

SENATE*Wednesday, July 06, 2022*

The Senate met at 10.00 a.m.

PRAYERS[MADAM PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Madam President: Hon. Senators, leave of absence has been granted to Sen. Dr. Muhammad Yunus Ibrahim who is ill and to Sen. Anthony Vieira who is out of the country.

SENATORS' APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/Paula-Mae Weekes

President.

TO: MR. AUGUSTUS THOMAS

WHEREAS Senator Dr. Muhammad Yunus Ibrahim is incapable of performing his duties as a Senator by reason of illness:

NOW THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Acting Prime Minister, do hereby appoint you, AUGUSTUS

UNREVISED

THOMAS to be a member of the Senate temporarily, with effect from 6th July, 2022 and continuing during the absence of Senator Dr. Muhammad Yunus Ibrahim by reason of illness.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 6th day of July, 2022.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/Paula-Mae Weekes

President.

TO: MR. JOSH DRAYTON

WHEREAS Senator Anthony D. Vieira is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOSH DRAYTON to be a member of the Senate temporarily, with effect from the 6th July, 2022 and continuing during the absence from Trinidad and Tobago of Senator Anthony D. Vieira.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and

UNREVISED

Tobago at the Office of the President, St. Ann's, this 6th day of July, 2022.”

OATH OF ALLEGIANCE

Senators Augustus Thomas and Josh Drayton took and subscribed the Oath of Allegiance as required by law.

MISCELLANEOUS PROVISIONS (CRIMINAL PROCEEDINGS) BILL, 2021

Bill to amend the Interpretation Act, Chap. 3:01, the Supreme Court of Judicature Act, Chap. 4:01, the Offences Against the Person Act, Chap. 11:08, the Criminal Procedure Act, Chap. 12:02 and for other related matters [*The Attorney General and Minister of Legal Affairs*]; read the first time.

TOBAGO COUNCIL FOR HANDICAPPED CHILDREN (INC'N) (AMDT.) BILL, 2022

Bill to amend the Tobago Council for Handicapped Children (Inc'n) Act, brought from the House of Representatives [*Sen. The Hon Christine Kangaloo*] read the first time.

Motion made: That the next stage be taken later in the proceedings. [*Sen. The Hon. C. Kangaloo*]

Question put and agreed to.

SRI SATHYA SAI BABA ORGANISATION OF TRINIDAD AND TOBAGO (INC'N) (AMDT.) BILL, 2022

Bill to amend Sri Sathya Sai Baba Organisation of Trinidad and Tobago (Inc'n) Act, 1993 (Act. No. 16 of 1993), brought from the House of Representatives, [*Sen. The Hon. Christine Kangaloo*] read the first time.

Motion made: That the next stage be taken later in the proceedings. [*Sen.*

The Hon. C. Kangaloo]

Question put and agreed to.

PAPER LAID

Ministerial Response of the Ministry of Social Development and Family Services to the Second Report of the Joint Select Committee on Human Rights, Equality and Diversity on the Human Rights of Socially Displaced Persons in Trinidad and Tobago with specific focus on their treatment and relocation from Port of Spain public spaces. [*The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox)*]

JOINT SELECT COMMITTEE REPORT

Status of the CSME in Trinidad and Tobago

(Presentation)

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

Madam President, I have the honour to present the following report:

Second Report of the Joint Select Committee on Foreign Affairs on an Inquiry into the Status of the CSME in Trinidad and Tobago, Second Session, (2021/2022), Twelfth Parliament.

PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE REPORT

East Port of Spain Development Company Limited (EPOS) (Presentation)

Sen. Wade Mark: Madam President, I have the honour to present the following report:

Sixth Report of the Public Accounts (Enterprises) Committee on the Audited Accounts, Balance Sheets and other Financial Statements of the East Port of Spain Development Company Limited (EPOS) for the financial years 2012 and 2013.

JOINT SELECT COMMITTEE REPORTS**(Presentation)****Fisheries Management (No. 2) Bill, 2020**

The Minister in the Ministry of Agriculture, Land and Fisheries (Sen. The Hon. Nigel de Freitas): Thank you, Madam President. Madam President, I have the honour to present the following report:

Report of the Joint Select Committee appointed to consider and report on the Fisheries Management (No. 2) Bill, 2020, Second Session (2021/2022), Twelfth Parliament.

Shipping Bill, 2020

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): Thank you, Madam President. Madam President, I have the honour to present the following report:

Report of the Joint Select Committee appointed to consider and report on the Shipping Bill, 2020, Second Session (2021/2022), Twelfth Parliament.

ANSWERS TO QUESTIONS

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne): Thank you, Madam President. There are three questions for oral answers on the Order Paper and the Government is prepared to answer all three of those questions.

ORAL ANSWERS TO QUESTIONS**Education Facilities Company Limited****(Status of)**

127. Sen. Wade Mark asked the hon. Minister of Finance:

In light of the Government's decision to close down the operations of Education Facilities Company Limited (EFCL), which has debt amounting

to over \$600 million owed to contractors, consultants and workers, can the Minister state how does the Government intend to treat with this debt?

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne): Thank you, Madam President. On behalf of the Minister of Finance, this question is extremely ill-advised and falls within a pattern of Opposition questions on matters that they know are before the courts. It is a matter of public record and Sen. Mark is well aware that the EFCL is the subject of an active winding up petition before the High Court of Trinidad and Tobago and as a consequence, this matter is sub judice. In fact, there was a hearing in court on this particular matter as recently as Monday 4th July, 2022 which was well and widely publicised. As a result, no further statements can or should be made on this matter until the court proceedings are concluded.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can you give me your ruling on this sub judice rule?

Madam President: Sen. Mark, I will not give any such ruling. It is well understood the steps and the appropriate actions that is taken when it is announced that a matter is sub judice.

Sen. Mark: Can I ask you, through you, Madam President, whether the Minister is prepared to bring this Senate up to speed with the debts that are owed to contractors, consultants and workers as a result of the closure of this company?

Madam President: Sen. Mark, that question is not allowed.

Sen. Mark: So Madam President, is the Government in a position to advise this honourable Senate how it plans to address this decision and the outstanding sum owed amounting to \$600 million? Can I ask that?

Madam President: Sen. Mark, that question is not allowed.

Sen. Mark: Can I ask through you, Madam President, whether the Government can clear the air as to whether it is Government's policy when they owe money to companies to get into what is called the winding up process in an effort to avoid paying their debts to consultants, contractors and workers?

Madam President: Sen. Mark, that question is not allowed. Next quest—
[*Microphone audio drops*]

Sen. Mark: May I?

Madam President: Yes. Next question, please.

Sen. Mark: No, I thought your mike was off because I did not hear you. Because you know sometimes mine is switched off as well. Question 129 to the Minister of Labour.

Madam President: Let me make sure my mike is on. Leader of Government Business.

Recent Diving Tragedy at Paria

(Occupational Safety and Health Agency Report)

129. Sen. Wade Mark asked the hon. Minister of Labour:

Given the investigation launched by the Occupational Safety and Health Agency into the recent diving tragedy at Paria Fuel Trading Company Limited, will the Minister make this report public upon its completion?

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne): Thank you, Madam President, and as always, I am hearing you very clearly. A commission of enquiry has been established to investigate the circumstances that led to the deaths of four divers contracted by the LMCS Limited to carry out pipeline maintenance work for Paria Fuel Trading Company Limited. Barring unforeseen circumstances, the procedural hearing of the Commission is scheduled to be held in August 2022 followed by the evidential stage thereafter.

Madam President, it is quite likely that the Occupational Safety and Health Agency will be requested to participate in the enquiry in some form or fashion. In these circumstances, in order not to interfere with the mandate and/or work of the enquiry, it is not considered prudent—in fact, it is considered imprudent to make any statement regarding any investigation by the Occupational Safety and Health Agency into this tragedy until the Commission has completed its work.

Madam President: Sen. Mark.

Sen. Mark: Thank you, Madam President. Can I ask the hon. Minister whether he is aware, or to put it another way, can the Minister advise whether the Occupational Safety and Health Agency conducted an investigation into this diving tragedy and whether that—well first of all, whether that has been done, Madam President?

Madam President: Sen. Mark, based on the question posed by you, which the question begins with the words “Given the investigation launched by the Occupational Safety and Health Agency”, I will not allow that question.

Sen. Mark: Can I ask the Minister whether that report that was commissioned or launched by the Occupational Safety and Health Agency, can the Minister give us an understanding of the status of that report? Has that report been completed?

Madam President: Leader of Government Business.

Sen. The Hon. Dr. A. Browne: Madam President, the language of the Senate and the Parliament is English and I really thought that I was pellucidly clear on this particular issue. There is a clear position of the Government of Trinidad and Tobago to avoid prejudicing the mandate and the operations of the Commission of Enquiry. The supplemental questions that Sen. Mark is seeking to lay and the line of questioning he is seeking to initiate takes us exactly into that direction and in the primary answer to the question, I made the Government’s position on this matter

completely clear.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the Minister indicate whether the Government is using the Commission of Enquiry as a fig leaf in an effort to escape accountability, transparency as it relates to this diving tragedy that occurred sometime ago where—

Madam President: Sen. Mark, that question is not allowed.

Sen. Mark: Madam President, seeing that the Minister has been talking about commission of enquiry and procedural hearing, is the Minister in a position to tell this Parliament, this Senate precisely when will the Commission of Enquiry begin particularly in the context of what he has shared with us earlier and given the urgency of this matter, can he now share with this Senate when does the Government expect this Commission of Enquiry to commence, particularly as he said procedural aspects—

Madam President: Sen. Mark, that question is not allowed. Next quest—
[*Microphone audio drops*]

Sen. Mark: Why are they switching you off? I am very concerned. Every time you try to talk, the mike is being switched off. I have to come to the defence of my President. Are you trying to muzzle the President?

Madam President: Sen. Mark.

Sen. Mark: Allow the President to speak, please.

Madam President: Sen. Mark.

Sen. Mark: Madam President, I will proceed in your defence.

Madam President: Thank you so much, Sen. Mark. Next question please.

Paria Fuel Trading Company
(Status of the Safety and Health function)

130. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

- (i) whether the Safety and Health function of the Paria Fuel Trading Company has been outsourced to a private firm; and
- (ii) the reasons for this decision?

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

Thank you, Madam President. The health, safety and the environment function is managed internally by Paria. However, specialized HSE services are contracted to provide effective and efficient support to the Paria team thereby minimizing risk to exposure.

Madam President: Sen. Mark.

Sen. Mark: Can I ask the Minister to elaborate on the specialized areas of health and safety that are currently being outsourced?

Madam President: Minister?

Sen. The Hon. P. Gopee-Scoon: As I said before, the function is managed internally by Paria, however it is only in particular circumstances that services would be contracted to provide support to the team and that is risk associated.

Sen. Mark: Madam President, I am becoming a bit concerned when Minister do not come here and other Ministers respond—

Madam President: Sen. Mark.

Sen. Mark:—and they cannot adequately—

Madam President: Sen. Mark, please ask a question.

Sen. Mark: Madam President, can I ask the Minister to be more concrete and specific as it relates to the particular circumstances that would allow Paria Fuel Trading Company to outsource the health and safety function that the Minister said is carried out by the said company? Can we get some concrete circumstances?

Madam President: Sen. Mark, that is a repeat of the supplemental question you

asked and an answer was given. So can you ask another question please?

Sen. Mark: Can I ask the hon. Minister to identify the name of the company or companies that are engaging as it relates to the outsourcing of these services?

Madam President: Sen. Mark, that question is not allowed—

Sen. Mark: But if we are being told—

Madam President: You have one more question.

Sen. Mark: [*Inaudible*] Can you guide me on this before I ask? If we are being told, Madam President, that things are being outsourced, circumstances permit outsourcing, I am asking a logical follow through as a result of it. Can the Minister advise you, and through you, Madam President, this honourable Senate as to the companies that are being used for purposes of outsourcing these particular functions?

Madam President: Sen. Mark, that question does not arise based on the question that had been posed and the answer that has been given, so I think you have finished your supplemental questions.

Madam President: Leader of Government Business.

SPECIAL SELECT COMMITTEE

Code of Ethical Conduct and Behaviour for Senators

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne): Madam President, having regard to the report of the Special Select Committee of the Senate appointed to consider and report on a Code of Ethical Conduct and Behaviour for Senators, Second Session 2021/2022 Twelfth Parliament, and the time constraint realized by the Committee, I beg to move that in the Third Session of the Parliament, a committee be re-established to consider and report on said Code of Ethical Conduct and Behaviour for Senators.

Sen. Mark: Madam President, could you clarify for us under what Standing Order

that particular Motion is being moved? Because I know that you can save reports but this particular matter, I think we need to be clear that we are not breaching or violating our Standing Orders. So if the hon. Leader of Government Business can tell this House under which Standing Order you are moving that Motion for adoption. I think the record is going to be very important here because I do not know and I ask for clarification.

Madam President: Sen. Mark, we will treat with that. I will have a discussion with you later in the proceedings.

Question put.

Sen. Mark: No, Madam President. A division on this, please.

The Senate voted: Ayes 22 Noes 6

AYES

Browne, Hon. Dr. A.

Armour SC, Hon. R.

Gopee-Scoon, Hon. P.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Mitchell, Hon. R.

Cox, Hon. D.

Bacchus, Hon. H.

de Freitas, Hon. N.

Sagramsingh-Sooklal, Hon. R.

Singh, Hon. A.

Lezama-Lee Sing, Mrs. L.

Hislop, L.

Thomas, A.
Richards, P.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.
Drayton, J.
NOES
Mark W.
John, Ms. J.
Lutchmedial, Ms. J.
Nahkid, D.
Lyder, D.
Roberts, A.

Ms. A. Deonarine abstained.

Question agreed to.

STANDING ORDER 77(3)

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne): Madam President, in accordance with Standing Order 77(3), I beg to move that the following Bills be restored to the Order Paper in the Third Session 2022/2023 of the Twelfth Parliament:

1. Fisheries Management (No. 2) Bill, 2020
2. Shipping Bill, 2020
3. Private Security Bill, 2022
4. Supplemental Police (Amdt.) Bill, 2022

Question put and agreed to.

11.00 a.m.

So, when we are looking at the proportionality of this Bill and the Government's move to arrest the crime situation, the Government is taking someone who might be an undergraduate in crime and getting them, after 120 days, to come out with a PhD in crime—

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial:—as a seasoned gang member and unleashing them back on the population.

I do not understand how with all of the evidence, anecdotal, joint select committee, media and what every man, woman and even some children on the street knows and understands to be the circumstances that exist in the prisons in Trinidad and Tobago, this Government could actually convince themselves—because I do not think they have convinced anybody else, but convinced themselves that this law has any merit in it whatsoever and can accomplish anything.

This law is simply a failure. It is an utter failure. Madam President, the fact of the matter remains that our Constitution grants people not a right to bail but a right to apply for bail. The courts are perfectly capable of protecting the public interest. Those are the words of the Chief Justice in rendering his decision on a matter involving the constitutionality of bail restrictions. The removal of that discretion, Madam President, from the Judiciary is not a solution to crime. And we stand here, week after week, month after month, every single time a piece of legislation is brought to this Parliament dealing with any aspect of crime and we give the Government proposals, we talk about the solutions, and it is their fault and

it is as a result of the implementation deficit that we have no DNA testing, we have no progress on forensic matters—

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial:—we have no electronic monitoring, we have no parole system that they have promised us and that is why crime is out of control. We have very little border control to intercept the influx of firearms and that is why crime is out of control. It is not because people are not getting bail. Because people have not been getting bail for the last three years and they have absolutely no evidence to show us that it has made an impact in this country, Madam President. We have gone from bad to worse. And I will not participate in something that is not only a failure, but it is illegal, it is unconstitutional, it is doomed to fail. If it goes before the court, and it will go before the court if it passes, I give them that assurance—on behalf of the Opposition of this country, I give them the assurance that if this Bill is passed and it becomes law, it will be challenged before the courts in this country.

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial: And I am well placed to give that assurance.

I do not understand how a government that has failed to implement any meaningful measure to address recidivism and repeat offenders by having a system in place to manage people when they exit the prison system can actually think that denying bail to persons when they are charged is a solution to crime. I cannot understand how a government faced right now with an education crisis, where children are simply without opportunities in this country, could think that restricting bail and throwing them in a prison where we just do not have to deal with them—like I said, it is out of sight out of mind, it is the equivalent to—I do not know if we recall when we were having—I do not know if it was the Summit of the Americas or CHOGM, that they built a wall—

Madam President: Sen. Lutchmedial, just one second.

Sen. Gopee-Scoon: Point of order, 46 (1). I think it is going a little wide.

Madam President: Sen. Lutchmedial, continue.

Sen. J. Lutchmedial: Thank you, Madam President. Madam President, you see going wide and dealing with the Government's failure on crime is essential because it is the Government's failure on crime and the failure to deliver on every single promise that they have made in the economy, education, crime, everything else, that is why we have an out of crime situation that they are attempting to remedy by throwing people into Remand Yard.

And yes, as I was saying, it is the equivalent of when they built a wall along the highway when President Obama was visiting. It was like, "You could just block it out. We do not have to look at it." That is the equivalent of what they are trying to do now. They are trying to block out—and we do not have to deal with these prisoners because, "Listen, the law is there to throw them and to Remand Yard." And that is the solution that they want to come with here today and tell us that that is the solution to crime.

Madam President, when you look at proportionality—and very quickly, I just want to deal with this. If you have to deal with proportionality—could you just let me know how much more time I have?

Madam President: You have seven more minutes.

Sen. J. Lutchmedial: Thank you, Madam President, that is enough for me to go through some of the judgments, none of them under appeal because I know that if I say anything about judgments which are under appeal, they will jump up erroneously on the sub judice rule. But I will deal with judgments that have dealt with prison conditions in this country, Madam President, because it is absolutely necessary when weighing the proportionality of a Bill that will put someone who

has the presumption of innocence into Remand Yard, to understand what that means for an individual, what they are going to be subjected to for the 120 days at the behest of this Government.

I refer to the case of *Colin Edghill v The Attorney General* in 2008, Madam President, where the honourable Justice Gobin quoted extensively from other pieces of studies and so on, on the prison, and the honourable judge stated, and I quote:

The remand yard Port of Spain is a hell hole in which a man presumed innocent is deprived of the elements necessary for human life, air, light, sanitation, hygiene, exercise and even food. The level of pain and suffering inflicted during detention goes beyond the harsh or what to my mind can conveniently be described as merely unacceptable and unsatisfactory. The treatment makes a mockery of the presumption of innocence.

Madam President, the Government is asking us today to pass a law where an innocent person could be subjected to those conditions.

In the Privy Council judgement of *Terrence Calix v the Attorney General of Trinidad and Tobago*, Madam President, they described the prison conditions at the Golden Grove Prison and they talked about the Inter-American Commission on Human Rights report into detention—

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

Sen. J. Lutchmedial: Thank you, Madam President:

“Cells of dimensions of approximately 9 ft x 6 ft are shared by up to seven or eight prisoners. Sleeping facilities are inadequate with only one double bunk in each cell. Consequently many inmates are forced to sleep on the floor and on a thin piece of worn carpet which is never cleaned, or on a thin

sheet if provided by relatives. Cells are poorly ventilated, are hot and [uncomfortable]. Lights may be kept on all night...A single plastic pail...”

I do not know if everybody here has ever understood the concept of a slop pail but that is what you have in Remand Yard.

“A single plastic pail is provided for use as a toilet by all the detainees in the cell.”

Madam President, the Government is here today to tell us that any person on the mere say so of a police officer, a person who never had the opportunity to mount a defence to an accusation against him, a person never convicted of an offence but accused on two occasions of a crime by the police, who has absolutely never presented any evidence before a judicial officer, will be subjected to those conditions for 120 days?

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial: And that is what this Government thinks is the solution to crime? That is a solution to psychologically create a criminal. That, what the Government is proposing here, is what would force people to come out of their 120 days and be angry at the world.

Madam President, I have spoken in this Parliament before, when I was a prosecutor, of making several applications for someone to be denied bail for a sexual offence on the ground that they were—because they had—the age of the victim and so on. And do you know that after some seven years of that person being in prison, the victim admitted to lying. The victim was trying to hide a relationship with someone else by whom she had become pregnant and pinned it on someone who had given her drop home, on those simple accusations. And you know why call them “simple accusations”? Because the criminal justice system and prosecutions in Trinidad and Tobago are still reliant on the say so of witnesses

who are inherently, in some cases, unreliable. Human beings are not scientific evidence.

So, when a person spends 120 days or up to a year in prison, by the time their case comes before a jury, in five years, or 10 years, witnesses could recant and the witness could say, "Look, I lied." And what happens then? You have taken away a person's life. The matter that nobody wants to talk about, where the Bail Act was found to be in violation of separation of powers, a man was deprived of his life for nine years under these conditions that I have described; nine years, Madam President, and what did it accomplish? Absolutely nothing. And in winding up, I want to say, I heard a Member opposite say that 120 days, in certain cases, could afford the police the opportunity to investigate.

Madam President, if the Government thinks that the answer to crime is to make police inefficiency permissible, well, they are severely misguided and we cannot, under any circumstances, condone that. And I want to strongly condemn any suggestion that a person should be charged and brought before the court in Trinidad and Tobago and remanded into custody while the police go about collecting evidence. You are supposed to collect and have sufficient evidence before you charge someone. And if we had a working criminal justice system, where you could go before the magistrate on the first occasion and say, "We have retrieved fingerprints that links this person to the crime, we have DNA evidence linking this rapist to this particular victim, we have in our possession CCTV camera footage that places the person on the scene of the crime, committing the crime," the judge or the magistrate would deny bail because it is the strength of the evidence. And people who have never appeared in a court and who have never heard a bail application made, do not understand that the first enquiry a magistrate will make is about the status of the victim and the evidence that the police have

against the offender. And if the police and the prosecution were given the resources to be able to do that, we would not need this piece of legislation, Madam President. So, this plaster is meant to hide and it is meant to cover the gaping wound created by the Government's failure to address every single aspect of the criminal justice system.

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial: And, Madam President, for those reasons, we will not support this Bill and the extension of these draconian measures. I thank you.

Hon. Senators: [*Desk thumping*]

Madam President: Minister of National Security.

Hon. Senators: [*Desk thumping*]

The Minister of National Security (Hon. Fitzgerald Hinds): I thank you very warmly, Madam President, for recognizing me from the other place to come to make a short contribution in this very important debate and the matter that is in front of us. I thank you very much for that. And I thank hon. Senators for entertaining me as politely and beautifully and professionally as you all have.

The last time I was here, Madam President, it was to pilot the anti-terrorism law and there were doubters in the society at that time, somewhere around 2005—2006, who said that we did not need anti-terrorism law in Trinidad and Tobago. But I live to see that terrorism remains one of the worlds, including Trinidad and Tobago's, enduring threats. And I live to see from my own knowledge that we averted a major terrorist event in this country, one Carnival Sunday night, just a couple of years ago. And when I saw that, and I was present in the Grand Stand on that night, I thank God, that we passed that law and we have other laws that would have allowed us to protect the people of Trinidad and Tobago from that and averted that attack.

Today, Madam President, I am here not only as a Member of Parliament, not only as the Minister of National Security, but as an emissary on behalf of the people that I represent, on behalf of the people that we all in this honourable House represent, the voiceless people in the society, on whose behalf we are privileged, nominated, elected to speak in this place. And for that reason, I propose to take a selfless, non-egotistical, empathetic posture in the context of this very important debate.

Hon. Senators: [*Desk thumping*]

Hon. F. Hinds: Madam Speaker, I followed some of these discussions from my chambers, the Office of the Minister of National Security, as well as I could have on Monday, and listened to some of the contributions made, which is what prompted my presence here today. I am satisfied from all that I heard that the terms of the measures before us are sufficiently clear and I need not rehash them really for the purpose of the hon. Senators, but I am speaking to the voiceless people who have sent me here to speak on their behalf. So, let me simply say that the measures before us relate, Madam President, to measures to restrict bail in circumstances where a person has been convicted of an offence that carries a penalty of imprisonment for over 10 years and is then charged for an offence stipulated in Part II of the First Schedule of this Act. And let me very quickly say what those offences are:

“(a) an offence committed by a person over the age of eighteen...under the Anti-Gang Act...”

“(b) an offence under the Offences Against the Person Act which is punishable by...a term of ten years or more...”

“(c) an offence under the Dangerous Drugs Act which is punishable by”—a term of—“imprisonment”—for offences—“for...ten years or more;”

“(d) an offence under the Kidnapping Act...”

Sen. Lyder: Madam President, 53(1), tedious repetition.

Madam President: Sen. Lyder, please.

Sen. Lyder: This was fully realized by the Attorney General.

Madam President: Sen. Lyder. Minister, continue.

Hon. F. Hinds:

“(e) a sexual offence...”—which is alleged to have been committed where the—“victim is a child...

(f) an offence under the Sexual Offences Act...

(g) an offence under the Anti-Terrorism Act...

(h) an offence under the Trafficking in Persons Act...

(i) an offence under the Firearms Act...”

And any:

“(j)...attempt to commit...”—any of those offences, as I have just described them.

And that was for the benefit of those outside of this Chamber who may have missed it on whose behalf we speak today.

The second category is a person who has a pending charge for firearm, ammunition or a prohibited weapon, including hand grenades and automatic weapons. And that person is charged under section 6 of the Firearms Act, meaning to say they are in possession, without explanation, without licence, another firearm.

And, Madam President, the third category is where you have a pending charge for an offence specified in the list I have just gone through and now you are charged with another offence from that list of serious offences.

And finally, an offence listed where you are charged for an offence, as I have just described, and you are now alleged to have used in the commission of a

crime, whether it is rape, or robbery, or kidnapping, another firearm, all very serious offences, all requiring or permitting the judges to give you a sentence of 10 years or more. And in addition to that, you are unable to get bail in the restrictions that we discussed today, if no evidence has been offered by the prosecution after a period of 120 days. All of these, if you look at them carefully, are designed to deal with repeat offenders. Persons who have the proclivity, Madam President, to offend and offend and offend again, even they have been charged and they are on bail already.

These measures today—I heard the senator who spoke before me talking about the Government. I want to make it clear to the learned Senators of this House, this is not about the Government, this is not about me, this is not about you as individuals, this is a matter for the police and more directly, this is a matter to protect the people of Trinidad and Tobago—

Hon. Senators: [*Desk thumping*]

Hon. F. Hinds:—the public, on whose behalf we speak today. Having listened to some of the debate in this place, I have listened, Madam President, to the call for statistics, information, quite properly so, to allow Senators to do the balancing of the interests that we are obliged to do. This is not about a party position, this is not about government or Opposition, this is the Parliament of Trinidad and Tobago having to make a serious decision, not even on our own individual behalves, but on behalf of the people who are voiceless, on whose interests, on whose basis we speak.

So, let me just share some statistics, Madam President, and these come from the Criminal Records Office of the Trinidad and Tobago Police Service. They manage these matters on a daily basis, and I cause them to collaborate with the Trinidad and Tobago Prison Service that holds and keeps records and individuals

in their care. And I therefore offer you, Senators, who wanted some statistics from the Criminal—not CAPA, they keep statistics but not this—from the Criminal Records Office of the Trinidad and Tobago Police Service in the CID.

And this has to do with—and these officers, they conduct checks into bail applications made before judges in chambers, not in the public court. This is by judges in chambers who deal with applications for bail on a daily basis. And these officers conduct the checks on behalf of the State in satisfaction of the judges in chambers. And these figures are for the period 2019 to 2022, where applicants were refused bail due to conditions imposed under sections 5(2), 5(3) and 5(5) of the Act that we are seeking to expand today. So, they are germane to this, they are the kernel of the nut. This is not an emotional issue or a shouting issue. These are the hard facts. And they deal with this in accordance with a very Act No.17 of 2019.

It is noteworthy to mention that these bail officers of the CRO, Criminal Records Office, are involved in the preparation of police reports and criminal records on behalf of the Office of the Director of Public Prosecutions in the hearing of these applications before the judges in chambers at Port of Spain, at San Fernando and Tobago. I now share with you applicants who were refused bail by judges in chambers for the period 2019 to 2022: 2019, 18 of them were refused bail and that will be 18 out of thousands. Because the judges, on the basis of what is in front of them, are the ones who make these decisions. In 2020, 46 of them were denied bail. In 2021, 46, again. And so far, in 2022, 13 have been denied bail, when the judge sitting quietly in chambers would have heard submissions from attorneys representing them, who will put their best case for their clients and, of course, the State, supported by these officers of the CRO through the office of the DPP, a total of 116 refused bail.

The number of persons refused bail, who had criminal records for serious offences and was subsequently charged for another offence, which is what we are dealing with, with Act No.17 of 2019, which is in front of us today, are follows: in 2019, there were 17 of them, all of them with over five pending matters for similar serious offences. In 2020, 23 of them, 17 of that were persons with over five pending matters for serious offences. In 2021, 33 of them, 10 with over five pending matters for similar serious offences. And so far, in 2022, none have appeared with over five pending matters for serious offences. A total of 79. These are records.

And these are small numbers compared to the number of persons who commit offence—other statistics have shown, and I might refer to some of them the numbers of persons who commit offences. But on the question of bail, before judges in chambers, these are the facts. And this is what the measures in front of us are getting to, to deal with persistent repeat offenders who kill us, rape us, burn our businesses, kidnap our families and demand money with menaces. As I said, this is not about me or you, it is about the public who we are here to serve. And that is why we have to take a professional, non-egoistic, non-partisan, non-emotional—what we have to tune into is: What does the public want of this Parliament? That is the issue.

Hon. Senators: [*Desk thumping*]

Hon. F. Hinds: Because it is a fact that Trinidad and Tobago, like many other countries in the world, have become a dangerous place. I just saw on my phone, officers of the transnational crime here detecting a major amount of cocaine on the shores of Trinidad and Tobago, just saw it, reporting to me as Minister. And I am aware—and this is not about me but as Minister now—information comes to hand which tells me we are in a dangerous place and that people, as a consequence of

that danger, are at severe risk. And it is my responsibility and the responsibility of all of us in national security to improve our border security and we had a success this morning working with our international partners from the report I just got. And, of course, you would have heard me announced, Madam President, the Commissioner of Police, the police have embarked upon a very active and sustained gun retrieval exercise because there are several, many, thousands of illegal guns in Trinidad and Tobago, sneaked in by people, including officials of the State, yet to be detected and found and prosecuted. Some have been but it is a work in progress. It is always happening.

And, of course, the criminals for whom this is a lucrative business with no concern for the public interest, other than to make money unto themselves, they work 25 hours a day. So, you would have heard me demanding more and more of the police service, more and more of the defence force, again, in the protection of the public interest as Minister of National Security. But in this place, as Parliament, we too have a responsibility.

Hon. Senators: [*Desk thumping*]

Hon. F. Hinds: And I want to repeat it is not mine—not my interest, not yours, nothing personal, nothing political. What we are called upon to do is for us to use our intellect, use our minds, use our knowledge, all that we bring, and gauge the public interest and represent that public interest in fairness to the people of Trinidad and Tobago inside of here. You are not doing it for me or for the Government. And therefore, we went—

Madam President: Minister, I think Sen. Thompson-Ahye wants to ask you question.

Hon. F. Hinds: Most certainly.

Sen. Thompson-Ahje: Mr. Minister, can you tell us a similar provision in another jurisdiction with this law?

Hon. F. Hinds: What I do know; what I do know is that in all countries of the world, they have judicial systems; and in all countries of the world, there are dangerous people; and in all countries of the world, there are prisons; and in all countries of the world, there are courts; and in all countries of the world, they are judges and the idea of having people in custody who are dangerous is normal. I cannot tell you any anything specific about Jamaica or Barbados but what I can tell you—

Sen. Lutchmedial: [*Inaudible*]

Madam President: Sen. Lutchmedial, you had your opportunity, please.

Hon. F. Hinds:—what I can tell you is that these laws exist in countries all over the world.

Hon. Senators: [*Crosstalk*]

Madam President: Just one second, Minister.

Hon. F. Hinds: Thank you.

Madam President: Minister of Culture, Tourism and the Arts, and Sen. Lyder, if you all want to have a conversation while the Minister is making his contribution, you are free to leave the Chamber. Okay?

Hon. F. Hinds: And so those are the facts. Those are the facts. And they do exist in other countries to protect the people of those countries. In fact, in some countries, in Guantanamo Bay in Cuba, men who were allegedly terrorists were kept not the best example; not the best example, but there are countries in the world who see it necessary to do that.

In the United Kingdom, they had 18 persons who they detained during those heady times, just after 9/11. So, I can tell you—and these matters will be tested in court. But all countries have issues to deal with. And they do deal with them.

11.30 a.m.

In addition to all that I have just told you, I have knowledge, as Minister of National Security, of the ongoing daily attempts at persons who are in custody—sent there not by the Government, but by the courts of Trinidad and Tobago, independent courts—who try hard and want to come out. They use all manners of ways to come out, because their liberty is restrained, and they want to be out here. But they went in in the first place, because of acts that are allegedly committed, and they were charged for certain offences and the courts say that you should stay there for one reason or the other.

I know of prison officers who were—at least, two cases of prison officers—not two—several prison officers killed, because of prisoners who want to come out, and these prison officers stand firm by their oath, and acting in the public interest, they put their lives on the line. They receive threats on a daily basis. In one of the cases the Member spoke about a while ago, it was a case, ended up in the Privy Council, where a prisoner inside the jail killed another prisoner. And I only say those things to demonstrate that people who are in custody want to come out.

The other day, we had a domestic violence killing in this country—the name I cannot remember now—but this was a man who was on a restraining order, who the court say you should not go around the lady, and so it was. He went and killed her. There are people like that, and in the public interest, we have to protect the public from them, and this is what this is all about.

So, the Senator who spoke before me, spoke about imagine a man inside of

the jail for mere suspicion—that is what the Senator says—and she spoke to one of them, who told her he lost his family, he lost his job. No concern about separation of powers on that occasion, because it is not the Parliament that sent them there, it is not the Government that sent them there, it is the very court. The judges are the ones who have the discretion. And whilst she was telling us about that man, she made no reference to what he had allegedly done—which house he burned down and displaced four children—somebody else four children—and somebody else does not have money to buy another house or build another house, no reference to that, but it was convenient to describe it as mere suspicion. Tell the woman who gets raped and then, as I know, reported to me, when she want to go to the police station, tell her: “If you go to the police station, we will burn down your house with your grandmother and your child in it” and I am begging her to go to the police station and make a report. Tell the person who lost their two sons recently, in a certain part of this country, never to be seen again, and they are crying and they are grieving, but they would not dare grieve in public, because they know the source of the problem.

Madam President, the Senator—and that is the reason why we are here, to balance the public interest, and for Parliament to give expression to the public interest. That is why we are here. The Senator spoke about prison conditions and quoted a case from 2008. We are in 2022. A lot has happened since, including a term of government by those on the other side for five years and three months, a case from 2008. Well, I am happy to let Senators in this Parliament know that since then, we embarked upon trying to fix the conditions in the prison to meet the high and proper constitutional standard that Justice Gobin and others have spoken about in 2008 and thereabout. So, I can tell you, as Minister of National Security, that we have expended millions of dollars on completing all the refurbishment on the south

wing of the Remand Yard—

Hon. Senators: [*Desk thumping*]

Hon. F. Hinds:—and we are conducting works, as I speak, due to be finished very shortly on the northern wing many—or the sap bucket of which she spoke, no more, because in those refurbished cells, they are air-conditioned, proper ventilation, proper painting, proper lighting and toilets inside of those cells, so that the question of slopping out is gone. Madam President, 2008 she is talking about, a long way behind the reality. But they do that, Madam President, in order to stir the emotions that they seek to stir.

My colleagues on this side would have given statistics about reported firearm-related murders, altogether, between 2015 and today, 2,820 of them and every bullet from the thousands of guns can have lethal and deadly effect, only waiting to erupt when the occasion arises. And this is why the police service has embarked on this sustained, intense and focused gun retrieval exercise to protect the people of Trinidad and Tobago. That is their job. And, again, up to this morning, I received a report from the police about three AR-15s they recovered. And the work continues, which is why we bought those OPVs and which is why we bought those two vessels recently, so that they can patrol our coast and protect our people from those who do not seek the public good, as we are called upon to do in this House.

Insofar as gang-related murders are concerned, these figures were shared with you already, 1,181 gang-related murders, according to CAPA; gang-related murders with firearms from 2015 to today, as we speak, 1,159—very serious matters to take as we replace our egos and our political party postures with gaging the public interest—and firearms found and seized by the police, between 2009 and 2022, as I speak to you now, 8,831, seized by the police, and I account for about six of them.

In fact, about eight, where people in my constituency called me and tell me, look, they want to get rid of this, they want to change their life and I report it to the police and the police take action. I could boast of that, but now is not time for boasting. I did that in the public interest and I am proud of it—and firearm-related offences from 2009, 24,574 and, of course, arrests for possession of firearms, because sometimes the police get the firearm, but they “eh” get the man with it, 1,984 of them between 2019 and today, as I speak to you, Madam President, in the public interest. Nothing to do with me, nothing to do with the Government that I am proud to be a part of, all to do with protecting the public interest.

Madam President, the Senator before me spoke about this being unconstitutional. Well, there is the case of Akilli Charles, which the Court of Appeal, led by Mr. Justice of Appeal, as president of that court, Mr. Ivor Archie, our Chief Justice, that matter is on appeal. I had the opportunity and the benefit of reading it as an attorney at law, as a literate and conscious man, and I was very impressed with the logic and his judicial astuteness in coming to the conclusion, that attempting to restrict bail would have been interfering with the separation of powers, because that ought to be left to the judges. The Judiciary has its responsibility, the Parliament, on behalf of the public interest, have ours and there is always this uncomfortable battle. That matter is not yet concluded, it is on appeal to the Privy Council. And the argument in that is whether the courts can grant bail for murder. They so found and the matter is now on appeal and we must wait to hear what our old colonial masters and the court that is still our superior court of appeal has to say. Finally, the message comes down to us. They said in that case, it has always been so that the courts should be the one to decide, and that it would an encroachment on their powers. The Senator carried that argument here today, but that matter is on appeal.

But, in the meantime, while that was happening, in the case of Dominic Suraj, which the Attorney General opened this debate with, and spoke about it, at least, twice in this Parliament, in the other place within recent weeks. In that case, the matter of separation of powers and power of Parliament was all put out for attention. And this case says—and he quoted it, you know, and I am only repeating some of it, because I want to speak to people who he claimed to represent and to remind the hon. Senator who just spoke before me, hear what they say in paragraph 91, just a short quotation, if you would permit me:

“The stronger the public interest in issue, the greater the interference with individual rights which may be permitted without there being any violation. Generally, in a democracy, it is the democratic institutions”—of which this Parliament is the supreme—“which have the primary responsibility to identify the public interest and what is required to promote it.”

I am quoting from the very Privy Council in the Dominic Suraj thing. The AG quoted it already. It goes on to say in another part:

“Parliament will have identified in a particularly clear and forceful way its opinion as to where the public interest lies.”

“Is Parliament have to decide that”.

“In a democratic state, the courts must be expected to be especially respectful of the choice made by Parliament to pass legislation in that formation”—and hear this, Madam President—“and slow to substitute their own view of the necessity for and proportionality of the measure taken.”

That is what the Privy Council is telling us, independent Trinidad and Tobago, former colonial stronghold for the British. It is the British Privy Council, which is our highest Court of Appeal, telling us that. And some time ago, Lord Keith of Kinkel—perhaps he would have passed by now. I think it was 1991—he

was telling us, it is time for you to move on, and get your own highest Court of Appeal, as long ago as that. It goes on to say, in another part:

“...the proviso in section 13”—which is what the Senator mentioned en passant, about respect for the laws and the rights and freedoms of others, it says:

“The proviso in section 13(1) is a long-stop check against abuse of that power and cannot be taken merely to replicate the ordinary proportionality standard inherent in the rights in section 4.”

As far as I understand it. And, finally, quoting from that, it says:

“It shows that Parliament considers the public interest objective to be very important indeed...which in turn is likely to affect assessment of whether there is a sufficient degree of connection between the measure”—like the ones we have today—“in issue and that objective...whether the trade-offs in public policy terms in using that...(sometimes called proportionality in the strict sense)...whether the trade-offs in public policy terms in using that measure as opposed to others are acceptable...and the question at stage (iv) (sometimes called proportionality”—test, and here is the Privy Council—“The essential question posed under the proviso, taking account of this framework, is whether the Act in question”—like we are trying to pass today—“strikes an acceptable balance between the rights and freedoms of individuals and the general interest of the community.”

So here is the Privy Council telling us, get on with your business. You have a Parliament in this Republic, and it is you who have to decide where the balance must be set. So when the Senator submits today that any bail restriction in the public interest is in itself inherently unconstitutional that, I submit, is quite wrong. They are telling us it is for you, through this institution, to make that decision and that the courts must be slow to interfere with that, because you, Parliament, you

hon. Senators, have that decision to make. They are telling us, effectively: “Organize allyuh self. You are an independent nation, sort yourselves out.” Do not put your personal interest—we say that in the prayer every day—over others. Do not put your party posture before others. What we seek here is the public interest and balancing the trouble that we face, and striking the right balance and the court must not easily jump in and interfere with that. That is what the law says.

Madam Speaker, as I work to my conclusion, if anyone thinks that this is all the Government is providing the police with through this Parliament to fight crime, they are simply wrong. Let me share with you, the fact that the police service has been doing work in various communities throughout Trinidad and Tobago, through the divisional—there are nine divisions. Every one of them has a Police Youth Club to circumvent and to discourage young people from going around to gangs and the negative pathways. The prison service has youth clubs, the fire service has youth clubs.

The defence force manages, for years, specialized youth training development programmes, MYLAT, MYPART, CCC and others. Every time somebody is having a hike, they get the defence force to send personnel to walk around with them, to protect them in the public interest and to show them some of the elements of their techniques and the discipline, and the Government supports that.

As you know, we established the Ministry of Youth Development and National Service focusing exclusively on youth. As you know, the education system, we all know it well, is designed—because it is only young people in the classroom—from early childhood to primary school, to secondary school, to university—all young people, offering them positive pathways rather than succumb to the brandishments of the gangsters. So, that is one of the tools that we

use through the police service.

In addition, the TTPS, over the last four and a half years, utilized the anti-gang legislation that they reluctantly supported on one occasion and failed to support on another to arrest and charge a total of 90 persons with various anti-gang—I have heard people glibly and ignorantly say, not a single charge under the anti-gang law. That is simply not true. Madam President, 15 were charged for being a gang leader; 18 were charged for being a gang member, 16 charges in relation to the Anti-Gang Act; 10 for supporting a gang leader and 31 other offences totalling 19, and that a number of initiatives targeting gangs and gang-related offences continue. I am aware, because we do have dangerous gangs in Trinidad whether it is Rasta City, so-called, whether it is ABG, whether it is 6ixx, whether it is Muslim and all the other so-called gangs, we do have them and they are creating havoc. Another tool that we used—

Madam President: Minister, you have four more minutes.

Hon. F. Hinds: Good. Special training for the Emergency Response Police and new strategies, new training, new techniques, so that they could confront these people in the public interest, and I have a very long list of outstanding—I heard the Senator say, no DNA. That is not true. In the last year alone, we hired—we now have three forensic pathologists. We employed two new mortuary attendants making it seven. No long lines outside of the Forensic Science Centre on a Monday morning anymore—even though you have that busy weekend with crime and murder; ballistics, 21 police officers and five employees of the thing trained in ballistics and doing case work; 1,225 backlog cases processed and cleared up by that little team of 25 or 26 persons; 247 persons of cases involving police shootings. You see, the Gilkes case and all of them—the emergencies and when the Masters of the Court and the DPP called for it—we have a system now, as they

call for it, they are getting it, not to hold up the criminal justice process. That is happening boastfully but, no, celebratory; 3,033 firearm holders got their processing because, you know, you have to have it tested and so on.

In the Biology Unit with the DNA, I would tell you what. We renovated the building during COVID-19. September 2021, the DNA Unit reopened after two and a half years of it being closed. I oversaw that, and right now they are running, and I can tell you, Madam President, solving more and more cases supporting the police and you will see an improvement in the solved rate because DNA functioning with almost perfection. The Biology Units working. They have the resources they need. More persons are trained and they are inside of it, they are inside of it, and five police officers in advanced practical and theoretical forensic DNA to bolster what I just told you.

We have introduced some new drugs: Ketamine, methamphetamine and ecstasy. All of these are new drugs that we have put, and they are now testing for those at the Forensic Science Centre. And that was just—because time has run—a small synopsis which I can boastfully tell you happening. So, all of these, including these measures, are just different strategies and tools. So, to give the impression that the Government is only depending on this is simply misguided.

Hon. Senators: [*Desk thumping*]

Hon. F. Hinds: Madam President, electronic monitoring functioning and we are in the process of procuring even more equipment for them. So, I close by saying this Bill is not for me. This Bill is not for the Ministry of National Security, it is not for the Government. It is for the people of Trinidad and Tobago to protect their welfare and their safety, and it is our decision, in this House, whether we choose to find the right balance and to protect them or not. I thank you.

Hon. Senators: [*Desk thumping*]

Madam President: The Attorney General.

[Opposition Senators exit the Chamber]

Sen. Lyder: *[Inaudible]*

Madam President: Listen, Sen. Lyder, please stop. I have already ruled, on previous occasions, you can leave the Chamber, but you leave in silence. Okay? Attorney General.

Hon. Senators: *[Desk thumping]*

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Madam President, thank you very much for this opportunity to wind up, what is a very important debate on a very important piece of legislation that this Government has brought to this House, in the interest of protecting the citizens of the Republic of Trinidad and Tobago, while respecting the rights of every member of this society, even including convicted criminals. Madam President, I am going to spend a little time, so that we can renew our focus, on the Schedules of the two Acts which are in focus today. The Schedule of the 2019 Act and the Schedule of that which will come back into force, if we do not extend beyond the sunset clause.

We remind ourselves, Madam President, of section 5 of the amendment Act, which is before us today—section 5, that is to say of the 2017 Act, which we are seeking to continue, in effect, for another year. So when we look at section 5 of Act No. 17 of 2019, we are reminded that section 5 of the Act then, amended the Bail Act, by repealing subsections (2) and (3) and inserting after subsection (1), the following subsections. So the current subsection (2) to the 2019 Act. No. 17 of 2019 reads:

“(2) A Court shall not grant bail to a person who on or after the commencement of this Act is charged with an offence listed in Part II of the

First Schedule and has been previously convicted of an offence which is punishable by imprisonment for a term of ten years or more.”

So, we remind ourselves that those persons whose right to bail is circumscribed under the Act, currently enforced, which we are asking this Parliament to continue for another year, are persons who are already convicted of an offence punishable by imprisonment of a term of 10 years or more.

And Part II of the 2019 Act, Act No. 17 of 2019, was introduced by section 6 of that Act and reads: “Part II Specified Offences”. So these are the offences, which I draw to the attention of Members of this august House, which currently obtain, and in respect of which persons charged with offences who have already committed these offences are being circumscribed in their right to avail themselves of bail.

- “(a) an offence committed by a person over the age of eighteen years under the Anti-Gang Act which is punishable by imprisonment for a term of ten years or more;
- (b) an offence under the Offences Against the Person Act which is punishable by imprisonment for a term of ten years or more...
- (c) an offence under the Dangerous Drugs Act which is punishable by imprisonment for a term of ten years or more;
- (d) an offence under the Kidnapping Act which is punishable by imprisonment for a term or ten years or more;
- (e) a sexual offence in which the alleged victim is a child...
- (f) an offence under the Sexual Offences Act which is punishable by imprisonment for a term of ten years or more;
- (g) an offence under the Anti-Terrorism Act which is punishable by imprisonment for a term of ten years or more;

- (h) an offence under the Trafficking in Persons Act which is punishable by imprisonment for a term of ten years or more;
- (i) an offence under the Firearms Act other than under section 6(1) or (2) which is punishable by imprisonment for a term of ten years or more...”

And importantly:

“(j) an attempt to commit an offence listed in this Part...”

So, that is the current state of the existing law, Madam President, which was brought into effect by Act No. 17 of 2019, which we ask this House to continue for one more year. Those are very serious crimes, Madam President.

Our failure, our decision today not to extend the life of that Act, will cause a reversion of the bail laws to what it was, prior to the year 2019. And the detrimental consequence would be the reinstatement of the original section 5 of the 1994 Act, which provides for the denial of bail for offences where the accused is convicted on three previous occasions within the last 10 years. And we should remind ourselves of what section 5 of the 1994 Act says. Section 5(2):

“(2) A Court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule and has been convicted on three occasions arising out of separate transactions—

- (a) of any offence; or
- (b) of any combination of offences

listed in that Part, unless on application to a Judge he can show sufficient cause why his remand in custody is not justified.”

(3) In calculating the three prior convictions referred to in subsection (2), only those convictions recorded within the last three years shall be taken into account.”

So we understand, immediately, Madam President, that when we revert to the pre-2019 legislation, what we are reverting to in that previous situation is Schedule 2 of the pre-2019 series of offences, which specific the following. So this is what we will go back to specified offences:

- “(a) trafficking in narcotics or possession of narcotics for the purpose of trafficking;
- (b) possessing and use of firearms or ammunition with intent to injure;
- (c) possession of imitation firearms in pursuance of any criminal offence;
- (d) rape;
- (e) sexual intercourse with a female under fourteen”—which no longer applies as a result of other amendments.
- “(f) buggery;
- (g) shooting or wounding with intent to do grievous bodily harm;
- (h) robbery, robbery with aggravation, armed robbery;
- (i) larceny of a motor vehicle;
- (j) burglary and housebreaking;
- (k) perverting or defeating the course of public justice;
- (l) arson;
- (m) an attempt to commit any offence listed in this Part or in Part I;
- (n) receiving stolen goods.”

So that is the list of the specified offences, which this law will revert to, should we not pass the legislation, the Bill before this House today, to continue for one more year, Act No. 17 of 2019.

12.00 noon

Madam President, I say—notwithstanding the very many emotional arguments that we have heard, and I say that with respect, I do not mean any

disrespect to anyone—that this reversion would be a very unfavourable step backwards for Trinidad and Tobago when one considers the risk posed to society by persons who commit or are charged with serious crimes and have been convicted of those serious crimes and are once more before the courts and are being asked by this Parliament to operate in limited circumstances under the discretion of the Judiciary as to when and over what period of time they are allowed to go on bail until such time as they are fully tried as charged. The 2019 Act, Madam President, covers a two-strike situation which is wholly appropriate in the context of today's current crime situation. To revert to a three-strike requirement before giving the Judiciary the power to automatically deny bail creates, in our respectful view, an unreasonable hurdle; one may say, an unforgivable hurdle in the fight against crime.

There are reported situations where no objections have been made to bail. Of course one may say that that is for the police to get their act together, but we have to deal with our reality in pragmatic terms. Part of the pragmatic terms with which we have to deal with our reality which informs the fact, and I will speak to that shortly, informs the fact that I only, this morning, got statistics which I have been asking for, for the past several weeks, has to do with the fact that we are coming out of a pandemic. Our systems are not up to the functional strength that they were prior to the pandemic. So for three weeks I have been asking for statistics to justify the work that has been done in the last three years. I got some of those statistics this morning. And I go on record to acknowledge the hard work of the members of the Judiciary—

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Armour SC:—the prison service and the police service who, working under strained and constrained circumstances, have been able to give me

that information today. I have been able to give it to the hon. Minister of National Security so he could have spoken to it this morning.

We are not living in a perfect world. We are attempting on an incremental basis as a responsible Government to keep this society safe, not to condemn ourselves to emotional appeals to create a crisis so that there can be some pretend basis to say, “The Government has failed and voted out of office”, because when we do that we are being reckless and we are exposing the citizenry of this country to the downfall of not being a responsible Parliament. Madam President, what is equally worrisome, with reference to the specified offences to which the former section 5 applies when compared to the updated and comprehensive list contained in Part II, is that we immediately appreciate when we lay schedule two, Part II of the pre-2019 Act, alongside schedule two of Act No. 17 of 2019, we immediately see the difference in the scope and application of specified offences which currently forms the law of this country and captures a wide range of criminality under, for example, the Dangerous Drugs Act, the Kidnapping Act, Trafficking in Persons and Sexual Offences Act. This as opposed to what is listed, and I have listed it under the former section 5 which included mere references to a few identified offences such as trafficking in narcotics and burglary, and matters which may carry a penalty of 10 years or more.

Madam President, additionally, Part II of the 2019 Act includes offences which have been recently included into our body of law, such as the anti-gang and anti-terrorism offences. These are serious offences and we cannot, with the greatest of respect, because we got the statistics late today—and I know it was a matter of legitimate concern, in particular for the Independent Senators—that we were not able to put statistics to show what difference has been made in the last three years, but now that we are able to show some of those statistics, we cannot, with the

greatest of respect, risk rolling ourselves back to a pre-2019 criminal justification basis to allow convicted criminals to roam the streets while they are being charged and are before the courts on similar offences and continue to pose a risk to our young women, our children, our vulnerable, our elderly and our right to walk our streets safely and to live in the comfort of knowing that the judicial system, the prison system, the governance of this country places the priority of the safety of all citizens as the foremost priority.

Madam President, I have already in my pilot referred to the criminal justice system improvements which the Office of the Attorney General and Ministry of Legal Affairs is engaged with has accomplished and continues to engage with. And may I go on record once again to pay tribute to the very hard-working members of the teams within the Office of the Attorney General and Ministry of Legal Affairs.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Armour SC: I have been humbled, I have been privileged to have assumed the office of Attorney General and to be served by persons who work until midnight most nights to provide the Attorney General with the material by which he can advise the Cabinet and the Government on responsible governance and I thank them.

I have spoken in my pilot, Madam President, to the holistic approach to governance which this Government must take. So today when we speak to this Parliament to ask the Parliament to support the Government to continue the legislation for one more year we are not just speaking to one piece of legislation. We are speaking to a suite of legislation. And I will give just one example of the suite of legislation which is currently a work in progress which I have inherited, which is part of the suite of legislation that we are bringing to this Parliament to keep our citizenry safe of which this piece of legislation, this Bill today, is only

one.

So we are working on the Offences Against the Person (Amdt.) Act, categorization of murder; the Administration of Justice (Indictable Proceedings) (Amdt.) No. 1 Bill, deeming of indictments; the Anti-Terrorism (Amdt.) Bill, returnee Bill to deal with returning persons who have found themselves out in societies such as Syria; the Interception of Communications (Amdt.) Act, 2020; the Criminal Records (Rehabilitation of Offenders) Bill, to find a way to give an opportunity for rehabilitation to persons convicted of crimes; the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2021; the Act that we dealt with yesterday in the House, in that other place, the Miscellaneous Provisions (Criminal Proceedings) Bill, abolition of the year and a day and relaxation of the rule against double jeopardy—all of that being a work in progress, alongside with—simultaneously with the Bill that is before the Parliament today; the Miscellaneous Provisions (Testing and Identification) Bill, 2019, polygraph testing; the Controlled Deliveries Bill, 2022; the Firearms (Amdt.) Act, 2021, for regulation of the use of pepper spray; the Arbitration Bill in the civil jurisdiction, to increase our capacity to resolve our disputes without always having to resort to the adversarial system of our justice system; Trafficking in Persons (Amdt.) Act, to seek to deter the commission of human trafficking offences and to provide better care and protection for victims of trafficking.

The Parole Bill. A comment was raised, justifiably, by a Member of the Independent Bench, “What about parole as part of the suite of legislation that we should be concentrating on as opposed to simply trying to extend the sunset clause of the legislation, Act 17 of 2019?” Work is being done on that as part of the comprehensive suite. The Evidence (Amdt.) (No. 2) Bill, witness anonymity orders to protect witnesses who have to live in fear of their lives when they have to come

forward to give evidence in our criminal justice system. All of that, Madam President, is part of a suite of legislation which is being worked on in tandem with that which we have brought before this House today.

The Minister, the hon. Minister of National Security, has spoken to the improvements in the Forensic Science data—Forensic Science Centre data, and I had intended to list that as well but I am not going to because he has already been there. But the point is we are working on an ongoing basis to improve our capacity, to deliver justice, to provide for expeditious justice, to provide for empirically reliable systems and processes to bring offenders to justice and to give a measure of psychological relief to the relatives of the victims of criminal activity who will know that their loved ones have been lost, maimed or wounded but that the justice system is working to bring the offenders to account. It is part of a work in progress. It is not simply one piece of legislation and therefore strike it out and embarrass the Government into allegedly failing to combat crime so that other persons can have themselves celebrated for crying loudly, and sometimes one might say, crying wolf. That is not how we govern responsibly, Madam President.

Madam President, the statistics which I received today, I am able to tell this honourable House, only this morning at about 8.30, having been asking for this information for the past three weeks, knowing that we were coming with this Bill to the Parliament, knowing that we have a sunset arriving on the 5th of August and we would be asking the legislators in this Parliament to do the responsible thing to continue the legislation, because it is our view that that which we have already passed has begun to take effect, is being applied and therefore it is justifiable that we ask Senators in this august House to take that one further step, to give us that little bit more time in which to keep the men and women, the citizens of this country safe. I have been asking for it. I got it this morning, Madam President.

It goes some small way to demonstrate that Act No. 17 of 2019 truly captures repeat offenders. When I go through schedule two of Act 17 of 2019, we are talking about repeat offenders; yes, they have rights and we have to respect their rights to due process, but they are repeat offenders from whom we want to keep the society safe. So it goes some way to demonstrate that the Act, which is now in force and which we ask to extend, captures repeat offenders and persons intent on repeating their criminal conduct. And we are saying that the data which has been provided illustrates that persons who were denied bail due to the conditions imposed under section 5(2), (3) and (5) of the Bail Act, 17 of 2019, is working.

The Criminal Records Office has pulled data from bail applications done before judges of the Criminal Division of the High Courts in Port of Spain, Tobago and San Fernando, and I thank the Criminal Records Office.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Armour SC: This category of data is important as it is reflective of persons who were firstly denied bail at the Magistrates' Court or persons who may have been granted bail and who have now come before a judge in chambers to reapply for bail. The data shows that the total number of persons who were refused bail by a judge in chambers for the period, 2019 to 2022—that is to say the application of Act 17 of 2019—totals 116, repeat offenders. Interestingly, Madam President, of those 116 persons who were refused bail, 79 persons had, as part of their criminal record, over five additional pending matters for serious criminal offences; not two, five additional pending matters for serious criminal offences. And I am not going to belabour the repetition of Schedule II to the 2019 Act to remind ourselves what those serious criminal offences are. That is a percentage, Madam President, of 68 per cent of persons who were denied bail

with this legislation in place over the past three years and have had several pending matters for serious criminal offences.

Madam President, I was at pains when I piloted this Bill on Monday to illustrate that Act 17 of 2019 is truly intended to target repeat offenders. I was at pains to illustrate that the persons being denied bail before the courts and the persons within this country contributing to the increasing crime rate do in fact—and it is a matter of court record—have a history of criminality. Yes, they have rights and, yes, we must respect their rights. We must give them access to the Judiciary so that the Judiciary, in due course, can adjudicate on their guilt or innocence on the new charges that they find themselves before the courts for, but we must give the Judiciary, in our less than perfect system, time to process everything, and all we are saying is, postpone their ability to apply for the bail whilst the system works through to ensure that those persons are not immediately allowed back onto the streets. So that the Act, Madam President, Act 17 of 2019, is working with the limited statistics that we have received in the constrained circumstances of the pandemic, which tells me certainly that the statistics may yet show more, but for purposes of this debate today, to appeal to the responsible Members of this Senate, I think that we can say with confidence that we have put sufficient material on the simple statistics of 2019 to 2022 to show that the legislation which we are asking this Parliament to continue has not existed in a vacuum, has not existed as if nothing was done. Work has been done, work is being done, and in the meantime the citizenry of this country are being kept as safe as we possibly can by a process of responsible governance.

Madam President, as Attorney General with a commitment to progressive bail reform, I am optimistic that extensive consultation on comprehensive bail reform is critical. I commit to that, to include the council of criminologists with

whom I have already engaged, because crime is not a phenomenon that is distanced from or separate from the society which gives birth to crime. Crime is a product of who we are and how therefore we must fix ourselves, and in the process of governance we have to work at our societal improvements. We have to work at improving the quality of life for every citizen, in the houses that they live in, in the streets that they walk in, in the schools that they go to, and that is what this Government is committed to. And in the meantime, we, as a part of the criminal justice system, part of the civil justice system, part of the administration of justice are committed to doing the little that we can to come before this Parliament with properly drafted law to say to this Parliament, “We need that little bit more time.”

A question was asked, Madam President, and I will turn to it immediately, a question was asked whether or not there are any precedents to this legislation. Well, I can say with confidence, Madam President, that—and I am not going to cite them as precedents because I do not—I am not one of those lawyers who speaks glibly or without research and claims to know everything and every answer. I speak guardedly and I speak with the maturity and the humility to know that I may be wrong, so I am not going to misrepresent what I am about to say. But I can say that there are other jurisdictions which are looking at their bail laws, New South Wales, Jamaica, Barbados, St. Lucia, Australia and New Zealand are looking at their bail laws, to amend their bail laws to refuse bail in limited circumstances so as to keep their citizens safe. We are not out there flying a kite because we are irresponsible and seeking to just keep people in prison. We are looking at the precedents to assist us in the responsible drafting process. And may I digress for a moment, Madam President? I got a text message last night from an Attorney General of another country in the Caribbean, asking if I knew of any good serious draughtspersons because they need draughtspersons, and I was able to

say to them with pride, “We have very good draughtspersons in Trinidad and Tobago”—

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Armour SC:—“and as much as I would like to offer them to you, Mr. Attorney General”, I said to my colleague last night, “We have work for them to do in Trinidad and Tobago”. So that, when we come to this Parliament with a Bill such as that, we put before this Parliament today, we do it with the confidence of knowing that it has been carefully drafted with reference to safe precedents and we are asking the Legislature to have the confidence in knowing that when they pass the legislation, drafted by our Chief Parliamentary Counsel and his staff, it is responsibly drafted legislation, and I commend them. I digress and I beg your forgiveness, Madam President.

We are committed to an ongoing criminal justice reform system which will keep the society safe. We—and I can speak for myself, I intend, in the period that we are asking, that one more year, to return to this Parliament with more legislation with a view to looking at our bail reform generally so as to take a holistic approach to bail, generally. My good friend and colleague in this Parliament, Sen. Vieira, made some very interesting remarks on Monday, and I regret that he is not here with us today so that I can speak with him directly, but I know that he will pay keen attention. He made a number of suggestions for improvements in the legislation which I am happy to say, some of which is already addressed in the very legislation that we are asking this Parliament to continue today beyond the sunset. So, Sen. Vieira said on Monday that he would like to see community provision for community safety to ascertain whether or not the accused is likely to pose any threat to the society and that that ought to be a factor to be considered by the magistrate or judge when deciding whether or not to grant bail.

Well, subsection (2)(a)(ii) of the legislation before us says:

“Where the offence or one of the offences of which the defendant is accused in the proceedings is punishable with imprisonment, it shall be within the discretion of the Court to deny bail to the defendant in the following circumstances:

- (a) where the Court is satisfied that there are substantial grounds for believing that the defendant, if released on bail would—
 - (i) ...
 - (ii) commit an offence while on bail;...”

So that is already under consideration in this legislation and we are going to improve it in the return that I promise we will make to this House on a more comprehensive bail reform. Sen. Vieira spoke also of wishing to see provisions for the—that employment of the accused ought to be a factor to be considered by the magistrate or judge when deciding whether or not to grant bail. Subsection (3)(b) of the legislation that exists at the moment, which if we do not renew it will roll back, provides that:

“(3) In the exercise of its discretion under subsection (2)(a) the Court may consider...:

- (a) ...
- (b) the character, antecedents, associations and social ties of the defendant;...”

Sen. Vieira said that the family of the accused ought to be a factor to be considered by the magistrate or judge when deciding whether or not to grant bail. Well, under the present legislation which we are asking this Parliament to continue, the judges have the discretion to grant bail within the prescriptions of the legislation, and one of the things that is prescribed for in section 6(3)(b) is that:

“In the exercise of its discretion under subsection (2)(a) the Court may consider the following:

- (a) ...
- (b) the character, antecedents, associations and social ties of the defendant;...”

He spoke to looking at community relations; again, that will come in under section 3(b). And we have the catch-all phrase at the end, section 6(3)(e):

“In the exercise of its discretion under subsection (2)(a) the Court may consider the following:

- (e) any other factor which appears to be relevant.”

So that far from denying the judicial system oversight of the circumstances in which to grant bail, the existing legislation which we ask this Parliament to continue, provides for some of the very considerations that legitimately trouble some of our Senators here and which this Government commits to coming back to improve on in a more holistic manner with the advice of relevant experts, including those criminologists that I have already began speaking with, because I appreciate that it must be a societal product that speaks to who we are as a society from a proper socio-psychological and criminological basis.

Madam President, Sen. Lutchmedial today sought to suggest—and I say immediately, wrongly, that, “If this legislation is continued today it will be an exercise in futility”—in my words—exercise in futility because the Senate is being asking to pass illegal legislation. Well, that is—how shall I find a polite way to say it?—a misrepresentation which I would expect on a more careful read of the law, Sen. Lutchmedial would correct herself on. In the first instance, the *Akilli Charles* decision which on appeal to the Privy Council, does not concern what we are debating here today. The *Akilli Charles* decision concerns section 5(1) of the Bail

Act. I only have to go to paragraph one of the decision in the *Akilli Charles* decision of the Court of Appeal, the judgment of Chief Justice Ivor Archie, which is now on appeal and which the State has argued forcefully should be overturned, but that is another point. This is what Chief Justice Archie began his judgment with; paragraph one of his judgment dated the 17th of February, 2022:

“The central issue in this appeal is whether section 5 (1) of the Bail Act of 1994...is inconsistent with the Constitution and therefore susceptible to being struck down.”

Let us look at the Act. Section 5(1) deals with the category of offences specified in Part I of the schedule which are murder, treason and piracy. It does not have anything to do with sections 5, 2, 3, 4 and 5, which we are considering under Act 17.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Armour SC: So I have every confidence that when Sen. Lutchmedial reads the *Akilli Charles* Court of Appeal decision she will correct herself. Secondly, there is the decision of this very court, Madam President, a Court of Appeal decision, Civil Appeal P351 of 2016 with between *The Attorney General v Danielle St. Omer*, a decision—a unanimous decision of Justices of Appeal Gregory Smith, Prakash Moosai and Peter Ramadar—Rajkumar—I beg his pardon—dated the 8th of March, 2019.

12.30 p.m.

Madam President, I will read paragraphs 1 to 5 in the time left to me:

“The central issue in this appeal involves the Court resolving an apparent conflict between 2 sections of the Bail Act Chap. 4:60.

These are section 5(1)—we remind ourselves: murder, piracy, treason—
 “and section 5(5)(b)(ii).”

—other aspects of Schedule II, which we are concerned with dealing with serious crime. Paragraph 2:

“Section 5(1) is a statutory affirmation of the constitutional right to bail except as provided for in sections 5(2) and 5(4)...

Section 5(5)(b)(ii) purported to take away the right to bail in certain cases.”

That is what we are about today in the discussion we are having. That sections 5(2) and others have limited the right to bail in certain other cases, other than murder, treason and piracy.

Paragraph 3:

“An interesting twist to this appeal...”

I am reading from the judgment of Mr. Justice of Appeal, Gregory Smith:

“An interesting twist to this appeal arises because section 5(5)(b)(ii) was one of some temporary amendments to the Act.”

—at the time.

“These amendments were in effect for only about one and a half years.

They lapsed on the 15 August 2016. They were part of what is termed a ‘sunset clause’.

Section 5(5)(b)(ii) was no longer the law at the time of the hearing and determination of this constitutional motion...in the High Court and...on this appeal.

Nevertheless, these appeals are not academic because:

- i. The Respondents were adversely affected since they were unable to secure bail...
- ii. Counsel for the Appellant informed us that the construction of this legislation may provide guidance in respect of future legislation on this very important area.”

Paragraph 4, judgment of Mr. Justice of Appeal, Gregory Smith:

“In summary, we find that on the relevant principles of statutory interpretation, the constitutional right to bail in section 5(1) was not taken away by section 5(5)(b)(ii). As a result, neither Respondent was deprived of his/her constitutional rights and we...”—therefore—“...allow the”—Attorney General’s—“appeal.”

The short point being there that the challenges to the sections after section 1, which limit the right to bail, are not unconstitutional because of section 5(1), which is not what is being challenged in this amendment, and not what is under consideration. So I have—

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

Sen. The Hon. R. Armour SC: Thank you very much, Madam President, and it is perhaps the only time since I have had the privilege to speak before you that I might yet go to my full time.

So that I say, without fear of contradiction, the following few things in summary. The legislation which we are asking this House to extend for one more year is legislation which we need in order to continue the work, which the statistics that I have read out today, demonstrate is a work in progress; point one.

Point two, nothing in the legislation that we are asking this House to extend takes away the constitutional right of convicted persons to their right to bail before judges of the Supreme Court or the Magistrates’ Court. It just simply does not. It constrains the right to bail, but it preserves that right on regulated terms.

Thirdly I say, that if we do not continue the legislation we will roll back the hand of the clock, and expose our citizenry to a very dangerous state of circumstances, which the Opposition is happy to point to as heralding some measure by which we should govern, when they point to the criminality that is

taking place in the streets. The point is we cannot afford to expose our citizenry to that level of criminality where we have the means and the resources, the wisdom and the intelligence to do otherwise, which we are asking this House to do.

Lastly I say, Madam President, that I give the undertaking to the Members of this Senate that in the year that we are asking for I will be coming back before this House to ask this House to join with me in a comprehensive system of bail reform that will satisfy the rights of every citizen of this country.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: With those few words, Madam President, I beg to move.

Madam President: Hon. Senators, at this juncture the sitting will be suspended for 15 minutes, and we will return at 12.50 p.m. which is at ten to 1.00. So the sitting is suspended until ten to 1.00.

12.35 p.m.: *Sitting suspended.*

12.50 p.m.: *Sitting resumed.*

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: I remind Members that there are three clauses to the Bill.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed: That clause 3 stand part of the Bill.

Sen. Drayton: Madam Chair, I have a question. I am not too sure whether it would be here in this clause or elsewhere, to the hon. Attorney General. I note that with respect to the specified offences under this Bill that buggery is included. Can

the hon. Attorney General state whether that is listed as specified offences under this Bill?

Madam Chairman: Attorney General.

Sen. Armour SC: Thank you, Madam Chair. Through you, if I may answer the hon. Senator. Buggery, hon. Senator, is actually specified in those terms in the Second Schedule to the pre-2019 legislation. You would recall when I laid out the two different Schedules, I laid out the Schedule of the pre-2019 legislation, to which we will revert if we do not take this legislation forward.

Under the current Act 17 of 2019, buggery would be included in the general offences under the Sexual Offences Act. Yes, it is not specified, but that question of buggery as a specified offence does not specifically arise under the amendment that we have in place now, subject to the fact that there is an outstanding case of Jason Jones, which deals with that issue, and the Government is awaiting the decision of that case before taking a position on it.

Sen. Drayton: A follow-up question, Madam Chair. I understand the context in which the hon. Attorney General has responded. I just wanted to know, given that the argument thus far by the Government has been the crime and security risk to Trinidad and Tobago, whether it is the Government's position that buggery is a crime and security risk to Trinidad and Tobago, hon. Attorney General.

Sen. Armour SC: Can I put it this way, hon. Senator? When one looks at the serious offences, and I spoke to it a little earlier, the serious offences spelt out in Schedule II of the legislation, as I have just said deals with sexual offences and offences against children. In those general terms, a sexual offence against a child is a serious crime, specified in the Part II of the Second Schedule. The Government has not and reserves its position with specific reference to the act of buggery, to await the determination of the outstanding decision in Jason Jones.

Sen. Drayton: Thank you, Madam Chair.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Preamble approved.

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

Senate resumed.

Madam President: Attorney General.

Sen. The Hon. Reginald Armour SC: Madam President, I beg to move that a Bill to amend the Bail (Amdt.) Act—

Madam President: Attorney General. We are dealing with the report of the committee.

Sen. The Hon. R. Armour SC: That the Bill be reported to the committee?

Madam President: No, the results of the committee.

Sen. The Hon. R. Armour SC: If you give me one minute please, Madam President.

Madam President: Sure, yes, take your time.

Hon. Senators: [*Crosstalk*]

Madam President: Members, please.

Sen. The Hon. R. Armour SC: Madam President, my apologies. I hastened up here from downstairs, and it took me a little while to get my papers together.

I wish to report that the Bail (Amdt.) (Extension of Duration) Bill, 2022, was considered in committee of the whole and approved without amendments. I now beg to move that the Senate agree with the committee's report.

Question put.

Sen. Mark: Division.

The Senate divided: Ayes 18 Noes 11

AYES

Browne, Hon. Dr. A.

Armour SC, Hon. R.

Gopee-Scoon, Hon. P.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Mitchell, Hon. R.

Cox, Hon. D.

Bacchus, Hon. H.

de Freitas, Hon. N.

Sagransingh-Sooklal, Hon. R.

Singh, Hon. A.

Lezama-Lee Sing, Mrs. L.

Hislop, L.

Thomas, A.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Drayton, J.

NOES

Mark, W.

John, Ms. J.

Lutchmedial, Ms. J.

Nakhid, D.

Lyder, D.

Roberts, A.

Richards, P.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Mr. E. Welch abstained.

Madam President: Hon. Senators, therefore the question as put is passed.

Question agreed to.

Bill reported, without amendment.

Question put: That the Bill be now read a third time.

Madam President: Hon. Senators, this Bill requires a special majority and therefore the Clerk will conduct a division.

The Senate divided: Ayes 18 Noes 11

AYES

Browne, Hon. Dr. A.

Armour SC, Hon. R.

Gopee-Scoon, Hon. P.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

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Lezama-Lee Sing, Mrs. L.

Hislop, L.

Thomas, A.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Drayton, J.

NOES

Mark, W.

John, Ms. J.

Lutchmedial, Ms. J.

Nakhid, D.

Lyder, D.

Roberts, A.

Richards, P.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Mr. E. Welch abstained.

Question negatived.

Hon. Senators: [*Continuous desk thumping and crosstalk*]

**SRI SATHYA SAI BABA ORGANISATION OF TRINIDAD AND TOBAGO
(INC'N) (AMDT.) BILL, 2022**

Question put and agreed to: That a Bill to amend Sri Sathya Sai Baba Organisation of Trinidad and Tobago (Inc'n) Act, 1993 (Act. No. 16 of 1993), 2022, be now read a second time.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam President: This Bill has two clauses and a preamble.

Clauses 1 and 2 ordered to stand part of the Bill.

Preamble approved.

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

Senate resumed.

Bill reported, without amendment, read the third time and passed.

**TOBAGO COUNCIL FOR HANDICAPPED
CHILDREN (INC'N) (AMDT.) BILL, 2022**

Question put and agreed to: That a Bill to amend the Tobago Council for Handicapped Children (Inc'n) Act, be now read a second time.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam President: This Bill has two clauses and a preamble.

Clauses 1 and 2 ordered to stand part of the Bill.

Preamble approved.

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

Senate resumed.

Bill reported, without amendment, read the third time and passed.

Madam President: Leader of Government Business.

ADJOURNMENT

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne): Madam President, I beg to move that this Senate do now adjourn to a date to be fixed.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for a matter to be raised. Sen. Mark.

First Citizens' Bank

(Cornerstone Financial Holdings Limited Loan)

Sen. Wade Mark: Thank you, Madam President. The matter that I am about to raise is one of grave interest to the people of the Republic of Trinidad and Tobago. It deals with the need for the Government to call for an investigation and public report on the decision of First Citizen's Bank to invest and/or loan a further US \$45 million to Cornerstone Financial Holdings Limited, a Jamaican-based company but located, I understand, in Barbados at this time.

1.15 p.m.

Madam President, it was in March of 2022, that an article written by Anthony Wilson titled, "First Citizens increases exposure to Barita's parent"—and I want to quote sections of this article for our consumption:

"...majority Stated-owned First Citizens"—Bank—"agreed to lend a private Jamaican company, Cornerstone Financial Holdings Ltd...the majority shareholder of publicly listed Barita Investments Ltd...up to an additional US \$45 million. The two-tranche would take the Trinidad and Tobago bank's debt exposure to Cornerstone to"—some—"US \$85.1 million, and the debt and equity exposure of the First Citizens group to an estimated US \$125 million."

Madam President, US \$85.1 million debt exposure of this—of our bank to

Cornerstone is provided in the following breakdown in the following tranches:

- “• First Citizens entered into an agreement, dated April 24, 2020, to lend Cornerstone US \$25 million;
- First Citizens entered into an agreement to extend an additional loan facility of US \$15.1 million to Cornerstone on July...2021;”

And then:

“• In February 2022, First Citizens Bank ‘agreed to extend additional credit facilities to...’”—this same company—“‘of up to US \$45 million’”—and that was—“disbursed in two tranches...”—of US \$20 million and \$25 million respectively.

Now, Madam President, it is important to note that Cornerstone Financial Holdings, which is an offshore company whose directors are nameless and faceless, there is no transparency and accountability involving this company. This company owns 75 per cent of Barita Investments Limited.

So, Madam President, here it is, a company that owns assets belonging to the people of this country, amounting to \$46 billion, is taking our money to lend to a company called Cornerstone Financial Holdings Limited which is an offshore company. You cannot locate them on the public listing trading front. They are not on the stock exchange. This company is privately owned. The shareholders are unknown. We do not know who are the shareholders of Cornerstone Financial Holdings Limited. And, Madam President, we are very concerned as a country. We have no problem with First Citizens investing in the northern Caribbean. We have no problem. We have no problem with diversification of our bank. But we do have a problem, Madam President, with our bank getting into an arrangement with fly-by-night companies that we have no history on, no background of and we have invested close to \$500 million of depositors' moneys and savers' moneys into a

fly-by-night Cornerstone Financial Holdings Limited.

Madam President, this is a serious matter affecting our bank and our depositors. I am depositor and saver in First Citizens Bank. I have been there for the last 30 years and beyond, and I want to protect my deposit, and I want to protect the deposit of the hundreds of thousands of citizens who deposit money in the First Citizens Bank. So, Madam President, we are concerned.

Madam President, I want to bring to your attention a Cornerstone Financial Holdings Limited financial statement which I happened to get. It is dated and ending, rather, September 30, 2020. Now, Madam President, would you believe that this company that we are talking about, with assets—according to the balance sheet that I have before me, their asset base is JMD \$557 million as at the end of 2020. And you know what the share equity of this company is? Madam President, do you know what the share equity of this company is? In 2019, the equivalent of \$5,034. And in 2018—in 2020, it is \$6,534. How can you have our First Citizens Bank investing in such a company whose shareholdings and equity is so low on their balance sheets?

Madam President, when you look at this report carefully, this company is heavily leveraged. They are borrowing moneys all over the place and hear who they are borrowing moneys from according to this balance sheet and report here. Madam President, they are borrowing money from JMMB, Jamaica—located in Jamaica. “Long-term loan”, they call it, Madam President. They are borrowing moneys from our bank, the First Citizens Bank of the Republic of T&T, Madam President. And this company, Madam President, is also—they borrowed money from corporate bondholders, \$46 million; First Citizens Bank, \$25 million; JMMB, \$5.6 million; JN Bank Limited, \$4.2 million.

Madam President, this is a matter of grave concern to the people of this

country. We need an explanation. We need an investigation into this matter. How can First Citizens take our money and invest our money in an institution, in a company that is offshore, that is not own to the world? You cannot find their directors anywhere. That is a criminal act that has taken place and we call on this Government to launch an investigation and to tell First Citizens, even if they want to open a bank in Jamaica—which we understand that they want to do and we are happy for them to open a bank in Jamaica, or in Guyana, or wherever they want to open a bank. But do not go and invest in companies that are fly-by-night, that are involved in Ponzi scheme, that are overly leveraged, Madam President. And that is why I have raised this matter to get the Government to speak and to get the Government to clarify—[*Inaudible*]

Madam President: Sen Mark, your time has expired.

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

Madam President: Minister in the Ministry of Finance.

Hon. Senators: [*Desk thumping*]

The Minister in the Ministry of Finance (Hon. Brian Manning): Madam President, now for the truth. Cornerstone Financial Holdings Limited is the parent company of Barita Investment Limited. Barita Investment Limited is publicly listed on the Jamaica Stock Exchange via three purchases in September 2020, December 2020 and final purchase in September 2021. First Citizens Investment Services Limited purchased shares in Barita at a weighted average price of JMD \$64.45. Since the acquisition of a total of 90,795,154 shares, the value of the shares has appreciated substantially and a share is now trading at JMD \$87.95, a gain of JMD \$23.50, compared to the average price of purchase of JMD \$64.45.

What is clear is that this was a sound investment decision made by First Citizens Investment Services Limited as that company has benefitted from a capital

gain of 36.5 per cent, in addition to the regular dividend payments which have also been received from the said investments. All this notwithstanding that the investment only amounted to 7.44 per cent of the company.

As regards to specific wording of the Motion in which an investigation is being called for into a reported loan of a further USD \$45 million to Cornerstone Financial Holdings Limited, the hon. Senator is, however, asked to note that pursuant to section 55(1) of the Financial Institutions Act, Chap. 79:09 of the revised laws of the Republic of Trinidad and Tobago, licensed financial institutions are restricted from sharing clients' confidential information. For the benefit of the hon. Senator, the wording of section 55(1) is as follows:

“No licensee, financial holding company, controlling shareholder, significant shareholder or affiliate of a licensee, and no director, officer, employee or agent of a licensee, financial holding company or other controlling shareholder or affiliate who receives information relating to the business or other affairs of a depositor or customer of the licensee or of any other person shall disclose the information unless—

- (a) the disclosure is required under a compulsion of law;
- (b) there is a duty to the public to disclose the information;
- (c) the interest of the licensee requires disclosure; or
- (d) the depositor or customer expressly or impliedly consents to the disclosure.”

The hon. Senator may wish to note that none of the conditions mentioned at (a), (b) or (c) above can be applied in this instance. And therefore, we are bound by the legislation to respect the confidentiality between licensee and client. Thank you.

First Citizens' Bank
Hon. B. Manning (cont'd)

2022.07.06

Hon. Senators: [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 1.27 p.m.