a physical sort of abuse but also in relation to a psychological harm that is committed against them. So that, you know, the whole intent of sharing the image should also be captured in the legislation.

Ms. Lutchmedial: Well, yes, and do you think that 22C then in the Act that deals with sharing, do you think that it is inadequate to meet our international obligations and treaty obligations in terms of what is expected because it does not include the reckless intent?

Ms. Harrikissoon: I think—member, I think we may probably have to look at the conventions again a bit more closely and defer this response at a later time.

Ms. Lutchmedial: Sure. Right.

Mr. Chairman: All right. Thank you—

Ms. Lutchmedial: Basically, I just want—

Mr. Chairman: Thank you very much, member Lutchmedial. We would come back to that. Thank you very much for eliciting the response and we would welcome the written submissions. I just want to give—before we come back to all the stakeholders, I just want to give member Mitchell the opportunity to lead us off in relation to the submission by CreativeTT. Member Mitchell.

Mr. Mitchell: Thank you very much, Chair. CreativeTT, your submissions were a bit brief but let

me ask, with respect to the creative industry, photographers/photography in particular, do you play any part or any role in determining the standards of professional photographers?

Ms. Mc Nicol Stephenson: Thank you for that question. Good morning, everyone. Member Mitchell, at this point we do not. We have been approached by two associations that represent photographers in Trinidad and Tobago; unfortunately, our budgetary allocation did not allow us to engage in the study that they had requested we put forward. So, at this point we do not represent them in that way but we do recognize their importance and impact into the creative industries.

Mr. Mitchell: Are you aware of any standards that apply to professional photographers, and we are asking this question in connection with the taking and sharing? I would appreciate that photographers, some of them have commercial studios and, you know, they take photographs of persons, of paying persons, pregnancy photographs, photographs in bath suits, in skimpy underwear, and I am not sure whether they are aware that before they take and they share—because some of these professional photographers may share on their pages, in advertisement of the types of work that they can produce. I am not sure and we are not sure whether they are aware that they need the consent of those who they photograph, whether in the studio or there may now be situations where a photographer may be photographing an event, Carnival or a fete, or otherwise, where there may be persons who are skimpily clad or otherwise becomes skimpily clad.

You know, perhaps they are inebriated, they are unable to give consent and the photographers may take photographs and may publish, or everybody is a photographer now so they have their cell phones and they may take photographs from someone who—because of, you know, their ingestion of alcohol and so on may not be able to give consent. So, do you see a role for CreativeTT in a sensitization campaign once this Bill is promulgated in ensuring that photographs know, you know, how this law now applies to them with respect to the taking and sharing of photographs?

Ms. Mc Nicol Stephenson: The short answer to that would be, yes. Certainly it is within our purview as the Creative Industries Company of Trinidad and Tobago to ensure that all our practitioners are aware of all the legislation that impacts them and generally usually around Carnival time there tends to be a lot of workshops, webinars, et cetera, directed to—targeted to photographers, speaking to them about the fact of having to be accredited by NCC for taking photographs on the parade route and et cetera, as well as intellectual property issues that arise out of photography, particularly during the carnival session.

And as you said, everybody is a photographer now; my mobile has a camera and therefore I can take and send. So, certainly we do see it as something that we can engage in, in terms of sensitizing our photographers, especially as we have the relationship with the two associations that tend to manage the professional and amateur photographers in Trinidad and Tobago.

Mr. Richards: Mr. Chairman, if I could just add one question to Sen. Mitchell's intervention because it is related, if I could?

Mr. Mitchell: Yeah. I just have one more question but proceed, Sen. Richards.

Mr. Richards: Thanks. To Ms. Mc Nicol-Stephenson—I know Dionne—let me put it on the table, I know Dionne very well. Ms. Mc Nicol-Stephenson, the parts of the law that—the clauses of the law that states in situations that would be expected to be private—intellectual property issues aside, that is a different conversation to a voyeurism Bill.

Ms. Mc Nicol-Stephenson: “Um -hmm.” I agree.

Mr. Richards: Do you think that that scenario, even with member Mitchell's assertions that, well, persons may be inebriated may have persons run afoul of the law even though they may be in a public space and not expected to be private and also in the context of—and this is a stretch here I know but I think wide because I know how sometimes law could be over prescriptive. It says the reasonable

sexual behaviour is one thing but the law is—the legislation is also—has content about for sexual gratification and persons may get sexual gratification from taping someone who is dancing on the street in a particular way—you understand?—how do we reconcile these issues? Because children dancing and people dancing, there are people who may get “sexual gratification” from that but it is in a public space and do you think that caveat that the expectation of or the lack of expectation of privacy on the streets may be some sort of lacuna?

Ms. Mc Nicol Stephenson: Well, I think it is a combination of both having to address it to the photographers as well as it being a social issue that is way beyond what we could do as CreativeTT. Certainly what I think we can do is sensitize photographers to the possibilities of flouting the law in this as it relates to this amendment that is before us, this Bill that is before us, but that is as much as I can say for now in terms of how we tackle the bigger social issue that is, you know, public relations and social campaign, I think, solution.

Mr. Mitchell: Yeah. Chairman, the last question; Ms. Mc Nicol- Stephenson, I want to give you a little bit of work again.

Ms. Mc Nicol Stephenson: Sure.

Mr. Mitchell: I would like if you can submit to the Committee—now, the law as it applies to these situations that I will now describe, know that media photographers would be in a public place in a public street and would take a photograph of someone doing something or just proceeding along their merry way and that person may say. “You cannot take my photograph”; the media person will say, “Yes, I can take your photograph.”, and the person may slap it away or become aggressive, or you see also where a policeman in the execution of his duties would be photographed by an onlooker who is not impeding that policeman in the execution of his duties and the policeman will say, “No, you cannot take my photograph”, perhaps aggressively slap away the person’s phone or do something otherwise in aggression. Could you please, you know, submit to us the law as it relates to photography in a public place if you can?

Ms. Mc Nicol Stephenson: Okay. Is there a timeline by which I should submit this?

Mr. Mitchell: As soon as you can. And I am just asking you just because, you know, we have had this discussion about photography and photographs in a public place, et cetera, you know, if you could submit that to us just for our edification.

Ms. Mc Nicol Stephenson: Sure, will do.

Mr. Mitchell: Thank you.

Ms. Mc Nicol Stephenson: Thank you.

Mr. Chairman: Thank you very much. Is member Richards still with us? I know he had to leave. I now want to go back to some of the areas that we have covered so far and I want to invite the members who have other questions to ask of our stakeholders. The Office of the Prime Minister, you have a further submission to make? Go ahead.

Mrs. Bailey-Sobers: Thank you, Chair. While we were having that discussion with Ms. Mc Nicol Stephenson we did not have this in our submission, but there was one question concerning the issue of sexual gratification and 22A. Given that the offence is premised on this whole issue of obtaining sexual gratification, just for my understanding I wanted to find out whether we needed to define “sexual gratification” or it is already defined somewhere in legislation? It is just for my understanding and clarification. Thank you.

Mr. Chairman: Okay. The Committee will provide the clarification once we have consulted with the CPC’s team. Is there any member who has a question for any of the stakeholders who are before us?

Mr. Mitchell: No, Chair.

Mr. Chairman: Okay. I want to invite now—I want to go through the stakeholders. I know that we have asked questions on your submissions and we have made comments but as we prepare to close I want to go through the stakeholders and invite each of you to make any further submissions in relation to what you have provided to us, if there is anything you want to add that has not been explored so far. So, I will start with the Ministry of National Security.

Mr. Joseph: Thank you, Chair, and members; thank you for giving us the opportunity to provide comments or feedback on the amendments. I know Minister Mitchell would have raised an issue for us to examine and the legal team on this end will in fact be looking at that and we will provide in writing to you what our comments are.

Mr. Chairman: Okay. Thank you very much. I now invite the Ministry of Foreign and Caricom Affairs.

Ms. Toussaint: Thank you. Thank you, Mr. Chairman. Just questions that occurred to us after the submission was made to the Committee and one is—I know that the Bill covers digital images and images captured by electronic means but does the Bill cover adequately or at all intimate images that are created by drawing, sketching or painting or similar form that are shared without the consent of the subject? Should I go to another or should I—

Mr. Chairman: Yeah, you could move on to your next one.

Ms. Toussaint: Is it proposed that the Bill would cover at some stage audio recordings of persons engaging in private acts when such recordings are done without the consent of or knowledge of one of the individuals or with a threat to share the audio recordings? And I have one more, if I may? Should I?

Mr. Chairman: Yes, proceed.

Ms. Toussaint: Does the Bill cover the responsibility for monitoring material on any potentially locally developed social media platforms? And I asked this because I am not certain that social media platforms are covered under the Internet service provider definition. Thank you.

Mr. Chairman: Right. Thank you very much. What I propose to do on these questions relating to drafting, in fairness to the CPC's team, I would allow them to—we have taken note, I will allow them to consider it and we would provide the responses at a later time. So, we have taken note of the questions. I just do not want—because in some cases we would be treading on policy issues, in some cases we would be dealing with consistency across laws and in some cases we may be dealing with consequential amendments; I do not want us to go into those drafting technicalities at this stage. So, we would be taking note of the questions and we appreciate the level of detail the team—the stakeholders have gone into.

I want now to invite the Ministry of Social Development and Family Services and I want to ask the Ministry, there is one—in your submission there is only one area that I wanted to ask about and that is your recommendation in relation to section 44B, subsection (4)(a), that the exemption of the professional legal adviser who shares an intimate image that you are suggesting, you are recommending that this exemption not be extended in the case of images of children. So, Ministry of Social Development and Family Services, that is one question that I have to ask of you and then if there is anything else you want to share with us as we head to the close, you are free to do that now.

Ms. Johnson: Chairman, the only reason why this is being recommended it is because of the existence of the Children Act and the fact that children cannot, under no circumstances, give consent and it is supported in our reason that we—where we indicated that since children cannot give consent those fines should be very high for perpetrators of this offence.

Just to add to what the Ministry of Foreign and Caricom Affairs indicated, we also want to—maybe consideration should be given to those persons who live on the street, our street dwellers, and

the services for those who are perpetrators, so that we address that somehow at either the level of the organization or the legislation. So those were the only two areas that we wanted to add.

Mr. Chairman: Okay. Thank you very much. Before I invite member Lutchmedial, I just want to correct something I had been saying all along. So, the team, the legal team we have supporting the Committee is from the Office of the hon. Attorney General and those are the Law Reform Commission and the Criminal Justice Unit. So, member Lutchmedial. Thank you.

Ms. Lutchmedial: Sorry, Chair, I think my hand remained up from previous—but as I have the option I just wanted to point out and ask the Ministry of Foreign and Caricom Affairs if they could look—they asked about basically for blackmail and I just asked them if I could follow up in writing with whether they think section 22B(1)(d) is sufficient and if they have any further comments on that one because it is related to their comments.

Mr. Chairman: Right. Okay. Thank you very much, member Lutchmedial. I now want to invite the Office of the Prime Minister, if you have any closing submissions to make.

Mrs. Bailey-Sobers: Thank you, Chair. I would have given my comment but I do think there is one other comment from Ms. Cardinez-Rostant concerning persons with mental and other types of disabilities. Ms. Cardinez-Rostant, you want to share on our behalf?

Ms. Cardinez-Rostant: Yes.

Mrs. Bailey-Sobers: Thanks.

Ms. Cardinez-Rostant: Thank you, PS. So there are really two issues in terms of persons—and I think someone had raised it with diminished capacities. So perpetrators with diminished capacities such as persons with Down syndrome or autism who in terms of the voyeurism—this is the offence of voyeurism—that they be treated differently because of their inability to meet the mens rea for committing the offence. I do not think they were captured in the Act sufficiently. And lastly, in terms of the intimate partnership relationships, that consent would have been given originally—let us say, for example, a boyfriend and a girlfriend and consent is given to take photographs and videos and then the relationship deteriorates, I think that consent should be automatically revoked because you would have originally given consent but it is fair to say that if the relationship has deteriorated the consent is withdrawn and I think that is not covered—I am subject to correction but I think that is not covered in the amendment to the Bill.

Mr. Chairman: Okay. Thank you very much for those submissions. Thank you Office of the Prime Minister, Gender and Child Affairs. I now want to invite the representatives from the Children's Authority to make any closing submissions that you may have.

Mrs. Morris-Cummings: Thank you, hon. Chair. I just want amplify our submission regarding educational purposes under section 22. We are respectfully of the view that section 22A(3)(b), insofar as it stipulates:

“A person does not commit an offence under this section if the acts that are alleged to constitute the offence are-

(b) carried out by an authorized person for medical, forensic, scientific or educational purposes;”

We are respectfully of the view that we should also qualify the persons identified here by reference to their acting in the course of lawful duties as it is with the police officer in subsection (a).

Mr. Chairman: Okay. Thank you very much, your submission is noted. And as we close, I want to now invite CreativeTT in the event you have any closing submission.

Ms. Mc Nicol Stephenson: No closing submission, Chair, but to say thank you for allowing us the opportunity to contribute.

Mr. Chairman: Thank you very much. So, I want to thank firstly the stakeholders who made the

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effort to provide written submissions, very detailed and incisive submission and to also come before us and assist us in understanding your submissions and understanding our own position in relation to what you have submitted. I want to thank the support from the Office of the hon. Attorney General and our parliamentary staff.

I want to thank the media and all the other persons involved, particularly the IT people, and the persons involved in this broadcast and the recording. I want to thank the viewing and the listening audience, the people who are following on *ParlView* live and the people who would follow the delayed broadcast later today. And at this moment all that is left for me to do is to adjourn the meeting. Thank you very much.

12.03 p.m.: *Meeting adjourned.*

VERBATIM NOTES OF THE VIRTUAL FIFTH MEETING OF THE SPECIAL SELECT COMMITTEE (SENATE) ON THE SEXUAL OFFENCES (AMDT.) (NO. 3) BILL, 2021 HELD (IN PUBLIC) ON FRIDAY, FEBRUARY 11, 2022, AT 10.30 A.M.

PRESENT

Mr. Clarence Rambharat	Chairman
Mrs. Renuka Sagrarsingh-Sooklal	Member
Ms. Jayanti Lutchmedial	Member
Mr. Randall Mitchell	Member
Mr. Paul Richards	Member
Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer Intern
Ms. Katharina Gokool	Graduate Research Assistant

**OFFICE OF THE ATTORNEY GENERAL
AND MINISTRY OF LEGAL AFFAIRS**

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Ms. Tamara Dookran	Law Reform Officer (Ag.)
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Ms. Nalini Ramjit	Legal Officer II
Mr. Carl Esdelle	Research Officer

LAW ASSOCIATION OF TRINIDAD AND TOBAGO

Mr. Douglas Mendes SC	Immediate Past President
Mr. Ravi Rajcoomar	Member

TRINIDAD AND TOBAGO PROMOTERS' ASSOCIATION

Mr. Jerome Precilla	President
Mr. Colin Miles	Secretary

CARIBBEAN CENTRE FOR HUMAN RIGHTS

Mrs. Diana Mahabir-Wyatt	Founder/President
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CENTRE FOR NONVIOLENCE, RESEARCH AND DEVELOPMENT

Ms. Sherna Alexander Benjamin	Founder
Mr. Masudah-Muhammad Baptiste	Counsellor/Liaison

FEMINITT CARIBBEAN

Ms. Ashlee Burnett	Founder/Managing Director
Ms. Anna McEwan	Member

MEDIA ASSOCIATION OF TRINIDAD AND TOBAGO

Ms. Ira Mathur	President
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Mr. Chairman: [*Technical difficulties*] There will be a delayed broadcast of this meeting on Parliament Channel 11 and Parliament Radio 105.5 FM. The meeting however is being broadcast live on Parliament's YouTube channel *ParlView*. My name is Clarence Rambharat, I am the Chairman of this Committee. I now invite the other members of the Committee, my colleagues from the Senate to introduce themselves.

[*Introductions made*]

Mr. Chairman: Thank you very much. We have six groups before us today and I want to invite those groups to introduce the representatives who are with us. And we would proceed in this order, the Law Association; Trinidad and Tobago Promoters' Association; the Media Association; Caribbean Centre for Human Rights, the Centre for Nonviolence, Research and Development; and Feminitt Caribbean. Thank you.

[*Introductions made*]

Mr. Rajcoomar: I apologize for the absence of the President, Ms. Sophia Chote, Senior Counsel. She had an emergency this morning and cannot attend the meeting.

Mr. Chairman: Okay. Thank you.

[*Introduction made*]

Mr. Chairman: Thank you. Media Association.

[*Chairman confers with Secretary*]

The Caribbean Centre for Human Rights.

[*Chairman confers with Secretary*]

The Centre for Nonviolence, Research and Development.

[*Introductions made*]

Ms. Alexander-Benjamin: The other member of my team is Mrs. Delrene Liverpool-Young. I would like to apologize—she is our lead attorney. I would like to apologize for her absence due to an unforeseen matter.

Mr. Chairman: Okay. Thank you very much. And Feminitt Caribbean.

[*Introduction made*]

Mr. Chairman: Okay. Thank you. So we expect to be joined by the Media Association and Caribbean Centre for Human Rights. At this time, I would ask that—I would invite member Lutchmedial to lead us off in respect of the submission from the Law Association. Thank you.

Ms. Lutchmedial: Good morning. Morning, Senior; morning, Mr. Rajcoomar. Thank you all very much for joining us and thank you so much for the comments that were provided. It was very helpful. I will start off by saying that a lot of common ground is covered in many of the submissions and that has to do with things that you all have covered, the exculpatory sections—[*Technical difficulties*]—but I would want to solicit your views on things that would have come up with other entities. Firstly, the Law Association made reference to the chapeau of the sections where they create the exemptions and you recommended use of the words that—a change in the wording. So let us say for example in section 22A(3) that it says:

“A person does not commit an offence under this section if the...”—conduct—“that...”—is—“...alleged to constitute the...”—actus reus of the offence is—

—and then we go on to list the number of things there. [*Interruption*] Sorry, I am hearing somebody speaking. I am not sure if it is—yeah. Okay. All right. Yeah. Let me—specifically when we go down the list there, if you go to subclause (c) with security monitoring, we have raised this issue of the security monitoring on whether a person—and how do we draw the balance between people having the entitlement to monitor their home and, of course, invading the privacy of someone who is a guest

at their home. Would you say that it is necessary for us to change this section even though the definition, let us say of voyeurism, really specifies that the purpose—you must prove that the purpose is linked to either sexual gratification, humiliation or distress. Is it still necessary, you think, to refine the wording of this exculpatory clause in order to ensure that someone who is genuinely security monitoring is not captured by the offence?

Mr. Mendes SC: That is a good question, of course, and both were answered by the appropriate drafting techniques that is used. Our concern, as we had expressed it, is that the provision might create ambiguity to the extent that the chapeau is saying that where the—sorry, as I am speaking, I am trying to scroll to the particular provision.

Ms. Lutchmedial: Sure.

Mr. Mendes SC: The chapeau, as we refer to it, is speaking of the offence of voyeurism is committed if:

“...the purpose for obtaining sexual gratification for himself...”—and so on.

“...he knowingly...”—does those things.

And then when you get to the section immediately after, it says:

“A person does not commit an offence under this section if the acts that are alleged to constitute the offence are...” —and then they list it.

So that we are concerned that if you do not limit it to the conduct itself as opposed to the reason why you are doing it that you might create an ambiguity at the very least.

At the worst it would be—somebody will say, “Well, listen, this is exactly what I was doing. I was—these cameras are there for the protection of my home”, or the police officer may say, “I was looking at these photographs”, or “I was looking at the video footage in carrying out my duty.” But then at some point in time, it morphs from what might be legitimate into something that might not be legitimate and the—we lawyers will then have to—and the court will then be left with the task of trying to resolve exactly what the Parliament’s intention was in those circumstances.

So the point that we are making is, make it clear. It may be that the technique we are suggesting does not make it clear enough but we are saying that you need to make it clear. We are seeing an ambiguity.

Ms. Lutchmedial: Right. Senior, the thing about the wording suggested is if we say that there is a blanket, no charges laid if the act committed is committed under these circumstances, then we are almost not looking at all to the intention. If I have performed one of these acts, whether I am law enforcement or so on, or let us say security monitoring—I used the term “nanny cams” on the last occasion and I think we all know what that is. So you have a nanny cam and if I as a homeowner raised the issue and say that I have a nanny cam installed, does that automatically give me a defence and a reason for me not to be charged when, you know, law enforcement then would not go on to look at the purpose for which it may have been used and other things?

Because I do not—what I am looking at—the mischief that I am looking at here is where someone is able to raise that defence of security monitoring yet they have committed the act albeit in pursuance of security monitoring but they have done it for humiliation or distress. So let us say, for example, they have then shown it, you know—shown the video to somebody else, shared it in some way, I mean that may be captured by other clauses and so on, but it is that voyeuristic act was not solely for security monitoring. There was an underlying purpose. As you say, it morphed into something differently. You know, we have other things like people being visitors to your home where security cameras are located, can an intention be inferred from those things? Can you not infer some sort of, you know, negative intention from someone installing a security camera in what should really

be a very private area of your home and where you invite your guests, so like a bathroom, for example?

Those are some of the concerns that we have raised before. So what is your view on perhaps creating a section or creating some sort of exemption where you cannot raise security monitoring if it is that the camera is located in an area that ought to be very private. I do not know if you are aware or—I am sure everyone has seen it in change rooms in large department stores in the United States where they install stickers in their change rooms to say that it is monitored by same sex persons and so on for the purpose of, you know, theft and all of that. Do you think we need to go so far here to prevent people from—or to have the public being aware of what is taking place and that they being video monitored in public spaces which—public spaces which you have an expectation of privacy like a change room and to prevent, let us say, a store owner or something from being charged with a voyeuristic act?

Mr. Mendes SC: I am going to say a couple of things and then I will ask Ravi if he wants to jump in because, of course, he is more experienced criminal lawyer among the group.

First of all, it seems that you are not in disagreement of our position that it needs to make clear—the law has to be made clear in the law that you cannot start off doing something legitimate and then end by doing something that is not intended to be lawful by the act. However, that is achieved, we are really not concerned. You have parliamentary counsel and you have staff who I am sure who are attached to the Parliament who would be able to assist you in finding the correct language to do it. That in itself, as we all know, is a specialty. I do not claim to have any specialization in drafting legislation. So whatever technique is used to achieve that we are quite happy with it.

On the question of security cameras in otherwise private areas, the problem there is that it may be precisely because those are private areas that somebody might seek to use it to commit a crime, so stash away something in their clothes or I do not know what else they may seek to do in a bathroom, in somebody's home, in a department store or something else. So I do not think that it would be helpful to—[*Inaudible*]—things like that all together. But once again the issue is starting off with legitimate surveillance and ending up with committing an act that the Bill intends to prohibit. And as I say, we are happy with any drafting techniques that is used to achieve that goal. I do not know if Mr. Rajcoomar has anything to add with it.

Mr. Rajcoomar: Senior, just to simply say, there is a difference between public and private and again, I agreed that we have to look at the drafting technique. I think that Ms. Lutchmedial is quite correct in saying that in public areas I think there should be signs displayed and that should perhaps be part of the legislation, like changing rooms and public bathrooms, et cetera. There must be some sort of warning put into place. I would have no difficulty with that. But I do agree with what you said. There is a difference between public and private and I also agree that it is a matter of the technique in ensuring that there is—[*Inaudible*]—with regard to the penal—where there is a penal clause like this. So subject to that, unless I could assist the Committee any further, that is the only comment I would make.

Ms. Lutchmedial: Okay.

Mr. Chairman: Okay. Thank you. That you very much so far. Let me just ask if there are other members who have questions for the Law Association.

Mr. Richards: Yes, Chair, if I could.

Mr. Chairman: Right. Go ahead.

Mr. Richards: Good morning, everyone. Again, thanks for joining us. Would the Law Association be able to comment on whether or not further differentiation should be made in terms of public versus private spaces where in some areas there is a differentiation made between a commercial space that

the public has access to as opposed to a privately owned space that a person may or may not be present in and may end up being caught by video cameras or recordings or a photographic camera that may eventually be used for nefarious purposes? Should there be some sort of differentiation made between—a further differentiation, sorry, made between those sorts of spaces and the expectation, as Mr. Rajcoomar said, they are well-held understandings or legal definitions of public versus private spaces? But in the context of this amendment Bill, do you think there needs to be a further elimination of some of those and the expectations for the purposes of this voyeurism Bill?

Mr. Mendes SC: It does not occur to me offhand. I mean, we have been speaking about cameras in a private room. I do not know if anybody really puts the cameras in their bathrooms in their private home in any event. I suppose we are just sort of imagining the worst-case scenario as it were to transcend and the legal proposition. But the cameras that people have in their home are usually outside. Of course, as Ms. Lutchmedial pointed out, you may have the nanny camera where you install to—I suppose maybe some people might monitor the persons who come into their home to work and to a certain extent that is also legitimate. So I cannot say that there is—

Mr. Richards: But in addition to the bathroom, for example, one of the scenarios that was raised was a scenario where a nanny or a helper was in the home and the camera may not be in the bathroom, it may be in the bedroom, do you think the law should provide for the person to indicate to that employee as it were or guest that these premises are monitored so that they are aware—so if they go into an area there is an expectation that, “Well, I may be filmed and x, y and z may be the case”?

Mr. Mendes SC: Well, I think that that is given. I did not realize that that is what you were focusing on when you asked if there is a difference between the two. Clearly, if anyone comes into your home and they are going into a place where they can expect privacy, then they ought to be informed that there is a camera in there and they may be monitored. As I say, I cannot imagine anyone having a camera in their bathroom and their guest goes in there and they say, “Hear nah, our cameras are on so watch what you are doing”, or what else are you going to be doing in a bathroom—a guest is going to be doing in a bathroom. So that is why I am saying we sort of imagining a situation that probably does not arise except for where the nanny camera situation as Lutchmedial was pointing out. But yes, to your question which is, “Should there be a warning?” I think clearly there must be—people must know that they are being monitored so that—

Mr. Richards: Do I think the law should provide for that in a provision or something?

Mr. Mendes SC: I certainly think so, yeah.

Mr. Richards: Thank you.

Ms. Lutchmedial: Chair—

Mr. Chairman: Yeah. Thank you. Before we move on, I just want to invite the representatives from Caribbean Centre for Human Rights and then the Media Association to introduce themselves.

Mrs. Mahabir-Wyatt: Okay. I just was trying to unmute. The one comment that I would like to make in reference to the point that has just been discussed is that if it is a matter of whether it is going to be regarded as illegal under the law, I think the distinction should be made as to whether or not the pictures being taken or the videos being taken are going to be shared or shown to somebody else. Like other members of this Committee, I cannot imagine people in their own private homes having cameras in their bathrooms. It is a really present and difficult psychological problem with somebody whom they expect to be using it but I do know that—I have had cases in terms of shoplifting where—in public spaces where shoplifters and in one case it was people who worked in the company put company goods into a bag and she went into the ladies’ toilets and hid it behind the bin which is normally used for sanitary napkins. And then at checkout time, went to check out of the company

and then went back in and said to the guy they just have to go to the ladies and went to pick up the bag of stolen goods.

So I can see a logical reason, outside of domestic violence, to have those cameras in changing rooms and bathrooms in public spaces. But I do not really—and I do agree that there should be a notification so people should know that they are being monitored. But I think that unless there is actual proof that it is going to be used or has been shared by other people, one does not need it in your own home.

Mr. Chairman: Right. Okay. Thank you very much. What I would do next, I would ask the Media Association to introduce themselves and when they do, I would invite them to speak on this particular issue, security monitoring, and then we would get back to the rest of their submission. Then I will invite the representatives of the Centre for Nonviolence, Research and Development to speak on this issue of security monitoring and after that I would invite the representatives from Feminitt Caribbean to speak on this issue of security monitoring because you have all made submissions on this particular issue and we could take your viewpoint at this stage. So, Media Association; followed by Centre for Nonviolence, Research and Development; and then, Feminitt Caribbean. Thank you.

[Introduction made]

Ms. Mathur: We have had a good look at the amendments. Also, you know, we got the help of several attorneys. And, yes, regarding the whole question of security monitoring—and forgive me if I am squinting, I have just been to the eye doctor and my eyes had been dilated so—I just, you know—I think I am not quite sure what “security monitoring” means in this context and I am wondering whether it should be linked in connection with legal proceedings. So my question here is that: Can anyone simply claim that he or she is monitoring premises and therefore does not breach the law? And, you know, I have noted the defence:

“...for the purpose of obtaining sexual gratification for himself or another person, or causing humiliation or distress to a person...knowingly...”

The question here for me is that: How is a prosecution going to prove that the intention of a defendant—should the onus be on the defendant to prove that he did not—he or she did not have such an intention? So those are my thoughts around security monitoring and my questions.

Mr. Chairman: Thank you very much. Centre for Nonviolence, Research and Development on security monitoring.

Ms. Alexander-Benjamin: Good morning. I agree with some of the points that were made in reference to informing persons that they are being monitored when they enter a private residence that has cameras. I would also like to say because we may not be able to conceive that a crime, conceive a crime does not mean that there are individuals within our society who may commit such a crime. And from my experience, we have had cases where husbands have monitored and partners have monitored their partners within what we term “private spaces”, like bathrooms and restrooms within the home.

So thereby I think that some type of amendment can be added to protect, first, the person who owns the home and also to protect those who are coming within the home because our public policies ought to be preventative in nature so it is preventing someone from breaking the law and preventing someone from being harmed. Thank you.

Mr. Chairman: Thank you very much. And Feminitt Caribbean on the issue of security monitoring.

Ms. Burnett: Good morning, everyone. We definitely agree with the points that were raised before. But I do have a question concerning—so there is a notification when you go into bathrooms that you are being monitored but that does not inherently give consent and so even if you are aware and you go into these rooms to change knowing that you are being filmed, it does not consent to what happens

to that footage after. So how can we possibly deal with that if an issue arises with that? So that is my comment on what was raised.

Mr. Chairman: Okay. Your comment has been noted. I want to go back to member Lutchmedial in relation to the submission of the Law Association.

Ms. Lutchmedial: Yes. Thank you, Chair. It is linked back to this—my next question is linked to the same exculpatory section because I noticed the Law Association raised the issue as well of people filming an estranged spouse or partner and I had raised in my contribution where there is an exemption that the acts of the person reasonably believed were necessary for legal proceedings, whether legal proceedings include family law, divorce proceedings and so on. I know neither of you, Senior or Mr. Rajcoomar, perhaps have practiced widely in family law court but I have seen enough to know that people are now relying heavily on video footage, WhatsApp chats, all sorts of things, electronic forms of, you know, surveillance and media and so on in their divorce proceedings. Do you feel that it is, you know—that this is too wide a section in terms of giving someone leeway or a reason to perform—you know, to conduct video surveillance and so on, if it extends to family law proceedings? Can it open up the floodgates of persons committing all sorts of intrusions of privacy for the sake of legal proceedings and being, you know—having a legitimate defence here?

Someone just mentioned about people filming their partners and so on. You know, let us say for example, people think that there is an act of infidelity and they installed cameras and they say then that, “I am doing this for the purpose of my divorce that I intend to file for later on down the road”, can you foresee a difficulty arising here with that part of the clause?

Mr. Mendes SC: All right, Jayanti. I came in just as after you started speaking. I was just at the top of page—

Ms. Lutchmedial: Okay. Right. So very briefly, Senior, let me just—very briefly, legal proceedings and whether they include divorce proceedings, family law proceedings and whether creating a defence there for legal proceedings can then allow persons to film and commit acts to capture, let us say, infidelity and so on, which could be link to humiliation and distress but they are raising a defence that it is necessary for legal proceedings because they subsequently want to file for divorce or something like that along those lines. Is “legal proceedings” too wide in terms of—we are looking at, let us say subclause (d)(ii). Do we need to refine “legal proceedings”?

11.00 a.m.

Mr. Mendes SC: I think that factor will have to, as they say, take that on advisement simply because I think, as I recall, maybe Mr. Rajcoomar might be able to give you an answer off the top of his head. But I think there would already be rules governing the admissibility of things like tape recordings and therefore video recording that are not taken without consent. I think that there may be already rules governing the admissibility of those documents in court, so I certainly would want to refresh my memory about that and before relating it to this particular provision. So I do not know if Mr. Rajcoomar would be able to provide a ready answer.

Mr. Rajcoomar: The law as it—the section is very wide, Jayanti, legal proceedings and I will go further or the administration of justice, I think, would mean that any type of videos could be admissible, subject to the rules of evidence. As it stands now video evidence is admissible once you could relate it to the relevancy of the matter. Perhaps we could look at it a little more closely because at the end of day it could be made, it could be used in legal proceedings as it stands right now. I mean, I have not thought beyond that, and again, I could probably look and send a note off again to you in, if I look at it overnight or something so but it is admissible at this stage and it would affect family proceedings.

Ms. Lutchmedial: Yeah. So we would be happy to hear you all on that whether you think that,

because barring admissibility, remember if I am recording something, I as a civilian I am not thinking about whether it would be admissible or not. I am recording it to take it to my lawyer to say that, look these are the grounds upon which I want to do X, Y or Z, file for divorce, it is infidelity, it is whatever it is. Whether it becomes admissible or not is beside the fact. The fact is that I would have committed an act filming someone or installing a camera somewhere to monitor my own home, but in the bedroom or something like that, to capture an image of someone that is engaging in something, my spouse, an estranged spouse or whatever it is. So I think that I do not—I think we have to be careful and my concern is that people feel emboldened that they are permitted to commit acts of voyeurism that could eventually lead to or that would cause humiliation and distress, not necessarily sexual gratification, but that they are permitted to do so because it is in pursuance of some legal proceedings, contemplating legal proceedings. So that is the concern. So if you all submit later on it, we would very grateful.

Mr. Mitchell: Jayanti—

Mr. Chairman: Thank you very much.

Mr. Mitchell: To piggyback on what Jayanti is saying, you know, we need to explore. I understand what Jayanti is saying but we need to explore. This may very well provide an exception for the private investigators who are engaged especially where there are contentious proceedings in family law. You know, these private investigators they pursue their targets and they seek to capture images, video of spouses, you know, engaged in certain acts. So just for the Law Association to consider that as well.

Mr. Chairman: Well, thank you very much, member Mitchell. I was about to pass to you, so I would now invite member Mitchell to take us through the submission from the Media Association and thereafter we would engage the Trinidad and Tobago Promoters Association. So, member Mitchell, Media Association and then the Promoters Association.

Mr. Mitchell: Thank you very much, Chair. I want to welcome the Media Association. Thank you for joining us. Also, I would like to extend to the Media Association, there was an editorial on Sunday and I want to, through you, thank the *Express* for bringing a spotlight to these proceedings and to these matters that we need to have ventilated and we are indeed getting ventilated through these proceedings.

I want to start off by asking the Media Association, with respect to clause 5 of the Bill section 22B, the proposed amendment to 22B(1)(a), does the Media Association accept that this section potentially affects adversely media photographers?

Ms. Mathur: I would like to just ask you to elucidate on that particular one because, like I said, I just had my eyes dilated but I could, over the clause 5 so that hopefully that should—

Mr. Mitchell: We are in 22B(1)(a)—

Ms. Mathur: Right.

Mr. Mitchell:—that treats with the:

“...taking and sharing of an intimate image...without...consent.”

Ms. Mathur: Right. Right. So, okay, I am not muted. Let me just over that a little bit if, you know, give me, allow me. I think that also goes back to—the way the media will interpret this is vastly different, I imagine, to other perspectives and they are very valuable perspectives here.

We actually have no problem with most of the amendments and real grey areas are in the area of photography and I do not think and I am not sure that the amendments catch, sufficiently catch photographers in the media so that, you know, they can potentially, you know, face prosecution based on the photographs that they take. So I would actually like to go back a little bit more if you would permit me. You know, we had suggested from clause 4 that the definition:

“...the person in a manner or context that is sexual...”—

—needs a further clarification. Right? And that ties into greater clarification that is required regarding public and private spaces and the reasonable expectations of consent. So, of course, you know, in the UK the term the up-skirting and down-blousing in public where cameras are pointed at women unknown to her in the public and captures an intimate image, you know, where do you stand with that. Clearly the law is on the side of, you know, the woman who feels violated. But I am not sure that law discovers it that by its very nature. Most shots during Carnival, for instance, can be construed as up-skirting or down-blousing. I am wary that photographers are not sufficiently covered even by the reasonable expectation clause.

So, for instance, you know you take a young woman, she may be somewhat drunk and, you know, a photograph is taken and it could be, you know, or she could be in the background. There is a certain sexual element to it and it finds itself in the newspaper amidst all the din of Carnival, where would the photographer stand there? You know, and we have noted the defence:

“...for the purpose of obtaining sexual gratification for himself or another person or causing humiliation or distress to a person,”—that—“he knowingly...”—

—has taken a particular photograph. How is the prosecution then—this comes back to my earlier point of going to prove the intention of the defendant. Should the onus be on the defendant to prove he did not have such an intention? And if you think about Carnival, it is a very, very particular festival. It is very particular to us. We understand it in a certain way. We, so you know, let us say that—

Mr. Chairman: Ms. Mathur, before we move on any further, I think we get the point from the Media Association on that. And I just want to invite, because they have made submissions on intimate images, I want to invite the Trinidad and Tobago Promoters Association to make their submission on intimate images and after that to invite the Centre for Nonviolence to make their submission on intimate images.

Ms. Mathur: Can I just finish my point? I just want to say that I think there needs to be a broader definition of public interest especially when it comes to Carnival.

Mr. Mitchell: Yes. So, Mr. Chairman—

Mr. Chairman: Thank you. Can we invite the Trinidad and Tobago Promoters Association on the issue of intimate image which is in their submission and then the Centre for Nonviolence on the issue of intimate image which is in their submission.

Mr. Precilla: Right. On that same note we had a similar concern and that is why we would have asked for a couple of things to be clarified especially because of the nature of Carnival. Is that the—I saw the phrase, the word underwear used and we would like that to be clearly defined just to remove any kind of ambiguity at all. Because a Carnival costume to some may be underwear. It may seem as underwear.

The other thing for us was in terms of consent and it is the same the Media Association would be alluding to is that, what we have seen in the past as well is that even in the case of like music videos you would have people in an intimate setting where they are in a bedroom in underwear and it is for the purpose of music video. How do we deal with that? We have cases where people would give verbal consent and that is why we ask for the clarification of consent to be defined as well. Would verbal consent stand up in court? Or do we have to get people to sign something in situations like that? A lot of music videos we do that. We do get them to sign something. But in the case of the average person giving verbal consent, how do we deal with something like that, with images.

The other phrase that we ask to be clarified was sexual gratification in the point of voyeurism, where if you have someone in a peeping Tom situation, that is court. And then you say, well okay, you are a peeping Tom in terms of sexual gratification and the person responds, “Well no, it was not for sexual gratification. I was just looking.” How do we treat with that as well?

Mr. Chairman: Okay. Thank you. The Centre for Nonviolence Research and Development on the issue of intimate images.

Ms. Benjamin: Our concern was—which was mentioned before to amplify the meaning of the word “consent” and also to consider professionals who, their profession is taking pictures. And what does that look like and mean in the public sphere when you have a large number of individuals where professionals have to do their job. How are those professionals protected? And also how are the persons within that space protected from harm that may be used in a sort of concealed way, to humiliate someone in that space? So for us it is about, you know, really looking at what that consent looks like and speaking to the point of sexual gratification, have that kind of clarified for us.

Mr. Chairman: Okay. And I believe that the submission from Feminitt also touches on intimate images. So I would ask Feminitt to make their submissions on that specific point and then I would go back to member Mitchell to continue with the Law—Media Association.

Ms. Burnett: Thank you, Chair. We were wondering if there could have been greater consideration taken for, if tapes used in guesthouses monitoring people who come in and out. We do not know about, I do not know where these cameras are placed. And so in a case like that, if it is to monitor criminal activity but we know sometimes for the purposes of guesthouses can be, how can that then be regulated?

And the other point is for, and I heard that the member from the Promoters Association would have raised that too, to kind of expand what underwear means. Should it include swimwear also taking into consideration that there are also children who go to the beach and we do not know what kind of people that may be there and what their purposes are for taking those images, and also expanding consent.

And just one quick, quick point. In the case of noting that sometimes these images can be used for whatever intention, is the onus then on the defendant to say, well this is not my intention. Where does this leave the survivor? Is it survivor-centred? It is possible that laws at all in this case can be survivor-centred? And would the images still be destroyed even after, let us say, the survivor loses the case. What happens to the images after?

Mr. Chairman: Okay. Thank you. And I just want to note that your submission did include a suggestion that the Children Act be amended to deal with the issue of swimwear in relation to children. So, member Mitchell?

Mr. Mitchell: Thank you, Chair. I will brief now. I have heard what everyone has submitted. I simply wanted to get from the Media Association whether they accepted that the section with respect to taking and sharing images affected media photographers? And I take that answer to be yes. And I agree with that. I also take the submission of the Media Association with respect to the exception in the public interest may not specifically be attached to media photographers in the course of their duties. So, Mr. Chairman, what I would suggest at this stage, I think that national security in their submissions provided a helpful suggestion of an amendment to the definition of private parts and that reads:

In the circumstances where the genitals, buttocks or underwear would not otherwise be visible.

And that would create exceptions in the case of Carnival, in the case of modelling, et cetera. So, Mr. Chairman, my suggestion would be to send that approved amendment from national security to the Media Association, to the Trinidad and Tobago Promoters Association and others for their comments on whether that amendment is indeed helpful to exculpate media photographers and professional photographers in the course of their duties.

With respect to consent, we have received submissions that professional photographers do have an

established standard and an established way of receiving that consent and that is something that I accept. Thank you very much, Mr. Chair.

Mr. Chairman: Thank you very much, member Mitchell. Member Mitchell, apart from the sexual image, sorry, the intimate image the Promoters Association also raised the issue of the material from previous relationships. Perhaps you can engage the Promoters Association on that aspect of their submission. And also, images—I was not too clear on the submission on intimate photos where the offender downloads it from a WhatsApp group. So, I think we could explore those two areas with the Promoters Association of Trinidad and Tobago.

Mr. Mitchell: Sure. With respect to point two in your submission Mr. Precilla, you have asked for consideration to be given to intimate photos unintentionally downloaded from WhatsApp and stored on one's phone and whether or not that would create an offence? Could you just expound a bit?

Mr. Precilla: So what we would have seen happening in the advent of social media and with WhatsApp and these message-sharing applications is that, a lot of both men and women become part of groups. I am sure a lot of us here are in WhatsApp groups ourselves and someone may have private photos of anyone and they would share it in the group. Now, some of these settings on these phones for these apps may automatically download these things onto your phone. So if you are in possession of these images, what happens then? And then we think of the word intent and if it is a case where your phone app, the app on the phone is not set to automatically download the images and you go ahead and download on your own, what happens in a case like that? How do we treat with that?

Mr. Chairman: Thank you very much, Mr. Precilla. Actually, that is a point that was raised in the Cybercrime Bill. Now, I now understand because you did not specify where you have the setting of automatically add to your roll and I myself sometimes when I have a lot of land documents, survey plans and so on in my roll and sometimes when I go to it, I am shocked at what I see there, because I have automatic—and then I try to find out where it came from because it came from a chat, you know. And, yes, I now understand that maybe there other—any other stakeholder before us who has that concern or that experience in relation to finding yourself with an image that you did not access or download or create but it is there on your device and what are your views on that? A very important point raised by the T&T Promoters Association. Any other stakeholder has a view on that?

Ms. Mathur: May I speak? Okay. So in the media a lot, across media there are lots of WhatsApp groups, you know, that editors have and, you know, those WhatsApp groups are used for news purposes and reporters and photographers are part of those groups as well. So let us take a situation that is obtained in Trinidad maybe a couple of times when, say a mentally disturbed woman has removed her clothing in public and walked say amidst of traffic. And that image has been captured by news photographers to be shown to an editor or passed on to a news chat or a mental health expert. Now what happens if that, if one reporter from there unknowingly downloads that photograph or it just comes on their phone and suddenly you have a position where a reporter has a photograph of a completely nude woman in the middle of traffic in the middle of the street on, you know, bright day. Where does that photographer stand? Or where does that reporter stand on that? And indeed, I am not very clear as to how the photographer and the media are covered in that kind of situation?

Mr. Richards: Perhaps I could ask Ms. Mathur a question also, based on what she is commenting on here?

Ms. Mathur: Sure.

Mr. Richards: Ms. Mathur, this is something that came up in the Cybercrime JSC many months ago and there is consistent reference, and rightly so, by yourself and other colleagues in the media about exculpatory clauses for persons carrying out legitimate—*[Inaudible]*—in their function. In today's context of social media, blogs, cameras, phones are cameras gathering content all the time. Who or

what is to be covered by the phrase, a reporter, a media photographer, a media person in the context of almost everyone could say, well, I was acting as a media person because I have a blog and then putting content out for consumption. And that has been a concern in terms of we know what a reporter and a journalist is in a general sense. But in the present context of technology and everyone having their own portals, how do we reconcile that?

Ms. Mathur: And you know, thanks for that, Mr. Richards, because that is something that the Media Association, we have been grappling with it and broadening our definition of what media is. I think we are in the process of doing that. But there are certain benchmarks by which it is very apparent whether that a photograph has been taken for lascivious reasons or simply to increase somebody's media profile or whether they are—it is a legitimate part of their duty as, you know, whether they are bloggers because there are some, you know, bloggers who are very legitimate who are doing great work and are part of the whole media landscape. So I think the surrounding circumstances of the person who has taken the image, how they use that image will all help us to come to a kind of decision whether they are legitimate or not. It is very, very, you know, it is, you know, it is no longer as simple as it used to be that—that this person is media and this person is not.

Mr. Richards: And you and I know— [*Inaudible*] —as a media practitioner. And with also the legislation seeks to criminalize taking the picture and/or video, storing in some instances and sharing. And what is your perspective on the—because many of these scenarios may intercept to the benefit of persons who wish to exploit them unfortunately.

Ms. Mathur: Of course.

Mr. Richards: And should there be some sort of clause that indicates you are storing for a particular reason you have a particular time frame within which to delete the image if it comes to you inadvertently or if you think the image crosses some sort of line? And also, how does that reconcile in your opinion with, how do we prove the person is using it for sexual gratification and not a legitimate person or both?

Ms. Mathur: And that is a question that we have been grappling with as well. So, I found that the idea of public good can cover a lot of that. A Canadian definition of public good comes from a case currently before the Supreme Court. So, the public good there means necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature or art or objects or general interests.

I would like to suggest a definition that first of all, you know, considers our cultural festivals. And second of all, also takes into account mental illness amidst, you know, have people who are mentally ill. You have people on the streets who take their clothes off, take that into account. And also, it should be so broad as to, yes, the image has been taken but how has that publication actually used it. So the media definition definitely needs to be much broader than just having it in your possession and having the ability to share it.

Mr. Rajcoomar: I respectfully would like to make a comment on that, Mr. Chairman, if I may. I regretfully to do not agree with the comments made by the last two speakers based on the contextual and the structure of section 22A. It seems to me that it appears very clearly:

“...a person commits the offence of voyeurism...for the purpose of obtaining sexual gratification for himself or another person, or causing humiliation or distress to a person where he knowingly—”

Now the question is, where he knowingly observes whether without or with the use of equipment, a person doing something and he does not have the consent to being observed. So it is very much a very specific part—so I do not see it expanding into the public media. I do however, I must tell you, I do agree to the concept of what is a journalist for purposes of the law because everybody is now a

journalist. But quite clearly the section 22 is specific, a person must knowingly take a picture or a photograph or a video image and he must do that knowing or reasonably knowing that the person does not consent to being observed. So I think—the section itself is tight. I do, of course, agree that I have a—definition of public interest because public interest is a morality compass. And we know as recently as a couple of months ago in Richards and the Attorney General and PSC and so on. It is a very nebulous sort of thing. So, I agree that we need to tighten the definition of public interest. And I also would like to suggest that we perhaps do not follow the Canadian overregulated scheme. That is a matter for perhaps written comments.

Mr. Chairman: Thank you very much, Mr. Rajcoomar. Before you take us all to the courthouse—

Members: [Laughter]

Mr. Chairman:—I want to go back to member Mitchell on the third point which was raised by the Promoters Association on issue of a previous relationship material and how that is dealt with. Member Mitchell.

Mr. Mitchell: Thank you very much. Let me just say that I agree with counsel. But, Mr. Precilla, the other point that you touched on was a point that was very live in the debates on the second reading of this Bill, the point of that court matter between *Lendl Simmons v Therese Ho* and it treats with the storing of intimate photos, images, videos from a previous relationship despite the person asking for it to be deleted. Could you just explain your points in terms of what social mischief you see there?

Mr. Precilla: So what we would see happening is that—and that is where consent comes in as well—while you are in a relationship with someone, they would give consent to have pictures of themselves taken or videos of sexual acts being committed and it is all fine and good while you all are together. And then the relationship end and someone moves on and then what happens if the person calls and says, please remove the images or the videos that we took. And what happens in a case like that and you are caught in possession with it still? And you have no proof now. And again, it goes back to consent. It is my word against yours in terms of if you have no recording of that conversation or no written proof of saying remove the images. There was consent given at the moment when the images were taken. But does the consent—is that removed now when you all break up if you are found in possession of an ex-girlfriend or boyfriend or husband or wife images in your possession. How does the law treat with that?

Mr. Mitchell: Yeah. So that touches on the matter of voyeurism and not on the taking and sharing or on the sharing points. So we would look at it. We would look and see whether the storing of those photos where the person has now retreated or removed their consent for the photos to be stored and the person still remains in possession of those photos for their sexual gratification whether they are indeed caught. So let me thank you for your submission, your observations on this. They have been quite helpful.

11.30 a.m.

Mr. Chairman: Thank you very much, member Mitchell, thank you. I want to now move to my colleague, member Renuka Sagrarsingh-Sooklal, and in particular the submission from Feminitt. Now, Feminitt has, Caribbean sorry, has given us six recommendations, I would say so far we have addressed the issue of swimwear, which is recommendation No. 6. The first recommendation deals with gender inclusive language, and it is a submission that has been made by several of the stakeholders who are before us today, so we note that one. I would not ask you to explore that first submission. The second one deals with the security monitoring, we have had some discussions on that already. The third deals with the issue of intimate images and the issue of consent. We have just talked about that. And then fourth and fifth deals with areas that I think we need to explore now, which would be the use of the expression “reasonable”, which has given several stakeholders some

challenges. And the second deals with the use of the expression “private parts”.

So member Sagrarsingh-Sooklal I wish to invite you to engage Feminitt Caribbean on the fourth—[*Technical difficulties*]

Mrs. Sagrarsingh-Sooklal: Thank you. Are you hearing me?

Mr. Chairman: Yes, we are, proceed.

Mrs. Sagrarsingh-Sooklal: Yes, thanks. So Feminitt TT—Caribbean sorry, in your submissions you would have suggested that further steps should be taken to define jargon in the Bill that appears unclear, right? A specific reference was made to the term “unreasonable”. If for the benefit of the committee you could just further clarify your concerns with the use of that term “reasonable”, identify to the committee specifically, is it just that your concern is just—you believe that this perhaps there is a necessity for us to define the term in the Bill. I just want to solicit from you your concerns relative, is it that you would prefer to see placed in the Bill a definition of that term “reasonable?”. Maybe we could just get into that a bit.

Ms. Burnett: Yeah, thank you so much for the question. Most definitely, because we know sometimes some words can be quite relative and so we do not want to leave any loopholes for misunderstanding, So I think it is important for that to be clearly defined or maybe use another word that can really help people understand what it means. So yes, it is just based on definitions.

Mrs. Sagrarsingh-Sooklal: Okay. Now, are there any other? So of course, you would have had the opportunity to go through the entire Bill, right? On that point of not being clear on specific terms after considering the amendments to the Bill that appears before you, are there any other terms that you may have difficulty with, that you would probably want the Committee to also consider? And of course, you know, make a—take a decision relative to whether it is necessary for us to have a definition of said terms in the Bill. Any other terms that you may want to point to us to? **Ms. Burnett:** Yeah. So we would have previously suggested defining what consent looks like, what that means, as well as sexual gratification. And I think there is, oh yes, and then of course private parts with exploring which is in point 5, what are private parts? Because we know sometimes that would be been a word that we heard growing up, which does not give us the language to really understanding what are we really talking about because I can say my private part is my elbow but that may not be considered a private part when you think about it.

Mrs. Sagrarsingh-Sooklal: Okay. So point is duly noted, right. Now, I want to go on to survivor-centred approach and I just want to be able to solicit from you and from the entity, what is your understanding or your definition of the survivor-centred approach?

Ms. Burnett: Yeah. So it takes into consideration the need of the survivor first, which I think, with the questions that were asked earlier and listening to the contributions from other stakeholders we were wondering—well now, I guess it is kind of easier to kind of expand on, because it seems as though when it comes to a criminal act it is up to the defendant to say that this was not my intention. But if the survivor is stating that this caused me harm yet your intention may not have been to cause me harm but the impact did do that, how do we then deal with the issue? And I guess it happens with most legislation where it does not consider what happens to the survivor after the case ends. Would the image we destroyed even if they still are— [*Technical difficulties*] —and they have to live with that for the rest of their lives, what does that look like. So for us, it really looks that taken into consideration the survivors what they have gone through and how can we assist them in the greater scheme of everything.

Mrs. Sagrarsingh-Sooklal: Okay, so excellent. So with respect to this survivor-centred approach, is it that you are recommending that perhaps this be incorporated into, let us say, a clause or a provision in the Bill that appears before us?

Ms. Burnett: Yeah. Yeah, yes, most definitely.

Mrs. Sagrarsingh-Sooklal: Okay then. Chair, I think— [*Technical difficulties*] —of your submission you were already to make that submission on security monitoring and so on? Chair, that is the extent of my questions.

Mr. Chairman: Okay, thank you.

Mr. Rajcoomar: Excuse me, if I could make a comment very quickly, I do know lawyers like to talk a little too much and I will keep it very brief.

Mr. Chairman: I was about to say to you I hope you do not send us a bill. [*Laughter*] Lawyers like to talk and bill. Proceed Mr. Rajcoomar.

Mr. Rajcoomar: I will do it pro bono. But I will explain to my friends on the Committee and everyone that reasonable person is a concept well known to law. It exists going way back to 1920s is has been defined on a number of occasions as a reason person being the person who is normal in society. So I do not know if you need to have that further defined. It is a concept, it is well applied in civil and criminal law. So it is a matter for the courts to determine having regard to all the facts and all the circumstances whether or not the conduct was reasonable, as we say, as the man down the Brian Lara Promenade would think it so to be. So it is a concept that we have worked on, the Judiciary is well aware and is applied on a number of occasions.

Consent is also defined very clearly in the Sexual Offences Act as to what consent is made. I do agree, however, that sexual gratification is something that could mean just about anything and perhaps need tightening up. The question of victim survivor, we do require now that victim impact, statements to be made available by the prosecution. So that may help you and perhaps you could put in that any images that are offensive could be destroyed the very same way that we destroy exhibits when they are illegal. Perhaps that can help the Committee.

Mr. Chairman: Thank you very much, Mr. Rajcoomar, and thank you very much for admitting that sexual gratification, not only the definition of “sexual gratification” but the proof and the proof of intention—in my submission on the debate I pointed out that that is going to prove to be a hurdle for prosecution.

I want to now go to the submission from the Centre for Nonviolence, Research and Development. I want to point out that the centre has made about eight recommendations. We have dealt with the definition in relation, they have raised private parts and reasonableness as issues which we have addressed. The issue of consent, in particular forced and coercive consent, and that is something you can engage us on. The centre has also raised gender neutral legislation, I have indicated we have had submissions on that already, and we have also been talking about the security monitoring aspect. I want to ask my colleague Sen. Paul Richards to now lead us off on the submission from the Centre for Nonviolence, Research and Development.

Mr. Richards: Thank you, Chairman. If we could go, for the representatives for the Centre for Nonviolence, Research and Development, as the Chairman guided, we have had quite a bit of discussion on intimate parts and reasonableness. Give us the sense of your forced or coercive consent—and I am quoting from your submission which is quite extensive:

...which can occur using primary and secondary threats cohesion, punitive measures and intimidation, also consideration for when a person gives initial consent or free will, and in the right frame of mind to be observed, recorded photographed and subsequently changes their mind from being observed, recording a photographed during the sexual act.

So is the intention here—the person who is the subject of the recording changing their mind and having the right to change their mind during the sexual act or sometime after. If you could clarify that for us, please?

Ms. Alexander-Benjamin: An individual has the right to change their mind or revoke consent during the act and subsequently. And our issue in relating to forced or coercive consent is where an individual uses any type of information about the person or their presence in a particular environment to coerce that person to participate in an act against their will. I am bringing this example, during this present period where COVID-19 is undermining so many issues and lives and also amplifying and exacerbating the same within our society, we have had individuals whose landlords have said to them, because they have lost their jobs or have received reduced employment, have said to them that is either they go on the street right away or they participate in some type of sexual act. In those moments we have had women say to us, and men also, that when they look at we have children, our families are unable to take us in, some of them consented in a coercive way because the threat of being homeless was used against them in that manner.

Mr. Richards: So is it that you think that—because we have brought this up with the Ministry of Social Development and Family Services, where I think I brought the point up about persons who are in vulnerable situations who, because of their circumstance at that point, may not necessarily have the normal agency that you would have if you are not in that situation, and so the person exploits that. Do you think there should be some sort of reference to that in the Bill, that persons who are exploiting vulnerable situations, and may give consent under those conditions may be considered their complaints or their charges may be considered valid, even though the person may say, well they have signed off something or they have given them verbal consent or something like that, is that what you are suggesting?

Ms. Alexander-Benjamin: Yes, to a point. The term “vulnerable”, I am not a legal mind, I am in that process, but however the term “vulnerable” to an attorney may mean many things and it may be problematic to prove in some instances where there is not sufficient proof and evidence. But for us we believe that some type of wording ought to be included in the amendment that prevents and protects a victim in cases of coercive attacks and acts of violence.

Mr. Richards: Okay. Your other part 6 of your submission also deals with law enforcement and possible abuses of power. Would you care to elaborate on that for me please?

Ms. Alexander-Benjamin: Yeah. Our challenge with that was that law enforcement and other professionals who observe, take pictures and so forth are exempted from punishment and any type of legal recourse. And we have law enforcement agents and other professionals who may use their authority to commit acts against a person’s body that violates aspects of this Bill, and what measures can be put in place to protect a victim from further harm and protect someone from potential harm? And again, I am speaking from experience where we have had women who have gone to make reports, and when I say women here please do not think if I exclude men, but the women are in the majority—women who have gone to make reports and again they are coerced or were coerced by law enforcement officers. We have law enforcement officers who have used their authority and position to abuse their spouses within a relationship and even former partners. So how do we put a line, and what type of framework can be implemented within public and private places of employment that protects individuals from further harm or potential harm?

Mr. Rajcoomar: I wonder if, Mr. Chairman, you permit me a comment, I know I have just interrupted?

Mr. Chairman: Yes.

Mr. Rajcoomar: Could you perhaps suggest, first of all the law provides in the Interpretation Act where you use the male or the feminine it refers to both or any kind of sex. So it is not—where even if “he” is used in a section, “he”, it means “she” or, well I know things are changing now, so that should help you there. The second thing is, consent must be free. In other words, it cannot be tainted

by any sort of threat, any sort of fraud, any sort of misrepresentation. If a person is subject to sex for in return for staying in your house that is rape, make the report. The Act also makes very clear—

Mr. Richards: Mr. Rajcoomar, since you are giving a legal overview, could you give us a sense based on what Ms. Alexander-Benjamin has indicated in terms of persons who may be—with the definition of vulnerable, the person may be in some way incapacitated by their circumstance, is that something the law covers for?

Mr. Rajcoomar: That in itself, because it means that the person has not got the free will to consent, and the consent must be with free will. For example, you have instances where men arrive at the house and they say they are the husband, that is rape. Even though she may have said yes, and when she realizes he is not the husband, it is rape. Or consent to some sort of medical procedure to find out, no, it was not a medical procedure, it was an excuse to have sex. That is not free. That is not proper consent in the law. So, you have to look at proper consent. If a landlord is going around the place and saying, well, I want sex for you to live in my house, go to the police and make the report; that is rape. That is a very unfortunate position to be.

Mr. Richards: That may be the theoretical right thing to do, but the person under those circumstances may not feel they have a choice in the matter because they are fearful of being put in the street with their children and their belongs so just to say go to the police and make a report, to me is not encompassing all the persons—

Mr. Rajcoomar: Not that I disagree with you, but even if you put that in the legislation here, it still means go to the police and make a report; they can investigate and prosecute as the police.

Mr. Richards: Well, you may not agree with me Mr. Rajcoomar, but as a valid perspective that the organization is proffering and that people have experienced and are experiencing.

Mr. Rajcoomar: The only way we can deal with that, Mr. Richards, is by allowing the police to do their job.

Mr. Richards: So, go to the police and make a report should not be the only consideration.

Mr. Chairman: Before I invite member Lutchmedial, let me just ask the centre, Mrs. Alexander-Benjamin just to discuss—you have made a very interesting submission on requesting that we include what you described as the pornography clause, so I am just going to ask you to quickly indicate what your thinking is behind this, and then I will invite member Lutchmedial.

Ms. Alexander-Benjamin: Very quickly, if I could say that one of the things that we also ask for is, as we progress as a society is the humanization of public policies and laws. Theoretically, it is very good for an attorney to sit and say go to the police, and that is a right action and step to take. Humanly when someone is violated and their agency and their autonomy has been stripped for that moment of violence against their body without their consent, whether that lack of consent is due to coercion or through the physical act, it places that person in an incapacitated space for a period. And we also have to consider other extenuating factors. So we may say go to the police, and this is one of the other things that we also ask for, education and training, not just for law enforcement officers but for society as a whole, to the point of pornography.

We understand that there are other types of measures and acts and clauses in other Bills that may speak to pornography, in this instance we also look at, again, in that coercive frame. And when I speak here, I am also speaking as an intentionally progressive survivor of severe sexual assault and also childhood abuse, so I am bringing that to the space here today. So I am not just speaking as a professional and an advocate for the rights of human beings and the prevention of violence. In terms of the—let me just get the point here for pornography clause, again going back to that aspect of forced or coercive consent, where a person is forced to view those images within that space they are in and with whomever they are with. So that is just a summary of it.

Mr. Chairman: Thank you very much, Ms. Alexander-Benjamin, and I want to thank you for your submission, and sometimes the best submissions we could get are from persons like yourself who are survivors, and we appreciate what you have shared with us. I want to go the member Lutchmedial.

Ms. Lutchmedial: Thanks, Chair, just a quick comment. I think we are getting a lot of material here that deals with the social side of this problem, and I just want to make the point though that you cannot legislate for every circumstance and every social issue. And a lot of what has been raised here are really good comments but it goes to implementation. Nobody will say it more than me that laws are just words printed on paper, and it is the implementation. So it is how you deal with that issue of consent where it is coerced and you are acting under duress, and education and training. And all of those things they are very serious issues pertinent here, but we cannot necessarily legislate sometimes for those things.

So, focusing, I mean, what we really do want to focus on here would be how do we capture the offences? Whether or not the exemptions are too broad or too narrow? And I think the media has a lot and the photographers as well would have a perspective on that, and we also have to look at how we balance rights. We have a lot of issues here in balancing. You have to balance the right of the homeowner to monitor versus the right of privacy of a guest or an employee. You have to balance the right of the media to publish certain things versus the right that people have to expectations of privacy depending on how they dress and so on, and living and carrying about themselves in public. And we have to balance, as somebody raised it, law enforcement, and I just want to make the comment as well, once something is not done pursuant to a legitimate, you know, part of the job, then they do not fall under the exemption. That is my understanding of it. But a law on paper is also subject to interpretation by the court based on the factual matrix that presents itself.

And nobody—we could sit here and talk from now till thy kingdom come, we cannot contemplate every factual matrix that will present itself in the court and that is why we have the court. So a lot of what we are dealing with it simply cannot really find its way into legislation, but it is a matter of implementation. But it is good things to take note of in terms of the powers that we having to roll these laws out and how they train officers to deal with reports and so on going forward. So I just want to make that comment so that everybody—I do not anybody to feel that their comments are not being taken on board, it is just it may not find itself into the actual words that you eventually see in a Bill.

Mr. Chairman: Thank you. Thank you very much. I want to go back to member Richards, and after member Richards I would invite the other members of the Committee to ask any or make any further submissions they would like to make and then I would go to the six groups that are before us and invite them to make their closing submissions. So member Richards first, and then I would ask the other members of the Committee if they have any other questions to ask any of the stakeholders. [*Technical difficulties*]

Mr. Richards: I have no further submissions for the group. So, unless the group has a closing comment, a brief closing comment, I am fine. Thank you.

Mr. Chairman: Right, thank you. Member Mitchell? Member Sagrainsingh anything further from you?

Mr. Mitchell: I have no further submission.

Mrs. Sagrainsingh-Sooklal: No, Chair, no further submissions.

Mr. Chairman: Right, thank you very much. I want to now invite the stakeholders, you have been, as member Lutchmedial has pointed out, you have made a lot of submissions, both in writing and before us today. [*Technical difficulties*]—strictly legal submissions. I want to say that a lot of social

issues in the country in particular, I will use the example of pervasiveness of drug use in the 1990s, for example, were addressed by the law, by the introduction of strict liability offences and by the introduction of harsh penalties, and there is a way in which the law can address social issues, but, of course, as member Lutchmedial rightly said, a lot depends on the implementation. So I want to invite first the Media Association to make your closing comments.

Ms. Mathur: I think I have said most of what I wanted to say earlier, but there is a lot of merit in actually defining certain wordings of the law such as reasonable expectation and public good, especially when it comes to photography and especially during carnival where, I think, that this law will mostly apply. I am worried that our photographers that it is not broad enough to cover, you know, what our photographers do, and similarly I think one of the gentlemen brought up the whole question of what is a reasonable person, and I think that whole thing kind of changes during carnival where those, the rules that we apply in the everyday context of our lives do not actually apply during national festivals where we kind of understand what the rules of engagement are.

For instance, a woman does not expect a man who she does not know to come and wine up against her in a bank. However, in the middle of a J'ouvert situation where everybody is drunk and it is twilight, it is entirely different. So I do think that those definitions definitely need to be broadened, especially in terms of photography, and once again in terms of mental health when our photographers capture whether nude people or people walking on the street and they have it on their cameras, they pass it is on to mental health professionals, other media, and their editors, I feel that they ought to be protected. I do not think that this particular amendment protects media sufficiently, and particularly it does not protect our reporters.

And the final point is that people say that taking an image knowingly. If you are actually covering a carnival, I think Mr. Richards will understand, it is unwitting, because it happens very quickly, what if, you know, you have covered something, it goes live and there is something that is happening in the background, so does that put our photographers and media immediately in the wrong? So those are some of my points and submissions.

Mr. Richards: And you also have authorization from the bodies to cover it as a media house.

Ms. Mathur: Yes. We do have authorization, but if there is something that—once again, that is why I would like the definitions to be a lot clearer in terms of public good in a carnival setting versus public good when we are going about everyday activities, reasonable expectations in a non-carnival state. In a state where you do not—you know, that is what we do, we mirror society. So if we find there is a woman who is naked and perhaps it is not done, you know, tastefully, what happens to our photographer, especially if he does not have the intent that is presumed in the law when taking photographs of a nude person or somebody who is in acts like that? And similarly, once again reporters and journalists, we cover pornography rings, child pornography rings, what happens then if a reporter captures something like that? Where does the photographer stand there? So I do not feel that there is sufficient—that the law is wide enough to catch the whole aspect of media photography, and probably it should be broadened both in its definition and perhaps in terms of the wording, extra wording.

Mr. Chairman: Thank you very much. I invite the Law Association.

Mr. Rajcoomar: Thank you very much, Mr. Chairman. In addition to what we have stated in our written comments, which we adopt with full force, with everything, may I suggest that I take on board the submissions of Ms. Alexander-Benjamin. I am not sure this is the correct Act in which you should create proper education to the protective forces as to how they deal with victims of sexual abuse, but I think it is a very good idea, and I still think that there is some way it should be brought into the forefront of when we are dealing with persons who are victims. Save as aforesaid,

and if there is anything else you wish me to comment on?

Mr. Chairman: Thank you very much, Mr. Rajcoomar, on behalf of the Law Association. I now invite Feminitt Caribbean.

12.00 noon

Ms. Burnett: Thank you so much for this opportunity today. Just like in our written contribution, we just want to make sure and amplify and always have to the forefront that there are conventions that we would have signed and ratified as a country, and I think even though we cannot legislate for everything I think it is important for us to figure out how can we stay true to these conventions because it does take into consideration human rights and how we can protect people. And I think this is very important to have consultations with stakeholders and I hope that it continues moving forward even though I know it is a process that is already in place. So thank you again.

Mr. Chairman: Thank you very much. Trinidad and Tobago Promoters Association.

Mr. Precilla: First of all, we want to say thanks for including us in this discussion. We think it is a very vital discussion to be had in terms of all the points raised. One thing we would want to keep reiterating is that we are in the age of technology, so we have to make sure to cater for these things especially the fact that a lot of the law alluded to the sharing of the pictures, but we also have to take into consideration the receiving and the possession of these pictures or these videos. Because I know in terms of ammunition and with the drugs, if you are found in possession of these things you are liable whether you know it or not, and I just think we need to be careful with that in terms of the people who receive them, as Chairman would have said himself, in terms of not knowing that you are in possession, how do we treat with some of those items. But thank you very much for having us here.

Mr. Chairman: Thank you very much. I invite the Centre for Non-violence, Research and Development, Ms. Alexander-Benjamin.

Ms. Alexander-Benjamin: Thank you very much for having us and for participatory engagement, and added to everything that was said, I would just like to say that laws may work to regulate behaviours but not the conscience, and that is something that we live with in our society. However, a country's progress is seen in the way it protects its citizens through its laws, and development, and strategies, because these are some of the items that determine its progress. We understand that violence in all its forms can be used to manipulate unequal power relations to inflict imaginable harm against others using it as an act of vengeance, intimidation, coercion, humiliation, to punish, and all that happens in the context of things we call culture, socialization, education, and now with the rapid exchange of technology.

So added to everything that was said, we would like to see a law that perpetuates the prevention of violence in this context which is sexual misconduct against people within society, that reduces unequal power relations and holds people to account for their crimes against another individual, but also works to protect the survivor which goes to Feminitt Caribbean's point of having survivor-focused and trauma-informed policies across the board and across all spheres. Thank you all.

Mr. Chairman: Thank you very much. And as always, I always ask Mrs. Diana Mahabir-Wyatt to have the last say.

Mrs. Mahabir-Wyatt: Thank you, Mr. Chairman. I was very impressed by the points made by the Law Association and I am very appreciative of those. We have already made our comments in writing. I do not have anything more to add to those. The one question that I want to ask which I always ask and I never had an answer for is: How do you prove a negative; how do you prove that you do not have the intention of? And that has come up with several speakers this morning, and it is almost impossible to do. How do I prove I did not have the intention of getting sexual gratification out

of an image or a statement? I know you do not have an answer, but I would just like to leave you with the question. Thank you very much, Mr. Chairman. I have enjoyed the morning.

Mr. Chairman: Thank you very much. I want to close by thanking all of you for your written submissions and for attending and providing us with your views. You still have the opportunity to provide us with further written submissions based on the discussions today. I want to thank the AG's team, the hon Attorney General's team. I want to let you know that he has been following and I want to thank his team, the hon. AG himself, and the officers from the Criminal Justice Unit and the Law Reform Commission.

I want to thank, of course, our staff here at the Parliament, Secretariat which supports us, the IT and other people who help us in the Broadcast. This meeting as I said at the start was live on or is live on *ParlView* and will be rebroadcast on the Parliament Channel later today. And I want to thank, of course, the viewing and listening audience, those who have followed live and those who would view and listen to the rebroadcast later today. So thank you very much for being part of this session today. This meeting is now adjourned.

12.06 p.m.: *Meeting adjourned.*

VERBATIM NOTES OF THE VIRTUAL SIXTH MEETING OF THE SPECIAL SELECT COMMITTEE (SENATE) ON THE SEXUAL OFFENCES (AMDT.) (NO. 3) BILL, 2021 HELD (IN PUBLIC) ON MONDAY, FEBRUARY 21, 2022, AT 10.30 A.M.

PRESENT

Mr. Clarence Rambharat	Chairman
Ms. Jayanti Lutchmedial	Member
Mr. Paul Richards	Member
Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Rebecca Rafeek	Procedural Officer Intern
Ms. Katharina Gokool	Graduate Research Assistant

ABSENT

Mrs. Renuka Sagrainsingh-Sooklal	Member
Mr. Randall Mitchell	Member

**OFFICE OF THE ATTORNEY GENERAL
AND MINISTRY OF LEGAL AFFAIRS**

Hon. Faris Al-Rawi, MP	Attorney General
Mrs. Shireen Khan-Hyder Ali	Senior Parliamentary Counsel (Ag.)
Ms. Tamara Dookran	Law Reform Officer (Ag.)
Mrs. Farzana Nazir-Mohammed	Director, Criminal Justice Unit
Ms. Farah Abdool	Senior Legal Officer
Mr. Jason Dass	Legal Officer II
Ms. Ria Brereton	Legal Officer II
Ms. Nalini Ramjit	Legal Officer II
Ms. Solange De Souza	Director Legal, Legal Services
Mr. Carl Esdelle	Research Officer

PUBLIC DEFENDERS' DEPARTMENT

Ms. Hasine Shaikh	Chief Public Defender
Mr. Raphael Morgan	Deputy Public Defender
Ms. Khadija Beddeau	Public Defender II Junior

**ALLIANCE FOR STATE ACTION
TO END GENDER-BASED VIOLENCE (ASA)**

Ms. Roberta Clarke	President, Coalition Against Domestic Violence T&T
Ms. Terry Ince	Founder, CEDAW Committee
Ms. Sherron Harford	Member, The Shelter
Dr. Carol Pitt-Braithwaite	Member, The Halfway House

Ms. Adeola Young
Ms. Angelique Nixon

CAFRA
CAISO

**TRINIDAD AND TOBAGO PUBLISHERS AND BROADCASTERS
ASSOCIATION (TTPBA)**

Mr. Douglas Wilson
Ms. Suzanne Sheppard

Director
Member

Mr. Chairman: Good morning and welcome, welcome to the fourth public stakeholders' engagement meeting of the Special Select Committee of the Senate on the Sexual Offences (Amdt.) (No. 3) Bill, 2021. This hearing will be broadcast live on Parliament Channel 11, Parliament Radio 105.5 FM and the Parliament's YouTube channel *ParlView*. My name is Clarence Rambharat, I am the Chairman of this Committee. I now invite the Committee members who are with us to introduce themselves.

[Introductions made]

Mr. Chairman: Thank you very much. Today we have three stakeholders who are before us, and who have made written submissions and these three stakeholders represent the Public Defenders' Department, the Alliance for State Action to end Gender-Based Violence and the Trinidad and Tobago Publishers and Broadcasters Association. I now invite these three entities to introduce themselves, the representatives, starting with the Chief Public Defender..

[Introductions made]

Mr. Chairman: Thank you. And the representatives from the Alliance for State Action to end Gender-Based Violence.

Ms. Lutchmedial: I think Ms. Ince is muted.

Ms. Ince: Thank you. Good morning Chair. Thank you members of this Select Committee. To our stakeholders, I am Terry Ince, Founding Director of the CEDAW, Acting Dean of the CEDAW, Committee of the Trinidad and Tobago or CCoTT.

I am partner in the Alliance for state action which is a network of organizations working on ending gender-based violence and human rights violations. The alliance leverages law in policy analysis, gender-based violence services analysis, advocacy and public communications, and we function on principles of the mission, collaboration and census building and commitment to human rights and social justice.

There are several members of the alliance with me, including Roberta Clarke, Angelique Nixon, Sherron Harford and others, and with the Chair's permission, I would like to pass it to the next speaker. Thank you.

Mr. Chairman: Thank you. Would any other member of the Alliance want to introduce themselves?

[Introductions made]

Mr. Chairman: Thank you.

[Introductions made]

Mr. Chairman: Thank you.

[Introductions made]

Mr. Chairman: Thank you, Ms. Young.

[Introductions made]

Mr. Chairman: Okay. Thank you.

[Introductions made]

Mr. Chairman: We thank you very much. Do we have any other representative who has not introduced themselves? Okay. Thank you. We also have, as part of the work of the Committee, of course, the Secretariat with us and representatives from the Criminal Justice Unit of the Ministry of the Attorney General, and we also have other representatives from the AG's Office, the AG's team.

So, I want to go straight into it, and we have the written submissions, and I want to start with the representatives from the Public Defenders' Department. Some of the things that you have at the end of your submission—you have made 11 recommendations—some of them we have already engaged other members, other stakeholders, who have made written submissions, and I would identify those for you.

On the second item you have identified, which deals with the penalties, we have had several submissions on that already, and the other items, of course, we have had a lot of submissions on section 22D and generally on section 22. But I now invite you to take us through your recommendations, which you have made with the exception of the penalties, on which we have had submissions already. Thank you.

Ms. Beddeau: Okay. Good morning. In relation to our first recommendation, we have asked that the sentencing aspect under the legislation incorporates a wider approach to sentencing, in terms of allowing for the root cause of the deviant behaviour to be identified and addressed. Whilst the current sentencing regime allows for deterrence, we do not see that the sentencing regime, as prescribed, will allow for the rehabilitation of offenders, so as to curb the likelihood of the reoffending. So that we thought some sort of sentencing approach in relation to counselling or psychological intervention would be appropriate to be included in the legislation. That was in relation to our first recommendation.

I understand that the Committee has already been addressed in relation to our second, so we would move to the third recommendation. We spoke about the fact that there is a possibility of under reporting of this sort of voyeuristic behaviour, especially as it relates to children. Section 22D addressing that and, again, I know that the Chair has said that the Committee has been addressed in relation to section 22D.

We also ask that there be incorporation of the law in relation to what they can call upskirting and downblousing. In the United Kingdom, they have recognized that that offence, it is quite common, especially, amongst children whereby they use mirrors and stairs and they call it upskirting or using cell phones to capture down the blouses of women. So that there can be some direct reference to those offences, because there is a reference to technological equipment to commit some of these offences, but the equipment on a wider scale can include mirrors and that sort of thing.

Furthermore, at No. 5, we asked that in the scenarios whereby the offensive conduct has been defined to be where persons have—one second please. In section 22B, they established categories whereby the offence can be committed. One such category is for the purpose of causing humiliation, for causing distress, containing sexual gratification, the threat for intending to cause a person to fear that the threat of sharing would be carried out and the alteration of an image.

We also suggested that, particularly in our society, they can also include the motivation, such as to joke or to coerce, because that is quite common in our society. That will appear especially amongst the youth offenders whereby there may not be, in their opinion, malicious intentions. You may find peers or younger persons stating that they would have taken the pictures in situations or scenarios that were meant to be jokes, meant to be a source of humour. Though not appropriate, it does exist in our jurisdiction. So that we did think that that was something to be considered under the legislation.

We thought as well that in the jurisdiction of New South Wales in Australia, they categorize the offences. So there were base offences and aggravated offences, but one thing that stood out was that they all had the charges under their legislation being heard summarily. I think that that is the thing that we can consider, especially in relation to these sorts of crimes.

We are all aware of the criminal justice system and the backlog within it. I do not think that it would be appropriate for persons to be waiting 10-plus years to have matters such as these be dealt with, especially in the circumstances where the orders for the material or the offending material to be destroyed come upon conviction. If we do not intervene at an early stage, that means by 10-plus years whereby these materials exist and whereby persons are awaiting for justice, and the harm will be continuing until that moment when an order is made for the material to be destroyed. So that I do think that the legislation can be amended to, perhaps, make it so that it is tried summarily, the offences are tried summarily, so as to allow the process of justice to take place at a faster rate than it is currently taking place in relation to having matters wait to be heard indictably at the High Court.

Additionally, we thought that the consent, having looked at New South Wales legislation, again, they defined “consent” within the legislation. They inserted the instances when consent was deemed to be given and included provisions to protect persons who are under age. Of course, section 22D within our legislation protects those persons, but we did not include or consider persons with limited mental capacity or those who may have been threatened or coerced to give consent or who may have been consented—who may have given consent by way of lawful detention. So that I do not think that if we borrow from that piece of legislation and categorize “consent”, I think that it will make the legislation a lot more operational in keeping with that of the New South Wales jurisdiction.

In relation to youth offenders, I know that our legislation provides for victims who are children, but we have not really addressed youth offenders at all. This is especially concerning as this whole concept of the taking and sharing of images of this nature is very common amongst the teenage age group. Those are persons under 18. Those persons, in the New South Wales, they actually have a provision whereby if you are under 18 and you are considered an offender, before you are charged, the Director of Public Prosecutions must give approval for those charges to give that sort of oversight of the process when it comes to youth offenders. Many times, youth offenders, the sort of justice or the sentencing process considered under this Act, is one whereby it is punitive, but we can consider a rehabilitative approach for youth offenders in these sorts of circumstances.

So that in New South Wales, there was a category of exemptions whereby consideration is given to the circumstances in which the images were taken, the nature and content of the image, the age, the intellectual capacity, vulnerability and other relevant circumstances of the person depicted and the degree to which the accused persons affect the privacy of the person depicted in the image. We are just saying that in considering youth offenders, we can perhaps ask that consideration be given to those sorts of factors to determine if the conduct or the conduct or the conduct complained of by the youth offender rises to that of criminal conduct. And, furthermore, we ask that the sentencing approach under this legislation contemplate that offenders are likely to be persons under the age of 18, and to deal with them in a manner more suited to youth offenders, perhaps looking at an approach that aligns with restorative justice.

Again, we asked at point 10, we looked at the fact that “authorized persons” have not been defined in the legislation. Now, authorized persons are given the exception to their conduct being criminal under this legislation. However, authorized persons have been captured in a wide range of fields. There is the medical field, the forensic field, the scientific or educational fields. Take, for example, under the educational field, we may think an authorized person is a teacher, but in the present circumstances, that can extend into a lessons teacher, somebody you are doing virtual classes

with. So, we are suggesting that either an authorized person be defined, again, instead of giving the wide-ranging exception to authorized persons.

We go further and ask that the scenario of persons being exempted be looked at a little more deeply and, again, borrowing from the New South Wales legislation, they suggest that you look at the scenarios, the actual scenario of the image, the circumstances in which it was taken, the nature and the content of same, you know, the circumstances of the person depicted in the image, that is their age, vulnerability and other relevant considerations. That provision, without repeating it, can be found at page 36 of our written submission under the exceptions in the New South Wales legislation.

So, I do think that instead of giving that broad-blanketed exemptions, we can look at the scenarios a little more closely so as to prevent any abuses under the legislation. And, again, we thought that that is especially relevant because oftentimes for victims who are children, these sorts of crimes are perpetuated by persons who are closest to children and who have those sorts of relationships with children whereby there is some level of trust and authority over the child.

Finally, we ask that the amendment would empower the court to penalize the offenders for any failures to comply with any orders given furtherance of the section 22D. That was what we considered for just basically be giving teeth to the legislation. Whilst the section 22D allows the court to make the Compensation Order, the Destruction Order, we are asking as well that under that section the court also be allowed to penalize anyone who does not comply with such orders given to ensure compliance.

Mr. Chairman: Okay. Thank you very much. I now want to invite the other members of the Committee, my colleagues, on the Committee, if there is anyone who would like to ask a question or intervene?

Ms. Lutchmedial: Chair, yes. I have quite a few questions, actually. Thank you Chair. Through you, with respect to the consideration being given to offenders who are minors and the role of the DPP, and the factors that are mentioned would be relevant, do you think that the powers currently vested in the Children Court would be sufficient to address those concerns or do you see that they do not go far enough and that the legislation needs to drill down more into how we treat with minors? Because I know the Children Court judges and masters and so on who sit in that court now, they have a wide range of powers and things that they must consider with respect to sentencing.

Ms. Beddeau: Yes. In terms of the sentencing approach, I do know that the Children Act allows for a lot more as compared to this Act, but in terms of the intervention of the DPP's Office, we are suggesting that sometimes with youth offenders, the scenarios, when you dig deeper into what transpired or the events that transpired, they may not necessary always rise to the level of criminal conduct. So, we are asking that the DPP be given the requirements that he give the permission to charge in these circumstances so that he will consider the scenario, and whether it really rises to the level of criminal conduct.

Just in circumstances, you might have two 13-year-olds, you know, one offence is the taking of an image. When a 13-year-old takes an image of another 13-year-old, should that really rise to the level of a criminal conduct in some circumstances? So, we are asking with those sorts of scenarios, the DPP should really be the one to review the file and make a determination rather than charging the child carte blanche, and then before the court there are arguments and the child has already sort of been victimized too, not to take away from the fact that a 13-year-old is a victim as well. But you do not want two victims at the end of the day. So, we are just asking that he has some oversight in that process.

Ms. Lutchmedial: Do you think given the—I am sorry. Go ahead.

Mr. Morgan: I apologize, Committee member Lutchmedial. If I may also add to that, there is

precedent for this in the UK with the CPS, where they have underage offenders where a specialized prosecutor reviews the file to see whether a charge ought to be laid.

Ms. Lutchmedial: Understood. But given the current resource constraints of that office, we are just looking at practicality as well. I know right now there is the practice of certain charges not being laid unless the DPP has review of a file. If you add all of these in law—and that is not in law that is a practice, however—the police when they require additional advice and support for non-capital offences, for example, they can approach the DPP’s Office. It is always open to them, but it is practise. So, we have never actually legislated, you know, or made it mandatory that the DPP gets involved in any type of matter, whether it is what we call the Romeo and Juliet-type sexual offences and all of that. So, for this particular, to put it into legislation is taking a step in a direction that we have not gone there.

The Constitution does vest in the DPP the power to take over matters and to, you know, discontinue proceedings and so on. Do you feel that this would be opening up a door now of putting a lot more emphasis or a lot more responsibility on the DPP’s Office that they may not be in a position to—because I would tell you what happens when everything comes to the DPP’s office for advice it takes long. Right? So you understand that there will be a time delay, and that would segue into my next question about the time it takes to move through the system. I am just putting that out there for consideration and, perhaps, you all could consider whether or not may be some sort of review process by the courts, initially or something might be better as opposed to the DPP’s Office, but I take the point and I see the point that you all are trying to make. Once a child is before the court, they are tainted, they have been arrested, they are in the system and it may be that with the oversight of the DPP’s Office, it might not have even gone that way because of their input.

My next question about time delays, you raised the issue of the amount of time. You made a recommendation with respect to dealing with matters summarily, because of the time that it takes to get before a judge and the time that it would take to have the Destruction Orders being made. How do you all feel or what is your view about some sort of interim proceedings similar to what you have in the civil court like an injunction, but a magistrate or somebody being empowered at the start of these proceedings to make an order barring the dissemination of the material whether it is a photograph taken without consent or shared without consent or whatever it is? Have you come across any jurisdictions that have empowered their criminal courts to make those types of orders? Because I tell you for the length of—it takes 15 years to get a judgment in the High Court now, and that is a capital matter, far less for these matters which will go to the bottom of the judge’s file, because people are not in custody and all of that. And in that 15 years, the images that you have that is the centre of the accusation could be shared about, you know, six million times. So, have you come across any type of precedent for that? How do you feel about that as it is a sort of a more of a civil-type remedy, but a judge or a magistrate being empowered to make that court order?

Mr. Morgan: I will let Ms. Beddeau answer that one and then I would.

Ms. Beddeau: Within our research, we did not come across any jurisdiction that give that sort of interim remedy. The jurisdiction where we saw such remedies being given was the New South Wales jurisdiction, and they included the remedy like ours at the end of the proceedings with the Destruction Orders.

Ms. Lutchmedial: All right. Mr. Morgan, you wanted to add something?

Mr. Morgan: Other than in quasi-criminal proceedings, if we consider the domestic violence legislation, as such, there is a precedent for an interim order. So there is an ability to legislate for that. The difficulty would be the standard of proof, at that stage, what do we go with? Do we do balance of probabilities? It can be worked out. So, I do not see any problem with the Committee member’s

suggestion and I do think it is a useful one in terms of preventing the dissemination, the damage being further caused during the length of the matter.

Ms. Lutchmedial: All right. I think that is it for now. I will give way to member Richards.

Mr. Chairman: Member Richards.

Mr. Richards: Thank you, Chair, and good morning again everyone. To the Public Defenders' Division. I have two questions: One primarily involves, the dimension of children as you have identified and the other one was— *[Inaudible]* The first one is regarding your perspective on children debarring from, of course, granting consent to sexual activity. We have the Romeo clause, et cetera, to deal with that. But how do you feel about having a clause or a provision? Because very often as member Lutchmedial said and I think Ms. Beddeau said, young people get involved in activity not necessarily for sexual gratification, but a group of them—and we have seen it before with these videos unfortunately—where someone who has the camera, while others are engaged in the activity as minors, and the person who is holding the camera has been given “permission” to film by the others and so they have all been captured in this although that person would not be involved in the activity themselves, and they may be caught by the law even in a scenario where a child scenario is considered. What do you think about that and what provision should be put in place to deal with those sorts of scenarios which are common as we have seen in our youth? Unfortunately, and it is not necessarily for sexual gratification. Unfortunately, it is for likes and popularity. That is one part.

Mr. Morgan: Again, most of the questions would be answered by Ms. Beddeau first and I would supplement anything that she says.

Ms. Beddeau: Yes, that is why we considered the recommendations or the taking of provision in New South Wales whereby in terms of exempting persons, they asked for there to be a look into certain factors that I went through. So some of the factors would include the nature and content of the image, the circumstances in which the image was recorded or distributed. The factors such as the age, intellectual capacity, vulnerability of the persons depicted, the degree to which the accused persons, in this case, it would be the child's action affect the privacy of the persons depicted and the relationship between the accused persons with the child here and the person or persons depicted in the image. So that, in those circumstances where the intentions of the child was not necessarily malicious or that as in the legislation it may not have been for sexual gratification, we do think that a provision such as that which allows for a closer examination of the scenario itself may assist in determining whether such a child should be charged in the first place.

Mr. Richards: Thank you, because we have to protect them from themselves sometimes.

Ms. Beddeau: Yes.

11.00 a.m.

Mr. Richards: The other scenario involves something that I do not think, I do not think it is before the courts, and it is certainly in the public domain, whereby there is a video being circulated—unfortunately it reached my phone this weekend—where a woman is taping a man and a woman by a beach, engaged in sexual activity. It is a really unfortunate video and the woman is taping it in demonstration as to how disgusted she is by this, these two adults having sex in full view, and the woman's child is in the immediate vicinity, it is clearly in a public place—

Ms. Beddeau: Yes.

Mr. Richards:—and what happened is whilst she is taping it, her child comes into frame, and she says look my child is here. So there are several different unfortunate scenarios there. One, she may be taping it as evidence of a criminal act being taken place to provide evidence, but unwittingly she has included her child in the frame with the sexual activity which adds a different dimension and now the video is viral. So, how do we reconcile that sort of situation where her intention is but from what

I saw I cannot be taken—is not for sexual gratification, her intention is to document a breach, a criminal act, lewd and lascivious behaviour in the presence of a child, exposing a child to sexual content or sexual activity, which is another breach of the criminal code in Trinidad and Tobago. And now she herself because she has recorded it, her child is in the frame and it has now been shared, may be found in breach of several parts of this law as proposed, even though it is in a public place.

Mr. Morgan: Just to clarify your question, member Richards, the question is, how do we deal with a situation where someone may be taping a sexual—someone else’s sexual encounter but not doing it for sexual gratification, how do you protect against situations like that?

Mr. Richards: Yeah, or even if it is—and that is a yes. How do you protect that person’s intention and I know intention is difficult in law, or even someone who may be—who may have taped someone in the privacy of their home in parentheses, but may feel that a crime is being committed, the person whose is involved may be under aged or something but of course, you may have breached the person’s privacy however you did it. But it is done with the intention of documenting what you think is a criminal act taking place.

Ms. Lutchmedial: Could I just jump in a little bit here?

Mr. Richards: “Um hmm”.

Ms. Lutchmedial: I think that you know, the fact of—so we have this exemption about preventing, detecting, investigating or prosecuting a crime and legal proceedings. Well, I think I have given my view on legal proceedings and it being a bit wide. But the—what you do with the material that you record, if someone records a minor having sex inside of a house and they choose to take it to the police, I cannot see someone being captured here. If you decide to share it on social media and even if you decided to share via WhatsApp or social media, some two people having sex on the beach, then I think you will be captured by the intention to humiliate as opposed to having the intention of detecting and preventing a crime. So I do not know, I mean, I am not a defence attorney but I would think that those are the issues that—and from a prosecutorial perspective, I think that is, it is what you do with the recorded image that you may have to eventually—

Mr. Richards: Answer for.

Ms. Lutchmedial:—yeah, and think there. With respect to the child being present and exposed and the parent not taking precautions and steps to protect the child from viewing what is taking place, I mean, that may be captured under a separate law, and it may give rise to other offences. So they may have unwittingly incriminated themselves under other pieces of legislation. But I think that what you do with the recorded material really has a lot to do with whether or not this law will protect you as a person trying to do something in the course of, you know, criminal proceedings or preventing crime as opposed to putting it out there. What we do have and I could—I would like the public defenders office to jump in here. What we do have in this country though is a lot of people who take to social media to share things to embarrass law enforcement into action. And that is—because, you know, we have seen women putting out videos saying, look I am—showing their bruises, I am being beaten up, the police not taking me seriously. We have people who say that they make reports all the time about minors being abused sexually or physically and the police being unwilling to intervene, so they start recording it, neighbours start recording it and putting it on Facebook to embarrass the police. How would you—do you think that those types of people whose intentions of sharing it is really to, you know, prompt action, but can they be penalized under this law?

Mr. Morgan: Unfortunately, to an extent, yes. Because whilst part of their intent may be altruistic in terms of shaming the police into doing something, part of it also encompasses embarrassing the alleged perpetrator, causing them humiliation and by societal I guess—causing society to shun them. So unfortunately, those acts can be caught by the legislation and it is a matter of how the prosecution

wishes to proceed, and whether they wish to charge and pursue the conviction against them. But it is—the legislation is wide enough to capture those persons and unfortunately, social justice warriors may be caught in the net.

Ms. Lutchmedial: So that is something I think may— [*Inaudible*] —consider.

Ms. Shaikh: Yes, if I may Committee member Lutchmedial, in addition to that, I think it goes back to the original point that we had been making, which is we really need to be very specific about the—how we put what in terms of getting out there the nature of what is intended, and having that and in a little bit more specific terms. So for the person as member Richards would have pointed out, with respect to the sharing of the video at the beach, yes, it may have been out of one aspect of it, which would have been, you know, anger, upset the nature of all of it but that is one aspect, but the minute that you go further and start sharing, you must know if you put that in a group chat, what is going to happen next. So, there needs to be some level of where it stops and I think that is what we are trying to protect in trying to say, okay, we are looking at the nature, where does it go and how does it go from there?

Ms. Lutchmedial: I think, member Richards, it is clear cut but let me give you another example of a real case that I dealt with of a police officer who was involved with a 14-year-old school girl. And, her parents kept making reports to the police station, many things—nothing was being done about it until someone who lived in the area videoed them drinking in a bar together and put it out there to shame the police. I mean, yes, it embarrassed the child, it embarrassed the officer but it actually got him charged. So, you know, do we then—so it really does have a grey area that I suppose would depend on prosecutorial discretion.

Mr. Richards: And I think that is why I drew the example of the person, if I could, Chairman, about someone even filming within the confines of the privacy of their home, who thinks that a crime is being committed, particularly against a minor or against an adult, that they do not think any other form of redress is going to bear fruit so, they taped it, and may be caught by the law, if they, as you said, they share publicly or as opposed to going to the police with the evidence.

Mr. Chairman: Thank you very much, members. I want to now, on this specific issue, which has engaged us, I want to now invite the Alliance, and then the Publishers and Broadcasters Association on this specific issue. I want to say to the Alliance first that I have reviewed your written submission we all have and some of the aspects have been raised and canvased before us already and when I invite you to go through your submission, I would indicate those areas that we want to give priority to. But at this time, I want you to join in the discussion on this issue of—which you have raised in your submission—on this issue of sharing—taking, sharing the way in which the particular scenario raised by both Senators Richards and Lutchmedial, those scenarios in relation to the submission you have made to us and then I will invite the Publishers and Broadcasters Association to also join on this matter because the—in your submission, you have raised the issue of definition—defining some of the media practitioners, and also asking that we draw the line between sharing and—taking and sharing and your responsibility to capture and share information that you consider to be in the public's interest. So first, the Alliance, and then the Publishers and Broadcasters Association.

Ms. Clarke: Thank you, Mr. Chairman, and again good morning, members of the Special Select Committee. A number of issues were raised in that wonderful submission from the public defenders and Committee's response, I am not exactly sure to which ones you are speaking, but maybe I will respond to a few of them that I had some thoughts on and also, invite my colleagues to jump in if they so wish.

On the scenario there, for example, the taking of the video on the beach, or the taking of the video with the 14-year-old, as I understand it, under the offences which are being created or proposed

to be created under this amendment, there are like three elements—two definitional elements of the offences. One is the nature of the image, that it is of a sexual nature; secondly, that it is being taken or shared without consent, and that there is a particular motive for that, so, whether sexual gratification or humiliation and causing distress. And as I read it, and I may be wrong, but as I read it, those three elements have to come together. So thinking about those three elements in the context of the woman taking the image of a sexual act in a public place, admittedly in a public place, but it is of a sexual nature. So that is one thing there that we know that she is taking a photo of a sexual nature. We do not know what her motive is, but we certainly know that the likely consequence of taking and sharing that video is to cause humiliation and distress and it is done without consent of the people, one can supposedly say if it is happening in the public space you are impliedly giving consent. But I do not think we can actually have that assumption in the context of what we are talking about, given the disproportionality between what is being done and impacting the lives of the people, the people whose images are being shared without their consent, because these things go into the universe for perpetuity and with infinite reach.

So, I think that the definition—the elements of the definition, I think can answer you, Sen. Richards, to quite—to an extent. And I think that whatever was her motive when she was doing it, there is a likely—there is a foreseeable consequence. And so therefore, I think that that kind of conduct would run afoul—or should run afoul of this legislation, and I think happily so and similarly, with the 14-year-old, something Sen. Richards said about protecting children, I think really important.

We understand and maybe now to make a second point in relation to young people's children, let say children, children's behaviour because I think young people and children put in a different basket—young adolescents and minors, people under the age of say 16 who are engaged in a certain conduct because everybody has their phone, you know children all have their phones to easily capture things but I think in a sense, we have to protect, we have to be ahead of the technology and ahead of children. So what we—what I think that the legislation should be clear about is that the sharing of images into the Internet space and any space but certainly in the Internet space where it goes out as I said in perpetuity and infinite reach has to be something that, almost like strict liability, that you cannot share images of minors, no matter whether—they cannot consent in any event. So I think that that is a policy decision which Parliament has to make, that it is going to—Parliament is going to protect young people from that foreseeable harm that goes on for the rest of their lives, that would colour their entire lives. So, that is what I want to say on that.

On some of the really important points raised by the Public Defender, I think this legislation does have to think carefully and thoughtfully, about how it treats with young people with the evolving capacity, with the evolving sexuality, but also with the harm that is causing non-consensual sharing. There is a reason why this Alliance for Gender-based—State Action for Gender-based Violence—to end Gender-based Violence is engaged in this because we do know that sexual offences have disproportionately targeted against young girls and women and there is a particular vulnerability there. So the legislation actually has to acknowledge that in its content in very specific ways.

One of the things, Mr. Chairman, I want to go back to as I make that reference, the gendered reality of sexual harm, here and everywhere in the world is that we see that this legislation is written in a gender specifically, it is not gender neutral, is very kind of masculinist way and that may be the historic convention in drafting but we really asking, and indeed demanding, as equal citizens in this country that this practice of masculine includes feminine, “he” includes “she” when in fact, it is the other way, “male” includes “female” when in fact it is the other way, “man” includes “woman” when in fact it is the other way, in the sense of linguistically where we really demanding that Parliament steps into—brings an end to this outdated and discriminatory practice. And in particular, for

legislation such as this, where their harms are so specific, and in one set of a population experiences them differentially and disproportionately. So that is what I have to say about maybe, as some general point.

In relation to children, I do agree with the Public Defenders Office that children have to be protected but also children's evolving capacities have to be taken into account. I think in relation to criminalization, we are suggesting strongly that we stay away from criminalization of children as far as that is possible. And so we definitely, like the Public Defenders recommendation, that perhaps do a screening process before criminal proceedings are commenced against minors. And that screening process should not only be done by the DPP but we think definitely Social Services or, Children's Authority, an institution that has an understanding of children's evolving, children's—call it behavioural evolution and capacity evolution, so that we do not jump to punishment and criminalization in relation to children and we really want to endorse that point. And again, on the question of the process, as the process is initiated, in fact, the first thing you want to do, particularly for children, is to protect them from the continued sharing of images.

And so it seems to me, you have to think, the legislation has to think through one, whether or not it is possible to attach an injunction almost to an arrest, an arrest or a charge—arrest warrant or a charge sheet. So immediately, you deal with the—you put a stop to the sharing. That could be one way that you deal with it. And I suppose it is almost like an interim order, I do not think in any particular way, rights are—the rights that may be affected to include expression have to be balanced against harm done, particularly to children. So I think you can have something in the nature of an interim injunction as an issue to deal with—to interrupt continued sharing, particularly of images of minors. That may be a kind of a solution there. And in any event, for all proceedings that are initiated, there should be a presumption that the images have to come down off the Internet and have to be stopped shared—sharing has to be interrupted. I think that is also something that this legislation probably should think through, how would you insert that obligation to stop the sharing at the moment of charging, because the harm again, is so disproportionate to any right that may be curtailed by demanding that the sharing stops.

Those are—we have other points to make but I think that those—my responses are to what I have heard from the Public Defender and I do not know if the other colleagues want to join on that, on those points, we have other points to make.

Mr. Chairman: Okay, maybe we could invite the Publishers and Broadcasters Association to make—

Mr. Richards: Could I at least have one point if I could, for the—

Mr. Chairman:—sure, go ahead.

Mr. Richards:—the Coalition—one of the recommendations they gave is for specifying a more serious criminal offence for adults who use children to gather sexual content. And I think I would like Ms. Clarke or her colleagues to expand on that more because I think it is really a good suggestion.

Mr. Chairman: Member Richards, what we would come back to their full submission.

Mr. Richards: Okay, that is fine.

Mr. Chairman: So I am just going to the Publishers and Broadcasters Association on this specific issue which you raised and member—

Mr. Richards: Not a problem.

Mr. Chairman:—Lutchmedial raised and then we would come back to the Alliance on their full submission. So Publishers and Broadcasters Association?

Ms. Sheppard: Okay, thanks again, for allowing us to be part of this session. On this specific issue of sharing of images that is something that impacts directly on us in terms of the practice of

journalism. In recent times, of course, the media more than any other industry of date, has gone through quite an evolution that has been of course, directly related to the emergence of social media, the development of social media. And we find ourselves dealing with some issues now, that say, even a decade or more ago, would not have been a concern for us. On this specific issue of sharing images, we ourselves as media, do find ourselves, involuntarily, I may add, being the recipient quite often a lot of images that may fall under the realm of this legislation, simply because very often when people are trying to shape the authorities, particularly, I can cite that case that member Richards referred to, one of their ports of call when they are trying to get action on an issue, or when they are trying to call attention to an issue is that they directly go to the media, they directly share images with the media, they directly send to us information that they would like us to follow up on. It may not necessarily be a case where we ourselves are taking and sharing images but very often in the practice of what we do now, we find ourselves being a recipient of images.

Now we—as I said, we will not without following the normal practices of journalism, investigating, following up and because we are also subject to other laws, certainly the Children’s Authority Act and therefore, things related to protecting minors. We would not necessarily fall into error in terms of being the ones who directly share such images but we would be a recipient. Quite often, almost every day we get those images. As soon as something is—by the time it is viral on social media, we ourselves have already been recipients of such images.

The other concern that we have is also, how these kinds of activities also could have the effect of forcing some of our practitioners into a degree of self-censorship, in the sense of being concerned about possible criminalization of some things that we have been accustomed doing over many years in the process of investigating, particularly, when we are doing deep investigative in depth pieces. We are concerned about what certain vagueness in terms of what are the exemptions, if any, that exists for us in going about normal—in the normal course of things. We have to as we are investigating certain types of stories, we do store, we do collect, and not necessarily for the purposes of publishing or broadcasting, but we do often have to keep certain—we receive certain information that we will collect and use as the basis for further investigation. I do not think that there is much more that I can add to that but certainly, we are directly impacted by that, those aspects of the Bill.

Mr. Chairman: Thank you very much.

Mr. Morgan: May I just add?

Mr. Chairman: Yes, go ahead.

Mr. Wilson: Yeah, I may just add that which since the media is protected by existing law in which it cannot publish material concerning minors, certainly “minors” being defined at below 18 years of age so to the extent that minors are involved. So, I think the media and the Laws of Trinidad and Tobago already ensure that the issue raised by public defence in relation to youth offenders, that the media already had some provisions in place so, I just wanted to throw that in.

The second thing I would like to throw into place with respect to the sharing from members of the public and it really has to do with the totally—now totally blurred line of social media plus the traditional mass media of radio, television newspapers in which you have professional journalists—journalist professionals, at work in the discharge of their daily duties, what you do now have is the—with the heavy sharing of material into the public domain in a completely different banner and how we choose, how we like to treat with that. So whether it is a minor 18 years and under—18 years and under and so on and all of these acts, activities are now commonplace, how we treat with that, we do not particularly see media as having a difficulty because of the don’ts and the laws in place but more of a definition of what has to happen society wise because of all of the other loose ends that are there for regular members of the public to just post into social media.

So my third contribution here now is in terms of solutions we seem to want to legislate for it. And the one thing that we are not always looking at is the role of either the telecom in all of this or the provider software platform which they should. No different from how WhatsApp can already easily identify that a particular image has been forwarded a sufficient number of times. They are always able to identify what images are and the nature of it and to my mind, let the legislation must include, it must include that the telecom or the platform provider not the telecom, really the software platform provider has to have some level of culpability here and the legislation completely absent in that regard. Thank you.

Mr. Chairman: I just want to invite the Alliance now, I will take you through your written submission in terms of the recommendations, I would highlight the areas I would like to give priority to, and then you would have the opportunity to highlight anything else in the submissions. But on the first recommendation relating to the language used in the legislation, we have had submissions on that already, and we have taken note of what has been said. On the second submission relating to sexual gratification and consent, we have had several submissions on that and we have taken note of the recommendations. The third one relating to coercion of the individual, we have also had submissions on that, as well as, as I have said before, the fourth on 22B, taking and sharing of the intimate image without consent. The fifth submission and sixth submission, we have had a lot of discussions on those already, sharing of the intimate image, and the recordings of a sexual nature.

What I would invite you to make your submissions now on recommendations seven, eight, nine, on those submissions and also, the submissions you have made in relation to section 20 of the Children Act and you have made a note of the continuing and intentional failure to decriminalize same sex intimacy between consenting children, we have noted that and that is a matter that we take note of but I would ask you now to address seven—recommendation seven, eight, nine and your comments on section 20 of the Children Act.

11.30 a.m.

Ms. Clarke: Yeah. Thank you very much, Mr. Chair. Mr. Chair, just with your permission on the question of “consent”, which I note that you have said you have read the submission and you have also received other submissions on that, I just want to maybe just to reiterate that the defining of “consent” we think it is not just important for the clarity within the legislation but it is also important for cultural change. The more we understand, in particular socialize our young people into understanding what is “consent”, I think that itself is about the transformation of the culture. And we do know that here, as many other parts of the world, that gender-based violence is a big issue across all age groups but certainly amongst young people. So, I think the definition will help with the sort of cultural awareness. And in relation to “consent” also the legislation may want to consider “conditional consent”, how does it deal with consent for taking and sharing and with specific circumstances but the share, taking that the sharing has happened outside of the specific consent given. I think that may perhaps need to be addressed and even more so having regard to the submissions made by the Public Defenders. I think Ms. Beddeau spoke a lot about circumstances and I think thinking about “conditional consent” and defining that may be helpful in your filling out some of the gaps.

In relation to the seven, eight and nine to which you have referred, I think seven is the creation of a sexual offence, the dissemination of unsolicited and unwelcomed messages, with sexually explicit content through emails and other personal messaging services. We have looked at section 30 and the Offences Against the Person Act which does address harassment, generally speaking, but we do not think it is this kind of harassment which is of a sexual nature is covered under the Offences Against the Person Act, and so we are asking that that should be criminalized. Persons who are

receiving unsolicited messages of sexual content experience being harassed. And in relation to the—and the motivation could include causing humiliation and distress. It could be for sexual gratification but like the Public Defenders submission we are also asking for an expansion of factors of motivation to include—and the Public Defenders spoke about jokes, of course that is really very important as well but also the motivation of exercising power and control, the motivation of harassment. So that expansion of what constitutes motivation we think applies to 22A, 22B. Well, also, it also applies to—if you do accept our submission to create a new offence of this kind of offence that you are sharing and soliciting information considering motive or likely consequence in mind. So that is on seven.

As I say, the Offences Against the Person has a general provision around the receipt of—of the sharing of material but it is not specific to material of a sexual nature and we think it is really—it is warranted. A specific offence is warranted here. On the eight which is about the gender responsive psychoeducation interventions, we think, you know, the identification of harms cause is important; the criminalization of conduct is important, but we like the Public Defenders are not only interested in punishment, we think that there has to be a lot of—we call it interventions of a psychoeducational nature. In other words, we are trying to reshape culture. That could include rehabilitation but really just let people understand what is the meaning of their actions. But many people do things kind of—sort of without much thought. It is part of the culture what they are doing. And so we are thinking that part of the arsenal of the court—and we do agree on the summary jurisdiction as well, by the way. Part of the arsenal of the court should be to order mandatory interventions for perpetrators of this kind of harm, gender-aware interventions and also into those interventions must be particularly mandatory against that phrase for minors or persons under 18.

Although we are saying that we should be very loath to charge minors that we can use other approaches to interrupt before the—to interrupt some patterns of causing harm to self and others. So that is our gender responsive psycho-education intervention. And we say gender responsive because we do know a lot of the motivation around the sharing of images is connected to gendered considerations and reinforces gender stereotypes and gender harm. So we think it is—it is just in effect psycho-education intervention. It has to be very much aware of power dynamics which are contained within gender relations in our society and so that is where we are.

Under No. 9, which I think Sen. Richards asked and I do apologize to Sen. Richards for not really responding to him, we are asking for an offence to be created which takes into account adults using children to capture materials in which case the children themselves are being caused harm and then the persons who are being captured by the children are being caused harm. So we think that is a gap here in this of how we can see it as a gap in the current amendments which should be filled. Causing a child to take images should be also criminalized. We also want to say, we talk about taking and sharing but there are instances where images are being copied, not taken in the sense that we understand that word—so we are suggesting that the line of words include “taking”, “copying”, “sharing” to take into account where someone is maybe taking material off someone’s phone or someone’s laptop and sharing it. It is not—yeah. That is what I think. It is more like a copy so it is more a technical drafting issue I think.

We also wanted to speak about homeowners, and I think, Mr. Chairman, you have said that has been addressed but—so homeowners you have, you are exempt from prosecution if you have been taking videos for the purposes of security, monitoring your premises, and we are saying that if that is the case then people who come into the house should know that cameras are on. And then we do think that the legislation does not sufficiently disaggregate the taking from the sharing. So the taking—prosecution for taking, there is immunity for that if you are taking it for purposes of security,

but should there also not be more specificity around the circumstances under which images taken can be shared for the purposes of security or monitoring? So we are asking for that to be a bit fleshed out that you can only share for security purposes and you share with police, for example, if you have taken images in your home. I think that needs to be made clear, not only under section 22B but also under—22A and 22B as well.

I would like to ask my colleague to speak to the issue of the Sexual Offences, the Children Act and the Romeo and Juliet clause. If you, with your leave, Mr. Chairman, if I can ask my colleague, Ms. Nixon, to speak to that?

Mr. Chairman: Ms.—

Ms. Nixon: Should I go?

Mr. Chairman: Yes. Go ahead.

Ms. Nixon: Thank you so much. So, we want to highlight with great disappointment that in amending the Sexual Offences Act there have been no proposed amendments to section 20 under the Children Act which—to decriminalize sexual activity between children under certain conditions, including that they are not of the same sex. And so, we want to highlight that this is a continuing and really intentional failure to decriminalize same sex intimacy between consenting children and young adults and that this continues a pattern of discrimination based on sexual orientation which has been held to be unconstitutional in Trinidad and Tobago and therefore is in violation of international human rights law.

And so, we really want to encourage other committees to consider this and, you know, perhaps we might mention the Jones appeal in process but we still think this is an opportunity to correct this issue which continues to criminalize young people's consensual sex acts when they are of the same sex. And to that point we also want to highlight some of the whole of society and state response issues we have been calling for to prevent gender-based violence and a part of that is comprehensive sex education among a number of other trainings, gender sensitization and really emphasizing what the Alliance for State Action to end GBV has been really calling on the Government since early 2020 that we need to activate a whole of society and state response to these issues. I am so happy to share more about that if there is time. Thank you so much.

Mr. Chairman: Okay. Thank you very much. I now want to invite my colleagues, Sen. Richards and Sen. Lutchmedial, to make their interventions.

Ms. Lutchmedial: Paul, I will give way.

Mr. Richards: The only other thing I wanted to identify in terms of the submissions so far, to the TTPBA—you all are hearing me, right? And I do not know if you could proffer some solutions. I think Mr. Wilson referenced it earlier on and in our interface with MATT and also when we were in the JSC dealing with the cybercrime legislation there was quite a bit of conversation about how these types of laws should seek to protect media practice in the country as is enshrined in the Constitution, while at the same time offering the protections that the proposed legislation seeks to provide and how we move forward. Because it has come up over and over and over and I as a media practitioner myself, I have had—being part of the TTPBA and also having interfaced with MATT, it has escaped us in terms of having a defined solution to protect media work as well as to protect members of the public in various circumstances, particularly as the Internet environment evolves, and we know it is evolving all the time. And what the suggestion is from the TTPBA in terms of trying to cleave out that protection in a realm where leader-practitioners are no longer domiciled in specific media houses but are doing good work on blogs and in some instances individual practitioners. And I do not know what the TTPBA proposed solution is for that, if there is one at all, and how we can move forward in terms of trying to find common ground and balancing the laws as well as the protections.

Mr. Wilson: Okay. Our solution is really to ensure that the legislation identify specifically instead of merely implicitly that journalists are covered. So, for example, the legislation—Bill I should say, sorry, is clearly identifying that for purposes of police work or work with an attorney, or work with a medical doctor who in the discharge of their duties are all needing to see, share, forward, seek further advice, et cetera, and in those contexts there is no offence. But it merely states that unless it is for public interest—and we need to elevate journalism into one of the stated professions exempted in the discharge of their duty from having created that.

Mr. Richards: In terms of your intervention there—and, yes, the police service is governed by the Police Service Act—the challenge that has come up over and over in a legislative sense is the definition of a journalist in the present context and the evolving definition of a journalist and the evolving definition of—you know this theory of, “in the public interest” and how do we codify that?

Mr. Wilson: Could I ask Suzanne to take that?

Ms. Sheppard: Certainly, it needs to be codified. Paul, I agree with you and certainly the 9 really needs—there needs to be a clear definition, interpretation of what the practice of journalism is as compared to what at one time was broadly defined as “citizen journalism” and “activism”. And we do know that because of how social media has evolved right now there are certainly some individuals as well as some independent organizations that do not fall under the definition of traditional media who are now unfortunately falling into that category—who are now sometimes when they do not have the filters we generally apply in reporting on issues. On the basis of our training, they do not have that. They do not, for example, have a knowledge or any training in defamation laws and that is where we often run into problems—

Mr. Richards: If I can—or safeguards in place—

Ms. Sheppard: Yes.

Mr. Richards:—for example in your position where if a junior journalist or reporter is sent, because sometimes it is not solicited by the journalist or the practitioner, the practitioners are known in the public domain as media practitioners and because they are part of the fourth estate, they are sent information that the public feels is seeking to uncover wrong or seeking to identify a perceived wrong. And it comes to the junior journalist’s phone and it is the duty of the junior journalist to send it to you.

Ms. Sheppard: Yes.

Mr. Richards: That is comparable to sharing. It is your duty also to keep it and store it for possible litigation later on in terms of libel and slander. Am I not correct?

Ms. Sheppard: Quite correct.

Mr. Richards: Part of your internal mechanism and safeguards and that is not always the case outside, so how do we reconcile those evolving scenarios and protect media practice, one, but also seek to protect the public as this law is trying to do and that is where the great question lies.

Ms. Sheppard: Yeah. That is the great question—

Mr. Richards: [*Inaudible*]

Ms. Sheppard:—and, you know, one of the challenges we have right now is even—one of the bigger laws that governs how we practice journalism, certain sections of the Libel and Defamation Act definition mean that we are still vulnerable to criminal liability and that has been further complication by the fact that this particular legislation now, borrows quite liberally in these specific matters of voyeurism and revenge porn. They borrow quite liberally from elements of the Cybercrime Bill that never saw the light of day but, you know, that intersection is where we now face a particular peril in even doing the normal practice of journalism. And that is why I can tell you as a practising newspaper editor who assigns people, there is hardly a day that goes by when I am not dealing particularly in

terms of junior reporters and so. And I can assure you that we do guide them; we do subject our staff to training and interventions quite regularly.

Right now we are looking at some other things that have to do with another issue we have which is time stamping content we already have as well as watermarking, content that we legitimately share on our social media platforms as opposed to the things that are done by hackers and others. But I think in terms of legislative cover we—our biggest challenge right now is that we are governed by a legislation that is 170—more than 170 years old; specifically, that section 8, section 9 were repealed but we are still faced with that peril and it means that there are things that we will do legitimately in the course of building a story.

I want to point out that what goes out there, what you see published and broadcast is the finer thing when we sift out all the things that are not relevant or legitimate or legal—

Mr. Richards: But Suzanne, if I can interrupt, “we” is not homogenous.

Ms. Sheppard: Yeah.

Mr. Richards: “We” does not apply to all present aspects of media. The “we” is not what we knew as media 20 years ago or 10 years ago, or even two years ago. So that “we” is not a homogenous group that is not subject to the rigours that you would have been trained in.

Ms. Sheppard: Exactly.

Mr. Richards: [*Inaudible*]—it is no less important to the public.

Ms. Sheppard: Yes. Because we now—

Mr. Richards:—and more importantly no less accessible to the public.

Ms. Sheppard: So we have a situation now—as I said, you know, there is not the filter, there are things in terms of how we portray children; there are things in terms of how we approach issues of privacy; there are things in terms of how we present certain information; there are things we will not put out there as responsible media houses. That is getting into the public domain now under the broad cover of journalism by other entities and organizations, independent and otherwise, who are of course getting into social media. It is easier now back 20 years ago, as you yourself would know, it was not that easy to put up a broadcast. It was not that easy to put out a publication unless you had significant amounts of money and resources to invest in equipment and channels for broadcast. Now that has changed, it is as simple as getting your phone or your other device and putting it out there through your social media accounts and there is where we have a particular problem.

Mr. Richards: And—

Mr. Wilson: I would need to just join in here—

Mr. Richards: Yeah.

Mr. Wilson:—and that is the codifying that you seek to enshrine and clearly the persons who are members of the public who wish to be doing such activities of taking images and broadcasting—and be broadcasting, clearly if they intend to they need to belong to an association. If it is that it is happening only at a level where it is one image here, one image next year versus, of course, if it is you theme part of what it is, the entities engaging it, meaning on a daily basis or so. So the codifying comes from, (a), you need to belong to the association; (b), the association then has its rules, its regulations and which govern its members. Will that stop it—

Mr. Richards: In other words, protection is not unlimited to anyone who can publish something, post something?

Mr. Wilson: Well—and the person who is doing it singly, one here today and one here tomorrow, it will never cover someone like that.

Mr. Richards: Okay. I know the Chairman is itching because we could go on with this forever. This probably needs its own JSC.

Ms. Lutchmedial: Could I just—right—

Mr. Chairman: Go ahead, Ms. Lutchmedial.

Ms. Lutchmedial: So I think that we have gotten the point that regulation of the media, which is a whole other conversation, is something that perhaps needs to happen here. Now, let me go on the other side here. We have an exemption of things—a defence that can be raised if something is done in the public interest. I for one found that that to be exceptionally wide and in piloting the Bill the Attorney General said that the reason that it was put there is for the media. As we say, media now has many meanings and I think that, you know, some of the concerns being raised—there is a scenario you painted there of a junior journalist getting something and being obligated to share it with, you know, their editors and so on, whether or not they would be captured as committing an offence, but I do not know that creating an exception for persons defined as media when it is essentially an unregulated industry that we would be serving the interest of the people who are victims and at the end of the day that is the primary goal of the legislation.

So how do you balance the rights of the media versus the rights of the victims?—because when everybody become—everybody with a phone is media now. Everybody with a Facebook page anonymously created with no name and sometimes we find—and I found myself the victim of that, *Express*, publishing things that are posted on Facebook pages by nameless people and fake accounts, and, I mean, you know, it is really where do you draw the line. The protection of victims, particularly—and you say, yes, you have these codes of conduct and all of that that governs you but it does not govern everybody. So if we have to create a stronger defence for the media, then we are automatically by doing so in this Bill creating stronger defences for everybody who passes as media now and that people are accepting as, you know, because you have a regular Friday night show with a webcam you become media and that really in essence, you know, that—the purpose of this legislation is to criminalize actions driven by sexual gratification, humiliation, and, you know, invasions of privacy and causing of distress. And I think that any, you know, legitimate media practitioners ought to have a sense of what that is and to stay clear of it.

So, I do not know that widening the definitions and creating of greater or stronger defences for people in the media is necessary. In fact, I objected to the inclusion of public interest because I thought it was far too wide—and, you know, what is in the public interest, is it in the public interest to know that—you know, a person in public life is doing x or y and z in the privacy of their home. A lot of people would say, yes, they need to know that. They need to know about your marital business; it is things like that, and video and photographs make it more believable so then where do you draw the line?

So I do not know that—at this point in time, given the state of the industry, I have read some of the concerns and I guess I could segue directly into it, you all have said that you find that the Bill is too vague in terms of the, you know, press freedom and so on. There is no absolute right to press freedom as opposed to individual rights and the line of privacy of the individual. How does the media see itself being disadvantaged by this law when essentially it is criminalizing private acts and private things that happen in the private space? I think that we need to get a little more explanation about that. And as opposed to defining “media practitioner”, well, I think we have covered that and we know that that is something that needs to be addressed in a whole other forum. And also, you asked about the interaction with the Cybercrime Bill, well, that is not—you know, it has been brought up but we do not—we cannot really address all those concerns here, but I would be willing to hear some of your concerns on cybercrime and the definitions on digital sharing by digital means and so on.

And then you asked for a greater definition or tightening up of the language with respect to “intimate image”; again, I think that we cannot define everything in law and I think what really—I

mean, what do you foresee as the difficulty for the media in terms of understanding what is an “intimate image” as opposed to what is not based on the current definition? So I would want to hear you on that a little bit more, if I could ask about that. Well, in terms of the public, well, I have said that already, in terms of anything that happens in the public view is—if you dress a particular way or conduct yourself a particular way in public, I think the expectation of privacy does not arise and so the media would obviously be, to my understanding of the law and how it operates, protected to some extent with things that take place in the public. So if you could address us on the cybercrime issue and the definition of “intimate image” particularly, I would want to hear you all on that.

12.00 noon

Ms. Sheppard: In terms of the cybercrime legislation—and this is a conversation we have been having probably going way back to 2014. The concerns expressed then are the same concerns we do have now, in that, the legislation in a way criminalizes some of the day-to-day practices of journalists. It certainly does in terms of collecting information, gathering images and other things. So our concern is there is now an additional risk towards journalists and other individuals and organizations who function in the public interest are now exposed in the conduct of their legitimate duties. The Bill, we think—because we do not have the same—let me make sure I get the term right—a “public interest exemption” as applies to, for example, law enforcement, forensics and other individuals, we are now exposed under this particular Bill in the practice of what we do.

I also wanted to emphasize that yes, there is now a broad range of people who claim to be media. I do not think that it is really all that hard to draw a line between practising journalists, such as myself, and those who can fall in just for the—you know, set up a Facebook page and so on and so forth. I think, however, for the purposes of that Bill that we would like to see in terms of—a specific definition, this and other Bills that affect how we are practising, that really that definition is clearly made.

In terms of intimate images and in terms of invasion of privacy, we already operate and respect loss of privacy. But let us consider, for example, the particular context and it is probably something that I can explain. Right now we are in what would have normally been Carnival week. We would have been covering right now—we have a very scaled down version of Carnival taking place right now. But even in terms of covering Carnival and festivals of that nature, there are sometimes images—we could be running video in a J’ouvert setting, in a fete setting, in a parade of the bands setting, that can very broadly put us in the place of being accused of taking images, intimate images, images that are of a nature that is criminalized under this law.

Ms. Lutchmedial: But all of those things that you have identified—

Mr. Richards: Public setting.

Ms. Lutchmedial: So would you not agree then that you are—and again, I keep saying what this Bill is dealing with—and this is why I do not understand some of the concerns that the media are bringing forward. What this Bill is covering are things that are happening in private, not in a public space and you must have a specific intent. So you cannot be accused or charged with voyeurism unless your specific intention is sexual gratification, causing distress, et cetera. Taking an image without consent—again, if you are in a public place there is implied consent—and sharing an image that is without consent that may have been taken with consent. Well, again, I think that Carnival events, you know, it does not really create an issue here.

I mean, it came up with other stakeholders because of the level of partial nudity and so on that we see taking place, but I do not foresee a situation—I cannot see a situation where someone in the media could be charged for, let us say, taking an image of a masquerader scantily clad and behaving a particular way on the savannah stage. I mean, I just think it is highly improbable and

unrealistic. And I mean, we have to trust that those that are applying this law and interpreting it would not go so far as to go behind the intention of the law and that certainly is not—the intention of the law is not to criminalize taking footage of Carnival events. It is something entirely different.

So I hear your concerns. With respect to the practices that the media may have to undertake in order to gather information, if it is done—again, what is ethical and unethical practices, to me, are well defined and known, and there are certain practices that may amount to cybercrime which would just be illegal, regardless if we draw a line in terms of how far you can go in the course of investigative journalism. But when it comes to things like these of a sexual nature, I think that line is pretty clear and I think that what can be shared and what should be published and what should be obtained by means of video recording or photographs, once that public interest requirement is met, I think that the defences are there.

If you ask to be specified in the way that medical and educational and law enforcement and so on are specified, you run into the problem that you have correctly identified of: you all are not defined. You understand? So how do we define you, when you yourself as a body—as a body of persons engaged in this, you all are not defined? So it may be a bit of a roadblock to advancing what I think is very important legislation if we have to stop and say, “Well, how do we define media?” I am not saying it is not necessary to define going forward here, I would 100 per cent support that, regulating, as I would say, media practitioners and so on. But it may be a roadblock to this legislation if we have to figure out how to define media first and who is going to enjoy a defence, an exemption from certain things under this piece of legislation. So that is just my final comment on that.

Ms. Sheppard: Well, certainly intent—we understand the intent of the law. Our concern really has to do with—and particularly because we are operating right now in a rapidly and constantly evolving scenario, the interpretations which could end up making us fall afoul of one or other provisions of this amendment—

Mr. Chairman: Okay. Thank you very much.

Ms. Sheppard:—when our intent—

Mr. Chairman: Thank you very much. I want to invite the three stakeholders who are before us to make their closing submissions now, starting with Publishers and Broadcasters Association and then the Public Defenders and then Alliance. Thank you very much.

Mr. Wilson: Thank you for the opportunity. I think we have been able to state our positions and participate in some other discussions here. I believe the closing comments from Sen. Lutchmedial have hit the nail on the head in relation to where it is we need to go and we certainly can look at that. The clarity we need though is—I believe can be formed through the TTPBA and how we register, and that being a requirement, persons who need to or entities which seek to call themselves journalists or media, and we ought not to be broad-brushing everyone as part of the media because they are on social media. I think the legislation, perhaps, then needs to be tighter on the persons or entities not so registered through the TTPBA. Those are my closing comments.

Mr. Chairman: Thank you. Public Defenders.

Ms. Beddeau: Yes. Firstly, we would just like to say thank you for the opportunity for allowing us to give our feedback in relation to this Bill. Our written comment was a lot longer and more comprehensive than the presentation today. But just to reiterate some of the points, we do hope that there is some provision made for youth offenders within the legislation and we are also hopeful that in consideration of the penalties that the net is broadened or widened so as to allow the intervention or the psychological intervention, so that we can really have some progress in terms of just getting to the root cause of these sorts of offences.

We also ask that there be some consideration to the fact that the rate or the time at which the

process will take to get it to trial, that there be some consideration as to having the offences heard summarily so as to allow for justice to be done in a timely manner for offences such as these. But, of course, we rely on our written comments which are a lot more comprehensive. Thank you.

Mr. Chairman: And the Alliance.

Ms. Ince: So, thank you again. So while CCoTT contributed to the submission by the Alliance, which includes the 10 specific recommendations, CCoTT also wants to take this opportunity to thank the Select Committee for allowing us to make these comments and make this submission. We want to also take the opportunity to amplify our advocacy for any policies and laws that may be in line with human rights, instruments such as CEDAW, which is the Convention on the Elimination of all Forms of Discrimination Against Women and its principles of equality, non-discrimination and state obligation.

To that point, as a signatory to CEDAW, Trinidad and Tobago submitted a report to the CEDAW Committee in Geneva in 2016, as a lead-up to the country's mandatory review. Following that review in 2016, the CEDAW Committee made specific recommendations to the State that included references to the Sexual Offences Act of 1986. Under general recommendation 21(c), the Committee stated as a matter of priority:

Adopt regulations to the Sexual Offences Act of 1986, to introduce sexual offenders registry with a view to combating gender-based violence against women by tracking recidivists.

The Sexual Offences (Amdt.) Bill of 2019, provides for, among other things, the establishment of a sexual offenders registry which would make it mandatory for adults convicted of sex crimes to be listed.

This Bill was passed, as you know, in January of 2020. So we note the effort to go beyond the above recommendation and address more recent forms of violence against women and girls. We have the use of technology and social media in 22A, B and C, but we do not aim to repeat recommendations previously made by other stakeholders. But we urge—we urge the drafters of this legislation to make full use of the human rights instruments in the drafting of the legislation, including clearly articulating the process for convicted offenders being placed on and removed from the sexual offenders registry. Thank you.

Ms. Clarke: Mr. Chair, with your leave—

Mr. Chairman: Thank you very much.

Ms. Clarke: I would just like to reiterate four points.

Mr. Chairman: Thank you. Go ahead, Roberta.

Ms. Clarke: Yes. Thank you, Mr. Chair. We just wanted to again thank you for the possibility, the Alliance, for appearing before you. And again, I find myself endorsing the Public Defenders submission time and time again, and I very much like the idea of getting to the root cause. So four points we want to reiterate.

One, we need a larger definition of “motive” beyond sexual gratification and humiliation and distress to include coercion, control; power and control and we know that is a big part of the use of images in the context of domestic violence, and we would like that language of definition to be expanded. That we should be not focused only on punishment but also on cultural change and rehabilitation. And that this legislation needs to be focused on children in particular and the decriminalization of children, rather than the criminalization of children and that type of social intervention. So we think that the amendments need to pay a little bit more attention to that as well as provisions for the removal of content in real time and not pending the ending of a criminal prosecution process which, as we know, can take quite a long time. So we are calling for urgent relief.

Finally, as we said in our submission, we also think that the focus on private/public may

obscure the harm being done experienced by many in what we think of as the public sphere. I do not know, Mr. Chair, but you can see all over Trinidad and Tobago people are bathing under standpipes in this country in the public space. So I think it is to say that this is just about private space. I think it does not necessarily take into account the realities of the country and communities that people live so closely together. A lot of the things are done in the hearing and the visuals of communities and I think we also want to be protecting of that.

So I do not think we want to over privilege the private space. I think we also have to look at the public space and what we are trying to get at is the harm. The mischief that we are trying to get at is the harm being perpetrated against people who are engaging in life in a reasonable expectation of privacy.

I just want to say, Mr. Chairman, I think that one of our ASA colleagues wants to make one last statement. If you can—if I can turn over to Ms. Adeola Young?

Mr. Chairman: Yes. Absolutely.

Ms. Clarke: Thank you very much, Mr. Chair.

Ms. Young: Hi everyone. Just that I would like to add, in addition to the registry, there should be protocol for sex offender management, meaning that the assessment, treatment, supervision and community notification be an integral part for reentry into society. Sexual offenders management is key in monitoring and evaluating the strategies that the State has in preventing this type of offence.

Mr. Chairman: Okay. Thank you very much. Is there any other member of the Alliance who wants to make a closing comment?

Ms. Nixon: I would. Thank you so much. I just want to reiterate that in our submission we really prioritized survivors. And I would just really urge in our closing that we take into consideration the lived experiences of people who have been violated in any way; people who are survivors who have had this happen to them; what are the ways that this legislation continues to protect people but also takes into consideration the real, everyday experiences.

So I just want to urge the Committee to also look at our very important recommendations that we continue to call for. And we really call on everyone to think about gender-based violence as a whole-of-society problem and that we need a full-scale approach to how we end it, and we have to think about the root causes of violence and prioritize survivors. Thank you so much.

Mr. Chairman: Thank you very much. As we close, I want to thank the three stakeholders who have been before us today. They are the Public Defenders Department, the Alliance for State Action to End Gender-Based Violence and the Publishers and Broadcasters Association. Among the Alliance, of course, had several constituent organizations including the Coalition Against Domestic Violence and other representatives: the CEDAW Committee, The Shelter, WOMANTRA, The Halfway House, CAFRA and CAISO.

I also want to thank the media for covering the work of the Committee and thirdly, I want to thank the AG's team, of course, led by the hon. AG himself, and representatives from the Criminal Justice Unit, the Law Reform and Legal Services Unit and other areas in the Ministry of the Attorney General and Legal Affairs.

I want to thank the parliamentary staff, both the Secretariat who is here with us and the broadcast team. And finally, I want to thank the viewing and listening audience. I want to say to those following the live broadcast and the rebroadcast that we have issued a call for public submissions. That call ended on Friday 18 February. This morning the Committee agreed to extend the time to March 18, 2022, so members of the public, listening or viewing, could still make submissions. We have had one submission so far and you are welcome to make submissions.

So those stakeholders who are before us today and those who are not here, I would tell you

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that the Committee has tried to reach some of the key stakeholders. We have not been able to reach all of them. So if you are a stakeholder with an interest in the work of the Committee, you are welcome to make a written submission. Even after we close the public hearings, we will continue to review any written submissions as we work towards our deadline fixed by the Senate which is March 31, 2022, to complete our work. So thank you very much. This meeting is adjourned.

12.19 p.m.: *Meeting adjourned.*

APPENDIX III

LIST OF PROPOSED AMENDMENTS

THE SEXUAL OFFENCES (AMENDMENT) (NO.3) BILL, 2021

**List of amendments to be moved in the Senate by the
Honourable Attorney General and Minister of Legal Affairs**

NOTICE is hereby given that the Honourable Attorney General and Minister of Legal Affairs will move in the Senate, the following amendments at the Committee Stage of the Sexual Offences (Amendment) (No.3) Bill, 2021:

Clause	Extent of Amendment
4	A. Insert before the proposed definition of “computer data storage medium”, the following definitions: ““apparatus” includes – (a) a computer system or part of a computer system; or (b) a computer data storage medium; “computer data” means any representation of – (a) facts; (b) concepts; (c) machine-readable code or instructions; or (d) information, including text, sound, image or video, that is in a form suitable for processing in a computer system and is capable of being sent, received or stored, and includes a program that can cause a computer system to perform a function;”. B. In the proposed definition of “device”, delete the words “electronic programmable device used, whether by itself or as part of a computer network, an electronic communications network or any other device” and substitute the words “electronic programmable apparatus used, whether by itself or as part of a computer network, an electronic communications network or any other apparatus”. C. In the proposed definition of “law enforcement officer” – (a) renumber paragraphs (a) to (f) as paragraphs (b) to (g) respectively; and

	(b) insert before the renumbered paragraph <i>(b)</i>, the following new paragraph: “Chap. 13:02 <i>(a)</i> a member of the prison service established under the Prison Service Act;”. D. Insert after the proposed definition of “private parts” the following definition: ““remote forensic tools” means investigative software or hardware installed on or attached to a computer system that is used to perform a task that includes keystroke logging or transmission of an internet protocol address;”. E. Insert after the proposed definition of “share” the following definition: ““traffic data” means computer data that – <i>(a)</i> relates to a communication by means of a computer system; <i>(b)</i> is generated by a computer system that is part of the chain of communications; and <i>(c)</i> shows the communication’s origin, destination, route, time, date, size, duration or the type of underlying services, and references to traffic data being attached to a communication include references to the data and the communications being logically associated with each other;”.
5	A. In the marginal note, delete the words “22A, 22B, 22C and 22D”. B. In the proposed section 22A – (a) in subsection (1) – (i) in the chapeau delete the words “subsection (3)” and substitute the words “section 22D”; (ii) delete the word “equipment” wherever it occurs and substitute the words “a device”;

	(iii) in paragraph (a), delete the words “ought to reasonably know that” and substitute the words “is reckless as to whether”; (iv) in subparagraph (b)(i)(B), insert the word “and” after the words “person ;”; (v) in subparagraph (b)(ii), delete the words “; and” and substitute the words “, or he is reckless as to whether the person consents to being observed; or”; (vi) delete subparagraph (b)(iii); (vii) in paragraph (c), after the words “consent of that person” insert the words “, or is reckless as to whether the person consents,”; (b) in subsection (2)(a), delete the words “two hundred and fifty thousand dollars and to imprisonment for two years” and substitute the words “five hundred thousand dollars and to imprisonment for three years”; and (c) delete subsection (3). C. In the proposed section 22B – (a) in subsection (1) – (i) in the chapeau, delete the words “subsections (3), (4) and (5)” and substitute the words “section 22D”; (ii) in paragraph (a), delete the words “and without reasonably believing that” and substitute the words “or is reckless as to whether”; (iii) in paragraph (b), insert after the words “depicted person” the words “or is reckless as to whether the depicted person consents”;
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	(iv) in paragraph (c), delete the words “and without reasonably believing that” and substitute the words “or is reckless as to whether”; and (v) in paragraph (e), delete the words “and without reasonably believing that” and substitute the words “or is reckless as to whether”; (b) in subsection (2)(a), delete the words “two hundred and fifty thousand dollars and to imprisonment for two years” and substitute the words “five hundred thousand dollars and to imprisonment for three years”; and (c) delete subsections (3), (4), (5), (6), (7) and (8). D. In the proposed section 22C – (a) in subsection (1) – (i) in the chapeau, delete the words “subsection (3)” and substitute the words “section 22D”; (ii) in paragraph (a), delete the words “and without reasonably believing that” and substitute the words “or is reckless as to whether”; (b) in subsection (2)(a), delete the words “two hundred and fifty thousand dollars and to imprisonment for two years” and substitute the words “five hundred thousand dollars and to imprisonment for three years”; and (c) delete subsection (3). E. Delete the proposed section 22D and insert the following new sections: “Exemptions 22D. (1) For the purposes of section 22A, 22B or 22C a person does not commit an offence if the acts that are alleged to constitute the offence are –
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	(a) performed by a law enforcement officer in the lawful execution of his duty; (b) carried out by an authorised person for medical, forensic, scientific or educational purposes; (c) carried out for the purposes of security monitoring – (i) by a person monitoring his home; or (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance; (d) acts that the person reasonably believed were necessary for the purposes of – (i) preventing, detecting, investigating or prosecuting crime; (ii) legal proceedings; or (iii) the administration of justice; or (e) in the public interest. (2) For the purposes of section 22A, 22B or 22C a person does not commit an offence if he shares an intimate image with a professional legal adviser – (a) in connection with the giving by the legal adviser of legal advice to the person; (b) in contemplation of, or in connection with, legal proceedings; or (c) for the purpose of legal proceedings. (3) For the purposes of section 22A, 22B or 22C a professional legal adviser does not commit an offence if he shares an intimate image or other matter –
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	(a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or (b) with any person – (i) in contemplation of, or in connection with, legal proceedings; and (ii) for the purpose of those proceedings. (4) Subsection (3) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose. (5) For the purposes of section 22A, 22B or 22C and subject to subsection (6), an internet service provider is not liable for – (a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or (b) actively seeking facts or circumstances which would indicate illegal activity in order to avoid criminal liability under this Act. (6) Notwithstanding subsection (5), an internet service provider shall comply with any court order, injunction, or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement under section 22A, 22B or 22C. Jurisdiction 22E. (1) A Court in Trinidad and Tobago shall have jurisdiction in respect of an offence under sections 22A, 22B or 22C where the act constituting the offence is carried out— (a) wholly or partly in Trinidad and Tobago;
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	(b) by a citizen of Trinidad and Tobago, whether in Trinidad and Tobago or elsewhere; or (c) by a person on board a vessel or aircraft registered in Trinidad and Tobago. (2) For the purpose of subsection (1)(a), an act is carried out in Trinidad and Tobago if— (a) the person is in Trinidad and Tobago at the time when the act is committed; (b) a computer system located in Trinidad and Tobago or computer data on a computer data storage device located in Trinidad and Tobago is affected by the act; or (c) the effect of the act, or the damage resulting from the act, occurs within Trinidad and Tobago.
Search and seizure	22F. (1) A Magistrate who is satisfied on the basis of information on oath by a police officer that there is reasonable ground to believe that there is in any building, ship, vessel, carriage, box, receptacle or place an apparatus or computer data— (a) in respect of which an offence under section 22A, 22B or 22C has been or is suspected to have been committed; (b) which there is reasonable ground for believing will afford evidence as to the commission of an offence under section 22A, 22B or 22C; or (c) which there is reasonable ground for believing is intended to be used for the purpose of committing an offence under section 22A, 22B or 22C, may at any time issue a warrant under his hand authorising a police officer, with such assistance as may be necessary, to search such building, ship, vessel, carriage, box, receptacle or place for any such apparatus or computer data and to seize and

	carry it before the Magistrate issuing the warrant or some other Magistrate, to be dealt with by him according to law. (2) Every such warrant may be issued and executed at any time, and may be issued and executed on a Sunday. (3) A police officer who undertakes a search under this section shall secure any apparatus and maintain the integrity of any computer data that is seized. (4) When any such apparatus or computer data is seized and brought before any Magistrate, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the matter and if any person is committed for trial, he may order it further to be detained for the purpose of evidence on the trial. (5) Where a person is not committed for trial, the Magistrate shall direct that the seized apparatus and computer data be restored to the person from whom it was taken unless he is authorised or required by law to dispose of it otherwise.
Order for removal or disablement of data	22G. If a Magistrate is satisfied on the basis of information on oath by a police officer that an internet service provider or any other entity with a domain name server is storing, transmitting or providing access to information in contravention of section 22A, 22B or 22C, the Magistrate may order the internet service provider or other entity with a domain name server to remove, or disable access to, the information.
Production Order	22H. If a Magistrate is satisfied on the basis of information on oath by a police officer that computer data, a printout or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings, the Magistrate may order— (a) a person in Trinidad and Tobago who is in control of an apparatus, to produce

	from the apparatus computer data or a printout or other intelligible output of the computer data; or an internet service provider in Trinidad and Tobago to produce information about a person who subscribes to, or otherwise uses his service.
Expedited preservation	22I. (1) A Magistrate may, if satisfied on an <i>ex parte</i> application by a police officer of the rank of Superintendent or above, that there are grounds to believe that computer data that is reasonably required for the purpose of a criminal investigation is vulnerable to loss or modification, authorise the police officer of the rank of Superintendent or above to require a person in control of the computer data, by notice in writing, to preserve the data for such period not exceeding ninety days as is stated in the notice. (2) A Magistrate may, on an <i>ex parte</i> application by a police officer of the rank of Superintendent or above, authorise an extension of the period referred to in subsection (1) by a further specified period not exceeding ninety days.
Disclosure of details of an order	22J. (1) If an order under section 22H or a notice under section 22I stipulates that confidentiality is to be maintained, a person who is the subject of the order or notice and who intentionally and without lawful excuse or justification discloses— (a) the fact that the order or notice has been made; (b) the details of the order or notice; (c) anything done pursuant to the order or notice; or (d) any data collected or recorded pursuant to the order, commits an offence.

	(2) A person who commits an offence under subsection (1) is liable— (a) on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or (b) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.
Disclosure of traffic data	22K. If a Magistrate is satisfied on the basis of information on oath by a police officer, that there are reasonable grounds to believe that computer data stored in an apparatus is reasonably required for the purpose of a criminal investigation into a data message, he may require a person to disclose sufficient traffic data about the data message to identify— (a) the internet service provider; or (b) the path, through which the data message was transmitted.
Remote forensic tools	22L. (1) If a Judge is satisfied on an <i>ex parte</i> application by a police officer of the rank of Superintendent or above, that there are reasonable grounds to believe that computer data which is required for the purpose of a criminal investigation into an offence under section 22A, 22B or 22C cannot be collected without the use of a remote forensic tool, the Judge may authorise a police officer of the rank of Superintendent or above, with such assistance as may be necessary, to utilise such tool for the investigation. (2) An application made under subsection (1) shall contain the following information: (a) the name, and if possible, the address of the person who is suspected of committing the offence; (b) a description of the targeted computer system;

	(c) a description of the required tool and the extent and duration of its utilisation; and (d) reason for the use of the tool. (3) Where an application is made under subsection (1), the Judge may order an internet service provider to furnish at its own cost, such information, facilities or technical assistance as may be necessary to support the installation of the remote forensic tool. (4) Where a remote forensic tool is utilised under this section— (a) modifications to a computer system shall be limited to those that are necessary for the investigation; (b) modifications to a computer system shall be undone, so far as possible, after the investigation; and (c) the following information shall be logged: (i) the technical means used; (ii) the time and date of the application; (iii) the identification of the computer system and details of the modification undertaken; and (iv) the information obtained. (5) The police officer responsible for a criminal investigation in which a remote forensic tool is utilised under this section shall ensure that any information obtained by the utilisation of the remote forensic tool is protected against modification, unauthorised deletion and unauthorised access. (6) An authorisation that is granted under this section shall cease to apply where— (a) the computer data sought is collected;
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	(b) there is no longer any reasonable ground for believing that the computer data sought exists; or (c) the conditions of the authorisation are no longer present. (7) For the purpose of this section, “utilise” includes— (a) accessing a computer system; (b) developing a remote forensic tool; (c) adopting a remote forensic tool; or (d) acquiring a remote forensic tool.
Court may request mental assessment report	22M. Where a person is convicted of an offence under section 22A, 22B or 22C and the Court is of the view that an enquiry ought to be made into his mental condition before sentence is passed, the Court may request a mental assessment report from a psychiatrist.
Court may make additional orders	22N. (1) Where a person is convicted of an offence under section 22A, 22B or 22C the Court may, in addition to any other penalty which may be imposed, make the following orders: (a) a probation order made under the Probation of Offenders Act; or (b) a community service order or a combination order made under the Community Service Orders Act.
Chap. 13:51	
Chap. 13:06	(2) The Court in making an order under subsection (1) shall take into account – (a) the findings of the mental assessment report referred to in section 22M, where the report was requested; (b) the nature and gravity of the offence; (c) whether the offender has been charged or convicted of a registrable offence; (d) the risk of reoffending;

	(e) the risk of harm to the victim or any other person; (f) whether the victim was a child or a person with a mental disorder; (g) whether the offender was in a position of care, authority or supervision of the victim; (h) whether the employment and residence status of the offender are stable; and (i) any other compelling reasons in the circumstances of the case.
Considerations regarding liability of child	22O. A child does not commit an offence under section 22A, 22B or 22C where a reasonable person would consider the conduct of the child acceptable, having regard to the following: (a) the nature and content of the intimate image; (b) the circumstances in which the intimate image was taken or shared; (c) the age, intellectual capacity, vulnerability or other relevant circumstances of the depicted person; and (d) the degree to which the child's actions affect the privacy of the depicted person; and (e) the relationship between the child and the depicted person.
Order for payment of compensation and rectification	22P.(1) Where a person is convicted of an offence under section 22A, 22B or 22C and the Court is satisfied that the complainant has suffered loss or damage as a result of the commission of the offence, it may, in addition to any other penalty imposed, order the person convicted to – (a) pay a fixed sum as compensation to the complainant for the loss or damage caused or likely to be caused, as a result of the commission of the offence, which

	shall be a charge on the property of the person so convicted; and (b) take reasonable actions to remove, retract, recover, delete or destroy any intimate image of the complainant which was taken or shared by the person within a period specified by the Court. (2) An order made under subsection (1) shall – (a) be without prejudice to any other remedy which the complainant may have under any other law. (b) not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order into account when it makes a further award. (3) The Court may make an order under this section of its own motion or upon application of a person who has suffered damage as a result of the commission of the offence. (4) A person who makes an application under subsection (3) shall do so before sentence is passed on the person against whom the order is sought. (5) A person who, without reasonable excuse, contravenes an order made under subsection (1) commits an offence and is liable on – (a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or (b) conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.
6	A. In the proposed section 44A –

	(a) in subsection (1), delete the words “subsection (3)” and substitute the words “section 44D”; (b) delete the word “equipment” wherever it occurs and substitute the words “a device”; (c) in subsection (2)(a), delete the words “two hundred and fifty thousand dollars and to imprisonment for two years” and substitute the words “five hundred thousand dollars and to imprisonment for three years”; and (d) delete subsection (3). B. In the proposed section 44B – (a) in subsection (1), delete the words “subsections (3), (4) and (5)” and substitute the words “section 44D”; (b) in subsection (2)(a), delete the words “two hundred and fifty thousand dollars and to imprisonment for two years” and substitute the words “five hundred thousand dollars and to imprisonment for three years”; and (c) delete subsections (3), (4), (5), (6), (7) and (8). C. In the proposed section 44C – (a) delete subsection (1) and replace with the following new subsection: “(1) Subject to section 44D, a person commits an offence if he knowingly shares an intimate image of a depicted child in circumstances in which – (a) the depicted child was doing a private act; (b) the private parts of the depicted child were not visible to the public; or (c) the parent, guardian or person with responsibility for the child has a reasonable expectation that the intimate image of the
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	child would not be shared without their express permission, regardless of whether the intimate image of the depicted child was taken in a public or private place.”; (b) in subsection (2)(a), delete the words “two hundred and fifty thousand dollars and to imprisonment for two years” and substitute the words “five hundred thousand dollars and to imprisonment for three years”; and (c) delete subsection (3). D. Delete the proposed sections 44D and 44E and insert the following new sections: “Exemptions 44D. (1) For the purposes of section 44A, 44B or 44C a person does not commit an offence if the acts that are alleged to constitute the offence are – (a) performed by a law enforcement officer in the lawful execution of his duty; (b) carried out by an authorised person for medical, forensic, scientific or educational purposes; (c) carried out for the purposes of security monitoring – (i) by a person monitoring his home; or (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance; (d) acts that the person reasonably believed were necessary for the purposes of –
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	(i) preventing, detecting, investigating or prosecuting crime; (ii) legal proceedings; or (iii) the administration of justice; or (e) in the public interest. (2) For the purposes of section 44A, 44B or 44C a person does not commit an offence if he shares an intimate image with a professional legal adviser – (a) in connection with the giving by the legal adviser of legal advice to the person; (b) in contemplation of, or in connection with, legal proceedings; or (c) for the purpose of legal proceedings. (3) For the purposes of section 44A, 44B or 44C a professional legal adviser does not commit an offence if he shares an intimate image or other matter – (a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or; (b) with any person – (i) in contemplation of, or in connection with, legal proceedings; and (ii) for the purpose of those proceedings. (4) Subsection (3) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose. (5) For the purposes of section 44A, 44B or 44C and subject to subsection (6), an internet service provider is not liable for –
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	(a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or (b) actively seeking facts or circumstances which would indicate illegal activity in order to avoid criminal liability under this Act. (6) Notwithstanding subsection (5), an internet service provider shall comply with any court order, injunction, or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement under section 44A, 44B or 44C. Jurisdiction 44E. (1) A Court in Trinidad and Tobago shall have jurisdiction in respect of an offence under section 44A, 44B or 44C where the act constituting the offence is carried out— (a) wholly or partly in Trinidad and Tobago; (b) by a citizen of Trinidad and Tobago, whether in Trinidad and Tobago or elsewhere; or (c) by a person on board a vessel or aircraft registered in Trinidad and Tobago. (2) For the purpose of subsection (1)(a), an act is carried out in Trinidad and Tobago if— (a) the person is in Trinidad and Tobago at the time when the act is committed; (b) a computer system located in Trinidad and Tobago or computer data on a computer data storage device located in Trinidad and Tobago is affected by the act; or (c) the effect of the act, or the damage resulting from the act, occurs within Trinidad and Tobago.
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	Search and seizure 44F. (1) A Magistrate who is satisfied on the basis of information on oath by a police officer that there is reasonable ground to believe that there is in any building, ship, vessel, carriage, box, receptacle or place an apparatus or computer data— (a) in respect of which an offence under section 44A, 44B or 44C has been or is suspected to have been committed; (b) which there is reasonable ground for believing will afford evidence as to the commission of an offence under section 44A, 44B or 44C; or (c) which there is reasonable ground for believing is intended to be used for the purpose of committing an offence under section 44A, 44B or 44C, may at any time issue a warrant under his hand authorising a police officer, with such assistance as may be necessary, to search such building, ship, vessel, carriage, box, receptacle or place for any such apparatus or computer data and to seize and carry it before the Magistrate issuing the warrant or some other Magistrate, to be dealt with by him according to law. (2) Every such warrant may be issued and executed at any time, and may be issued and executed on a Sunday. (3) A police officer who undertakes a search under this section shall secure any apparatus and maintain the integrity of any computer data that is seized. (4) When any such apparatus or computer data is seized and brought before any Magistrate, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the matter and if any person is committed for trial, he may order it further to be detained for the purpose of evidence on the trial.
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	(5) Where a person is not committed for trial, the Magistrate shall direct that the seized apparatus and computer data be restored to the person from whom it was taken unless he is authorised or required by law to dispose of it otherwise.
Order for removal or disablement of data	44G. If a Magistrate is satisfied on the basis of information on oath by a police officer that an internet service provider or any other entity with a domain name server is storing, transmitting or providing access to information in contravention of section 44A, 44B or 44C, the Magistrate may order the internet service provider or other entity with a domain name server to remove, or disable access to, the information.
Production Order	44H. If a Magistrate is satisfied on the basis of information on oath by a police officer that computer data, a printout or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings, the Magistrate may order— (a) a person in Trinidad and Tobago who is in control of an apparatus, to produce from the apparatus computer data or a printout or other intelligible output of the computer data; or (b) an internet service provider in Trinidad and Tobago to produce information about a person who subscribes to, or otherwise uses his service.
Expedited preservation	44I. (1) A Magistrate may, if satisfied on an <i>ex parte</i> application by a police officer of the rank of Superintendent or above, that there are grounds to believe that computer data that is reasonably required for the purpose of a criminal investigation is vulnerable to loss or modification, authorise the police officer of the rank of Superintendent or above to require a person in control of the computer data, by notice in writing, to preserve the data for such period not exceeding ninety days as is stated in the notice.

	(2) A Magistrate may, on an <i>ex parte</i> application by a police officer of the rank of Superintendent or above, authorise an extension of the period referred to in subsection (1) by a further specified period not exceeding ninety days.
Disclosure of details of an order	44J. (1) If an order under section 44H or a notice under section 44I stipulates that confidentiality is to be maintained, a person who is the subject of the order or notice and who intentionally and without lawful excuse or justification discloses— (a) the fact that the order or notice has been made; (b) the details of the order or notice; (c) anything done pursuant to the order or notice; or (d) any data collected or recorded pursuant to the order, commits an offence. (2) A person who commits an offence under subsection (1) is liable— (a) on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or (b) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.
Disclosure of traffic data	44K. If a Magistrate is satisfied on the basis of information on oath by a police officer, that there are reasonable grounds to believe that computer data stored in an apparatus is reasonably required for the purpose of a criminal investigation into a data message, he may require a person to disclose sufficient traffic data about the data message to identify— (a) the internet service provider; or (b) the path, through which the data message was transmitted.

	Remote forensic tools 44L. (1) If a Judge is satisfied on an <i>ex parte</i> application by a police officer of the rank of Superintendent or above, that there are reasonable grounds to believe that computer data which is required for the purpose of a criminal investigation into an offence under section 44A, 44B or 44C cannot be collected without the use of a remote forensic tool, the Judge may authorise a police officer of the rank of Superintendent or above, with such assistance as may be necessary, to utilise such tool for the investigation. (2) An application made under subsection (1) shall contain the following information: (a) the name, and if possible, the address of the person who is suspected of committing the offence; (b) a description of the targeted computer system; (c) a description of the required tool and the extent and duration of its utilisation; and (d) reason for the use of the tool. (3) Where an application is made under subsection (1), the Judge may order an internet service provider to furnish at its own cost, such information, facilities or technical assistance as may be necessary to support the installation of the remote forensic tool. (4) Where a remote forensic tool is utilised under this section— (a) modifications to a computer system shall be limited to those that are necessary for the investigation; (b) modifications to a computer system shall be undone, so far as possible, after the investigation; and (c) the following information shall be logged: (i) the technical means used;
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	(ii) the time and date of the application; (iii) the identification of the computer system and details of the modification undertaken; and (iv) the information obtained. (5) The police officer responsible for a criminal investigation in which a remote forensic tool is utilised under this section shall ensure that any information obtained by the utilisation of the remote forensic tool is protected against modification, unauthorised deletion and unauthorised access. (6) An authorisation that is granted under this section shall cease to apply where— (a) the computer data sought is collected; (b) there is no longer any reasonable ground for believing that the computer data sought exists; or (c) the conditions of the authorisation are no longer present. (7) For the purpose of this section, “utilise” includes— (a) accessing a computer system; (b) developing a remote forensic tool; (c) adopting a remote forensic tool; or (d) acquiring a remote forensic tool.
Court may request mental assessment report	44M. Where a person is convicted of an offence under section 44A, 44B or 44C and the Court is of the view that an enquiry ought to be made into his mental condition before sentence is passed, the Court may request a mental assessment report from a psychiatrist
Court may make additional orders	44N.(1) Where a person is convicted of an offence under section 44A, 44B or 44C the Court may, in addition to any other penalty that may be imposed, make the following orders:

	Chap. 13:51 (a) a probation order made under the Probation of Offenders Act; or Chap. 13:06 (b) a community service order or a combination order made under the Community Service Orders Act. (2) The Court in making an order under subsection (1) shall take into account – (a) the findings of the mental assessment report referred to in section 44M, where the report was requested; (b) the nature and gravity of the offence; (c) whether the offender has been charged or convicted of a registrable offence; (d) the risk of reoffending; (e) the risk of harm to the victim or any other person; (f) whether the victim was a child or a person with a mental disorder; (g) whether the offender was in a position of care, authority or supervision of the victim; (h) whether the employment and residence status of the offender are stable; and (i) any other compelling reasons in the circumstances of the case. Order for payment of compensation and rectification 44O.(1) Where a person is convicted of an offence under section 44A, 44B or 44C and the Court is satisfied that the complainant has suffered loss or damage as a result of the commission of the offence it may, in addition to any other penalty imposed under this Part, order the person convicted to – (a) pay a fixed sum as compensation to the complainant for the loss or damage caused or likely to be caused, as a result of the commission of the offence which shall be a charge on the property of the person so convicted; and (b) take reasonable actions to remove, retract, recover, delete or destroy any intimate
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	image taken or shared by the complainant within a period specified by the Court. (2) An order made under subsection (1) shall – (a) be without prejudice to any other remedy which the complainant may have under any other law; and (b) not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order into account when it makes a further award. (3) The Court may make an order under this section of its own motion or upon application of a person who has suffered damage as a result of the commission of the offence. (4) A person who makes an application under subsection (3) shall do so before sentence is passed on the person against whom the order is sought. (5) A person who, without reasonable excuse, contravenes an order made under subsection (1) commits an offence and is liable on – (a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or (b) conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years. Interpretation 44P. For the purposes of this Part – “apparatus” includes – (a) a computer system or part of a computer system; or (b) a computer data storage medium; “computer data” means any representation of –
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	(a) facts; (b) concepts; (c) machine-readable code or instructions; or (d) information, including text, sound, image or video, that is in a form suitable for processing in a computer system and is capable of being sent, received or stored and includes a program that can cause a computer system to perform a function; “computer data storage medium” means anything in which information is capable of being stored, or anything from which information is capable of being retrieved or reproduced, with or without the aid of any other article or device; “computer system” means any device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or electronic data; “device” means any electronic programmable apparatus used, whether by itself or as part of a computer network, an electronic communications network or any other apparatus or equipment, or any part thereof, to perform pre-determined arithmetic, logical, routing or storage operations and includes— (a) an input device; (b) an output device; (c) a processing device; (d) a computer data storage medium; (e) a program; or (f) equipment, that is related to, connected with or used with such a device or any part thereof;
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	“internet service provider” means – (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system; or (b) any other entity that processes or stores computer data on behalf of such communication service or users of such service; “intimate image” means a visual recording of a child that depicts – (a) the child engaged in a sexual act; (b) the child in a manner or context that is sexual; or (c) the private parts of the child; “law enforcement officer” means – (a) a member of the prison service established under the Prison Service Act; (b) a police officer appointed under the Police Service Act; (c) a constable as defined under the Supplemental Police Act; (d) a member of the Special Reserve Police appointed under the Special Reserve Police Act; (e) an employee of the Strategic Services Agency established under the Strategic Services Agency Act; (f) a member of the Municipal Police Service appointed under the Municipal Corporations Act; or (g) a member of any other agency of the State in which investigative and intelligence gathering powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;
Chap. 13:02	
Chap. 15:01	
Chap. 15:02	
Chap. 15:03	
Chap. 15:06	
Chap. 25:04	

	“private act” means an act done by a child where the child is in a place which, in the circumstances, would reasonably be expected to provide privacy and – (a) the private parts of the child are fully or partially exposed or covered only with underwear; (b) the child is using the toilet, showering or bathing; or (c) the child is doing a sexual act; “private parts” means – (a) the genitals, pubic area or buttocks of a child; or (b) the breasts of a female child, whether or not the breasts are sexually developed; “remote forensic tools” means investigative software or hardware installed on or attached to a computer system that is used to perform a task that includes keystroke logging or transmission of an internet protocol address; “sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual; “share” means – (a) publish, distribute, transmit, stream, sell, make available or advertise; (b) sharing online, including on websites, via email, live-streaming or through private messaging services; (c) sharing offline, including through the post or distribution by hand; or (d) showing to another person, including images stored on a device or printed copies;
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	“traffic data” means computer data that – (a) relates to a communication by means of a computer system; (b) is generated by a computer system that is part of the chain of communication; and (c) shows the communication’s origin, destination, route, time, date, size, duration or the type of underlying services, and references to traffic data being attached to a communication include references to the data and the communication being logically associated with each other; “visual recording” means a – (a) photograph or film; (b) video recording; or (c) live-stream, on any medium from which a still or moving image may by any means be produced or transmitted, whether or not accompanied by a soundtrack.”.
New clause 5A	Insert after clause 5 the following new clause: “Schedule 2 amended 5A. Schedule 2 to the Act is amended – (a) in paragraph (a), by inserting in the appropriate numerical sequence the following offences: “22A Voyeurism. 22B Taking and sharing of an intimate image without consent. 22C Sharing an intimate image.”; - and (b) in paragraph (c), by inserting in the appropriate numerical sequence the following offences: “44A Voyeurism. 44B Taking and sharing of an intimate image. 44C Sharing an intimate image.”.

APPENDIX IV

CONSOLIDATED VERSION OF THE BILL

THE SEXUAL OFFENCES (AMENDMENT) (NO. 3) BILL, 2021

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Interpretation
4. Section 2 amended
5. [New sections inserted](#)
- 5A. [Schedule 2 amended](#)
6. Consequential amendments

BILL

AN ACT to amend the Sexual Offences Act, Chap. 11:28
[, 2021]

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:
Short title	1. This Act may be cited as the Sexual Offences (Amendment) (No. 3) Act, 2021.
Commencement	2. This Act comes into operation on such date as is fixed by the President by Proclamation.
Interpretation Chap. 11:28	3. In this Act, “the Act” means the Sexual Offences Act.
Section 2 amended	4. Section 2 of the Act is amended by inserting the following definitions in the appropriate alphabetical sequence:

“apparatus” includes –

- (a) a computer system or part of a computer system;
or
- (b) a computer data storage medium;

“computer data” means any representation of –

- (e) facts;
- (f) concepts;
- (g) machine-readable code or instructions; or
- (h) information, including text, sound, image or video,

that is in a form suitable for processing in a computer system and is capable of being sent, received or stored, and includes a program that can cause a computer system to perform a function;

“computer data storage medium” means anything in which information is capable of being stored, or anything from which information is capable of being retrieved or

reproduced, with or without the aid of any other article or device;

“computer system” means any device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or electronic data;

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

- (a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) a computer data storage medium;
- (e) a program; or
- (f) equipment,

that is related to, connected with or used with such a device or any part thereof;

“internet service provider” means –

- (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system; or
- (b) any other entity that processes or stores computer data on behalf of such communication service or users of such service;

“intimate image” means a visual recording of a person that depicts

—

- (a) the person engaged in a sexual act;
- (b) the person in a manner or context that is sexual; or
- (c) the private parts of the person;

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“law enforcement officer” means –

- Chap. 13:02 (a) a member of the prison service established under the Prison Service Act;
- Chap. 15:01 (b) a police officer appointed under the Police Service Act;
- Chap. 15:02 (c) a constable as defined under the Supplemental Police Act;
- Chap. 15:03 (d) a member of the Special Reserve Police appointed under the Special Reserve Police Act;
- Chap. 15:06 (e) an employee of the Strategic Services Agency established under the Strategic Services Agency Act;
- Chap. 25:04 (f) a member of the Municipal Police Service appointed under the Municipal Corporations Act; or
- (g) a member of any other agency of the State in which investigative and intelligence gathering powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;

“private act” means an act done by a person where the person is in a place which, in the circumstances, would reasonably be expected to provide privacy and –

- (a) the private parts of the person are fully or partially exposed or covered only with underwear;
- (b) the person is using the toilet, showering or bathing; or
- (c) the person is doing a sexual act;

“private parts” means –

- (a) the genitals, pubic area or buttocks of a person; or
- (b) the breasts of a female person, whether or not the breasts are sexually developed;

“remote forensic tools” means investigative software or hardware installed on or attached to a computer system that is used to

perform a task that includes keystroke logging or transmission of an internet protocol address;

“sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual;

“share” means –

- (a) publish, distribute, transmit, stream, sell, make available or advertise;
- (b) sharing online, including on websites, via email, live-streaming or through private messaging services;
- (c) sharing offline, including through the post or distribution by hand; or
- (d) showing to another person, including images stored on a device or printed copies;

“traffic data” means computer data that –

- (a) relates to a communication by means of a computer system;
- (b) is generated by a computer system that is part of the chain of communications; and
- (c) shows the communication’s origin, destination, route, time, date, size, duration or the type of underlying services,

and references to traffic data being attached to a communication include references to the data and the communications being logically associated with each other;

“visual recording” means a –

- (a) photograph or film;
- (b) video recording; or
- (c) live-stream,

on any medium from which a still or moving image may by any means be produced or transmitted, whether or not accompanied by a soundtrack;”.

~~and 22D~~ inserted “Voyeurism

22A.(1) Subject to ~~subsection (3)~~ **section 22D**, a person commits the offence of voyeurism if, for the purpose of obtaining sexual gratification for himself or another person, or causing humiliation or distress to a person, he knowingly –

- (a) observes, whether with or without the use of ~~equipment~~ **a device**, that person doing a private act and he knows or ~~ought to reasonably know that~~ **is reckless as to whether** the person does not consent to being observed;
- (b) views, whether with or without the use of ~~equipment~~ **a device**, beneath the clothing of that person and does so –
 - (i) with the intention of enabling himself or another person to observe –
 - (A) the private parts of that person, whether fully or partially exposed or covered with underwear; or
 - (B) the underwear covering the private parts of that person;
and
 - (ii) without the consent of that person, **or he is reckless as to whether the person consents to being observed; or** ~~and~~
 - ~~(iii) without reasonably believing that the person consents to being observed; or~~
- (c) takes, captures, records, streams, stores, publishes or transmits through a device or computer system, a visual recording of the private parts of a person without the consent of that person, **or is reckless as to whether the person consents**, in circumstances in which that person has a reasonable expectation that he was doing a private act.

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

- (a) summary conviction to a fine of ~~two hundred and fifty thousand dollars and to imprisonment for two years~~ **five hundred thousand dollars and to imprisonment for three years**; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

~~(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are –~~

- ~~(a) performed by a law enforcement officer in the lawful execution of his duty;~~
- ~~(b) carried out by an authorized person for medical, forensic, scientific or educational purposes;~~
- ~~(c) carried out for the purposes of security monitoring –~~
 - ~~(i) by a person monitoring his home; or~~
 - ~~(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;~~
- ~~(d) acts that the person reasonably believed were necessary for the purposes of –~~
 - ~~(i) preventing, detecting, investigating or prosecuting crime;~~
 - ~~(ii) legal proceedings; or~~
 - ~~(iii) the administration of justice; or~~
- ~~(e) in the public interest.~~

Taking and
sharing of an
intimate image
without consent

22B.(1) Subject to ~~subsections (3), (4) and (5)~~ **section 22D**, a person commits an offence if –

- (a) he knowingly takes and shares an intimate image of another person without the consent of the depicted person for the taking and

sharing of the intimate image ~~and without reasonably believing that~~ **or is reckless as to whether** the depicted person consents;

- (b) for the purpose of causing humiliation or distress to another person, he knowingly takes and shares an intimate image of that person without the consent of the depicted person **or is reckless as to whether the depicted person consents**;
- (c) for the purpose of obtaining sexual gratification for himself or another person, he knowingly takes and shares an intimate image of a person without the consent of the depicted person ~~and without reasonably believing that~~ **or is reckless as to whether** the depicted person consents;
- (d) he knowingly threatens to share an intimate image of another person in circumstances in which he intends to cause the depicted person to fear that the threat will be carried out or he is reckless as to whether the depicted person will fear that the threat will be carried out; or
- (e) he knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate image and shares that altered image without the consent of the depicted person ~~and without reasonably believing that~~ **or is reckless as to whether** the depicted person consents.

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

- (a) summary conviction to a fine of ~~two hundred and fifty thousand dollars and to imprisonment for two years~~ **five hundred**

thousand dollars and to imprisonment for three years; or

- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

~~(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—~~

- ~~(a) performed by a law enforcement officer in the lawful execution of his duty;~~
- ~~(b) carried out by an authorized person for medical, forensic, scientific or educational purposes;~~
- ~~(c) carried out for the purposes of security monitoring—~~
 - ~~(i) by a person monitoring his home; or~~
 - ~~(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;~~
- ~~(d) acts that the person reasonably believed were necessary for the purposes of—~~
 - ~~(i) preventing, detecting, investigating or prosecuting crime;~~
 - ~~(ii) legal proceedings; or~~
 - ~~(iii) the administration of justice; or~~
- ~~(e) in the public interest.~~

~~(4) A person does not commit an offence under this section if he shares an intimate image with a professional legal adviser—~~

- ~~(a) in connection with the giving by the legal adviser of legal advice to the person;~~
- ~~(b) in contemplation of, or in connection with, legal proceedings; or~~
- ~~(c) for the purpose of legal proceedings.~~

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~~(5) A professional legal adviser does not commit an offence under this section if he shares an intimate image or other matter—~~

- ~~(a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or~~
- ~~(b) with any person—~~
 - ~~(i) in contemplation of, or in connection with, legal proceedings; and~~
 - ~~(ii) for the purpose of those proceedings.~~

~~(6) Subsection (5) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.~~

~~(7) Subject to subsection (8), an internet service provider which provides a conduit for the transmission of information, shall not be responsible for—~~

- ~~(a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or~~
- ~~(b) actively seeking facts or circumstances indicating illegal activity in order to avoid criminal liability under this Act.~~

~~(8) Notwithstanding subsection (7), an internet service provider shall comply with any court order, injunction, writ or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement based on any written law.~~

Sharing an
intimate image

22C.(1) Subject to ~~subsection (3)~~ [section 22D](#), a person commits an offence if he knowingly shares an intimate image of a depicted person –

- ~~(a) without the consent of the depicted person and without reasonably believing that~~ [or is reckless as to whether](#) the depicted person consents; or

- (b) in circumstances in which the depicted person has a reasonable expectation that—
 - (i) he was doing a private act;
 - (ii) his private parts would not be visible to the public; or
 - (iii) his intimate image would not be shared without his express permission, regardless of whether the intimate image of the depicted person was taken in a public or private place.

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

- (a) summary conviction to a fine of ~~two hundred and fifty thousand dollars and to imprisonment for two years~~ **five hundred thousand dollars and to imprisonment for three years**; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

~~(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are –~~

- ~~(a) performed by a law enforcement officer in the lawful execution of his duty;~~
- ~~(b) carried out by an authorized person for medical, forensic, scientific or educational purposes;~~
- ~~(c) carried out for the purposes of security monitoring –
 - ~~(i) by a person monitoring his home; or~~
 - ~~(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;~~~~

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	(d) — acts that the person reasonably believed were necessary for the purposes of — (i) — preventing, detecting, investigating or prosecuting crime; (ii) — legal proceedings; or (iii) — the administration of justice; or (e) — in the public interest.
Court may order compensation and rectification	22D. (1) The Court or body may order a person who is convicted of an offence under sections 22A, 22B or 22C — (a) to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted; and (b) to take reasonable actions to remove, retract, recover, delete or destroy any intimate image taken or shared by the person within a period specified by the Court. (2) The provisions of subsection (1) shall not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order under subsection (1) into account when it makes a further award.”.

Exemptions	22D.(1) For the purposes of section 22A, 22B or 22C a person does not commit an offence if the acts that are alleged to constitute the offence are — <i>(f)</i> performed by a law enforcement officer in the lawful execution of his duty; <i>(g)</i> carried out by an authorised person for medical, forensic, scientific or educational purposes; <i>(h)</i> carried out for the purposes of security monitoring — <i>(j)</i> by a person monitoring his home; or <i>(iii)</i> in premises where there are signs prominently displayed informing persons that the premises or designated
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portions of the premises are under surveillance;

- (i) acts that the person reasonably believed were necessary for the purposes of –
 - (j) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or
- (e) in the public interest

(2) For the purposes of section 22A, 22B or 22C a person does not commit an offence if he shares an intimate image with a professional legal adviser –

- (d) in connection with the giving by the legal adviser of legal advice to the person;
- (e) in contemplation of, or in connection with, legal proceedings; or
- (c) for the purpose of legal proceedings.

(3) For the purposes of section 22A, 22B or 22C a professional legal adviser does not commit an offence if he shares an intimate image or other matter –

- (c) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (d) with any person –
 - (iii) in contemplation of, or in connection with, legal proceedings; and
 - (iv) for the purpose of those proceedings.

(4) Subsection (3) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.

(5) For the purposes of section 22A, 22B or 22C and subject to subsection (6), an internet service provider is not liable for –

- (a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or

- (b) actively seeking facts or circumstances which would indicate illegal activity in order to avoid criminal liability under this Act.

(6) Notwithstanding subsection (5), an internet service provider shall comply with any court order, injunction, or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement under section 22A, 22B or 22C.

Jurisdiction

22E.(1) A Court in Trinidad and Tobago shall have jurisdiction in respect of an offence under section 22A, 22B or 22C where the act constituting the offence is carried out—

- (d) wholly or partly in Trinidad and Tobago;
- (e) by a citizen of Trinidad and Tobago, whether in Trinidad and Tobago or elsewhere; or
- (f) by a person on board a vessel or aircraft registered in Trinidad and Tobago.

(2) For the purpose of subsection (1)(a), an act is carried out in Trinidad and Tobago if—

- (d) the person is in Trinidad and Tobago at the time when the act is committed;
- (e) a computer system located in Trinidad and Tobago or computer data on a computer data storage device located in Trinidad and Tobago is affected by the act; or
- (f) the effect of the act, or the damage resulting from the act, occurs within Trinidad and Tobago.

Search and seizure

22F.(1) A Magistrate who is satisfied on the basis of information on oath by a police officer that there is reasonable ground for believing that there is in any building, ship, vessel, carriage, box, receptacle or place an apparatus or computer data—

- (d) in respect of which an offence under section 22A, 22B or 22C has been or is suspected to have been committed;
- (e) which there is reasonable ground for believing will afford evidence as to the

commission an offence under section 22A, 22B or 22C; or

- (f) which there is reasonable ground for believing is intended to be used for the purpose of committing an offence under section 22A, 22B or 22C,

may at any time issue a warrant under his hand authorising a police officer, with such assistance as may be necessary, to search such building, ship, vessel, carriage, box, receptacle or place for any such apparatus or computer data and to seize and carry it before the Magistrate issuing the warrant or some other Magistrate, to be dealt with by him according to law.

(2) Every such warrant may be issued and executed at any time, and may be issued and executed on a Sunday.

(3) A police officer who undertakes a search under this section shall secure any apparatus and maintain the integrity of any computer data that is seized.

(4) When any such apparatus or computer data is seized and brought before any Magistrate, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the matter and if any person is committed for trial, he may order it further to be detained for the purpose of evidence on the trial.

(5) Where a person is not committed for trial, the Magistrate shall direct that the seized apparatus and computer data be restored to the person from whom it was taken unless he is authorised or required by law to dispose of it otherwise.

Order for
removal or
disablement of
data

22G. If a Magistrate is satisfied on the basis of information on oath by a police officer that an internet service provider or any other entity with a domain name server is storing, transmitting or providing access to information in contravention of section 22A, 22B or 22C, the Magistrate may order the internet service provider or other entity with a domain name server to remove, or disable access to, the information.

Production Order

22H. If a Magistrate is satisfied on the basis of information on oath by a police officer that computer data, a printout or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings, the Magistrate may order—

- (b) a person in Trinidad and Tobago who is in control of an apparatus, to produce from the apparatus computer data or a printout or other intelligible output of the computer data; or
- (c) an internet service provider in Trinidad and Tobago to produce information about a person who subscribes to, or otherwise uses his service.

Expedited preservation

22I.(1) A Magistrate may, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above, that there are grounds to believe that computer data that is reasonably required for the purpose of a criminal investigation is vulnerable to loss or modification, authorise the police officer of the rank of Superintendent or above to require a person in control of the computer data, by notice in writing, to preserve the data for such period not exceeding ninety days as is stated in the notice.

(2) A Magistrate may, on an *ex parte* application by a police officer of the rank of Superintendent or above, authorise an extension of the period referred to in subsection (1) by a further specified period not exceeding ninety days.

Disclosure of details of an order

22J.(1) If an order under section 22H or a notice under section 22I stipulates that confidentiality is to be maintained, a person who is the subject of the order or notice and who intentionally and without lawful excuse or justification discloses—

- (e) the fact that the order or notice has been made;
- (f) the details of the order or notice;
- (g) anything done pursuant to the order or notice; or
- (h) any data collected or recorded pursuant to the order,

commits an offence.

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

- (c) on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or
- (d) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.

Disclosure of
traffic data

22K. If a Magistrate is satisfied on the basis of information on oath by a police officer, that there are reasonable grounds to believe that computer data stored in an apparatus is reasonably required for the purpose of a criminal investigation into a data message, he may require a person to disclose sufficient traffic data about the data message to identify—

- (c) the internet service provider; or
- (d) the path,

through which the data message was transmitted.

Remote forensic
tools

22L.(1) If a Judge is satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above, that there are reasonable grounds to believe that computer data which is required for the purpose of a criminal investigation into an offence under section 22A, 22B or 22C cannot be collected without the use of a remote forensic tool, the Judge may authorise a police officer of the rank of Superintendent or above, with such assistance as may be necessary, to utilise such tool for the investigation.

(2) An application made under subsection (1) shall contain the following information:

- (e) the name, and if possible, the address of the person who is suspected of committing the offence;
- (f) a description of the targeted computer system;
- (g) a description of the required tool and the extent and duration of its utilisation; and
- (h) reason for the use of the tool.

(3) Where an application is made under subsection (1), the Judge may order an internet service provider to furnish at its own

cost, such information, facilities or technical assistance as may be necessary to support the installation of the remote forensic tool.

(4) Where a remote forensic tool is utilised under this section—

- (d) modifications to a computer system shall be limited to those that are necessary for the investigation;
- (e) modifications to a computer system shall be undone, so far as possible, after the investigation; and
- (f) the following information shall be logged:
 - (v) the technical means used;
 - (vi) the time and date of the application;
 - (vii) the identification of the computer system and details of the modification undertaken; and
 - (viii) the information obtained.

(5) The police officer responsible for a criminal investigation in which a remote forensic tool is utilised under this section shall ensure that any information obtained by the utilisation of the remote forensic tool is protected against modification, unauthorised deletion and unauthorised access.

(6) An authorisation that is granted under this section shall cease to apply where—

- (d) the computer data sought is collected;
- (e) there is no longer any reasonable ground for believing that the computer data sought exists; or
- (f) the conditions of the authorisation are no longer present.

(7) For the purpose of this section, “utilise” includes—

- (e) accessing a computer system;
- (f) developing a remote forensic tool;
- (g) adopting a remote forensic tool; or
- (h) acquiring a remote forensic tool.

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Court may
request
mental
assessment
report

22M. Where a person is convicted of an offence under section 22A, 22B or 22C and the Court is of the view that an enquiry ought to be made into his mental condition before sentence is passed, the Court may request a mental assessment report from a psychiatrist.

Court may make
additional orders

22N.(1) Where a person is convicted of an offence under section 22A, 22B or 22C the Court may, in addition to any other penalty that may be imposed, make the following orders:

Chap. 13:51

(a) a probation order made under the Probation of Offenders Act; or

(b) a community service order or a combination order made under the Community Service Orders Act.

Chap. 13:06

(2) The Court in making an order under subsection (1) shall take into account –

(c) the findings of the mental assessment report referred to in section 22M, where the report was requested;

(d) the nature and gravity of the offence;

(e) whether the offender has been charged or convicted of a registrable offence;

(f) the risk of reoffending;

(g) the risk of harm to the victim or any other person;

(h) whether the victim was a child or a person with a mental disorder;

(i) whether the offender was in a position of care, authority or supervision of the victim;

(j) whether the employment and residence status of the offender are stable; and

(k) any other compelling reasons in the circumstances of the case.

Considerations
regarding
liability of child

22O. A child does not commit an offence under section 22A, 22B or 22C where a reasonable person would consider the conduct of the child acceptable, having regard to the following:

(c) the nature and content of the intimate image;

(d) the circumstances in which the intimate image was taken or shared;

- (e) the age, intellectual capacity, vulnerability or other relevant circumstances of the depicted person;
- (f) the degree to which the child's actions affect the privacy of the depicted person; and
- (g) the relationship between the child and the depicted person.

Order for
payment of
compensation
and rectification

22P. (1) Where a person is convicted of an offence under section 22A, 22B or 22C and the Court is satisfied that the complainant has suffered loss or damage as a result of the commission of the offence it may, in addition to any other penalty imposed, order the person convicted to –

- (a) pay a fixed sum as compensation to the complainant for the loss or damage caused, or likely to be caused, as a result of the commission of the offence, which shall be a charge on the property of the person so convicted; and
- (b) take reasonable actions to remove, retract, recover, delete or destroy any intimate image of the complainant which was taken or shared by the person within a period specified by the Court.

(2) An order made under subsection (1) shall –

- (c) be without prejudice to any other remedy which the complainant may have under any other law; and
- (d) not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order into account when it makes a further award.

(3) The Court may make an order under this section of its own motion or upon application of a person who has suffered damage as a result of the commission of the offence.

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(4) A person who makes an application under subsection (3) shall do so before sentence is passed on the person against whom the order is sought.

(5) A person who, without reasonable excuse, contravenes an order made under subsection (1) commits an offence and is liable on –

- (a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.

Schedule 2
amended

5A. Schedule 2 to the Act is amended –

(c) in paragraph (a), by inserting in the appropriate numerical sequence the following offences:

- “22A Voyeurism.
- 22B Taking and sharing of an intimate image without consent.
- 22C Sharing an intimate image.”; and

(b) in paragraph (c), by inserting in the appropriate numerical sequence the following offences:

- “44A Voyeurism.
- 44B Taking and sharing of an intimate image.
- 44C Sharing an intimate image.”.

Consequential
amendments

6. The written law listed in the First Column of the Schedule is amended to the extent specified in the Second Column of that Schedule:

SCHEDULE

(Section 6)

CONSEQUENTIAL AMENDMENTS

First Column

Second Column

The Children
Act,
Chap. 46:01

Insert after Part VIII, the following new Part:

“PART VIIIA
VOYEURISM

Voyeurism

44A.(1) Subject to ~~subsection (3)~~ [section 44D](#), a person commits the offence of voyeurism if, for the purpose of obtaining sexual gratification for himself or another person, or causing humiliation or distress to a child, he knowingly –

- (a) observes, whether with or without the use of ~~equipment~~ [a device](#), that child doing a private act;
- (b) views, whether with or without the use of ~~equipment~~ [a device](#), beneath the clothing of that child and does so with the intention of enabling himself or another person to observe –
 - (i) the private parts of that child, whether fully or partially exposed or covered with underwear; or
 - (ii) the underwear covering the private parts of that child; or
- (c) takes, captures, records, streams, stores, publishes or transmits through a device or computer system, a visual recording of the private parts of a child.

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

- (a) summary conviction to a fine of ~~two hundred and fifty thousand dollars and to imprisonment for two years~~ [five hundred](#)

thousand dollars and to imprisonment for three years;

or

- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

~~(3) — A person does not commit an offence under this section if the acts that are alleged to constitute the offence are —~~

~~(a) — performed — by — a — law enforcement officer in the lawful execution of his duty with the consent of the child's parent, guardian or a person with responsibility for the child;~~

~~(b) — carried out by an authorized person for medical, forensic, scientific — or — educational purposes with the consent of the child's parent, guardian or a person with responsibility for the child;~~

~~(c) — carried out for the purposes of security monitoring —~~

~~(i) — by a person monitoring his home; or~~

~~(ii) — in premises where there are signs prominently displayed — informing persons that the premises or designated portions of the premises are under surveillance;~~

~~(d) — acts that the person reasonably believed were necessary for the purposes of —~~

- ~~(i) preventing, detecting, investigating or prosecuting crime;~~
- ~~(ii) legal proceedings; or~~
- ~~(iii) the administration of justice; or~~
- ~~(e) in the public interest.~~

Taking and
sharing of an
intimate
image

44B.(1) Subject to ~~subsections (3), (4) and (5)~~
[section 44D](#), a person commits an offence if –

- (a) for the purpose of causing humiliation or distress to a child, he knowingly takes and shares an intimate image of that child;
- (b) for the purpose of obtaining sexual gratification for himself or another person, he knowingly takes and shares an intimate image of a child;
- (c) he knowingly threatens to share an intimate image of a child in circumstances in which he intends to cause the depicted child to fear that the threat will be carried out or he is reckless as to whether the depicted child will fear that the threat will be carried out; or
- (d) he knowingly alters an image of a child to make it appear that the image of the depicted child is an intimate image and shares that altered image.

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

- (a) summary conviction to a fine of ~~two hundred and fifty thousand dollars and to imprisonment for two years~~ **five hundred thousand dollars and to imprisonment for three years**; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

~~(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are –~~

- ~~(a) performed by a law enforcement officer in the lawful execution of his duty with the consent of the child's parent, guardian or a person with responsibility for the child;~~
- ~~(b) carried out by an authorized person for medical, forensic, scientific or educational purposes with the consent of the child's parent, guardian or a person with responsibility for the child;~~
- ~~(c) carried out for the purposes of security monitoring –
 - ~~(i) by a person monitoring his home; or~~
 - ~~(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of~~~~

~~the premises are under surveillance;~~

~~(d) acts that the person reasonably believed were necessary for the purposes of—~~

~~(i) preventing, detecting, investigating or prosecuting crime;~~

~~(ii) legal proceedings; or~~

~~(iii) the administration of justice; or~~

~~(e) in the public interest.~~

~~(4) A person does not commit an offence under this section if he shares an intimate image with a professional legal adviser—~~

~~(a) in connection with the giving by the legal adviser of legal advice to the person;~~

~~(b) in contemplation of, or in connection with, legal proceedings; or~~

~~(c) for the purpose of legal proceedings.~~

~~(5) A professional legal adviser does not commit an offence under this section if he shares an intimate image or other matter—~~

~~(a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or~~

~~(b) with any person—~~

~~(i) in contemplation of, or in connection with, legal proceedings; and~~

~~(ii) for the purpose of those proceedings.~~

~~(6) — Subsection (5) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.~~

~~(7) — Subject to subsection (8), an internet service provider which provides a conduit for the transmission of information, shall not be responsible for—~~

~~(a) — monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or~~

~~(b) — actively seeking facts or circumstances indicating illegal activity in order to avoid criminal liability under this Act.~~

~~(8) — Notwithstanding subsection (7), an internet service provider shall comply with any court order, injunction, writ or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement based on any written law.~~

Sharing an
intimate
image

~~44C.(1) Subject to subsection (3), a person commits an offence if he knowingly shares an intimate image of a depicted child in circumstances in which the depicted child has a reasonable expectation that—~~

~~(a) — he was doing a private act;~~

~~(b) — his private parts would not be visible to the public; or~~

~~(c) — his intimate image would not be shared,~~

~~regardless of whether the intimate image of the depicted child was taken in a public or private place.~~

(1) Subject to section 44D, a person commits an offence if he knowingly shares an intimate image of a depicted child in circumstances in which –

- (a) the depicted child was doing a private act;
- (b) the private parts of the depicted child were not visible to the public; or
- (c) the parent, guardian or person with responsibility for the child has a reasonable expectation that the intimate image of the child would not be shared without their express permission,

regardless of whether the intimate image of the depicted child was taken in a public or private place.

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

- (a) summary conviction to a fine of ~~two hundred and fifty thousand dollars and to imprisonment for two years~~ **five hundred thousand dollars and to imprisonment for three years**; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

~~(3) — A person does not commit an offence under this section if the acts that are alleged to constitute the offence are —~~

- ~~(a) — performed by a law enforcement officer in the lawful execution of his duty with the consent of the child's parent, guardian or a person with responsibility for the child;~~

- ~~(b) carried out by an authorized person for medical, forensic, scientific or educational purposes with the consent of the child's parent, guardian or a person with responsibility for the child;~~
- ~~(c) carried out for the purposes of security monitoring—~~
 - ~~(i) by a person monitoring his home; or~~
 - ~~(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;~~
- ~~(d) acts that the person reasonably believed were necessary for the purposes of—~~
 - ~~(i) preventing, detecting, investigating or prosecuting crime;~~
 - ~~(ii) legal proceedings; or~~
 - ~~(iii) the administration of justice; or~~
- ~~(e) in the public interest.~~

~~Court may
order
compensation
and
rectification~~

~~44D. (1) The Court or body may order a person who is convicted of an offence under sections 44A, 44B or 44C—~~

- ~~(c) to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted; and~~
- ~~(d) to take reasonable actions to remove, retract, recover, delete or destroy any intimate image taken or shared by the person within a period specified by the Court.~~

~~(2) The provisions of subsection (1) shall not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order under subsection (1) into account when it makes a further award.”.~~

Interpretation

~~44E. For the purposes of this Part—~~

~~“computer data storage medium” means anything in which information is capable of being stored, or anything from which information is capable of being retrieved or reproduced, with or without the aid of any other article or device;~~

~~“computer system” means any device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or electronic data;~~

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

- ~~(a) an input device;~~
- ~~(b) an output device;~~
- ~~(c) a processing device;~~
- ~~(d) computer data storage medium;~~
- ~~(e) a program; or~~
- ~~(f) equipment,~~

~~that is related to, connected with or used with such a device or any part thereof;~~

~~“internet service provider” means—~~

- ~~(a) any public or private entity that provides to users of its service the ability to~~

~~communicate by means of a computer system; or~~

~~(b) any other entity that processes or stores computer data on behalf of such communication service or users of such service;~~

~~“intimate image” means a visual recording of a child that depicts—~~

~~(a) the child engaged in a sexual act;~~

~~(b) the child in a manner or context that is sexual; or~~

~~(c) the private parts of the child;~~

~~“law enforcement officer” means—~~

~~(a) a police officer appointed under the Police Service Act;~~

~~(b) a constable as defined under the Supplemental Police Act;~~

~~(c) a member of the Special Reserve Police appointed under the Special Reserve Police Act;~~

~~(d) an employee of the Strategic Services Agency established under the Strategic Services Agency Act;~~

~~(e) a member of the Municipal Police Service appointed under the Municipal Corporations Act; or~~

~~(f) a member of any other agency of the State in which investigative and intelligence gathering powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;~~

~~“private act” means an act done by a child where the child is in a place which, in the circumstances, would reasonably be expected to provide privacy and—~~

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- ~~(a) the private parts of the child are fully or partially exposed or covered only with underwear;~~
- ~~(b) the child is using the toilet, showering or bathing; or~~
- ~~(c) the child is doing a sexual act;~~

~~“private parts” means—~~

- ~~(a) the genitals, pubic area or buttocks of a child; or~~
- ~~(b) the breasts of a female child, whether or not the breasts are sexually developed;~~

~~“sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual;~~

~~“share” means—~~

- ~~(a) publish, distribute, transmit, stream, sell, make available or advertise;~~
- ~~(b) sharing online, including on websites, via email, live streaming or through private messaging services;~~
- ~~(c) sharing offline, including through the post or distribution by hand; or~~
- ~~(d) showing to another person, including images stored on a device or printed copies;~~

~~“visual recording” means a—~~

- ~~(a) photograph or film;~~
- ~~(b) video recording; or~~
- ~~(c) live stream,~~

~~on any medium from which a still or moving image may by any means be produced or transmitted, whether or not accompanied by a soundtrack.”.~~

Exemptions

44D.(1) For the purposes of section 44A, 44B or 44C a person does not commit an offence if the acts that are alleged to constitute the offence are –

- (f) performed by a law enforcement officer in the lawful execution of his duty;
- (g) carried out by an authorised person for medical, forensic, scientific or educational purposes;
- (h) carried out for the purposes of security monitoring –
 - (iv) by a person monitoring his home; or
 - (v) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;
- (i) acts that the person reasonably believed were necessary for the purposes of –
 - (j) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (vi) the administration of justice; or
- (e) in the public interest.

(2) For the purposes of section 44A, 44B or 44C a person does not commit an offence if he shares an intimate image with a professional legal adviser –

- (a) in connection with the giving by the legal adviser of legal advice to the person;

- (b) in contemplation of, or in connection with, legal proceedings; or
- (c) for the purpose of legal proceedings.

(3) For the purposes of section 44A, 44B or 44C a professional legal adviser does not commit an offence if he shares an intimate image or other matter –

- (a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (b) with any person –
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.

(5) For the purposes of section 44A, 44B or 44C and subject to subsection (6), an internet service provider is not liable for –

- (a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or
- (b) actively seeking facts or circumstances which would indicate illegal activity in order to avoid criminal liability under this Act.

(6) Notwithstanding subsection (5), an internet service provider shall comply with any court order, injunction, or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement under section 44A, 44B or 44C.

Jurisdiction

44E.(1) A Court in Trinidad and Tobago shall have jurisdiction in respect of an offence under section 44A, 44B or 44C where the act constituting the offence is carried out—

- (a) wholly or partly in Trinidad and Tobago;
- (b) by a citizen of Trinidad and Tobago, whether in Trinidad and Tobago or elsewhere; or
- (c) by a person on board a vessel or aircraft registered in Trinidad and Tobago.

(2) For the purpose of subsection (1)(a), an act is carried out in Trinidad and Tobago if—

- (a) the person is in Trinidad and Tobago at the time when the act is committed;
- (b) a computer system located in Trinidad and Tobago or computer data on a computer data storage device located in Trinidad and Tobago is affected by the act; or
- (c) the effect of the act, or the damage resulting from the act, occurs within Trinidad and Tobago.

Search and seizure

44F.(1) A Magistrate who is satisfied on the basis of information on oath by a police officer that there is reasonable ground to believe that there is in any building, ship, vessel, carriage, box, receptacle or place an apparatus or computer data—

- (a) in respect of which an offence under section 44A, 44B or 44C has been or is suspected to have been committed;
- (b) which there is reasonable ground for believing will afford evidence as to the commission of an offence under section 44A, 44B or 44C; or
- (c) which there is reasonable ground for believing is intended to be used for the purpose of committing an offence under section 44A, 44B or 44C,

may at any time issue a warrant under his hand authorising a police officer, with such assistance as may be necessary, to search such building, ship, vessel, carriage, box, receptacle or place for any such apparatus or computer data and to seize and carry it before the Magistrate issuing the warrant or some other Magistrate, to be dealt with by him according to law.

(2) Every such warrant may be issued and executed at any time, and may be issued and executed on a Sunday.

(3) A police officer who undertakes a search under this section shall secure any apparatus and maintain the integrity of any computer data that is seized.

(4) When any such apparatus or computer data is seized and brought before any Magistrate, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the matter and if any person is committed for trial, he may order it further to be detained for the purpose of evidence on the trial.

(5) Where a person is not committed for trial, the Magistrate shall direct that the seized apparatus and computer data be restored to the person from whom it was taken unless he is authorised or required by law to dispose of it otherwise.

Order for
removal or
disablement
of data

44G. If a Magistrate is satisfied on the basis of information on oath by a police officer that an internet service provider or any other entity with a domain name server is storing, transmitting or providing access to information in contravention of section 44A, 44B or 44C, the Magistrate may order the internet service provider or other entity with a domain name server to remove, or disable access to, the information.

Production
Order

44H. If a Magistrate is satisfied on the basis of information on oath by a police officer that computer data, a printout or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings, the Magistrate may order—

- (c) a person in Trinidad and Tobago who is in control of an apparatus, to produce from the apparatus computer data or a printout or other intelligible output of the computer data; or
- (b) an internet service provider in Trinidad and Tobago to produce information about a person who subscribes to, or otherwise uses his service.

Expedited
preservation

44I.(1) A Magistrate may, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above, that there are grounds to believe that computer data that is reasonably required for the purpose of a criminal investigation is vulnerable to loss or modification, authorise the police officer of the rank of Superintendent or

above, to require a person in control of the computer data, by notice in writing, to preserve the data for such period not exceeding ninety days as is stated in the notice.

(2) A Magistrate may, on an *ex parte* application by a police officer of the rank of Superintendent or above, authorise an extension of the period referred to in subsection (1) by a further specified period not exceeding ninety days.

Disclosure of
details of an
order

44J.(1) If an order under section 44H or a notice under section 44I stipulates that confidentiality is to be maintained, a person who is the subject of the order or notice and who intentionally and without lawful excuse or justification discloses—

- (e) the fact that the order or notice has been made;
- (b) the details of the order or notice;
- (c) anything done pursuant to the order or notice; or
- (d) any data collected or recorded pursuant to the order,

commits an offence.

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

- (c) on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or
- (b) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.

Disclosure of
traffic data

44K. If a Magistrate is satisfied on the basis of information on oath by a police officer, that there are reasonable grounds to believe that computer data stored in an apparatus is reasonably required for the

purpose of a criminal investigation into a data message, he may require a person to disclose sufficient traffic data about the data message to identify—

- (c) the internet service provider; or
- (d) the path,

through which the data message was transmitted.

Remote
forensic tools

44L.(1) If a Judge is satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above, that there are reasonable grounds to believe that computer data which is required for the purpose of a criminal investigation into an offence under section 44A, 44B or 44C cannot be collected without the use of a remote forensic tool, the Judge may authorise a police officer of the rank of Superintendent or above, with such assistance as may be necessary, to utilise such tool for the investigation.

(2) An application made under subsection (1) shall contain the following information:

- (e) the name, and if possible, the address of the person who is suspected of committing the offence;
- (f) a description of the targeted computer system;
- (g) a description of the required tool and the extent and duration of its utilisation; and
- (h) reason for the use of the tool.

(3) Where an application is made under subsection (1), the Judge may order an internet service provider to furnish at its own cost, such information, facilities or technical assistance as may be necessary to support the installation of the remote forensic tool.

(4) Where a remote forensic tool is utilised under this section—

- (d) modifications to a computer system shall be limited to those that are necessary for the investigation;
- (e) modifications to a computer system shall be undone, so far as possible, after the investigation; and
- (f) the following information shall be logged:
 - (ii) the technical means used;
 - (iii) the time and date of the application;
 - (iv) the identification of the computer system and details of the modification undertaken; and
 - (v) the information obtained.

(5) The police officer responsible for a criminal investigation in which a remote forensic tool is utilised under this section shall ensure that any information obtained by the utilisation of the remote forensic tool is protected against modification, unauthorised deletion and unauthorised access.

(6) An authorisation that is granted under this section shall cease to apply where—

- (d) the computer data sought is collected;
- (e) there is no longer any reasonable ground for believing that the computer data sought exists; or
- (f) the conditions of the authorisation are no longer present.

(7) For the purpose of this section, “utilise” includes—

- (e) accessing a computer system;
- (f) developing a remote forensic tool;
- (g) adopting a remote forensic tool; or
- (d) acquiring a remote forensic tool.

Court may request mental assessment report

44M. Where a person is convicted of an offence under section 44A, 44B or 44C and the Court is of the view that an enquiry ought to be made into his mental condition before sentence is passed, the Court may request a mental assessment report from a psychiatrist.

Court may make additional orders

44N.(1) Where a person is convicted of an offence under section 44A, 44B or 44C the Court may, in addition to any other penalty that may be imposed, make the following orders:

Chap. 13:51

- (a) a probation order made under the Probation of Offenders Act; or
- (b) a community service order or a combination order made under the Community Service Orders Act.

Chap. 13:06

(2) The Court in making an order under subsection (1) shall take into account –

- (a) the findings of the mental assessment report referred to in section 44M, where the report was requested;
- (b) the nature and gravity of the offence;
- (c) whether the offender has been charged or convicted of a registrable offence;
- (d) the risk of reoffending;

- (e) the risk of harm to the victim or any other person;
- (f) whether the victim was a child or a person with a mental disorder;
- (g) whether the offender was in a position of care, authority or supervision of the victim;
- (h) whether the employment and residence status of the offender are stable; and
- (i) any other compelling reasons in the circumstances of the case.

Order for
payment of
compensation
and
rectification

44O.(1) Where a person is convicted of an offence under section 44A, 44B or 44C and the Court is satisfied that the complainant has suffered loss or damage as a result of the commission of the offence it may, in addition to any other penalty imposed, order the person convicted to –

- (c) pay a fixed sum as compensation to the complainant for the loss or damage caused, or likely to be caused, as a result of the commission of the offence, which shall be a charge on the property of the person so convicted; and
- (d) take reasonable actions to remove, retract, recover, delete or destroy any intimate image taken or shared by the person within a period specified by the Court.

(2) An order made under subsection (1) shall –

- (c) be without prejudice to any other remedy which the complainant may have under any other law; and

- (d) not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order into account when it makes a further award.

(3) The Court may make an order under this section of its own motion or upon application of a person who has suffered damage as a result of the commission of the offence.

(4) A person who makes an application under subsection (3) shall do so before sentence is passed on the person against whom the order is sought.

(5) A person who, without reasonable excuse, contravenes an order made under subsection (1) commits an offence and is liable on –

- (c) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or
- (d) conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.

Interpretation

44P. For the purposes of this Part –

“apparatus” includes –

- (a) a computer system or part of a computer system; or
- (b) a computer data storage medium;

“computer data” means any representation of –

- (e) facts;
- (f) concepts;
- (g) machine-readable code or instructions; or

(h) information, including text, sound, image or video, that is in a form suitable for processing in a computer system and is capable of being sent, received or stored and includes a program that can cause a computer system to perform a function;

“computer data storage medium” means anything in which information is capable of being stored, or anything from which information is capable of being retrieved or reproduced, with or without the aid of any other article or device;

“computer system” means any device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or electronic data;

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

- (a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) a computer data storage medium;
- (e) a program; or
- (f) equipment,

that is related to, connected with or used with such a device or any part thereof;

“internet service provider” means –

- (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system; or
- (b) any other entity that processes or stores computer data on behalf of such communication service or users of such service;

“intimate image” means a visual recording of a child that depicts –

- (a) the child engaged in a sexual act;
- (b) the child in a manner or context that is sexual; or
- (c) the private parts of the child;

“law enforcement officer” means –

- (a) a member of the Prison Service established under the Prison Service Act;
Chap. 13:02
- (b) a police officer appointed under the Police Service Act;
Chap. 15:01
- (c) a constable as defined under the Supplemental Police Act;
Chap. 15:02
- (d) a member of the Special Reserve Police appointed under the Special Reserve Police Act;
Chap. 15:03
- (e) an employee of the Strategic Services Agency established under the Strategic Services Agency Act;
Chap. 15:06
- (f) a member of the Municipal Police Service appointed under the Municipal Corporations Act;
Chap. 25:04
or
- (g) a member of any other agency of the State in which investigative and intelligence gathering powers, similar to those exercisable by a police officer

appointed under the Police Service Act, are lawfully vested;

“private act” means an act done by a child where the child is in a place which, in the circumstances, would reasonably be expected to provide privacy and –

- (a) the private parts of the child are fully or partially exposed or covered only with underwear;
- (b) the child is using the toilet, showering or bathing; or
- (c) the child is doing a sexual act;

“private parts” means –

- (a) the genitals, pubic area or buttocks of a child; or
- (b) the breasts of a female child, whether or not the breasts are sexually developed;

“remote forensic tools” means investigative software or hardware installed on or attached to a computer system that is used to perform a task that includes keystroke logging or transmission of an internet protocol address;

“sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual;

“share” means –

- (a) publish, distribute, transmit, stream, sell, make available or advertise;
- (b) sharing online, including on websites, via email, live-streaming or through private messaging services;

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- (c) sharing offline, including through the post or distribution by hand; or
- (d) showing to another person, including images stored on a device or printed copies;

“traffic data” means computer data that –

- (a) relates to a communication by means of a computer system;
- (b) is generated by a computer system that is part of the chain of communication; and
- (c) shows the communication’s origin, destination, route, time, date, size, duration or the type of underlying services,

and references to traffic data being attached to a communication include references to the data and the communication being logically associated with each other;

“visual recording” means a –

- (a) photograph or film;
- (b) video recording; or
- (c) live-stream,

on any medium from which a still or moving image may by any means be produced or transmitted, whether or not accompanied by a soundtrack.”.

Passed in the Senate this day of , 2021.

Clerk of the Senate

I confirm the above.

President of the Senate

SSC (Senate) on the Sexual Offences (Amendment) (No. 3) Bill

Passed in the House of Representatives this day of , 2021.

Clerk of the House

I confirm the above.

Speaker

APPENDIX V

MATRIX OF COMMENTS/ISSUES RAISED BY STAKEHOLDERS

Sexual Offences (Amendment) (No. 3) Bill, 2021
Matrix of Stakeholder Comments

Clauses	Stakeholders		Action to be taken	Comments
	Stakeholder/ Entity	Stakeholder Comments/Issues/Recommendations		
			LRC Policy No action required	LRC Policy No action required
1 Short title				
2 Commence- ment				
3 Interpreteta- tion				
4 Section 2 amended	Trinidad and Tobago Police Service (TTPS)	Had no significant difficulties with the definitions proposed in the Bill. Felt that as law enforcement, what would be needed is a sensitisation programme to assist the public in understanding the law.	No action required.	
“computer data storage medium”				
“computer system”				
“device”	Children’s Authority	Should the term ‘device’ be used instead of ‘equipment’	LRC	The term device means ‘any electronic programmable device...and includes – (f)

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				<i>equipment, that is related to connected with or used with such a device or any part thereof.’ This definition of device contemplates an electronic device.</i> The use of the term ‘equipment’ in 22A and 44A refers to the ordinary use of the term which is broader and is defined as ‘things that are used for a particular purpose’, which may include mirrors etc. Consider maybe extending the definition of device to include a piece of equipment/instrument/apparatus which may be used manually and by itself such as a mirror or binoculars
	Public Defenders’ Department	Equipment can also include a mirror eg. upskirting.	LRC	Equipment can include a mirror, camera, phone, binoculars etc.
“internet service provider”	Ministry of Foreign and CARICOM Affairs	Does the Bill cover responsibility for monitoring material for any potentially local social media platforms	LRC	It does not cover responsibility for local social media platforms.
“intimate image”	Ministry of Social Development	Do the offences only relate to digital images or can they apply to paintings, drawings etc of individuals without their consent	LRC	The offences are not meant to cover paintings or drawings of individuals as these may arguably be termed as works of art. A review of various

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	and Family Services Ministry of Foreign and CARICOM Affairs	Will the Bill cover intimate images created by drawing, painting, sketches or similar forms that are shared without consent		jurisdictions (UK, Canada, Australia) has revealed that making and sharing a nude or sexual drawing or painting is not an offence in those jurisdictions. The UK Law Commission Paper on Intimate Image Abuse has also stated the following at page 148 – <i>6.14 Nude or sexualised drawing, painting or sculpture is not, even in part, an actual image of the victim. It is far enough removed from the victim not to warrant criminalisation. Additionally, we recognise the importance of artistic expression, and do not think that this should be curtailed without compelling evidence that doing so is both necessary, to protect the public, and proportionate.</i>
	Media Association	The term “manner or context that is sexual” needs further clarification.	LRC	This was drafted in a wide manner to not only cover the sexual act itself but also acts that may, given the circumstances, would be considered sexual.
	Publishers and Broadcasters Association	The language in the definition of “intimate image” needs to be tightened. Also, clarify “privacy”. Additionally suggested the tightening up of the language in certain definitions which were not specified.	LRC	See above.
“law enforcement officer”	Immigration Division Ministry of National Security	Should it be expanded to include Immigration Officer?	LRC	s.12 of the Immigration Act Chap. 18:01 provides for the powers of Immigration Officers. Paragraph (f) would cover Immigration Officers as they would be a member of any other agency of the State in which investigative and intelligence

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				gathering powers, similar to the police, are vested.
	Trinidad and Tobago Prison Service (TTPrS)	Include prison officers as they routinely, in the exercise of their duties, take images of inmates which may include intimate areas, conduct intrusive searches and are involved in taking DNA samples. TTPS supports this proposal.	LRC	Included prison officers in the definition of 'law enforcement officer' <i>'a member of the Prison Service established under the Prison Service Act;'</i>
"private act"	Media Association	Greater clarification needed regarding public/private spaces and reasonable expectations of consent. Most images during carnival can be construed as 'up-skirting' or down-blousing'. Concerned that photographers would not be sufficiently covered although there is the 'reasonable expectation' proviso.	LRC	The private act is done in a place where there is a reasonable expectation of privacy. This does not mean that the act must occur in a private place. For example, a changing room in a clothing store or a public toilet is a place where one would reasonably be expected to be private.
"private parts"	Center for Nonviolence, Research and Development	Include 'mouth' in the definition of "private parts".	Policy.	<u>Disagree</u> Mouth is not included in any legislation that treats with voyeurism.
	Feminitt Caribbean	Clearly define the term "private parts" to ensure there is no vagueness.	LRC	"private parts" are described as genitals, pubic area, buttocks and breasts. These are the terms that are used in other pieces of legislation. UK – genitals, buttocks or breasts NSW – genital area or anal area, breasts Canada - genital organs, anal region or breasts Consider including 'anal region/area' instead of buttocks for clarity

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“sexual act”	Ministry of Social Development and Family Services	Definition too vague	LRC	The definition is tied to what a reasonable person would consider to be sexual.
“share”				
“visual recording”	Ministry of Foreign and CARICOM Affairs	Does the Bill capture audio recording?	LRC	No, it does not capture audio recordings. While the definition of the term ‘visual recording’ does capture photograph, film, video recording and live streams with or without a soundtrack, the soundtrack or audio recording alone is not intended to be captured under the offences in the Bill.
Inclusion of additional definitions	Ministry of Social Development and Family Services	The following terms should be defined: “complainant” – includes but is not limited to a victim regardless of age, parent/guardian, teacher/child care provider, social worker, health care worker attending to a minor and has found evidence of sexual abuse and religious leaders “consent” “accused” or “defendant” “spouse”	LRC	The Summary Courts Act, Chap. 4:20 includes definitions of “complainant” and “defendant”, therefore there is no need to define same The terms “accused”, “spouse” and “defendant” are not currently included in the Bill and so do not require definition. Section 28 of the Sexual Offences Act sets out the parameters for determining consent in relation to sexual intercourse or any other sexual act. The issue of whether consent was in fact given, or

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				given in the absence of threats/intimidation etc. would also depend on the circumstances of each case
	Office of the Prime Minister (Gender and Child Development)	Should “sexual gratification” be defined	LRC	The term “sexual gratification” is also used in the Children Act at sections 23, 24 and 25A without being delineated. Other jurisdictions that use the term or a similar term such as the UK, Canada and Australia have also not defined it UK - s. 67 Sexual Offences Act uses “sexual gratification” Canada - s.162 Canadian Criminal Code uses “sexual purpose” Australia (New South Wales) - s. 91J Crimes Act uses “sexual arousal or sexual gratification
	Promoters Association	Indicated that the word ‘underwear’ should be defined to prevent ambiguity, as some persons may view a carnival costume as being underwear. How does one deal with a person in an intimate setting in a music video eg. in a bedroom in underwear? Felt that the word ‘consent’ should be defined and questioned	LRC LRC	See policy explanation below relating to swimwear. Unless a carnival costume is being worn as underwear, it would not be considered ‘underwear’. See section 28 Sexual Offences Act.

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		whether verbal consent would stand up in Court. Also suggested that ‘sexual gratification’ should be defined. Cited a situation where a Peeping Tom was caught and then says that it was not for the purpose of sexual gratification, he was just looking. What happens then?		The term “sexual gratification” is also used in the Children Act at sections 23, 24 and 25A without being delineated. Other jurisdictions that use the term or a similar term such as the UK, Canada and Australia have also not defined it.
	Media Association	Define what is a ‘reasonable expectation’. What may be ‘reasonable’ during the everyday context of our lives may change during carnival.	LRC	The term ‘reasonable’ is a term used in both civil and criminal law and is matter for the courts to determine.
	Center for Nonviolence, Research and Development	Amplify the meaning of the word ‘consent’. Clarify the term ‘sexual gratification’. Determining what is ‘reasonable’ may prove to be challenging. Consider professionals eg. photographers doing their job. What does that look like and mean in the public sphere when you have a large number of individuals in a space where professionals have to do their job? How are professionals protected and how are the persons in that space protected from harm?	LRC	See section 28 Sexual Offences Act. The term “sexual gratification” is also used in the Children Act at sections 23, 24 and 25A without being delineated. Other jurisdictions that use the term or a similar term such as the UK, Canada and Australia have also not defined it. The term ‘reasonable’ is a term used in both civil and criminal law and is matter for the courts to determine.
	Feminitt Caribbean	Define ‘consent’. The Law Association noted that the concept of ‘consent’ was set out in the Sexual Offences Act.	LRC	See section 28 Sexual Offences Act.
		Define ‘sexual gratification’. The Law Association agreed that the term ‘sexual gratification’ was very wide and should be tightened.	Policy.	<u>Disagree</u> The term “sexual gratification” is also used in the Children Act at sections 23, 24 and 25A without being delineated. Section 23 of the Children Act

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		Expand the meaning of underwear to include swimwear, particularly in relation to children. Consider an amendment to the Children Act.	Policy	states <i>inter alia</i>: (1) <i>Where a person engages in an activity and— (a) the activity is sexual; and (b) for the purposes of obtaining sexual gratification, the person engages in it— (i) when a child is present or when a child is in a place from which the person can be observed; and (ii) knowing or believing that the child is aware, or intending that the child should be aware, that the person is engaging in sexual activity...</i> <u>Disagree</u> It was held in Police Service for Northern Ireland v MacRitchie [2009] NI 84 (1) <i>“The meaning of underwear, for the purposes of s 68 of the 2003 Act, could not be extended to cover swimwear worn on any occasion. If it is worn as underwear and for that purpose, it would qualify as underwear within the terms of the 2003 Act. Otherwise, it would not. On the evidence that had been available to the magistrate, she had been entitled to conclude that the only images actually recorded by the defendant were of the complainant clad in her bikini. The evidence clearly indicated that throughout the time that she had been wearing the bikini, the complainant wore it as swimwear rather than as underwear”.</i> Therefore, according to the case law, swimwear is differentiated from underwear (unless it is worn as underwear, i.e. covered by garments) and in this
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				regard, the meaning of underwear should not include swimwear.
		Cited the terms ‘reasonable person’, ‘reasonably know’, ‘reasonable actions’ and felt that a definition should be provided or a different word used to help persons understand what this means. The Law Association noted that the term ‘reasonable person’ is a well-known concept in both civil and criminal law, defined generally as the person who is normal in society, so there may be no need to further define same. Ultimately it is a matter for the Courts to determine based the circumstances of each case, whether or not a person’s conduct was reasonable.	LRC	The term ‘reasonable’ is a term used in both civil and criminal law and is matter for the courts to determine.
	Public Defenders’ Department	“consent” Section 91O <i>NSW Crimes Act, 1900 No.40</i> defined ‘consent’. Insert instances when consent is deemed to have been given and when it cannot be given. This would protect, for example, under-aged persons, persons with limited mental capacity or persons who may have been threatened or coerced to give consent. This insertion would make the legislation more operational “authorized person” The term “authorized person” should be clearly defined to prevent any abuses of the wide-ranging exceptions at 22A, B, & C (3)(b). Alternatively, consider the NSW precedent where, in terms of exceptions/statutory defences, one must have regard to the nature and content of the image, the circumstances in which it was taken/shared, the circumstances of the person depicted in	LRC LRC	See section 28 Sexual Offences Act. The authorized person must be acting for a specific purpose such as medical, forensic, scientific or educational purposes. If he is acting for the purposes of sexual gratification, causing humiliation, distress etc. he will not be exempted.

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		the image (age, intellectual capacity, vulnerability, other relevant considerations), the degree to which the actions of the accused affected the depicted person's privacy, and the relationship between the accused and the depicted person.		
	Alliance for State Action	"consent" & "sexual gratification" Define "consent" – 'consent is indicated by agreeing by choice, and having the freedom and capacity to make that choice. The definition should include factors that vitiate...' [footnote 5 of submission]. The defining of "consent" is not only important for clarity, but also cultural change and socialising young people into understanding what is consent. Also consider the concept of 'conditional consent' – where consent for the taking and sharing under specific circumstances is given, but the sharing has happened outside of the specific consent given. Define "sexual gratification".	LRC	See section 28 Sexual Offences Act. The term "sexual gratification" is also used in the Children Act at sections 23, 24 and 25A without being delineated. Other jurisdictions that use the term or a similar term such as the UK, Canada and Australia have also not defined it.
5 New sections 22A, 22B, 22C and 22D inserted	Office of the Prime Minister (Gender and Child Affairs)	Adult offenders should be distinguished from child offenders See s.20 of the Children Act which guides the Courts in treating with them Higher penalties where child is victim Offenders with diminished capacity were not captured in the Bill and should be treated differently given that they may be	LRC	Section 20 decriminalizes certain types of sexual activity between children. Child offenders are already distinguished under the Part X of the Children Act and specific provisions are made for them with respect to bail, interviews, appearing before court, sentencing etc.

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		suffering from illnesses such as dementia Consent not adequately addressed. Where a relationship deteriorates consent should be immediately diminished or automatically revoked		Further, section 43 of the CA provides that a child who is convicted for offence under Part V, VI and VIII or the SOA, is liable to reduced fines. It is to be noted that while this would cover the offence of voyeurism in the SOA, it does not cover the same offence in the CA unless an amendment is made to insert Part VIIIA in s.43.
	CreativeTT	Reckless intention to commit the acts should be included even if it leads to a lesser sentence upon conviction	LRC	According to the Response from the Ministry of Foreign and CARICOM Affairs dd17/02/22, there is no obligation under the International Conventions that provides specifically for 'reckless intent' in image-based abuse, although states are under the obligation to protect women and children from violence.
	Children's Authority	Exemptions for educational purposes too broad. Need further restrictions to ensure privacy and confidentiality is protected What does lawful security monitoring constitute?	LRC	The CA includes an exemption for <i>'teacher or counsellor in the execution of his duties for the purpose of education or counselling'</i> in s.40(5)(h), which deals with child pornography. However, the authorized person must be acting for a specific purpose such as medical, forensic, scientific or educational purposes. If he is acting for the purposes of sexual gratification, causing humiliation, distress etc. he will not be exempted. The term used is 'security monitoring' and it is given a generally accepted meaning, namely, the monitoring of one's home or premises with the intent of securing same from criminals.

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	Ministry of Social Development and Family Services	Should consent be reconsidered under circumstances where a person was vulnerable at the time of giving consent Street dwellers are a vulnerable group and may service perpetrators. Legislation should address this.	LRC	See section 28 Sexual Offences Act.
	Ministry of Foreign and Caricom	Creation of an offence of sharing images for financial gain and/or from hacked or stolen computers, phones or other electronic devices Extend the offences to cover reckless intention to cause distress to the victims as a form of punishment Extend the offences to cover threats to distribute images, without the consent of the victim in exchange for monetary gain or to other benefit. Higher penalty should be applicable where an image is shared for financial gain Crimes against adults who are of diminished capacity mentally should carry a stiffer penalty	LRC	The offence is committed regardless of whether it was done for financial gain. As noted above, there is no obligation under the International Conventions that provides specifically for 'reckless intent' in image-based abuse, although states are under the obligation to protect women and children from violence.
	Alliance for State Action	A larger definition of 'motive' beyond sexual gratification and causing humiliation or distress is needed across the provisions of the Bill. There are other motives eg. coercion, power and control, which should be included. 22A, B & C – include the concept of 'copying' In addition to 'taking' and 'sharing', the copying of an image should also be included. 22A, B, C (3) (c)(i) – security monitoring in homes Homeowners should be under an obligation to inform visitors of the presence of cameras.	LRC	'Share' is defined broadly to include publish, distribute, transmit, stream, sell, make available or advertise, share through the post or distribute by hand, show to another person. There is currently no requirement in the Bill to display signs informing persons that a home is being monitored.

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		The term ‘monitoring’ should be defined to reduce ambiguity regarding what can be considered monitoring for security purposes. The legislation does not adequately disaggregate the ‘taking’ from the ‘sharing’ in this instance. The provision is too expansive and seems to give homeowners immunity from prosecution both for the taking of the images and for the disseminating of same without consent. There should be more specificity regarding the circumstances in which images taken for the purpose of security monitoring can be shared eg. only share with the police.		Consider refining.
	Public Defenders’ Department	<u>22A, B & C (2) – penalties</u> Penalties should be re-evaluated as the sums are extensive and draconian. Suggested a fine of \$5,000 – 15,000. There should be a reduction in penalties for child offenders, taking into consideration their age and status in society.	Policy. LRC	This point can be raised for any criminal offence. It should be noted that sentencing is a judicial discretion and the Court is entitled to consider the age of the victim when sentencing. Additionally, based on stakeholder feedback thus far, the consensus is that where the perpetrator is a child, the fine should be lower and there should be a rehabilitative component included in the sentence. Further, section 43 of the CA provides that a child who is convicted for an offence under Part V, VI and VIII or the SOA, is liable to reduced fines. It is to be noted that while this would cover the offence of voyeurism in the SOA it does not cover the same offence in the CA unless an amendment is made to insert Part VIIIA in s.43.

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		<u>22A, B & C (2) – offences triable either way</u> The offences set out in the Bill should be heard summarily, having regard to the backlog of matters awaiting trial in the criminal justice system. Indicated that it was not appropriate for persons to be awaiting 10+ years to have matters such as these dealt with, especially where the order for the offending material to be destroyed comes upon conviction. If one does not intervene at an early stage, the harm will be continuing to the victim until the order to destroy the material is made. Cited the example of the <i>NSW Crimes Act, 1900 No.40</i> where there are base offences and aggravated offences, but they are all heard summarily with alternative verdicts for the lesser offence.	Policy	Even though the offences are triable either way, it does not prevent the matter from being disposed of summarily. Also, with the proclamation of AJIPA there would also be a significant decrease to the length of time for matters to be disposed of. Additionally, section 33(2) of the Summary Courts Act imposes a limitation of period for making a complaint and states inter alia: <i>“In every case where no time is specially limited for making a complaint for a summary offence in the Act relating to such offence, the complaint shall be made within six months from the time when the matter of the complaint arose, and not after”</i> In the UK these matters are also triable either way with a maximum sentence of two (2) years.
22A Voyeurism	Ministry of National Security	22A(1)(b) to include the words ‘in circumstances where the private parts would not otherwise be visible’ taken from 67A(1) of the UK Sex Offences Act 2003. 22A(3)(c) Where a homeowner installs security cameras or hidden camera within his home for the main purpose of voyeurism of persons he invites into his home but installs it under the guise of security monitoring, he still has a defence for the crime.	LRC	Consider revising draft accordingly. The exemption would only be available if it was done for the purpose of security monitoring.

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		Consideration given to restricting the use of cameras or specifically hidden cameras in private areas where there is an expectation of privacy Should owner of property declare that property is monitored by camera surveillance		There is currently no requirement in the Bill for a homeowner to display signs declaring that his property is being monitored for security purposes.
	TTPS	<u>22A(3), 22B(3), 22C(3) – exculpatory sections</u> Was of the view that it is not necessary to provide that only officers above a certain rank should have the authority to search/detain suspects with respect to intimate images on devices and treat with the storage/management of any evidence because of the sensitive nature of same. Internal checks and balances together with standard operational procedures are in place. The focus should not be on rank, but on the relevant skills/expertise to perform the task.	No action required.	
		Generally felt that the wording of the exceptions was adequate to protect police officers from being accused of acts of voyeurism. However, there was some concern with subsection (3)(d) and the issue of ‘acts reasonably believed to be necessary’. The TTPS noted that initially there may be questions raised regarding the ‘reasonableness’ of actions taken by police officers, but any queries would be resolved based on their internal practices and procedures.	No action required.	
	TTPS & TTPrS	There is no need for a provision in the Bill to treat with law enforcement officers who may facilitate the unauthorised sharing of intimate images/crime scenes. There are other avenues to treat with like scenarios.	No action required.	
	TTPS	<u>22A(2), 22B(2), 22C(2) – penalties</u> The penalties stipulated in the Bill are stiff and should not be higher for law enforcement officers who commit acts which are	No action required.	

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		not in the legitimate performance of their duties. Additionally, there will be other disciplinary consequences eg. termination of employment.		
		Where an offence is committed by an adult against a child, the penalties should be higher. Additionally, where the perpetrator is a child, the fine should be lower and there should be a rehabilitative component included in the sentence.	Policy.	<u>Disagree</u> This point can be raised for any criminal offence. It should be noted that sentencing is a judicial discretion and the Court is entitled to consider the age of the victim when sentencing. Additionally, based on stakeholder feedback thus far, the consensus is that where the perpetrator is a child, the fine should be lower and there should be a rehabilitative component included in the sentence.
	TTPS & TTPrS	There should be mandatory psychological evaluation before sentencing. Counselling and rehabilitation are critical. There should be a mandatory rehabilitation programme for all persons convicted of sexual offences.	Policy.	<u>Agree</u> While there is no mandatory psychological evaluation before sentencing, the District Court has an inherent discretion to do so - s. 66A of the Summary Courts Act where a person is before the Court. <i>“66A. (1) Where, on the trial by the Court of an offence punishable on summary conviction with imprisonment, the Court is satisfied that the offence has been committed by the accused, but is of the opinion that an inquiry ought to be made into his physical and mental condition before the method of dealing with him is determined, the Court may adjourn the hearing to enable a medical examination and report to be made and shall remand him.”</i>

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			LRC	Section 50(6) of the Sexual Offences Act (as amended by Act No. 13 of 2021) states <i>inter alia</i>: <i>The Court, before making a determination pursuant to an application made under subsection (3), may request a mental assessment report from a psychiatrist.</i> Consideration can be given for a similar power in the High Court with the discretion of the Court to enable a mental assessment, or the inclusion of a similar provision in the Voyeurism Bill. The court found mandatory psychological assessments to be onerous and caused a delay in the matter, in order to acquire same. Consider the following new provision in the Sexual Offences Act and the provision would be replicated in the Children Act <i>Where a person is convicted of an offence under section 22A, 22B or 22C and the Court is of the view that a mental assessment report is required before sentencing, the Court may request a mental assessment report from a psychiatrist.</i> <i>Where a person is convicted of an offence under section 44A, 44B or 44C and the Court is of the view that a mental assessment report is required before sentencing, the Court may request a mental assessment report from a psychiatrist.</i>
	Media Association	How is the prosecution going to prove intent as prescribed – “...for the purpose of obtaining sexual gratification for himself or	No action required	

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		another person, or causing humiliation or distress to a person, he knowingly...”? Shouldn't the onus be on the defendant to prove that he did not have the intention of obtaining sexual gratification or causing humiliation/distress?		
	Law Association	<u>22A, B & C (3) – exculpatory sections</u> If you don't limit the chapeau to the conduct as opposed to the reason you are doing it, can create an ambiguity. It should be clearly stated that the defence does not arise where the conduct is linked to obtaining sexual gratification or causing humiliation/distress. Recommended that the chapeau be amended to read – ‘A person does not commit an offence under this section if the conduct that is alleged to constitute the <i>actus reus</i> of the offence is...’. It should be made clear that a person cannot start off doing something which is legitimate and end by doing something which the Bill intends to prohibit.	LRC	Consider revising.
	Center for Nonviolence, Research and Development	<u>22A, B & C (3)(a)&(b)</u> Does not take into account law enforcement officers and other authorised persons abuse and reckless use of power. Noted that law enforcement and other professionals, who may observe and take pictures etc. are exempt from punishment. The concern is that these persons may use their authority to commit acts against a person's body that violates aspects of this Bill. What measures can be put in place to protect a victim from further harm and protect someone from potential harm. Cited instances of women going to the police station to make reports and they have been coerced by law enforcement officers, or	LRC No action required	If the acts are not performed in the lawful execution of their duty they would not be caught under the exemption.

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		officers have used their authority and position to abuse their spouses/partners. What type of framework can be implemented within public and private places of employment that protects individuals from further harm or potential harm? As we progress as a society, there must be a humanisation of public policies and laws.		
	Law Association	<u>22A, B & C (3)(c) – security monitoring</u> There is a difference between public and private. It should be clearly articulated that the defence of security monitoring may not arise in a public place where there is an expectation of privacy eg. a changing room. Persons should know premises are being monitored, there should be signage and the law should provide for same. Similarly, if an employee/guest on private premises is in an area where there may be an expectation of privacy eg. bedroom, they ought to be informed that they may be monitored and the law should provide for this.	LRC	For the security monitoring of premises, there is a requirement to display signage indicating that the premises or designated portions of the premises are being monitored. There is no such requirement for security monitoring in a person's home.
	Caribbean Center for Human Rights	If the acts are to be considered illegal under the law, then a distinction should be made regarding whether or not the images are to be shared or shown to someone else. Can see the need for cameras in public bathrooms and changing rooms eg. to deal with employees stealing goods or shoplifters. There should be notification so that people know they are being monitored.	LRC	The acts must be committed for the purpose of sexual gratification, causing humiliation or distress. There is the requirement to post signs in premises indicating that the premises are under surveillance.
	Media Association	Not sure what security monitoring means in this context and wondered whether it should be linked to being in connection with legal proceedings. Can anyone simply claim they are monitoring	LRC	Security monitoring is for the purpose of securing one's home.

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		premises for security purposes and will therefore not be in breach of the law?		
	Center for Nonviolence, Research and Development	This clause can be abused and used recklessly by homeowners. Persons should be advised that they are being monitored on private premises which are equipped with cameras. Simply because one may not be able to conceive a crime, does not mean that there are individuals in society who may commit such a crime. For example, husbands/partners monitoring their significant other in the bathroom. Suggested the Bill should be amended to protect the homeowner and also the person coming into the home. Public policies should be preventative in nature.	LRC	For the security monitoring of premises, there is a requirement to display signage indicating that the premises or designated portions of the premises are being monitored. There is no such requirement for security monitoring in a person's home.
	Feminitt Caribbean	Although signs may be placed in changing rooms/bathrooms that premises are being monitored, that does not inherently give consent especially to what happens with that footage after. Consider the regulation of security monitoring in guest houses and the possible video recording of sexual acts.	LRC	For the security monitoring of premises, there is a requirement to display signage indicating that the premises or designated portions of the premises are being monitored.
	Law Association	22A, B & C (3)(d)(ii) – scope of the term “legal proceedings” The Law Association was asked if they felt the term “legal proceedings” was too wide in terms of giving someone leeway or a reason to conduct video surveillance with respect to family law proceedings. Can it open up the floodgates of persons committing all sorts of intrusions of privacy for the sake of “legal proceedings”? For example, someone installs cameras if their spouse is suspected of infidelity...can that person raise a defence of using the footage for their divorce proceedings? The Law Association indicated that there may already be rules governing the admissibility of tape recordings taken without consent. They indicated that the section is wide and the terms ‘legal proceedings’ or ‘the administration of justice’ would mean	No action required	

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		that any types of videos would be admissible subject to the rules of evidence. As it stands now, video evidence is admissible once one can relate it to the relevancy of the matter. Sen Lutchmedial noted that one has to be careful with respect to persons feeling emboldened to commit an act of voyeurism that may cause humiliation or distress, because they are permitted to do so in the pursuance of legal proceedings or when contemplating legal proceedings. Sen Mitchell also raised the issue of private investigators carrying out surveillance to capture images, especially where there are contentious proceedings in family law. The Law Association undertook consider the matters raised and to send their views on same.		
	Media Association	22A, B & C (3)(e) – what is meant by the term “public interest”? A broader definition of “public interest” is needed, which takes T&T’s cultural festivals into consideration and also takes into account mental illness. Cited a Canadian definition of ‘public good’ as being ‘necessary or advantageous to religion or morality, the administration of justice, the pursuit of science, literature, or art, or other objects of general interest’. Noted that in terms of the media, the definition needs to go beyond having the image in your possession and having the ability to share it. One must consider how the media has used the image. In response, the Law Association felt that the context and structure of 22A and the use of the word “knowingly” in the chapeau of 22A(1), was very specific and would not extend to the public media in the course of their duties.	LRC	Public interest was used to capture those acts that would engage the public interest. This exemption would include the publication of journalistic material where it can be shown that there was a legitimate need for the public to have access to that material. In any event, it would be for the Courts to decide in the particular circumstances of a given case whether the person reasonably believed that acts were necessary for the purposes of the public interest.
	Law	Felt that the phrase “in the public interest” is an extremely	LRC	Public interest was used to capture those acts that

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	Association	nebulous concept and needed to be tightened. The breadth of the phrase creates uncertainty regarding the circumstances which would create an immunity to the commission of an offence under the legislation.		would engage the public interest. This exemption would include the publication of journalistic material where it can be shown that there was a legitimate need for the public to have access to that material. In any event, it would be for the Courts to decide in the circumstances of a given case whether the person reasonably believed that acts were necessary for the purposes of the public interest.
22B Taking and sharing of an intimate image without consent	Ministry of Social Development and Family Services	22B(1) Include an offence as follows: “where an intimate image is taken and used as leverage to cause someone to commit an act (criminal or otherwise) against their will” 22B(4) – what are the consequence if the legal adviser shares the image or uses his/her station to obtain images that are then shared for illegal purposes or used to obtain money/property from the client to prevent release? 22B(2)(a) – Fines for acts done to children should be more than those posted for adults and should include mandatory imprisonment as well as their inclusion on a register of sex offenders which should be made available	LRC Policy	A professional legal adviser will not be exempted if shares the intimate image with a view to furthering any criminal purpose. This point can be raised for any criminal offence. It should be noted that sentencing is a judicial discretion and the Court is entitled to consider the age of the victim when sentencing.
	Media Association	The Media Association was asked whether this section potentially adversely affects media photographers. In response, the Media Association indicated that they had no problem with most of the amendments and the ‘grey areas’ related to photography. They were not sure the amendments sufficiently protected the work of	No action required	

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		media photographers. It was noted that the exception ‘in the public interest’ may not specifically attach to media photographers in the course of their duties. Sen Mitchell indicated that the Ministry of National Security provided a helpful suggestion modelled after s.67A(1) UK Sexual Offences Act, which would lend further clarity and create exceptions eg. in the case of carnival, modelling. Consider inserting the words ‘...In circumstances where the private parts of the person would not otherwise be visible...’. It was suggested that the submission from the Ministry of National Security be sent to the Media Association, Promoters Association and other stakeholders for their comments on whether that amendment is helpful to exculpate media/professional photographers in the course of their duties. With respect to consent, it was noted that professional photographers have an established standard and procedure for receiving consent.	LRC No action required No action required	Consider revising.
	Promoters Association	Raised the issue of intimate images unintentionally downloaded on one’s cell phone from messaging groups. When intimate images are shared in a group, the settings for the ‘app’ may automatically download these images onto your cell phone. If a person receives and is in possession of these images what happens then? Further, if one thinks of ‘intent’, if the ‘app’ is not set to automatically download an image and a person downloads it on their own, how does one treat with that? Also mentioned intimate images/videos from a previous	LRC	Consent must be obtained for the taking and

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		relationship which are intentionally stored, although the depicted person requested that the images be deleted. If one is found in possession of those images, what happens when there is no written/recorded proof that the depicted person asked that the images be deleted? How would the law treat with that?		sharing of the intimate image.
	Public Defenders' Department	Motivations eg. 'joking' and 'coercing' should be included in the scenarios. This may be particularly common amongst youth offenders who, in their opinion, do not have malicious intent and take/share the image as a joke or source of humour.		
	Alliance for State Action	The <i>mens rea</i> should include both 'knowingly and recklessly'.	LRC	As noted above, there is no obligation under the International Conventions that provides specifically for 'reckless intent' in image-based abuse, although states are under the obligation to protect women and children from violence.
22C Sharing an intimate image	Ministry of National Security	Include 'being reckless as to whether or not that person gave their consent to that conduct . see s.162.1(1) of the Canadian Criminal Code.	LRC	As noted above, there is no obligation under the International Conventions that provides specifically for 'reckless intent' in image-based abuse, although states are under the obligation to protect women and children from violence.
	Public Defenders' Department	22B & 22C – duplicitous offences May give rise to multiple offences with the same elements. See section 91L(7) <i>NSW Crimes Act, 1900 No.40</i> which treats with this 'double jeopardy' scenario.	LRC	Consider refining.
	Alliance for State Action	Threats to share an intimate image should also be criminalised. Additionally, the motive for the threats should include humiliation, coercion, control or causing distress to an individual.	LRC	Threats to share an intimate image are criminalized under the proposed 22B(1)(d).

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22D Court may order compensation and rectification	Public Defenders' Department	The legislation should empower the Court to penalise an offender who does not comply with an order under 22D(1) or 44D(1).	Policy. LRC	Agree Sections 91P, 91Q and 91R of the <i>NSW Crimes Act, 1900 No. 40</i> create offences pertaining to voyeurism. Section 91S (1) allows the Court to order the person found guilty of these offences to take reasonable actions for the removal, retraction, recovery, deletion or destruction of intimate images recorded or distributed. Section 91S (2) - (3) provides a penalty for a person who contravenes any order made under Sections 91S (1): (2) <i>A person who, without reasonable excuse, contravenes an order made under this section is guilty of an offence.</i> <i>Maximum penalty—50 penalty units or imprisonment for 2 years, or both.</i> (3) <i>An offence against this section is a summary offence.</i> Consider the following draft provisions 22D. (3) <i>A person who, without reasonable excuse, contravenes an Order made under subsection (1) commits an offence and is liable on summary conviction to a fine of and imprisonment foryears.</i> 44D (3) <i>A person who, without reasonable excuse,</i>
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				<i>contravenes an Order made under subsection (1) commits an offence and is liable on summary conviction to a fine of and imprisonment foryears.</i>
6 Consequential amendments	Children's Authority	Amendment should take into account that those in positions of trust be held to a higher standard of accountability and that it is included as a mandatory reported offence Consideration be given to including an employee of the Children's Authority who in the course of conducting their lawful duty is designated to carry out social investigations in relation to abuse or any offence in relation to a child Would voyeurism be considered a registrable offence pursuant to s.31 of the Sexual Offences Act or a mandatory reporting offence , given that the sexual offences under the CA require mandatory reporting Sections 29, 30 and 31 of the CA should be included to capture persons in positions of trust, hold them to higher standard of responsibility and impose higher sentences.	LRC Policy	The offence of child pornography includes the following exemption at s.40(5)(h). <i>'any person employed by the Authority who is designated to investigate abuse of a child or any offence against a child;'</i> Section 31 of the Sexual Offences Act deals with the mandatory reporting of suspected abuse of children. This is also dealt with under sections 9,10,18 and 19 of the Children Act. Voyeurism is not a registrable offence. However, Schedule I of the Sexual Offences Act has the following listed as a registrable offence: • Causing a child to watch a sexual act • Exposing a child to pornography • Abuse of positions of trust and familial relationships.

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				The concerns raised by the CA is covered already in existing pieces of legislation. Voyeurism with respect to children is included in the schedule above. However, whether voyeurism is to be added to the Schedule as a registrable offence for adults, is a matter to be considered by the Committee.
44A Voyeurism				
44B Taking and sharing of an intimate image	Ministry of Social Development and Family Services	44B(2)(a) - Fines for acts done to children should be more than those posted for adults and should include mandatory imprisonment as well as their inclusion on a register of sex offenders which should be made available 44B(3)(a) – what are the consequences if the parents/guardians are responsible for sharing the pictures. This responsibility should be carried out by a trained officer in the presence of parents/care givers/guardians 44B(3)(c) – where security monitoring of properties is done external to premises and at a third party location, this needs to be addressed 44B(4)(a) – this should not be allowed as it relates to children. The Professional legal adviser should not be given this authority.	Policy.	This point can be raised for any criminal offence. It should be noted that sentencing is a judicial discretion and the Court is entitled to consider the age of the victim when sentencing. Additionally, based on stakeholder feedback thus far, the consensus is that where the perpetrator is a child, the fine should be lower and there should be a rehabilitative component included in the sentence.

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		44B(5) – where paralegals are collecting information, will this be permitted		
44C Sharing an intimate image	Children’s Authority	44C(1)(c) would an intimate image include a situation where a parent may share a baby picture of their child in a manner considered to be “innocent” where parts of the child’s body are exposed Fines for offences against children should be increased	Policy	This point can be raised for any criminal offence. It should be noted that sentencing is a judicial discretion and the Court is entitled to consider the age of the victim when sentencing. Additionally, based on stakeholder feedback thus far, the consensus is that where the perpetrator is a child, the fine should be lower and there should be a rehabilitative component included in the sentence.
44D Court may order compensation and rectification				
44E Interpretation	Children’s Authority	Ensure definition of “sexual act” does not conflict with “sexual” in Children Act. There should be 1 definition in the CA.	LRC	<u>Bill</u> <i>“sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual</i>

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				<u>CA</u> 3. (2) For the purposes of this Act, penetration, touching or any other activity is sexual if – (a) it is not done for medically recognized purposes; and (b) a reasonable person would consider that – (i) the person’s purpose in relation to it, is, because of its nature sexual; or (ii) because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual Apart from paragraph (a) in the CA, the CA definition follows closely the UK definition in s.78 of their Sexual Offences Act, 2003. Consider revising the definition in the Bill in keeping with the UK precedent.
	Ministry of Social Development and Family Services	“intimate image” definition open to interpretation Consider the definition of child pornography in s.3 of the Trafficking in Persons Act to clarify the different types of images referred to in the Bill	LRC	This was drafted in a wide manner to not only cover the sexual act itself but also acts that may, given the circumstances, be considered sexual.
Additional Comments				
Audio recordings	TTPS & TTPrS	Inclusion of provisions dealing with the taking and sharing of audio recordings that are sexual in nature. These audio	Policy.	<u>Disagree</u> While a specific offence relating to audio

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		recordings may be used to harass, humiliate, intimidate, blackmail the victim.		recordings may not currently exist in a sexual offence context, it may not be properly included under the voyeurism offences but instead a separate sexual offence may be created under the existing Sexual Offences Act. The Sexual Offences (Amendment) (No.3) Bill, 2021 is concerned with intimate images and not audio recordings. While the definition of the term ‘visual recording’ does capture photograph, film, video recording and live streams with or without a soundtrack, the soundtrack or audio recording alone is not intended to be captured under the offences in the Bill. The UK Law Commission’s Consultation Paper on Intimate Image Abuse also does not cover audio recordings. In other jurisdictions such as Canada and Australia (New South Wales, Queensland), the term ‘visual recording’ or ‘intimate image’ is used in relation to voyeurism. It is clearly contemplated that it is an image and not an audio recording that is required for the offence. It should also be noted that in the United States, a federal law known as the Video Voyeurism Prevention Act of 2004 was passed and that too relates to images and not audio recordings. While States such as Michigan and South Carolina however do include audio recording in their definition of voyeurism, their offences incorporate
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				eavesdropping as well as voyeurism.
	Alliance for State Action	Audio recordings of a sexual nature and their dissemination without consent when taken in circumstances in which the person recorded had a reasonable expectation that they were doing a private act should be criminalised.	LRC	See above.
	TTPS & TTPrS	Signage indicating that premises are under surveillance generally viewed as a crime deterrent. Consider whether private premises should also have signs indicating that the premises are being monitored. There would be spaces in both public and private premises where a person would have an expectation of privacy eg. washroom.	LRC	Currently signage does not apply to private premises.
		Consider the taking and sharing of intimate images of deceased persons at crime scenes. Is this a lacuna in the proposed law?	LRC	The Bill currently does not cover this scenario and it is doubtful whether it can be captured with the construct of the Bill. A corpse cannot give/withhold consent and no humiliation/distress can be occasioned to a corpse.
	Feminitt Caribbean	A survivor-centered approach is required which takes into consideration the needs of the survivor first. In the Bill it seems as if the onus placed on the defendant to prove he did not have a specific intent. But if the survivor is stating that the defendant's actions caused them harm, although that was not the intent, where does this leave the survivor? How is the issue dealt with? The impact of the act that caused harm should be considered by the Court. Is an image/video recording destroyed when a case is concluded? These matters should be addressed in the Bill. The Law Association noted that in matters before the Court a victim impact statement is to be made available by the	LRC	The proposed section 22D and 44D provide for to Court to order a person who is convicted of an

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		prosecution. Additionally, perhaps a provision could be put in the Bill that any offensive images/video recordings are to be destroyed – similar to the destruction of exhibits when they are illegal. There are conventions that T&T would have signed and ratified. Although one cannot legislate for every instance, it is important to stay true to these conventions which address human rights and the protection of the individual.		offence under the Bill to take reasonable actions to remove, retract, recover, delete or destroy the intimate image.
	Center for Nonviolence, Research and Development	Consider a person’s right to change their mind or revoke consent during/after an act – eg. a person may freely give initial consent to be observed, photographed or recorded and subsequently changes their mind during/after the sexual act. With respect to forced/coercive consent, the concern is where an individual uses any type of information about another person or their presence in a particular environment, to coerce that person to participate in an act against their will. Cited an example of landlords forcing tenants who lost their jobs during the pandemic and are unable to pay their rent, to either participate in a sexual act or go on the streets. The Bill should contain wording which prevents and protects victims with respect to coercive attacks and acts of violence. The Law Association noted that consent must be free and not tainted by any type of threat, fraud or misrepresentation. Additionally, an incapacitated person does not have the ‘free will’ to consent. One has to look at ‘proper consent’ in the eyes of the law. Although there may be other laws that speak to pornography, consider the insertion of a pornography clause in the Bill.	LRC Policy.	See section 28 of the Sexual Offences Act. <u>Disagree</u>

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		Consider the issue of forced/coercive consent, where a person is forced to view intimate images/videos or engage in pornographic activities without full and free consent, or under duress. Consider alternatives to imprisonment.	Policy. LRC	See sections 23, 24 & Part VIII, Children Act for possible precedents. Child pornography is already dealt with under Part VIII the Children Act. Sections 23 and 24 of the Children Act already treat with a child being forced or coerced into watching a third person engage in a sexual act. <u>Agree</u> Consideration can be given to this and it should be dependent on the circumstances surrounding the commission of the offence. The UK provides for out of court disposals dependent on the circumstances surrounding the offence, such as probation and community service. <u>Alternatives to imprisonment</u> <i>(1) Where a person is convicted of an offence under section 22A, 22B or 22C, the Court may, in addition to any other penalty that may be imposed, make the following Orders:</i> <i>(a) a probation order made under the Probation of Offenders Act; or</i> <i>(b) a community service order or a combination order made under the Community Service Orders Act;</i> <i>(2) The Court in making an Order under subsection (1) shall take into account –</i> <i>(a) the findings of the mental assessment report, where the report was requested;</i>
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				(b) the nature and gravity of the offence; (c) whether the offender has been charged or convicted of a registrable offence; (d) the risk of reoffending (e) the risk of harm to the victim or any other person; (f) whether the victim was a child or a person with a mental disorder; (g) whether the offender was in a position of car, authority or supervision of the victim; and (h) whether the employment and residence status of the offender are stable; (i) any other compelling reasons in the circumstances of the case.
		Laws may work to regulate behaviours but not the conscience. A country's progress is seen in the way it protects its citizens through its laws, development and strategies. Violence in all its forms can be used to manipulate unequal power relations. Would like to see a law that perpetuates the reduction of violence in this context, holds people to account for their crimes against another individual and works to protect the survivor. Important to have survivor focused and trauma informed policies.	No action required	
	Law Association	Something is needed to treat with educating law enforcement and how they deal with victims of sexual abuse.	No action required	
	Caribbean Center for Human Rights	How does one prove a negative? That you don't have a certain intention?		
	Center for Nonviolence,	Use gender inclusive/neutral language. Referenced the UK Office of the Parliamentary Counsel and Government Legal Department	Policy.	<u>Disagree</u> Section 16(1) Interpretation Act provides that

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	Research and Development; Feminitt Caribbean	'Guide to Gender–Neutral Drafting'.		“Words in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons.” Additionally, section 16(2) provides that words in the singular include the plural and words in the plural include the singular.
Wider approach to sentencing needed	Public Defenders' Department	The sentencing regime proposed in the Bill provides for deterrence but does not allow for rehabilitation of offenders to curb the likelihood of reoffending. The root cause of the deviant behaviour should be identified and addressed eg. voyeuristic disorder. The sentencing approach may include, for example, counselling, psychological intervention, electronic monitoring.	Policy.	Consideration can be given to this and it should be dependent on the circumstances surrounding the commission of the offence. The UK provides for out of court disposals dependent on the circumstances surrounding the offence, such as probation and community service.
	Alliance for State Action	Part of the arsenal of the Courts should be the ability to order mandatory gender–responsive, psycho–educational interventions for perpetrators of this type of harm in an attempt to foster a greater understanding of the meaning of their actions. With respect to child offenders in particular, priority should be placed on ensuring that these types of interventions are provided instead of imposing a fine/imprisonment as a first line of response.	Policy. LRC	Consideration can be given to this and it should be dependent on the circumstances surrounding the commission of the offence. The UK provides for out of court disposals dependent on the circumstances surrounding the offence, such as probation and community service. Child offenders are already distinguished under the Part X of the Children Act and specific provisions are made for them with respect to bail, interviews, appearing before court, sentencing etc. Further section 43 of the CA provides that a child who is convicted for offence under Part V, VI and VIII or the SOA, is liable to reduced fines. It is to be noted that while this would cover the offence of

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				voyeurism in the SOA it does not cover the same offence in the CA unless an amendment is made to insert Part VIIIA in s.43.
Introduction of an 'interim order' to stop the sharing of images	Public Defenders' Department	Sen. Lutchmedial asked for the Department's views on introducing some sort of interim proceedings, similar to an injunction in the civil courts. For example, a District Court Judge being empowered to make an order barring the dissemination of the material at the start of the proceedings. The Public Defenders' Department indicated that the NSW precedent provided for the destruction of the material at the end of the proceedings. However, it was noted that in the Domestic Violence Act there is precedent for an interim protection order. One would have to consider the standard of proof, but the suggestion is useful in terms of mitigating any further damage caused.	Policy	A similar precedent for an interim protection order as seen in the Domestic Violence Act may be included. Section 8(1) states inter alia <i>"On an application for a Protection Order, the Court may make an Interim Order, pending the hearing and determination of the proceedings, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the applicant."</i>
	Alliance for State Action	In terms of the process, especially in relation to children, one has to protect against the continued sharing of images. The legislation has to provide for the sharing to be stopped in real time, at the moment of charging. Consider whether it is possible to attach an 'injunction'/'interim order' to a charge, so that one immediately puts a stop to the sharing. Rights with respect to freedom of expression have to be balanced against harm done, especially to children. In any event, for all proceedings that are initiated, there should be a presumption that the images have to be removed and sharing stopped.		
Youth Offenders	Public Defenders' Department	The taking and sharing of intimate images is very common amongst teenagers. In the NSW legislation where a person is under the age of eighteen and considered an offender, before	LRC	The DPP recommended the inclusion of such a provision.

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		that person is charged the DPP must give approval for those charges. This provides added oversight to the process. Section 91T(1)(d) <i>NSW Crimes Act, 1900 No.40</i> sets out exceptions which may be suitable when considering youth offenders: A person does not commit an offence if – ‘(d) a reasonable person would consider the conduct of the accused person acceptable, having regard to each of the following (to the extent relevant)— (i) the nature and content of the image, (ii) the circumstances in which the image was recorded or distributed, (iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the person depicted in the image, (iv) the degree to which the accused person’s actions affect the privacy of the person depicted in the image, (v) the relationship between the accused person and the person depicted in the image.’ With respect to youth offenders, these are factors which may be considered to determine if the conduct complained of rises to the level of criminal conduct. This would mitigate against the ‘victimisation’ of children. There is precedent for this in the UK with the Crown Prosecution Service.	Policy. LRC	Consider that the consent of the DPP must already be obtained under s. 116 of the Children Act 116. <i>Proceedings for an offence under Part V, VI or VIII, with respect to which the alleged perpetrator is a child, shall not be instituted except by or with the consent of the Director of Public Prosecutions</i> <u>Agree</u> These factors can be considered. New provision in the Sexual Offences Act and the provision would be replicated in the Children Act 22E. <i>A child does not commit an offence under sections 22A, 22B or 22C where a reasonable person would consider the conduct of the child acceptable, having regard to the following – (a) the nature and content of the intimate image; (b) the circumstances in which the intimate image was taken and shared; (c) the age, intellectual capacity, vulnerability or other relevant circumstances of the depicted person; (d) the degree to which the child’s actions affect the privacy of the depicted person; (e) the relationship between the child and the depicted person.</i>
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		Sen Lutchmedial considered the practicality of the proposal having regard to the current resource constraints of the DPP's office. It was noted that at present there is a practice of certain charges not being laid until the DPP has reviewed the file. Consider time delays and whether some sort of initial review process by the Courts would be better. The sentencing approach under the Bill is punitive but with respect to youth offenders, consider an approach that aligns with restorative justice.	Policy	<u>Disagree</u> With the proposed consequential amendment to insert a new Part VIIA into the Children Act, a child offender will fall under section 59 which deals with the determination of the sentence of a child. More specifically section 59(3) states <i>inter alia</i>: <i>(3) "Where a child is convicted of any offence and the offence is his first offence, the Court may pronounce a custodial sentence only if convinced that— (a) the offence is so grave that no other punishment or course of action that it is authorised to impose under this Act is sufficient; and (b) having regard to such information revealed pursuant to subsection (1), it is in the best interest of the child that he be placed in an appropriate Community Residence".</i>
	Alliance for State Action	One has to be ahead of the technology and protect young adolescents/minors from themselves. The legislation should be clear that the sharing of images of minors into the internet space where it goes on in perpetuity with infinite reach, has to be akin to a strict liability situation. This is a policy decision for Parliament	LRC	Child offenders are already distinguished under the Part X of the Children Act and specific provisions are made for them with respect to bail, interviews, appearing before court, sentencing etc.

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		in order to protect young people from foreseeable harm which can colour their entire lives. The legislation has to be carefully and thoughtfully crafted regarding the treatment of young people, their evolving capacity and evolving sexuality. Avoid the criminalisation of children as far as possible. Supports the position of the Public Defenders' Department that there ought to be a screening process before criminal proceedings are commenced against minors. In addition to the DPP, screening should be done by social services, the Children's Authority.		Further section 43 of the CA provides that a child who is convicted for offence under Part V, VI and VIII or the SOA, is liable to reduced fines. It is to be noted that while this would cover the offence of voyeurism in the SOA it does not cover the same offence in the CA unless an amendment is made to insert Part VIIIA in s.43.
Insert provision on the dissemination of unsolicited and unwelcome messages	Alliance for State Action	Create an offence with respect to the dissemination of unsolicited and unwelcome messages with sexually explicit content through emails and other personal messaging services. Section 30A <i>Offences Against the Person Act</i> addresses harassment, but the Alliance is not of the view that this type of harassment of a sexual nature is covered under that provision. The motive for this type of offence could be causing humiliation or distress, sexual gratification, exercising power and control, harassment, a joke etc. These 'motivating factors' can be used in 22A & B. Additionally, anonymous dissemination should be considered an aggravating factor when determining the nature of the punishment.	Policy	Policy and prescription for this type of offence is being managed under Sexual Harassment legislation.
Insert provision on adults using	Alliance for State Action	Causing a child to take images should be criminalised. In this scenario, both the child and the depicted person are being harmed.	Policy	Section 24 of the Children Act deals with causing a child to watch a sexual act. Section 24(1) states:

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children to capture and disseminate materials without consent				<i>“Where a person, for the purpose of obtaining sexual gratification, causes a child to watch a third person engaging in an activity, or causes a child to look at an image of any person engaging in an activity and— (a) the activity is sexual; and (b) the child is under sixteen years of age”</i>
Insert provision on the dissemination of an image without consent of the depicted person	Alliance for State Action	Recommends the creation of an offence of possessing/storing an image and knowing or having reason to suspect that the taking/dissemination of that image is without the consent of the depicted person.	LRC	The proposed section 22A(1)(c) provides for the offence of voyeurism if, <i>for the purpose of obtaining sexual gratification or causing humiliation or distress to a person he knowingly – takes, captures, stores, ...a visual recording of the private parts of a person without the consent of that person...’</i>
Include a direct reference to the concepts of ‘upskirting’ and ‘down-blousing’	Public Defenders’ Department	The UK has noted that upskirting and downblousing is quite common, especially amongst children who may stand under stairs or use mirrors to ‘upskirt’, or use cellphones to ‘downblouse’	LRC	This is provided for in the Bill.
Under-reporting of voyeuristic behaviour	Public Defenders’ Department	Because many acts of voyeurism may be committed in secret, the means by which the offence can be detected and reported should be considered. There is a possibility of underreporting especially in relation to children.	No action required	

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Victim's 'reasonable expectation' that he was doing a private act	Public Defenders' Department	The 'reasonable expectation' of a victim may be a difficult element to prove	LRC	The term 'reasonable' is a term used in both civil and criminal law and is matter for the courts to determine.
The act of receiving voyeuristic images with intent to share or distribute not covered by the legislation	Public Defenders' Department	Persons who receive intimate images may also use them for business purposes. Concerned with persons who encourage or facilitate the receipt, purchase and distribution of intimate images.	LRC	The proposed section 22C provides for the offence of knowingly sharing an intimate image without the consent of the depicted person or without reasonably believing that the depicted person consents.
Gender-neutral language.	Public Defenders' Department	The use of the word "he" in each offence amounts to gender stereotyping.	LRC	Section 16(1) Interpretation Act provides that "Words in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons."
	Alliance for State Action	Sexual offences are disproportionately targeted against young girls/women and the legislation has to acknowledge this in very specific ways, including the use of gender-neutral language. Discriminatory practice.	LRC	Section 16(1) Interpretation Act provides that "Words in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons,

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				corporations, whether aggregate or sole, and unincorporated bodies of persons.”
Sharing/ Receiving images	Publishers and Broadcasters Association	The sharing of images impacts directly on members of the media in terms of the practice of journalism. When people are trying to get action on an issue or call attention to an issue, the media are involuntarily the recipients of images that may fall under the realm of this legislation. Often, it is not a case of the media taking and sharing images but being the recipients of same. Although the media is protected by existing laws and journalistic practices regarding the publication of certain categories of material, the Association is concerned that the provisions of the Bill can have the effect of forcing media practitioners into some sort of self-censorship in the practice of journalism. With respect to ‘sharing’ in particular, cited concern for the blurred lines of social media vis-à-vis traditional mass media (radio, television, newspaper). Material is now shared in the public domain in a completely different manner, so how do we treat with that?	No action required	
Exemptions for media practitioners	Publishers and Broadcasters Association	What exemptions exist for journalists? The Bill is vague and can affect press freedom. The exceptions in the Bill reference specified categories of persons, but there is no specific provision which addresses the business of journalism – press coverage, protecting the public interest, the public’s right to know etc.	LRC	Journalists may fall under the public interest exemption. If a separate exemption is to be created, the issue would then arise as to the definition of ‘journalist’.

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		Sen Richards asked whether the Association had any suggestions/solutions regarding how these types of laws should protect the work of the media while at the same time offering the protection to members of the public that the proposed legislation seeks to provide. How do we move forward and find common ground? How is the protection to be cleaved out in a realm where media practitioners are no longer domiciled in specific media houses but are doing good work on blogs etc.? It was also noted that a continuing challenge was the definition of a journalist, the evolving definition of a journalist and the evolving definition of what is in the public interest. In response the Association noted that the legislation should specifically identify that journalists are covered, instead of doing so by implication. Journalism needs to be elevated to one of the stated professions identified under the exculpatory provisions in the Bill. Further, there needs to be a clear definition of what the practice of journalism is, compared to what was once broadly defined as ‘citizen journalism’. It was suggested that in order to be termed a ‘journalist’ one had to belong to the Association and be subject to the rules/regulations of the Association, which regulates the conduct of its members. The Association felt that it was not difficult to differentiate between practicing journalists and others who may simply set up a Facebook page, for example. The Association was also of the view that the Bill under review borrows quite liberally from elements of the Cybercrime Bill, in the specific matters of voyeurism and revenge porn. The Association articulated that this was concerning, as the Cybercrime Bill in a way criminalises some of the day-to-day practices of journalists in terms of collecting information,		
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		gathering images and other things. They felt that journalists would now be exposed in the conduct of their everyday duties, as they are not within the specified categories of persons in the exculpatory sections. The Association also noted that their biggest challenge was that they were governed by archaic legislation. Sen Lutchmedial asked how the media saw itself as being disadvantaged by the provisions of the Bill, when it essentially seeks to criminalise private acts and things that happen in private spaces. In terms of things of a sexual nature, what can be shared, what should be published and what should be obtained by means of video recording/photograph should be clear. Therefore, once the public interest requirement is met, the defence afforded to the media is there.		
Role of the software platform provider with respect to the sharing of images	Publishers and Broadcasters Association	Platforms such as WhatsApp are able to identify how many times an image has been shared and the nature of the image. The legislation must include a provision that the software platform provider is to have some level of culpability when images are shared.	LRC	Currently, the proposed 22B(7) only provides that internet service providers shall not be responsible for monitoring the information it stores, or actively seeking facts or circumstances indicating illegal activity. The ISPs however must comply with any court order, injunction or writ that obliges them to terminate or prevent an infringement.
Amend section 20 Children Act	Alliance for State Action	Disappointed that there is no proposal to amend this section in order to decriminalise same-sex sexual activity between children. The continuing failure to decriminalise same-sex intimacy between consenting children and young adults is a form of	No action required	

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		discrimination based on sexual orientation and is in violation of human rights.		
Public/ Private spaces	Alliance for State Action	The focus on what is a public or private space may obscure the harm being experienced by many in what we think of as a public sphere eg. people bathing at standpipes. In communities people live so closely together that many things are done in the hearing and visuals of the community. Don't 'overprivilege' the private space – the mischief we're trying to get at is the harm being perpetrated against people who are engaging in life, in a reasonable expectation of privacy. One can have an expectation of privacy in a public place. The elements of place, motive and harm have to be balanced.	No action required	
Capturing an image in a public space	Publishers and Broadcasters Association	Permission should not be required to take a photo of an event that is occurring in public view.	No action required	

APPENDIX VI

MINORITY REPORT

**Report of the Special Select Committee (Senate) on the
Sexual Offences (Amendment) (N0. 3) Bill, 2021**

Report submitted pursuant to Standing Order 104 (6)

Pursuant to a resolution of the Senate on Tuesday January 11, 2022, a Special Select Committee was established to consider and report by February 01, 2022 on the Sexual Offences (Amendment) (No. 3) Bill, 2021.

Two Interim Reports were presented in the Senate on Tuesday February 08, 2022 and Wednesday May 25, 2022 respectively. An extension of time was sought to June 30, 2022 to complete the Committee's work and submit its final report.

Whilst the undersigned does not object in principle to the draft report circulated to members on 13th June 2022 by email, there is a concern regarding the omission of a clause to address a form of interim/injunctive relief in the bill.

This proposal was raised frontally by the undersigned in the debate and at various Committee meetings and the views of stakeholders were sought. The proposal found favour with the representative of the Public Defender's Officer (Mr Morgan), who drew a comparison to the Court's power under the Domestic Violence Act and noted the ability to legislate for such a power. Ms Roberta Clarke was also in agreement that such a provision would be of great value to minimise the impact on victims whilst matters were pending before the Court.

At the 7th meeting of the Committee, it was agreed that the views of the DPP would be sought on this matter. To date the undersigned is not aware whether the DPP has provided an opinion. However, the DPP's view on the suitability and practicality of such a provision is valuable and the Committee would benefit greatly from an opinion on the matter.

At the committee's final meeting it was raised that no such provision was included in the Bill, and whilst the Committee was informed that a provision had been drafted, it appeared to be omitted without any plausible explanation.

An undertaking was given by the Chairman/Attorney General that an amendment would be moved at the Committee of the Whole to address this concern.

The undersigned wishes to place on the record of the Committee's Report that the critical importance of such a provision to give effect to the underlying policy of the bill, that is, to minimise the harm to victims of the offenses created by the Bill.

Given the endemic delays which plague the criminal justice system, the absence of a power to retrain the Defendant who is before the Court from continuing to share and distribute or to permit the sharing and distributing of material covered by the Act would render any possible redress to the victim meaningless.

The Court should, in the view of the undersigned, have the power to compel a Defendant, under the penalty of contempt, to remove the material from any platform under his control and to cease and desist from distribution.

In the absence of the ability for the Court to grant injunctive relief at the earliest possible occasion in criminal cases which can take a number of years to be completed, the Bill would fail to achieve one of the most important objectives.

Whilst the undertaking of the Chairman/Attorney General is noted, the undersigned reiterates its position for the purposes of the record.

Sgd.

Signed : Jayanti Rachel Lutchmedial
Opposition Senator.