SENATE

Tuesday, June 15, 2021

The Senate met at 10.00 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have received a request for leave of absence from Sen. Evans Welch for today's sitting. The leave the Member seeks has been granted. I have also granted leave of absence to Sen. Anil Roberts who is ill.

Hon. Senators, I am awaiting correspondence from Her Excellency in respect of the absence of Sen. Roberts so therefore, I will ask if we can revert to this item on the Order Paper later in the proceedings.

URGENT QUESTIONS

Pfizer Vaccines

(Details of Documentation)

Sen. Wade Mark: Thank you very much, Madam President. To the Minister of Health: Can the Minister explain why the donated 80 vials of Pfizer vaccines arrived in this country without the necessary and proper documentation?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. [*Desk thumping*] Good morning to you, good morning to this honourable Chamber and to all listening. Madam President, let us contextualize this. Trinidad and Tobago has a history when it comes to donations of receiving donations very often, sometimes by the container load pending documentation.

International aid agencies over the years have done this, and what we do is hold these things in bond pending the arrival of full documentation. More recently in the case of receipt of AstraZeneca vaccines which were not yet documented by WHO

for EUL, we accepted a gift of 2,000 doses, held it in bond pending documentation. The instant case is no different as we have done for donations over the years. The vaccines were imported again, and they are being held in bond pending further documentation as I have outlined with precedent. Thank you very much.

Sen. Mark: Madam President, can the Minister indicate why the CMO, Chief Medical Officer and the Ministry were not apprised of this donation before its arrival at the Piarco International Airport?

Hon. T. Deyalsingh: That is not an accurate statement if you listened to the CMO's comments yesterday. Once we were informed by Customs, we liaised with Customs and took the vaccines into our custody pending full documentation as we have done in the past with donor agencies and with the AstraZeneca vaccines.

Sen. Mark: Next question, Madam?

Pfizer Vaccines

(Recipients of)

Sen. Wade Mark: Madam President, to the Minister of Health: Can the Minister indicate who will be vaccinated with the 80 vials of Pfizer vaccines which were recently donated to this country?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. So as is stated in the public domain by the hon. Minister of National Security, they will make the final determination as to who will be the recipients of these vaccines. The Ministry of Health makes vaccines available but we do not specify individuals, it is up to the agency whether it is a private sector agency, a public sector agency, to decide who will do that. My information is as in the public domain, it will be reserved for members under the remit of the Ministry of National Security.

Sen. Mark: Madam President, can the Minister deny or confirm that these

vaccines or vials have been imported for private citizens within this country closely associated with the ruling party?

Madam President: That question is not—that question is not allowed.

Sen. Mark: Madam President, may I proceed to the third question therefore?

A&V Oil and Gas Limited

(Details of Arbitration to the High Court)

Sen. Wade Mark: To the hon. Attorney General and Minister of Legal Affairs: In light of the recent arbitration award amounting to approximately $1 billion in favor of A&V Oil and Gas Limited, will the State be filing application to the High Court to seek to have this arbitration award set aside?

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi) Thank you, Madam President. Madam President, Sen. Mark's question is as dangerous as the one he just last asked. There is no award for $1 billion; let us start with that. There is a black and white written judgment which starts at TT $84 million. So that flight of fantasy that Sen. Mark is on, he is on his own.

Secondly, this is a matter engaging the attention of Petrotrin. The Office of the Attorney General has no dealings with this matter and never has. This matter will be considered by their counsel as to whether an appeal is in order. And it is important to bear in mind that this matter arose from a gross untruth or rather an unconfirmed position put forward by the Leader of the Opposition. So the decision is one which is under review. The three arbitrators in this matter, Sir Dennis Byron, Lord David Hope and Justice Humphrey Stollmeyer held unanimously in favour of the claimant in those proceedings. The matter is under review, and this caution is offered to Sen. Mark in particular, stop exaggerating figures when the black and white figures are starting at $84 million, Madam President.

Sen. Mark: Can the hon. Minister who is famous for hyperbolic statement—

Madam President: Sen. Mark, please.

Sen. Mark: May I—

Madam President: No. Please. Yes, state your question.

Sen. Mark: Can I seek from the hon. Attorney General to indicate whether he is not conflicted in this matter as Attorney General? And whether, Madam President—

Madam President: No. There is one question to ask and I will not allow that question. You have one more.

Sen. Mark: Can the hon. Attorney General indicate who were the lawyers representing Petrotrin and by extension the State in this very important arbitration matter, Madam President?

Hon. F. Al-Rawi: Sure. Madam President, I am very pleased to say that Mrs. Deborah Peake of Senior Counsel led the team of lawyers acting for Petrotrin. And let me underwrite this statement in plain English. I have, as Attorney General, no role in this matter therefore it is ludicrous to even ask if I have a conflict, if I am not involved, again, a flight of fantasy that Sen. Mark is putting onto the table.

Sen. Mark: May I say that you are involved and you are conflicted.

Madam President: Sen. Mark, I will ask you to withdraw that statement.

Sen. Mark: I withdraw it but—

Madam President: Thank—no but, just you have one more.

Sen. Mark: I am guided, Madam President.

Madam President: Yes.

Sen. Mark: I do not know why the AG is so flighty this morning.

Homes for the Elderly

(Measures for Assistance)

Sen. Wade Mark: Madam President, let me address the final question to the hon. Minister of Social Development and Family Services. Given reports of the financial burdens being experienced by the homes for the elderly, can the Minister indicate what measures, if any, are being taken to assist said homes?

The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox): Madam President, the Ministry has not received any such reports. But notwithstanding, the Ministry provides subventions to eight homes for older persons and payments for accommodation and care for older persons under the Community Care Programme.

Subventions to the homes are made on a quarterly basis and payments were made up to March 2021 for six of these homes that submitted their up-to-date documents. Payment under the Community Care Programme was made up to April 2021 for accommodation and care for 90 persons at 17 homes for older persons.

Sen. Mark: Can I ask, Madam President, through you, given the financial crisis that has arisen affecting these elderly homes whether the hon. Minister and the Government would be inclined to look into this issue to provide additional subvention to avoid these elderly aged homes and the personnel therewith experiencing undue hardships?

Sen. The Hon. D. Cox: I repeat that we have not received such reports but we will ask our Division of Ageing to look into it.

Sen. Mark: Madam President—

Madam President: Yes.

Sen. Mark: Can I ask the hon. Minister whether based on the information that was publicized on this matter whether the Minister intends to meet with the association and its president representing the homes for elderly with a view to soliciting more information on this matter, Madam President?

Madam President: Minister.

Sen. The Hon. D. Cox: Madam President, if this is necessary, it will be done.

Sen. Mark: I think I am through, Madam President. Thank you.

Madam President: Yes.

ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. There are three questions for oral response and one for written response. The Government will answer all three for oral response, and we have submitted the question for written response. Thank you.

Madam President: Sen. Mark.

Sen. Mark: Madam President, before I ask my question, may I ask whether I can raise a matter at this time and, Madam President, it is brief. When we last met, there was an undertaking or an understanding I should say that having deferred these questions to today's date, we had a principled agreement afterwards that this should be in addition to the three questions that would have qualitied for today's sitting. So in all we were supposed to have six questions. So I do not know if it is possible that we can look at that as it relates to the agreement under 137.

Madam President: Well, Sen. Mark, first of all, no such agreement was conveyed to me. And the Standing Orders are such that if a Minister is unable to answer a question on a particular date, that question may be deferred to a subsequent date, and that question will be included with the other questions that were due to be answered. As I recall last week you made the request that all the questions which the Ministers were prepared to answer last week, you asked for them to be deferred to this week. Therefore, as according to the Standing Order only three questions can appear on the Order Paper in your name and that is the three questions that were deferred from last week. Okay?

Sen. Mark: I will not detain us at this time. Madam President, can I go on to the questions?

Madam President: Yes.

WRITTEN ANSWER TO QUESTION

Disruption of Traditional Schooling due to COVID-19

(Impact on Students)

146. Sen. Wade Mark asked the hon. Minister of Education:

Having regard to the 13-month disruption caused by the COVID-19 pandemic to traditional schooling of students at the Early Childhood Care, Primary and Secondary School levels, can the Minister advise as to the following:

(i) the breakdown of the number of students who have not been able to access online classes because they do not have the appropriate device or Internet connectivity;

(ii) the total breakdown of said students who are still without access to electronic devices; and

(iii) the immediate, short, medium and long-term impacts on the psychological well-being of these students?

Vide end of sitting for written answer.

ORAL ANSWERS TO QUESTIONS

FIFA-Appointed Committee

(Rejection of Application)

104. Sen. Wade Mark asked the hon. Minister of Sport and Community Development:

Can the Minister indicate the reason(s) why the application of the FIFA-appointed normalization committee to host the Guyana versus Trinidad and Tobago World Cup qualifier game was rejected?

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): [*Desk thumping*] Thank you very much, Madam President. On behalf of the Minister of Sport and Community Development, with respect to the proposed hosting of the Guyana versus Trinidad and Tobago World Cup qualifier game, the Ministry of Health advised the TTFA Normalization Committee by letter dated February 19, 2021, that their draft COVID-19 return to play operational protocol did not satisfy the required 14-day quarantine period.

The Ministry of Health guidelines for the repatriation of nationals from high-risk countries were provided to the Normalization Committee. The guidelines require all nationals returning to Trinidad and Tobago from high-risk countries to quarantine for seven days at a state or state-supervised quarantine facility followed by seven days in home quarantine. And these requirements also apply to non-nationals who obtained exemptions to enter the borders of Trinidad and Tobago.

Water and Sewerage Authority

(Privatization of)

105. Sen. Wade Mark asked the hon. Minister of Public Utilities:

Can the Minister indicate whether a decision has been taken to privatize the Water and Sewerage Authority?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, the Government has not taken any decision to privatize the Water and Sewerage Authority. Thank you.

Madam President: Sen. Mark.

Sen. Mark: Madam President, may I ask the hon. Minister whether the Government has taken any decision to engage in any arrangement with the Inter-American Development Bank with a view to obtaining a loan to strengthen the overall operations of the Water and Sewerage Authority?

Madam President: Sen. Mark, I will not allow that question because it does not relate to the question posed or the answer given.

Sen. Mark: Can the Minister categorically state that there is no intention on the part of the Government either in the immediate, short, medium or long term to find a private sector partner to operate and to ensure the efficient functioning of the Water and Sewerage Authority in light of his earlier answer?

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

Sen. Mark: Madam President, can I ask therefore whether the Government intends to restructure the Water and Sewerage Authority that can in fact result in private sector partnership arrangement to make that utility more efficient?

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

Sen. Mark: Is there any intention through the Minister to retrench thousands of workers at WASA if the Government has decided to restructure WASA within the framework of a private/public sector partnership?

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

Decline in Student Admission at UWI
(Impact on Labour Force)

107. Sen. Wade Mark asked the hon. Minister of Education:

Can the Minister advise as to how the decline in new student admissions and a reduction in courses at the University of the West Indies, St. Augustine Campus is expected to impact this country's professional labour force?

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

Thank you, Madam President. Students applying to the UWI St. Augustine for academic year 2021 would have had to submit their applications in July 2020, a most uncertain time in the world and in Trinidad and Tobago due to the onset of the COVID-19 pandemic. Schools were closed, the university was operating fully online and this level of uncertainty would have impacted decisions about future study options for many students.

This decline in both graduate and post-graduate admissions has been noted as a trend in a decrease in applications globally from low income students. Interestingly, Madam President, the so-called big-named colleges internationally halted SATs and ACT testing roles and saw large increases in applications, but this is not the trend in smaller colleges and universities.

The UWI has been experiencing small decreases in admissions since 2015 as there are many non-UWI options to post-secondary study locally and also internationally. However, the impact of the pandemic on the admission numbers of 2020/2021 should not be overlooked.

Further, information received from the UWI St. Augustine has shown that the number of programmes offered for to new students admitted over the 2015/2016 to 2020/2021 has fluctuated around an average of 284 programmes.

Programmes offered at the undergraduate level peaked at 112 in 2017 to 2018 but generally averaged 107 programmes over the period. Provisional data showed a minor decrease in the 2021 academic year whereby 100 programmes are offered at this level. Programmes offered at the pre-university level remained stable at two programmes offered over the same period. Provisional data showed an increase to three programmes offered at this level in the 2020/2021 academic.

Programmes at the postgraduate level remained relatively stable over the period. The number of programmes offered at this level returned to 178

programmes in the 2019/2020 academic year and further decreased to 140 programmes in the 2020/'21 academic year.

The campus administration has advised that a number of taught postgraduate programmes are not always offered in each academic year.

Further, the campus School of Business did not offered postgraduate programmes for the 2020/2021 academic year. Accordingly, any fluctuations seen in the number of programmes offered to new students is not considered significant enough to impact the country's professional labour force. Thank you.

Madam President: Sen. Mark.

Sen. Mark: Can I ask the hon. Minister if she can be a little more concrete and specific by sharing with the Senate what were the numbers involved as it relates to what has been described as minor declines that is not significant? Can we get from the hon. Minister what was the actual number of students that really did not access that tertiary education because of the circumstances that we have outlined?

Madam President: Minister.

Sen. The Hon. P. Gopee-Scoon: I detailed for you already that the programmes remained constant. It will not make economic sense if there was minimal attendance to offer the programmes. So implied is that there has been some fluctuation but not generally a significantly low participation by students or else the programmes would not offered.

Madam President: Sen. Mark.

Sen. Mark: I am just trying to get from the hon. Minister, through you, Madam President, if the information that is available to you points to numbers? Whether it is significant, insignificant or minor? So in other words, can you share with us any data as it relates to numbers?

Sen. The Hon. P. Gopee-Scoon: The numbers were shared with you with regard

to each level and in terms of the tertiary programmes. As I said before, postgraduate programmes remained relatively stable and I gave you the numbers for that; increase in 178 programmes in 2015/2016 to 192 programmes in the 2016/2017 academic year. And then, of course, returning to 178 programmes in the 2019/2020 academic year and further decreased to 140 programmes in the 2021.

I have given you the idea of the number of programmes that have been available over the last five years and that should be an indication of the level of participation at the postgraduate level, the pre-university level, the undergraduate level. I have given you enough details in terms of programme availability and you can match these in terms of level of participation by students.

Madam President: Sen. Mark.

Sen. Mark: Madam President. I thank you. I thank you.

SEXUAL OFFENCES (AMDT.) BILL, 2021

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, I beg to move:

That a Bill to amend the Sexual Offences Act, Chap. 11:28, be now read a second time.

May I just confirm, Madam President, the speaking time in this House?

Madam President: You have 45 minutes.

Hon. F. Al-Rawi: Thank you very much, Madam President. Madam President, I rise to continue the reform of laws designed to protect our most vulnerable. Today we come to this honourable Chamber to amend the Sexual Offences Act. The Sexual Offences Act by Act No. 27 of 1986 brought into sharp focus significant consolidation of the law and then over the period of several years in particular by the year 2000, significant reforms were introduced but not operationalized in large

part. And then over the course of the several decades that followed we saw the laws move along in incremental amendments until the last five years in particular when articulating systems to treat with the criminal side of sexual offences in criminal proceedings how they are managed, how we treat with our children in children's courts, how we treat with the concept of recidivism was all tied in to further amendments in the Sexual Offences Act. Very importantly, operationalization of the mechanism to use a sex offenders registry was brought to life.

In the 2000 amendments we had a Part III of the Sexual Offenses Act which unfortunately was not well thought out and did not work as a result of which no person in Trinidad and Tobago was placed on sex offender registry. Why?—because the law simply could not be implemented. For instance, in Part III of the 2000 amendments to this Act you were required upon conviction while you were making your way to prison to miraculously attend at the police station to be registered and therefore the Judiciary had the very difficult situation of thousands of sexual offences matters having come to life in Trinidad and Tobago with absolutely no one on the sexual offenders register, none, zero.

We as a Parliament under this Government amended that law. We repealed Part III, we inserted a new Part IV to cause a sex offenders registry. We created a register and we created a website. The register is that list or document where every sex offender so ordered by a court is placed. And the website is when it is made public on a website managed by the Commissioner of Police pursuant to a court order.

What happed is that we got to see this law go to work, and in going to work very importantly there is an interesting decision that stands now, this is *The State v Joseph* before the honourable Mr. Justice Hayden St. Clair-Douglas delivered 09

December, 2020. And in focusing the purpose of this Bill and the things which we seek to cure by the amendments before us now, I would like to put this into perspective.

First of all, before I get to the dicta of the honourable judge, permit me to so say that we are now well accustomed to this country crying out for more, more protection for the most vulnerable, in particular in relation to the horrible circumstances of sexual abuse, sexual offences. Many people are so impassioned that they cry out for more but when you ask what more can be done with specifics, there is unfortunately not a clear thought presented or there is disagreement for good reason.

On the one hand we have people that want to see transparency to know who all offenders are at the moment on which an allegation of an offence comes about, then on the other hand we have people that say, no, let us seek to rehabilitate, let us keep the names private, let us not go there, let us avoid attacking an alleged offender unjustly. Those are legitimate concerns from both perspectives. As a Parliament, as a Senate I sat under the chairmanship of the Leader of the Senate Bench Clarence Rambharat, Sen. Rambharat and we engaged in a special select committee where we invited considerations in last round of amendments, the principle of round of amendments that we made in treating with sex offenders, mandatory reporting, et cetera.

And coming out of that experience I can say certainly there was a very powerful voice which turned up in the interest sectors that said, look, let us take our time in subjecting people to the scrutiny of sexual offence allegations.

Now as a matter of fact, unless you are dealing with a child victim or a child offender, the publication of who has committed a sexual offence by way of allegation, who is on a charge for rape, a charge for this, a charge for assault, those

things come out in the newspapers, they are published, there is open forum unless a court says otherwise.

10.30 a.m.

So, in our newspaper reports we have stories like this: April 2021, Tobago man, 29, denied bail for sexual penetration of a 14-year-old girl; labourer, 22 granted a $175,000 bail when he appeared in court charged with three counts of sexual penetration against a girl; 26-year-old man, sexual penetration of his 12-year-old brother; Princes Town businessman charged, one count indecent assault against 17-year-old boy; 23-year-old Carenage man charged with one count of sexual penetration of a girl; 55-year-old labourer of Mayaro, sexual penetration of a five-year-old boy. March 2021, no bail, 40-year-old man who robbed and raped a 76-year-old pensioner; Diego Martin fisherman, 58, charged assaulting two seven-year-old girls; security guard, 41, 14 charges of rape—14 charges of rape, one charge indecent assault against a 17-year-old girl; 47-year-old Plymouth man, 15-year-old-child. February 2021, Princes Town labourer 22-year-old, woman dragged into a bushy area, beaten and raped by man; et cetera, et cetera.

Crime and Problem Analysis of the Trinidad and Tobago Police Service, rape, incest, sexual offences. I took a small snapshot to show what the state of society is treating with; who we are; what we are. In the period 2016 to 2020, 2016 to 2021, as at February 2021, reported rape, incest, sexual offences, 2,573; criminal indictments filed, 2014 to 2019, 245; convictions for sexual offences, the period 2013 to 2018, 916 convictions; criminal indictments filed, by turn, again aggregated in the hundreds.

Now, in this context of Trinidad and Tobago with 916 convictions at the Magistracy and High Court, 916 convictions, what is the status of our sexual offences register? One. Why is it one? That is why we are here. Should we look at

something else? Are we to pay attention to the marches against sexual violence, murder, rape? Are we to do something to give people a fighting chance? Is the vulnerable to be protected? This is where I come back to the dicta of the hon. Mr. Justice St. Clair-Douglas, and I would like to put this on the record, paragraph one of his judgment. Sentencing note. I quote—the judge is quoting here:

> "'I never completed school as a result of having my kids at a young age. I had my daughter at the age of 13 years old; I was then a Form 1 student at the Barataria South Secondary School. After giving birth to my daughter I went back to school and continued my schooling. I had advanced to Form 2 but became pregnant again with my son. I was 14 years old. I never returned to school after having my son.'"
>
> The judges say:—"These are not the words of a young female in some isolated plantation or far away from rural community in 1940s Trinidad, these are the words of a young female who resides in an urban community in Trinidad in the 21st century. In the view of this court this is unacceptable."

There is one other paragraph that I thought ought to be put on to the record, and here is where the judge in looking at sentencing of a particular individual in this matter, asked a question. He said:

> "A question"—and it is at paragraph 17—"is often posed to children and young persons about their ambitions and aspirations when they grow up. The responses are likely to be varied, and as limitless as the frontiers of a child's imagination: chef, or professional footballer, or professional athlete, or doctor, or lawyer, or representing the West Indies, or going to the Olympics, or singer, or actress, or air hostess, or model. Even with the wide variation in childhood ambitions and imaginations this court has never

encountered a young girl whose ambition was to have her first child at the age of 12, to have 2 children by the age 14, and to have 3 children by the time she had attained adulthood."

When we listen to a factual scenario of thousands of convictions of the abuse of the vulnerable, we must obviously then go to the Children's Authority. The Children's Authority's statistics up to 2021, as at 2021 March 31st, for the period 2015 to 2020, the number of cases reported are 27,837; 6,402 of those cases are for sexual abuse alone. What is grippingly horrific is that the cases for sexual abuse for children include children between the ages of zero to four months. So this is the backdrop of the society of Trinidad and Tobago within the parameters of section 13 of the Constitution. Why section 13 of the Constitution? Section 13 of the Constitution we are treating with the principle applied across any law in general, is it reasonable in a society such as Trinidad and Tobago that we may make laws to protect the vulnerable? We make laws under section 53 of the Constitution for the peace, order and good governance of society.

We are making a law today, now what does this law say? Is it reasonable in Trinidad and Tobago that we ought to have these amendments? Is it proportionate to the rights that are in issue? The rights of the victim, the rights of the accused and the rights of society as a whole? Because there is a social arrangement between the individual and the collective, and that is on test here today. So what does our Bill propose? Our Bill is set out comprising 21 amendments. For the ease of hon. Senators I am going to ask, I had a consolidated version of the Act done. I am going to circulate it to all hon. Senators showing all of the amendments that have been made, particularly the last two amendments that this Government piloted in creating a new sexual offences register, and the matters which we did in December 2020 where we amended that Act No. 29 of 2020, where we amended

"shall" to "may" in respect of the absolute requirement to have a mental assessment report. And then the amendments that we propose now or set out in that Act. It will help hon. Senators when we get to committee stage.

Let me start by saying that I have received some very useful submissions from the Law Association, some of which are agreeable, others of which are distinguishable and therefore not proposed to be accepted, but I am sure they will come up in the course of this debate, and I intend to address them in large part in the wind up and at committee stage. But, let us get to the Bill. So, the first few clauses of the Bill—Madam President, what time is full time?

Madam President: You finish at eight minutes past 11, some 20 seconds after that.

Hon. F. Al-Rawi: Thank you so much. So, the first clause, this Act is the Sexual Offences (Amdt.) Act, 2021. Second clause is a proclamation clause. Third clause, the Act that we are amending, that Act means Sexual Offences Act. Fourth clause, we seek in clause 4 to amend section 2 which is the definition section of the principal Act, and in that we seek to, in the definition of register, we correct some cross-referencing, because we are making some amendments further down, so we change 47(1) to 46A. In sexually transmitted we are putting an "and" at the end of that, because we are now going to introduce a defined term on the website. That will become apparent in a moment. The website is the public sex offenders' website, established under 46A.

Let us get to what we are doing in the substance of the Bill. In clause 5 we are deleting the National Sex Offender Register, a single register, and in the heading we are now putting "Sex Offender Registers", because there is going to be two of them. We are saying in this particular structure, that then springs to our amendments in ballpark as to the rationale behind this Bill. But, let me go through

a few cursory matters to do it clause by clause.

Clause 6 amends section 45 of the Bill. And, what we are doing in clause 6 in section 45, we are improving the applicability of this part, the sexual offender registers, to people who are the subject of conviction in Trinidad and Tobago, and people who are also the subject of conviction outside of Trinidad and Tobago. Why? Because later in the Act we provide that people who are convicted of registrable offences outside of the Trinidad and Tobago must report within two days. If they are spending more than two days in Trinidad, they must report to a police station and have themselves registered. That takes care of the situation of deportees, or migrants, et cetera, so that we can have an understanding of where we stand in relation to sexual offences.

Let us go then, Madam President, to clause 7. Clause 7 is where we set up the two registers. The National Sex Offender Register, which is a non-public register, and then the public sex offenders' website. So that there is a clear distinction between the two. In clause 8 we make an important amendment to section 47. Now allow me to stick a pin. The Law Association in their comments signalled that they could not understand why people who were the subject of conviction under the previous law were not being included in the current register. And let me answer that plainly, they cannot be included because the court is functus. When they passed through the court and they were convicted, the court at that moment never made an order that they go on the register. So we could not go retroactively, revive a case which was completed in respect of which there was no appeal, there was no order to put you on the register, and we therefore said, anybody that was convicted prior to the coming into force of our new part cannot be put on the register. And I would just like to remind that this was the subject of significant debate in the Special Select Committee. We had a significant amount

of commentary. Sen. Chote SC, as she then was, participated vigorously and agreed with this position. So, unfortunately the Law Association probably did not have the benefit of those submissions, or did not recall, but that is why people, the thousands of convictions that are on the record cannot be included.

So we seek in clause 8 to make an amendment to section 47, and we say:

"The National Sex Offender Register shall…contain information in Schedule 3 and pursuant to section 54."

And then we say:

"The Register shall not be accessible to the public."

A recommendation has come in for us to consider whether we should exempt this register from the Freedom of Information Act. That is something that we could perhaps consider at committee stage. Because section 35 of the Freedom of Information Act allows things which are said under section 34 of that Act to be prohibited to still in the public interest be disclosed. So, it may be an opportunity to close that door for good reason because there is another aspect of it. The other aspect is the public register.

We, very importantly, make sure to maintain the control and custody by the Commissioner of Police. We make sure that there are security arrangements around it. We get to clause 9. Clause 9 seeks to repeal and replace section 48. Section 48 in its original form is the public access to the register, and what we are doing here essentially, were amending the marginal clause. Unfortunately, the rule is we cannot just amend the marginal note on the side of the position. You have to repeal and replace. So it looks like a substantive amendment, but not that substantive. We are seeking to repeal and replace. We are ensuring that the Commissioner of Police shall have a public sex offender website, and that this website shall be maintained with the information provided. Note, we have said

that we would put a locality of the sex offender. Not the address. Because the learning tells us you ought not to give the specific address but rather the area; Port of Spain, San Fernando, as it may be, to avoid the concept of victimization.

There is a notice and caution that you cannot intentionally use these things without justification. There is an enquiry in respect of use. Use is the plain and ordinary meaning. And, it is subject to lawful excuse. So, if you take that register and you share it for the purpose of caution you may have a justifiable reason for doing so, and therefore not have a problem with the law in any event. This was decided by a Special Select Committee when we amended it in the last Parliament, and accepted by both Houses of Parliament.

Clause 10 treats with the court to order the sex offender to comply with Part IV. Now clause 10 here had initially a mandatory registration exercise for the grievous aspects, rape, incest, subnormal personality, children, et cetera, any breaches in the Children Act. That was mandatory. You had to go on the register. We amended that law by way of amendment to the schedule to include repealed offences under the old Act, section 6, for instance. So, we included mandatory reporting. It was taken care of in the very case that I read by Mr. Justice St. Clair-Douglas. And then we had a discretionary position where a court could consider every other offence as going on to the register subject to an application under section 54, where the court considers it is not appropriate to put you on. For instance, if it is a case of incest, the family may fall into odium, the child may be prejudiced.

What we do now, is we say every sexual offence is to go on the register. However, that is subject to the individual making an application to not go on the register ought to certain circumstances. You have appealed the decision, your appeal is still pending. In those circumstances you do not go on to the register, or

you make an application to the court and say, "I do not wish to be named as a person on the sexual offences register for the public side. I want to be off", and the court considers that. I flag that we intend to make amendments in relation to this, to put in prescriptive time frames so that the court considers how you get to that decision. If you make an application that you should not go on to the register, and that application is determined against you, we are going to include the rights of appeal and that you should not go on to the register until the court tells the Commissioner of Police, okay, it is clear to put you on because we have rejected the application. So, I would like to caution that that is not a removal of the discretion of the court, Madam President. That is in fact maintaining the discretion of the court. What we are doing is we are just turning it in a different direction. Mind you, section 5 of the Constitution allows for an onus to be put upon somebody, to reverse the burden that is clearly recognized as not tripping the Constitution of Trinidad and Tobago in any rights fashion. So the discretion is maintained when you look at the Act as a whole.

Madam President, when we look to clause 11 and we see the amendments to section 50 of the Act. It is at section 50 of the Act where we do the surgery of making sure that we preserve due process subject to (2):

> "a court shall, where he has appealed the conviction or not appealed the conviction…"

We take the steps as to when the Commissioner of Police ought to put you on the record. Why? Because enquiries came from the Commissioner of Police saying that there was uncertainty as to when you ought to come on. Should you come on to the register only after you have come out of jail? Should it be in a different scenario? So what we have done is to provide clarity because of working and experiences that we had in applying this law. Very importantly, the new section

50(2) says:

> "Where a sex offender is convicted of a registrable offence, he may apply to the court to be exempt from having his information published on the website."

In section 48, the conditions that the court ought to consider are set out in (4) here. The court in making its determination. Please note, Madam President, that what we did is effectively move the conditions set out in section 49 as it is originally stated, put it into section 50 so that we preserve the court's discretion, and give the indicating factors as to what ought to be in the mind of the judicial officer in considering the application to not be put on to the register. This section 50 is closely related to section 61 of the law, and section 61 is where we deal with exemptions from registering or reporting. So please read section 50 along with section 61.

Madam President, again, we seek in clause 12 to harmonize the approach of the time frame to make better meaning of the law as stated. We changed within four months of discharge to within four months before discharge, so that we can work out the time frames for reporting. Clause 13 fixes cross-references as a result of amendments that we propose. Clause 14 removes the word "registered" from registered sexual offender, because the initial report of a sexual offender on this point, that person is not registered yet. That person is only a sex offender, so it is a tidy up and clean up.

Madam President, clause 15 takes the similar approach of disaggregating the sex offender versus the person who is a registered sex offender. The sex offender is a person who has received the decision of the court that says you are a sex offender, but you are not yet registered until you go through the registration requirements set out in the Act at the police station pursuant to the court order, et

cetera.

Section 61 is proposed to be amended. Here we are harmonizing the exemptions from registering or reporting. And what we are doing here is we are doing two things. We are cleaning up the approach. We are bringing it in tandem with a law that we have already amended, Act No. 29 of 2020, which we did in December of last year. Section 6 of that Act amended the Sexual Offences Act. We deleted "shall", we put "may", and we said "where a report is requested". Why? Because a court may not always in its discretion decide that it wishes to have a report presented. It may have been presented in other circumstances so this is to bring harmony with law that this Senate has already passed in December of last year.

Madam President, clause 17, again, keeps with this concept of "may" and "shall". It is to bring us in tandem with what we did in December of last year, where the court in looking at factors, in making a determination pursuant to an application, may request a mental health assessment report. And, we then take the opportunity to clean up the difference between sex offender and registered sex offender. Madam President, clause 18, again, is to bring us in harmony with that December amendment, the "may" and "shall" amendment. That is Act No. 29 of 2020, section 6. So what we are doing is cleaning up the rest of the Act in line with what we did already as a Senate.

We, in clause 19, again, make the distinction between a registered sex offender and an offender. In this case it is a registered sex offender that we are speaking about. We seek to amend, Madam President, in the remaining clauses, the regulations. We seek to raise the fine from $50,000 to $250,000 and imprisonment for five years. Why? Because we already amended the Interpretation Act as a Parliament last year, and therefore these figures have to be

brought in line with the Interpretation Act as amended and could not stand below, because the laws would be in conflict in any event, having amended the Interpretation Act, after this Act, that would apply, but it is unseemly to not fix it while you have the chance. It is just changing the law in its express form in line with what it ought to be.

Madam President, we also seek to cause amendments to the schedules attached to the Act. Again, we are raising $50,000 to $250,000 and six months to five years, and that is in the DNA Act. We are doing that again because we amended the Interpretation Act already, so that is a breach of the rules—of regulations, forgive me. We are seeking to add the Police Service Act amendments, introducing who a sex offender is as opposed to a registered sex offender, and we are making that distinction there in the consequential amendments.

Madam President, that is the heart and soul of the amendments. Let me break it down in simple form now. The Bill before us intends the creation of two registers. A register which remains with the Trinidad and Tobago Police Service, and which is not open to the public. That register has everybody on it. The minute the court makes the order, the register is populated because the court says so. What we seek to do is to create a public register, which is a website operated by the Trinidad and Tobago Police Service. That public register is one where we are putting the flow to get there as follows:

- The court makes an order that you are a sex offender, you shall be put on to the register, unless you say to the court that you do not want to be put on the register. The court then exercises its discretion in that application, we seek to cause some amendments to the Bill to tell you the time

frames to apply and what happens.

- Second thing, we seek to harmonize amendments that we have already done. Last year in December by Act No. 29 of 2020 we amended the "shall" and "may" in respect of the request for a mental assessment report. We are harmonizing that into the law now.
- Thirdly, we are also causing harmony for the amendments that we made to the Interpretation Act. In the Interpretation Act as we have it amended now, we raise the ceiling for offences, breaches of regulations up to $250,000, et cetera.

Madam President, these amendments come while we are in the public domain, at present the Office of the Attorney General discussing further amendment. And the further amendments, I am flagging now are to treat with things like, voyeurism, revenge porn, criminalizing the disclosure of intimate images and videos, et cetera, against the will of someone. That is not criminalized in our law. We are seeking to treat with the concept of further harmonizing bail and how it relates to this. We are discussing the issue of whether the concept of corporal punishment is still relevant, because there is a corporal punishment law for rape. We are also seeking, Madam President, to cause a tie-in of resources. Why are we seeking these things, Madam President? Because we are also asking in the public domain, relative to further amendments proposed, that we consider a register of sexual offences charges. Why? Because, Madam President, if you go for a Certificate of Character in this country, the police are looking for convictions. The fact is that sexual charges, offence charges are public, unless you are dealing with children or child offenders that the court says otherwise. They are published in the newspapers, people come to you for a job, for inspection, et cetera, and you have

no idea of what they are before the courts on.

And when you see our country correctly rise up and say, how can monsters be walking around unbridled in this country with 10 and 12 and 14 charges for rape or assault, et cetera? It is because there is no register for these things. None! Now of course we must factor these things in the concept of a small island state, a small society, but where do we get the protection balance? Because, Madam President, I am giving notice that all of this flows into the regulation for the PH and taxi and maxi and driving industry, which is tied into this. And therefore, the Government's approach is a holistic plan where we give the vulnerable, or the innocent, or the unaware, a fighting chance at knowledge, where we give people that ability to also think twice before they do something.

And, Madam President, I recall my mother constantly telling me stories of what it was like to be afraid whilst growing up that you did something wrong because you would get punished in school. On the way home your neighbour "cut yuh tail", excuse the French. The neighbour will discipline you. By the time you get home your parents discipline you twice for the shame at school and the shame in coming home, because you just could not do it. Trinidad and Tobago today, we are almost immune to horrible stories. We are immune to violence. We have armchair critics. We have politicians. We have commentators who seem to have no bounds.

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There is no degree of civility or accord, there are no limits that are out of bounds now, you will leak images, you will say things, you will make up stories. The concept of telling a gross untruth is a reality in this country, because who cares? You just make law, you make fact, and in our country I dare to say we are at a very dangerous crossroad where it is not what is the truth, it is what is the version

of the truth you select for yourself. And therefore, legislation like this is designed to bring us back to some degree of normalcy, to put some degree of boundary and exercise.

I dare say, Madam President, that I consider this law to be entirely proportionate. I dare say that this law is reasonable in a society such as Trinidad and Tobago. Madam President, I ask you to note that we are not asking for any three-fifths majority passage of this law for a very good reason. The reason is it is all in the discretion of the court. Once we have the comfort of the judicial discretion we are in better position in terms of proportionality and therefore constitutionality. We are seeking to protect our vulnerable in society. This law was designed without the other laws that are in discussion specifically so that we can take amendments one after the other after we have consultation. And we had wide consultation on a number of matters.

I wish to thank the Law Association for providing fulsome comments which were very useful in this regard, Madam President. I also thank several members of the public for sharing their points of view in respect to this. I am certainly very interested in having the perspective of my learned colleagues in this Chamber so that we can move towards a better form of law as we get to law which is good for the peace, order and good governance of our society within the meaning of section 53 of the Constitution.

Madam President, as I said, we will do two things: one, circulate a marked-up track-change version of the Act so that Members can follow, and then, secondly, Madam President, we do proposed to introduce amendments to treat with some of the issues that I have identified so far. Madam President, I thank you for the opportunity to pilot this Bill and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Jayanti Lutchmedial: [*Desk thumping*] Thank you. Thank you, Madam President, for the opportunity to contribute on this Sexual Offences (Amdt.) Bill, 2021. Madam President, I am—I wish to say it up front that I support any measure, any legislative or other measure that would curb the tide of violence against women in this country and children and particularly sexual violence. We spoke recently, we had the opportunity through the very important Motion brought by Independent Sen. Richards to discuss some of the issues of sexual violence, violence against women and children in general, but particularly we mentioned some of the sexual offences and prevalence.

I do not know if it is that we just have more reporting at this time or if it is that we have just seen a drastic increase, but over the years it has simple gotten worse and the Attorney General has read a couple of headlines. I can tell you that the headlines and the reports in the newspapers—as a former prosecutor I could say—it does not do justice to some of the things that you see and that I have seen over the years. When I was, back in my 20's I remember as a child who was very sheltered, I would read things in files and then I would meet victims and I would have to go to court and deal with cases and at night I would have to ask my mother to sleep with me because of some of the horrific things that I saw and dealt with during the day. It is that bad, it really is that bad, and no newspaper report could even do justice to what women experience in this country and children and even young men and boys experience now with sexual violence. So I am in support of measures, proper measures that would curb the tide.

Now, the first thing, of course, that I have to say is that the—and the Attorney General addressed it towards the end of his contribution, is the removal of the special majority. The 2019 amendments which this Bill seeks to make changes to were passed with a special majority. And the Attorney General is on record in the

Hansard when that 2019 Bill was debated right here in this Senate, I think it was on the 5th of February, 2019, saying that, you know, and he says, what about your three-fifth rights, your right to privacy and family life, section 4? Yes, it is stripped in this Bill.

So how was it, it was stripped in the 2019 Bill when you had a non-public register and now when you are seeking to create a public website where a person's personal information, whether a person is convicted or not, whether we deem them monsters or not they still have constitutional rights, whether we like it or not. I do not like it at all, I do not like it and I want to say very openly because there is a lot of criticism of attorneys who defend the people in court or who take up constitutional cases and so on. It is not that you feel the individual deserves certain rights you know. It is that you feel as a society as a whole it is important to preserve rights. And I cannot see how when a Bill in 2019 introduced a register that was non-public that the Attorney General could say that it tripped that 4(c) right to privacy and now when you are creating a public website that that right is not being violated.

So, Madam President, as I said, I am all in favour of certain information being made public once a proper process is followed, but I do feel that this ought to have been special majority legislation and I would not like to have a law passed that is not passed through the proper process and procedure. Will it withstand section 13(1) scrutiny by the court, proportionality and the whole Suratt, Barry Francis type test? Perhaps, yes, it will, because we have to take into account the conditions under which we are operating at this point in time and what has become so prevalent in our society. But there is no reason in my respectful view, and this is a trend that we are seeing sometimes that special majority legislation is being—the majority clause is just being removed and that is a dangerous and frightening

incursion upon the rights and freedom of people where you are basically saying as an Executive we are passing this whether there is support or not. A more appropriate approach would perhaps have been a little more consultation and engagement so that there can be agreement and we can make sure that these laws are passed properly.

Now, the other thing that I believe is a little bit, not a little bit, an incursion upon the concept of separation of powers is the amendment proposed to section 50 in clause 11 of this Bill. The creation of the public sex offender website and what information is to be published there, it says that the court shall do it. This is the same argument that was raised when we had the pepper spray debate and about the revoking of the permit; it is the same thing that I have raised all the time on bail. The Executive ought not to be using the Legislature to command the Judiciary. The judicial officer seized of all the facts of a case is the person best placed to make a determination.

When a person is convicted there are so many permutations, there are so many different factors that may weigh into and may be present in a case that the judicial officer ought to make the determination whether or not the person's information ought to be published. You have to consider a number of things. Now, of course, you have included the clause where the—I think it is subsection (2) of the new section 50, where the offender can make the application to become exempt from having his information published on the website. Well, I respectfully—and there is a list of things that the court shall consider. Respectfully, Madam President, I want to suggest that in section 50(1) that we revert to discretionary "may", that is:

"Subject to subsection (2), the Court"—may—"where a person has—"—done so and so, order that—his information be—and he has exhausted the appeal conviction or appeals process—order that his information be published.

And therein list some of the factors together with the catch all at the end:

"…any other compelling reasons in…the case"

—that the court should consider before ordering that this public publication on the website be made. So that in every single case the court is compelled or use the language in such a way that the court is compelled to consider it and make a determination.

I say all of this in the context that sometimes the offender may not care one way or the other so he may not make the application under subsection (2). But what about the victim? The victim has no rights here to say that, listen, if you publish—–and the Attorney General used the exact example I wanted to use—a case of incest. If the victim feels that by publishing the information in relation to her attacker who committed an act of incest against her will expose her identity and it will forever be something that she has to carry the shame and so on of, the victim ought to have a voice and the perspective of the victim is something that the court should consider. So the mandatory aspect of this should be the factors that the court must consider when making the determination, but the ultimate decision on whether or not the information should be on the public website should, in my respectful view, remain with the court.

Madam President, the other aspect of this that I wanted to look at is the review mechanism. Now I believe that initially in countries such as the United Kingdom they did not have a built-in review mechanism and it was challenged and it was found that it would be contrary to the rights under the European Convention to not have a review mechanism put into place. So we have put into place a

mechanism where someone can make an application. I have found the UK system to be a little bit more accessible. Under this system and correct me if I am wrong because—and I am happy to hear that a Bill with all of the amendments is being circulated, but that would have been really helpful before the debate. And I would like to urge the Attorney General to perhaps provide us with those things, maybe a day in advance, but it is the—I am sorry, I did not hear Imbert or he could get the Law Revision Commission to start working and updating the website with the laws.

But the point is this, the burden is on the person to come to the court and make an application to say well these are the reasons why I should not have to report any further and I can have my information removed from the website. We are a society where a lot of people do not understand or they do not have the resources to approach the court for these types of orders. You are looking at someone who may have served a term, they have come out of prison, they have challenges, all of the challenges that are faced by persons who come out of prison in terms of financially and otherwise, and you put the burden on them to make this application. In the United Kingdom they have a system whereby through the reporting process the police are actually allowed to determine whether or not—you can actually go to the police station and say listen, I have been reporting here for X amount of time, I have attended this session, that counselling, therapy, whatever it is, and after five years of coming out of prison, serving my seven-year term, five years after I wish to be removed and the police can then trigger whatever they need to get, whether it is an assessment by a professional, or whatever it is and make a determination. There is significant guidance provided to the police in how they should do it and there is an appellate process if the police refuse so that the person

could actually then make the application to court. But the first line where the determination can be made is the police.

Now, I think that is a very useful type of mechanism that they have put in place in the United Kingdom. It means that every person who wishes to have a review done after they have reported for a number of years and after they have been listed for a number of years to have that mechanism triggered. You see, it is not just about imposing a punishment on someone that they are forever branded on this website and that they must remain there, or it is not just about offering protection to the general public of knowing who sex offenders are. We must also look at rehabilitation, we must also look at the concept of ensuring that people can re-enter society and these people have to live when they come out of prison. So, if it is that someone really does commit to reforming themselves, it sounds strange to say "reform" when you think of the grievous type of offences but there are lots of offences captured as sexual offences and sometimes they are not all of such a nature that you can say from now listen, there is no hope for this person, this person needs forever to be branded and be placed on this website and we must know of them and their whereabouts and so on, for the rest of all eternity.

So make the process of the review mechanism a little bit more accessible. I believe, and as I said before, allow the court to determine whether or not it is in the best interest given the circumstances of the case, whether the person should be placed on the public website to begin with. Madam President, the amendment to section 57— Well section 57 generally deals with notifying the police of a change in circumstances when the person is registered, and I would like to suggest that we include a mandatory requirement that the information be updated within a specific time. Again, with sex offenders it is very important to know the location. We live in a country where people give their address as where they were born and where

they perhaps grew up and that is their registered address, but they have not lived there for a very, very long time. They stay by a girlfriend somewhere, they are doing this, they are doing that, and the monitoring of people, and I see this all the time in the court when bail is granted and people have to do the reporting under the bail requirements, the police have a very hard time sometime locating them afterwards because people move around a lot and they stay by family, friends, whatever it is. So any change in the circumstances really ought to be immediately notified and it is there in the law, but we should include some sort of a process and a time frame in which it must be updated on the website, because this website is really not for the police, it is for the public.

So if a person notifies the police within the required time frame, let us say the offender does his part, but the police fail to update the records and that is not a far-fetched notion; that happens all the time. In fact, and the AG raised the issue of criminal records, there are many, many people who have actually threatened to sue the Commissioner of Police for failing to update their criminal records and showing pending matters, matters which have been—so it is not true to say that police do not only look for convictions. They also look for pending matters. In fact, your Certificate of Character, when you apply for it, they check both matters. The problem is that the system is not updated because it is the duty of the police officer when the matter is completed to inform the criminal records office to update the system.

So you have had people and I have met people who applied for jobs and when they went for a Certificate of Character they had been charged 15 years ago for resisting a police officer and using obscene language and of course the matter went through the court system, thrown out, whatever it is, and it is still showing up on their record. If we do not update this website in a timely manner, it will really

defeat the purpose. It would defeat the purpose, because the general public—you could have a registered sex offender of the most violent nature who has served his term but he is now back in-to our society coming into your area and you would not know. And that is the importance of the locality factor and that is why one of the things that they ask you, that the Bill includes, and I support it, is the inclusion of locality and that was there since 2019.

In the United States you actually just put in your location on an app and it will show you, popping up around you, and it is actually quite scary if you do it, about the number of sex offenders registered right around you. Now I think that is a bit extreme and of course in a small society like ours that would have a number of different consequences, so, but it is important sometimes to know who are your neighbours and whether there are people in your area who have moved into your area and come into your area who have been convicted of certain types of crimes and offences. Primary reason for the creation of a register is really so that the police in the area as well must know who are the people in the area and that they have to do some monitoring, because that is the only real way to attack and to try deal with the problem of reoffending by sexual offenders.

So, I flag the issue of the retroactivity and I understand what the Attorney General has said about it being, the court being functus and not being able to make the order. But I would like to suggest that perhaps persons who are presently serving a term that we can, and again if there are further amendments to be proposed I think one of them has to be that we find a way that persons who are presently serving a term and who will be coming back out into society in the next three, four, five years that we find a mechanism to capture them via some means of reporting. Because the persons who are going to be charged now or who are having their matters heard now, they are going to go into the prison if they are convicted.

So them coming onto the website and it is really many years down the road, but what happens with the ones who are presently in there, they are the more immediate problem that we have to deal with as a society. And I am speaking here as a woman, as a mother, as someone who has to walk the street from time to time and to live in this society. I want to know if tomorrow or next week a person who was convicted of a violent sexual offence 10 years ago is coming out of prison.

So I would urge the Attorney General to give some consideration, again, put it out there for consultation with all the necessary parties. I take the point of the Law Association raising the functus issue, perhaps I agree. There may be civil mechanisms, they call them collateral orders that judges can make and so on, and the State can apply for in other jurisdictions to have persons—to impose some sort of reporting requirement and people who are coming out of prison. Because we do not want to have—it is like generation of sex offenders who would be coming out of prison now and living with us until the rest of—and only the ones who are convicted post to passage of this Bill are the ones who will be there on the website and who we are allowed to know about and who we are allowed to monitor.

Madam President, just briefly, I want to deal with the issue of, you know, having a philosophical approach to dealing with sexual violence in our society. Because a register and even a public website only addresses the middle of the problem. The middle of the problem being the persons who have offended and are now before the courts, and I will get to that in a little while about them being before the courts. But we also have to look at what gets someone there? What is wrong in a society when you have these number of cases of sexual violence taking place?

So a register and a website places the burden on the citizen to look around, look over your shoulder, find out who your neighbours are, very useful, yes, but it

places the burden on you, the innocent party. We really do need to have more things in place to prevent us from having these things happening to begin with and I think other Senators I am sure would talk about it. When I read the debate in 2019, I saw that many Senators spoke about these things and then we also have to look at the issue of reoffending, recidivism, what are we doing to help, putting someone on a website and putting your face on a website and letting society know that you are dangerous sex offender really does not prevent you from reoffending.

In fact, there are some—and this is where the balancing comes in, there are some persons who are adamantly against public sex offender websites because they feel that that level of putting this person out there it really prevents this person from being allowed to re-enter into society and become a meaningful contributor to society and it can actually encourage reoffending. Because, let us be real, when a man comes out of prison and if he has a propensity to commit these types of offences and he is now on a website where anyone can check his name and see that, yes, this is who this person is, he may not be able to get a job, he may not be able to get a number of things and I have no pity for a person who is a sex offender, who comes out of prison and perhaps faces those things, as a human being I probably do not. But we have to look at the, we have to take away that emotion and consider now when that person, that offender is back out into society living among us and he suffers the backlash of society because it is public knowledge that he, this person, name, location and photograph is a sex offender. What is he going to do? If you have that propensity and if we do not have enough things in place to help them, the offenders who are returning to our society deal with their problem that they have, because they have a problem, are we just creating a situation that is ripe for reoffending? And that is something that we have to look at.

So a person coming out of prison, yes, we have to balance the need of the society to know against what will help them, so let us, I am just saying it has to be that there are other measures such as mandatory counselling, mandatory attendance at whatever type of therapy is needed to help these people while they are reporting and you have the system here now where they are registered and reporting, so you know who they are. You know, growing up sometimes I remember visiting my grandparents and so on, and they would say, well so and so they went to jail and people in the neighbourhood just kind of know that there was something about this man and so they would tell you "doh" walk that way when you are going somewhere and that kind of thing. But nobody ever reached out to those people to find out or to try to fix, or to try to mitigate the risk of reoffending. Instead, they are branded and they are treated in such a way that it may encourage them and the reaction that they may have to society would not be helpful to anyone, not their potential victims, not society as a whole and certainly not them.

The other issue that we have and the AG flagged it that we have a situation where a lot of people who are charged are walking around. Now I have to say I do not support persons who are charged being placed on a public register. It may be reported in certain circumstances, in the media, but you know that really does to me offend against the innocent until proven guilty principle and the constitutional right that you enjoy to your innocence. The newspaper reporting you and putting it out there, I mean, yes in the digital age it may be accessible and so on, and a lot of times I have noticed the media leave out names but they published enough circumstances that the person can be identified. And I have my views on that, but in any event once the person goes on a public register and they are merely charged, the damage to your character is done. And I think I spoke about it before in this House of cases that I did where after six years a victim recanted against someone

she accused of rape and for six years an innocent man stayed in prison without bail because of the allegations and so on. But the same thing could happen here. An innocent man could have is face plastered on a website for years until a victim perhaps recants or he is found not guilty by a court and the process goes through.

So I do not support any public publication for persons who are merely charged. What I would say is that it is frightening that for sometimes 10 years a person charged with multiple offences and perhaps who has reoffended whilst on bail for one reason or another is still amongst us and walking amongst us. And the solution to that has to be that we expedite the criminal justice process. I have made the suggestion before of specialized courts to deal with gender-based violence issues, both of a sexual nature and domestic violence type crimes. These matters involve families, they involve crimes of such a nature that you really want to give the victim the soonest possible avenue for closure. You also want to create an environment that is conducive to having these trials done and specialized courts could address that. It would also mean that these matters are pulled out and channelled through a system whereby they are not just bogged down with it. Because you see the thing about it is that capital matters get priority in the court because persons are deprived of their liberty. And, once you have that happening all the time because of the amount of murders we have and the amount and so on, the criminal justice system is simple overburdened. And so, if we want to get these persons who are charged off the street in the quickest possible time and on the register and in a prison then it is really important for us to look at the justice system and to expedite these matters as quickly as possible.

Another suggestion-that I would have—Madam President, may I just ask what time I am supposed to be finished?

Madam President: You finish at two minutes past eleven. You have some thirty-seven seconds after that. So two minutes past eleven, thirty-seven seconds.

Ms. J. Lutchmedial: It is 11.29.

Madam President: Oh, I am sorry. "Ahh", 11:42:37 a.m.

11.30 a.m.

Sen. J. Lutchmedial: Thank you. Thank you, Madam President. So another suggestion, and I think this warrants some consideration, sexual offences are such that a lot of it is "he say, she say" as we say sometimes, and what would improve upon the rate of detection as well as the rate of conviction is really employing more scientific methods of crime-solving. The statistics from CAPA that I looked at CAPA as well—yes they are frightening in terms of the number of matters categorized as rape, incest and other sexual offences—in 2019, you had 352 reports but the detection rate was 82 matters of that 352—that is really, really poor—372 matters in 2020, 129 detected; so far for this year 127 with 39 being solved.

Now, when you are depending on eyewitness evidence for example, when you depending on a rape victim to remember the identity and all of that, and not just to remember but to be brave enough to come forward and give the statements and give the reports and go through the process, a lot of people even though they report crimes, they do not follow through with the identification process and so on because they just do not want to have to do it. But if you have proper DNA, DNA ought to be a standard method of crime-solving when it comes to sexual offences and prosecutions. We will not just raise the level of detection, we will also raise the level of conviction because you have scientific irrefutable evidence being placed before a jury as opposed to a victim who—I mean, it is heart-wrenching when you have to see victims give evidence in sexual offence matters. It is really, really

heart-wrenching and how many of them are incapable or just simply unwilling to do it. It is scary. It allows the same people who we want to put on a website to walk free. So having a website is nice but we also have to put things in place to make sure that we have enough people and that we capture all the people that we need to get onto that website. So we need a higher level of detection and prosecution for these offences.

Madam President, just briefly, and I know one of my colleagues will probably touch upon this a little more, there are certain provisions in this Bill that deal with the court when the court has to exercise a discretion, for example, to expunge someone from the register. We are now making it—sorry, we have removed the mandatory requirement for a mental assessment. If anybody needs to be mentally assessed, I think it is a person who has committed an act of sexual violence. So I do not know that it should be discretionary. I think that sometimes things that prolong a process we try to remove it so that it will expedite the process, but what we should really be doing is making sure that it does not take so long.

So, a lot of the times it is discretionary for the court to order various types of reports from social workers and all of this. But the more information the court has, the better, and I do not feel that a discretionary mental assessment should be included in these amendments. I think that the court must be mandated to have a mental assessment done if they are going to remove someone from a register. To me, a mental assessment—I mean, I am not a doctor. Sen. Deyalsingh would shed some light on this, but I think that having a proper mental assessment done on someone who was a sex offender and wants to now be removed from a register and not be subjected to the stringent requirements of reporting and so on, you really want to make sure that they are not going to reoffend, and a mental assessment is a

very useful tool in making that determination. So I think it should be as a matter of course that those things ought to be done.

I do believe that perhaps the freedom of information power that the Attorney General said that he wanted to discuss, whether it ought to be circumscribed here, I think that actually these websites, the national register, really ought to be kept confidential if that was the initial intention. And if you have a public register and the court, not the Legislature but the court determines who should be placed on it and what information is there, then I cannot see it being generally open to the public to make a freedom of information request. So I think that that warrants some further consideration and discussion as well, but I am not really in favour of exempting things from freedom of information.

Information really, if a legislature wants to make a big impact, we should actually be telling people when they must utilize information. One of the things that I have seen in foreign jurisdictions is that there are certain types of activities and certain types of employment that you must—it is important, for example, for a preschool to vet applications by persons against the public sex offenders registries, particularly the child registries, and other countries have special registries for child sex offences. So that is something as well that we have to look at. Should we be including in this legislation now, that it is mandatory that persons who are running certain types of day cares and preschools, and sporting clubs and cultural clubs and so on? I believe that the judgment quoted—the facts of that case of the judgments that the AG quoted from, where the girl had been impregnated twice before she entered Form 2, it was from a teacher who was teaching steel pan to her, and when you have people with those types of propensities being allowed to interact with young children and so on, it really is a danger to society.

So, a meaningful piece of legislation would mandate as well that persons

running these types of organizations check these websites. Why put the information out there when people may not even be using it? And it might sound strange that people do not use it, but I have actually seen where very cunningly people are able to convince others that you know, they were wrongly accused and set up, and things like that. So, perhaps making it illegal in some way, or having very strict measures in place to vet persons who are on these registers when they are applying for certain types of activities.

In the United Kingdom they restrict your Internet access if you are guilty of certain types of sexual offences, of course, like child pornography and so on. They restrict your use of the Internet, and if the police find you—and, of course, they have the technology to monitor your access on what you are looking at and so on. If they only find that you have done that, it is straight back to prison because those are some of the types of orders that the court is empowered to make. So they have really taken offender management to a whole different level and that is where I hope to see that we could actually reach. And offender management involves everything including rehabilitation going down as the person is—

Madam President: Senator, you have five more minutes.

Sen. J. Lutchmedial: Five more minutes, yes. Thank you. So all of this is part of that philosophical approach that we have to take towards crime-fighting and towards sexual offences.

Madam President, I would perhaps circulate an amendment in light of what I have proposed particularly with section 50 and placing the discretion back to the court about the public website. Again, I am firm in my view that a court really and a judicial officer sees of the facts of every single matter that comes before him or her is really the best person to make a determination as to whether or not someone should be publicly listed on a website. I agree that mandatorily it should be that

they come onto the national register; that is the private register that law enforcement has access to, I have no challenge with that. But once you are placing a person on a public website and you are placing information about them—remember this is a very small society and you do not want to have a well-intentioned piece of legislation and a well-intentioned scheme be maligned and bogged down by unintended consequences.

And so, as I said, the one that comes first to mind is the identity of the victim preserving that anonymity that we should be offering to victims and all sorts of other types of permutations that could arise in sexual offences. And so, I would ask the hon. Attorney General to give some consideration to leaving that discretion with the judicial officer. Madam President, I thank you very much. [*Desk thumping*]

Madam President: Sen. Thompson-Ahye.

Sen. Hazel Thompson-Ahye: Thank you, Madam President. This Bill to amend the Sexual Offences Act seeks to make some changes to the sexual offenders website and register. I should first like to thank the hon. Attorney General for kindly providing us with a consolidation of the various amendments to the Sexual Offences Act. Perhaps a consolidation can also be done of legislation pertaining to child justice, as some months ago I submitted an article on reforms in child justice in Trinidad and Tobago for publication in this year's edition of the *International Survey of Family Law*, and the editor suggested that it would be useful if I could annex the relevant law. I had to tell her that in Trinidad and Tobago because of the numerous amendments that have been made and were to be found in various pieces of legislation; that would be too difficult. Finding the law here is a researcher's nightmare. CPC and Law Reform Commission take note; persons who are not lawyers in the Chamber have particular difficulty.

So today we are dealing with the sex offender registries. An earlier amendment to the Sexual Offences Act exempts child sex offenders from being placed on the register and I agree totally with this amendment but I want to say that the Legislature and social services should address the issue of juvenile sex offending which anecdotal evidence suggests is much more prevalent than we realize, especially within families, brothers and sisters, cousins, stepbrothers, and so on, with devastating long-term effects on young girls. Now, the hon. Attorney General spoke of horrific statistics put out in the annual report of the Children's Authority, and I would like to say that I served on that care committee for some years and one day when a case came before us of a 10-year-old girl and one younger being sexually abused at night, I asked that I be relieved and promptly resigned from this committee because I just could not deal with it anymore.

So, children are suffering and we need to work on the best that we can, and I know the gender-based unit is doing much better than before because we never used to get follow-up with the police, but things have improved but there is still a lot of work to be done. One must be mindful though, that this Bill, as all laws pertaining to sexual offences, deals with detection of a crime that is traditionally grossly under-reported. What we have therefore to deal with today is an inaccurate measure of the true incidence of such crimes, and further, this Bill is applicable only to those who have been convicted. So the pool of sexual offenders who are affected is even smaller. If we think that in enacting these amendments to determine which sexual offenders get on the register, how, for how long, that will make us and our children safe from sexual predators, we are being delusional. Sexual offenders who come to the attention of the law represent only the tip of the iceberg.

When we look at how many sexual offenders convicted are in prison today, I

cannot believe that I am hearing that there are 11 convicted offenders in the prison: five for rape, five for indecent assault and one with sex with a minor. So all the others are on Remand, what is happening?

Clause 6 of the Bill seeks to widen the applicability of the register to apply to sex offenders who have been convicted of offences outside of Trinidad and Tobago, and may even be a registered sex offender abroad. To me, that seems very logical because a sex offender when travelling to another jurisdiction like ours, is not going to leave at home but is very likely to bring with him well-hidden from view and undeclared to customs the weapon he used to commit the crime abroad, and given his propensity may very well use it here. We know what is happening and we have had at least one precedent of a registered sex offender from outside Trinidad and Tobago entering this country undetected in just 2020. So we know he was Nicki Minaj's husband. Although it was carnival time to all intents and purposes, fortunately he did not make mas here.

Clause 7 of the Bill provides for the establishment of two sex offenders registers. We have the national sex offender register which will not be accessible to the public and the public sex offenders' website. Now, perhaps the rationale for having these two separate registers to arrive at a balance between the right of the public to have information about a sex offender in their neighbourhood and the human rights of the offender, his family, his wife and children, to have some degree of protection from vigilantism and victimization and other self-help behaviours which do not aid recidivism, rehabilitation, or reintegration.

Now, when we look at clause 8 it provides for the public sex offender website to omit from public view certain particulars of the sex offender which are included in a National Sex Offender Registry. It places the national sex offender registry under the control of the Commissioner of Police. The Commissioner now

has control and custody of the register and is responsible to maintain the register and ensure that the information entered therein is in accordance with the Act and any other written law. He must ensure that the information published is accurate. Now, herein lies the rub. The Commissioner of Police is required to and I quote:

> "(5) …make reasonable security arrangements to protect the information contained in the Register against unauthorized access, collection, misuse, alteration, disclosure or disposal."

Now, clause 9 places the public sex offender website under the control of the Commissioner of Police. So he is taking care of both. This website now is accessible to the public.

> "(2) Subject to an application being made"—for exemption from publication—"under section 50…"

Clause 9 states that the information in relation to a sex offender is to be placed on a website and the information in subsection (4) is:

> "(i)…"—the—"name, the former names and aliases;
>
> (ii)…"—the—"date of birth;
>
> (iii)…"—the—"photograph;
>
> (iv) the locality where the sex offender lives; and
>
> (v) convictions of registrable offences committed by the sex offender, including the date of each conviction;"

So all of these will go there.

My question though is: Should it be subject to an application for exemption or should it be subject to a successful application for an exemption? It seems to me that unless the offender's application for exemption is successful, his particulars will be included on the register. Omission from the register follows a grant of exemption, not an application for exemption. As with the national register, the

Commissioner has the responsibility, as I said before, of making reasonable security arrangements to protect the information published on the website against unauthorized access, collection, misuse, alteration, disclosure or disposal.

Now, Madam President, in 1978 I took part in a play on campus called *Jestina's Calypso* written by Earl Lovelace and directed by Gregory Maguire. Playing the role of Jestina, I remember a line from that play, it went like this:

"It ain't have no secret in this place."

Madam President, I am an avid reader of daily newspapers, I listen to talk shows on the radio, on television when I can catch them, and if I have to give an alternative name for the country of my birth, it would be "buss mark country". The name has nothing to do with anyone in the Chamber. Madam President, many in the media seem to have access to high officeholders who help them "buss mark" for some consideration. It may be love or money, whatever, it may be reward, Lovelace was right, "it have no secrets in this place". So we have given the Commissioner of Police the responsibility of making reasonable security arrangements to protect the information on the website and on the national register. But what is reasonable? I consider the threshold of reasonable security arrangements not high enough. I recommend a change in wording: the Commissioner should not "make reasonable security arrangements", but instead I would recommend that he:

> …make every effort to protect the information published on the website against unauthorized access, collection, misuse, alteration, disclosure or disposal.

The phrase "make every effort" is a higher standard to me in my mind of care, than to make reasonable security arrangements.

Now, clause 10 amends section 49 of the Act to enact a new section 49(2)

which reads:

> "(2) Where a person has appealed his conviction, the Court shall, pending the completion of the appeal, withhold making an order in accordance with subsection (1)."

Now, given our record of time periods for an appeal, what is it now, five, 10 years? If the offender is out on bail pending his appeal, his name may never reach the register for years, and this would defeat the purpose of protecting the population from the sex offender. Some offenders have clever lawyers well able to manipulate the system. What is the status of the plans to expedite the hearings in the criminal justice system? Has the building-out of the criminal court in the Towers on Wrightson Road been placed in jeopardy by the massive unexpected expenses occasioned by the Government's efforts at alleviating the devastating effects brought on the economy by COVID-19? Maybe we can have an update from the hon. Attorney General to say what is the position to date, with those ambitious plans with the criminal justice system.

In clause 11, we find that section 50(4), the factors that the court should take into account in deciding whether or not to grant the application of a sex offender who wishes to be exempt from having his information published on the website. Clause 11(b) seeks to amend section 50(3) and states that:

> "…before making a determination pursuant to an application…"—for an exemption, the court—"may request a mental assessment report from a psychiatrist."

The report from the psychiatrist is at the top of the list of the factors that the court must take into account in determining the application. Now, this reminds me of a saying my dad used to say whenever any heinous crime was committed. Daddy used to say, "he either mad or he bad". Clearly, the legislature is of the same mind,

but what some categorize as a mental affliction is discrimination based on gender, power and control.

My view is that what should be at the top of the list is at number four on the list, "the risk of reoffending". That is what should concern us most, what is the risk of that offender reoffending, the most important consideration. Clause 6 is also relevant to the application to be exempt from registration as a registered sex offender pursuant to section 54. Again, the risk of reoffending is critical. Clause 16 amends section 61 in two respects. Not only exemption from registering but also cessation of reporting, when do I stop reporting? So you have a schedule of the offences and the period for reporting.

The Medical University of South Carolina publication in 2010 of a study entitled: "Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence Against Women" concluded among other findings that a follow-up of just over eight years that registered sex offenders were not less likely to recidivate than non-registered sex offenders. And one of the problems we have in the society is the lack of research studies. One of the recommendation in that report was to limit the duration of the period of SORN—S-O-R-N—sex offender registration and notification. The study recommended that since few low-risk offenders will sexually reoffend and that even high-risk offenders are less likely to recidivate as they age—because when you get older you slow down. As they accumulate time in the community offence-free, registered sex offenders should be provided an opportunity to be released from the requirements after a reasonable period of law-abiding behaviour in the community, and they suggest five to ten years in the community. Every year that you go with any lack of offending should be taken into account.

Now, how effective is this sex offenders registry? In the February 2006 issue

of *Corrections Today* which is published by the American Correctional Association there is an article entitled "Understanding policy programmatic issues regarding sex offender registries" written by Matthew Lees and Richard Tewksbury and in that article the authors state, if I may, Madam President, that:

> "While sex offenders have always been subject to particularly severe sentencing laws on harsh treatment from society, the past decade has seen the development, emergence and proliferation of a 'new' form of criminal sanction: the sex offender registry "

So it has reached here now.

> "The heightened awareness"—they continue—"of sex offenders can generally be attributed to the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act of 1994, a law that formalized the practice of registering sex offenders in state-wide databases. Sex offender registries were subsequently made publicly accessible (almost always via the Internet) though Megan's Law…"

And most of us would have heard about Megan's Law which was:

> "…passed in 1996 in response to the brutal murder of Megan Kanka, a young New Jersey girl, by a registered sex offender living anonymously in the community."

So—

> "This (and subsequent) legislation was created to deter potential sex offenders and reduce instances of sex offenders re-offending."

So it is really organized and came into fruition to deal with children who have been sexually abused.

> "Such moves have also served to provide at least an illusion of increased public awareness of sex offenders, enabled community members to…protect

themselves and their children through greater knowledge and to provide a sense of creating safer communities."

So are we really going to get safer communities?

"Perhaps the most important reason for the creation of sex offender registries was the anticipated reduction in recidivism for sex offences."

But the authors concluded that the research to date suggests that sex offender registries may not be achieving the goal of deterrence or reductions in recidivism.

"…sex offender registration is a process that is well-intentioned, but, as suggested by the emerging…literature, fraught with problems, inconsistencies and the potential for adverse consequences."

So—

"The need for continued research is clear, public policy and the safety of communities will hinge on what research continues to show regarding the efficacy, process and consequences of sex offender registries."

So, do I offer any hope or is the picture all bleak? One promising sign of a successful response to sexual offenders is restorative justice. Ann Marie McAlinden in an article entitled "Restorative Justice as a Response to Sexual Offending - Addressing the Failings of Current Punitive Approaches" published in 2008 online issue of the *Sexual Offender Treatment* which is the official journal of the International Association for the Treatment of Sexual Offenders, IATSO:

"…advocates the use of restorative practices with sexual crime as a proactive, holistic response to the problem…"—and we did hear the hon. Attorney General talk about a holistic response—"and"—is—"ultimately as a more effective means of reducing the incidence of sexual offences and sex offender recidivism."

So McAlinden states that at best the criminal justice system can only ever

hope to deal effectively with those offenders who have already come to the attention of the law enforcement authorities, and that is a very small number of offenders. Some research shows fewer than 5 per cent of offenders are ever arrested, and evidence from self-reporting studies, when you speak to the offenders, they reveal that they have committed much more offences than they are being questioned about. But there is not enough reporting so they are not being detected. So child abuse often remains hidden and undisclosed. Low level of prosecution attributed to the low level of reporting. Sex offender registration and community notification impedes offender reintegration. What do we want at the end of the day? Do we want these persons to return and be reintegrated in the community?

So restorative justice and its alternative views crime as a violation of the law which necessitates punishment but is harm to people and relationships and seeks to redress or restore that harm. So it involves engaging with the offenders to help them appreciate the consequences of their actions, encourage reparation to victims or the wider community and reintegration of the offender.

12.00 noon

It is used—restorative justice, the term—to cover a wide range of programmes: conferences in one form where the offenders, on the one hand, they get together with their supporters in a restorative justice conference in the presence of a trained facilitator, and we have several trained facilitators in Trinidad and Tobago now, and also with the community being represented to decide how to repair the harm. Some judges in the United States are also using intimate abuse circles as a restorative response to domestic violence and you have circles of support and accountability being used widely in Canada for the last 10 years with reintegration of selected high-risk offenders at the end of their sentences.

And an evaluation of circles in Ontario found that high-risk offenders had a reduced rate of recidivism of over 50 per cent. In the book, *Restorative Justice Today: Practical Applications*, published in 2013, Anne Hayden and Katherine van Wormer, in an article entitled, "Restorative Justice and Gendered Violence" compared how the criminal justice system dealt with the needs of female victims and offenders against restorative justice and they advocated the victims' survival panel where you have a range of victims meet with perpetrators, not with the same persons who had perpetrated the crimes against them. And they sit and they listen—the perpetrators—to the narratives of the women. It can be very painful to them. And what has been emerging is that on hearing of the pain suffered by the women, actually hearing the pain, they begin to feel that sense of empathy. That is the feeling that is being evoked and they get in touch with their own feelings and their own victimization because as we always say, "hurt people, hurt people". So where did it all start?

And I want to tell the story of Frank who sexually abused his granddaughter. It is a true story and it involves a single sexual act against the granddaughter but it evoked a lot of turmoil in the family that before that incident, the family was very close-knit. Frank had a wife of 36 years, he had seven children. Three of his sons came to the conference that was convened and they all spoke about what happened, because first of all, he had denied the charge. He said he did not do it. But when he went and he thought about it, he said, "I should not be putting my family through this. I confess"—euphemism—"I did interfere with my granddaughter." So the conference recommended periodic detentions, suspended prison sentence and two years supervision and counselling or therapy, as recommended by the probation officer, and the court accepted the recommendation.

But what came out of the conference—and that is why it is so important to

understand why the crime happened—is the fact that he said that, hitherto, he had been a model citizen and father and all of that but he was introduced to a lot of pornographic material in books and videos, and there was born the harm that he perpetrated. So perhaps one of the things that we should look at is to redouble our efforts to eliminate what we have heard, is the huge amount of pornographic material circulating in this society. Because certainly it is putting ideas in people's head, it is getting people aroused and it is causing them to commit crime.

Now, at the end of the day, I am not advocating that we throw out the register and say no sex offender registry, but what I am saying is that we must understand the limitations of the use, that we must explore alongside the use of the register such options as being offered in the field of restorative justice for a long-term and effective solution to the heinous crime of sexual offences. So let us not close our minds to alternatives. Let us understand the reality of what we think we are doing, what we would like to do and how best we can do it. And, Madam President, I thank you. [*Desk thumping*]

Sen. Yokymma Bethelmy: Good afternoon, Madam President, colleagues and citizens joining us on *ParlView* and the Parliament Channel. In recent times, we have seen the proliferation of violent crimes and sexual acts against our women, children and vulnerable members in society. This is due to the very real fear that our women and children are being targeted by a minority of men who feel emboldened by their ability to carry out such crimes. So, Madam President, this Bill could not come in a better time and its impact cannot be discounted as we empower our protective services to safeguard those who they have sworn to protect and provide our citizens with the information necessary to protect themselves and their families from sex offenders.

Madam President, I will not be long as I come behind many illustrious

speakers, learned in law. However, I will focus on the following points: I will give an overview of the current situation and why it is important for us to protect our women, children and vulnerable in society, and what the Government of Trinidad and Tobago is seeking to achieve with these Bill amendments.

Madam President, I stand before you not just as Sen. Yokymma Bethelmy, not just as a legislator but as a sister, a friend, a daughter, a cousin and a godmother. I stand before you, Madam President, as a witness of female friends being sexually assaulted in public by complete strangers, as a confidant who has heard the experiences of many females and other vulnerable members in society about being sexually offended from childhood straight into adulthood. I have read numerous newspaper articles about local and international sex offenders ripping the innocence from our children. I have unfortunately seen the disgusting videos shared through social media about children being sexually molested. I have heard and looked at trafficking documentaries. Madam President, I have seen it all and if I have not seen it all, I do not want to see anymore. I think that I am fed up.

According to UNICEF, approximately one in every 10 girls under the age of 20:

> "…have been forced to engage in sex or perform other sexual acts, although the figure is likely much higher."
>
> "Roughly 90 per cent of the adolescent girls who report forced sex say that their first perpetrator was someone they knew…"

So, Madam President, who are the sex offenders? It is usually the nice guy. It is usually the stepfather, the brother, the teacher, the coach, the guy that everyone trusts and has easy access to our children. They are usually the people that we love and respect.

Madam President, the study goes on to say:

"Sexual violence results in severe physical, psychological and social harm. Victims experience an increased risk of HIV and other sexually transmitted…"—diseases—"pain, illness, unwanted pregnancy, social isolation and psychological trauma. Some victims may resort to risky behaviours like substance abuse to cope with trauma. And as child victims reach adulthood, sexual violence can reduce their ability to care for themselves and others."

"…many victims of sexual violence, including millions of boys, never tell anyone."

Madam President, children cannot defend themselves against these individuals and it is exceedingly rare for a child to make a false claim about being sexually molested and this has been proven study after study. Madam President, protecting our women and our children is everyone's business. Through God's blessings, our women are creators of life and our children are our future. Without fully functional youth, Madam President, I have no future, you have no future, we have no future and it is of utmost importance that we protect our future.

Madam President, I know the conversation of abuse and neglect of children is an awkward discussion to have but it is one that is necessary and for that, I just want to say thank you to our hon. Attorney General for being our champion legislator and for bringing Bills dedicated to protecting our women and our children. I say thank you to Sen. The Hon. Clarence Rambharat and the other members of the Special Select Committee for their contributions in this matter. I say thank you to Sen. Paul Richards for his Motion that examined the deficiencies in our current systems in place and last but not least, I thank our hon. Minister of Gender and Child Affairs for all of the work that she has done within her Ministry.

Under the astute leadership of the Minister of Gender and Child Affairs, the

Government of Trinidad and Tobago has placed several programmes in place, such as the National Child Policy; the Be a Hero initiative, which was designed by the West Indies Cricket Board. It integrates sports and education to create heightened awareness of abuse with a focus on being a hero by breaking the silence against child abuse. On the Ministry's website, there is also a Child Zone where children can go and visit and actually interact with friendly graphics and videos and workbooks that actually raise awareness about child abuse and to really educate the children about what is right from what is wrong. We also have the SARAH project which is Safeguarding and Rescuing of All Humans from Human Trafficking and we also have partnerships that the Ministry forged with NGOs and the Tobago House of Assembly. This was really aimed at providing all citizens on both islands, who have been victims of abuse in any way, with a safe place to be after. The Ministry also has the support of the TTPS' Child Protection Unit and Children's Authority.

But even with all of these programmes in place and all of the work done thus far, we still have to pass necessary legislation to support the programmes that we have put in place. So, Madam President, on to the burdening question: What are we seeking to achieve with these Bill amendments? Through these Bill amendments, we seek to support the work that the Children's Authority has already been doing. We seek to support the Child Protection Unit of Trinidad and Tobago and all other agencies working together to protect our nation's children.

Madam President, let us examine some of the amendments in the Bill. Clause 7 which seeks to amend substantive legislation to give effect to the National Sex Offender Register and the Public Sex Offender Website. But why do we need this amendment? You see, Madam President, the Government has been burdened with competing interests: balancing the rights of a convicted sex offender while

protecting, jealously, our citizens and general public to live a life free from fear without necessary encumbrances. The introduction of this register will assist our law enforcement agencies to monitor and track our registered sex offenders as means of expediting investigations and criminal acts. On the other end of the spectrum, the register will allow the average man or woman the opportunity to vet the people that they interact with, live around or even expose themselves and their families to. It would allow for the individual to take responsibility in implementing safeguards with the additional information made available to them.

Madam President, what the Government of Trinidad and Tobago is trying to do is not anything new. We are not reinventing the wheel. This model has been used in the United States of America's Department of Justice where they have something called the SMART initiative or the SMART programme which is the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking department, and this is really aimed—it is really a system in place that monitors and collects all the necessary data that is needed as far as dealing with sex offenders.

Madam President, I know that citizens and activists and some of my colleagues on the other side may have some reservations with the register being made publicly, but personally, I would like it to be public. And some may argue that we are violating the rights of perpetrators but what about the rights of our children? What about the rights of our women? What about their rights, Madam President?—which brings me to clauses 8 and 9. Madam President, these seek to bring balance and highlight the other end of the spectrum which is protecting the perpetrator and protecting our citizens from themselves.

Madam President, as said earlier by my colleagues before me, the National Sex Offender Register will be monitored by the Commissioner of Police to protect

against unauthorized access, collection, misuse, alteration and disclosure or disposal because this register will have detailed information. But why? Why are we giving access of this detailed information solely to the Commissioner of Police? You see, Madam President, the Bill before this honourable House is one that not only affects the lives of citizens but it is one that stirs strong emotions in our hearts, and can sometimes get us in trouble.

Madam President, we may sit back and not truly feel the full brunt of crimes experienced by fellow citizens until it hits home. So, we have seen videos on social media from across the world, right here at home of citizens taking the law into their own hands and seeking justice on the behalf of the victim. To answer the question: Why the Commissioner of Police is the only person who will have access? It is to protect against vigilantism.

When we look at clause 9, where we speak about the sex offender website being may public, the public will have access to it but it too will be controlled by the Commissioner of Police and will set out specified information on sex offenders but reasonable security measures will be put in place and to protect the information on the website against unauthorized access, collection, misuse, et cetera. The new amendments will prohibit the publication of the sex offender and it will require locality similar to what our hon. Attorney General spoke about. We are not going to put the person's exact address. We are just going to put where you are located.

Madam President, the sex offender register will allow for persons to protect themselves and their families, because how can we tell who we are interacting with, especially in a day like today? We really have to provide our citizens with the necessary information to continue guarding themselves and their families. Because even with the various programmes that I spoke about earlier, even with the different units that I would have discussed earlier, our citizens are still at risk.

Madam President, the sex offender register—apologies. We are focusing on the face-to-face interactions, what about the Internet? What about taking a closer look at technology which has revolutionized our daily lives? The Internet has evolved from being a specialized communication tool to one that is common in our workplace, schools and homes. And on the flip side, it can be used to facilitate crimes such as human trafficking and child pornography. The Internet is used as a medium by sex offenders to target vulnerable children and citizens for sexual exploitation. But how can we protect our children if we do not know who they are interacting with?

Madam President, the old saying goes, "It takes a village to raise a child," but I want to change that saying and say, "It takes a village to raise and protect a child." It should not just be looking at John when John is misbehaving. It should be observing John and knowing what is happening with him, observing his behaviours and if you hear that John is being sexually abused, at least report it to the right authorities, not to take it into your own hands.

Madam President, we are not at all saying that the sex offender registry will step sexual crime but it is a tool that can be used to deter possible sex offenders. Additionally, this piece of legislation will create further reinforcement for the programmes that address the sociocultural change needed to treat with the underlying issues that promote gender-based violence and child abuse. The problem of sexual violence and child abuse and violence against women and our vulnerable members in society is of national legislative priority and the Government of Trinidad and Tobago will continue to actively work towards protecting our women, children and vulnerable members in society.

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

Sen. Charrise Seepersad: Thank you, Madam President, for the opportunity to

contribute to the debate on the Sexual Offences (Amdt.) Bill, 2021. Madam President, considering the sexual assaults and brutal murder of far too many women in Trinidad and Tobago, the fear of sexual predators and the general safety of citizens, especially women, continue to be highlighted in the media. Citizens are also actively participating in protest to demonstrate their frustration about the brazen actions of violent, sexual predators. All sexual-related crimes are heinous. Statistically, sexual predators are mostly men targeting women.

A recent IADB study found that 20 per cent of women surveyed in Trinidad and Tobago had experienced some form of sexual assaults with few reporting these acts. Reasons for not reporting include social shame, fear, the tedious legal process, lack of access to redress and justice. Fortunately, the Me Too Movement has emboldened women of all backgrounds to come forward, nevertheless victims suffer permanent psychological scars. Imagine one in five women suffering unspeakable trauma in silence and having very little or no support mechanisms. Imagine daily having to pretend that life is normal, life is okay.

Madam President, I firmly believe that victims require state-provided, well-resourced, dedicated, ongoing services to deal with the mental, physical and emotional trauma. Every effort to reduce if not eliminate these offences is of critical urgency. Therefore, Madam President, I am in support of measures to reduce the incidence of these crimes.

Between September 2019, when this Sexual Offences Act was passed, until January 2021, 326 people have been charged for sexual offences. However, as at February 2021, as the hon. Attorney General mentioned, only one person was registered on the National Sex Offender Register. He will have to register with the police station in his district for seven days after serving a nine-year prison term and his name will remain on the register for 10 years and he must report annually.

However, hundreds of sex offenders, sentenced prior to the new law in 2019, cannot be placed on the registry as retrospective punishment is unconstitutional.

Clauses 8, 9 and 10 of the Bill: Madam President, the primary focus of the Bill is to establish two registers: the National Sex Offender Register and the Public Sex Offender Website. The databases are valuable tools for monitoring and tracking sex offenders following their release into the community. The TTPS will have a crime database, the National Sex Offender Register. While a sex offender registry is not unique to this country, the registry sets out to capture the personal data of persons convicted of crimes. The database is under the direct control and custody of the Commissioner of Police who will be responsible for populating and updating the database. The database is structured so the TTPS will have access to additional details, including among other things, photographs, fingerprints, DNA profile, et cetera. The subset of the registry is the Public Sex Offender Website which will be released online for the public use and will contain information, such as the name, former names, et cetera, photograph, locality, not specific addresses to avoid victimization and conviction and conviction dates of the offences. The subset of the registry is expected to be expunged after a predetermined period.

However, it is almost impossible to remove data which has been proliferated on the World Wide Web. Also, cyber criminals may download the data and use it for further crimes. Madam President, while every effort to reduce, if not eliminate these heinous offences, is commendable, I would like to raise a few concerns especially since the constitutional right to privacy is being taken away for registrable sexual offenders. My concerns are one, the security of data. As already mentioned, the Internet is not secure and confidential personal information can and will be misused. Two, the integrity and accuracy of data. Data captured must be both accurate and complete, it cannot be one or the other. Three, confidentiality of

the extended personal details in the care of the Trinidad and Tobago Police Service. No system is secure enough that hackers cannot compromise. And four, what redress is there when a conviction of a person on the database is overturned because of new evidence?

Global sex offender registry: Madam President, I am asking that the hon. Attorney General consider connecting the Trinidad and Tobago National Sex Offender Register with countries such as the United States, Canada and Europe. The TTPS will have a centralized database to collate information on sex offenders and allow sex offenders to be tracked across borders. There is also software that can be used to intercept registered sex offenders who try to message children on social media. We need sweeping changes to reduce the violence against women.

Clause 10 of the Bill, amendment to section 49 of the Act: The amendments in clause 10 removes the role of the court in determining who is included in the National Sex Offender Register, for how long and whose details go on the Public Sex Offender Website. Under the existing Sexual Offences Act, a person convicted of a registrable offence will only be required to be registered at the discretion of the court, section 54(1). A person can apply under section 61(1) to be exempted from registration or under 62(1) for the cessation of the reporting requirement. Under this Bill before us, all registered sex offenders must be included in the register. The court must now order the registration of all persons convicted of a registrable offence, subject only to an application for exemption. Further, under the existing Act, the public was denied access to the register unless the court ordered, under section 49(4), that the offender's information be published on the website.

Madam President, under the proposed Bill, there seems to be no situations under which the public may have access to the register. The effect of the amendment is to make registration, and therefore reporting under section 54(1), an

automatic consequence of conviction. The obligation is on the offender to satisfy the court that an exemption from the reporting requirement is appropriate. I do not agree with the court's discretion being removed.

Section 48(1) of the Sexual Offences Act: The effect of this section means that the following information is not included on the website: that the sex offender is a citizen or resident of Trinidad and Tobago, that the sex offender was convicted of a registrable offence by a court in or outside of Trinidad and Tobago, that the sex offender completed his or her sentence before the commencement of Act No. 19 of 2019. I am not sure why this information is not included on the website but I believe it should be. The public should know that the sex offender has served his or her sentence.

Finally, Madam President, protection and mitigation strategies. Relevant legislation such as the Sexual Offences (Amdt.) Bill, 2021, before us and the imprisonment of sex offenders are valued because it protects the wider society, especially women. It can potentially encourage citizens to obey the law since convictions have severe and long-lasting consequences. However, laws, no matter how punitive, may not always deter someone from committing a crime. We also need education and awareness. In Trinidad and Tobago, treating sexual offending needs to be multifaceted and this needs to be resource intensive.

Studies have showed that sex offenders tend to lack victim empathy, display emotional loneliness and possess inadequate problem-solving abilities. This is confirmed in Fisher, Beech and Browne, 1999 and Marshall and Barbaree, 1990. These factors may contribute to the onset of predatory sexual behaviour and crimes. Intervention strategies, such as early detection of personality and mental disorders, are crucial to successfully tackle the issue of sex offending.

Psychological testing, counselling and medical treatment are necessary to

identify and treat antisocial behaviours and enhance emotional competencies to prevent and mitigate sexual violence in our country.

12.30 p.m.

The criminal justice system in Trinidad and Tobago has to prove efficient and effective in charging, convicting and rehabilitating sexual offenders through psycho-educational interventions during incarceration to end impunity for acts of sexual violence and all forms of gender-based violence.

Reducing case backlogs and delays in trials is critical for both victims and the accused. This will also mean that persons will be incarcerated more timely if found guilty rather than being out on bail for years, the ability to continue their violent behaviour.

Finally, Madam President, hon. Attorney General, I also look forward to you bringing legislation to the Senate which deals with, among other things, sexual harassment and the registration of public transport, including PH taxis in the shortest possible time. Thank you, Madam. President. [*Desk thumping*]

Sen. Dr. Varma Deyalsingh: Thank you, Madam President, for allowing me to partake in this discussion. Madam President, the incidents that the Attorney General relayed about persons having committed such atrocious acts, actually, I was looking at the media reports recently and for the past month. It actually pained me to see what our citizens, our ladies, mainly ladies, have to be undergoing. It seems that we are not a civilized society anymore.

But you see, Madam, it is not just in Trinidad. In the United States, there are about 900,000 sex offenders registered. So it is a global problem that we are facing, that we have to try to appreciate that, listen, something we need to do different, not just in Trinidad but all over.

The Megan rule, as was mentioned before, started when a young girl, a

perpetrator, moved in across the road from her and he had two instances of sexual assault before. And if the parents had only known that, they would have been able to set their guard up. They would have been able to look at their daughter. They would have been able to be more vigilant. So it was really the voice of the people that resulted in this Megan's Law coming into part and, you know, actually giving us the sexual registers, but just not in the United States.

In the UK, there is what you consider the Sarah's Law, where a young girl again was snatched from playing in the playfield with her relatives and her body was found mutilated. And again, the sex offender then had previous instances. So we see it is a global problem. And the terrible figures and statistics we see, we may think that, hey, you know, we are in a bad way. But it is actually worse than that, Madam. Because you see, three-quarters of those sex offenders out there are never even brought to the forefront. So it is really a hidden epidemic.

Statistics have shown that a lot of persons do not even, you know, come forth to say that they have been raped, to say that they have been violated. So really speaking, out there, there are individuals who are posing in men of cloth, boy scouts, leaders, doctors. There are persons out there who are actually great pretenders. They are pretending to be sometimes those persons in a jacket and a tie who may protect society, and very pious individuals. But we have to realize, most of those individuals out there, 75 per cent out there, are just waiting around. So this list, it is really, I think, well needed. But it is not to say, as other Members mentioned, it would not cause a major dent because the majority of persons are not being caught.

So therefore, this hidden epidemic, how do we get these—how would this help? Because remember we have heard discussions where the recidivism rates maybe in a sense, in a way that, you know, it is a low level of recidivism in those

individuals. Some people quote 15 per cent, in contrast with general crime which is around 30 to 40 per cent. But remember, Madam, those countries have better capacity to rehabilitating individuals. So those countries are at an advantage. They have a system there. We here may not have that capacity so we may be putting persons out there who, if we are not aware about them or not aware of their past but their deeds, we will be causing an injustice for not protecting society.

So even when we say have on register, we have to understand a lot of those individuals are not caught. A lot of those individuals are individuals who are out there. And even when you catch these individuals, the conviction rate seems to be very, very dismal. You found that, you know, when you look at even figures in the United Kingdom, United Kingdom had some figures where the crime survey of England and Wales, 144,000 victims of rape or attempted rape but only 55,000 were reported and only 1,439 convicted. So therefore, the low detection rate is something that we have been seeing globally. So therefore, we have to realize that those that we catch are only a minority. And that minority, we need to put the full brunt of the law to let persons see that the minority of those persons that we catch and go before the courts and are charged are persons who could serve as a buffer or even as a preventative measure for others, the 75 per cent people out there who are waiting in the wings, who have done their acts. Let them realize the law is coming after them.

So you see, putting somebody's face in the social media, having that out there, having digital boards, newspapers, it sends out a fear or caution that we can show that we are interested in showing the persons that we as—the Government as a whole, with the population, is willing to put measures in place. We would not know the mind of a rapist who he is going to be raping next, but we put systems in place and laws in place, where we can certainly help the situation.

So, we have to appreciate that a lot of the persons who actually escaped justice are persons who may also escape by hiring a good lawyer. We may have cases where there are certain untouchables. So the few that we catch, maybe with a good attorney, maybe with a delay in the legal system, the judicial system, we may be actually letting out persons there who should have really felt the full brunt of the law.

When I looked, Madam President, at the situation of the diluted effects, I am thinking, of the reoffenders, diluted in the sense that the figures do not show the true picture. I am thinking that even though we have those individuals who are not being reported on, we have to get to those individuals and we have to get those individuals because those are the individuals out there who are getting away. Now the Me Too movement, they bring persons to report instances. We also realize that if persons could get faith in the system they may come forward more.

I have seen patients in my clinic, elderly patients, older patients, I am saying that, when we go into the therapy, they have been raped as a child. They never spoke to anyone. They kept it in and they are presented with mental illness later on. So we have to appreciate that we may not be getting the—

This piece of legislation is excellent. It is going to be giving us a register but we will be missing out a broader section of society; those in the closets willing to just be hidden, not being known. We do not have any idea which persons are there.

I am thinking, Madam, we have to appreciate that, you know, it is not just here. Right now in Belgium, there is a major problem where the legislators are now in Parliament trying to go after the change in the law. They actually realized that there was a rape recently, about 11 days ago, where five teenagers between the ages of 14 and 19 actually raped a young girl, a 14-year-old girl and it is presently causing an outrage and the Belgium Parliament is thinking about actually looking

at rape of a minor under the age of 14, increasing the sentence to 28 years. The significant fact is, Madam, it was five teenagers between the ages of 14 and 19 involved in this manner. So even though some Senators may say we have to protect children who are committing crimes, we have to realize more and more children are going out and doing atrocious crimes. About 10 years ago in the UK a similar thing happened where 15 persons actually raped a girl in a stairwell, 15 boys between the ages of 13 and 19. And this girl actually almost killed herself.

Now in the case in Belgium I mentioned, that girl committed suicide. Four days after she was raped in Belgium, she committed suicide. So we have to appreciate the sexual offender can drive persons to have psychiatric illness, lifelong problems. They can also drive persons to actually commit suicide. So we have to put things in place. It is not just the Mano Benjamins in our society who could keep two sisters captive for years. It is the ones that are looking—I am saying the stepfather who goes through the mother to get at her daughters, the doctors who use their position, their privilege position, to go after children.

Right now, there is big controversy going on with the WHO. Two doctors who were in Congo actually impregnated persons there and the European Union actually was telling the WHO representatives that you have to have a better policy in place for handling your staff who come here. So even though the doctors may come here to work, or other persons may come here to work, we need to track them by this legislation.

It was President Obama actually who had actually looked at legislation of having persons extended their boundaries for children, and he had passed that when he was in office to try to see if somehow he can reduce trafficking in children. So while we are looking at different persons having the means to escape one country to another, some persons look at Third World countries as, we can

come down there, they may not have good laws, they may get away. So they may use our Third World countries as fodder for their activities.

Now, Operation Global Sex Offenders Registry is also seeking to somehow have a link with Trinidad and the United Kingdom and other countries to link these offenders. So Operation Global Sex Offenders Registry, I am thinking it is something that our Caricom head, our Prime Minister, should probably motivate our 15 Caricom nations to go on this registry to share this sort of information with other governments, to look and put a curb to this. Not only do we have to have that register, but I am thinking this register should not—the Attorney General said we should not have the address of the persons. I am thinking no, put the address. If you have—you are saying that people with vigilante groups will come about, but there are laws.

In Pennsylvania there is a law, that if you go after these people and try to somehow have vigilante justice or go after them, you put laws in place to go after those persons. But why I am thinking it is necessary, because there is something called see Virtual Neighborhood. It is an app where parents will know if a child goes near a sex offender's address. We had cases where sex offenders lured children to their homes. So therefore, if we are thinking ahead, have the address. I see nothing wrong with putting the address of these persons here on the list.

Now the fact that you have two lists available, I am wondering definitely one list maybe for the police officers to have and the other list for public access. And I welcome the Attorney General in his closing comments when he said he would be considering looking at other things, like looking as revenge porn, looking at once you are charged for a crime, even though you get away, it is public knowledge. Have that list there so people can see because sometimes the court cases and a good lawyer may let somebody escape. So these are things that I would

be looking and hoping we can put in place.

Madam, you know, the law has to change to keep up with what society wants. And our society, I am saying, there is a lot of those crimes here; crimes against women, a lot of crimes here that we hope that we can somehow be able to put a dent into it. The thing is, if crimes like this, if legislation like this can help, it is really therapeutic jurisprudence where you are trying to make laws to see if somehow we can help society.

Part of it I did not agree with, Madam, is when not putting somebody retroactively. Putting somebody who, when the law comes about, persons who already did crimes, I think they should be added on, because those persons could still pose a danger. And if the whole idea of this legislation is to get persons who are dangerous, if you committed a crime before this law you should be put on that. I think it was California, I think, had an issue where they were deciding to put on persons retroactively too, from when their legislation came about. And I am thinking we may have to put that to protect because the whole idea is to protect persons. Some countries have orange flags, red flags against persons' names to see if they may have a great chance of reoffending. But sometimes it is difficult. Even if we as a psychiatrist are going to do some sort of assessment, a very smart sociopath can fool us, tell us all the right answers and still get away, so we have to be very cautious. It is better to let society judge, than living amongst us is somebody who committed a crime.

As one of the Senators mentioned here, we do not want if the community is responsible, we do not want John to just be abused. We want the community to get involved. But we also need, if there is Jake in the community, who is a mentally ill person who had done an issue before or a sex offender before, we also want the community to know Jake lives amongst us. We will not discriminate against him.

We will not go like vigilante justice against him. But we will watch at him. We will warn our daughters and whatnot and say: "Look, living across the road, do not talk to that man. If he is fresh with you, come after tell us." So we have a duty to put this there.

I am suggesting, even though there is somebody who has a mental illness like exhibition, which I have seen patients in clinics come, even though you have those individuals, we have to, it is on the list. We say: "Well he is there. It is just like somebody who has diabetes. He is there, he has that. Watch out little children, he may expose himself." So the information could be out there, regardless of any sort of mental illness, if not just to warn persons that living amongst us, we treat them with kindness, we treat them. Look, if they are having a meltdown, call St. Ann's or the ambulance to help them, but we look at them to understand, living amongst us are good people, bad people, people who are offending.

And you see when Sarah's Law in the UK came about, they found, the government, Gov.UK published on the 4th of April, 2012, that actually found 200 children were protected from potential harm during the first year of this child offender registry. So it has its benefits, and I am thinking that the benefits are there and I am supporting totally this Bill, but I am thinking we have to look at the other aspects where I am thinking it is lacking.

Madam, there are gang waves that are occurring. We have to know that even, when you see the two instances I mentioned in Belgium and the UK. I remember, last year, September 15th, Pakistani Prime Minister, in a case which rocked Pakistan when an individual car broke down. She had her children there. She pulled up her glass. She put up her glass. She called for help. Two guys came, broke the glass and raped her in front of her children. And the Pakistani President at the time suggested he would not mind even having capital punishment, you

know, the death penalty for those persons. But he said that because of the trade status agreement by the European Union, he cannot call for that. But he also made mention that he is in favour of even castration, chemical castration and whatnot.

Nigerian state also, around same September last year, there was a case where you had the persons there also calling to change the law, when it was found—it was a public outcry, just how we had our public outcry there—that the Nigerian Prime Minister, I do not know if it is Prime Minister or President, actually made a commitment that anybody convicted of raping anyone younger than 14 years under a new law will be punished sometimes and he was looking at the death penalty. So even if the Attorney General wants to bring the death penalty for certain heinous crimes of rape, I will support the death penalty in that area because I am seeing persons are driven to suicide. Persons' lives have been destroyed.

The aspect of having reporting—statistics show sometimes 19 per cent of women and 13 per cent of men who are raped since their 18th birthday would not even report it. And this was a recent study by Tajden and Thoennes in 2006. And it matched the studies before Bachman in 1998, where he found it was only one out of four rapes were really reported.

So our problem as a society is: How are we going to reach to those individuals who are potential rapists? The persons who are posing as good friends, as scoutmasters, as doctors, as persons in society, those are the—to really get to them, we have to really educate people and children that: Hey, you have to report it.

We also have to, as I am saying, to look out—as a Member said about the village. We have to also look at the fact that we have to know that the society will come down with a full hand of justice on those persons.

The case I mentioned, Madam, in the UK, where the 15 boys raped this

teenager in a stairwell over one and a half hours and filmed it, actually filmed it, the judge at the case here, Judge Wendy Joseph, actually did something which I found was excellent. Now, people may disagree but she said she is going to name 13 of the 15 persons because—even though we want to protect children, she said the identification of those individuals, in her opinion, would deter others. So while children or young people may think they can get away and get away with anything, it comes like if you do something bad, we will not name you. We will treat you good. You could go back into society. We are not going to put you on a register, but that is wrong. I am thinking, this judge used her discretion. I think we need more cases like that.

I am also looking at the fact that if we have cases where, I think it was mentioned, where somebody could actually go before a judge and ask that judge to not put their name down, I think this is dangerous. Because you see, individuals with money to hire a good lawyer could now sometimes go to a judge and get away rather than another individual. So I am thinking, this law is part of that clause there. I am thinking we should not leave that under the discretion of a judge alone. You see, let there be a tribunal where a judge could sit with a victim or a victim's relatives, also sitting with a—so you have like a tribunal really sitting on should we put this person name at all. Do not let it just be. Let it be a judge, a lay member and one of the victims and victim's relatives to be that part to say, hey, because persons could say people could still escape this list if they have enough funds to hire a good lawyer. Persons could still say: "Well we would not be put on this list because of the dating." So that dating, I am thinking, has to go there.

The sexual offences I am looking at, the fact that it is caught up, as certain other Members say, into a lot of other things. We have to look at the fact that even as the Attorney General mentioned, he was going to look at revenge porn, corporal

punishment, voyeurism. I will say we have to appreciate the fact that looking at pornography is also laid up with this. So he has to come with this. There are statistics and figures that show that if you are demeaning to certain persons, if you have that level of porn that is existing, that level of porn could actually affect the minds of the individuals and make them more prone to commit violent acts.

So, we had this forensic psychiatrist come out with the opinion often that imagery affects children. It normalizes sexual harm by portraying a lack of emotion, relationships between consensual partners, unprotected sexual contact. And also, there was a Dr. Sharon Cooper, a Forensic Pediatrician and lecturer in North Carolina School of Medicine who says what children see, they could mirror. It is something call mirrored neurons. And she says a pornography is actually more sexist than hostile towards women than other social images and it can lead young men and boys to think that it is socially acceptable and even go aggressively towards demeaning women. So, I welcome if the Attorney General could also look at this. Because remember, the porn hub survey showed we are very high in Trinidad and Tobago, among other countries in terms of looking at porn. So somehow we have to look at porn going to affect the minds of the children and affect the children.

I look at the pieces of legislation that the Attorney General brought and the majority of it I would agree with, except the two exceptions I had given. I also agree with raising, where it was mentioned that he was going to raise the fine to 250,000. I think it was clause 20. And I am thinking, if you are going to raise that fine for persons who breach it, somehow that should be channelled back in to help victims of sexual assault, help them with their therapy and whatnot. Just do not put it in the Government coffers. Get some way of putting this back.

And we have to appreciate that we may have to look at the sexual offences

registry as he mentioned it. He mentioned the register could be one for the public and one for private. Now, a lot of individuals we see are persons who may be tending to be a sexual predator. I had a patient, a young girl, she was a teenager, and she was total psychotic, schizophrenic. And in her periods of lucidity, she mentioned she was raped by her father. So probably that caused her to trigger this mental illness. But what was very significant, during her period of lucidity she mentioned to me that that father is now in another marriage with two step daughters. How are we going to warn that person, that new person in the relationship, that we highly suspect? We had no proof, because this girl was mentally ill. But the fact is, she did mention she was worried for these two stepdaughters, because they all grew up in the same village. And in that way, we may have to put a sort of a list where persons could be put on that list when people could call. Just as we have the Me Too Movement, persons could call and say: "Look, this teacher was inappropriate…"

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

Sen. Dr. Varma Deyalsingh: Thank you, Madam. That "this teacher, this scoutmaster, this person made inappropriate comments to me." You call into the Police Commissioner's register department and say: "Listen, let us put somebody on that list." If I have a patient who said they were molested by a neighbour some years ago, I would say call in still. Now, you may not have the evidence. You cannot go after those people but they are on a list. So if any future crimes occur, the police will have that private list where they could check back and say: "Well listen, this guy had a history there." So we may have to get that list to gets these closet rapists that did the harm, lurking around, and it could be managed by the Police Commissioner actually to have it there, in case any new rapes come in the future. They can go back and check this individual.

You see, Madam, this is really an event I think today, having this register. I think it is needed. I think we have to even, as they say, expand it in the sense, I think, to put that address. Expand it if you think people are going to misuse it for vigilante justice.

You see, the world has moved also for other registered lists. There is something call Clare's Law in the United Kingdom where, for domestic violence, there was this lady who actually died in the hand of an ex-lover, and the parents agitated for Clare's Law where they said if you have domestic violence and you know that individual is such, you should be able to—the police would have a duty to warn that individual. Or individuals could have the knowledge. They could approach the police officers to see if you can get that list. That will help us in domestic violence. So the Attorney General may have to look at something like that in our Domestic Violence Act because we are already on register. So have a register of violent persons who are on that list.

You know, Madam, recently Australia and some parts of Canada also took that principle. So Clare's Law was a policy, but other countries put it in as part of their law. So the whole idea of having registers, having lists is really to protect society, to protect a victim. And I am thinking, well it is not just Trinidad and Tobago. It is all over the world we have attacks on women. Government has to ensure that we have the laws to prevent and deter because a government cannot know what is going on in every rapist's mind, or who will do it, or what is going on in people's doors, but government owes it to put laws like this, to put laws where no one can escape, to have quick justice, to educate persons in the society on toxic men, to educate the females that, you know, there are persons out there. You all are victims. You could come. You could empower yourself. You can call in.

And in conclusion, I am saying, Madam, I welcome this piece of legislation.

I think my dilemma, sometimes I treat both the victim and a raped person, but I am thinking: What is going on now? We need to strike that balance on the side of the victim until we could ease up that social distress that persons are facing. Thank you, Madam President.

1.00 p.m.

Madam President: Sen. Dillon-Remy.

Sen. Dr. Maria Dillon-Remy: Thank you Madam President. Madam President, I am pleased to be given the opportunity to contribute to the Sexual Offences (Amdt.) Bill, 2021, debated here today. This Bill certainly highlights an issue of great concern in our society, and I mean, it has been of great concern for a while, but specifically after the recent rape and murder of two of our nation's daughters, names that are well known, it is even more important.

In perusing this Bill two overriding questions came to mind, namely, the fairness of the initiative and the effectiveness of sex registries. Both terms have been discussed by previous presenters. These comments are of relevance to clause 7 of the Bill that seeks to establish two registers, to be known as the "National Sex Offenders Register" and the "Public Sex Offender Website".

In researching the efficacy of sex registries, I read several reports and research papers some of which give evidence statistically about the value of registries, others present information to the contrary. In an article entitled Trends and Issues in Crime and Criminal Justice by the Australian Government, Australian Institute of Criminology, No. 550, of May 2018, this article stated that:

> "There is little evidence that…"—registries—"…have reduced reoffending among registered sex offenders; in fact, some studies have shown that…"—registries—"…increased sex offence recidivism. Conversely, there is some evidence that…"

—registries act as—

> "… a general deterrent…"—to—"first time or non-convicted sex offenders in the community, likely due to the perceived risk of being placed on a public register."

In another article entitled Rethinking Sex Offences Registry by Eli Lehrer, published on the website www.nationalaffairs.com, Article No. 47, Spring 2021, that article stated:

> "The practice of requiring sex offenders to register with law-enforcement officials is effective and has contributed to a sizable drop in sex offenses committed against children in the United States."

A report published by J.J. Prescott of Jonah E Rockoff, the University of Michigan Law School, in the *Journal of Law and Economics* stated:

> "…that notification laws reduce the number of sex offenses when the size of the registry is small but that these benefits dissipate as more offenders become subject to notification requirements. This pattern is consistent with notification deterring nonregistered individuals but encouraging recidivism among registered offenders, perhaps because of the social and financial costs associated with the public release of their criminal history and personal information."

Further, they found non-public registration of convicted sex offenders significantly decrease the overall numbers of sex offences. The reductions were primarily observed for sex offences against:

> "…victims who are known to an offender (namely, friends, acquaintances and neighbors)"—rather than among strangers.

Madam President, I turn to the experience of the Caricom region. It was reported in the *Bajan Reporter* on June the 14th, 2021:

"Once properly implemented the Caribbean Committee Against Sex Crimes…"

A group founded in 2014.

"…expects the presence of a public sex offenders registry to deter new sex crimes in Trinidad and Tobago."

The article went on to state that:

"The Caribbean Committee Against Sex crimes encourages all CARICOM member states to review this bill and consider adopting some of its provisions in order to help deter sex crime regionally."

The general consensus seemed to speak more to the usefulness of the registry than not. Needless to say, I think we are on the right track with this initiative but the full success of it depends on proper implementation.

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

Mr. Vice-President, the article in the *Bajan Reporter* continued and outlined a few recommendations from the United Nations Office on Drug and Crime and the World Bank 2007 Report. Their report entitled "Crime, Violence and Development: Trends, Cost and Policy Options in the Caribbean". These recommendations can be used to buffer our current sex offender registry initiative and add to its efficacy. Some of these recommendations include:

The needs to standardize best practice for sex offender rehabilitation to introduce recidivism and facilitate rehabilitation to reduce recidivism and facilitate rehabilitation regionally. Policy should cause any Caricom national who is a sex offender to register with the rehabilitation centres in the respective State they may choose to migrate to.

2. "Establishment of an amalgamated database of convicted Sex Offenders in CARICOM to be shared with IMPACTS…"

That is the Caribbean Community Implementation Agency for Crime and Security. Shared also with—

> "…INTERPOL and the US Angel Watch Centre in line with international best practice."

A similar point that was made by Sen. Seepersad in her contribution about getting international involvement.

3. "Model Legislation for police level Sex Offender registries should be standardized throughout the CARICOM. Legislation should expressly stipulate provisions for international notification in line with best practice and for registration of Sex Offenders who commit crimes outside of the region."
4. "Standardize a policy for supporting victims of sex crime within CARICOM…"—and;
5. "Encourage nation states to reform court systems in order to fast-track sex crime cases."

Sen. Hazel Thompson-Ahye made that the point very clearly, given what is happening within our systems here in courts in Trinidad and Tobago in terms of the length of time taken for commitment. Those were the five recommendations.

In considering the fairness of this initiative I reviewed the comprehensive qualitative analysis prepared on behalf of the Centre for Child Rights in 2018 entitled, "The Benefits and Detriments of Sex Offenders Registries", which highlighted that:

> "The collateral consequences of sexual offender registration are profound and extend far beyond the individual offender to family members of registrants who often experience the social isolation and feelings of shame associated with registration that limits their access to socially valued

resources, and infringes on their capacity to contribute and participate within their communities."

Again, in keeping with the presentation that was made earlier on that putting a sex offenders registry causes issues not just with the offender but with their families, and therefore we have to think of the complications that can be caused, so that when a registry is put in place, we must make sure that every efforts is made to decrease the collateral damage. I continue:

"Research commonly categorises the main challenges facing offenders as being: unemployment, residency restrictions and isolation and stigmatisation. When experienced simultaneously, these challenges combine to cause sex offenders to lose their social capital and support, thus destroying family relationships, causing mental health issues, and often resulting in suicide. It is therefore unsurprising that many offenders see SORs as 'additional prison sentences', as they significantly limit the freedom experienced by offenders post prison release. Resulting from a destroyed relationship between offenders and the state, SORs may even cause offenders to 'rebel' against the system, leading to increased recidivism."

So in the light of this, it really is important to consider the contribution made by Sen. Hazel Thompson-Ahye that talked about restorative justice, that talked about ensuring that there is a system in place for making sure that at least an attempt is made so that persons who are convicted of sex offences can be given an opportunity for rehabilitation. And therefore, it is not just putting the sex offences register there and expecting that it is going to have its result without any additional aspects being put into place.

Mr. Vice-President, there was an article on the *Express* newspaper dated 8th of February, 2021, which stated that an unofficial sex offenders registry had been created to red flag men who had been charged with sexual offences. The registry of violent offenders against women in Trinidad and Tobago was established by a group called My Trini Experience and their link mytriniexperience.com provided a database of persons who were charged and named in newspaper reports. The alleged offenders' names and photographs are in the registry and a link to the news story which reported the charge. The page clearly stated that it was not an official government information site. They also stated all persons are viewed innocent until proven guilty. Yet, they had no problems putting it on their web site. They had so many negative comments that were posted online because the persons who are on that list included many well-known personalities. It seems as though the comments were so negative that the web site seems to have been taken down since that time.

I think it was Hazel Thompson-Ahye again who talked about the matter that concerns Trinbagonians getting information that is supposedly not for public consumption and having it and talking about "bussing a mark". The question is the fact that this registry which is supposedly the part that is supposedly not for public publication, making sure that the Commissioner of Police ensures that the information that is there does not get into the public domain by whatever means. And I do thank the Attorney General for putting on the provision that says that any:

> "...person who intentionally and without lawful excuse or justification
>
> alters, disposes, reproduces, shares or uses any information published on the website referred to in subsection (1) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for three years."

I am not sure how it is going to be done. In other words, what systems are going to be put in to make sure that the registry is kept in the manner that is supposed to be kept?, b But I am asking the Attorney General to make sure that whatever is put in the Bill that that—in other words, not just consequences for disclosure but making sure that disclosure does not happen by putting systems in place.

Mr. Vice-President, I would not be much longer. I understand the initiative and I acknowledge that it is necessary to put such a sex offender registry in place. My main concern is making sure that we do not put into the—as a result of this make sure that other persons are going to be harmed by what we are doing, and as far as the matter that concerns prevention of recidivism, one of the central issues that is at the helm of this issue remains whether putting a person on the registry and their removal subsequent to their sentence being spent, whether it guarantees that a person would not reoffend.

So therefore, while I support the initiative, I say again, rehabilitation is the key to ensuring that the recidivism rate is lowered for sex offences. As such, measures which offer therapy and offer assistance to offenders should be an important consideration. If our goal is building a better future, the emphasis ought to be on encouraging change in these individuals to the extent that they can become healthy and reformed members of the society.

And again, Sen. Thompson-Ahye made a great point of this in her contribution. Mr. Vice-President, after all many of these people continue to be a part of our society, so if we do not make any efforts at rehabilitation and have them just convicted, it will mean that we may just have a set of exiled people who either continue or they remain in exile and are unable to be important contributors to the society.

So, Mr. Vice-President, I thank you for this opportunity to have this short contribution on this Bill. [*Desk thumping*]

Mr. Vice-President: Sen. Nakhid. [*Desk thumping*]

Sen. David Nakhid: In the name of God, most gracious, most merciful. Mr. Vice-President, thank you for the opportunity to contribute on this very important Bill, the Sexual Offences (Amdt.) Bill, 2021. And I will not be long and more contentious since I think it is something that is very important given our history as a country and what has transpired most recently.

Now I must say on doing research into this Bill, it would have been very rough waters for the hon. AG to navigate in drafting legislation because something like the Sexual Offences (Amdt.) Bill, 2021, or the Sexual Offences Act has so many layers that are nuanced, because upon research there is nothing more complex than the human psyche when it comes to these kinds of offences. And I would go into that because a lot of the speakers before me touched on a variety of issues, but I would like to go more in depth into some of those things.

We heard the previous Sen. Dillon-Remy speak about rehabilitation as most people have because it is a very fine balance, Mr. Vice-President. You know, do we deal with rehabilitation? How do we balance that with trying to avoid recidivism? You know, it is a very, very complex issue, and I must say I was torn, because I have my own preconceived notions and I believe, and I have always believed this, that once someone commits an act of rape or child sexual abuse, he should be given the maximum punishment. I have kids as so do most of the people here.

So I was really torn and then I said, "you know what, rather than reach to the point where we are in the penal system where the act has been committed, we have to consider now rehabilitation, and how do we balance that, and whether a sex

offender register and all of that that I will go into, what about the actual developmental experience of the people that we are dealing with? And there have been studies that address those things.

And I thought maybe as a suggestion since we are in agreement in principle with the legislation as a suggestion to the hon. AG, in drafting the legislation to perhaps look more at the developmental experiences of both child sexual abusers and rapists. And there have been studies done and maybe that will determine how we go further in addressing the actual penal system, and the rehabilitation of said. Because I am talking more about a pre-emptived action.

And I think the studies have shown, for example there was a study made in 2000 by RK Bergen and KA Bogle which looked at the relationship between sexual violence—and some people touched on it, but I intend to go more in depth, sexual violence—and pornography.

Now, I have heard about—and I heard about this when I was abroad still, that Trinidad was number one and so on, per capita in how we consume Internet pornography, but when we look at that we never looked at the woman's experiences, women's experience of the sexual violence and the abusers' use of pornography. The relationship the abusers of the women and that use of pornography that probably precipitated them to commit those actions.

So, a study was done by the aforementioned RK Bergen and KA Bogle, and it was a study at a rape crisis centre for about 100 survivors. And I say survivors loosely because does one really survive rape? And that is why I talk about it is very nuanced, it is very difficult. Because sometimes a rape—you know, a murder is cut and dry somebody has been murdered, but a rape is something that lives on. Women do not handle it. They end up sometimes themselves being abusers. I mean, it was a very, very, complex research into this matter that I was astonished

myself. It seems to me that it is as almost— it cannot be one blanket one size fits all because every case is so unique.

So, someone might commit an act and that person can be rehabilitated. Someone in the same circumstances can commit the same act and they cannot. So how do you approach it? So, my suggestion is that we look at the studies, we look at the studies. There can be nothing definitive most times might be a hit and a miss but at least we could be guided. So they looked at 100 survivors at this rape crisis centre and the findings include or concluded that 28 per cent of respondents reported that their abusers used pornography, 28 per cent, and that for 12 per cent of the women who survived, pornography was imitated during the abusive incident. And that says a lot.

So now we have as a society have to make some kind of bold, I would say, because how do you control? How do you monitor our consumption of pornography? Nobody went into detail how we do that. How do we do that? Because all my research shows that pornography actually rewires the brain especially among our young kids. It is actually rewiring on how we view relationships, how we see the sexual act, how we see women. So it comes to gender equality because pornography is such, is such a journey from the realities of relationships and sexual relationships that we find that men because of the visual instant gratification that pornography provides they tend to end up frustrated in relationships, dissatisfied in relationships, and that eventually turns in some cases, not all, into violent acts against women. And in young men, young boys, there is an increase in sexual dysfunction, erectile dysfunction.

So, as I said before, my contribution today is more to offer in the line of suggestions that we deal with it in a different way from the rehabilitation side, but

try to find solutions from the actual developmental experience of the people that commit or would probably commit these acts.

In another study reported in May 2008, by Dominic Sinan, Sandy Worthill and Robert Durham where their in-depth study of that development experience that I am talking about was more in depth. They looked at 269 sexual offenders divided into 137 convicted rapists, and 132 child sexual abusers. And they did a comparative study. So the child sexual abusers reported more frequent experiences of child sexual abuse, 72 per cent. Early exposure to pornography before the age of 10 of 65 per cent, and sexual activities with animals, 38 per cent.

Okay. So, from these studies what we can bring is that the child sexual abuser, his dysfunction was related more to almost a compulsion or a maladaptive character in terms of how he would see that sexual experience, that is a child sexual abuser. Unlike the rapist who most of the time was subject at a young age to physical abuse, 68 per cent; parental violence, 78 per cent; emotional abuse, 70 per cent; and cruelty to animals, 68 per cent.

So you see immediately it is not a one size fits all. Even among sexual offenders you can look at them from a different perspective. So my suggestion is as we draft legislation, we have to keep an eye on how do we mould development, sexual development? Do we attack it through the schools?

1.30 p.m.

Why not? Do we have a more public awareness campaign, through churches, through community groups? I think that is extremely important. We do not pay enough attention to how it takes a village not only to raise a child but to mould a child to bring it into society in a normal way. Because this is important, I think we need to remove the taboo that we have of the sexual experience in Trinidad and Tobago. We need to speak more about it in the schools, in the churches, in

community groups. Only then that we would have sane and more focused contributions as it relates to how we speak with our young men and young women indeed.

Mr. Vice-President, I heard about as we examine about the sexual offenders register and so, and this also was so difficult to pin it down. You know, some people—I have seen it here that the COP, Commissioner of Police, that it would fall under his jurisdiction, his discretion, and he would have, he would be privy to that. And I am asking, why? Why we would give that exclusively? I mean, this Commissioner of Police, does he not have quite a lot of things that he is already involved in? I mean, why? For example, so that registrar is under his purview exclusively, more or less, and we have somebody who wants an exemption, they want to know something, and it takes time, it takes time and somebody commits a crime in that period of time, is the State then liable?

Why not, why not have an independent board to determine on this sexual offenders website? Someone—a group of people, for example, of course~~,~~ the Commissioner of Police will be there, a judicial officer, a probation officer, for example, to expedite matters quickly. So people ask for an exemption, they want to know, and that is available to them in quick time so people can put themselves in order. Because, God forbid, again, if something happens while they have applied, and it takes time, the bureaucratic process, and I think we need to, we see everything is stalled. You know, there is always a bureaucracy that we need to get around. I think in matters like this, there should be some measure of expedition.

So, I thought about that and I thought why not have an independent board, and it can be done to help the Commissioner of Police. Then I said, okay, upon consultation, why not also have if you want to pay attention, or to be concerned with the rehabilitation aspect of it and also with the anonymity of the victims, we

have to protect the right to privacy. So we do not want to have it, of course, open and everybody knows. What about if we have some kind of tracker where we have—you go on the website, and this is if we make it open to the public, I am given options here, and on that tracker, you have indicated where, in what area, for example, for example, if you in Diego Martin you will have on that tracker, well in this area of Diego Martin, there is a sexual offender. In other words, it protects the rights—because people in Trinidad—Trinidad is small; a lot of the sexual offences are committed against your own family. We know all of this. So, what it does, it gives an indication that in this area, a particular area, a sexual offender lives. Now, I know it is not a perfect solution, and I said before. There is nothing definitive because someone like say, in response to that, it could create some—a lot of suspicion within our community and that is a fact. But what do we do then? We list the name of the offender? Doing that, in my opinion, also makes it almost impossible after that for him to be seen by the rest of the community in any kind of positive light that could help with his rehabilitation. So, I am thinking all of these things that we would need to consider when we draft legislation, and why it is so important, not only to look at when these people have entered the penal system already. We need to start looking at how do we prevent that, and that all has to do with the developmental experience.

So, one of my last points, Mr. Vice-President, I think that as far as we keep about the point of keeping records, I think the case of—was mentioned earlier of one of our two daughters who was recently killed and as the suspect held, it turned out that he had a lot of cases pending against him. But, as a matter of fact, a lot of those matters were dismissed. I do not want to call names, I heard it is not sensitive to call names, so—but one of these accused, there were a lot of matters pending against him and most of these matters dismissed were because there were no—

there was a lot of lax actions on the part of the police who did not show up for the case and so. And again, to keep records accurate, we have to put a duty on the police to report the outcome of the case and keep up with the case, and in my opinion, perhaps, attach a criminal sanction such as a fine so that people pay from their pockets when they do not comply. How else are we going to keep up with records to make sure that some of these offenders do not get out lightly?—because he got off eventually, because the matters kept dismissing, because police officers not showing up until he got bail and suppose—allegedly committed a crime.

So, Mr. Vice-President, again, I know very difficult waters to navigate to draft legislation concerning this, but these are some of the factors, I think would be important for the hon. AG to consider when drafting legislation on such, such a nuanced subject. And so, I do not know, maybe I can suggest while we have "Vaccinate to operate", "Do not ask, wear your mask", maybe for this—the AG to take into consideration "Legislate for legacy", for example. And I know the Government likes all these sound bites, so "legislate for legacy". In other words, not only about people being in the penal system, but trying to attack the problem from the developmental side of things. And, of course, we look forward to supporting this with suggestions that we will make. I thank you, Mr. Vice-President. [*Desk thumping*]

Mr. Vice-President: Hon. Senators, before I call the next speaker, permit me to return to item 3 on the Order Paper.

SENATOR'S APPOINTMENT

Mr. Vice-President: The following correspondence has been received from Her Excellency the President, Paula Mae Weeks, ORTT.

"TO: MS RENUKA RAMBHAJAN

WHEREAS Senator Anil Roberts is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKS President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44 (4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, RENUKA RAMBHAJAN to be a member of the Senate temporarily, with effect from 15th June, 2021 and continuing during the absence of Senator Anil Roberts by reason of illness.

Given under my Hand and Seal of the President of the Republic of Trinidad and Tobago, at the Office of the President, St. Ann's, this 15th day of June, 2021."

Mr. Vice-President: Hon. Senators, a Senator is required to take the Oath.

OATH OF ALLEGIANCE

Senator Renuka Rambhajan took and subscribed the Oath of Allegiance as required by law.

SEXUAL OFFENCES (AMDT.) BILL, 2021

Mr. Vice-President: Sen. Mark.

Sen. Wade Mark: Thank you, Mr. President, Mr. Vice-President. Mr. Vice-President, we are very happy to contribute at this time to the Sexual Offences (Amdt.) Bill, 2021. And Mr. Vice-President, in going through this Bill, I sought to determine what is the mischief that the Government through the Attorney General is seeking to cure? What was the objective of these provisions contained in this piece of legislation? Is it an attempt to continue along their merry way or path, in

promoting as a policy suppression and the promotion of punishment? Or is it a change of course and look at this issue as a public health issue and focus on prevention, rehabilitation, and reintegration.

Mr. Vice-President, the core, the root cause of sexual violence lies in gender inequality in our society. And unless, Mr. Vice-President, this issue, this principle, is addressed, then sexual violence will continue to haunt our civilization and our nation, since it is deeply rooted in power relations and control. You know, gender equality has been defined as:

> "…the state of equal ease of access to resources and opportunities regardless of gender, including economic participation and decision making; and the state valuing different behaviors, aspirations and needs equally regardless of gender."

That is what gender equality means.

Mr. Vice-President, it is about rights, opportunities, benefits, and obligations. And unless we focus on these fundamental issues by focusing and addressing these matters, and targeting our children and youths in particular, along with the adult population, this violence against our women folk will continue. And therefore, Mr. Vice-President, I believe it is very important that in dealing with this matter of sexual offences, we need to pay attention to the reality, the roots that give rise to this particular development. But I will show you in my presentation that the Government continues to focus on punitive and suppressive measures in order to address issues and problems such as sexual violence and sexual offences.

Mr. Vice-President, I was hoping that the Attorney General would have given us an update on the 2019 piece of legislation that we spent hours debating, crafting, fashioning, and eventually unanimously passing. It is known as Act No. 19 of 2019. I thought the Attorney General would have taken the time off to share

with us where are we as a society as it relates to this issue of sexual offences. Mr. Vice-President, in this Act 31—Act 19 rather of 2019, we advocated, articulated and advanced the inclusion—for the inclusion of the generation of an annual report on the administration of this Act. And if you go on, Mr. Vice-President, section 67A of this piece of legislation, it says that:

> "The Minister shall cause to be laid in both Houses of Parliament, annually, a report on the administration of this Act."

Mr. Vice-President, this Act was assented in September of 2019. We are now in June of 2021, almost one year and a half and there is no report in our library, no report has been tabled in this Parliament. In addition, Mr. Vice-President, in this Act, section 68, the Minister is supposed to table regulations to govern this piece of legislation. This is under 67 sub (1), (2) and (3). Mr. Vice-President, I have searched. I have gotten a headache in searching and up to now I cannot see those regulations. So the Attorney General has been sleeping on the job and he comes here today for further amendments to the Sexual Offences Act and the Attorney General has not brought to this Parliament the annual reports so that we as parliamentarians can do an overview, so that we can assess and evaluate where we are. So when we look at this piece of legislation before us, we can say "ha", Mr. Vice-President, look, the Attorney General is on the right track. Because we are seeing errors, we are seeing mistakes, we are seeing deficiencies. But nothing Mr. Vice-President.

So that is why I asked the question very early. Mr. Vice-President, what was the mischief that the Attorney General and the Government seeking to cure? What was it?—because we have nothing before us to go by? He has violated and breached the law by refusing to table the annual report, which is a breach of the law. The Attorney General and the Government has failed to table the regulations

to govern this piece of law but they have come with new amendments, Mr. Vice-President, before us today.

Mr. Vice-President, I want to let you know that this matter was subject to intense scrutiny and widespread discussions involving the public sector, civil society organizations; we were all involved. And Mr. Vice-President, at the end of the day, we all agreed that there is need to establish a National Sex Offender Register. So, it is there, it was in the 2000 Act that Ramesh Lawrence Maharaj, then Attorney General piloted? And it came—it was repeated, Mr. Vice-President, in the 2019 legislation. So, yes, a National Sex Offender Register is there, the Public Sex Offender Website was also established. But Mr. Vice-President, you know why the Attorney General came with this piece of legislation, and he has admitted—confession is good for the soul. So, the Attorney General confessed today that the reason why he has brought us here is because he wants to populate the National Sex Offender Register. He says that there is only one convicted sex offender in the National Sex Offender Register. So, the purpose of our meeting today is to pass legislation so that the Attorney General would look good. And in doing that, Mr. Vice-President, the Attorney General has intruded, has invaded, the sacred spaces of the Judiciary by seeking to remove the discretionary powers of the judges, in determining matters that are before them—that come before them when somebody says I want to be exempted from my name. I want my name to be exempt from that sex register, or National Sex Offender Register. And unless you make that application, your name will be down in that book, in that register.

Mr. Vice-President, let me make it very clear, people who do the crime, must of the time. We have no problem with that. But do not trip and contravene fundamental rights and freedoms. Do not seek in your haste to bring about what you consider to be a population of the national sex register and now you have

created something called the public sex offender register, do not trip over citizens' fundamental rights and freedoms, and do not trip over and breach the principle of the separation of powers. We have to be very careful how we are operating in this place.

This Government constitutes a clear and present danger to our democracy and the rule of law and we must look at these pieces of legislation very, very carefully, Mr. Vice-President, because I am very disturbed as a Member of this honourable Senate, and I will tell you why I am disturbed. I am seeing Mr. Vice-President, a trend that has emerged in the last six and a half years of this administration. And that trend tells me that when it suits the whims and fancies of this administration they emasculate our Constitution. And you know what to do, Mr. Vice-President? Legislation and Acts of Parliament that require a special constitutional majority are removed. So, rights and freedoms are removed and you bring what is called simple majority legislation. Mr. Vice-President, that is frightening.

And, you know, the Attorney General in an *Express* article sometime this year—I cannot remember the exact date—the Attorney General is on record as saying, he is going back to Cabinet. And you know why he is going to Cabinet?—because he wants persons to be on the National Sex Offender Register and that website only, only, on the basis of their being charged. So, we have moved, Mr. Vice-President, from somebody being convicted and the Attorney General admitted today that one of the pieces of legislation that he would like to bring before us in this Parliament is a piece of legislation, Mr. Vice-President, entitled the Sexual Offences (Amdt.) (No. 3) Bill of 2021, which seeks to introduce a registerable offences charges registered in relation the persons charged with registerable offences under the Sexual Offences Act. Mr. Vice-President, this is not

only lunacy, it is utter madness. And when I look at this piece of legislation, I have it before me, I do not see a constitutional majority included here. But the Attorney General has admitted today that not only is he interested in bringing legislation to create a register on citizens who are all innocent under our Constitution until proven guilty, the hon. Attorney General goes further. He says, I want to reintroduce flogging, flogging in our nation. He said flogging is needed. So, he is bringing a Bill, called Corporal Punishment (Offenders Over Eighteen) (Amdt.) Bill to reintroduce flogging. So, when you are charged with sex offence or a sexual offence, you will not only be in jail, Mr. Vice-President, for five years, and charge, maybe $300,000 or $150,000 but you may get 25 lashes with the cat-o-nine, or the cat-o-tail, whatever they call it. But you will be beaten. So the Attorney General is living in the past.

2.00 p.m.

I have the two pieces of legislation here that they have circulated for public consumption and for comments, and he admitted today, the Attorney General admitted today, Mr. Vice-President, that he is interested in introducing a Bill that will bring flogging back to this nation. I want to tell the Attorney General, that flogging is something of the past. What we know as corporal punishment is something of the past. And I want to let the Attorney General know, he must live in the 21st Century and not go back to Stone Age. That is Stone Age thinking.

And, further, if you want to tamper with people's constitutional rights, by putting them on a register and making their information known to the public, you are infringing sections 4 and 5 of the Constitution. It is reprehensible, highly dangerous and disturbing for an Attorney General who is supposed to be the guardian of our democracy, to be bringing legislation to this Parliament that requires a special constitutional majority, and he brings a simple majority.

Mr. Vice-President, may I remind you that in 1986, when Russell Martineau was then Attorney General, and he introduced the Sexual Offences Act, he brought that Bill with a constitutional majority of three-fifths. When Ramesh Maharaj introduced an amendment to that Act in 2000, it required a special constitutional majority of three-fifths. When we debated it in 2019, the month of February, and this thing was passed in June, assented in September, that Bill called Act No. 13 or 19 of 2019, required a special majority.

The Attorney General has come to this Parliament today with some very dangerous proposals: one, making the judges place you as a sex offender on that list on that register. If you do not seek an exemption and go to the High Court or the Court of Appeal, your name goes there, and they are telling the judges, you have to do it, you are ordered to do it. I want to tell the Attorney General that that is dangerous.

I want to bring to your attention, a very powerful statement made by our friend, Sen. Anthony Vieira, when we were debating a report on this same Bill in 2019. I could never forget, as long as I live, the infamous clause 11. It is known as the doctrine of recent complaint which the Attorney General introduced on the floor of the House, and I termed it ad hominem legislation, at the time. And I say today, if we did not stop that Attorney General from introducing this measure, somebody would have been in jail today and I know who the person is. I would not call the name, but I know who this thing was directed at, where the judge was being told by this amendment what to do and what not to do. Hear what Anthony Vieira, Sen. Anthony Vieira, told us. He said and I quote—this is a report, eh, but he is speaking on the report. We were in committee stage, when this thing was sprung on us. He said and I quote:

I think it is extremely important that we must be careful when legislating a

> judge's duty, because a judge has a duty to sum up a case, and give particular directions, and I do not know if it is proper for us to legislate what direction a judge should give in any particular matter, and I just want to register my dissent—Mr. Vice-President.

That was the statement made by Sen. Anthony Vieira when this thing was parachuted in a committee stage of a Bill called the Sexual Offences (Amdt.) Bill, 2019.

Mr. Vice-President, we are doing the same today. We are legislating. The Legislature is legislating and telling the Judiciary how they must go about sentencing citizens in this Republic. I will have no part of it. We will have no part of it, we will oppose it. We will not intrude on the sacred spaces of the Judiciary and the separation of powers. And this Attorney General has been infringing and incrementally reducing rights and freedoms of our citizens on some pretext or something called Suratt. Everything is Suratt, everything is proportionate, everything is legitimate, and I will tell you in a short while what the Court of Appeal of this country said in April of this year on a judgment dealing with this same Suratt and dealing with this same matter of proportionate—it is proportional and proportionate and legitimate. And whilst he is telling you that, Mr. Vice-President, your rights are being eaten away.

So, I want to tell the AG, even if you are right, and you say that this Bill, Mr. Vice-President, does not require a special majority, have you not read the Court of Appeal judgment? You want to see a copy? I could make a copy available to the Attorney General, Mr. Vice-President.

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

Sen. W. Mark: Right? Look it is here. Civil Appeal No. S-246-2020 between *Dominic Suraj v Attorney General* and *S. Maharaj v the Attorney General*. It is

here. I have the judgment, Mr. Vice-President.

So, let me give an advice to the Attorney General, through you, Mr. Vice-President. We have a system of laws in this country that is the embodiment of the rule of law. We have a Constitution which guides this Parliament on how it should pass law. It requires a special majority in certain circumstances where constitutional rights are offended. Every previous Attorney General, including this one, in this country, Mr. Vice-President, has seen the need to use a special majority when it comes to regulating this area of law concerning how these things are treated in the context of sexual offences. The question has to be asked: Why would the Attorney General want to encourage litigation against the State by passing a Bill that requires a special constitutional majority with a simple majority? It is as if the Attorney General likes to spend taxpayers' money to defend challenges and then claims confidentiality, so that we the taxpayers do not know who got what by failure of disclosing who the Attorney General has paid, how much he has paid to those lawyers, including his own family law firm. Mr. Vice-President, why risk this legislation being struck down as being unconstitutional? Why risk taxpayers' money going to waste? The Attorney General must act in a manner befitting the Office of the Attorney General and act responsibly.

Mr. Vice-President, the AG, of course, will claim the defence and use Suratt and push his own brand or "Surattism" in our law. Yes, we are bound by Suratt. But, Mr. Vice-President, the Court of Appeal recently in April of this year, commented on this Suratt approach and said simply assessing if the law was proportionate and using that as the excuse to pass laws as these with simple majorities is wrong. The Court of Appeal said that that approach was dangerous. That is what the Court of Appeal said in adopting the minority view of the Barry Francis case which is the view that we on this side advocate for.

The Court of Appeal in April of this year stated in paragraph 123 of the Dominic Suraj case, and I quote:

> "We are inclined to adopt the minority view. Reading into the Constitution, material that had not been placed there by the legislature is both wrong in principle and dangerous. It will result in empowering the legislature to whittle away fundamental rights, by asserting that there were legitimate aims that evade precise definition. We are nonetheless bound by the decision in Suratt."

The Court of Appeal has described in our view exactly what the AG has been doing over the last five to six years, whittling away rights because he thinks it serves a legitimate aim. Mr. Vice-President, whilst the Court of Appeal is bound by Suratt, our Attorney General is not so bound. He has a choice as to whether he can bring legislation and seek a special majority. He has chosen not to do so.

One day, Mr. Vice-President, when Suratt is overturned or clarified, this country will be left in a legislative miasma. Mr. Vice-President, we will be in a position because—we will be in this position because of our Attorney General, this Attorney General, where a number of laws will all at once become unconstitutional and that will be the legacy of the Attorney General, Mr. Vice-President.

Mr. Vice-President, I want to thank you for giving me this opportunity, but I want to tell the Attorney General, you cannot continue how you are going. We need, if you want this Bill passed, impose, insert the special majority. I thank you, Mr. Vice-President. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Mr. Vice-President. Mr. Vice-President, my colleague and friend, Sen. Mark, has been in this Parliament for three decades. I have seen him in action on the floor of this House. I have seen him in committees

and I must say it is the first time I have seen Sen. Mark read from a contribution. The end is really near. Somebody has put words in my friend's mouth and he simply does not understand what he has said. He has read it. He even had to read from a piece of paper, Mr. Vice-President, to address you as Vice-President. That is not the Sen. Mark I know. I mean, the earlier part had trademark Sen. Mark. I will talk about that. But the last part there, the day in which Suratt will be overturned and all of that, that is not my friend.

In fact, Kenneth Suratt, with whom I spoke yesterday, and I have been speaking very often—I mean, my friend, Sen. Ramdeen, as he then was, he brought Suratt here. He introduced me to Suratt, and we have had a Suratt Opposition. But somebody wrote that script for my friend, and I must get to the bottom of it. The part that I understood was vintage, Sen. Mark, vintage Mark. And, again, it brought back memories of last year April. We brought the first COVID-related regulations legislation into this House, and from then on I heard border closure, infringing, doing this, disenfranchising section 4, section 5, the whole range.

Everything we did in relation to COVID was the threat of constitutional warfare and litigation and all of that, only to see a string of losses in the court. Waste of time. You just wasted 30 minutes because it is the usual formula, Sen. Mark. The Sen. Mark I know, "This is the breach of the law". "Where is the report?" You know what? Sen. Mark, let me give you the report. The annual report, let me give it to you.

You see, I always say my job as a legislator is very simple. My job is to get the legislation in place. And when we debated in 2019, I was very clear in making the point that we do not remember that Trinidad and Tobago was one of the first jurisdictions to introduce sex offenders registry, I made that point, but it was not

adhered to. And in 2019, we had to come back and deal with that and fix it. And you know what? My job as a legislator is to pass the law that enables the bureaucracy and law enforcement to do what it has to do. So, my annual report, my report on our 2019 work is very simple.

One day, Wednesday, December 09, 2020, I was reading the *Newsday* and I saw a headline, "Court orders first man to register as sex offender". That is my annual report. Because that morning I felt as a legislator, and I felt that we as a Senate, and I felt that we as a Parliament had done our job. I do not have the power to investigate, to arrest, to prosecute and to hold in the prison. I have today, I do not know about tomorrow, the power to make the law, and I felt that we had done what should have been done a long time before, but we had done our job. And when I saw trial without jury, when I saw that process which led to plea bargaining and entering a plea and receiving a penalty, I felt that we had done our job.

In those days when we sat late at nights, and we did DNA Regulations, two sets one night, to give effect to the legislation which had been passed and sitting down there, which gave the power to hire somebody to run the registry and to actually collect the samples and swabs and so on, who said we had done our job? And I could list many, many things: regulation of nonprofit organizations, insurance. I felt we had done our thing. And that day, Wednesday, December 09, 2020, and I looked at the *Newsday*, I copied the link and I sent it to my friend, the hon. Attorney General, and I said, we have done our job. So that is the report. When you say, where is the report? That is the report that I saw and that is how I know that we are doing our job.

We have heard so many times about this intrusion. The claim that the Attorney General came here to look good. But, you know, the hon. Attorney General said, while we are here, we come here based on the experience, one, of the

law so far, to perfect the law. And he has not only said that, you know. He said he is going to have to come back again. He set out when we are going to come back again and this issue of voyeurism. We are going to have to come back, again and again, because the technology, the society influences, particularly, influences on our children. The dangers posed by technology and predators and other things, movement of people and the movement of characters, changing nature of the society. The fact that many of us, we do not admit it, many of us are not comfortable with sending our children to overnight by even family, going on the beach Easter time and camping and so on. We are going to have to come back and fix and that is what we do.

So that the fact of coming back is another form of annual report or reporting that the two things and the two main things in this Bill: one relates to a matter that grappled with in the select committee and even in the debate, the difficult aspect of making this type of information known to the public. We have grappled with that, because I remember the contributions I made on those Bills and I said we have been part of the problem. Sexual offences have become pervasive because mothers, fathers, family members, have historically felt the need to protect the perpetrators of it. And many, if not all sexual offences, involve an element of protection and not protection of the victim, you know, protection of the perpetrator.

And we have been reluctant, because I remembered in that debate when we had the provision in the Bill, about making the notation on the passport, there was great reluctance on the floor to do that, because we felt that the person who had this passport had some right to be protected, and I had a different view, not only in the fact that the passport explicitly says it does not belong to the holder, but to the State. I felt that the balance should be in favour of the victim, not the protection of the perpetrator. And that is why the law itself, when you talk, Sen. Mark, about

infringing 4 and 5, the law explicitly allows that. The Constitution allows that in certain circumstances, well established in Suratt, and long before that, that we can come here and do that. And I then and I now believe that the balance should tilt in favour of the victim once and for all. So to say that we have come here to infringe, the law allows us to do that, and we are not doing that today. That is not what we are doing today.

To talk about clause 11, when you mentioned clause 11, Sen. Mark, I do not often invoke this response but I will tell you, you mentioned ad hominem and clause 11? I went straight back to section 34 because that is what section 34 did. That is what section 34 did. It placed as the law, as we are entitled to do in a Parliament, it placed the Judiciary in a position in which if a certain time frame had passed, and a certain point in the prosecution of a matter had not been reached or passed, there was an automatic process that followed. That is what it was. So what you described, and that is not happening here, but what you described was straight section 34. That is what you have described and that is why section 34 was eventually rejected.

So, Mr. Vice-President, notwithstanding all the fanfare and all the usual threats, the only thing Sen. Mark has not threatened to do is to throw down the Government. But, I guess that that threat has been made earlier in the week and he knows we have had enough of that.

This piece of legislation, Mr. Vice-President, seeks to do two things: to create the two registries, one in the form of a public website and one in the form of the national sex offenders registry, something as I say we grappled with before; and secondly, to detail in a manner we had not done before, the role of the Commissioner of Police in the creation and the maintenance of those two registries. It is as simple as that. And the other parts of the Bill seek to create

consistency based on the amendments which were made before, to create consistency among the various pieces of legislation, including consistency in the fines and sentencing in relation to the DNA Act and the Police Service Act which is set out in the Schedule to this Bill. It is as simple as that. And it is reflected in the contributions which have preceded me that lacked complexity, that demonstrated that strong desire to make this further step in the evolution of the sexual offences legislation in this country, and to bring certainty in a manner the previous work may not have done before. And, most importantly, to address further that issue of the registers that any legislator who was here at the time would know, both in the select committee and in the debate, we all grappled with. I thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Paul Richards: Thank you, Mr. Vice-President, for recognizing me and allowing me to make a contribution to this the Sexual Offences (Amdt.) Bill, 2021. Good afternoon colleagues. A lot has changed in our country but the need to protect girls and women and boys and men from predators has not changed. While I support the Bill in principle and the intention to offer yet another layer of critical protection against perpetrators of sexual violence against the vulnerable in society, I hope we are not lulled into a false sense of security about this being a panacea. It is one of the layers that I think is important, all things being equal, and protections being afforded, but it has to be, of course, part of a more sustainable, consistent and comprehensive approach.

Most of the research anyone can do on national sex registries indicates they generally do not attain the objectives. They sometimes give a false sense of security. Like Sen. Dillon-Remy outlined in her contribution, public sex registries tend to be effective in preventing or mitigating against first-time offenders because of the obvious public ridicule. The larger the registry actually, the less effective

they are. Fortunately, Trinidad and Tobago's population is much smaller.

This Bill is packed with many punitive measures as it should, but unfortunately, it is absent of provisions for treatment options for offenders and the families of victims, including the families sometimes of offenders who are also affected in a secondhand manner. It is important also to note that after psychiatric evaluations, not all offenders are going to benefit from treatment and rehabilitation. Some simply need to be locked away forever but some can benefit from treatment and rehabilitative measures.

2.30 p.m.

Generally speaking, an offender is anyone who is convicted of a sex crime and sex crimes have been clearly identified in this Bill and others in our country. California began registering sex offenders as early as 1947. Sex offender registries did not become widespread until the 1990s, after state registries became part of federal law in the US and the passing of the Jacob Wetterling Act in 1994. Comprehensive research of data did not show significant decreases in rates of rape or sexual violence or the arrest rate for sexual abuse after implementation of registries or the access to registries via the Internet by the public or any other means. The Department of Justice data also track individual sex offenders after they are released from as early as 1994 and they did not show that the registration or public publication had a significant negative effect on recidivism.

We continue to talk rehabilitation but seem unwilling to walk the talk. We do not seem to have a national philosophy toward rehabilitation and a comprehensive approach to restorative justice. And when you say that, sometimes people can have a visceral reaction because of the sensitive nature of sexual violence, particularly against girls and women because—and we all understand it—, we have seen the history in this country. And one of my colleagues earlier on

spoke about the two high-profile rapes and murders recently, but this has been happening for decades in Trinidad and Tobago. We are just more exposed to it now through the media.

Recently, in a Motion I piloted, many of my colleagues in this honourable House or all colleagues in this honourable House told us about their own experiences with violence in home circles. I do believe that while this approach is important in the right construct, I think those convicted of sexual offences may be better monitored by electronic devices or ankle bands, which is now available and, I think, has been part of a judgment recently. This may prove to be much more effective than public sex registers in protecting the public and consistently monitoring the offender. And if we are applying the science to it and looking at the data globally, as I said before, they do not generally attain the objectives. They are more of a fear factor and in some instances, provide information to persons in specific communities about where a sex offender may reside or may be frequenting. But research is important and science is important, and there are psychometric measures that can be used to assess the propensity of an offender if he or she qualifies for reoffending.

One such is the Multiphasic Sex Inventory (MISI) by Nichols and Molinder, 1984, which is:

> "…a psychometric measure specially designed to assess the psychosexual characteristics of sex offenders (, rapists, child molesters, exhibitionists)…"—et cetera.
>
> It—"…provides information that is independent of personality and psychopathological tests and…"—is—"found to provide data that corroborates with physiological indices for arousal.… It is used in more than

1,400 hospitals, clinics and agencies in the assessment of sex offenders globally.…"

If we look at the science of it, there are some persons, as I said before, that can benefit from this sort of approach because in many instances, the reason that we are going through this process today is because sex offenders, in most instances, will come back out in society.

Do we want an offender back in society simply to monitor them or do we want an offender to come back into society having gone through some sort of rehabilitative programme that moves them in the direction of being less likely to reoffend? That is the question we have to ask ourselves, because just having them serve their sentences and come back into society where we have to monitor them without even a modicum of them being exposed to some sort of rehabilitative process is counterproductive.

It is almost like we put them back out—we allow them back outside because they served their sentence and we are just on eggshells waiting for them to reoffend because nothing has been done in terms of passing them through, what should be to me, a mandatory regimen of some sort of process to get them back in line with what is expected of them in society. Is that not the more productive way to do it? Would that not put us more an ease? And having them be assessed by these instruments gives us a clearer sense for those who need more intervention and those who are much less likely to reoffend as opposed to just monitoring. I think that is something that is worth consideration.

In an article by Amanda Agan, the University of Chicago in 2011, titled, "Sex Offender Registries: Fear without Function"?, the:

> The—"…registries"—as our Bill—", contained names, and addresses, and photographs of sex offenders are now"—generally—"easily accessible on the Internet."

And:

> "People appear to value…"— the—" information and pay to avoid living near registered sex offenders..."

In the US, there are some data that suggest that:

> "…homes close to a registered"—sex—"offender sells for about US $5,500"—US—"less than comparable homes.…"

Now, this may be a controversial statement but I prefer people know, in certain constructs, where an offender is and suffer the loss in valuable property because the property value is nowhere near comparable to the safety of persons, but that is a fact.

One of the other issues that we really have to consider, in terms of sex offender registries—and I have to commend the hon. Attorney General for the disaggregation of the public registry and the nationally available registry. I think that is a move in the right direction which I have not seen in many other jurisdictions. It is important that that disaggregation takes place because there are some, I guess, who would end up on the public registry that really need to be available to the public under certain circumstances and some persons who I think, as I said before, may be open to rehabilitation that should not end up necessarily on a public registry.

But one of the issues that we have to consider, which is widely available through research, is the issue of vigilantism and the danger that may be posed to the family and community that will now become associated with the offender while back in society. Because at the end of day, they have to live somewhere and

they are generally associated with a particular family or community. And I think it is very important to put systems and mechanisms in place to ensure that—and I know it is in the other parts of law— that persons who engage in acts of vigilantism face the brunt of the law. That is very important. The Bill contains provision for the Commissioner to publish the locality of the offender. But just thinking about it, what happens if you have 15 offenders in the same locality? What happens in that case to that particular community? Because it is quite possible. It means that there will be even more intense focus on a particular community which puts a different kind of spin in that community in terms of public perception. We have to consider all these possible eventualities when we are passing law or making law, I should say. Our colleague, the hon. Minister of Agriculture, Land and Fisheries indicated that we are here to perfect the law—well, I just want to amend it—,that we are here to improve the law because I do not think in our context and the evolving society that we could ever have perfect law in any iteration.

One of the other concerns I have, Mr. Vice-President, through you, is section 48, clause 9, where the Commissioner of Police—and I am not talking about this particular Commissioner of Police, I am talking about the office of the Commissioner of Police is required to maintain, reasonably, the information contained in the registry and maintain the security, and there are several other applications or responsibilities assigned to the Commissioner of Police. And I do not see any consequence to him or her acting in the position of the Commissioner of Police if those responsibilities are not maintained to a reasonable standard. So I am hoping the Attorney General can address that. Maybe I missed it in some other part of the Bill or the parent Act.

One of the other interesting studies I found, in terms of information on sex registries globally, is one by the Justice Policy Institute and is titled:,

"Registering Harm and How Sex Offense Registries"—sometimes—"Fail Youth…"

And I know this particular Bill does not contemplate persons under 18 years of age, which makes sense, but we sometimes have a very defined—and I understand the legal aspect of it, to 18 and over 18, when in some instances persons, certainly have not reached an age of intellectual or emotional maturity by the time they are 18. And I know they are culpable in law as adults as 18, but we really have to have a different kind of juvenile justice system and provisions of a juvenile justice system, a more effective juvenile justice system to deal with persons who may have attained the age of 18 but really through their circumstances, are not intellectually and emotionally mature and may not understand the implications of their actions at that age.

Mr. Vice-President, through you, you know, one of the bits of information that came through that same article is that—and the source is Howard Snyder, "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics", Washington DC, from the year 2000—is that it is interesting to note that the majority of persons who are sexually assaulted and are victimized are by people who are already known to the survivor or victim; 59 per cent by an acquaintance and 34 per cent by a family member, and only 7 per cent are victims of sexual assault by a stranger—59 per cent by an acquaintance, 34 by a family member, how should that inform how we make law, when you think about it? Because in some instances, it is clear that the person, the perpetrator may end back up in a close proximity to someone very close to them or someone who is an acquaintance or may be in the same community, and we have to really look at

those possibilities in terms of how we mitigate against them. And that is why I suggested earlier on that one of the accompanying or parallel mechanisms to a public sex registry is maybe in the implementation of the electronic monitoring device for persons who would have been convicted of sexual offences and also have served their terms and allowed back into society, at least for a particular length of time.

I referenced earlier on, the importance of research. In some instances, if we do not do proper assessments, psychological and psychometric assessments of offenders, we would be missing the opportunity to garner valuable research on what may have led that person down that path; what are the antecedents in their life or the influences in their lives that would have led them down that path to make those kinds of decisions that we may be able to red flag certain behavioural patterns and intervene before the offender actually commits the act. And to me, that is also part of what effective restorative justice entails in Trinidad and Tobago.

Part of the restorative justice process also is ensuring that the perpetrator comes to a clear understanding of the impact of their activity, on not only the victim and the victim's family, but also themselves and their own families and their communities. And I think the absence of that aspect in the Bill is somewhat of a missed opportunity in terms of how we can move forward because we do not want to be, in my humble opinion, continuously making law to deal with situations as if they have to happen; as if we have no agency in how we raise our citizens in the country and how we intervene if pathological behaviour patterns start to emerge through particular influences in society.

So, I think we have to start looking beyond just punitive measures and look at, one, rehabilitative or restorative justice measures and certainly measures that can impact the direction of lives if we see red flags start to arise in a particular

direction by getting the kinds of antecedents to—behaviour patterns which end up on the wrong end of the criminal justice system. So, in closing, Mr. Vice-President, as I said before, I, in principle, support this but I think we have to be a little more holistic in our approach to lawmaking in Trinidad and Tobago. And with those few words, I thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Rambhajan.

Sen. Renuka Rambhajan: Thank you very much, Mr. Vice-President. Members of the Senate, good afternoon. I was turning over in my mind how I would start dealing with this piece of legislation because it is such a touchy subject. And Sen. Rambharat started his contribution when I came into the House and he spoke of the annual report and the fact that the court ordered one man to register. Mr. Justice St. Clair-Douglas, in December, 2020, was the first judgment and there was a lot of patting on the back that we got things done. Then there was talk about the legislative agenda to deal with crime and that, you know, DNA Regulations were passed and plea bargaining was done. And as a member of the Bar who practises in the criminal arena, I am subject to my oath and I must be honest, even though I might be the bearer of bad news, to tell the learned Attorney General and Sen. Rambharat that the gentleman who was ordered to register in 2020, that is not the first order the court has ever made.

I have prosecuted in cases where Mr. Justice Mark Mohammed, as he then was, was the trial judge and he ordered it then. The problem was it could not be implemented. So let us not say this is novel legislation, it is groundbreaking and it is not, Firstly, plea bargaining was always there. The DNA Regulations, though it was not there, the legislation was there and it was implemented in a case called, *The State v Quincy Jeremy*, in which I was the junior prosecutor. So perhaps it was fortuitous that I was given a temporary appointment today to put on the *Hansard*

the actual legal facts and what has happened in the courts of the Republic of Trinidad and Tobago. [*Desk thumping*]

Having said that, this piece of legislation, the Sexual Offences (Amdt.) Bill, 2021, feeds on the 2019 Act, and I trawled through the *Hansard* and I looked at everybody's contribution when the legislation was first passed with its 90 amendments, and there is still work to be done, in my respectful view. My role and function is not to criticize. It is to recommend and suggest because of where I sit. I sit as an attorney first; politician, very many moves after that. So as a politician, my role here today is to educate from a place of experience and to tell you that while this piece of legislation is groundbreaking and it can serve a good purpose, it cannot be that we are passing legislation in a fashion where we are reacting to things in society.

This honourable House should not be reactive. The hon. Attorney General said in his opening, "Should we ignore the marches?"; no, you should not, absolutely not. The voice of the people is the voice of God, listen to them. Let them assist you to understand the grassroots and ground issues that the people of Trinidad and Tobago are dealing with. But do not let them dictate to you your legislative agenda. Do not stand on the pulpit of political pressure or popular vote and pass a piece of legislation that you are not ready to implement yet. So my purpose today, ladies and gentlemen of this honourable Chamber, is to say to you that the legislation can work. The registry can work but we need to tweak it.

Sen. Rambharat said, the hon. Attorney General said, "We have to come back again to deal with voyeurism. We will have to come back again to deal with social media and how it impacts on sexual offences.", why are we coming back? Why can we not sit and develop a clear policy on this matter and then legislate? That is what they did in England in 1997. When they passed their legislation to

implement the sexual registry, there was a White Paper that was produced and the White Paper was entitled, "Protecting the Public: Government's Strategy on Crime in England and Wales". Where is our policy? What are we hoping to achieve or are we passing legislation to ensure popularity and to give the impression of public relations? Because when it hits the court and the Judiciary has to implement, that is where the problems arise? And while there was talk back and forth about constitutional motions and actions before the court, why do we have to wait for the court to get it right when we here can sit and debate and figure it out?

When we look at this legislation and we look at the terminology of the hon. Attorney General when he laid it in Parliament, and even today, it is a lot of talk of punishment of the rights of the victim versus the rights of the perpetrator. That is a very myopic view, regrettably, of the law and justice. When you look at Lady Justice, she has scales in her hand and those scales do not tip in one direction, hon. Members, it is balanced and that is what we must seek to do with this piece of legislation. We must balance the rights of the victim while not infringing on the rights of the convicted. How do we do that? We do that by carefully drafting legislation to ensure that persons' fundamental rights and freedoms are not infringed upon, while also ensuring that a victim feels that their voice has been heard. And I was grateful to see in the legislation that victims have the opportunity to provide statements as to their feelings when a person wants to make an application to come off of the registry.

The role of victim impact statements in the courts of Trinidad and Tobago continue today and it is something that we ought to consider when we look at the registry. But is the legislation, as laid, covering of all of the necessary issues that we need to deal with when we set up a registry? Are we looking at populist punitiveness? That is not my term. I wish I could take credit for it. It was actually

in an article—; many persons here quoted from articles. But I like the term, "populist punitiveness" because it says that we are punishing so we could remain popular. That is what it means. Are we legislating with purpose and what is our purpose?

We must understand that there is a balance to be struck between the victim and the offender, and I do not want anybody to say that I choose the offender over the victim, that is not my purpose. Every victim's voice needs to be heard and every victim should have the right to say to the Commissioner of Police, "I want this person on the register." That is a recognition of their right, of their voice. Because you know what sexual offences do? They take away the voice of the victim. So anything to give them their voice back, I will respectfully support.

So, I am supporting the Bill in my own way but I am also making recommendations for the hon. Attorney General's consideration. We are looking at preparing a list of persons; the national registry which would be used by those in authority and then a website that the police will fashion, maintain, update, populate and ensure security of. So when we look at that website, you have a number of persons who would be listed there. But when we look at each section, there is nothing there about rehabilitation. There is nothing there about counselling. There is nothing there about restorative justice. And I am grateful to follow on Sen. Richards who raised those very points. What is the purpose of having a list of offenders—, convicted offenders? Because that is all this legislation does, it lets you create a list.

What do we do with that list? Do we use it to investigate other matters? Do we use it to develop treatment plans for persons so that they do not reoffend? Do we use that information to target certain sectors of society who may not be educated in terms of sexual deviance? Because we all know that in some sectors of

society, sexual offences occur because of tradition, misapprehension, culture and simple education where you tell a child, this is a good touch or this is a bad touch, can change the way people perceive sexual offences. Are we implementing any of that in this Bill or are we just creating a list of people that we are condemning because they are sexual offenders? What use is that information going to be used for?

In England, they have something called a spectrum of protection that works in tandem with their sexual registry. Sen. Bethelmy indicated in her—permit me one moment—indicated in her contribution that in the United States, the Department of Justice has implemented a registry. What she has not also said is the Department of Justice has also created a number of rehabilitative programmes, so that when the sexual offender is being monitored in their registry system, they are also being required to attend counselling services. Unfortunately, sexual offences is not like a man going into a place and robbing a store or somebody in the heat of the moment in a crime of passion. A person ordinarily who commits a crime of a sexual deviant nature, something is not right with him mentally sometimes. And when I say something is not right with him mentally, offences like rape, incest, all of the offences listed in the Schedule, they carry a certain degree of anguish on the side of the perpetrator. And why do I say that? Because very often the offender was once a victim.

So, are we creating a cycle where we now identify the offender but we do not see whether or not he is in fact a victim? And that takes me to the Act. There is an amendment here that makes it discretionary for a court to order a mental health assessment report before making a determination whether or not the person should be added to the register. It is my respectful view that that mental health assessment report should be mandatory. And I want to recommend to the hon. Attorney

General that we move back the "may" to "shall". The reason that should be done is because if I am putting your name on the register, I want to see how I can assist you; how can I rehabilitate you because the probability of you reoffending is extremely high. So how can I fix you? So if we are creating a registry, can we not use it to break that cycle of abuse and prevent those potential victims of those persons from suffering at the hands of these individuals? You would not save all of them but at least you would have in there the opportunity and the framework to create some sort of change in this person's life. And who knows, maybe 10, 12 years from now, he or she might make an application to come off that registry because he has proven that he is rehabilitated.

3.00 p.m.

Madam President, we need to consider how this register is going to work as well. If I am an offender and I am placed on that list, because I have been convicted of an offence, and the police is required to monitor me, what do we think the likelihood of that person saying they feel harassed by the police would do? Is there not a potential for that individual, who has served his time, who has gone to the police station and registered and said, "I want to move on with my life and I want to put this behind me. I was convicted and I want to put this behind me." And then he has police officers coming to monitor him? He has potential to provide all of this information, he is listed on a register. You think that would affect his employment chances? If that affects his employment chances, "how he making money to survive"? And what is he going to turn to, not the very same thing that put him a jail in the first place, because that is the only thing that is providing him with comfort? We need to break that cycle.

So I am saying, if we are creating the use of this register and website, that we need to balance, not only the punitive arm of the State, but we all need to

consider the rehabilitative arms of the State. They must go together. That is why the scales of justice are twofold, you cannot have one without the other. But in this piece of legislation, we only have one, it is only punitive. You cannot only legislate to lock up, to list, and that is what we are doing unfortunately. Great talk about bail, great talk about 120 days and sunset clause, all of these things. Why is our approach to lock up and list? Why is it not to help and assist? [*Desk thumping*]

When this Bill was first laid in Parliament, the hon. Attorney General used statistics and the statistics showed that that there is a 3 per cent conviction rate for sexual offences in the Republic of Trinidad and Tobago, between the period of 2000 and 2019—3 per cent. At that rate, "dat list not going and get full anytime soon"—one.

Two: Why are we legislating post-conviction and not for the prosecution of the offences? Why are we not looking at why there is only a 3 per cent conviction rate? Why are we not focusing our energies on fixing the problem, rather than coming after and trying to fix it? This is not a raffle, we are not taking chances. Set the policy, figure out what it is we want to do and then let us legislate for it. So that the population can feel confident when legislation is passed, that the powers that be can enforce that legislation for their protection.

If we do that, if we are able to factor in rehabilitation with punitive measures, then the—Sen. Thompson-Ahye spoke about the roles of juveniles. Statistically, younger persons are committing sexual offences. I am sure we have all read in the newspaper horror stories of children going to school and being attacked in schools by other classmates, and they are sexually assaulted, sometimes by gangs. It happens, we cannot turn our eyes to it. This legislation says carte blanche no child offender is to be listed on the registry. Again, is that a holistic

approach, or are we doing things again in a piecemeal fashion, where we are only dealing with one sector of society, the convicted older offender?

The learned Attorney General spoke about Mr. Justice St. Clair-Douglas's decision to have "de" man who was convicted to nine years in prison, to register after he came out. I am sure when many of you were here for that debate in 2019, you did not anticipate that the first man who would be on that register, would be a man who fathered three children with the victim between the time of 13 and 18, and that they were in a relationship together. Because when we think sexual offender, and we think sexual offence registry, we think rapist, we think this, we think that. That was a case of statutory rape and, yes, it was right that he is being registered on the Sexual Offenders Registry, because he is a sexual offender, because she was a child and he was a 24-year-old man. But the reason I raise the facts of the case is to show you that what we think we are putting on the register is not the crime, it is a person, and that person has the potential to re-offend. Why is the role of probation not referred to in this piece of legislation? Why is a probation officer's report not requested to determine how this person is doing, having been released into society?

If we look at the role of the police in this proposed legislation, the police have so much to do. They have to police us, protect us, serve us and now they have to maintain a registry. They have to populate it, ensure the information is accurate and implement security measures so that persons cannot hack into the registry. That is a lot of responsibility for an already overburdened state enterprise. I would want to recommend that perhaps there should be consideration for a third- party monitoring and populating the registry, perhaps an ex-judicial officer, former judge who has retired, sitting with the Commissioner of Police, and somebody else who

understands the role of rehabilitation, and the balance between punishment and restorative justice.

When we also look at the role of the police, "where dey are getting de resources to do dis"? The last time I was here, I spoke about the practical and the pragmatic, and I have to repeat myself. When you have three police prosecutors using one laptop to do virtual court, and the bandwidth is so slow that they cannot access the court unless they turn off their camera, so all we are hearing is their voice, how are we implementing this registry through the TTPS? How are there going to be update, after update and names of persons who are coming in who are convicted, for them to maintain, when they do not have computers for their own use in the police stations?

When you look at the application that is being made to the police for access to the website and the information, why are we giving the Commissioner of Police a judicial function? Why is he making a determination whether or not your application to get the information should be granted? If we had the ex-judge sitting on the panel I just suggested, that takes care of that. It would also take care of the fact that no matter how you cut it or dice it, the police still involved, because they are the ones who would populate the registry.

Under this new amendment an application is to be made to the Commissioner of Police under section 50, but the old section 50—

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

Sen. R. Rambhajan: Thank you very much, Madam President. The old section 50 was repealed, and there is nothing in this amendment. I am, of course, subject to correction, but an application in England under the same registry—I want to read from an article called, "Use of the Sex Offenders Registry in the UK", which was published in 2016, by three college professors in criminology, English professors:

> The scheme of this Sexual Offenders Registry is not a US-type community notification scheme, and is actually quite limited. An enquiry must be made via the police about a person. The person must be in contact or have access to children or a child, entitling him to the information, and it is only if the subject of the enquiry meets certain criteria of risk that the disclosure would be made.

The legislation is silent on all of this. What is the criteria that is being used to judge whether the information should be given? Then we talk about vigilantism, locality. There was an amendment where we take the address out and we put the locality. I commend the change, but the problem is Trinidad and Tobago is such a small place. If you put—I will use myself as an example. I am from Kelly Village—village, locality, village. "Anybody who go Kelly Village and say dey looking for de fat lawyer, dey will find me." That is how simple it is; I am being real with you. That is how simple it is to find someone in Trinidad and Tobago. So if you go on that website and you see the locality of a person, and then you start to check and you see three, four people there in close proximity to where you live, does that not raise the anxiety of a parent? So we need to be careful what information is available to whom. We also need to be careful of abuse by the police.

We have excellent police officers, but we have some not so good ones as well. I am not confident that a police officer may not use that information against someone. It has happened. How do we put protections in place? I do see that there is a section that speaks to confidentiality, but I want to recommend to the hon. Attorney General that we create a specific offence, for persons who have access to the register or the website, posting information on social media. Right now we have a serious problem, where people's information is being spread on social

media, and after it is out there, you might send 10 pre-action protocol letters, the problem is, it is already out there and you have destroyed a man's character by just the click of a button. So, perhaps, we can consider putting some sort of penalty and offence in the legislation there.

Now, at the end of the day, while we recommend these changes, there is one recommendation I want to end on, and that is that we must be slow to remove judicial discretion in situations like this. When we look at criminal enterprise, criminal offences, the criminal justice system must have its say, and any attempt to remove judicial discretion should not, in my respectful view, be supported. At the end of the day, what we want to do is to create a piece of legislation that creates a register that can be used for a much larger purpose than just public perception. We want to make it a tool that the police can use in the investigative process. We want it to be a tool that can be used for the protection of the public. We also want it to be a tool for deterrence, so that persons who are engaged in this type of offence will know that their picture is out there for people to see. But at the same time, we also want to use it so that they can be rehabilitated, and restorative justice can go hand in hand with the punitive measures being implemented.

So I end as I began, remember the scales of justice when you legislate. It is not for one side, but for both. I thank you, Madam President. [*Desk thumping*]

Madam President: Minister in the Office of the Attorney General and Legal Affairs.

The Minister in the Ministry of the Attorney General and Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal): Madam President, I thank you for yet another opportunity to make a contribution in this most honourable Chamber. This is an opportunity, I will say, I do not take for granted, and will never take for granted, because God knows, with all we say and do in this Senate, may we inspire

confidence in our fellow citizens and make a positive contribution for the peace and prosperity of our nation.

Madam President, before I support any Bill that is brought to this honourable Chamber, I always step back, analyse the law and ask myself what positive impact, if any, is this piece of legislation going to have on our population. Madam President, you see, there are very two simple reasons why I entered into politics, and I will share that with the hon. Members of this Chamber.

The first, Madam President, to be very honest, it carries a name, and that name is Dr. Keith Christopher Rowley. You see, I do believe and will always believe, that my political leader is a leader phenomenal and it is because of him legislation like this is brought to this Chamber.

I will never forget on an occasion while discussing young people and the role of young people in our society with the hon. Prime Minister, he said to me, and I will quote him, he said, "You speak for them in the Parliament, so do a job of that. You have a soap box that most do not have, use it." I am saying this because every time I am blessed and privileged with the opportunity to speak in this Chamber, I understand that I have a privilege that not many citizens in this country have, and when I come here it is always my intention, and us on this side of the Parliament, to make a contribution that could only uplift our society.

Now, the second reason why I entered into politics is perhaps most relevant to this debate. I genuinely, like all of my colleagues I am sure in this Chamber, want to serve and I genuinely want to attempt and help in protecting all of our citizens. Now, all of our citizens and all of our people we understand what that word "all" suggests. It suggests every creed, every race. It suggests law-abiding and I even non-law-abiding citizens, and you heard me correct, Madam President. Even those little bad boys and girls in prison, I recognize that we have a

responsibility as legislators to equally protect. Madam President, I was a defence counsel, so it is in my DNA, and I am certainly never going to turn my back on even those who are the perpetrators of crime in this society. But, Madam President, I recognize standing here I have an equal responsibility to protecting the innocent and the law-abiding citizens of this country.

So when I support, and when I place my support towards any piece of legislation brought before this Parliament, Trinidad and Tobago you can rest assured I will never support and encourage legislation that perpetuates injustices in our society, because coming from a criminal and a defence background, I understand the importance of protecting the rights of even those "little bad boys and dem in prison". But now as I legislator, I have an equal responsibility to our law-abiding citizens. And I want to place on the record again, as my colleagues on this Bench would have already done, my support for this legislation, for I believe it balances, it balances the rights of our perpetrators, protecting their human rights, which they are all entitled to, together with ensuring and reassuring our citizens that the days ahead are going to be better and safer.

Now, I immediately want to respond to—my contribution may not be very long today, because there are really points that I intend to rebut on, and if time permits me I will focus on clause 11 of the Bill that appears before us, because that clause is what amends section 50. It repeals section 50 of the Sexual Offences Act, introduces a new section 50. That clause in particular is what I call the "Scarlet Letter clause". For A levels there was a book that I did in school that was called *The Scarlet Letter*, and if I get to that place in my contribution, Madam President, I will discuss what is the comparison between terming this clause "the Scarlet Letter clause".

I want to immediately answer a question respectfully put to this Chamber, or a statement made by the hon. Senator, who I have the honour of sharing her name, Sen. Renuka Rambhajan. She asked the question, why can we not sit and wait and then legislate. Hon. Senator, respectfully, I have a 13-year-old daughter and I have a 12-year-old son, and I shudder to think that as a Parliament we are prepared to sit, wait and legislate. [*Desk thumping*] Because, while we are sitting, waiting and legislating, our children are victims to monsters outside there, they are. I am not saying that if you are not a parent you do not understand, because people have nieces, they have nephews, we are all connected. But I shudder to think that this Parliament will be expected to simply wait and have it right and have it perfect, before we present any piece of legislation that has the potential of protecting our vulnerable in society.

There was also another statement made by the hon. Senator. The hon. Senator stated that we balance the rights of victims while not infringing on the rights of the convicted. As an attorney-at-law, it is my personal pet peeve not to read articles and not to read from articles. I always prefer to refer to a point of law or a case law, but in some reading and in trying to answer to that statement made by the hon. Senator, I want to quote a 2010 journal published in the *Journal of International Criminal Justice*, entitled "The Rights of the Accused versus the Rights of the Victim". This particular article stated:

> The balancing of the victim's participation against the rights of the accused should be inspired by some procedural principle and imperative nature which represents the backbone of international criminal procedure. The presumption of innocence, the right to a fair hearing in full equality and the right to an expeditious trial. The right to confront and present evidence...and so on.

Now, it is my respectful view that by virtue of this Bill we strike a balance, while we protect the vulnerable. We do not seek to trample—as the Opposition seems to think—we do not seek to trample on the rights on the rights of the vulnerable. We do not seek to trample sorry, on the rights of the convicted, in that, throughout the length and breadth of this legislation, and that is why I want to really get into clause 11, especially in that clause 11 that brings amendments to section 50 of the Sexual Offences Act. That particular section identifies safeguards that have been placed in this amendment that allows for due process. It allows an application for someone—it allows the convicted person the opportunity to make an application for their name not to be placed on the website. It speaks, I believe it is section 50(2), the new section 50(2)—it speaks to what happens when someone appeals their conviction. Then it goes on to speak, 50(3) and (4), it goes on to further speak to what is within the contemplation of the court. Even that same mental assessment that we spoke of, those sections all speak to what, in my mind, is due process, a provision that allows the convicted person at all times an opportunity to be able to make necessary applications wherever they see fit. So certainly, Madam President, when I get to that section I will address that point.

I want to say respectfully to Sen. Thompson-Ahye, Sen. Dillon-Remy, Sen. Paul Richards, even Sen. Deyalsingh, I believe, agree and fully support your position, that there is a need for rehabilitation in our country. I do, do honestly believe that, because yes, I had for many, many years my clients were persons whom I know the system had failed them, and they had turned to crime and became re-offenders, because the system failed them. I agree with that, and I agree there is a need for rehabilitation. You all have offered many wonderful recommendations which I agree with, but I simply want to say to these hon.

Senators, the need for this rehabilitation I do not believe it any way devalues the law that exists, and has been presented before this honourable Senate.

So while I agree that there is a need for rehabilitation, while I agree that there is a need for restorative justice and all of that, I do not believe that the need for this has devalued the law that appears in its current form before this honourable Senate. I am respectfully asking hon. Senators to consider giving the support that this Bill requires because, God knows, our vulnerable in society are depending on us to do same.

Most respectfully, I also want to address some statements—well, I am not going to spend too much time on the contribution made by Sen. Mark. I am not going to spend too much time addressing flotsam and jetsam contributions, and I mean that most respectfully. Sen. Mark in his contribution he spoke about the charges register, and there was a constant repetition about the charges register. Respectfully, Madam President, the Bill which was sent out for public comments to the Law Association and other stakeholders, that was the Bill which made reference to the charges register. The Bill that appears in its current form that appears before this Parliament, makes no mention of a charges register. What it does make mention of is a person being placed on, whether it is the National Sex Offender Register or the Public Sex Offender Website. It makes mention to persons being placed on either, only if and when convicted of a particular offence. So I just wanted to clear that as a matter of record, and I am sure that the Attorney General will deal with those issues in his contribution as well.

Now, there are two points that I want to also address that were made by the hon. Sen. Lutchmedial. The hon. Senator suggested that, and these are points of law, Madam President, just for the public's benefit and for the record. The hon. Senator suggested that in section 50(1) that we revert to a discretionary "may". The

judicial officer she said, I believe, is best placed to make a determination whether the information needs to be published.

Now, I want to turn to the law of interpretation as it relates to the concept of "shall" and "may" in the law. Now, the learning is that the interpretation of "shall" has been left to judicial construction. It has been persuasively argued, as a matter of fact," that "shall" may be construed to even mean "may", when, and these are the circumstances, when no right or benefit depends on its imperative use. There is case law in the case of *Reid vs Wellman* that supports this position. So I just wanted, as a matter of law, to indicate that notwithstanding the fact that in law, in certain provisions, there is the existence of the word "shall". The learning in the law of interpretation is clear as to how even that mandatory word "shall" can be construed, and this is for, of course, this falls on our judicial officer, the officer of the court to do so. Therefore, Madam President, it is my respectful view in response to the hon. Senator, that this section does not in any way stifle judicial discretion, and it is certainly in keeping with the doctrine of the separation of powers.

Another point, the final point before I get into the crux of my contribution, that was made by the hon. Sen. Lutchmedial, Sen. Lutchmedial suggested a mandatory requirement for a mental assessment. The hon. Senator indicated that a report should be done.

3.30 p.m.

Now respectfully, Madam President, I am a bit confused because the Senator in her earlier argument advocated against the use of the word "shall" and now she wants an obligation to be imposed for a mental assessment in order for a person's name to be removed from the register.

Now, Madam President, if I may respectfully take this honourable Chamber to section 63(1) of the Act, because we must remember when amendments are brought, these amendments cannot be read in isolation, these amendments must be read in tandem with the entire legislation. So these amendments have to be read in line with the entire Sexual Offences Act.

Now in accordance, Madam President, with section 63(1) of the Act it is stated that:

"A registered sex offender…"

And this is what that provision says:

"A registered sex offender may,"

—make an application to the court for his name to expunged from the register—

"(b) on the basis of…compelling reasons…"

Now what this simply identifies, in law, the existing law is that he has an option, meaning the convicted person has an option to produce a mental report by virtue of—because that he—if it is that is one of his compelling reasons why he believes his name ought to be expunged.

So if we are to read section 63(1), it is clear in the law that if you have an opportunity as an accused, as the convicted persons, sorry, Madam President, to make an application for your name to be expunged and the basis of that is to show compelling reasons, if you believe that your compelling reason is because of an unsound mind, then this gives you under this particular section, the convicted person still has an opportunity to present to the court, Madam President, a mental report.

Now clause 18, let us turn to the Bill now that appears before us. Madam President, clause 18 of this Bill that appears before us, it amends section 63 of the Act and replaces the word "shall" with "may" in section 63(3). Therefore again,

Madam President, the court at this time also can request a mental assessment from a psychiatrist and so on. So I also respectfully believe, Madam President, if we were to keep it in a mandatory requirement, this means that for repeated offenders the court is now obligated to conduct a mental assessment again.

So if a man comes before me 20 times, every time this man comes before me, I have, I am mandated as a judicial officer to require a mental assessment?. That is madness. That is legislating madness, because what it means is, we always complain as citizens, the duration of time—we complain about the criminal justice system, we complain about the length of time it takes for matters to be adjudicated upon. If we are to present, if we are to support a provision that makes this mental assessment mandatory, it means—because we have the recent case that everyone knows about, this man, what?—I think it is 70-something charges, convictions or charges or something like that he had. Right? But imagine you have a case in small Trinidad and Tobago, somebody comes before you, a repeated offender 70-something times, and every time this man appears you are mandated as a judicial officer to wait for his psychiatric evaluation or his medical report. That is legislating madness.

And that is why I am in full support of this medical report not being mandatory because this is only going to prolong and derail justice, it is only going to prolong and derail the adjudication of this matter, something that Trinidad and Tobago always complains about. The complaint is that we take too long in court, matters are not addressed expeditiously, these are little ways in which we can improve the system. All right? So that was just, Madam President, my effort to respond to some of the statements made by the hon. Senator, Sen. Lutchmedial.

Now to the crux of my contribution, Madam President, as I indicated to this honourable Chamber, my intention is to look at clause 11 and I will try, well of course, if time permits, to look at clause 11 in its entirety.

Now, Madam President, this particular clause as I indicated before, my focus, my first focus will be on the proposed amendments that clause 11 brings to section 50—well it introduces, sorry, a section 50(2), 50(3) and 50(4) and those are the first sections that I want to focus on.

Now, as all of my colleagues vote on the side opposite, —and here, we have already established that the purpose of this law is to introduce two registers now. We have the National Sex Offender Register along with the Public Sex Offender Website. Now I know colleagues before myself throughout the length and breadth of the Chamber, Madam President, they would have gone into what the National Sex Offender Register is and what the public sex offender register is, so to not fall victim to tedious repetition I will not get into that.

We all understand, Madam President, respectfully that one of the critical differences that exists between the National Sex Offender Register and the Public Sex Offender Website is that, one, on the National Sex Offender Register that information is held closely to the chest of the Commissioner of Police, whereas the information placed on the Public Sex Offender Website, that is what could go viral, that is what the public is aware of.

Now this is where my story and my comparison with *The Scarlet Letter* comes in. We know that the time that information hits a public registry especially, and I agree, in a small country like Trinidad and Tobago one can only imagine the negative implication that can have on an accused who really is remorseful for the crime that he committed and for that accused who really wanted to move past a

deviant, some sort of deviant act or criminal act he may have committed in his or her earlier years.

Now *The Scarlet Letter*, I am not sure many of my colleagues read that but there was a novel in which—it was a novel set in the Puritanic society. And in that Puritanic society—I did it for A levels at Lakshmi Girls Hindu College—and at that time in the Puritanic society one of the biggest crimes to have been committed was to be an adulteress. And in that particular era, that particular time what had happened is that the heroine of the book, to make a long story short, of course she had an affairs with a priest and she gave birth to a child, and you are living in a time where, of course, to conceive without being married was a sin. And the Puritanic society ordered that she wear a scarlet letter A signifying adulteress for the rest of her life. So that is to make a long story short. And the point is, that she was branded as an adulteress until the end of her time. Her child paid the penalty because the mother was branded as an adulteress.

And from the time I read this particular clause, this novel came to my mind because I am thinking, once this information goes public, you have this person and having to wear this scarlet letter or this scarlet letter is bolstered to their chest for the rest of their life—well not for the rest of your life but as long as the information is on the register and of course God one knows the repercussions they are going to have to face.

But then as I looked closely at the clause I said, thank God because within the parameters of 50(2), (3) and (4) of the law that appears before us, we are ensuring that the convicted person is not or does not have the burden of carrying the scarlet letter bolstered to his chest for the rest of his life. And what do I mean by that. If we look, Madam President, at the proposed—now clause 11 which brings proposed amendments 50(2), if we look at the particular amendment,

Madam President, it reminded me of the case of *Ashingdane v the United Kingdom*. And one of the learnings that came out of that case, a little quotation that I liked, it said:

> A fair balance must be struck between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights.

And this particular clause 50(2), it provides an avenue for the convicted to make an application to the court.

Madam President: Minister, you have five more minutes.

Sen. The Hon. R. Sagramsingh-Sooklal: Thank you, Madam President. It gives the convicted person and opportunity to make an application to the honourable court if they do not want their name to be placed on this public sex offender website. Unlike the book, *The Scarlet Letter* she had no choice in the matter, but our convicted persons in this scenario, Madam President, they have an opportunity if they have reason, and of course they must convince the court as to why their name ought not to be placed on the public register. And what this does is that this is where in the law we have created that balancing act, and that comes back to when I began this debate.

I recognize that having been a defence counsel our responsibility to protecting even those who are convicted of criminal offences. Because you are convicted of criminal offences, save and except for your right to movement and all of that, if you are incarcerated, a person's right remains intact. And I understand more than ever that there is a need to protect that person, and I respectfully submit to this honourable Chamber, Madam President, that 50(2) provides that opportunity.

Now, 50(3) it speaks about the issue of an unsound mind and this, Madam President, what that particular clause does is that it gives a discretion, of course, for a person for the court now to request a mental assessment of the person appearing before them. But more than that, 50(4) is what is important because this actually identifies what will be within the contemplation of the honourable court in deciding if they are going to grant the application to the convicted person, and the application—so you make an application to the honourable court that your name not be placed on this Public Sex Offender Website. The court now—we are now prescribing and creating parameters in which the court can assess this application that appears before him, the judicial officer, and makes a determination as to whether or not this person, the application should be granted. And this, in my respectful view, Madam President, this particular clause 50(4), we are actually codifying to an extent the principles and the dicta that came out of that case the *State v Everton Joseph*. That is the case that has been discussed in some detail in this honourable Chamber, that case that the hon. Hayden St. Clair-Douglas would have adjudicated upon.

So, Madam President, with this being said I want to respectfully say, Madam President, that when this Bill becomes law the hiding grounds for these sexual predators, Madam President, will be taken away. They will now be forced, Madam President, to walk in broad daylight and their identities would be known to all members of the public. But at the same time as responsible legislators we have ensured that every convicted person is given an opportunity, if they believe that there are compelling reasons and substantial reasons why their name ought not to be placed on this public register, they are still provided with the opportunity to make said application. Then later on in the Bill we spoke about what happens when the convicted person appeals their conviction. We understand that once an appeal

is filed, automatically the court is stayed from placing your name on the public register, the public—yeah, it is the public website, sorry, Madam President.

So I implore, I ask the Members of this honourable Chamber to understand that we have been very responsible as a Government in drafting this legislation. We have ensured that we have balanced well the rights of the convicted persons with the obligation and right that we have as legislators to protect the vulnerable in our society. And to that extent, Madam President, I support this Bill, I support the Attorney General and I do ask the Members of this honourable Chamber tof give the Government, give the people of Trinidad and Tobago the legislation that they desire because certainly it has the potential to protect our vulnerable. With these few words, Madam President, I thank you. [*Desk thumping*]

Madam President: Attorney General.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Madam President. May I start off by thanking my colleague the hon. Renuka Sagramsingh-Sooklal for an excellent contribution on the law. [*Desk thumping*] She has made my task tremendously easier with her very well-positioned research and response to the issues raised.

Madam President, may I thank all hon. Senators for their very passionate and excellent contributions here. It is very good to see Sen. Rambhajan back with us in her animate style which I always enjoy. It is very good to see you back, hon. Senator.

Madam President, may I say that notwithstanding the differences that we have in terms of certain perspectives on the law, I think it is safe to say that I feel that this was a very productive debate. I actually found Sen. Nakhid's contribution to be the most relevant contribution that I have heard from him. I do not sit in this Chamber, so forgive me, I do not mean to be pejorative but I thought the

contribution was a good one. And I thought that Sen. Lutchmedial brought across the points that Sen. Mark attempted to make in perhaps the correct tone that was required, because I think it necessary just to touch the issues raised by Sen. Mark for the record, lest someone walks away with the wrong impression.

In responding to this particular debate, a number of issues have been raised. A lot of what has been said necessarily and very poignantly includes what else ought to be done. We heard the word holistic many times during this debate, and it is true that in looking at the concept of victim, the offender, the criminal justice system and the society that we need to be holistic. But dare I say that it is axiomatic that a piece of law cannot be within the whole of what is required. Each end must take the piece that it does and work in tandem with others. Sen. Rambhajan's contribution joined by Sen. Lutchmedial, Sen. Nakhid, hon. Senators on the Independent Bench, Sen. Deyalsingh, Sen. Thompson-Ahye, Sen. Dillon-Remy, all hon. Senators raised the correct point, that we are treating with a multipronged issue and that we must be mindful of the approach that we take.

So I agree, hon. Senators. I agree that we have to look at the issue of rehabilitation, reform, recidivism, the voice of the victim, Sen. Rambhajan said it very, very well. In these matters you take away the voice of the victim and that is a very true point to make, very powerfully true point to make. But this law is not about the reform aspects. This law touches and concerns those things and perhaps I ought to take the immediate opportunity to say, Madam President, we have a significant Bill to come to Parliament very shortly on the parole reforms of Trinidad and Tobago. It has been decades in the making and I assure you as Attorney General that I have completed the work. We are dealing only right now with the issue of child parole. That is the one issue that has to be harmonized inside of here. We are dealing with the reform inside of the prisons conditions, the

operationalization of the Prisons Rules which were done since 2014 and not yet operationalized because the plant and machinery has not yet been put into place and therefore one has to work oneself and position toward that. We are, Madam President, now in a state where we are talking about the criminal justice system but we are in a very different place from 2015.

I recall vividly the disbelief when I came to present the Family and Children Division to create the Children Court. I recall the disbelief amongst hon. Senators when I piloted the Criminal Division and District Courts. I recall the disbelief when I piloted the judge only law. I recall the disbelief when I piloted the law to treat with plea bargaining. I recall the disbelief in introducing electronic payments. I recall the disbelief in tackling the backlog by removing 104,000 cases a year from the Magistrates' Court by simply amending the Motor Vehicles and Road Traffic Act. I recall the disbelief in breaking the backlog in terms of annual load as well in removing 8,500 marijuana cases per year. I recall the disbelief in piloting the law to introduce electronic and virtual hearings on a laptop.

But today, Madam President, we stand in this law's context with double the number of judges from 36 to 64 in the High Court legislatively. Masters have gone from two masters to 25. We stand now with full judicial immunity for magistrates. We stand now with an entirely administrative, improved administrative structure in the Magistracy. We no longer have the centuries old Clerk of the Peace running the Magistrates' Court. We have a completely digitized environment in that Magistrates' Court.

Today, Madam President, we have the coordination in a particular trial, for instance, where a witness who is a critical witness appeared in a judge- only trial for murder on their phone sitting in the back of a cab of a truck in an interstate highway pit stop in the United States of America. We have had people use the

judge-only system which applies in this law's operational context as raised by Sen. Rambhajan in the context where people said that nobody would ever use judge-only laws.

Now, Madam President, Sen. Rambhajan raised the case of Mr. Justice Mark Mohammed some 14 years ago in raising the sexual offender registry. Later, of course, Mr. Justice Hayden St. Clair-Douglas did before it. But the point is that, Mr. Justice Mark Mohammed could not operationalize the listing because the law was just plainly, badly drafted. The 2000 law when you look at it and you look at Part III and what was amended, it could not operate which is why we had no listings on the register, zero.

Now, Sen. Rambhajan raised a very interesting concept and point. The hon. Senator raised the experiences that we see elsewhere where policy papers are produced and we take a holistic approach towards the development of law, et cetera. Madam President, if I could say this. Upon becoming Attorney General, one of the first things I did was to look at the Law Reform Commission. And in looking at the Law Reform Commission I asked for a listing of all laws that were, Bills that were produced by the Law Reform Commission and I asked to see how many of those laws actually became law. And you will be shocked to know that notwithstanding the immense effort, expertise and hard work put out by the Law Reform Commission.

And in fact, if I could say so now and I say publicly thank you, the drafters of this particular Bill from the Attorney General's Office come from the Law Reform Commission and they are phenomenal lawyers. And I would like to say that what hit me was that we were on this excursion of perfection constantly. We had nothing to show. And hon. Senators know that the mantra that I preach inside of this honourable Chamber all the time, it is called just start; just start.

And in answer to Sen. Rambhajan, the reason why we are just starting and did start because we amended the law in 2019, we put it into operation and at the Office of the Attorney General we constantly check what is going on. We took avail of the law as it was put in. We checked what was actually in court. We spotted that the section 6 repealed offences of—the repealed section 6 of the Sexual Offenses Act were not covered, we amended the law. We came back in December 2020, we dealt with the issue of the mental reports, we amended the law. We come here today again to amend the law because it is born out of the experience in the court. So we are actively tracking the cases, not in an ad hominem way but in a general purport way within the construct of Liyanage, that famous case that we are all guided by so that we can actually get to the point of having the annual report put in. But Sen. Rambharat is completely correct. A report has been given because it has been one case. There is no requirement for regulations just yet. Today we seek to cause an amendment which will be circulated as I am speaking now where I am inviting hon. Senators that we can include the power to make rules of court.

Now, let us get to the point that we must look at this holistically. Agreed. I ask hon. Senators to bear in mind that alternate sentencing is already a feature of our laws operationalized by this Government, the use of electronic monitoring in effect, bracelets being put on, anklets being put on. The use of community service orders, the use of psychological assessments.

Now one of the reasons why we have left the discretionary aspect of mental reports, psychological reports in the judge's discretion is that we have an extremely litigious society. The case of Lendore alone out of the Privy Council tells us that there are significant consequences to be had to the State in not being ready for operationalization and therefore to get the job done, the flexibility of law has to be

in effect. I say nothing pejorative of my colleague Sen. Lutchmedial who is frequently against the State and legitimately so as an attorney-at-law in practice, together with other persons or Sen. Rambhajan who has appeared in commendable cases as well, the Dominic Suraj matter alone, the hon. Senator appeared in.

There is a right to test the law, and in that right I notice that there is a significant frequency with which the State under my watch as Attorney General is being tested on laws that were never tested before by the same people when they had control of the reins, administrated those laws. And I am referring to my colleagues who happen to be frontline parliamentarians or politicians for the UNC. So be it. You want to test prison conditions; so be it. You want to strike out the laws on bail for mandatory, no bail for murder; so be it. You want to sue the State for not having a child rehabilitation centre when you proclaimed the law; so be it. How "it go look" is a different question. Is it technically right to challenge the law? Yes. But oh Lord God Almighty, it does not ring right, Madam President. It just does not ring right. That is where the Trini in me comes out and say, you "hatta watch dem so cokey eye". But, Madam President, I cannot say it is wrong to challenge it.

Madam President, let us deal with this so-called three-fifths issue. Sen. Mark actually after making a huge song and dance about the Court of Appeal in the Dominic Suraj matter in paragraph 123 recognizing that they felt obiter dicta that the minority decision in Francis should be followed. That is the strict interpretation of the three- fifths majority. That very paragraph was followed by paragraph 124. And at paragraph 124 the court went on to acknowledge that the whole concept of proportionality or a strict three-fifths was obiter. And they said and recognized the fact and the law that the Privy Council stands as our highest appellate court, and the Privy Council's decision is that proportionality is what prevails.

Suratt is the classic case in that regard, there are lots of others, Northern Construction, et cetera, et cetera. But the bottom line is bearing in mind the jurisprudence coming out of the European court in particular on the issue of mandatory vaccines as an example. They have upheld mandatory vaccines in the European context in the COVID climate on the basis of proportionality and reasonableness.

So as Attorney General in advising for the promulgation of laws and this Bill, I am bound to advise on what the law of Trinidad currently is. And the current law is, we do not need a special majority, and let me prove it quite simply.

I have here, Madam President, the letter from the Law Association, 27 April, 2021, written to me, copied to the Leader of the Opposition, all Independent Senators, Government Senators, all Opposition Senators. The Legislative Review Committee of the Law Association has provided its comments. One, two, three, four, five, six, seven pages of comments, 34 paragraphs, not one of them says the Bill required a special majority, not one.

4.00 p.m.

But if we listen to Sen. Wade Mark, who I had cause to consider may have had need for oxygen in the position that he was speaking in, so passionate was he about his submission that a three-fifths majority was required. Sen Mark, I say respectfully, is on his own because this law is here to treat with the preservation of the jurisdiction of the court. There is no whittling away of the separation of powers principle at all. And I draw in aid of that argument nothing less than the Constitution of the Republic of Trinidad and Tobago, section 5(2)(f) as in Fox Trot. In section 5(2):

"Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

(f) deprive a person charged with a criminal offence of the right—

(i) to be presumed innocent until proven guilty"—et cetera.

Two, sorry continue—"...according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts…"

Reversal of burden is not uncommon.

But, Madam President, it is not that we are even trampling upon the innocent until proven guilty point here, you know. I draw this by way of analogy. The Constitution says you can reverse the burden, and nothing is unconstitutional about that. In this case here it is the discretion of the court that we are reorganizing, we are saying that the court shall put everybody who is a sex offender under a conviction after due process onto a register, unless the person shows cause effectively why they should not be there, and we invite them to consider that approach of application.

It is no different from putting your plea in mitigation at the point of sentencing. No different at all. And as Sen. Renuka Sagramsingh-Sookal so correctly and capably and elegantly pointed out, the law is further balanced in section 50, in section 54, in 61 and 63, where you can approach the court and make the application and show cause why the law ought not to apply to you.

So respectfully, Madam President, there is nothing inside of here that ought to occupy us in the very loud contribution of Sen. Wade Mark. Madam President, we dealt with therefore special majority, the fact that there is no intrusion in the separation of powers principle, because what we are seeing is that the court must be guided by the application that is to be made. Due process is therefore preserved. It is the court's decision. The court obviously must act as the construction entity of the laws of the Republic of Trinidad and Tobago. That is

where Sen. Sagramsingh-Sooklal's point on "shall" and "may" comes very sharply into focus. But in any event, the discretion is plainly set out in the law because it is subject to the application and consideration of the court.

Madam President, I definitely wish to thank the hon. Members of the Independent Bench who reflected upon the need for us to tighten a number of our provisions. The tightening of our provisions in terms of the treatment of the offender, the alternate provisions I have already addressed. I would like to say, Madam President, that this is not a Bill which is myopic in view, as Sen. Rambhajan had sought to persuade us. This is certainly a Bill where the scales of justice are in balance. This is not a Bill intended to satiate any desire of a populist mass. This is a Bill intended to address a mischief. What is the mischief? The mischief is allowing the population to know who is a sex offender of a particular type after that person has gone through a trial, after that person has been convicted and sentenced, and after that person has exhausted all of their appellate rights to set aside the conviction. You cannot get a little closer to being very careful than that. Because what we are looking at here is the societal interest in knowing who an offender is.

Now I would like to point out, in response to Sen. Thompson-Ahye, that those persons who are currently incarcerated are potentially the subject of this law. Persons who were sentenced and came out of incarceration, and have served their sentence are not, because the court is functus, and we could not put them on in terms of the retrospectivity. Even though you have the ability to make retrospective laws, the due process has ended, and therefore they would be subjected to a form of penalty that they were not invited to, addressed to the court, or have considered by the court. So unfortunately, we cannot do that.

We do agree that counselling, et cetera, is a necessary aspect of this. In

drawing the point of painting the mischief, Sen. Rambhajan correctly referred to the circumstance of the case dealt with by Mr. Justice—the Joseph case dealt with by Mr. Justice St. Clair-Douglas. The reason why the court gave that nine-year sentence—and I commend the judge on an excellent judgment, it was very, very useful to look at the heads—is really because the judge felt that a 26-year-old man had no business, as a pan teacher, a music teacher, in interfering with, as the judge said, a 12-year-old child. And that there is a societal scorn that must be applied, notwithstanding the hardship of the fact that he fathered three children with this particular victim, he also fathered three children with someone else, and according to the judgment, looked after none. None! And in that hardship and circumstance the judge said a lesson must be sent to society that certain things are off limits. A 12-year-old child is off limits. That is a child.

And therefore, I borrow Sen. Sagramsingh-Sooklal's passion in saying that we make no complaint and we need not hide our heads in the sand in saying that there comes a point when you have to be punitive. I accept that justice is blind. I accept that the veil of ignorance in the classic context of the law must be applied, that we must apply the law with a careful poise and balance. But it comes down to what view and vision of society do we have for ourselves and a Government's role is to fashion a society in the mechanisms available to it.

And one of the mechanisms available to us, Madam President, is the ability to fashion the law in the way we do. Lord Falconer in considering the bail amendments and the law in the United Kingdom said very plainly in the House of Lords, that Parliament is there to take care of bad judicial decisions as well. It is why we have a Legislature capable of making law, and while we have the court that will interpret it in case it goes wrong. But it will not be the first time that a Legislature says to a country, this is the law. It may be strict lability. It may be

mandatory. It may be lacking in discretion—

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

Hon. F. Al-Rawi: Thank you, Madam President. But there is nothing odious in seeking to shape society. I will give you the classic example. Madam President, I witnessed a Bill called the Motor Vehicles Authority Bill for decades in the works. Decades. And when I became Attorney General and that motor vehicle authority law was brought to me, I say we are not going with that. We are just going to start. Three sections were introduced into law. We amended section 20 of the Motor Vehicles and Road Traffic Act. We introduced a new section 20A, 20B and 20C, simply to convert the road as place where you have a licence or privilege to be. And we converted offences into liabilities of a civil nature. We birthed demerit points. And as a result of those three clauses which became sections, we saw Trinidad and Tobago witness the lowest number of road traffic deaths in 65 years. Because all of a sudden people slowed down. All of a sudden the reality of demerit points became conscious reflection. All of a sudden people lining up to check their tint, to make sure they are not going to fast, to make sure their back light is working. All of a sudden the digitization programmes to see where your demerits are, et cetera, became a reality. That is a very good example of shaping society.

This is what this Bill intends to do. This Bill intends to shape society, to take bold decisions like abolishing child marriage. I remember the histrionics from persons across me now in relation to abolishing child marriage. Madam President, there comes a point where you have to be possessed of courage and determination to just do it. Just start. And I have repeatedly and consistently given my undertaking to the Senate, to the House and to the Parliament to come back as often as is necessary to amend laws where required because it is a living breathing

thing that must be monitored whilst it is being operationalized.

I take the caution from Sen. Rambhajan that we need to make sure that the operational functions are there. I take solace in my colleagues Sen. Bacchus and Sen. West in the digitization programme which is fast afoot. I know Sen. Rambhajan will smile under that mask, in agreeing with me, lawyers did not believe that we could go to court from home. Be in Tobago, San Fernando and Port of Spain within two seconds flat. The world has changed, some of it for the better; the vast majority.

So, Madam President, I am confident that this law is what is required at this moment. The other laws which I have given intention to continue discussing in the public domain, which include revenge pornography, criminalizing that; voyeurism, criminalizing that; further bail restrictions associated with savage rape and other abuses; and, yes, Madam President, testing the population, if not the law, on flogging. Why? Because it is something that is out there. You need to poll the constitutionality, the lawfulness, and the appetite. Why? Everybody knows if you spit gum on the sidewalk in Singapore you have consequences. Everybody knows if you are crossing through with a suitcase in Singapore and there are drugs in there, whether you put it or not, man stripping suitcase in the airport, taking videos and cameras to make sure.

So, Madam President, I look forward to committee stage. There are amendments in circulation under my hand, and I thank you for this opportunity, and beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Hon. Senators, are we now in a position to proceed, everyone has sight of the amendments proposed by the Attorney General?

Sen. Mark: No.

Madam Chairman: It will be on the Rotunda, as you know that has now been our—Attorney General, you are ready as well?

Mr. Al-Rawi: Yes please. Madam Chair. Thank you.

Clauses 1 to 7 ordered to stand part of the Bill.

Clause 8.

Question proposed: That clause 8 stand part of the Bill

8 Insert after proposed subsection 47 (5), the following new subsection:

(6) A person who intentionally and without lawful excuse or justification—

(a) obstructs the Commissioner of Police or any other person acting for or under the direction of the Commissioner of Police in the course of carrying out the provisions of this section; or

(b) alters, disposes, reproduces, shares, uses, obstructs, disrupts or interferes with any information contained in the Register referred to in subsection (1) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for three years.

Mr. Al-Rawi: Madam Chair, the Government proposes an amendment to clause 8. Specifically, Madam Chair, in the proposed 47(6) that we—after 47(5), we put a new (6). And this came as a result of submissions that we got from persons prior to this debate, and therefore the request came in and we considered it prudent to

agree that we put in the penalty for persons who intentionally and without lawful excuse or justification obstruct the Commissioner of Police, or alter or disposes, reproduces, shares, et cetera, those things which are captured under the registers. And we make that therefore a summary conviction liable to a fine of $25,000 and imprisonment for three years. So it was intended to put a penalty to the offence. We have very purposefully put in the lawful excuse exception to allow for the reasonable circumstances. We are relying upon the concept of plain and ordinary meaning here, and these come from amendments proposed from the public as we were coming to this Bill.

Sen. Richards: Thank you, Madam Chairman. I know we are on (6). Can I just ask a question on (5) before I go to (6)?

Madam Chairman: I beg your pardon.

Sen. Richards: I know we are on clause 8(6)—

Madam President: Yes.

Sen. Richards:—as proposed for amendment from the Attorney General, but can I just ask a question on (5) before I comment on (6)?

Madam Chairman: On 8(5)?

Sen. Richards: Yes.

Madam Chairman: Yes. Okay, yes.

Sen. Richards: Thank you, Madam Chair, through you, to the Attorney General. The (5) says:

> "the Commissioner of Police shall make reasonable security arrangements to protect information contained in the register against unauthorized access, collection issues, alteration, disclosure or disposal."

What happens if the Commissioner fails to do that?

Mr. Al-Rawi: There is where—what happens if the Commissioner fails to take

the steps? There is a mandatory obligation upon him. So, we do not criminalize the positive obligation of the entity such as the Government or Ministry or Commissioner. But what you would be subjected to here is a mandamus, and you would also be subjected to damages that flow from breach of liability. So there is a civil remedy that is available to you in that end of the law.

Sen. Richards: Thank you. And on (6) in terms of shares. Are we to interpret "shares" as publication, digital sharing, et cetera. Is that contained—comprised as shares, or to be listed as shares in anyway whatsoever?

Mr. Al-Rawi: Yes.

Sen. Richards: Thank you.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9.

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

9. A. Delete the proposed subsection 48(2) and replace with the following new subsection:

(2) The information on the website referred to in subsection (1), shall be accessible to the public and shall not be published—

(a) pending the determination of an—

(i) appeal of a person's conviction for a registrable offence;

(ii) application for exemption under section 50(3); or

(iii) appeal under section 50(4), where the Court has not granted an exemption;

and

(b) until the Commissioner of Police has received an order of the Court made under section 50(1).; and

B. Delete the proposed subsection 48(6) and replace with the following new subsection:

(6) A person who intentionally and without lawful excuse or justification -

(a) obstructs the Commissioner of Police or any other person acting for or under the direction of the Commissioner of Police in the course of carrying out the provisions of this section; or

(b) alters, disposes, reproduces, shares, uses, obstructs, disrupts or interferes with any information published on the website referred to in subsection (1) commits an offence and is liable on summary conviction to a fine of twenty five thousand dollars and to imprisonment for three years.

Mr. Al-Rawi: Yes, Madam Chair. Madam Chair, the Law Association made a very useful comment that we ought to contemplate a number of factors. Number one, the certainty and clarity of the law specifying what happens in the context of an appeal. Secondly, urging us to also consider the consequences as to how that works out in space and in time. And therefore, we have sought to amend the clause by dealing with (2) in the manner circulated to provide for the circumstances that it will not go on to the website pending the determination of

the appeal for conviction, or an application for exemption under 53, or an application where there is an appeal on that application which was denied under 53 by tying it to 54.

We also say that it should not go onto the register until the Commissioner of Police has received the order of the court, so therefore there can be no slip or mistaken inclusion onto the record. We then continue in paragraph B of this proposed amendment of doing exactly as we did in relation to clause 8, which is to provide the penalty for persons who intentionally and without lawful excuse or justification obstruct or alter, et cetera. And this is to take care of things like fake news or manipulation, et cetera, so that we put a positive obligation to make sure that this is used as best as is possible for legitimate purpose. Just a fun fact, if I could say this, this type of notice is actually on the Privy Council website. So when you are tuning into the Privy Council you will notice they put a huge caveat saying, you cannot alter what you are seeing here less you be subjected to penalties. So, thank you, Madam Chair.

Sen. Mark: Through you, Madam Chair, could the Attorney General indicate the public notice under clause 9(4)(b)—now we said that it must be displaced—displayed rather, in a conspicuous place. Now, is this register, the public sex offender register, is it going to be centralized Attorney General at the headquarters of the Commissioner of Police, or is it going to be decentralized as the case may be?

Mr. Al-Rawi: So, Madam Chair, the funny thing about the World Wide Web is that it is the World Wide Web, it is not centralized. It is the World Wide Web. So, it is the website. So just to assist my learned friend with that, and to assure him that this comes from the very law which we passed before. It was the old 48(1)(b), so it is the same position. And why I put the fun fact in about the Privy Council, is

that that is the way they do it as well on the website.

Sen. Mark: Okay.

Sen. Lutchmedial: Yes, this is just an enquiry, Attorney General. Thank you, Ma'am. The proposed 48(6) which replicates what we did before, attaches a penalty, but this is in relation to the public website. But reproducing and sharing, what would you anticipate to be, a person who intentionally and without lawful excuse, do you need lawful excuse to share—I mean, I could understand the altering, but the point of it being in a public website is to share it. So, I am thinking of an example of someone pulling the information off of the website and sharing it on these community groups, WhatsApp groups which I am sure we are all in one or two or many, and that is the type of thing that would possibly attract a sanction here. But that really does—I mean, is that not part of the point that you have this information on a public website and it is intended to be brought to the attention of the community and so on. So, I think maybe some clarification is so that people really know what they are allowed to do and not allowed to do, and what could attract a penalty here.

Mr. Al-Rawi: Thank you. May I?

Madam Chairman: You want to add something?

Sen. Vieira: Sure. In regard to Sen. Mark's point. So after?

Madam Chairman: Okay, so I will let the Minister respond to Sen. Lutchmedial.

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, I am very grateful to my friend for raising this issue, because surely it would occupy the innocent infringer aspect, et cetera, the proper purpose. Madam Chair, we borrowed from the cybercrime legislation this particular concept. And it is intended, obviously, if you are in a neighbourhood chat, and you are saying this is the list that comes from the website, take notice somebody has moved in, et cetera. That will not be an

improper purpose. It was to take care of the circumstances that much of the case law in other jurisdictions has brought about where wrong material, altered material, is in fact shared. So it was "the wicked sharing" which went there. That is why we used, very carefully, the intentionally and without lawful excuse so that we bifurcated the gravity of the mental intention specifically to capture this. It is really to give you the fighting opportunity in this world of fake news to have the law enforcement authorities push back and say, "Hey, take notice, what you are doing is wrong, and cause people to scatter".

Sen. Vieira: Thanks, Chair. Yes. AG, Sen. Mark had raised a question and I was wondering what he was really getting at. We have the register which is not accessible to the public, and the website which is public domain. In relation to the register not accessible to the public, I believe Sen. Mark was trying to ascertain from you, whether this was paper-based at a central repository, or whether this could be a virtual register, but could be encrypted and protected?

Mr. Al-Rawi: It would be both. Under the current Data Protection Act there is a mandatory obligation to reduce things to paper. It is something we are looking at now as we amend the Data Protection Act. And under the Electronic Transactions Act, all things that are paper can be done electronically. The intention is to have it in compliance with the law, which means both paper and also electronic, but I should give notice now. We are literally right now doing the electronic digitization process, including the amendments to all of our paper based products.

4.30 p.m.

So that we intend for this thing to be electronically done and encrypted of course.

Sen. Vieira: And it would also make sense so that law enforcement wherever they are can tap into this protected register and be kept abreast.

Mr. Al-Rawi: Madam Chair, if I could just add this, Sen. Vieira has also touched on it, permit me to put it on the record. Remember we have in relation to child offenders in particular, even though they may have certain aspects we have also a protocol in effect under the Children Court and the structures of anonymizing records in certain instances. So it is not only digitized, encrypted, unavailable, but there will also be a certain amount of anonymity in terms of the child issue aspects when that arises.

Madam Chairman: Sen. Lutchmedial, you wanted to say something to—

Sen. Lutchmedial: Just that, I mean, Attorney General, I accept what you are saying and I think it is necessary to prevent the sharing and the reproducing of fake material. But the way the section 48(6) is crafted here, sharing even the legitimate material contained on the website appears—could be "criminalized". The chapeau of "intentional and without lawful excuse or justification", I do not think cures the issue here that—I understand "alters", but dispose and maybe disposing if you are hacking the website or something. But reproducing, sharing, using, those are things that could be criminalized if you take them individually by someone—and they may do it intentionally. The intention is to share it as widely as possible amongst my neighbourhood and it could be criminalized by this section.

So I think that we just need to clean up and perhaps split, particularly, that subsection (b) to some extent to criminalize only the sharing of altered material or the fake news as you say and not any information from the website because persons should be allowed and it should not be criminalized to share or reproduce or use the material contained on the website.

Mr. Al-Rawi: So, Madam Chair, this is a very interesting aspect and I would just like to borrow from the copyright realm now. Altering, reproducing, et cetera, also involves sharing. So we have here a construct. The intention behind this is not only

precedent based, in that it exists in other jurisdictions, but it is intended specifically because there is a danger in correct information being shared or used out of context.

So the problem is that one size does not fit all. You can take what is perfectly correct information out of context and put it alongside—I recall a video of something that I had said in Parliament which was then clipped, it appeared on a couple of sites, the UNC sites, "Kick out the PNM", et cetera. And when they clipped it parts of what I said were true and they left out all the salient bits in between and it caused a human being, a lady who had lost someone, extreme anguish to the point where she took to Facebook and went to town until she realized that what had been put out was a lie. Sorry to use that term. And it was only then that the recovery began to happen. So this is intended to deal with issues of how we box the mischief. That is why the "intentionally and without lawful excuse" were carefully put inside.

Sen. Lutchmedial: I still do not see how the sharing of public information by itself could, you know, or should be criminalized. You see, you can run into a situation here where a person who has the information shared widely, let us say within the community, can make a report to the police and say that my neighbours have infringed section 48(6) by—what is their lawful excuse, what is their justification. I mean, I guess a police officer would have to make that determination but it ought to be clear that—I think that sharing information from a public website really should not be criminalized and when you are reading the law it has to be, you know, you have to take each one. Yes, if someone alters the information and so on, that is fine like the example you used, but sharing by itself should not be, I think, included there.

Mr. Al-Rawi: The intention of the law like the precedence that we have come

from is that you are free to go and have a view of this thing, you know. But sharing it is, we want to limit the aspects of it. If your Neighbourhood Watch were to say, "Please, everybody turn on to the website, www.sexoffenderstt.com to update yourselves on recent positions". That is an entirely different thing from saying, "Aye, Faris Al-Rawi name just geh added on to that". So the intention is really to focus people in as disciplined away. We are very cautious about opening Pandora's Box in this thing. One of the main arguments against sex offenders registers in small societies is that there is the risk of victimization or the risk of vigilante justice, et cetera, and you really want to have a fighting chance to put the genie back in the bottle if you can, if that is ever possible in this world.

Madam Chairman: Sen. Vieira.

Sen. Vieira: Thank you. AG, what does "uses" mean or cover in this section, please?

Mr. Al-Rawi: So we looked at that, because a comment had come in in relation to that and we went down to the interpretation. "Uses" is the plain and ordinary meaning of uses. Obviously, the use would have to be something which was not a use that you could lawfully explain. "Yes, I used it. I put up a notice saying guards that are—private security guards in an area or municipal police, we want you to come and have a monitoring watch, we are having a children's party outside and there is a child offender living in the neighbourhood." So that use will be lawful.

So, yes, the "use" much like the "share" is problematic depending upon how you look at it, but this is intended for the police to be able to give a caution, to say listen, that is not allowed. It is to manners the society back into the point. It is a hard concept to box, I accept, but it is intended to give the push.

Sen. Vieira: And so, on the record I just want the public to be assured that it is not an offence for them to go and look at the website and to draw information from it.

In that sense "use" is not offensive.

Mr. Al-Rawi: Yes. Thank you all for allowing me that opportunity to put that on.

Sen. Mark: Could I just ask the Attorney General, through you, the victims who would want these sex predators' names to be publicized on the register, do you not think Attorney General, how this is captured here, may discourage individuals who are victims from participating and then the ulterior objective of people actually reporting these developments could be defeated at the end of the day. And therefore, the website that is seeking to capture people could at the end of the day backfire in a negative way. I am just concerned about—

Madam Chairman: Sen. Mark, are you treating with clause 9?

Sen. Mark: No, yeah, I am just dealing with the matter of a person who intentionally without lawful excuse. That is the one that Sen. Vieira—

Madam Chairman: Yes, that is what Sen. Lutchmedial and Sen. Vieira, they have raised issues on, and the Attorney General—

Sen. Mark: Yes, I was just consolidating and advancing some concerns that I have as it relates to how this thing could backfire.

Madam Chairman: How it could backfire?

Sen. Mark: In other words and so on, victims. All right, okay. Let me leave it so. I will leave it so.

Madam Chairman: Okay.

Question put and agreed to.

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

Clause 10 ordered to stand part of the Bill.

Clause 11.

Question proposed: That clause 11 stand part of the Bill.

11 Delete clause 11 and replace with the following new clause:

"Section 50 repealed and substituted

11. The Act is amended by repealing section 50 and substituting the following section:

"Information on sex offender to be published on Public Sex Offender Website

50. (1) Subject to subsections (2), (3) and (4) the Court shall, in relation to a sex offender—

(a) order that the information referred to in section 48(4)*(a)* in relation to the sex offender shall be published on the website referred to in section 48; and

(b) direct that the Registrar shall forward the name and particulars of the sex offender to the Commissioner of Police who shall publish the information.

(2) Where a person has appealed his conviction for a registrable offence the Court shall, pending the

determination of the appeal, withhold making an order in accordance with subsection (1).

(3) A sex offender –

(a) may, within fourteen days of the date of conviction or such other period of time as the Court may prescribe, apply to the Court to be exempt from having the information referred to in section 48(4)*(a)* published on the website referred to in section 48; and

(b) shall show cause why he should be exempt from having his information published on the website.

(4) Where the Court has not granted an exemption under subsection (3), the –

(a) sex offender may, within twenty–one days of the date of refusal to grant an exemption or such other

period of time as the Court may prescribe, appeal the Court's decision; and

(b) Court shall, pending the determination of the appeal, withhold making an order in accordance with subsection (1).

(5) Where the Court makes an order under subsection (1), it shall direct that the information on the sex offender shall be published on the website referred to in section 48 within fourteen days of the date of the order or such other period of time as the Court may prescribe.

(6) The Court, before making a determination pursuant to an application made under subsection (3), may request a mental assessment report from a psychiatrist.

(7) The Court, in making a determination pursuant to an application made under subsection (3), shall take into account –

(a) the findings of the mental health assessment report referred to in subsection (6) where the report was requested;

(b) the nature and gravity of the offence;

(c) whether the sex offender has been charged or convicted of any other 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 sex offender was in a position of care, authority or supervision of the victim;

(h) whether the employment and residence status of the sex offender are stable; and

(i) any other compelling reasons in the circumstances of the case.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, clause 11 is relative to section 50 of the Act and consequent upon amendments that were suggested by a number of stakeholders, we took the opportunity to craft amendments in terms circulated. We have thought it important, if you look at that circulation, in this particular point to add in the process of appealing the conviction, et cetera, holding of the making of the Order. And very importantly the process came to us from the Law Association saying well, look, we think that you ought to put in prescriptive times for these things to happen. So in the new subsection (3), Madam Chair, you will notice:

"A sex offender –

(a) may, within fourteen days of the date of conviction or such other…time as the Court may prescribe…"—giving the latitude to enlarge that or treat with it otherwise—"apply to the Court to be exempt from…"—the provisions of being published.

(b) " —And—"show cause why…"

And then:

"(4) Where the Court has not granted"—in subsection (4)—"an exemption…the–

(a) sex offender may, within twenty–one days of…refusal…appeal"—that and the—

"(b) Court shall, pending…"—that—"…withhold making an order…"

So, what we sought to do, Madam Chair, was to put in some more safeguards

to ensure that as the Law Association had pointed out that we capture in express terms the right of appeal, the time frames within which that ought to be done, et cetera. This tacks on to a later clause that we ask you to add into the Bill which is the rule-making power of the court so that we can use the Criminal Procedure Rules, et cetera, to manage this process, Madam Chair. Those are the effective substantive amendments. The rest is of course in tandem with what was there. It looks long because what we did for neatness' sake was just to repeal and replace or rather remove and replace with what is there. But those are the essential core features of the amendment.

Question put.

Sen. Lutchmedial: Sorry, Madam Chair. Attorney General, I am going through the amendments here as circulated. Could I just flag one issue? The only person entitled to make an application for the court not to make this order is the offender but this section has not considered the views of other parties who are involved, for example, the victim. The victim may wish to make an application to the court to say that listen, if you publish this information on a public website you are running the risk of exposing my identity. Because you have used the "shall" and I do not accept that "shall" could be interpreted as "may" in these circumstances because that is usually the case where you have a lack of clarity. But if the court is compelled to do it, the views of the victim are essentially excluded from this assessment. Even the offender's family may have a particular—because of the nature of the offence, may wish to make submissions to the court and the court may wish to hear them. So, by having a mandatory requirement, save and except if the offender is able to prove to the court that it is in, and it is his view that this thing be excluded, then you exclude all other persons who are affected by the publication of the material from the opportunity to be heard by the court.

Mr. Al-Rawi: Madam Chair, thank you. In reading the Act as a whole, we had traversed this when we did the first round of amendments in 2019. If we look to section 61 of the Act, et cetera, we do preserve the right for anybody to approach, to stop the registering per se, and that is also inclusive of the victim's rights, et cetera, and the court has the widest discretion to consider those factors. It was a very live discussion when we were considering the issue of incest, in particular, and that was something that we spent nearly a year considering in the Special Select Committee with very careful detail. The Senator's eyes are sharp and I know that it is not easy to pick this up in one go as part of the workings that we had considered. So the existing law treats with that.

Sen. Lutchmedial: So the person—so despite section 50 they would have to go under section 61 and make the application.

Mr. Al-Rawi: Yes.

Sen. Lutchmedial: Any other affected—

Mr. Al-Rawi: And that is, if I can use the term even ab initio, before you even get registered.

Sen. Lutchmedial: Right. So would it not then, should you not include here then that subject to any application being made under section 61 as well?

Mr. Al-Rawi: The law is read as a whole.

Sen. Lutchmedial: Well, yes, but—

Mr. Al-Rawi: Right. So remember we are at the point, it is a bifurcation. The sentence is passed, the first step is you are going to become a registered sex offender. You cannot become somebody on the public website unless you are registered in the first place.

Sen. Lutchmedial: Sure.

Mr. Al-Rawi: So that is step one where you have the opportunity to say look, I do

not even want this person to be registered. The second aspect is that there is also the right to say look, I do not want this to be published at all either. Now, remember that the court in the context of the sexual offences does consider victim impact statements, et cetera, as we saw most recently in Justice St. Clair-Douglas's very fine judgment that we referred to, the Joseph matter in 2020. So the victim impact, the other aspects, any interested parties, for instance, the Children's Authority or the Solicitor General acting as child advocate, all of these are part and parcel of the equation.

Madam Chairman: Sen. Vieira.

Sen. Vieira: I understand what you are saying hon. Attorney General, but I also sense the Senator's concern that that might be in conflict with the language of this new section. Because it is saying subject to these specific subsections the court shall do these things. And so—now, you know I have a particular concern and I will say this now because it is going to come up later on, I never use the word "shall". I think it is one of the most problematic words in legislation and in agreements. There are other words that one could use, but there is a difference between "shall" being directory or mandatory. My understanding of the word "shall" as defined in law is that it does not mean "must", it can mean "should", it can mean "has a duty to", it can mean "may", it can mean "may be lawful". But because of all of these different meanings and juxtaposed against the popular perception that shall means "must" and "it is mandatory", that is why it is so problematic. So, I am thinking that here, to avoid the conflict, perhaps we could say:

…the court shall be entitled to; or

…is entitled to…

—because that way it means it is not bound to if there is an application made by

the victim. And as you know, we spoke a lot about the victim not being made voiceless. I think it is a very important consideration.

Mr. Al-Rawi: Thank you, Madam Chair. I thank Sen. Vieira for expressing so clearly what is a very important point. I would just like to say that the legislative structure that we use that is well traversed in court is "shall" or "may". And, yes "shall" is "may" and "may" may be "shall" and we have had lots of discussions from Bennion come down as to what is what. But the fact is that as much I would love to see us take that step towards the plain English reading like the English do in their legislation, we are not there just yet. We still use mutatis mutandis and other positions from our Latin roots, et cetera.

So I would be cautious because this is terminology used throughout the Act as amended to touch one particular aspect of it from a phrasing point of view and plain English point of view. I would like to say that in the process of exemption from registration or reporting that we contemplate a person applying to the court. And we do capture the voice of the victim, in particular, in mandating that the court take into account the victim's voice which is in the parent law. And in those circumstances I fall upon the defence that the Act is read as a whole because of the process by which you get to become a registered person and then ultimately a published person if that happens on the website, pursuant to the structures that we have.

So I would respectfully invite hon. Senators to be assured, having put this on the *Hansard* as well, that that risk of somebody else not having a right or the victim's voice which is a critical issue inside of here, the victim's voice is very securely managed in the judicial considerations in the other provisions of the Act that correlate to this.

Madam Chairman: Sen. Rambhajan.

Sen. Rambhajan: Yes, please, thank you, Madam Chair. Hon. Attorney General, I am looking at section 61 and from my reading of it, it says:

"A person may apply…to be exempt from—

(a) registering...or…

(b) reporting…"

So the person referred to in 61 is the same sexual offender referred to in the amendment. So, what my friend is saying, Sen. Lutchmedial, is the way the both sections read, the amendment as well as the parent Act, it envisages that the offender is the one who is making the application. From my reading of it there is no room for a victim to make an application for the offender not to report or to be exempted. And even though we have the consideration of the victim impact statement, the consideration of a victim impact statement is very different from a right to make an application. So I think this may be one of the places we may want to consider the voice of the victim as well.

Mr. Al-Rawi: So, Madam Chair, thank you, Sen. Rambhajan. Section 61 is a person, "he", and then subsection (2) in 61 is:

"Where a sex offender…"—has made the—"…application…the Registrar shall inform the victim or the family of the victim…and the victim or…family may make oral or written representations..."

So it is the victim impact statements. The hon. Senator is correct there. That is where I was alluding to the voice of the victim aspect. The entire construct of the parent law as we passed it in 2019, which in fact had a lot more cautions than the 2000 version of the law, was to allow for the victim impact concept. But we have left the discretion of the court intact as to whether you go on the register or not. Even though we used the word "shall", the fact is that the court will interpret what its parameters are because this law must be read alongside the other law. So, for

instance, the shall in the context of the Children Court, the laws that prevail there are anonymization, et cetera, and the preclusion. We have left out children, we have left out incest, they cannot be reported statutorily under this law. It is the other factors that can.

What we are doing on this occasion we had mandatory "shall" in the 2019 law for section 4, section 9, section 12, section 9A, rape, et cetera, we had that as mandatory. What we are doing right now is all the rest where we said the judge may, which is all other sexual offences, we are saying "shall" but subject to the right to say no. So we have improved on that particular provision in section 50. Why I would be loath at this point to have a tweak on this is that it is going to pull a thread on the rest of the law. What I can say is that we do have two other amendments to come to this law which we are at the cusp of bringing to Cabinet now, and I think this is a very useful point to have a look at in a more round purpose because if we touch this particular provision, it is going to touch many other sections that are in the Act as a whole. So, what I can do is to give you that square undertaking in the presence of the chairman of the Law Revision Committee right here, Mr. Rambharat, that we will look at it. I think it is a very good point but I would like to look at it holistically within the language of the rest of the Act.

Sen. Rambhajan: Thank you, AG.

Mr. Al-Rawi: Thank you.

Madam Chairman: Sen. Lutchmedial.

Sen. Lutchmedial: The point is that both section 61 and section 50, the right to invoke the discretion of the court is only with the offender. But what I think might be useful based on your explanation of section 50, would be to add the word "registered" before "sex offender" in 50(1) in the chapeau. [*Crosstalk*]

Sen. Lutchmedial: That is okay.

Mr. Al-Rawi: Sorry, would you repeat?

Sen. Lutchmedial: Right, just based on your explanation on how you envision section 50 to work, that you must become registered first before you become published. I am still maintaining my view that 61 and 50 only invoke the discretion of the court when the offender makes the application based on our reading. So you said you would look at that. But in addition to which, if 50 is meant to be triggered only for a registered offender, I think you should insert the word "registered" before "sex offender" in the chapeau. So:

> "Subject to…(2), (3) and (4) the Court shall, in relation to a"—registered—
> "sex offender—"

So you cross the hurdle of registration before you get to the publication on the website.

Mr. Al-Rawi: So if I could explain that, it is the reason why we have separated out sex offender from registered sex offender. So you are a sex offender but you only register when you report to the police station for registration. So we need to use sex offender in this case here because you only become registered when under 54 you get to the police station after you have been released or your sentence was suspended, et cetera, it is at the point of turning up that they register you and then you become registered. Until then you just are just a sex offender.

Sen. Lutchmedial: So you are going to publish even unregistered—before you become registered you could be published then?

Mr. Al-Rawi: Yes. Sex offenders—

Sen. Lutchmedial: Right.

Mr. Al-Rawi: So at the point of conviction you are a sex offender. You are a registrable status, which is where you report. So the registrable really means I have

now a reporting requirement. After turning up X number of days, I have to do that. So the concept of registration is not the fact that you are on a register, it was the fact that you were subjected to requirements for reporting to the police station. That is what the registration exercise really is.

Sen. Lutchmedial: Right. Because if someone were to make an application to become exempt under 61 from registration and they were granted that exemption under 61, then they ought not to be published, or they could still be published on the website?

Mr. Al-Rawi: That is why we have put in section 50, the ability to say I do not want to be published at all. So there are certain circumstances in 50 where we say look, you cannot be published on the website if you have an appeal; you cannot be published if you made an application to not be published; you cannot be published if you have an appeal which was rejected on your application to not be published. It is only when due process is complete, and mind you, that goes all the way to the Privy Council if you want to. So you cannot be published in those circumstances. So you become a sex offender when the court is finished with you; you become a sex offender on the website when the court is finished hearing your objections as to why you ought to go there. When you become a registered sex offender you are now outside and reporting to the police station in that registration requirement.

Sen. Lutchmedial: So, if you are published as a sex offender at the time of your conviction, so all of the time that you are serving your sentence, for example, you are on the website?

Mr. Al-Rawi: Yes.

Sen. Lutchmedial: But when you come out of prison and you register, you can also make an application to not be registered under 61.

Mr. Al-Rawi: Yes. Because registration also involves reporting requirements.

Sen. Lutchmedial: Sure. If at that point in time a different fora, a different quorum or whatever considers that application or the court or whoever and they determine, yes, you should be exempted from registering for good reason, whatever reason you put forward, you would have already been published on a website for X number of years.

Mr. Al-Rawi: Because the court said you did it. You raped someone, you brutalized a child, you are a sex offender.

Sen. Lutchmedial: Great, but it really renders the exemption under 61 meaningless.

Mr. Al-Rawi: And you exhausted all your appeals to not be listed.

Sen. Lutchmedial: Sure. So then what is the purpose of 61? It serves no function after the fact—if you could provide some good reason when you come out of prison why you ought not to be registered, of what use is that protection or that facility that you provide to the offender under 61 if they have been published already on the website.

Mr. Al-Rawi: Well, the publication and their reporting are mutually exclusive in some circumstances. You may be a paraplegic, you are still a sex offender, you did it at that point in time, your name is known, et cetera, you then find yourself incapable. You left the country, you were incarcerated again and all of those circumstances as to why you ought not to be reporting to the police station in regular cycle.

Sen. Lutchmedial: Okay, and then that does not assist us with the point that you said that section 61 was the reason and the justification why you do not need—why only the offender makes the application under 50, because you said 61 could take into account victim and all of that. But if 61 kicks in only when you come out of prison or when you are released and you go to register, then that offers absolutely

no protection for the victim or other people who might be impacted on the publication at the time of conviction under section 50.

Mr. Al-Rawi: So let us get to the point. Sorry, thank you. So, yes 61 treats with the registered person and the registration requirements; 50 treats with look, am I going on the website? So you get convicted, you are a sex offender, you say I do not want to be on the website.

Sen. Lutchmedial: I am not on the sex offender and him not wanting to be on website. I am on the ability of other people.

Mr. Al-Rawi: The victim, I know. The person other than the offender, I got your point. I am saying number one, the prosecutor would take care of that, the voice of the victim impact statement in the course of criminal prosecution for sex offences will do that. The Criminal Procedure Rules will assist us with that, and what I did say is that I would specifically look at the point coming back to the Senate, because I accept the considerations that you and Sen. Rambhajan and Sen. Vieira have said, and my caution, my only reason for not doing it immediately is that I would like to look at it carefully because I know it impacts on other sections of the parent Act as well. I think that the point is well taken, let us have a look at it carefully.

Sen. Rambhajan: Madam Chair, if I may just suggest—

Madam Chairman: This will be the last on this particular clause, yeah?

Sen. Rambhajan: Yeah. Perhaps, AG, what we might consider is putting a time when the application for exemption is to be made. So perhaps upon conviction a sexual offender may make an application to be exempted and then that does not preclude the registered sex offender when he comes out of prison having the same right to make the same application. So, if you put a time, we may clarify it.

Mr. Al-Rawi: We did put the time; that is where we put the 14 days; the 21 days, et cetera.

Sen. Rambhajan: Right.

Mr. Al-Rawi: The golden point that stands out—thank you, Madam Chair, for allowing us this, the golden point that stands out is somebody other than the offender.

Sen. Rambhajan: Thank you.

Mr. Al-Rawi: That is the simple point that I am taking away here. Look, can somebody else come and say look, I have a problem with that. Yeah? Okay, thank you.

Madam Chairman: So the question is that clause 11 be amended as circulated. Those in favour say, "Aye"—

Mr. Al-Rawi: "Aye."

Madam Chairman: I need to hear other than the Attorney General.

Question agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Clauses 12 to 16 ordered to stand part of the Bill.

5.00 p.m.

Clauses 17 to 19.

Question proposed: That clauses 17 to 19 stand part of the Bill.

Madam Chairman: Sen. Lutchmedial.

Sen. Lutchmedial: Madam Chairman, with your leave, I just want to raise one thing under clause 18, Attorney General. Again, the offender under section 63—and it is just something worth considering. It just popped in my head—again, the onus is on him to make the application here. I have actually seen situations where after someone is convicted and is serving his sentence and does not appeal or the appeal process was exhausted, that the State has to reopen the case on fresh evidence such as a victim recanting. And in this circumstance, I do not know that

the offender alone should be able to make this application to the High Court to have the information expunged. I do not know if you can flag it for further consideration that the court, if you know fresh evidence is introduced or even if the State reopens the matter at an appeal process on the basis as a fresh evidence—I think that is how it is done when fresh evidence—they file an appeal and ask for the period to be extended, that the court can, as part of that process, order that the information in the register be expunged. So I just wanted to flag it. I do not know if it is right to just shift the onus to the registered offender.

Mr. Al-Rawi: Thank you very much. I certainly will take a look at it. I had thought that that would have been taken care of in a matter being reopened under the inherent jurisdiction of the court to treat with orders that it had made, particularly because it was the same matter and not a fresh matter or not a point there. But I thank you for flagging it and we will certainly look at it.

Sen. Lutchmedial: Thank you.

Question put and agreed to.

Clauses 17 to 19 ordered to stand of the Bill.

Clause 20.

Question proposed: That clause 20 stand part of the Bill.

Madam Chairman: Sen. Mark.

Sen. Mark: Attorney General, was this increase from $50,000 to $250,000 and the six months to five years—was that a recommendation from the Judiciary?

Mr. Al-Rawi: Thank you, Madam Chair. No, it was not. We amended the Interpretation Act last year to raise those limits. So because we knew that, we did not want to rely upon the consequential, inferential amendments, so we just fixed the law at the same time. So the Interpretation Act itself was amended in this way so we are just putting in language right here.

Sen. Mark: Okay.

Question put and agreed to.

Clause 20 ordered to stand part of the Bill.

Clause 21.

Question proposed: That clause 21 stand part of the Bill.

After the word "SCHEDULE", insert the words "(Section 21)".

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, it is usual when you have a Schedule to refer to the springboard from which it comes, which is section 21. So we are just simply doing that.

Question put and agreed to.

Clause 21, as amended, ordered to stand part of the Bill.

*New clause 20*A.

Insert after clause 20, the following new clause:

New section 69 inserted	20A. The Act is amended by inserting after section 68, the following section:	
	"Rules Chap. 4:01	69. The Rules Committee established by the Supreme Court of Judicature Act may, subject to negative resolution of

Parliament, make Rules necessary for the purposes of this Act."

New clause 20A read the first time.

Question proposed: That the new clause 20A be read a second time.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, it was an omission to not have included the ability for the court to make rules under the rules of the Supreme Court route. And therefore, we have just sort to add this in to allow for the harmony of rulemaking, particularly with the Criminal Procedure Rules and Family Proceedings and Children Proceedings Rules as we have them now. Thank you, Madam Chair.

Madam Chairman: Sen. Vieira.

Sen. Vieira: Chair, I wondered if you could just allow me an indulgence. Just for the record, hon. Attorney General, I know that we have in the Act that a child offender will not be included on the register. Now, the register is private, it is not public and we know there have been serious situations where children, and a child could be 18 years old, 17 years old, have committed heinous crimes including sexual offences. We had a situation, remember with the Slender Man case, two young girls brutally stabbed up another woman, or the one in England with Venables where they brutalized this little child and left him on the rail track. If you have a child offender who is a real risk to other children, should the police and law enforcement not be aware that this is a dangerous person?

Mr. Al-Rawi: Madam Chair, this was the subject of heated debate by the interest groups in particular in the Special Select Committee, that strict line of the child and the prospect of the rehabilitation and reform of the child, as a result of it which we

listened to the voices that were in the select committee and did not include the child offender, notwithstanding the potential gravity and seriousness of the child's propensity, or ability, or capacity to offend in a very serious way. What I am comforted by is that the experience in the Children Court is growing significantly and that we do have a whole line of investigation that we are looking at right now. That is why I mentioned the parole board and I said the one reason that we have not come forward yet on that is that we are looking at the issue of child parole. Because it would be odd to bring a parole Bill and leave out all the child offenders inside of that, because one of the aspects of parole that is very persuasive is that you get enrolled in programmes to qualify.

So that there is a whole training and reform and other aspects that goes on with parole. Parole is much more than "Ay, can I get out?" as you well know, but I am saying it for public right now. So the issue of including the child would require us to have a significant amount of coordinated conversation with—my colleague, Ayanna Webster-Roy is leading that particular dynamic, and of course, I, with the Judiciary on the other side. So it is something that is being looked at because we need to settle that ground a little bit more, but I take your point.

Madam Chairman: Sen. Thompson-Ahye.

Sen. Thompson-Ahye: Madam Chair, if I may? The body of literature, all the international standards and norms in child justice, they all speak against it and there is a whole set of learning on it, research papers, and so on, which go in not in that direction at all. So I can make some available to you, Mr. Vieira.

Sen. Vieira: Thanks. But it is not public currency. It is restricted just to law enforcement and I am thinking that is where the balance lies.

Madam Chairman: Sen. Vieira, did ask for an indulgence, so that I will now put the question.

Question put and agreed to.

Question proposed: That new clause 20A be added to the Bill.

Question put and agreed to.

New clause 20A added to the Bill.

New clause 22.

Insert after clause 21, the following new clause:

"Schedule 3 amended	22.	Schedule 3 to the Act is amended in the reference to the empowering section, by deleting the words "(Section 47(2))" and substituting the words "(Section 47(1))".

New clause 22 read the first time.

Question proposed: That new clause 22 be read a second time.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, the proposal for the amendment for the addition of new clause 22 is to correct some cross-referencing that we needed to take care of in the Schedule. So it was upon a scrubbing of the Bill that we spotted this, and therefore, we are seeking to tidy it up by the addition of this clause.

Question put and agreed to.

Question proposed: That new clause 22 be added to the Bill.

Question put and agreed to.

New clause 22 added to the Bill.

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

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

Sen. Mark: Division.

Madam President: So I will allow for three minutes for all Members to return to the Chamber.

The Senate voted: Ayes 28

AYES

Rambharat, Hon. C.

Gopee-Scoon, Hon. P.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Browne, Hon. Dr. A.

Mitchell, Hon. R.

Cox, Hon. D.

de Freitas, N.

Singh, Hon. A.

Sagramsingh-Sooklal, Hon. R.

Bacchus, Hon. H.

Lezama-Lee Sing, Mrs. L.

Bethelmy, Ms. Y.

Ibrahim, Dr. M. Y.

Mark W.

John, Ms. J.

Lutchmedial, Mrs. J

Nakhid, D

Lyder, D.

Rambhajan, Ms. R.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, Mr. D.

Thompson-Ahye, Mrs. H.

Question agreed to.

Bill accordingly read the third time and passed. [*Desk thumping*]

ADJOURNMENT

Madam President: Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move that this House do now adjourn to Friday 18 June, 2021, at 10.00 a.m. We propose on that day, Madam President, to deal with the Gambling (Gaming and Betting) Control Bill, 2021. Madam President, I just also want to indicate that the Government proposes to also sit on Monday 21st of June, 2021, from 10.00 a.m. Thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.17 p.m.