Leave of Absence

HOUSE OF REPRESENTATIVES

Wednesday, June 28, 2023

The House met at 1.30 p.m.

PRAYERS

[Madam Speaker in the Chair]

LEAVE OF ABSENCE

Madam Speaker: Hon. Members, I have received communication from the hon. Kamla Persad-Bissessar SC, MP, Member for Siparia, and Ms. Anita Haynes, MP, Member for Tabaquite, who have requested leave of absence from today’s sitting of the House. The leave which the Members seek is granted.

PAPERS LAID

1. Audited Financial Statements of East Port of Spain Development Company Limited for the financial year ended September 30, 2014. [The Minister of Finance (Hon. Colm Imbert)]
3. Audited Financial Statements of East Port of Spain Development Company Limited for the financial year ended September 30, 2016. [Hon. C. Imbert]
   Papers 1 to 4 to be referred to the Public Accounts (Enterprises) Committee.

UNREVISED
6. Ministerial Response of the Ministry of Health to the Tenth Report of the Public Administration and Appropriations Committee on the examination into the findings of the Report of the Committee Appointed to Investigate the Factors Contributing to Clinical Outcomes of COVID-19 Patients in Trinidad and Tobago. [Hon. C. Robinson-Regis]

7. Dossier of Documents Surrounding the Appointment of a Chief Administrator, Tobago House of Assembly. [Hon. C. Robinson-Regis]

**URGENT QUESTIONS**

Residents Affected by Heavy Rainfall

*(Works undertaken to assist)*

**Dr. Roodal Moonilal (Oropouche East):** Thank you very much, Madam Speaker. To the Minister of Works and Transport: In light of the devastating damage and inconvenience caused by the heavy rainfall yesterday and this morning, will the Minister state what urgent clearing, cleaning and drainage works will be undertaken from today to assist residents and prevent another incident of destruction and human suffering?

**Madam Speaker:** Minister of Works and Transport.

**The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):**

Thank you, Madam Speaker. Madam Speaker, I do have a written answer, but I will not use that and it is a simple reason for that. Based on a question that was posed to me about the devastating flooding and destruction and human suffering, I do not know where that came from. Yesterday, we got some flash flooding and within one hour, the water receded. Yes, some debris came down, and as of half an hour ago, I was in most of the areas where that happened and it is already cleaned. So I do not know where the human suffering—And so I just want to remind the Member, we are in the rainy season and in the rainy season we must expect rain.
What happened yesterday was a large volume of water. That was anticipated based on the local and international weather pattern, what that resulted in was some severe flash flooding in certain parts of the island. The reports that I have, no rivers broke their banks. There was some overtopping in the Diego Martin area, which is normal with that volume of water.

So in terms of the human suffering and so, I sympathize with the areas, the low-lying areas in Trinidad where we do get flooding from time to time, but the Ministry will continue on its programme of the desilting and improving the infrastructure in Trinidad so that we can cater for the new norm brought upon us by climate change, high sea level rise and the abnormal amount of rainfall that we are getting at this time. Thank you.

Hon. Members: [Desk thumping]

Madam Speaker: Member for Oropouche East.

Dr. Moonilal: Thank you, Mr. Minister. In light of the front page of the Express today which states:

Midday storm ripped off roofs caused traffic nightmare, flood blows.

Could I invite you, and would you agree to read the proper answer supplied to you by the technical people of your Ministry—

Hon. Members: [Desk thumping]

Dr. Moonilal: —and do not extempo? Could you do that?

Madam Speaker: Member, that is a statement and there is a lot of conjecture in that, so I am not going to allow that question, it is out of order. You have another question?

Dr. Moonilal: Yes.

Madam Speaker: Member for Oropouche East.
Dr. Moonilal: Just for clarity Ma’am, I am allowed two more questions since you disqualified that.

Madam Speaker: Well, is that a question or is it a statement?

Dr. Moonilal: [Inaudible]

Madam Speaker: Well, you decided to use a question that, you know, is improper, so you have a question left.

Dr. Moonilal: No, well I have two questions.

Madam Speaker: No, no, no. You have one question left, please use it wisely.

Dr. Moonilal: Okay. I understand fully. Minister, in light of the fact that the Ministry received the $167 million recently in the mid-term review, could you indicate what projects are ongoing and would prevent flooding—further incidents of flooding during this time? What thing? And Minister, do you think it is time that you stop—[Inaudible]

Madam Speaker: Member, Member for Oropouche East, I know how—

Dr. Moonilal: Passionate.

Madam Speaker:—passionate you are and I know how much this issue means to many people in Trinidad and Tobago, but that does not give us the right to offend the Standing Orders, which a senior Member like you is so well seasoned in your knowledge. So could you decide which question it will be? And I would also say before you decide which question, that the first question, according to the Standing Orders, is out of order.

Dr. Moonilal: Minister, in light of the 167 million recently approved for your Ministry specifically for dealing with drainage and flooding and so on, would you indicate which projects are ongoing in those areas flooded yesterday and this morning that could alleviate and prevent further devastation in the event of rainfall?
Madam Speaker: Minister.

Sen. The Hon. R. Sinanan: Thank you, Madam Speaker. Madam Speaker, just to clarify, rainfall and flooding and cleaning drains have nothing to do with roofs blowing out that has to do with wind. We have no control on the wind.

Madam Speaker, the Ministry has a very aggressive drainage programme ongoing, where we are desilting water courses, we are rebuilding banks, we are upgrading pumps, we are upgrading gates, and there are several different aspects and that money will be spent there. However, I need to indicate to the Member, flooding has to do with the volume of rainfall and the capacity of the channels. So as a Government we will do our part but we have no control on the new norm, the new weather pattern that is affecting the entire globe. Just this morning—I do not know if the Members looked at the international news, it is happening around the world and we will not be spared. We will not be spared but we need to work, all hands must be on deck and we must not use flood—

Hon. Members: [Desk thumping]

Sen. The Hon. R. Sinanan:—as a part of the politics in Trinidad and Tobago. Thank you.

Hon. Members: [Desk thumping]

Madam Speaker: Member for Chaguanas East.

Residents Affected by Floods

(Emergency mechanisms to assist)

Ms. Vandana Mohit (Chaguanas East): Thank you very much, Madam Speaker. To the Minister of Social Development and Family Services: Will the Minister advise this House what immediate emergency mechanisms are being instituted or contemplated to assist those residents affected by the widespread flooding across the nation yesterday and today?
The Minister of Housing and Urban Development (Hon. Camille Robinson-Regis): Madam Speaker, thank you very kindly. On behalf of the Minister of Social Development and Family Services, in the same vein as my colleague the Minister of Works and Transport indicated, there was almost immediate run-off as it related to quite a number of areas, and consequently, up to now, we have not received any reports of persons who are in need of any assistance from the Ministry of Social Development and Family Services. However, if we do receive those reports, the Ministry of Social Development and Family Services is already in a position to determine the extent of the recovery that is needed and the Ministry will respond accordingly.

Madam Speaker, I think it is a good opportunity to indicate that the Ministry of Social Development and Family Services is consistent in the responses that it gives once any need is identified and assessed. The Ministry gives for emergency food support, $510; for household items, as per the guide, up to a maximum of $10,000; for a refrigerator, $4,000; a stove, $2,500; a bed with a mattress, $1,000; living room sets, $3,500; mattresses alone, $1,000; dining room sets, $3,500; chest of drawers, $2,000; washing machines, not dryers, $2,500; a wardrobe, $3,000; kitchen cupboards, $2,000.

Madam Speaker, for minor house repairs, the Ministry of Social Development and Family Services gives up to $20,000 in funding for material only; for sanitary plumbing assistance, up to $15,000 for material only. The Clothing Grant is up to $1,000 per person.

Madam Speaker: Hon. Member, your speaking time is now expired.

Hon. Members: [Desk thumping]

Madam Speaker: Member for Chaguanas East.
Ms. Mohit: Thank you, Madam Speaker. Madam Speaker, based on the Minister’s response, Minister, can you indicate whether the Ministry of Social Development and Family Services has liaised with the regional corporations to receive information so staffing can be deployed accordingly as it relates to reports?

Madam Speaker: Member.

Hon. C. Robinson-Regis: Madam Speaker, as the Member well knows, there is a process. The Ministry of Social Development and Family Services is already in contact with all the DMUs in—who may be affected in the various corporations and to date, we have had no requests because, as my colleague said, the run-off was swift. Where there is roof—where there has been roof damage, we have provided tarpaulins and we have also provided cleaning supplies in several instances. Other than that, we have no reports of need in terms of the emergency supplies that we give here.

Madam Speaker: Member for Chaguanas East.

Ms. Mohit: Thank you, Madam Speaker. Madam Speaker, based on the Minister’s response of tarpaulins being provided, this is actually a report of persons requiring assistance with roof repairs and you are saying no reports—Minister, you are saying no reports. Are you in position to state whether or not you do not have the information or you intend to get the accurate information—

Hon. Members: [Desk thumping]

Ms. Mohit:—during the course of today or over the course of the weekend so that you can give the public the proper information?

Madam Speaker: Minister.

Hon. C. Robinson-Regis: Madam Speaker, in the areas where there are proper representatives—

Mr. Young: Correct.
Hon. Members: [Desk thumping]

Hon. C. Robinson-Regis:—like—

Mr. Young: Port of Spain, East-West Corridor.

Hon. C. Robinson-Regis: Port of Spain, Laventille East/Morvant and the other aspects of the—

Mr. Hinds: Laventille West.

Hon. C. Robinson-Regis:—and Laventille West—

Dr. Rowley: And Diego Martin.

Hon. C. Robinson-Regis:—along the East-West Corridor, including all the Diego Martins, where there were incidents, the Members of Parliament and the former councillors have all been in the field—

Hon. Members: [Desk thumping]

Mr. Young: Correct.

Hon. C. Robinson-Regis:—and they gave out what was necessary. If there is further information which has not come to hand, then the Ministry of Social Development and Family Services will get involved. Madam Speaker, we are not in the habit of encouraging flood politics—

Mr. Young: Correct.

Hon. Members: [Desk thumping]

Hon. C. Robinson-Regis:—and consequently, we have already done our part in terms of providing tarpaulin if it was necessary. We have also contacted the National Commission for Self-Help commission and done our part, and the corporations have been activated.

Hon. Members: [Desk thumping]

1.45 p.m.

UNREVISED
Appointment of Chief Administrator
(Tobago House of Assembly)

Madam Speaker: Hon. Members, I understand that there is agreement that the hon. Prime Minister will speak until the end of his statement. Prime Minister.

Hon. Members: [Desk thumping]

The Prime Minister (Hon. Dr. Keith Rowley): Madam Speaker, I thank you for the opportunity to make the following statement. I am authorized by the Cabinet to make this statement of clarification on a matter of public administration. As you are aware, Madam Speaker, there are two aspects of administration of Tobago. There is the Tobago House of Assembly, commonly called the THA, which has its autonomy under the Act with all its rights and responsibilities, and there are the residual responsibilities of the central government administered under the Central Administrative Services, Tobago (CAST). Both of these arms of administration have as their head a Chief Administrator, THA, and Permanent Secretary at CAST, respectively. These are both public servants under the Act and jurisdiction of the independent Public Service Commission.

Madam Speaker, it also goes without saying that for peace, good order and progress to prevail in Tobago, and also in Trinidad and Tobago, it is absolutely essential for there to be respect for each other and a good working relationship between all officers and agencies of state charged with these responsibilities.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: It is in recognition of this imperative that I, as Prime Minister, have always gone out of my way to harbour and foster a good working relationship with my colleagues and associates in Tobago, and between the central government and the Tobago House of Assembly.

Notwithstanding the anticipated cut and thrust of the politics, some recent
developments in Tobago have not only raised eyebrows but have produced disintegration and discord followed by serious allegations and some measure of anxiety and distress in some quarters. Throughout these periods of evolution, the central government has been careful to keep a respectful distance whilst ensuring that everything is done to maintain the designated services to the people of Tobago. However, Madam Speaker, this did not prevent the authorities there, at the first opportunity, to seek to embroil the central government, and especially the Prime Minister in whatever difficulties they were experiencing at the moment. It is in this environment, Madam Speaker, that in an address to the Assembly last Thursday, 22nd of June, that the Chief Secretary, in a fit of hopefully genuine misunderstanding, made some very serious allegations against the Prime Minister and the Government of Trinidad and Tobago.

It is the view of the Cabinet that such accusations and misinterpretations, if left unattended in the public mind and domain, could grossly mislead the citizenry, not only in Tobago but across the nation, with grave consequences leading to the deterioration of the relationship between the people of Tobago and the rest of the nation. Madam Speaker, it is common knowledge that until a designated officer is identified by the Public Service Commission for appointment to the post of Chief Administrator, substantive or acting, there is no role for the Prime Minister in the public services where matters of ranking and selection are concerned. A proper interpretation of the law would show that in pursuance of an appointment to be made, the Prime Minister’s role only comes into being when the Public Service Commission identifies a designated officer and seeks to confirm from the Prime Minister whether he has an objection to the selection put forward by the Public Service Commission.

This is the first time that the Prime Minister is to be involved in the process
to be followed immediately, as per the law, by consultation between the Chief Secretary and the Prime Minister. It is clear, Madam Speaker, from the behaviour of the Chief Secretary, ascribing his own skewed interpretation to the consultative process, that the Chief Secretary does not have a proper understanding of the phrase “designated officer”, the meaning of the phrase “subject to”, and the words “selection” and “appointment”. In thoroughly disregarding or misinterpreting these words and phrases, the Chief Secretary has been driven to operate in the realm of conspiracy theories which seek to implicate the Prime Minister in a fleet of wrongdoing or suspicion for which the record will show there is absolutely no basis once a clear understanding of the law is invoked.

The following allegations have been made and put unchallenged in the Tobago House of Assembly’s record by the Chief Secretary. He alleged that in February 2022, the Prime Minister appointed Ms. Ethlyn John as acting Chief Administrator without consulting the Chief Secretary in violation of the THA Act. At the onset it must be established that the Prime Minister has no power to appoint that officer, such is the sole responsibility of the independent Public Service Commission, who in doing so, is required by law to alert and inform the Prime Minister for certain conditions to be met. He quoted liberally from his letter of March 10, 2022 to the Prime Minister, but was deliberately silent on the existence of a letter to him from the Prime Minister of March 3rd, 2022, where the consultative process was initiated.

The last line of that letter states that—and I quote, Madam Speaker, from the letter:

In accordance with the provision of subsection (4) of section 71 of the Tobago House of Assembly Act, Chap. 25:03, I wish to consult with you on the above-mentioned appointment.
That is the letter from the Prime Minister to the Chief Secretary, which played no part in his carryings-on. My letter for March 3rd, 2022, to the Chief Secretary to initiate the consultative process was an immediate response following the notification on March 2nd, 2022, from the Public Service Commission of their selection of a designated officer. Madam Speaker, this should make it quite clear that as Prime Minister there was no action or intention on my part to do anything other than responding, according to law, in the most expeditious manner. I responded on the same day that I was required.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: One could easily be led to conclude that the Chief Secretary omitted to mention the existence of this particular piece of correspondence from the Prime Minister to him because it was inconvenient to the case he wanted to make about satanic behaviour on the part of the Prime Minister and disrespect to his office and the THA in general.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: Madam Speaker—

Dr. Moonilal: [Inaudible]

Hon. Dr. K. Rowley: Madam Speaker, I seek your protection from the Member for Oropouche West. I would like to speak in silence, please.

Mrs. Robinson-Regis: East.

Hon. Dr. K. Rowley: East. Sorry.

Madam Speaker: Okay. So, I ask all Members to observe Standing Order 53. The Prime Minister would be heard in silence. Prime Minister.

Hon. Dr. K. Rowley: Thank you, Madam Speaker. The fact that the designated officer at the time attempted to assume duty before the actual appointment was finalized was unknown to me. That office had participated in an unauthorized
handover before an actual appointment was made and to which the Chief Secretary quite properly objected. This was rectified by the Permanent Secretary in the Office of the Prime Minister by withdrawing the unauthorized officer once that development was made known to him as head of the Public Service. The situation was remedied by the acceptance of the Chief Secretary after conversation with the Prime Minister and the issuance of the requisite appointment letter by the Public Service Commission.

So contrary to what the Chief Secretary is now saying, no willful disregard was initiated or supported by the Prime Minister or the Office of the Prime Minister. The raising of this matter now in his season of despair and the attaching of sinister ulterior motives, such as introduced by the Chief Secretary in the Assembly on June 22, 2023, is more than unfortunate. Madam Speaker, it is disturbing.

**Hon. Members:** [Desk thumping]

**Hon. Dr. K. Rowley:** With respect to the accusation that a second instance of “no consultation, disregard and disrespect on the part of the Prime Minister” was imminent along with the development of the absence of a Chief Administrator, the Chief Secretary continues to misrepresent the role of the Prime Minister. Even as he was properly advised by the Director of Public Administration—the office of the DPA—that the Commission—I am quoting here, Madam Speaker, from the DPA’s letter:

…the Commission had previously appointed an officer to act as the Chief Administrator from May 17th, 2023…

And I quote again:

…subject to consultation as provided for in the Constitution.

And, Madam Speaker, I want to repeat that. The DPA advising the Chief Secretary
that the process is that the person—the Chief Administrator is being appointed to act by the Commission:

…subject to the consultation as provided in the Constitution.

The Chief Secretary continues to believe that no officer should be designated by the public service without prior consultation with the Chief Secretary. In fact, Madam Speaker, it is the Public Service Commission’s action of identifying and designating the appropriate officer for consideration for an appointment that triggers that consultative process between the Prime Minister and the Chief Secretary.

In his haste to make damaging allegations against all comers, particularly the Prime Minister, the Chief Secretary is blinded to his own shortcomings which results in misleading of the population of Tobago and, by extension, Trinidad and Tobago.

2.00 p.m.

The Acting Chief Administrator, Ms Ethlyn John, retired on May 17th, 2023, creating a vacancy in the Tobago House of Assembly to be filled by a designated officer to be appointed by the Public Service Commission only after the process is triggered by the head of the Public Service Commission.

The reminder correspondence on this issue was circulated between the outgoing Chief Administrator and the head of the Public Service. This triggered communication between the head of the Public Service and the Public Service Commission. It also attracted the attention of the Chief Secretary, who wrote in anticipation of selection and consultation taking place.

However, once again, the Chief Secretary in his intervention, disregards the fact that a designated officer is not an appointed officer until an appointment is made, and the Prime Minister is not brought into the process until such designated
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officer is identified by the Public Service Commission.

Madam Speaker, additionally it is the identification of the designated officer that requires the Commission, in moving towards an appointment as required by law to seek a “no objection” from the Prime Minister. On receiving this notification from the Commission, the Prime Minister is required to consult with the Chief Secretary before advising the Commission of the status of the designated officer. A “no objection” would see the Commission’s recommendation moving to an appointment being made. The corollary is that if, only for good lawful reason, the Prime Minister offers an objection, the Commission must cease the process and advance another officer for consideration.

Correspondence from the Public Service Commission dated May 16\textsuperscript{th}, 2023, and received by the Office of the Prime Minister the next day on May 17, 2023, indicated that Mr Ritchie Toppin, the Permanent Secretary at the Office of the Prime Minister, CAST, had been designated as the officer to act as the Chief Administrator at the THA. This letter would have ordinarily triggered the consultation process between the Prime Minister and the Chief Secretary before the appointment was formalized. Madam Speaker, however, this letter was never advanced to me as Prime Minister, because the Permanent Secretary received a letter of the same date, May 17\textsuperscript{th}, from the outgoing Chief Administrator, THA, informing him as head of the public service that a number of allegations of misconduct have been made against the designated officer, Mr Toppin.

The Public Service Commission, being so advised, immediately withdrew its letter of May 16\textsuperscript{th}, which advanced Mr. Toppin for consideration to the position of Acting Chief Administrator at the Tobago House of Assembly. It is interesting to note that I was not aware of the letters passing between public officers when I met with the Chief Secretary in Tobago.
A letter dated May 15th from the Chief Secretary on the matter of the appointment and consultation process was received at my office on May 16th. We also communicated cordially by phone and subsequently met on May 22nd in Tobago. It is at this juncture that I should point out that quite separate and apart from any of these proceedings requiring my involvement, I sought in my normal duties on that said occasion, to meet with the Chief Secretary to discuss a development plan for Tobago which was to involve the THA with the support of the Central Government. During this meeting, the Chief Secretary raised the matter of his preference for the officer that was mentioned in his letter of May 15th.

Not knowing about the public service issues surrounding the withdrawal of the Public Service Commission’s letter, I gave an undertaking to support the officer as advanced by the Chief Secretary. That was the settled outcome. What I did not know then is that there was an interdiction of the Permanent Secretary at CAST arising out of the proceeds of an audit, which was undertaken and spoken about quite frequently and passionately by the Chief Secretary himself. I also subsequently found out that a series of correspondence between the head of the Public Service, Chief Administrator, and the Permanent Secretary at CAST on this subject of the audit, was taking place from as early as November 2022. The letters of November 16th, November 28th and December 1st. These being routine public service matters, the Prime Minister was in no way involved and therefore could not influence the decisions in any person’s favour, public officer or contractor, as recklessly stated by the Chief Secretary.

The outcome of these exchanges resulted in the suspension of the designated officer, and the creation of the absence of a Chief Administrator, because the Commission had to redo its selection process, but was delayed in advancing this action due to being inquorate, a situation which was only rectified by June 12th.
I want to make it abundantly clear, Madam Speaker, that contrary to statements, insults, accusations and insinuations made by the Chief Secretary, that neither I nor my office has expressed any interest whatsoever in obtaining his audit report, for pleasure or for nefarious purposes as he described, namely, and I quote, “to assist friends of the Prime Minister”, who the Chief Secretary accuses of criminal conduct.

Madam Speaker, at no time during any of our discussions, face-to-face or otherwise, did I ever discuss, or request any information from, or copy of, the audit to which the Chief Secretary frequently speaks. To the best of my knowledge, no person in any of my offices or any officer reporting to me has ever sought to obtain information from the Chief Secretary about his forensic audit.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: Therefore, for the Chief Secretary to wantonly put on the record of the Tobago House of Assembly that he will not give a copy or provide any information about the audit to the Prime Minister because he is satisfied that such information is to be used by the Prime Minister to assist persons whom the Chief Secretary wishes to see face criminal charges and put behind bars, is scandalous in the extreme.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: The Chief Secretary stating that he is satisfied that the Prime Minister wishes to have this audit to provide technical escape loopholes for his friends, is a slander most grave.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: The issue of the Tobago House of Assembly being without a Chief Administrator for over a month is entirely an outcome that had as its origin the Commission’s designated officer having to be withdrawn, because that
officer’s name in the May 16th correspondence of the Commission was concurrently named by the THA in its correspondence on May 17th, advising the Commission that Mr Toppin was the subject of allegations of misconduct, and was being put on charges as effected in the letter on the Chief Administrator.

Madam Speaker, in dealing with whether the Chief Secretary knew or was party to the actions of the Chief Administrator as it relates to the disqualification of Mr. Toppin, Chief Secretary Augustine makes it quite clear that such matters lie entirely in the hands of the public servants within the realms of the public service. However, he is not prepared to accept that the Public Service matter of selecting a designated officer to become Chief Administrator is a matter that lies within the Public Service, and for which the Prime Minister may have little knowledge and certainly no involvement until a “no objection” is required.

For the Chief Secretary to conflate these public service actions with his pet conspiracy theories in his battles against contractors, and allow himself to put on the record in the Tobago House of Assembly that the Prime Minister has some sinister interest in the selection and promotion of Permanent Secretary Toppin, whom he accuses of wrongdoing on behalf of contractors, is yet another instance of the Chief Secretary using the Assembly Chamber to spread propaganda and slander against persons who have no recourse in that Chamber.

**Hon. Members:** [Desk thumping]

**Hon. Dr. K. Rowley:** Madam Speaker, it is to be noted that the people of Tobago were first brought into the picture of these developments when the Deputy Chief Secretary, I presume with the sanction of the Chief Secretary, who was missing at the time, addressed the media and made it quite clear that the absence of a Chief Administrator was as a result of Office of the Prime Minister not doing its job, and was deliberately interfering with and undermining the Tobago House of Assembly.
Nothing is further from the truth.

The fact is that the first time the Prime Minister had anything to respond to was when a letter dated June 21st, 2023, was issued to make an appointment to fill the vacancy created by the retirement of Ms. John on May 17th. It is to be remembered that the May 16th correspondence was the first attempt by the Commission to have a designated officer identified to fill the vacant post of Chief Administrator by May 17th, 2023. This effort failed because of the intervention of the Assembly by way of the outgoing Acting Chief Administrator reporting to the public service on the content of the audit. Incidentally, as stated before, this was done on May 17th, the last working day of the now retired Acting Chief Administrator.

In my capacity as Prime Minister, I received on June 22nd 2023 from the Public Service Commission, correspondence dated June 21st, advancing an officer to fill the vacancy of Chief Administrator. It should be noted that this is the first letter that I received from the Public Service Commission advising of the vacancy and its intention to fill it. This is the one that was withdrawn, Madam Speaker—not withdrawn. Having had prior agreement with the Chief Secretary on the said officer now designated, I replied on June 23rd, clearing the way for the Commission to finally appoint an Acting Chief Administrator for the Tobago House of Assembly. This appointment is being made in accordance with the provisions of subsection (3) of section 121 of the Constitution of the Republic of Trinidad and Tobago.

Madam Speaker, it is to be noted that contrary to the Chief Secretary’s fulminations and confused state of mind, there is no requirement for any consultation with the Chief Secretary before a designated officer is made known and available to the Prime Minister. It is only when the Prime Minister receives
correspondence identifying a designated officer that the law requires that the Prime Minister consult with the Chief Secretary prior to the appointment of the officer.

Madam Speaker, as a person of such vast experience and so familiar with the workings of the public service, you and many of my colleagues in this honourable House would know it is not uncommon, because of the exigencies of the situation, for officers to be made to assume responsibilities in acting appointments long before the authorizing paperwork is completed.

In 2015, as a new Prime Minister, I was required to sign off on mountains of files at the Prime Minister’s Office so that public officers in a variety of ranks and situations could be duly authorized and be appropriately paid for their assumptions and work done as far back as 2013 and 2014. This was completed without any fuss or fanfare. However in Tobago, one has to be particularly careful, since these exigencies may provide tinder for unnecessary conflagration if such opportunities and developments are deemed to be useful from time to time. The real danger is, Madam Speaker, that on every occasion that this happens, it diminishes us all a little bit more and presents a clear and present danger for discord to prosper.

2.15 p.m.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: Madam Speaker, as for me and my Government, we will follow the law.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: And, Madam Speaker, we will put the interest of the people of Tobago and the people of Trinidad first.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: Finally, Madam Speaker, so seriously do I take the slander and insinuations and allegations of the irresponsible Chief Secretary, that as I make
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this statement of clarification and rebuttal, I laid in this House today as a Paper, a comprehensive dossier of all the relevant correspondence in support of what I have just said here today.

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley: Madam Speaker, I go further. If it can be truthfully shown by any of the authorities that I have mentioned or impacted here today, that I have misled this House, I will immediately resign forthwith and hand over the reins to another, in the interest of peace, good order and progress—

Hon. Members: [Desk thumping]

Hon. Dr. K. Rowley:—of the people whom I have continued to serve to the best of my ability.

Madam Speaker, I thank you, and I thank all my colleagues—

Hon. Members: [Interruption]

Hon. Dr. K. Rowley: Madam Speaker—

Madam Speaker: I am sure people are familiar with the Standing Orders and people also know they are entitled to one question. So if Members will wait for the Prime Minister to finish in silence and then follow the Standing Orders. Prime Minister.

Hon. Dr. K. Rowley: Madam Speaker, I thank you, and I thank all my colleagues in this House for your patience and attention.

Hon. Members: [Desk thumping]

Madam Chairman: Member for Oropouche East.

Hon. Members: [Desk thumping]

Dr. Moonilal: Thank you very much, Madam Speaker. Madam Speaker, notwithstanding the optimistic end, could I ask the Prime Minister, Prime Minister, in light of the charges and counter-charges being laid in Scarborough and Port of
Spain, where office-holders are describing each other, one as satanic and one as a confused slanderer, does the Prime Minister believe in the national interest it is better for both parties to meet around a table with proper advice and sort out this matter—

**Hon. Members:** [Desk thumping]

**Dr. Moonilal:**—rather than using the Parliament to attack each other in such a manner? Would the Prime Minister agree a meeting of the parties with proper advice is in the national interest rather than these weekly bouts of attacking each other in such a derogatory manner?

**Hon. Members:** [Interruption]

**Hon. Dr. K. Rowley:** Madam Speaker, I have attacked no one. I have corrected the record and I have put it on the *Hansard* for all times.

**Hon. Members:** [Desk thumping]

**ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2023**

[Second Day]

*Order for resuming adjourned debate on question* [June 05, 2023]:

*Question again proposed.*

**Madam Speaker:** Attorney General.

**Hon. Members:** [Desk thumping]

**Madam Speaker:** Attorney General, you have 10 more minutes of full speaking time available to you.

**The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC):** Thank you very much, Madam Speaker. Madam Speaker, when I addressed this honourable House on the 5th of June, I had just concluded my review of the Bill, which is before this House, and the clauses of the Bill dealing with
initial hearings. I move now to clauses 20 through to 37 of the Bill which deals with sufficiency hearings under the fast-track trial law.

Madam Speaker, clause 20 of that Bill does a number of things, but in particular it removes, among others, references in subsections (6), (2), subsection (1), where the Director of Public Prosecutions would now be subject to a sufficiency hearing. As mentioned earlier in my presentation, this Bill proposes that the accused will be subject to a sufficiency hearing even in circumstances where the Director of Public Prosecutions files a voluntary bill of the indictment. The rationale, Madam Speaker, is balanced to ensure that while the section 90 powers of the DPP are upheld, sufficiency of evidence is still to be assessed.

Among other things, Madam Speaker, that part of the Bill that we speak of, clause 21, would insert after section 19 a new section 19A which will deal with witnesses and witness statements as it pertains to a sufficiency hearing. It now proposes that:

“The attendance of a witness shall not be required at a sufficiency hearing unless, on application, the Master makes an order for the attendance of a witness who filed an unsworn statement.”

This, Madam Speaker, is a pivotal change to the way pretrial proceedings are conducted, remembering throughout my earlier presentation and this presentation that we are about expediting the process of the pretrial phase of trials of accused persons. The addition of oral evidence by way of further evidence and cross-examination has been identified as a major cause for the protraction of preliminary enquiries which this Bill seeks to abolish.

“Clause 23 of the Bill would amend section 21 of the Act in subsection (2) by deleting”—certain—“paragraphs (c) and (d) and substituting new
paragraphs…to ensure that there is clarity in procedure as it relates to the admissibility of prosecution witness statements.”

Among other things, clause 23 will:

“...also delete paragraph (da) in section 21(4)…and substitute a new paragraph (da) in order to clarify the procedure as it relates to a statement made by a person who does not speak fluent English.”

Additionally, this clause would amend section 21(5) by repealing it, and amend section 21(8) by repealing and substituting a new section 21(8):

“...which pertains to a transcript of proceedings and evidence obtained under a treaty to be admissible as evidence at a sufficiency hearing.”

Madam Speaker:

“Clause 24 of the Bill would amend section 23 of the Act by deleting paragraph (b) and substituting a new paragraph (b)…”

—to clarify the procedure and:

“...to provide for the Criminal Procedure Act…”—relating— “...to orders under section 25, concerning a Master’s final decision at a sufficiency hearing.

Clause 25 of the Bill would amend section 24 of the Act by inserting in subsection (1)...the words ‘on the indictment’…”—which concerns—“….discharge of the accused. This clause...also repeal subsections (4) to (11) of section 24”—of the Act—“and substitute…”—it with new—“...subsections (4) to (6) in order to allow the Director of Public Prosecutions to appeal the decision of a Master if the former is of the opinion that the accused ought not to have been discharged…”

It also allows:

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“…for the appeal of a Master’s decision…to the Court of Appeal in accordance with 65C of the Supreme Court of Judicature Act.”

Then clauses 26, 27 and 28 through to 30 make for further substantive amendments, Madam Speaker, of the Act.

2.25 p.m.

Clause 31 of the Bill will amend section 27 of the—

[Device goes off]

Madam Speaker: Member, just a minute. Please leave the Chamber and get your device under control. Thank you. Attorney General.

Sen. The Hon. R. Armour SC: Thank you, Madam Speaker. Clause 31 of the Bill will amend section 27 of the Act by repealing section 27. This effectively removes Schedule VI matters which were exempted from discharge. This is better aligned as the indictment is now being filed at the beginning of the sufficiency hearing process, so there is no longer a need to have a schedule which exempts matters from discharge due to delayed filing of the indictment.

Clause 32 of the Bill will:

“…amend section 28 of the Act by…deleting paragraph (c) of section 28…inserting a new subsection (1A) to account for where a Master…”—is—“…referred an accused to a Judge for sentencing…”—following an early guilty plea—“…and the Director of Public Prosecutions is to be given notice of that referral.”

There are other substantial amendments that are proposed, Madam Speaker, to expedite the fast-track trial process in currency of the sufficiency hearing. Clause 36 of the Bill will allow, will amend section 29(2)(b) of the Act by allowing:

“…the oath of a credible witness, whose attendance is not reasonably
practicable as result of being out of Trinidad and Tobago, to be secured physically or by electronic means. The clause will also amend section 29 of the Act by repealing section 29(7).”

Then there is importantly, Madam Speaker, clause 39 of the Bill which will amend the Act by inserting after section 32A a new section 32B to deal with anatomization of documents for a variety of reasons, for example, the protection of witnesses. Importantly here, the original version of the document is always retained for court and internal purposes.

Madam Speaker:

“Clause 40 of the Bill would amend the Act…”—by amending—“…section 33(2) by deleting the words, ‘…neither the prosecutor nor the accused elects to have the case determined in accordance with this Act’ and substituting the words ‘no order is made in this section 32A’ in order to allow for savings under the Indictable Offences (Preliminary Enquiry) Act.

Clauses 41 through to 44, Madam Speaker, address the ability of the Chief Justice to produce practiced directions to make amendments to the Schedules.

And finally, clause 45 of the Bill, Madam Speaker, deals with consequential amendments as a result of the Act, namely the Summary Courts Act, Chap. 4:20, the Criminal Procedure Act, Chap. 12:02, the Criminal Procedure (Change of Venue) Rules, the Police Service and the Family and Children Division Act.

Madam Speaker, what is very important to appreciate about this Bill which is before this House, is that it complements a host of reforms which have been undertaken over the past eight years and work in tandem with those to reduce the delays associated with the pre-trial process in criminal matters. We can note some measures, backlog identification at all levels of the court and prosecutorial
division.

**Madam Speaker:** Attorney General, you have two minutes left.

**Sen. The Hon. R. Armour SC:** Thank you, Madam Speaker. The creation of divisions of court and a number of other significant amendments that have been passed by the Government including the creation of a public defender system and generally the implementation of a fully computerized case management structure.

May I indicate, Madam Speaker, as I close, that I will be moving an amendment to section 5 of the Bill which is the Act which is before this House to ensure that due process will be ensured in relation to search and seizure, so that by that amendment all persons whose premises are searched and seized, will be subject to the oath which the magistrate, the master will be required to take from the witness.

And may I say finally, Madam Speaker, that the object of this Bill even without requiring is a legitimate—it is legitimate in its aim, it is proportionate, and it is indeed necessary. And I look forward to hearing my learned colleagues’ contributions on this very important piece of legislation designed to enhance our criminal justice system to provide for a speedy and expeditious trial process. With respect, Madam Speaker, I beg to move.

**Hon. Members:** [Desk thumping]

*Question proposed.*

**Madam Speaker:** Member for Chaguanas West.

**Hon. Members:** [Desk thumping]

**Mr. Dinesh Rambally (Chaguanas West):** Thank you, Madam Speaker, for the opportunity to speak in this particular debate. Madam Speaker, as I start, I want to say that, conceptually and as a matter of principle, we on this side, we have no
difficulty with abolishing preliminary enquiries. We do appreciate the backlog. We do appreciate the delay in the administration and so as a matter of principle the concept of abolishing PIs is something that we would agree with.

But moving away from that overarching position, I want to say that when we get down into the amendments that are being proposed by way of this Bill, what we are seeing, Madam Speaker, and I say respectfully, but what we are seeing really is what I would describe as a rag bag. It is a rag bag of proposed amendments leading to uncertainty and confusion. What we are seeing, I know the hon. Attorney General spoke about clarity of procedure but we run the risk if we enforce these amendments that we will end up with a rag bag of legislative provisions which promote, as I said, confusion and uncertainty both of which are contrary to the robust running of the administration of justice and the justice system.

But why do I say something like that, Madam Speaker? Madam Speaker, if I was to start with just a definition which was identified by the hon. Attorney General when he was piloting the Bill and I go back to the first session of this Bill which was on the 5th of June, 2023 and we look at the Hansard. And, Madam Speaker, with your permission I will quote what the Attorney General had said, and this is what he said in relation to clause 4:

“Clause 4 of the Bill, Madam Speaker, importantly inserts definitions, among other definitions, and one or two of them are worth discussing. The term ‘appropriate adult’ is introduced because ‘appropriate adult’, when you read it in relation to the different legislation that this fast track law has to be read with, involves children and persons who fall within the brackets of age groups who will be referred to appropriate adults who are charged with
certain crimes, but we want to bring those trials to the earliest possible conclusion.”

That is the part of the Hansard that I am referring to. What is wrong with that, Madam Speaker, is that it shows from the outset that fundamentally even when you deal with definitions of very important provisions that the Attorney General is missing the mark. He is treating with “appropriate adult” as though that refers to children and certain vulnerable adults as having committed crimes and that is not what the role of the appropriate adult is. Now, I start with that and I want to show that as one, if I may say, one example as to why I started off by saying we are dealing a rag bag that could lead to uncertainty and confusion.

Madam Speaker, when we look at the “appropriate adult” definition and this is something that came up, Madam Speaker, the House may recall when we were debating the Evidence (Amdt.) Bill, I believe it was February 2022, that it is a matter which I actually spoke about in terms of the appropriate adult. This definition that is being proposed in this Act is equivalent, or, I should say, largely similar to what was put forward in the Evidence (Amdt.) Bill which is also to be replicated in the Children Act and amendment which was brought by way of Miscellaneous Provisions (Supreme Court of Judicature and Children), 2018.

And so, what the definition does is that, and I want to repeat here because it is very important. I repeat that, Madam Speaker, being a Commonwealth country and adopting a lot of our laws from England we followed something that is called PACE and that PACE for those who are not lawyers, that is really a significant advancement in law, in criminal law, in the UK. And what happened with that from 1984 is that you would have seen that PACE was pieces of legislation that was meant to carefully balance police powers against the rights of the person
engaged in the criminal justice system, so such as witnesses, suspects and accused persons.

So what you have in that balancing act, Madam Speaker, is that, following PACE they introduced something called the “appropriate adult” and I am referring to now the UK, the United Kingdom. The appropriate adult is practically an institution, Madam Speaker, in its own right. They have appropriate adult schemes. They have a National Appropriate Adult Network. You have guidance given as to what an appropriate adult ought to do. Until this day, Madam Speaker, I am seeing appropriate adult—this would be the third debate that I am aware of where we are speaking about an appropriate adult whilst you have, who is an appropriate adult, you do not have any duties defined under the different pieces of legislation.

So what I would say, Madam Speaker, is that, when we talk about even the incorporation in this Bill of appropriate adult what we see in contrast to what has been put forward in the UK is that we are straying very far and far away from stating the duties, roles and functions of the appropriate adult. And this again, Madam Speaker, whilst I have spoken about it in detail in the Evidence (Amdt.) Bill and which became law in February 2022, I will repeat, it betrays a lack of foresight. Just merely stating who is an appropriate adult, Madam Speaker, but going no further as to what such a person ought to do is something that it can create uncertainty. Uncertainty in an important Bill like this will cause confusion. So, I say that it must be precisely defined.

Now the reason for having these things properly defined, Madam Speaker, is that if we are talking about the interest of the administration of justice, certainty is something that we must have. And when I go to the actual provision itself,
appropriate adults as being suggested here has the meaning assigned in section 3 of the Children Act.

Now, Madam Speaker, what we see is that, appropriate adult will include social worker, a welfare worker and a JP. And what I would say at the outset is that this provision without proper definition goes contrary to the Judges’ Rules. What we experience now—and I know that we have Member for Port of Spain South and he will speak to this as well I am sure, but what you have now is that, if you have a person who being detained, you may have questioning which will take place of that person whether a charge is laid or not. So you can have questioning before, and you could even have questioning after being charged.

What is the importance of it is that you have the Judges’ Rules and under that, Madam Speaker, there is a rule one caution. Essentially, we say that what you have is you can the right to remain silent. What is taking place, Madam Speaker, in the justice system is that, despite an accused adopting the position of them wanting to remain silent, as it stands now in the law, you still have a situation with the JP can be brought in the police officers and then questions are put to that accused person. And if not, as I indicated earlier, even if they are not charged and they are just simply being detained and interrogated, even in such a situation, what you have is, they will bring in the JP and the JP now is there for purpose of questions being administered to the person who is being detained. And that runs contrary to the Judges’ Rules. But what is the importance of that down the road, Madam Speaker, is that you then have issues arising as to the admissibility of the evidence. So that is in relation to what obtains now in relation to JPs.

2.40 p.m.

This provision, Madam Speaker, now encompasses more persons other than
the JP, as I indicated before, it will now include, you have the welfare worker, you have the social worker, and other persons as well. So you are expanding the group of persons who are now going to be approached for the purpose of sitting in in these interviews, and I am saying without proper definition of what their duties are you can see a replica of what obtains now in relation to the JP to extend to this wider base of persons, this wider category of persons. And remember at the end of the day, Madam Speaker, when we talk about all of these provisions, clarity in procedure is one thing but we must have fairness and the fairness must extend to the accused. So it is very important that when we talk about the protection of law it will no longer exist in the absence of proper definitions, you will have more avenues being accessed by the police officers whereby they can put things to the person who is being detained or accused following a formal charge being laid.

So I say, Madam Speaker, that an appropriate adult is new, and I mean in our jurisdiction is new to the criminal law, so it is important that we take into account the duties, we define properly what the duties are of the appropriate—of the adult. So, Madam Speaker, on that point that is the example that I used to cite why it is I say that you can have uncertainty leading to confusion. So, Madam Speaker, I say that—the second point I want to move on to is that, and I thank the Attorney General for citing statistics, because it is important for something as important as this Bill that we see in the context as presented on our statistics. So, according to the Attorney General, and not to recite or to rehash what has been said by him, we are saying that we have 37,933 matters pending—these are indictable matters—before our courts, and I think that was cited as at March 2023. And according to the Attorney General, in our system we are looking at 37,933 matters, criminal prosecution, criminal matters, plus 8,835 indictable offences filed
annually. So you can imagine this is 37 plus—almost 38,000 plus 9,000 and that takes you up to 47,000 matters existing in a system, and that is increasing per annum by almost 9,000 matters per annum.

So I know that the Attorney General, you know, heralded this piece of legislation as the fast-track trial law. The question I want to get into now is that, where does the infrastructure largely come from to operate this piece of legislation? So if we were to implement these amendments to the indictable proceedings laws where does the infrastructure come to support it? And, Madam Speaker, if we are talking about a system we are talking about—when we talk about indictable offences we are talking about serious crimes, murders, we are talking about paper committals, we hear the term sufficiency hearings.

So you are dealing with everything largely, Madam Speaker, by way of paper. Everything is going to be codified up front in paper and you are going to have a sufficiency hearing where they will determine whether prima facie case has been made out, and if so then it is going to go in the system towards a criminal trial, and if not well it will be thrown out. If everything is going to be by paper who are the persons who going to be codifying the necessary ingredients of the offence? Who are the persons who are going to be largely doing the drafting? And it comes down simply to, Madam Speaker, the Office of the DPP. Yes, you will have more weight being placed on the criminal masters, the masters that sit in the criminal jurisdiction to adjudicate, but I am talking about before it even gets to the stage of adjudication. You are going to have the police officers, one, but, two, mainly the Office of the DPP.

And, Madam Speaker, I think that it is somewhat disingenuous to simply say that you are piloting a Bill, and this is not directed individually to the Attorney
General, I am saying that it is disingenuous if you are piloting a Bill like this and you are talking about the success of this proposed system when you do not give proper credence to those who will have to be the infrastructure and the support for this implementation that we are embarking upon. And why do I say that, Madam Speaker? And I think it is critical that I cite a couple matters in relation to the Office of the DPP, because I think if you are coming here to pilot this you must have some authority to do so, whether it be moral or legal or otherwise. And I am saying, Madam Speaker, that we have, as at the 11th of March, 2023, and with your permission, I refer to an article published in the Newsday. The title of the article is: “AG rejects DPP’s call for more staff, claims department is under-performing”.

And, Madam Speaker, without going too much into the details what it simply says is that the:

“Attorney General Reginald Armour says the call by Director of Public Prosecutions Roger Gaspard for more staff ‘is an unsatisfactory explanation for under-performance of the DPP.’”

This is March 2023, we are here in June 2023. It goes on to quote:

“That is an unsatisfactory explanation for under-performance of the DPP. Other critical arms of the criminal justice system are also operating below capacity, yet far more effectively. We need to critically examine what are the systemic issues that are hampering the performance of the DPP’s office”.

These are the words of the Attorney General that are quoted in this article.

Madam Speaker, this did not rest there. This was the 11th of March, an article. And then you have by the 15th March, 2023 I go to another article which was reported in the Newsday, and other newspapers carried it as well, but I have
singled out these because it was quickly thrown up on research:

“DPP’s lawyers want apology for AG’s criticisms”.

Madam Speaker, following the Attorney General’s disposition, his assessment of the DPP’s office, state attorneys at the Office of the DPP sent the Attorney General a two-page letter delivered to the secretary shortly following his comments demanding that he apologize to the Office of the DPP. Madam Speaker, what is the relevance of this? You have 16 attorneys from the DPP office that are demanding an apology for making that statement, Madam Speaker. And, I say that we on this side, we always stand on the side of the hardworking public servants, on the side of the rights of citizens, and I say that today we want to call upon the Attorney General, if he intends to pursue this piece of legislation, that he should outright offer an unequivocal apology to the Office of the DPP.

**Hon. Members:** [Desk thumping]

**Mr. D. Rambally:** Madam Speaker, it is not us alone who have been saying that, you know, that this should be done. There are other persons in the public domain that are of this view as well. But, on the point of the infrastructure—and I move away from the apology—we even had the Law Association come out during that time and say that they deem it—matters have reached a critical stage in the Office of the DPP in light of the shortage of resources at his office.

So in addressing this important Bill, one would have thought that such strong words being uttered by the Attorney General that we would have heard something today, or certainly in the first session when this Bill was being piloted as to how it is we can expect that that office will be equipped sufficiently to treat with these amendments because we are going fully paper and front-loaded in terms of abolishing the preliminary enquiries. So, Madam Speaker, I leave that point
there and I hope that the Attorney General offers the apology.

Now, Madam Speaker, I move on to treat with some of the clauses of the Bill, and when we look at—I have dealt with the definition of the “appropriate adults”, and when we look at the other matters arising under these proposed amendments in the definition, Madam Speaker, what I want to say is that when we look at the use of the non-writable— So what you have is a definition now for audio recording, and what it says, Madam Speaker, is that the use of non-re-writable in this definition of “audio recording”, Madam Speaker, what it does is that it creates an unnecessary bar to the use of video evidence. Because when you come later in the definition section and you see a very expansive—you can anticipate an expansive definition under video recording itself. But when you look at this one for audio recording what you see is that if a video is recorded on a medium that is re-writable—Madam Speaker, we have attorneys on both sides of the House, you can anticipate that a good defence attorney will argue that it does not meet the standard required for the video evidence to be admissible.

So the question is, what is the intention of that definition? Is it that we really do not want any medium that is other than on non-re-writable medium to be admitted or to be debarred?—because what you can have is that you will see, for example, Madam Speaker, the best evidence rule for those who may be familiar with it is that that is what will be put forward, admissible before a court of law. So you may have the voice of a person, an accused person on probably a cell phone, and that voice now is on a re-writable medium, that is the best evidence that would probably be available to sustain the charges, and to be prosecuted. And so if it is the voice of the accused person you would want to know that that can be admissible. Under this definition it will not be, because it is on a medium that is
re-writable. So, we have to be clear what it is we anticipate, and we may have to restructure that particular definition.

So, Madam Speaker, that is in relation to the audio recording. Madam Speaker, bearing in mind that I have started off by saying that you have uncertainty and that uncertainty that I was referring to as overarching points to be debated in the Bill it can lead to confusion, so I, just for the record, Madam Speaker, the *Hansard* that is:

“‘audio recording’ means an audio recording on a non-re-writable recording medium identifying the persons speaking”.

So I do not repeat my point, Madam Speaker. We have to be clear exactly what evidence we want to be captured under this, and if we know what evidence we want to capture, the question is whether it will be admissible by virtue of this definition, audio recording. So, Madam Speaker, that is in relation to the audio recording.

Madam Speaker, when we go along, and I take some of the clauses in order, and when we look at, for example, Madam Speaker, I looked at the warrant of apprehension versus warrant of arrest. Now what you have—oh, Madam Speaker, I should take it in order of the Bill. When we look at, this is section 4 of the Act, and it would therefore be clause 5 of the Bill, where they are seeking to amend section 4 of the Act. Madam Speaker, when we look at this, in criminal law we have instances of what we would call joint enterprise. So you can have persons who are jointly charged and you can have offences that you would want to prosecute by way of joint enterprise. So what you have now being proposed under section 4 is:

“A Magistrate shall not determine that a case is to be determined in
accordance with this Act unless the Magistrate…”

—and so they speak of subsection:

“(a) in the case of a joint trial, so determines in respect of all accused; and

(b) in a case where two or more charges are to be tried together, so determines in respect of all charges”.

So what is critical there, Madam Speaker, is that when you are talking about a joint trial they are saying that the magistrate must so determine in respect of all accused, and where you have two or more charges are to be tried together they are saying that the magistrate must so determine in respect of all charges.

What I would say to that, Madam Speaker, is that the clause is unclear as to joint trials. “In the case of a joint trial”, where we say “determines in respect of all accused”, does this means if the case is made out against one accused and not the others a prima facie case is not made out at all? The proposed amendment does not factor in that in some instances there may be evidence against one co-accused and not the other. So therefore you may want to proceed against that one that you have the elements of the offence, the ingredients of the offence having been made out, and then discharging the other person.

So the Bill is unclear as to how the magistrate is to proceed in cases of joint enterprise and where there are multiple charges. And, if I may be permitted, Madam Speaker, just to attempt to break it down, you may have the evidence against two persons charged jointly. The legislation, I am saying, is silent as to what happens if the evidence against one person is weak and therefore not worth prosecuting, does not give the master the power to commit on the merits of one individual case. And when we talk about joint enterprise it therefore suggests that

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you have to find a prima facie case against everyone charged as opposed to you can proceed against one.

So we should have in this proposed amendment where it says, categorically, the evidence that ought to be considered and that it can apply to an individual and therefore not everybody has to be found, who are jointly charged, be found to be making out the case and sufficient evidence before the charge can go forward.

2.55 p.m.

The other part about this and the other side of this, Madam Speaker, is that in our jurisdiction we still have the legal right to elect to be tried separately. So even if you are charged jointly, under our laws you have the right to elect to be tried separately. And therefore, that must be made clear in terms of this particular provision, this amendment. Again, I say that is clause 5 of the Bill, which would be seeking to amend section 4 of the Act. So I raise that, Madam Speaker. That is something that I deem to be particularly important.

When we move away from section 4 and then we go to section 5, I believe in the Attorney General’s conclusion in piloting this Bill that the hon. Attorney General mentioned that we will probably see, or we would see some amendments to section 5 to ensure that it treats with due process properly. I do not know what that amendment is but what I would say is that based on what the Bill has proposed, my concerns, Madam Speaker—very simple. When you look at section 5 and the amendments that is being proposed—sorry, so that would be clause 7 of the Bill and that would be in relation to section 5 of the Act. And you have amendments speaking to:

“…search warrants…”—being—“issued under…”—the—“…Act for the purpose of obtaining communications data, stored communication or stored
data…”—and the reference is made to the Interception of Communications Act to apply.

And they speak about the:

“…search warrant”—being—“issued by the Master…”—and—

“…search warrant issued by a person referred to in section 10 who exercises concurrent jurisdiction…”

I believe the concurrent jurisdiction with the master at section 10 is the registrar.

But what is important with this particular provision is that, Madam Speaker, under our common law, in the criminal arena, what you have is you have a system where you will seek warrants to do different things. As it stands now you can go to the JP. The Justice of the Peace will be in a position to take whatever affidavit, evidence, is put forward before the JP, whatever evidence is put on oath. Sometimes you can anticipate that part is prepared on oath in writing and in the form of an affidavit, whereas they may amplify on oath certain matters orally in order to secure warrants. When you get the warrant, Madam Speaker, you can have warrants which are—it ought to be applicable to the circumstances of the case. And when I say applicable, I mean it must be proportionate to what the warrant is actually seeking. So you must not have a situation or an opening or uncertainty where the issuance of a warrant can be sought at large and therefore, it is disproportionate to the rights of an accused person.

And what do I mean by that, Madam Speaker? You have warrants which you can secure to seize devices. So you can actually get a warrant to seize somebody’s phone, somebody’s cellphone. If you want to get a warrant—if you want to now get into the information stored on that phone, that is something that is subjected to a separate warrant. So you would have to satisfy that you are seeking
the physical obtaining of the phone, but you are also seeking to interrogate the contents of the phone, and therefore that is a subject of another warrant. And if even, Madam Speaker, you are contemplating that the issue can arise that you also want to get the password—because sometimes to get into the devices, depending on the device, there are passwords so you have to get key passwords. So the common law recognizes, Madam Speaker, that you can actually secure a warrant to get that password and certain conditions are put forward.

These, Madam Speaker, are not provisions in our common law that are to be trifled with. These are provisions which are there because it must not have a situation arising where you secure a warrant which is more intrusive than is necessary. So you do not go for draconian measures to secure information which you can otherwise secure by something less intrusive. Why do I say that, Madam Speaker, is that when we look at section 5, clause 6—

Madam Speaker: Hon. Member, you have about 15 more seconds left of your original speaking time, you are entitled to 15 more minutes to complete your contribution if you wish.

Mr. D. Rambally: Thank you, Madam Speaker. I would please seek permission to exercise the additional 15 minutes.

Madam Speaker: You may proceed.

Mr. D. Rambally: So, Madam Speaker, I say that because what you have, you do have a Privy Council case of Brandt v the Commissioner of Police arising out of proceedings in Monserrat. The citation is 2021, UKPC 12, and that is a matter where they went extensively into what the warrants can actually do. There is also a local matter of Adrian Scoon versus the police, and that is a matter which I know Members of this House will be familiar with. I see the Member for San Fernando
West is here and he would be familiar with that matter. That is a matter in which the police were seeking warrants to be able to access devices and they wanted to get the password of one Mr. Scoon who is someone who was operating a party boat, and there is quite a history to that, Madam Speaker.

So, Madam Speaker, what I say is that we should factor in, whilst the common law in different jurisdictions you can see the development of protection for the accused in terms of obtaining warrants, we have the opportunity to codify it in our legislation here and to make the distinctions, and I think we should do that if we are moving forward with this proposed Bill.

Madam Speaker, I go to next—that would deal with section 5 of the Act, clause 6 of our present Bill. I would go to next section 6 of the Act and that would now relate to clause 10 of our Bill, and then we would see that we have certain amendments that are being made to section 6 of the Act. What section 6 proposes, Madam Speaker, is that you can have—where:

“A master, if he—or she—is satisfied that there are grounds for believing that an indictable offence has been committed, issue a summons or an arrest warrant to compel the appearance of the accused before him.”

What is troubling with this provision, Madam Speaker, is that the definition that is being provided here, the ground that is being provided here for the master issuing a summons or an arrest warrant to compel simply the appearance of the accused before the judicial officer, it simply says if the master is satisfied that there are grounds for believing that the offence has been committed.

And, Madam Speaker, when I looked back, I saw that my colleague, Member for Barataria/San Juan, had raised this in another debate, in another place, and I would just find quickly the reference where that was raised. Because what is
important was that the Member had raised that you should not have something as simple as saying that there are grounds for believing. And so that is something, Madam Speaker—if I can get my note—it is certainly too low a threshold to allow the master to be able to issue something as serious as a summons to compel arrest or a warrant to procure someone to attend before the court. And I say that, Madam Speaker, because it is very important. These are all going to give the officers powers to compel persons to come before the court and I think we need to get that definition right.

Madam Speaker, we have a situation where it ought to be that you are reasonably satisfied or that you have reasonable grounds, simply saying that you have a situation and you are going to utilize the test where there are grounds for believing is too low a threshold. And why I raise it, Madam Speaker, is that this was raised in other—if I do get my notes on it, Madam Speaker, I will return to it, but I know that it was raised before, it was possibly a joint select committee when we had the undertaking of the Member for San Fernando West then that it would be corrected so that we would have the inclusion of reasonable grounds for believing. That now elevates the test, Madam Speaker, and we need to be careful because we are talking about a summons for—or an arrest warrant being issued against someone.

So, Madam Speaker, I say that very quickly in passing because we need to get the terminology and we need to get these procedures right. So, Madam Speaker, that is in relation to the arrest warrants.

One of the things I want to mention as well is that what you have is we must make provision in the law, and this is something that I am not seeing in this Act; provision whereby the proportionality test is something that you must not be left to
ponder. It must be evident on the language that the law provides. And so this is something that I am not satisfied that we have sufficient protection when it is you want to compel someone just simply saying that you have grounds for believing. So, Madam Speaker, I say that.

I turn to section 4 of the Act whereby we are seeking to amend that—to include the term that the magistrate:

“in the interest of justice and fairness to the parties”
—can do certain things. And what that means is that it would be too wide for modern legislative drafting to simply say that you want to have a provision that the magistrate shall determine whether a case is to be determined in accordance with the Act, and you have just this general subheading:

“in the interest of justice and fairness to the parties.”

We need to give some direction as to how an exercise of discretion should be employed under this particular section. I refer to specifically section 4 of the Act, the proposed amendment will be a subsection (2). And what that means is that we are being too wide. Where there are two accused persons, you have a situation where the court is required to look at the evidence of each accused person, you want to determine if in the interest of justice and fairness to the parties we should give some guidance on what subheadings can apply under that. We are dealing with modern legislative drafting in the criminal arena and I am saying that if we are moving forward, we should get these things sorted out now.

Madam Speaker, the other point I want to turn to quickly is that, for example, when we look at the—I have dealt with the joint trials. When you look at, for example, the proposed amendment of section 6, where a complaint is made and the accused is a child, the entire process does not accord with the spirit of the
Children’s Authority Act. Because what you expect is this multi-agency protocol and the interagency protocols to kick in, and this has been adopted by Trinidad and Tobago Police Service and the Children’s Authority. So what you expect here, Madam Speaker, is that you would see something in the Bill that would point to the diversion techniques for a child who is charged with, for example, a summary offence.

So what obtains in practice now, Madam Speaker, is that if a child is charged—it could be probably in Arima, it could be in Diego Martin, it could be different parts, Chaguanas. So you would have that when they are picked up by the police and they are to be charged, they are not necessarily taken to the nearest or the closest police station, they are taken before—we have processing centres. Right now, to my knowledge, we only have two processing centres for the children: one in Oropouche and one in St. Joseph. At these processing centres, what is expected, Madam Speaker, is that a different procedure—the children are treated differently and they are then taken before the Children Court and they are monitored. So we have to be clear in this Bill that those diversion techniques that we would see applying under the Children Authority’s Act and otherwise, that they are also replicated here and it is clear that anybody who is charged, a child, that they will have access to these diversion techniques that we are seeing.

And what does division techniques mean, Madam Speaker? Very simply, they may not necessarily have to go through the formal processes and the extent of the full brunt of the law, but they are somehow counselled and they are monitored in a manner that they would not necessarily have to carry the weight of the law on their shoulders. But yet they would be monitored so that they are expected to abide by the law.
So I say that because when we look at the definition section again and we see the use of prison to include “rehabilitation centres”, Madam Speaker, it goes against the grain of the United Nation’s convention on human rights, and particularly the rights of the child, where it clearly contemplates that we do not use, for example, terminology like “prison” when we are dealing with children. Yet in this we are seeing “prison” in this Act to include the “rehabilitation centres”. What is the reason for including this within the definition, Madam Speaker? I do not know but it does not accord with the Children’s Authority Act.

3.10 p.m.

A child is not to be kept in a prison and I do not think that this Act is saying it, but I am saying terminology-wise we would not have on the books that a child is to be even referred to as being kept in a prison. They are expected under law to be kept in a rehabilitation centre. So why are we changing definitions and we are going against the spirit of the law that we are already practicing under the Children’s Authority Act? And the case on that point is well-known, it is Brian Seepersad, a Privy Council case.

Madam Speaker, we have to take into account police prosecutors versus the DPP’s office. This Act contemplates the use of the police prosecutors. There has been a movement, so to speak, Madam Speaker, against the use of police officers as prosecutors, largely because there is not anything personal against the police officers prosecuting, but largely because you expect that when you are dealing with the higher end or the more serious offences that they may not be particularly legally trained even if some of them may now have their law degree. It is something that whether they have actually practiced as opposed to those who are actually within the bosom of the DPP’s office. So they do not have the experience
to prosecute the more complex matters, and when you have matters involving children you have to have specialized knowledge as to how to treat with them.

So I say this because what you will now have, is that you are putting them in the hot seat as we say, Madam Speaker. We are talking about sufficiency hearings, more work. We are talking about more serious crime, murders, everything is by paper. So we are saying that we should consider whether we are going in this direction or whether we want to really ramp up the resources in the DPP’s office. Give them what they need, have the supporting staff, have the supporting counsel advocates and, therefore, they are the ones who will be able to treat with this situation. Right now, Madam Speaker, we encounter in the courts a situation where, for example, you have officers who are the prosecutors, and when they go to court, if the virtual complainant being a fellow police officer does not come to court, there is nothing that can actually be done and cases are actually being thrown out because of that simple situation where an officer fails to appear. And so, Madam Speaker, the difference between that and the DPP’s office is that there is some level of the DPP’s office having some authority where they can exercise, and on the instructions of the DPP’s lawyers you will see these officers coming to court. If they miss one, you can expect that they come on the second occasion.

So, Madam Speaker, all of these things are practical permutations which I do not see being reflected or considered in the proposed Bill, the amendments that we are seeing being proposed today. And I want to say that it is something that we should take on board, and we should be clear if we are going to implement the system which is going to outright get rid of preliminary enquiries. We want to know that the system which we are adopting—preliminary enquiries as it stands now, it is causing backlog of cases. You want to get rid of it because you are
saying that the system that will now replace it will now speed up the administration of justice. We will clear up the backlog. It means that we have to be clear that the processes will not just simply create a bottleneck—remove bottlenecks from where it exists in the present system but put it further down the road in the new system and, therefore, you do not want to have a situation like that arising. Madam Speaker, how much time I have remaining please?

Madam Speaker: You have about one minute and 30 seconds.

Mr. D. Rambally: Thank you, Madam Speaker. Madam Speaker, I want to say that there are reports and one of the citations that I referred to earlier—let me just quickly say the Newsday article and this is one which is entitled: “Court dismisses protest charges against Fuad Abu Bakr”.

I am trying to find the actual date of this article, but it a Newsday article and it spoke about of absences of police officers who were to appear before court and that is what their failure caused the charges to be dismissed.

Madam Speaker, in concluding in the short time that I have, what I would want to say, Madam Speaker, is that if we are moving forward, we should have where after all that we say here is said and done, more is actually done. And I want to say that if we are talking about moving forward you will hear problems that we still encounter where police stations are missing diaries, police officers are taking notes in their phones. All of these problems still plague us. We need to move to a system where you can have support from proper technologically advanced systems, devices. The police officers must be equipped in a manner that they can actually promote the spirit of what is being proposed here by way of the amendments, and DNA analysis takes centre stage.

So I think that, Madam Speaker, with these few words I would want to say
that, as I started off, conceptually and as a matter of principle we would support the abolition of preliminary enquiry, but we do not want to jump from the frying pan into the fire. Thank you, Madam Speaker.

**Hon. Members:** *[Desk thumping]*

**Madam Speaker**: Member for San Fernando West.

**The Minister of Rural Development and Local Government (Hon. Faris Al-Rawi)**: Thank you, Madam Speaker. Madam Speaker, I rise to join in supporting this Bill. I wish to commend the hon. Attorney General for an excellent pilot and for putting things into the context that we are to consider. Madam Speaker, we are here, as the Parliament, pursuant to the Constitution, Section 53, to make laws for the peace, order and good governance of Trinidad and Tobago. We propose today to make the final broad amendments required to the Administration of Justice (Indictable Proceedings) Act, sometimes refer to as AJIPA, specifically after having had a journey to get here and a context in which this happened.

Preliminary enquiries, Madam Speaker, have been around since 1917 in our laws, Chap 12:01. The very important law which runs alongside this used to be largely just the Criminal Procedure Act, that is, Chap. 12:02. But in arriving at today’s juncture, it is important to remember that the Government has spent eight years radically reforming the system in which this law operates. Now my learned colleague for Chaguanas West raised the question and he said—the hon Member asked: What were we going to do in terms of the administration and system of this law? In fact, he then went on, quite remarkably, to demand an apology from the hon. Attorney General in relation to the Office of the DPP, because so severe was his view about the system that the hon. Member, really being new to this House, perhaps has forgotten the history of his own party especially whilst in Government.
and I will come to that in a moment.

Madam Speaker, this Bill which amends the AJIPA, the Administration of Justice (Indictable Proceedings) Act, comes after we created divisions of court, specifically the children’s division, the criminal division which operates in a de facto civil division. We, of course, have the family division which is part of the children division in terms of legislation, but a separate administrative function. This law comes today after we passed the method and subsidiary legislation in the form of rules, Criminal Procedure Rules. This law, in answer to my colleague’s question about the system in which it is going to work, comes after we amended the law in relation to the selection of judges.

We as a Parliament amended the law such that judges can come from more than the Commonwealth. This law comes after we amended the Supreme Court of Judicature Act and we raised the number of judges in operation, moving from 36 to 64 in the High Court, and moving from 12 in the Court of Appeal to 15 in the Court of Appeal. This law comes after we amended the law to raise the age of retirement for judicial officers from 65 to 70. This law comes after we did the amendments to the children’s package, and I am laying this groundwork because it is going to come in direct answer to the submissions made by Chaguanas West.

So today we are reflecting upon a law to move away from a few very particular ills in the preliminary enquiry, Chap. 12:01 law. What is a preliminary enquiry? A preliminary enquiry is intended to achieve two purposes: one, to allow the accused the knowledge of exactly what he is accused of; and, two, it was intended to be a filtration system to make sure that only bona fide matters proceeded and that things were vouched by evidence. That in our system of justice resulted in significant decade-long delays. The hon. Attorney General has put on
the record our statistics. Madam Speaker, there are 37,933 preliminary enquiries outstanding. That number, Madam Speaker, as the hon. Attorney General has told us, has 8,835 per year coming.

Now, Madam Speaker, when we came into Government in 2015 and in relation to the infrastructure and development and the law that we are debating today, the caseload was approximately in the Magistrates’ Court including some 8,000 preliminary enquiries every year. It was 141,000 matters per year, 104,000 of which were motor and vehicle and road traffic offences. And in answer to what are we doing in terms of the infrastructure, it is now a matter of law and working record that those amendments to the Motor Vehicle and Road Traffic Act contained in the criminal division have moved criminal offences for Motor Vehicles and Road Traffic Act to violations and, therefore, 104,000 cases are now treated differently.

Madam Speaker, we added to this the amendments to the Dangerous Drugs Act in the decriminalization of cannabis. Some 8,500 matters per year removed as a result of that. So today, Madam Speaker, with an improvement of masters, from two masters in 2015 to 18 masters in 2023, with a number of 25 in total, in increasing the number of judges, increasing the judicial retirement age, separating the divisions of court, creating specifically an entire regime for children and children matters that is criminal offences against children, where the children are accused in those courts, children matters in particular are treated with in a separate court. So, Madam Speaker, the amendments here today are properly in a context of significant reform.

Relative to Chaguanas West telling us that the Government must apologize and that they stand up for people who are working in the system. Madam Speaker,
why that is to be rejected completely is borne about in a Legal Notice. The Legal Notice No. 348 of 2012 saw the proclamation of this parent Act, the Administration of Justice (Indictable Proceedings) Act by that Legal Notice, Madam Speaker, on the 31st of August, 2012. How could Chaguanas West be telling us to apologize to the country for increasing all the resources that I have just named, more courts, more divisions, more masters, age of retirement, children’s package? And the hon. Member has the temerity to forget that his Government, now the Opposition, proclaimed section 34, in particular, of this Administration of Justice (Indictable Proceedings) Act when there were no masters, no criminal proceedings rules, no amendments to the law, no courts.

Today we have a High Court with its criminal division at the old Hall of Justice; we have a civil court at the Waterfront; we have new courts at O’Meara; we have virtual courts. Madam Speaker, for the record, the Opposition Senator then, Sen. Wayne Sturge, went to court and challenged and lost in relation to challenges on the constitutionality of the criminal proceedings rules. Madam Speaker, every step that the Government has taken to improve the system has been met with legal challenges by the Opposition, most of which have failed and burnt into dust, Madam Speaker. But, Madam Speaker, today we are talking about an amendment to the Administration of Justice (Indictable Proceedings) route and I want to get now after saying there is no apology necessary in relation to the system of justice. I also add to that, Madam Speaker, that by amending the Police Service Act as we do as a consequential amendment in this Bill, by ensuring that police prosecutors are persons who are legally qualified and comply with the Legal Profession Act, we are therefore easing the load of the DPP’s department, Madam Speaker.
3.25 p.m.

Now, Madam Speaker, my friend, the Member for Chaguanas West, raised the issue of the appropriate adult and said that this was effectively something which was unknown, it was something that needed to put into this law in particular form. I would like to refer the hon. Member to section 3 of the Children Act. I would also like to refer the hon. Member to section 51 of Children Act. And why I do that, and why I reject the argument that we are running against the grain of the United Nations and the manner in which we treat children is that, Madam Speaker, that we created by law, this Government, the Children Division. We created the Children Court. We created the deviation techniques to move into the drug enforcement arena and the drug treatment court.

**Hon. Members:** [Desk thumping]

**Hon. F. Al-Rawi:** And this preliminary enquiry removal as a fast-track as the hon. Attorney General correctly characterizes this law, what we do is we say the obvious; this law must be read in tandem with the Children Act and with the Children Division. So it is incredible for my learned friend to say that this law is somehow in conflict and needs to be particularized.

I want to remind, Madam Speaker, that the Act itself sets out—the parent Act which we seek to amend and in the Bill which touches some of those amendments—that this law operates on the back of the Criminal Procedure Rules. Section 32 of the Act says that the Rules Committee can make rules and the rules of court are subject to negative resolution, and we have the children’s rules, and we have the Criminal Procedure Rules. And, there is no way that you can find yourself in jeopardy by not having an actual definition in this Act which is framework law for an “appropriate adult” because it is described and set out in

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section 3 and it is cross-referenced in this law, Madam Speaker, as well.

Madam Speaker, my learned friend raised the issue of joint enterprise, and permit me at this point to say the Bill seeks to remove certain significant pitfalls. The Bill, number one, removes the obstacles of cross-examination and examination of persons at what is known as a preliminary enquiry. Now we are at initial and sufficiency hearing. So no more preliminary enquiry. We have initial hearing, we have a sufficiency hearing. The problem in the existing laws, put very simply, one of the main problems was the examination and cross-examination of witnesses who appeared at the preliminary enquiry stage which took years. That defeated the intention behind the 2005 amendments to deal with paper committals.

And what we seek here, Madam Speaker, in answering my friend’s question, and in looking at the section 4 of the Act, I want to put on the record we are treating with the application of the law. That is to be found in section 4 of the parent Act, and one is bound to look as well at section 32A of the parent Act. Madam Speaker, our clauses of the Bill treat with amendments to both of these, in particular section 32A is amended by clause 38 of the Bill.

Now, Madam Speaker, when you look at the application of this law, we are saying in relation to one of other main issues for delay, this law is carefully designed so that we are no longer having a dispute as to whether an old matter under the old law, the law which is to be repealed, that is Chap. 12:01, whether that person is going to continue ad infinitum in the old system. We put the judicial discretion on the magistrate. In fact, this is one of the few occasions in this administration of justice preliminary enquiries Act which you are going to see the term “magistrate”. We put the magistrate to consider the determination as to whether the old matters can be brought under or be continued under the new
AJIPA. But we do that after due process is exercised after the prosecutor and the accused are given the opportunity to be heard and with the interest of justice and fairness to parties as a consideration which is an overriding condition precedent.

The magistrate must also obey the direction that no case is to be determined, unless in the case of a joint trial, there is a determination in respect of all of the accused. So my learned friend is saying in his submissions, Chaguanas West, that we are wrong in the statement of law that we put before this House because we have, according to the hon. Member, omitted to treat with the particularized details of joint trials and joint enterprises. I want to say in answer to that, this is framework legislation. If you go to section 32 of the Act, you will see that the rules deal with the prescriptive aspects pursuant to this Act and under the Supreme Court of Judicature Act, under the Criminal Division, under the Children Division and Family Division as well. They all feed into that same source, Madam Speaker, and I want to remind that the court overruled and denied the application by one Sen. Wayne Sturge to hold the Criminal Procedure Rules as a violation of the Constitution and law. So that law stands.

Mr. Scotland: David O’Brien.

Hon. F. Al-Rawi: The case of David O’Brien. Madam Speaker, so the joint trial issue and the allegation that was somehow wrong just does not arise if you listen to the contribution of my learned friend, Chaguanas West.

Now, the Madam Speaker, the hon. Member went on to treat with clause 6 and dealt with the warrant to seize and clause 6, the hon. Member pointed again to issues about we need to have concern because you can get the device but you would have to take a separate warrant to get the information. I would like to refer you, Madam Speaker, when we look at clause 6 and we look at section 5A of the
parent law, you will note, Madam Speaker, that we are making an amendment and we are specifically cross-referencing the provisions to the Interception of Communications Act.

Right now, we do not need to rely on the common law for the warrant to produce a device or the information. We actually have the existing Chap. 12:01 section 5 where you can get a warrant for the production of the device. But we also have the Interception of Communications Act which specifically allows us to get the data, the communication data, the stored data, Madam Speaker, as well as the stored communications. You will see in the amendment proposed by clause 7 that we are asking for communication data, stored communication or stored data. So contrary to the submissions of Chaguanas West, we have not missed anything out. We are specifically capturing the three species of data, that is, communication data, stored data and stored communications. Those can be obtained by a warrant.

But, Madam Speaker, we are doing more than that. Number one, as we are talking about passwords, we do not need to refer to Scoon or any other matters. The law is right here, and if you are looking at passwords, section 13(2) to (4) of the Interception of Communications Act, which is included by way of clause 7, specifically say that third parties who have things like password, et cetera, under penalty of law, a summary offence is the penalty at law. Madam Speaker, $1 million as the summary offence. If you fail to cooperate with the warrant, Madam Speaker, you are subjected to that cost and that includes Internet service providers—

**Madam Speaker:** Member for San Fernando West, you have one minute more of ordinary speaking time. You are entitled to 15 more minutes to wind up your contribution.
Hon. F. Al-Rawi: May I please respectfully take that time?

Madam Speaker: You may proceed.

Hon. F. Al-Rawi: Yes, Madam Speaker. So specifically we have included, contrary to the submissions of Chaguana West, the specific reasons and ability to obtain the warrants and structures, et cetera. Now that means we get device, we get information, we get structures. I believe the hon. Attorney General has a few thoughts in relation to any amendments that may be required on that but I think it is to capture the species of stored data only.

Madam Speaker, the reference to child and the allegation in relation to the description of prison, the hon. Member for Chaguanas West said that we were running contrary to the United Nations and our position by using the term “prison”. Now, Madam Speaker, you will see that in the amendments to section 4 of the Act that we ask, we do amend the term “prison” and we specifically cleave prisons from child rehabilitation centres and we are very well familiar with child rehabilitation centres.

What was kind of interesting that Chaguanas West put forward was reference to the case of Brian Seepersad. It is actually Brian Seepersad and Sasha Seepersad. It was a case brought by Attorney General Anand Ramlogan in new clothing, now as attorney-at-law for those two parties, where the case came to say the proclamation by the Government to put on child rehabilitation centres as a mandatory thing, that children must go to centres and not to prison, was deficient because there were no child rehabilitation centres. And, they asked for damages for failure of the Government to do that.

What was missing from the proceedings, of which the Privy Council took note of, was that the person that proclaimed the law was the Attorney General of
the Government that failed to bring about the child rehabilitation centres and then exposed the taxpayers to millions of dollars of cost and damages. Madam Speaker, it is just mindboggling that somebody could have the moral position of doing what the past Attorney General did, and worse yet for his honourable colleagues in the party, because they celebrate that this is the best Attorney General that they have ever seen, that they would hold it up as an example. I mean common sense and morality just dictate against that.

Madam Speaker, as a matter of fact, the reason why prison is done that way is that specifically, if you are dealing with children, as I mentioned before, this law must be read with the Children Division and Family Division and with the Children Act. And, if you look at it, you will see the Commissioner of Prisons is in fact the person with authority over children in child rehabilitation centres, and that reference to prison is because, Madam Speaker, we are amending 2011 law.

Let me remind. In 2011, I sat in Opposition, debated the preliminary enquiries new version AJIPA, saw it proclaimed with section 34 only in 2012, saw the move to the Antigua model come up in 2014, and then had to experience the Privy Council saying that it was effectively madness for section 34 to have been proclaimed the way it was. But the journey on preliminary enquiries really involved masters to be provided, new courts to be provided, and Criminal Procedure Rules to be provided, none of which existed in 2012, all of which now exist in 2023.

Hon. Members: [Desk thumping]

Hon. F. Al-Rawi: So we are coming with a very different matrix before us now. And, Madam Speaker, that is why the reason for the use of prisons is done the way it is.
Now, Madam Speaker, I would like to also put on the record that if you want to look at the big architectural points, because this is actually wonderful law in respect of which we could talk about each and every one of the clauses. Each clause is rich in content. This Bill proposes underwriting electronic filing. This Bill proposes that we do not have to go to Mars and Venus, et cetera, to come back right here to the planet Earth. We have to treat with the truth of our management of system. The truth of our management of system is that electronic filing is now a reality. The truth of this system is the bugbears involved, number one, the time frame for the filing of the indictment. If you warrant to exercise maximum sentence indication, if you want to enter into a murder felony plea, if you want to use plea bargaining, if you want to say I am guilty at sentencing, you have to enter the plea of guilt and then be referred to a judge for sentencing.

A vast number of persons who are on Remand, and a vast amount of the cases, the some 39,000 cases, et cetera, involve the fact that there have been significant complaints that the indictments are taking too long either to work their way through the system because of the obstacles of cross-examination and examination or that when the committal bundles are ready, that the process of the indictment being perfected takes too long. And this Bill in proposing amendments specifically targeted at the indictment.

3:40 p.m.
Significant discussions were undertaken, Madam Speaker. Madam Speaker, I moved on behalf of the Government in my tenure as Attorney General at least four amendments to this law. And in each step of the way, we had significant consultation, Madam Speaker: consultation with the Judiciary; the Public Defenders’ Department, which interestingly, Madam Speaker, this Government
created. We dealt with the issue of the—

Hon. Members: [Desk thumping]

Hon. F. Al-Rawi:—of the lack of defence attorneys, the small criminal bar, by creating what is now an incredibly successful public defenders’ division, Madam Speaker. You know what was quite curious? The Senator who sat opposite me then, in relation to the criminal division Bill and the work that we were doing for the UNC and who had certain reflections, is now the head of the public defenders’ division—

Hon Member: What?

Hon. F. Al-Rawi:—and can testify that this Government deals without malice, deals without fear or favour, but more importantly, Madam Speaker, can testify to the merits of the law that we passed.

Madam Speaker, when we passed the criminal division Bill, and the Family and Children Division, the Opposition was up in arms to say, nobody would go to court virtually, Madam Speaker. That is how now a standard feature of the operation of our courts, Madam Speaker.

So, Madam Speaker, in treating with the submissions coming from the Judiciary, the public defender, we also had the Office of the Director of Public Prosecutions, the Trinidad and Tobago Police Service. But importantly, in 2021, in the middle of the pandemic, we reignited, under the Chief Justices Committee, the sector that treats with discussions on this. And, Madam Speaker, I would like to say that there has been at least two, nearly three years, of clause-by-clause analysis with flowchart information as to every step of the way which is bound to also capture all of the other amendments we made. So, Madam Speaker, when we are talking about the delays in the system, the filing of the indictment, there was a
point in time when indictments could not be filed because transcripts could not be produced. Madam Speaker, there was a backlog of approximately 10,000 transcripts. That went to zero by the use of new technology, by the use of voice transcription, Madam Speaker.

So, Madam Speaker, there has been a massive operational improvement in the Judiciary. As we get to this now and we are talking time frame, and we are talking indictment, I want to start off by pointing that the amendments to section 11 of the parent Act, Madam Speaker, are critically important to us. Section 11, Madam Speaker, is reflected upon in clause 13. And in section 11, Madam Speaker, I would like you to notice that when we are dealing with—sorry, that is clause 15. When we are dealing with section 11, we are upfront requiring the indictment to be considered. And I would like to point you, Madam Speaker, to clause 15(b)(iv) and I would like you to note that the prosecutor shall file in the High Court and

“‘serve on the accused’…‘the indictment…’”

That, Madam Speaker, is really—even though it is a very simple inclusion in (iii) of just the words, “the indictment, and”, that is the genesis of the solution. Because the indictment was a creature just floating around. There was notice being given but the indictment was elusive. It was so elusive that we had to include, but which we are repealing today, that you had to file the indictment within 12 months or else a delayed application could be filed, and you could go for a discharge, and that discharge was set out with exceptions in the sixth Schedule which we are repealing today.

Because, Madam Speaker, that—if I translate it for the ordinary person paying attention today—was the genesis of section 34. They used section 34 to
say, “It is 10 years old, we are out of the system”, Madam Speaker. And then that would have been added on by the delay provisions which we are deleting today. So there is a massively important inclusion of the words “the indictment” into what is now section 11 of the Act, pursuant to clause 15, Madam Speaker. And, Madam Speaker, there begins the process.

The hon. Attorney General referred us to the removal of “concurrent jurisdiction of magistrates”. Madam Speaker, we had this confusion: you have a summary offence, you are going to the Magistrates’ Court; you have a triable either way, you are going to the Magistrates’ Court; you are arrested, you are supposed to come to the master but you go to the Magistrates’ Court. All of those things have been removed in this Bill. If you are indictable, if it is a triable either way, it must start indictably, you go to the master. If you have a summons, you go to the master. If you have a warrant, you go to the master. If it is a voluntary indictment by the DPP, Madam Speaker, you go to the court, and you also subject that to the sufficiency hearing and initial hearing, Madam Speaker.

So this law, some 10 years later, 12 years later, Madam Speaker, is on the back of massive amendments to our system. So the indictment is the key point here.

Now, Madam Speaker, another critical issue which raised its head for us, apart from the indictment, is the fact that we look at section 23, section 24 and section 25 of the parent Act. And, Madam Speaker, if you look at section 23 of the parent Act, and you cross reference it to the clauses of the Bill, section 23 of the parent Act is amended by clause 23. And, Madam Speaker, you will see that this is where we are treating with, if you start at section 20 of the parent Act, which is clause 22; section 21, which is clause 23; section 23, which is clause 24, you will
see here, the master in conducting the sufficiency hearing, Madam Speaker, is bound to use modern technology, the marking of exhibits electronically.

Madam Speaker, I can tell you this, having participated in a trial abroad recently, I was quite impressed with the electronic system of marking used in US courts; the use of video testimony and video depositions in US courts for people who were now deceased or had now become mentally incapacitated. The techniques that cause success in that Piarco matter in the recent proceedings in Miami actually find themselves in the body of this Bill; video evidence, audio evidence, depositions which were taken prior, flowing into the statement, but it really starts and stops with where the indictment goes.

Now, Madam Speaker, if you look at the consequence of the indictment, I would like to point out that the indictment is a critical tool, because the indictment is actually something which is generated by the State, in this case the DPP. Prior to the 1975 Constitution, it was the Attorney General. In 1975, we put that in the sole discretion of the DPP, we created section 90 of the Constitution—76, forgive me.

So, Madam Speaker, when we look at the powers of the DPP inside of here, the Criminal Procedure Act, Chap. 12:02, really the factor of the DPP signing the indictment is only a creature of the Second Schedule. And if you look at it, the purpose of an indictment is to tell you what is the charge you are facing with sufficient particularity, so that you can defend yourself. It goes along with the rules of disclosure, the rules of evidence, no longer common law rules alone but codified in the Evidence Act, Madam Speaker. And when we look at the provisions there, you will see that we are now harmonizing the approach, making the prosecution and the defence funnel all their submissions into court; we are
removing the cross-examination of witnesses specifically at the sufficiency hearing stage, except for one type of person, and that is only with the leave of court. And the one type of person is somebody who has an unsworn statement, because that is sometimes a feature which happens.

So, Madam Speaker, not only the failure to file the indictment has been treated with, but now we are treating with the consequence of the transmission of documents being set out. Because when you get to the sufficiency hearing, you look to the provisions that treat with the transmission of documents, you will notice that everything that forms part of the record of proceedings is at the court or at the police, or by the direction of the court held.

3.50 p.m.

So, Madam Speaker, this law now contemplates a virtual environment where your documents cannot be lost. And, therefore, the certainty of your options now look better. You cannot plea bargain unless you have a proper record. You cannot enter a guilt on an MSI matter, unless you have a proper record and you have the indictment. The court must be properly seized of all of the material. We removed, as well, the need for the recognizance of the witness at every stage of the matter, because at the witness statement stage the recognizance is entered and this Bill does this as well.

Madam Speaker, it is 10 minutes left, yes? Much obliged. Madam Speaker, the law before us now, also, at clauses 35, clause 32, catches up with a few amendments to the law. My friend, the hon. Member for Port of Spain South participated in St. Omer and Akili Charles. That law set out the challenges to the exclusion of the right of accessing bail in matters of treason and in capital offences, that is for murder, et cetera. And, Madam Speaker, therefore any reference to
non-bailable, et cetera, in clauses 35 and 32, as the referenced section 28(d) and section 28, you see that we are treating with that, Madam Speaker. And, therefore, we are harmonizing the approach.

It is the same harmony approach that I refer to as we are treating with the Children Act, the Children Division, the use of the child rehabilitation centres, et cetera, Madam Speaker. It is the same thing. One of the problems was the binding over of witnesses. I refer you to clause 37, which treats with section 30. We are now binding over witnesses, and you will notice, Madam Speaker, in keeping with the structure of our Constitution, the independence of the DPP, the features of section 90 of the Constitution, we are referring everything, if you are committed for the trial after sufficiency hearing. Madam Speaker, you are going under the provisions of the Criminal Procedure Act, Chap 12:02. That means the DPP has conduct of that.

Now, Madam Speaker, if we break it down, where do we stand right now? This law contemplates the operationalization of a new system. Back in 2015, when we came into government, there were two masters, 34 judges, a Supreme Court, which comprise the High Court and the Court of Appeal, the Magistrates’ Court was run with a Clerk of the Peace who was a public officer, not a lawyer. There were no recordings virtually done. There were no registrars in the Magistrates’ Court. There were no judicial support officers. Madam Speaker, children were locked in with adults. You had 104,000 motor vehicle and road traffic cases, 8,500 marijuana cases, 26,000, preliminary enquiries coming at you every year; 40,000 preliminary enquiries, Madam Speaker. And all you had was the Opposition turning on section 34.

Fast forward eight years, you now have a criminal division, a family
division, a children division, a civil division. Thirty-six judges have moved legislatively to 64, High Court, that is. Court of Appeal, you moved from 12 to 15. The age of retirement has moved from 65 to 70. You have Criminal Procedure Rules, which the Opposition tried to negative and challenge constitutionally and lost in court, Madam Speaker.

You now have a system where violations operate, and your backlog is being managed in a magistracy. It is now called a district court. You have the district judges. They have the support of judicial support officers, judicial research assistants on a five to one ratio. All of the proceedings are managed electronically, Madam Speaker. We have taken the lessons learnt in preliminary enquiries, which had to be restarted because of magisterial issues, or retirement or other factors.

We have taken the benefit of the learning in section 23(8) of the Preliminary Enquiries Act, Chap. 12:01. We have added that into this mix. We come forward now, we have taken the fact that exhibits can be recorded by way of photographic evidence. Third parties can receive their exhibits back. But, Madam Speaker, I want to also point out that we have brought significant attendant information attached to the protection of witnesses.

And it is very important to note that the only time that a witness is not required to attend court, Madam Speaker, the only time is in certain circumstances: unavailability of the witness beyond the jurisdiction of the court. But very importantly, this Bill says if there is danger to the witness, and if there is danger to a member of the family of the witness, Madam Speaker, that the court can, in its discretion, consider the admissibility of witness statements or evidence.

Now, Madam Speaker, could you imagine if this Opposition were to put right before wrong and actually support the provisions of anonymous witness
the provisions of whistleblowing protection, Madam Speaker, allow witnesses a fighting chance; allow them to give their evidence by the use of deposition testimony; allow for the transmission of those documents, Madam Speaker, directly to the court and the transmission to stay by way of record of proceedings? Madam Speaker, we will be bettering the system of justice.

But the Opposition wants to see us run. As Minister Hinds often tells me: in a 100 meters race, they want to see us run a brisk 99 and then trip you on the line. And, Madam Speaker, when you look at the need for bail amendments to stand, when you look at the best class that we could do for anti-gang provisions, et cetera; when you look at the provisions that we brought as a Government to treat with possession of firearms, if you get caught once that you should be reversing the burden of bail. In other words, then, we are demanding that people who are caught with firearms explain why they should not receive bail; not that we take away their bail. The Opposition stands against that. And then they are the ones up and down the country celebrating gore and death and mayhem and saying the Government would not do anything about it, when they will not participate where they can, which is in the Parliament of the Republic of Trinidad and Tobago, under section 53 of the Constitution, where we make laws for the peace, order and good governance.

Madam Speaker, the Administration of Justice (Indictable Proceedings) Act is ready to rock and roll. The hon. Attorney General has spent a lot of time in tuning the final positions on this. We as a Government bring before this Parliament now eight years of work. The Privy Council decided in Hilroy Humphreys that there is no right to a preliminary enquiry. You have a right to a fair trial. Madam Speaker, we have a method to get there. This will trigger plea
bargaining. This will trigger maximum sentence indication. This will trigger ease and better access to justice, Madam Speaker. And by the amendment to the Police Service Act, we are also, therefore, broadening the participation of prosecutors to include prosecutors from the Trinidad and Tobago Police Service, Madam Speaker. Prosecutors to go behind trafficking in persons.

If you look to where the voluntary indictments exist, Madam Speaker, where the DPP can take action, we are signalling to the country our disdain for trafficking in women and children. And trafficking in persons is a centre point to that. I am sure Caroni Central is interested in that and not afraid of it, Madam Speaker. Madam Speaker, these are the kinds of things that they want to stand in the way of, Madam Speaker. And I just ask: Why? Why, Madam Speaker? Why would Caroni Central stand in the way of that?

So, Madam Speaker, I believe that I have one minute left. And in that one minute, despite the protestations of Caroni Central. Madam Speaker, I will say that this law is ready to rock and roll. We support this law. It will involve the fast tracking of cases, Madam Speaker. I stand behind the hon. Attorney General who is carrying, having received his baton, of carrying it with strength and pride and making good pace, Madam Speaker. And we collectively as a Government; Minister Hinds pushing national security and prosecution, moving the prosecutorial capacity of the Trinidad and Tobago Police Service because, Madam Speaker, my colleague, the Member for Laventille West, the Minister of National Security—you see people “doh”’’ like to see good things, so they like to pour scorn, Madam Speaker. I could testify to his work and ability and in improving the prosecutorial power of the police in particular, and Madam Speaker, I support this law. Thank you.

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CORRECTION OF THE RECORD

Madam Speaker: Hon. Members, before I call on the next contributor, I just want to take the opportunity to correct the record having regard to the premature warning, which was given to the Member for San Fernando West. His ordinary time expired at 3:45:50. So the additional 15 minutes would have carried him to 4 o'clock and 15 seconds.

ADMINISTRATION OF JUSTICE
(INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2023

Madam Speaker: Member for Barataria/San Juan.

Mr. Saddam Hosein (Barataria/San Juan): Thank you very much, Madam Speaker. Madam Speaker, before I begin my substantive contribution, I just would like to take the opportunity to wish all my brothers and sisters in the Muslim community, Eid Mubarak. Some of my brothers and sisters are celebrating Eid today, Eid ul-Adha, and some will be celebrating it tomorrow. So I take this opportunity to send Eid greetings on behalf of the Opposition Bench in Trinidad and Tobago.

Madam Speaker, San Fernando West said, when he ended his contribution, that this law is ready to rock and roll. Madam Speaker, this Government had rocked the criminal justice system and rolled it down a hill.

Hon. Members: [Desk thumping]

Mr. S. Hosein: That is what they have done with this criminal justice system. Because they have caused a system that had issues to now become a system that is almost on the end of its life. It is almost coming to a grinding halt, because of mismanagement, because of incompetence and because of a lack of resources and attention being paid to the criminal justice system.

You see, Madam Speaker, this Government is a reactive Government. They
only take action or attempt to take action when there is already a problem. There is proactive steps being taken by this Government in order to fix the system. The system is bad. All of us admit that the criminal justice system is bad.

Just yesterday there is an article coming out from the *Newsday*:

“Man guilty of killing ex-wife sentenced to hang”

And this shows where our criminal justice system is. This man was charged in 2010. Madam Speaker, we are in 2023 and there is now a conviction. This is the state of our criminal justice system. So when you talk about virtual courts and that the Waterfront has courts and that you have buildings going up all over the place, Madam Speaker, this is the state of our criminal justice system. It is deplorable.

**Hon. Members:** [*Desk thumping*]

**Mr. S. Hosein:** We on the Opposition, we care about Trinidad and Tobago, and we want to help this Government. We want to help Trinidad and Tobago fix this system.

**Hon. Members:** [*Desk thumping*]

**Mr. S. Hosein:** Madam Speaker, I was part of that system when I served in another place. I appreciate what happens. My friend from Port of Spain South knows the issues that are taking place in the criminal justice system. They come and tell us that this is the greatest Bill. This might be the panacea, this is the silver bullet. Madam Speaker, we reject that submission. Because when you have prosecutors operating in an environment where they have no space to work, where there is a large number of vacancies—Look, I have an article in my hand here dated 2\textsuperscript{nd} May, 2023,

“AG: DPP’s office short staffed by 114 employees”

Madam Speaker, 114 employees. And when the Attorney General piloted this Bill,
he gave us statistics that there are about 38,000 outstanding indictable matters in the criminal justice system. Then San Fernando West tells us there are 18 masters. How can 19 masters deal with a backlog of 14,000 matters when an additional 8,000 joined the system and you have 114 prosecutor vacancies at the office of the DPP? Madam Speaker, that is a snapshot of our criminal justice system. And then you tell us that Bill is going to help? You tell us that this Bill is going to help? Madam Speaker, the Bill may work if you give resources to the system.

Hon. Members: [Desk thumping]

Mr. S. Hosein: But you know what that takes? That does not take this Parliament. That takes the will power of the Executive to allocate resources and properly manage the system.

Hon. Members: [Desk thumping]

Mr. S. Hosein: But, Madam Speaker, by no feat I am saying that we on this side are agreeable to some of the provisions in this Bill. There are some very serious provisions in this Bill that I wish to highlight, Madam Speaker, that will take us into some very, very concerning and trying issues.

4.05 p.m.

Now let me just explain to the general public what we are trying to do here today because, I think, we as MPs in this House owe it to the general public to make them understand what process is being taken place in this House. In the criminal justice system as it currently stands, all matters will be initiated from the Magistrates’ Court. There are two separate types of offences. There are summary offences and there are indictable offences. A summary offence starts and finishes at the Magistrates’ Court, an indictable offence starts in the Magistrates’ Court but it finishes in the assizes in the High Court. And what this process we are trying to
do here today is specifically dealing with indictable offences only. We are not dealing with the summary offences.

So the system that currently happens now, or that is in force now, is that when a police officer lays something called an information in the Magistrates’ Court, that will now generate a charge on the accused person. The accused person will be brought to court but he will not be called upon to plead because it is an enquiring magistrate. That magistrate does not find guilt. All the magistrate has to do is make out a prima facie case on whether or not there is sufficient evidence for this person to be tried in the High Court.

What the Bill is trying to do in essence in the global sense is to bypass that entire process of a magistrate sitting as an enquiring magistrate because what happens is basically a trial. When the police officers or the prosecutor brings witnesses for the court, the defense is allowed to cross-examine those witnesses, they are allowed to make submissions, they could make no-case submissions, and that takes years, Madam Speaker. Sometimes we have preliminary enquiries going on in this country for many, many, years. Sometimes, I believe, up to 10 to 12 years we may have a preliminary enquiry going on.

That is something which we saw as a Government in 2011 that needs to be addressed. So therefore, this Bill was birthed in 2011. And when this Bill was birthed in 2011 the idea behind it was, if we are going to bypass the preliminary enquiry stage because, as San Fernando West rightly pointed out, there is judicial pronouncement on whether or not you could abolish preliminary enquiries, and that is coming from the case of Hilroy Humphreys.

And when that process has been abolished in terms of the preliminary enquiry, getting rid of the cross-examination, the lengthy submissions, you now
have an area called the Masters’ Court where documents, witness statements, exhibits, have to be filed. There is no right of cross-examination for those witnesses. All that happens is that the lawyers representing the defendant or the prosecutor will now make submissions on that evidence that is presented by the prosecutor. That is all that they have to do. And that is what this Bill is trying to achieve. But we have some amendments here, Madam Speaker, that may cause that system to collapse. As good as an intention as it may be, I am saying that we have to pay particular attention to some of the provisions. Because we in this Parliament took an oath that we must uphold the law and the Constitution. We must pass good law, we must pass constitutional law, we must pass law that is bulletproof.

Hon. Members: [Desk thumping]

Mr. S. Hosein: And as an Opposition, we have a constitutional role to ensure that we pass those good laws. And Madam Speaker, I want to address you on four very important points when it comes to this Bill.

The first point is that there is some vagueness of the provisions of the law in relation to the powers of a magistrate. On the second point I want to address you on, Madam Speaker, is that there is a circumvention of the protections under the Interception of Communications Act to access the data from individuals. Our third point is that there is an erosion of powers of the DPP. And on the fourth point, there is an issue with respect to anonymous witness evidence.

So, Madam Speaker, let me begin by addressing you on the first issue that I raised in terms of the vagueness of provisions of the law in relation to the powers of magistrates. And I want to take you, Madam Speaker, and please forgive me, I have a consolidated version of the Bill. I may not be able to refer to the specific
clause but I could tell you which section of the Act is being amended by the clause.

And Madam Speaker, when you look at the amendment that is being made to section 4 of the Act, it now allows for an inclusion of a 4 (2) which says basically, and this is the application section of the Act where:

“...a Magistrate shall determine whether the case is to be determined in accordance with this Act—

(a) after giving the prosecutor and the accused an opportunity to be heard in this regard; and

(b) in the interest of justice and fairness to the parties.”

So what does that mean? It means that if there are proceedings in the Magistrates’ Court that had begun before this Act came into force, the magistrate now has to make a decision whether this new piece of law will apply to that previous case that was filed. But there are two thresholds that the magistrate has to consider, one being that you must give an opportunity for the prosecutor and the defense to be heard, and two, it must be done in the interest of justice and fairness to the parties.

Now, Madam Speaker, what does this mean? And I raise this in the context of a magistrate is a creature of statute. A magistrate is bound by the four corners of the law, they cannot go outside of that. In fact, a magistrate has no inherent jurisdiction like a high court judge. A puny judge sitting in the High Court has an inherent jurisdiction to use wide discretion to determine whether or not they can exercise their inherent jurisdiction in the interest of justice. And if you allow me to give one small example, Madam Speaker.

If we look at the civil arena. A civil judge, even when making a decision on some applications, let us just say a relief from sanctions application, they have to consider something called the “interest of justice.” But how do they understand
what does that mean? They go back to the overriding objective of the CPR, which is to deal with cases justly, deal with it expeditiously, manage the resources of the parties.

When you look at section 4 here, there are no factors in which a magistrate considers to determine what is the interest of justice or fairness. And that is very unfair to, one, the prosecutor, the defense, and even the court. Because if the court is bound by these four walls of the statute, there are no inherent jurisdiction, and they are creatures of statute, we must prescribe a little more in detail what this magistrate has to consider. Because if this magistrate goes outside of his jurisdiction, well, that is a challenge for an entire criminal matter, which can fall apart based on a technicality of the law. And that is something that this Parliament ought to prevent.

Hon. Members: [Desk thumping]

Dr. Moonilal: Well said.

Mr. S. Hosein: It ought to prevent. And I can quote a case, Madam Speaker, all the way from 1875, Johnson, that says, this is 10 Queens Bench 544, that:

A Magistrates’ jurisdiction must be conferred by statute and their powers are derived from the enabling Act.

Clear. Clear, clear, clear, Madam Speaker, and that is a point that we have to ensure that we do not allow a magistrate or a court to go outside or step outside of their boundary.

Then, Madam Speaker, I want look at what we have seen in this particular provision that deals with the circumvention of protections under the Interception of Communications Act. And I would spend a little more time on this particular area, Madam Speaker. And this is an amendment to section 5 of the law, and it deals
with an insertion of 5A (1). And you would allow me to read, Madam Speaker, what it says. It says:

“Where a search warrant has been issued under this Act for the purpose of obtaining communications data, stored communication or stored data, sections 13(2) to (4) and 14 of the Interception of Communications Act apply.”

And—

“(1A) Subsection (1) applies to a search warrant issued by a Master under this Act or to a search warrant issued by a person referred to in section 10 who exercises concurrent jurisdiction with a Master.”

Very technical terms. What does all of that mean? It means a master now has the ability to issue a search warrant to get specified data that is defined under the Interception of Communications Act. So we are dealing with communications data, stored data, and stored communication. Simple, if you look at the definition that was made in the amendment to the Interception of Communication Act, these are things like text messages on someone’s phone, photographs on someone’s phone. It deals with their call logs, their message logs. These are all of the stored data and stored communication that will be in someone’s phone. And what the law now allows is for a Master of the High Court, not a puny judge, a master, to now have jurisdiction under the Interception of Communications Act. And the master, in issuing this particular search warrant, uses the standard reasonable grounds for suspecting.

Now, that is a very, very, low standard in order to obtain a warrant. You normally have a standard of reasonable grounds for believing an offence. Those two are two different standards. A reasonable grounds for believing an offence has
occurred. This saying a reasonable grounds for suspecting an offence has occurred or will occur.

And Madam Speaker, when you look, because we have to read this particular provision because it refers to section 13 and 14 of the Interception Act, in line with the Interception of Communications Act. Under that Act, in this particular provision, who can get this warrant? A constable. A police constable can go before the master, make an application that they want a warrant for stored data, stored communication, and all the master has to say, “Well, I reasonably suspect that this offence is taking place and they will have information, let me issue this warrant.”

But, Madam Speaker, when you look at the protections under the Interception of Communications Act there are three authorized officers who can get that information. And these are the authorized officers, the Commissioner of Police, the Chief of Defence Staff, and the Director of the SSA. Now, this Act that we are amending is allowing a police constable to go before a master and get that. And before the Commissioner of Police can even get a warrant under the Interception of Communications Act, they have one heavy threshold to cross. They must show that they have exhausted all, all efforts before they can go to intercept communications. They have to go before a high court judge before they could get information. Madam Speaker, the threshold is very high. There are so many protections because it is an invasive tool in terms of rights to privacy—

Hon. Members: [Desk thumping]

Mr. S. Hosein:—that there are so many protections built in in the parent Act of the Interception of Communications Act. And what is very surprising is that while this standard is now so low, and a police constable going to get this information, they
did not allow, the Government that is, for these protections to apply to this search warrant under this Act. It did not apply, Madam Speaker, and that is a very dangerous, dangerous, piece of law that we are dealing with here because it deals with persons, with a police constable going and getting this information. And when you look and you read this provision with what is already existing in the law, do you know that this information can be disclosable to a Minister?

Hon. Member: What!

Mr. S. Hosein: If there is a mutual agreement between this country and another country for exchange of information, the Minister can access this stored data that “de constabl get” through a search warrant.

Mr. Al-Rawi: That is the current law.

Mr. S. Hosein: And Madam Speaker, we are saying that this threshold for getting this search warrant is absolutely too low.

Hon. Members: [Desk thumping]

Mr. S. Hosein: It is too low. And they can quote Suratt. They can quote Suraj. This law is disproportionate, Madam Speaker.

Hon. Members: [Desk thumping]

Dr. Moonilal: Oh yes. Agreed.

Mr. S. Hosein: It is totally, totally, disproportionate, Madam Speaker. And Madam Speaker, under the law we just spoke of judges being able to issue warrants under the parent Act, we spoke about the amendment being made here, the master is allowed to issue the warrant. But then it goes on, Madam Speaker, when you read on to the Bill it says the:

“…search warrant issued by a Master under this Act or to a search warrant issued by a person referred to in section 10 who exercises concurrent
Do you know who exercises the concurrent jurisdiction with a master? It is the registrar.

Dr. Moonilal: What!

Mr. S. Hosein: So that, they are saying that a registrar can also issue this search warrant for stored data, stored communication, and communication data, Madam Speaker.

Dr. Moonilal: What madness is this?

Mr. S. Hosein: Madam Speaker, when you look at that you would see that this entire thing it has to be—I do not understand who draft this because when you look at section 10—

Dr. Moonilal: A satanic person.

Mr. S. Hosein:—of the Bill it says:

“For the purpose of this Act, Magistrates shall subject to subsections (2) and (3), have and exercise concurrent jurisdiction with Masters to—

(a) issue search warrants”

4.20 p.m.

So a registrar is allowed to issue search warrants with concurrent jurisdiction of a master with no protections, absolutely. Madam Speaker, they are just coming with reasonable grounds to suspect—

Hon. Members: [Desk thumping]

Dr. Moonilal: “Who write this?”

Mr. S. Hosein: They are coming with reasonable grounds to suspect, Madam Speaker, to get a warrant. Look—so I do not understand, Madam Speaker—I do not understand how this Government had read this Bill together with the
Constitution, you know. Because this cannot be the Constitution of Trinidad and Tobago that they measured this Bill with, because this Bill is converting Trinidad and Tobago into a clear, clear dictatorship.

**Hon. Members:** [Desk thumping]

**Mr. S. Hosein:** Madam Speaker, I want to move on to my other point which deals with an absolute erosion and dilution of the powers of the DPP under section 90 of the Constitution. And I want to premise my contribution by reading into the record what section 90 says, because it seems as though the Attorney General might be a stranger to this Constitution.

**Dr. Moonilal:** Oh, that is a good point.

**Hon. Members:** [Desk thumping]

**Dr. Moonilal:** We believe that.

**Mr. S. Hosein:** And section 90 of the Constitution says, Madam Speaker, and I think I am going to read it very slowly for the Attorney General, 90(3):

**Dr. Moonilal:** He knows about that.

**Mr. S. Hosein:**

“The Director of Public Prosecutions shall have power in any case in which he considers it proper to do so—

(a) to institute and undertake criminal proceedings against any person before any Court in respect of any offence against the law of Trinidad and Tobago;

(b) to take over and continue any such criminal proceedings that may have been instituted by any person or authority;
(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.”

Very, very far-reaching powers that the DPP has that was conferred to him by the supreme law of the land; supreme law of the land. This Government wants to come with a Bill now, Madam Speaker, to erode the powers, and I read that section 90 to make an analogy and the context of what currently takes place.

After a preliminary enquiry is completed, the deposition, those are the matters that were heard in the Magistrates’ Court, all the exhibits will be transferred to the Office of the DPP. When I was there, they would have passed several files to us and we do a summary of the evidence and then we do a draft indictment. And once the DPP is satisfied, he will sign off the draft indictment and file it in the High Court. That is the procedure that currently happens right now and what the DPP has is far-reaching powers.

First, the DPP can lay something called a voluntary bill of indictment. That means he can indict anyone, even without a preliminary enquiry. Two, the DPP also has—even if a person is discharged after the preliminary enquiry, he can obtain a warrant of committal and then he can determine the case based on the ruling of a judge whether to indict someone. And the last position is that on the deposition, if a person is charged for one offence but the DPP reviews the deposition and he finds that there any other offences the person could be charged for, he has the power to also indict for those additional offences and the indictment only comes after the preliminary enquiry.

Madam Speaker, I heard an argument from San Fernando West saying that basically there will be a triggering of the process now with an indictment. The
process as it currently stands is that the information that is laid will go on to the PI, go on to the hearing whether to discharge, sufficient case made out and then the indictment is laid. But in this case the Attorney General, during his piloting of this Bill also, he would have indicated, Madam Speaker, that when you look at clause 19 of the Bill, he said—and I am going to quote the Attorney General from his *Hansard* on the 5th of June, 2023. He said:

“As mentioned earlier, this Bill proposes that the accused will be subject to a sufficiency hearing in those circumstances. With a rational being to be balanced, to ensure that while section 90 powers of the...”—DPP—“...are maintained, sufficiency of evidence is...to be judicially assessed.”

So what this Government is now trying to introduce here, Madam Speaker, is this, is that if the DPP lays a voluntary bill of indictment, he is now subject to a sufficiency hearing. So that is an erosion of the power of the DPP according to section 90 of the Constitution. Because if an indictment initiates a proceeding, why should the DPP now be subject to a sufficiency hearing? Why are you going to make the DPP do that?

Now, I heard the Attorney General also said that there has been consultation. I do not know if there is consultation on this Bill, but if there is consultation on this Bill, I would like the Attorney General to disclose the comments and the position of the Director of Public Prosecutions on this matter.

**Hon. Members:** [*Desk thumping*]

**Dr. Moonilal:** Correct.

**Mr. S. Hosein:** Because I do not know if the Director of Public Prosecutions agrees with this particular law that erodes and dilutes his power under this Bill. And I cannot understand why the Attorney General cannot make full disclosure of

**UNREVISED**
the comments of the DPP if there was a consultation, if any, on this particular piece of legislation; if any, Madam Speaker.

Madam Speaker, when you look again at how this entire process is going to take place, it seems as though it is very confusing. Because under section 6, which is being amended under the law, it says that the process can be triggered by one, a complaint. Now, I have no issue with that. If the complaint starts the procedure, then the police will have to lay their witness statements, bring their exhibits before the court. But then you are saying that it can also be triggered by an indictment. And then you are saying that in the same breath that the Criminal Procedure Act will apply to indictments.

Madam Speaker, the Criminal Procedure Act provides that when an indictment is laid, it initiates the high court proceedings. It does not initiate sufficiency hearings that are prescribed under this law. So this piece of law is in direct conflict—it collides actually with the Criminal Procedure Act. That is part of our law that we are not amending here today, Madam Speaker. And that is some of the issues that I have with this Bill in terms of the clarity in which this is drafted. Because you cannot have two systems now, one via complaint, one via indictment, and we do not understand really what is taking place. And then if the DPP has the power to prefer an indictment, there are provisions in this Bill that now allows a master of the court to amend that indictment. The master is going to amend the indictment.

If the issue that the Government is trying to fix—if the mischief is that the DPP’s Office is taking way too long to file indictments, there is one simple fix, Madam Speaker, staff the DPP’s Office.

**Hon. Members:** [Desk thumping]

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Mr. S. Hosein: Staff it. That office has been suffering, Madam Speaker. Madam Speaker, as a former prosecutor there, there has been word, there have been rumours going around that they have been begging and pleading for better terms and conditions. Why does the Government not take an initiative to make the packages a bit more attractive—

Hon. Members: [Desk thumping]

Mr. S. Hosein:—so that lawyers will want to go and work in that office, Madam Speaker—

Dr. Moonial: And not leave.

Mr. S. Hosein: And not leave? There is an exodus from that office because persons tend—and nothing is wrong with that, because persons from the DPP’s Office may have a desire to sit on the bench, and nothing is wrong with that. But where is the succession planning that goes on at that office? And if that is the issue, provide the resources. Do not come with a shortcut piece of Bill here to circumvent constitutional protections—

Hon. Members: [Desk thumping]

Mr. S. Hosein:—to try to fix a problem.

Dr. Moonilal: Well said. Well said.

Mr. S. Hosein: Madam Speaker, you see, there are a lot of inconsistencies with this particular law and I want to go back to that issue that deals with the voluntary bill of indictment. Because when you look particularly at section 6 of the—what is being amended, there is a new provision that is being included here, in that:

“Where an indictment is preferred and filed under subsection (2) without making of a complaint, a Master shall issue a warrant of apprehension”—of
the accused—“to compel the appearance of the accused before...the purposes of an initial hearing.”

So what they are saying here, Madam Speaker, is this, is that there are two-fold tests that are going to take place here. Once the complaint is made, the person is brought before the court, the first hearing, or when the DPP prefers an indictment now that they are trying to prescribe, is that they will have an initial hearing, and in that initial hearing it will be as though it is a case management conference. It will give deadlines, it will give timelines on how the matter is to progress. It will have something called a scheduling order giving the accused an opportunity to seek legal representation, going towards the Legal Aid to seek legal representation. And once this initial hearing is done, they will then move to a sufficiency hearing. And, Madam Speaker, I could just point out one area of bad drafting in this law, you know—just one area. I could just do that very quickly.

**Madam Speaker:** Hon. Member.

**Mr. S. Hosein:** Yes please.

**Madam Speaker:** You have a just a few more seconds left. It is now 4.30 p.m. I think now is a convenient time that we take the suspension and we will resume at 5.00 p.m.

**Mr. S. Hosein:** Sure.

**Madam Speaker:** Okay. So this House is now suspended. We will resume at 5.00 p.m.

**4.30 p.m.:** Sitting suspended.

**5.00 p.m.:** Sitting resumed.

**Madam Speaker:** Member for Barataria/San Juan—

**Hon. Members:** [Desk thumping]
Madam Speaker:—you have 15 minutes and 33 seconds left.

Mr. S. Hosein: Thank you very much, Madam Speaker. And I think I may be using even the 33 seconds to complete my contribution in this matter, because I think the people of Trinidad and Tobago need to understand the Bill that is before this particular House of Parliament.

And, Madam Speaker, before we went on the break I was on the point of the erosion and the dilution of the powers of the Director of Public Prosecutions. And the law that currently exists, that could be found in the original preliminary enquiries Act which has been enforced for several, several decades, and then would have been administered through the Office of the DPP through the 1976 Constitution, there is a power that the DPP currently enjoys, as I mentioned, that even where an accused is discharged after a PI, a warrant of committal can be obtained by the DPP and a decision can be made by a judge in order to commit that person. Secondly, in limited circumstances, the DPP can lay a voluntary bill of indictment without any judicial scrutiny. And then the third is that the DPP can also commit an accused person on any indictable offence that is disclosed by the deposition. And I think all of us in this Parliament and who would have gone through the Hugh Wooding Law School will be familiar with the famous case of Jagessar v Bhola Nandlal, in terms of the DPP’s powers and the powers of a magistrate when sitting as an enquiring magistrate. And those three powers that I outlined here, Madam Speaker, are now removed by this current Bill.

Under section 6, which is amended, it allows the DPP to prefer an indictment, yes, as a voluntary bill of indictment under limited circumstances. But as the Attorney General said, according to section 19 of the Act, even those voluntary bills of indictment will be subject to judicial scrutiny. They will be
subject to judicial scrutiny, meaning that they will have to still undergo the initial hearing and the sufficiency hearing. So when the Constitution gives the DPP a power to institute criminal charges—as I mentioned before, the filing of an indictment in the criminal court, in the assizes, criminal division is the initiation of a criminal matter against an accused in the High Court. In this Bill, what they are doing is removing that power of the Director of Public Prosecutions. And as I said, it is colliding with section 3 of the Act—section 19 and section 3 are colliding with each other.

Madam Speaker, even on the point of—this Bill has some issues with the drafting because there are provisions which are badly drafted. As I indicated, there are two ways in which you can initiate a matter under this fast-track law, as the Attorney General deemed it, either by complaint or by indictment. But when you read section 19, which is being amended here, it says:

“A Master shall hold a sufficiently hearing to determine whether there is sufficient evidence to establish a prima facie case of any indictable offence on an indictment.”

It only restricts the master from conducting that hearing on an indictment. What about those matters that were initiated through a complaint under section 6(1)? It does not speak to that. And maybe, I do not know, that it might be an inadvertence in the drafting of the legislation. Because section 6(1) indicates that any person:

“Where a complaint is made...by any person charging or alleging that an indictable offence has been committed, by an accused...”—they will—“...make an application...to a Master to issue a summons or an arrest warrant to compel the appearance of the...”—person—“...before him.”
And the form of that particular complaint can be found in the first Schedule of the Act. And if you look at the first Schedule of the Act too, Madam Speaker—it will be found at Form 4—it talks about the complainant could be the State, the Commissioner of Police, even the Comptroller of Customs.

5.05 p.m.

So what about those matters in which those individuals would have initiated the matters? I do not know if that might be an inadvertence with respect to the drafting of this particular law. When you also look at section 24, which also is being amended, it only refers to an indictment in terms of the discharge of the accused, not the complaint also, because it seems as though there are two separate streams in which you will initiate proceedings under this new piece of legislation.

Madam Speaker, there is another very, very dangerous provision in this law, and I think I want to deal with it now while I have a couple more minutes remaining, and that deals with section 32B, which is a new section; a new section that is being inserted in this Bill, and this, Madam Speaker, is a very dangerous provision and it has history in it, and I will explain the history in it also.

“The Registrar may, on application or in his own discretion…any document filed or issued under this Act, if anonymisation is necessary—

a) for the protection or safety of a witness or accused;”

So what this is saying, Madam Speaker, is that the prosecution can file a witness statement in the courthouse, and nobody knows the identity of that witness, you know. You do not know your accuser. The basic tenets of the criminal justice system stemming back for hundreds of years is that the accused must know his accuser—

Hon. Members: [Desk thumping]
Mr. S. Hosein: —but what they are doing here, Madam Speaker, is creating anonymous hearsay evidence, you know. This is anonymous hearsay, you know, Madam Speaker, because what this Bill is doing now is hiding the accused from—hiding the accuser from the accused. This particular provision has some history when we were doing the Evidence (Amdt.) Act, Madam Speaker.

I sat in a special select committee of the Senate and in my possession, Madam Speaker, I filed, under my authorship, a 15-page minority report to that particular SSC, indicating our objection very early to anonymous witnesses. It is a dangerous provision. You have countries who may have this particular law, but it is only restricted to offences such as terrorism—terrorism. In this case, this is for any offence, any indictable offence, Madam Speaker, and it is not a judge. It is not a judicial officer who is making the decision whether or not to create an anonymous witness order, you know; it is a registrar of the court. A registrar of the court who normally signs off on court orders.

Hon. Members: [Desk thumping]

Dr. Moonilal: Good point. Good point.

Mr. S. Hosein: A registrar does not exercise much judicial authority in terms of the tax Bills, Madam Speaker, or deal with some probate matters, but when it comes to issues surrounding the law, you have not a judicial officer making this pronouncement but a registrar. This is absolutely dangerous, Madam Speaker. It is dangerous and this ought to be deleted completely from this Bill.

Hon. Members: [Desk thumping]

Mr. S. Hosein: We cannot, in any good sense, support this particular provision.

There is a House of Lords case, R v Davis, [2008] UKHL 36, that it found that the use of anonymous witnesses prevented the accused from adequately
examining his accusers and thereby denied him a fair trial in accordance with both the common law and article 6(3)(d) of the European Convention on Human Rights. The House of Lords held that a conviction should not be based or decided upon the evidence of anonymous witnesses, Madam Speaker, because you cannot cross-examine that witness. I can give you an example, as a defence counsel, you are allowed to have the antecedents, the character, the previous convictions of a witness because it affects their quality of evidence. It affects the veracity of the evidence that they will give; the credibility of the individual.

Now, if you have an anonymous witness, how are you going to cross-examine that person if you—how could you cross-examine, you know, the character of the person if you do not know the person, one, and, two, they are not going to tell you if the person has any previous offences or anything like that? So, Madam Speaker, and the problem is, I know they will jump—sorry—the Government will jump up and say, “Well, a fair trial is not applicable to a preliminary enquiry because of the Hilroy Humphreys case”. Madam Speaker, this is the evidence that will go before a High Court judge and jury.

Hon. Members: [Desk thumping]

Mr. S. Hosein: This anonymous witness is going before a High Court judge and jury. The matter does not end at the masters’ court. So how can you, in a democratic country that has respect for our Constitution—section 4 and 5 of our 1976 Constitution—introduce a Bill like this in our Parliament? In any event, this particular provision ought not to even find itself in this Bill.

Hon. Members: [Desk thumping]

Mr. S. Hosein: This was a matter that was being dealt with by the amendment to the Evidence Act. How did they sneak this particular provision into this Bill?
They sneaked it in, and they placed it in the back of the Bill, Madam Speaker.

**Dr. Moonilal:** Oh my God.

**Mr. S. Hosein:** What you feel, we would not read the entire legislation?

**Dr. Moonilal:** Though we would not reach “dey”.

**Mr. S. Hosein:** But, Madam Speaker, I read everything according to Oropouche East.

**Hon. Members:** *[Desk thumping]*

**Dr. Moonilal:** Everything, nothing passes you.

**Mr. S. Hosein:** Madam Speaker, you see, when you look again at the issues surrounding anonymous witnesses—I have that particular minority report that I filed, it says, *Jarvie v Magistrates’ Court of Victoria* [1995] I VR 84. It was held that the identity of a witness should never be withheld from a defendant when disclosure might be of substantial assistance to the defendant, because everyone knows in criminal trials you must have full and frank and fair disclosure—full disclosure.

There are many cases that would have fallen apart in the Appeal Court because the prosecutor may have withheld some information, some disclosure from the defence, and in this case they are now trying to legitimize—the Government, is trying to legitimize having persons whose identity is undisclosed give evidence against persons in this country, Madam Speaker. We have seen even in cases where you know the identity of the witness, they come and tell untruths to the court. We have cases where people go in foreign courts and tell untruths on affidavits.

**Dr. Moonilal:** Oh, yes, yes, yes, yes.

**Hon. Members:** *[Desk thumping]*
Dr. Moonilal: We know of that.

Mr. S. Hosein: Madam Speaker, we have to be very careful when we deal with the criminal justice system in this country, because if this Government sets this precedent whereby they are eroding and cutting away constitutional rights, we will end up like the frog in the boiling water, and when they take away our rights more and more, Madam Speaker, you would realize that soon Trinidad and Tobago may be very well accustomed to what this Government is doing, but that is the purpose of the Opposition to stand against any move of a dictatorship—

Hon. Members: [Desk thumping]

Mr. S. Hosein: —because it is our duty to put on the record and inform the ordinary people, the ordinary members of the public what this Government is trying to do.

You see, Madam Speaker, this anonymous witness, we have to ensure that it does not go forward. And we have in the past, Madam Speaker, supported the Government with legislation, when they bring good legislation.

Hon. Member: Correct.

Mr. S. Hosein: I heard the Attorney General talk about the Bail Act, we never supported it; I want to rebut that. In 2019, the Opposition supported the Bail Act.

Hon. Members: [Desk thumping]

Mr. S. Hosein: It required a special majority. It was the law. It had a sunset clause, it ended, and the reason why you have sunset clauses, it is because you are testing the legislation to see if it worked, and we realize it did not work, so why did you want to extend it further? And that is why we did not support it then, but we supported. We gave the Government the support in 2019 when they brought the Bail law. And, Madam Speaker, I have raised four very important issues, there is
one more issue I wanted to raise in terms of the standard of proof; that is a matter one of my colleagues will deal with because I realize I only have a few seconds or minutes remaining from my original time. But it was a point that I raised in 2019 when I was a Senator where I indicated that they need to change the standard of proof at section 6 of the law that says—instead of “grounds for believing”, “reasonable grounds for believing”, and at the time Attorney General, Faris Al-Rawi, did give the undertaking on the Hansard, which I have a copy of, that that particular amendment will be made, so I am hopeful that could be made. But, Madam Speaker, that is just one change, there are many other changes that need to be addressed in this particular Bill, and we are asking on this side that this Bill, if they want our support, let us send it to a joint select committee for a full ventilation—

Hon. Members: [Desk thumping]

Mr. S. Hosein: —full consultation, full deliberation of this so that we could hear from the stakeholders, because this Bill does not only affect the Office of the DPP, it affects the TTPS, it affects the Judiciary, it affects the criminal bar, it affects the Public Defenders, it affects the Legal Aid and Advisory Authority, Madam Speaker.

There are wide-ranging stakeholders, and we need to hear their voice when it comes to this Bill, because there are four important points, and one of my most fundamental issues is the erosion of the power and the interference of the power of the Director of Public Prosecutions with this particular Bill, Madam Speaker. So, Madam Speaker, thank you very much for allowing me this opportunity to be heard and I now look forward to hearing from my colleague opposite.

Hon. Members: [Desk thumping]
Madam Speaker: Member for Port-of-Spain South.

Hon. Members: [Desk thumping]

Mr. Keith Scotland (Member for Port of Spain South): Madam Speaker, good afternoon. Madam Speaker, I am gratified to be able to respond and to join this debate. Madam Speaker, I would like to start to respond to the hon. Member for Barataria/San Juan by dealing with his points, and I will deal with his last point first, the point of the anonymity of documents and section 32B(1). Madam Speaker, it is important that we correct the Hansard because what the hon. Member is doing is trying to instil unnecessary fear and fearmongering in the population of Trinidad and Tobago where there is no need to be. So let me start by reading:

“The Registrar may, on application or in his own discretion, anonymise any document filed or issued under this Act, if anonymisation is necessary—

(a) for the protection or safety of a witness or accused;”

The hon. Member has forgotten to tell that to the Parliament. It is not just for the witness but it is for the accused, both sides:“(b) to prevent serious damage to property;

(c) in cases”—

Hon. Members: [Crosstalk]

Mr. K. Scotland: Madam Speaker, I was very respectful and silent, I do not like the noise from that Spanish station I am hearing.

Hon. Members: [Crosstalk]

Mr. K. Scotland: Thank you.

Hon. Members:[Crosstalk]

Madam Speaker: Okay. So—all right, let us just try to give respect and render
respect. Okay? So, I do not know that we allow any language in here other than English—

**Dr. Moonilal:** Put earplugs on him.

**Madam Speaker:** —but if it is that. So thank you Barataria/San Juan for helping, and Oropouche East, I do not know if you are the offender with respect to crosstalk which made the Member for Port of Spain South, you know, make that comment. Okay? So let us invoke Standing Order 53 and allow the Member to make his contribution. Members, be mindful of your volumes. Member for Port of Spain South.

**Mr. K. Scotland:** Thank you, Madam Speaker.

“(c) in cases involving witnesses who the Court considers to be vulnerable by virtue of—

(i) …age or immaturity of the witness;

(ii) …physical disability or mental disorder;

(iii) …trauma suffered by the witness;

(iv) the witness’ fear of intimidation; or

(v) the nature of the offence, including sexual offences, for which the witness is the virtual complainant; or

(d) in the interest of public safety.”

This is the making of good law for the order and the protection of all members of our society, but Madam Speaker, this is what the hon. Member on the other side did not say.

In this section “anonymize” and its grammatical variations have the same meaning as in section 3 of the Family and Children’s Division Act of 2016. Since 2016, the law has been in place for the anonymizing of documents and witnesses.
There is no novelty in this, Madam Speaker, and I reject that submission outright as having no merit. And it does not dislodge section 5(6) of the Evidence Act which allows you to tell a witness, “Do you ever recall saying...”; that is cross-examination for [Inaudible]. It does not dislodge the ability of any attorney to challenge admissibility, to ask for disclosure, to ask for antecedents of the—and where is the prejudice? That is the first point. I do not want to waste too much on it, Madam Speaker. I think we have dealt with it.

5.20 p.m.

The second point concerns the major desk thumping of this alleged erosion of the power of the DPP under section 19. If that was done, Madam Speaker, this legislation would have gone as far enough to say, once the Master says there is sufficiency and indictment it goes directly to the High Court. That would have done, because what that would do is to correct the backlog of indictments remaining in the office of the DPP for several reasons, all may be legitimate, but not being put to the High Court so that the High Court could start the trial. But it does not do that. It says that the DPP, whatever sufficiency hearing, and it reveals that there is sufficient evidence, the indictment must go to the Director. But let me go to the knob of my rebuttal to show that the legislation, the proposed Bill, does not in any way erode the constitutional powers of the DPP.

Here is what section 24 (4) says:

“Where an accused is discharged, the Master shall, on the written request of the Director of Public Prosecutions, transmit within fourteen days to the Director of Public Prosecutions the record of the sufficiency hearing.

(5) The Director of Public Prosecutions may appeal the decision of the Master, if the Director of Public Prosecutions is of the opinion that the
accused ought not to have been discharged.”

What happens there in real time, what happens there, there is an inherent protection for accused persons who a Master may have felt have been indicted without sufficient evidence, without a prima facie case. And if the DPP who would have laid the indictment voluntarily in the first place is aggrieved, his constitutional right under the Constitution is protected by his right to appeal, and go to three judges in the Court of Appeal and have that revoked. Where is the erosion of the DPP’s power?

The third point made by the hon. Member is as it relates to magistrates having to deal with matters under the rubric “the interest of justice”. Madam Speaker, what the hon. Member did not say is that he has relied on the old case you would remember from another incarnation of Cadogan v R, I think it is 1977 West Indian Report at page 363, which says that magistrates are creatures of statute. But the law since then has evolved, and I wish to edify the public that there is a case called O’Toole, and in O’Toole, here is what it says about magistrates, that Magistrates have a discretion and this has existed from the earliest of times:

“This discretion was not conferred by statute, but was an element or consequence of the inherent right of a judge or magistrate to regulate the proceedings of his court. It could be exercised either on general grounds common to many cases or on specific grounds arising in a particular case. Its exercise should not be confined to cases where there was a strict necessity. It should be regarded as proper for a magistrate to exercise this discretion in order to secure or promote convenience and expedition and efficiency in the administration of justice.”

Madam Speaker, I rest my on that point.
So in other words, it is no longer the law that magistrates are bound by statute alone. There is an inherent power in the magistrates that has existed since time immemorial. The case says “since the earliest of times”, and that, Madam Speaker, to my respectful mind, deals with the third point made by the speaker that went before.

The fourth point relates to the resources. Madam Speaker, it is now a fact, and I would want my learned friend when he is finished here to take a walk next door. At the Hall of Justice you no longer have civil cases. That is done down at Tower D. The Hall of Justice now is totally dedicated to the hearing and determination of criminal cases. That is the physical court. There is now the virtual court where judges, and particularly since Misik, can sit within the jurisdiction and deal with a trial while the accused appears at the VACC centre, the witnesses appear at the VACC centre, and the defence attorney remains at his chambers and cross-examines the witnesses and, Madam Speaker, addresses a jury.

Apart from that there is the O’Meara Administrative Centre. There is one court totally dedicated to paperless trials. I am still to learn CaseLine, and that is there. There is the San Fernando court, and then of course there is the Princes Town court. There is an issue with it, but what we are saying is that the resources have been—have been allocated.

**Hon. Members:** [Desk thumping]

**Mr. K. Scotland:** What the other side does not want this country to know is as follows: This Government, over a decade ago, before it came into power, before it got the reins of government, recognized that there was an issue with the criminal justice system, and it needed to be arrested and improved. This Bill is the culmination of that exercise in order to arrest the decline and the malaise in the
criminal justice system. It is part of a slew of legislation that has started from nine years ago.

Firstly, this provision and the provisions of this Bill work in tandem with amendments to section 6 of the Criminal Procedure Act. Firstly, a major concept is a person shall be judged by a judge alone, except if the person wants to be judged by a jury and the judge sitting if it is in the interest of justice. The number of jurors is to be reduced from nine, in treason and murders, from 12 to nine, and six in other matters where it was nine before. The category of special jurors have been repealed with lay assessors.

What happens then, it means then that the resources to get the jury pool, to bring 12 people, sometimes 18 people, depending on how many alternates you have, that no longer is necessary, because people require resources. Madam Speaker, a jury requires lunch, they require space. Sometimes if they are sequestered they require hotel accommodations, and that is at a cost. It is not for free. What this has done is reduce the demand on the State for that amount of resources in order that those resources can be used in other areas.

The legislation makes judge-alone the first position, and it is opposite to what exists now, because now jury trials are the first position. So there is a change in the focus of this legislation as it relates to the strain on the resources of the Government. And who is to say that six will not decide better than nine, and nine will not decide better than 12. I have not heard an argument.

These amendments therefore are all aimed, Madam Speaker—if you have a pool and you can share the pool with more, does that not increase the amount of trials that can be had at the same time? Several times judges want to empanel, but they do not have enough in the jury pool. Therefore we are saying that we read the
legislation in context of other pieces of legislation that have been brought before this Parliament.

The effect, Madam Speaker, of this piece of legislation also means that when you look at the Miscellaneous Provisions Bill, and also when you look at the Summary Courts (Amdt.) Bill, clause 64(2), which provides that where there are more than two complaints, you have to ask the defendant, “Well, do you consent to both matters being tried together?” If the defendant says no, you know what happens? The same witnesses, from the same event, with the same evidence, have to come to court and give one set of testimony. When that is done, the first thing you do if the magistrate deals with that matter, under R v Gough and Porter v Magill, you must ask that magistrate to recuse himself or herself, because you could not have tried me on this issue and come back and try me again. So the case goes before another magistrate, and you do it over again.

What this does is to take the ability of anyone to unnecessarily abuse the process of the court, and therefore there is no option. Once it is there is the same complainant, the same witnesses, the same series of events, even if there are different charges, they are to be held together. That is in consonance, Madam Speaker, with the effective administration of justice and its sibling to proper and effective case management. So therefore that is the second piece of legislation that pulls this together.

Madam Speaker, the essence of this incarnation is, and I have checked it, it seems to be the fourth phase of the amendment of the Administration of Justice Act, and also the 2011 Act, the Indicatabile Proceedings Act of 2011, which was enacted in both Houses.

The Act has been previously amended. When I was doing my research the
first amendment came in 2012, and this amendment was brought by the then AG. You know what that gave us, Madam Speaker? Section 34. That is what that gave us in 2012, section 34. The next amendment came in 2019 under this administration, and you know what that gave us, Madam Speaker? It started to cure deficiencies in the parent Act. The third amendment was done also in 2019, and this was the second phase of amendments, and it again tried to cure the deficiencies that existed in the Act, and it went to the third and the fourth amendment.

An estimated 142,000 cases come before magistrates annually, with approximately 50 magistrates currently sitting. The system is stretched beyond capacity. Magistrates preside over summary offences. They preside over minor offences. Even now the ticketing system, although persons can pay tickets, once you are challenging it, you have your day in court. You are entitled to your day in court. If you have a licence for a bar and the committee does not decide the matter, there is a chasm between the bar owner and the residents, that matter goes before the magistrate.

So what happens? During the morning period the magistrate may spend two to three hours just calling matters and adjourning, and not hours spent dealing with justice, dealing with cases, taking evidence and deciding matters, and getting them out of the system. The magistrates themselves they conduct trials to determine guilt and innocence, and they also preside over petty civil matters. Those are matters that are 50,000 and under.

It means then, just their summary matters alone, have weighed them down. Why have the Members on the other side not said to you, Madam Speaker, they need another avenue, another system, that can deal with cases, particularly
indictable cases, because indictable cases are heavy cases.

So in addition to what I have just described there, those 142,000 cases, Madam Speaker, what happens to the indictable cases? Let me give a little history of this Preliminary Enquiry Act, Chap. 12:01. It has been in existence since 1917, and magistrates who have to deal with all the summary matters I have just described, now have to embark into serious criminal matters for indictable offences.

No wonder, no wonder, the system is how it is now. How can one magistrate—how can the 50 magistrates do all of that? That is why because of the heavy weight of the cases falling within the purview of the Magistracy, because every preliminary enquiry, every indicatable matter, starts at the Magistrates’ Court, and the resources are limited. Having to deal with these thousands of criminal cases, they will just languish. There is just so much you can do in one day; and they languish.

That is why the Member for Barataria/San Juan could say that a man was just sentenced for the killing of his wife in 2010, 13 years before, because most likely that matter would have taken five years in the Magistrates’ Court at the PI, two years to be committed on the indictment, and the five years to be had as a trial in the High Court.

5.35 p.m.
What this system is trying to do is to remove too that waiting period, to truncate it, to let matters move through the system more timely. The situation, Madam Speaker, can be exacerbated in this regard. We know now that you can secure bail for almost most charges, now you can secure bail for murder. But what about when an accused person cannot have access to bail and then has to languish in
prison, most likely serving a term before the matter is determined? How come that issue was not addressed by any Member on the other side? Because, you see, it means that if this system is introduced now in order to speed up the hearing of indictable matters, persons will be spending less time incarcerated under the presumption of innocence; under the presumption of innocence.

And not only are the accused affected, what about the victims? What about the victims and the accused persons in serious matters, fraud matters, sexual offences matters, assault matters, and grievous bodily harm? They are left in limbo—they are left in limbo in this long pre-trial period. And that, Madam Speaker, is why the criminal justice system is in dire need of reform. There is no real expediency, there is no efficiency because there are too many persons languishing in remand, giving credence to that adage, “Justice delayed is justice denied.”

So when the parent Act was brought to this Parliament in 2011, we now know what the main purpose was. When it was brought by the Members of the other side, it unanimously passed with the support of the Opposition, the PNM. We supported it because we recognized then that this was an attempt—outside of what was tried in the dark of night, we thought it was a genuine attempt to improve the criminal justice system. And the move to abolish preliminary enquiries, which is why we are here now, part of the purpose, was supported. It was supported then and it is supported now, because the PNM is consistent and principled. And that is why it is being brought now and piloted in order to have it as a fait accompli.

It was one of the rare instances where a piece of legislation moved through the House with a three-fifths majority needed for its passage and later, proclamation. This Act was based on the St. Lucian model and sought to introduce
criminal masters, sufficiency hearings, and it appeared that there were no problems with the legislation then. What is the problem with it now? The operationalization of the 2011 Act required much to be done, and that is what this Government has been about since 2019. It required, Madam Speaker, existing infrastructure to be upgraded and allocated, and that is why I started by saying now that there is the Hall of Justice, which is exclusively—save and expect for the third floor which is still the Court of Appeal, and, Madam Speaker, the Court of Appeal in criminal matters I am told, east wing, west wing, and it means that this has been provided.

It also required the implementation of the Criminal Procedure Rules, 2016. And when those rules were proclaimed—and I declare my interest because I represented the maker of the Criminal Procedure Rules in the challenge, and, Madam Speaker, we prevailed at first instance. Garth O’Brien, led by a team—and they entitled to challenge it, but why would you challenge the Criminal Procedures Rules which is something that is an adjunct to a piece of legislation that you created? The rules, Madam Speaker, operationalized—the legislation was the bones, the rules fleshed it out, yet it was challenged; yet it was challenged—Hon. Member: Unsuccessfully.

**Mr. K. Scotland:**—unsuccessfully; unsuccessfully.

Justice Joan Charles gave an erudite ruling and what happened is that the post of criminal masters under the family division was created also; children division legislation; and the Government enabled the enlargement of the capacity of the Judiciary by increasing the number of High Court judges, Madam Speaker, hear this from 36 to 64—if my math serves me right, 36 by two is 72, almost doubling it; and by increasing the cap of appellate judges from 12 to 15.

So right now, Madam Speaker, there are three divisions in the Court of
Appeal, there is the west division, there is the east division and there is the central divisions, all panels; three divisions of the Court of Appeal. And that is because the resources are being provided by the Government of Trinidad and Tobago.

Hon. Members: [Desk thumping]

Mr. K. Scotland: In 2018 and 2019, further amendments were made to the 2011 parent Act to address deficiencies, where it did not take into account matters that are triable either way, hybrid matters. It did not contemplate that if someone was charged with both an indictable and a summary offence, just to name a few. The amendments that followed were done that affect the extensive consultations with the Criminal Bar Association, the Law Association of Trinidad and Tobago, the Judiciary, the DPP, and the Trinidad and Tobago Police Service, and we sat for several months with the stakeholders. The effect of these discussions showed a requirement for further amendments in order to be able to abolish preliminary enquiries with a view to avoiding the hiccups subsequent to the implementation of the parent Act. So thus, for almost three decades, after the Government has been involved in the refining process and refining this piece of legislation, we are here now. We are here now.

And this fourth round of amendments to the Administration of Justice (Indictable Proceedings) Act, these amendments tend to try to eradicate the inordinate, tedious delays in the system. That is what we are trying to do. Because when we look at the legislation, we see that there is a purpose. Now, what says—and let us hear what the stakeholders have to say. The honourable Chief Justice of Trinidad and Tobago, Chief Justice Ivor Archie, before the pronouncement of this Act, at the opening of the Law Term 2008/2009, in September 16, 2008, said this:

“Elimination of Preliminary Enquiries – The system of preliminary
enquiries was inherited from the United Kingdom which has since abandoned it without any sacrifice of fairness or justice. It makes the trial of indictable matters inordinately tedious and expensive and exposes witnesses to risk for longer than is necessary. There really is no need for two bites at the cherry and fairness can be assured by a system of appropriate criminal case management.”

This is the head of the Judiciary supporting in principle—well, not in principle, it goes beyond that.

**Madam Speaker:** Member for Port of Spain South, you have one more minute of ordinary time available to you. You are entitled to 15 more minutes extended time if you so wish to complete your contribution.

**5.45 p.m.**

**Mr. K. Scotland:** Madam Speaker, may I respectfully crave your indulgence for the additional 15 minutes?

**Madam Speaker:** You may proceed.

**Mr. K. Scotland:** Thank you. So, Madam Speaker, that is what has happened with one of the major stakeholders in this country, support since 2008.

Now, Madam Speaker, we know, and let me look to the gallery, you know that it is now novel that almost everything done here there is now a chorus of reliance on the Privy Council. Well, Madam Speaker, in *Hilroy Humphreys v the Attorney General of Antigua and Barbuda*, the essence of the challenge to this type of legislation was done. And the Privy Council had this to say about the challenge at paragraph 10:

“Mr. Fitzgerald submitted that because preliminary inquiries were in existence at the time of the Constitution…”—as it—“was enacted, they must
be taken to be incorporated as the gold standard into the concept of a fair hearing. But that seems to the Board”—to be—“an extravagant proposition. By the same token, virtually any feature of criminal procedure (a requirement of unanimity in jury verdicts, for example) would become constitutionally protected. It is unlikely the framers of the Constitution intended to introduce such rigidity into the law. The question in each case is whether the requirements of a fair hearing are satisfied.

The Board agrees with the Court of Appeal that they are. The committal proceedings are not determinative of guilt but act as a filter to enable the magistrate to screen out those cases which there appears to be insufficient evidence for a jury trial. They are conducted by an independent magistrate to whom both sides may submit evidence and make submissions.”

Madam Speaker, this is the ruling of the Privy Council on the 11th December, 2008. So let me go now directly to what I consider is one of the main features of this Bill.

Preliminary enquiries have traditionally been an integral part of the criminal justice system but as we have recognized, and is the main thesis, the Government has understood that there is an urgency and a necessity to review the proper working of the administration of justice. And as that is reviewed, the Government is acutely cognizant of the fact that you must intersplice any amendment with the constituent of fairness and constitutionality. Therefore, clause 24 and clause 19 when you read these clauses together, you can see that the hallmark of this is fairness.

Section 24 provides, and 19, when read conjointly and I will not wish to take up too much of my time reading, but what it says is that, at this sufficiency hearing,
Madam Speaker, both defence the prosecution will have an opportunity to be heard.

When you look at section 19 section, section 19 says very briefly, that:

“A Master shall hold a sufficiency hearing to determine whether there is sufficient evidence to establish a prima facie case of any indictable offence on an indictment.”

The other sections that follow outlines the fact that, even if the accused is not represented, the master can appoint a public defender or there are certain thresholds and certain safeguards for an unrepresented accused.

And in section 25, Madam Speaker, where the evidence—where the master finds that there is evidence to establish a prima facie case, it is committed. The section that goes before, if there is not a prima facie case, the accused is discharged. The power of the DPP, Madam Speaker, is retain because if the DPP is dissatisfied, within 14 days the record must be transmitted to the DPP, and he has the right to appeal.

So that is the first hallmark that I wish to put on record. The efficacy of preliminary enquiries and its continued existence must be examined with a view to determining whether its retention at this stage is just and fair and reasonable as it relates victims and as it relates to the accused and as it relates to the public who is outside looking on. Madam Speaker, sometimes a process becomes so embedded in a system that it becomes difficult to accept that it no longer serves the purpose that it was meant for initially. And it is my respectful contention that the preliminary inquiries and how it is done at this time, no longer suits its original purpose.

When you look at the purpose for which a preliminary enquiry was firstly
introduced, it was that what you want to do is to ensure that before you commit someone to upstairs, the big yard to face a trial, that there was sufficient evidence to meet the muster. It was called a prima facie case. And the other purpose was that only matters with that quality of evidence should make the High Court and therefore, what happened was that, the prosecution had what we call the duty, the burden of proof, to bring that evidence. Preliminary enquiries were supposed to be a sifting process in order to protect an accused person.

At this stage the prosecution did not have to bring and present its full case. And all the accused had to do was either satisfy both limbs under what we know as Sangit Chaitlal which has been now changed from Kerlan George which now says that, the essential ingredients of the charge are really what magistrates must go on and they go back to Parker CJ because the practice note because they say, Madam Speaker, you must take the case at its highest to see if there is some evidence that a jury properly directed ought to convict, you do not go, you do not rely too much on manifestly unreliable. But that is not what has happened now you know, Madam Speaker. Preliminary enquiries have become a trial before a trial. What do I mean by that? They are prolonged because the prosecution is expected now to call almost all of their witness. And if you do not call all of your witnesses, the others who are not called, fall in the category of unused material which you must now disclose. Full-fledged trials now constitute preliminary enquiries.

I myself, Madam Speaker, I have done it for decades. You cross-examine not ad nauseam, but you cross-examine robustly to try to see if you can dislodge the case. If you do not, then you make submissions all the way from points in limine to points in between to a no case at the end. What happens then? It means that victims and supporting witnesses will be cross-examined at length and the
length of time that the preliminary enquiry will take is now extended. If the prosecution does not disclose properly under Reese and Ferguson, there is a challenge for abuse of process for lack of disclosure. What this has done in essence is that, the preliminary enquiries have morphed into a full-blown trial. And therefore, what was originally supposed to be a sifting process, has now developed into a full-fledged trial. What happens now? When that is finished, if the matter is committed in the High Court, both victim and accused have to go over that process again. They have to go over that process again. Is that fair to anyone?

Madam Speaker, you remember the case of Kettleman, I think that is 1968 All England Reports where it says that a case hanging over someone is like the proverbial sword of “Dem-ma-clees”, you know.

Hon. Members: [Crosstalk]

Mr. K. Scotland: The Demoacles, Damocles. Thank you. What does it mean? It means that you cannot—

Hon. Members: [Crosstalk]

Mr. K. Scotland: —you cannot have a case hanging over an accused and a victim because both are affected, and they have to go through the same process twice. Madam Speaker, that cannot be fair, but I come to the nub. When a preliminary enquiry is done as a full-fledged trial, what about the fees? Fees are due. The lawyer is not expected to work for fee unless it is legally aided. And when it comes to the trial, the accused has to find another fee to pay the lawyer for trial. That is a legitimate consideration that I have not heard anyone who practices law address. It means then that there is a double financial burden on accused persons. The sufficiency hearing although rightly will attract fees, but not that, Madam Speaker, of a full trial, a full-blown trial, because the master has conduct of the
documentation before he or she and the attorney both for the prosecution and
defence will determine by their submissions, Madam Speaker, on the evidence as
before the master, whether there is sufficient evidence to file an indictment.

Madam Speaker, what can be wrong with that approach? My respectful
view is nothing because all the rights of the DPP are protected and all the rights of
the accused, all the constitutional rights that were bandied about by the hon.
Member for Barataria/San Juan, they are also protected. This Bill seeks now—
Madam Speaker, how much more time do I have?

**Madam Speaker:** You end at 6 o’clock.

**Mr. K. Scotland:** Madam Speaker, this Bill seeks then to operationalize and
attempt to transform and improve the criminal justice system. When the Member
for Barataria/San Juan spoke about the erosion of rights of the DPP, did the hon.
Member not consider the erosion of rights of an accused person who could have a
voluntary bill signed against him, an indictment filed against and there is not
sufficient evidence? You cannot speak out of the both sides of your mouth. If you
are for the defense of rights, you must be for the defense of rights. You cannot
say, well I defend the right but oh, by the way, you are infringing on the DPP’s
right. This Bill protects both sets of rights because if the DPP is aggrieved, he
could go to the Court of Appeal. And if the accused does not have a case to
answer, he is discharged, Madam Speaker, because of the insufficiency of
evidence.

So what do we have here? We have a choice coming you know, Madam
Speaker, when we vote on this because this is between right and wrong, whether
we want to join together as a Parliament to try to improve the criminal justice
system. Now, we are here for some time to come. We will see when the vote
comes how it will go. And then when further debates come, they will say, “Oh no, well we did not support it because you did not go back to consultation”. Madam Speaker, consultation from 2011? Eleven and nine is 20 and 10, Madam Speaker, that is over 13 years. What more consultation they want? Talk? Eleven and nine is 20. I thought I got it wrong.

Hon. Members: [Laughter]

Mr. K. Scotland: Madam Speaker, I am not—math was never my forte and I remember Justice of Appeal Kangaloo saying that. Thirteen years of talk. Now the time for talk is over and, Madam Speaker, we have to act.

Hon. Members: [Desk thumping]

Mr. K. Scotland: This Government when it comes to the criminal justice system and the protection of the citizens both victims and accused, is intent on acting and acting now.

Hon. Members: [Desk thumping]

Mr. K. Scotland: This Bill, not as in its incarnation of the other Bills that were made in the still of the night—

Hon. Members: [Desk thumping]

Mr. K. Scotland: —it is brought in the broad daylight for the citizens to see.

Hon. Members: [Desk thumping]

Mr. K. Scotland: There is no ad hominem here to protect anybody. We are protecting the whole of Trinidad and Tobago—

6.00 p.m.

Hon. Members: [Desk thumping]

Mr. K. Scotland:—because we are here to serve Pointe-a-Pierre—

Hon. Members: [Desk thumping.]

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Mr. K. Scotland:—Naparima—

Hon. Members: [Desk thumping]

Mr. K. Scotland:—Barataria/San Juan—

Hon. Members: [Desk thumping]

Mr. K. Scotland:—Siparia and all those who are engaged in activities, gun related or not.

Hon. Members: [Desk thumping]

Mr. K. Scotland: Look Naparima “cyah help himself, he draw his gun”.

Dr. Moonilal: My colleague is affecting us, if you can reduce the—what is the term, the decibel?

Mr. K. Scotland: I know he did not say Oropouche. Oropouche you too. So do not feel left out, I will say it softly.

Madam Speaker: Member your speaking time is now expired.

Dr. Moonilal: Good. Thank you.

Hon. Members: [Desk thumping]

Madam Speaker: Member for Caroni Central.

Mr. Arnold Ram (Caroni Central): Thank you for the recognition this afternoon, Madam Speaker, as I would like to add my voice to the Bill before us entitled, the Administration of Justice (Indictable Proceedings) (Amdt.) Bill, 2023. Madam Speaker, at the onset, I would like to endorse all the comments coming from this side of the House this afternoon in respect of this Bill.

Hon. Members: [Desk thumping]

Mr. A. Ram: Madam Speaker, as we get into the Bill there is one particular point which I think Barataria/San Juan was very clear about, which my colleague for Port of Spain South failed to answer, and maybe when the Attorney General, hon.
Attorney General winds up this debate he will be able—the hon. Member, Attorney General, will be able to provide some clarity in respect of that. And, Madam Speaker, Barataria/San Juan was quite pellucid in saying that in respect of clause 4 and the factors to be considered when the magistrate determines whether the case is to be determined in accordance with the Act, this is with respect, Madam Speaker, the cases which are existing at the time, whether they should be—what is happen with those cases he was clear to indicate at 5(2)(b) it says:

“...in the interest of justice and fairness to the parties”.

He asked, Madam Speaker, for the Government to indicate what are the factors that that magistrate ought to consider when making that determination? Many of our practicing lawyers in here have borrowed—that Member, Madam Speaker, borrowed from the civil arena what pertains in the civil arena, and he was trying to bring it to the attention of the hon. Government if they had to listen. But we know they do not listen to the Opposition because it is good ideas, and they lack the depth to agree when we bring good amendments to the legislation that they have provided to this Parliament.

**Hon. Members:** [Desk thumping]

**Mr. A. Ram:** So, Madam Speaker, that is the first point. In respect of my friend, Port of Spain South, I want to let him know that the Civil Court of Appeal still meets at the Hall of Justice. So I want to edify you there hon. Member.

So, Madam Speaker, as I get into my substantive debate, I want to let you know that this has been the fourth amendment—well the fourth amendment Bill which has been brought to this House in the last five years, this being the fourth, and we are nowhere closer, Madam Speaker, or anywhere closer, to getting rid of these PIs, and I could, in my preparation for this afternoon debate, Madam
Speaker, I could picture San Fernando West, hon. Member, coming and “ramajaying” about how many—

**Hon. Member:** “Ramajaying”?

**Mr. A. Ram:** “Ramajaying” about they moved the civil courts from the Hall of Justice to the Waterfront. I have heard that story so many times, it is now a cliché in my mind. How many times has that been repeated by San Fernando West about how many masters have been appointed, about new judges have been appointed? I could have tell you, Madam Speaker, if San Fernando West was coming this afternoon to this debate he was going to say that, because this is the fourth amendment in five years. So, for me, in my mind, this does not get us any closer to getting rid of PIs, Madam Speaker. Yet again, this PNM Government is simply forcing the passage of legislation without putting the necessary resources and support mechanisms for the laws to take effect. In other words, all talk and no action.

**Hon. Members:** [Desk thumping]

**Mr. A. Ram:** I wish to refer this honourable House to the *Hansard* of the 17th of May 2019 when the Administration of Justice (Indictable Proceedings (Amdt.) Bill, No. 2 was debated, the then Attorney General, the hon. Member for San Fernando West, Mr. Faris Al-Rawi, he said:

“…it gives me great pleasure to come to perfect a critical piece of law designed to take our country out of the lurch of criminality, corruption, malfeasance and turpitude.”

Today he described it as rock and roll. Back then in 2019 was perfection. What happened to your perfection, hon. Member, in 2019?

**Hon. Members:** [Desk thumping]
Mr. A. Ram: If it was so perfect in 2019 why are we here again in 2023 perfecting your imperfections? Why are we here? Well it seems that the present Attorney General is really here for your imperfections. But we have grown accustomed to pretty suits and to no substance from the former Attorney General.

Madam Speaker, let me let you know that it was the UNC by Act No. 20 of 2011, the Administrative of Justice (Indictable Proceedings) Act, which was assented on the 16th of December 2011, which first brought this piece of legislation, the parent Act, before this Parliament. Since 2018 this PNM Government has brought amendments after amendments after amendments after amendments, yet the purpose of this Act cannot be fulfilled because this Government has not put the support mechanisms in place for it to take effect. Might I remind hon. Members and the national public at large, that we are nearly into the second half of the PNM second term in office, I ask, how much time do you need to make and to enforce this Bill that is so important for the criminal justice system in this country? I must ask, are you serious about the criminal justice system and fixing the criminal justice system in this country, I must ask, because this has already passed halfway into your second term in office.

Madam Speaker, it has been section after section of this Act, some have been amended, some have been re-amended, some have been repealed, they have replaced some of the amended sections. It is all hodgepodge and haphazard, Madam Speaker. It seems to be the PNM approach to these preliminary enquiries and this indictable—Administration of Justice (Indictable Proceedings)—something as simple, Madam Speaker—you ask the man on the street what do you understand by alibi? We are here because you have a new definition of alibi. They cannot even get that right.

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Madam Speaker, in my preparation when this Bill was first sent to us Members—first sent to us there was no way where you could have found the entire Bill with all the amendments. When you go on to the Legal Affairs website you are getting a Bill that is dated 2016 or so. There was no place, Madam Speaker, until it was sent by the Parliament, and I saw the document, it is the CPC’s unofficial consolidated version, is only then you find in one place all the amendments and the re-amendments over the years.

Madam Speaker, even the interpretation section is indicated is being constantly tinkered with and it seems there is no clear path and no clear way forward. Madam Speaker, since 2018 section 3, section 5, section 6, section 7, section 8 have been amended and re-amended four times. There have been amendments and re-amendments to sections 11, 12, 13, 15, 18, 19, 20, 21, 22, 27 and 32. There have been new insertions including a new section 8(a), 26(a), 26(c), 28(a), 28(e), and these new sections have also been amended and in some cases re-amended. This PNM Government seem not able to get their act, or rather I say this Act together. And you know, Madam Speaker, during the 2011 debate in this House, the hon. Member for Diego Martin North/East had the gumption to boast that it was the PNM Government that first drafted the Administration of Justice—

Mr. Young: Madam Speaker, 48(1), the contemplation of this type of legislation was not even in existence in 2011. And if the Member could speak English it would be appreciated?

Madam Speaker: Okay, so on the latter point let us exercise some tolerance and not make personal reflections. Okay. So Member I am giving you some leeway to get into—I think you have painted an overall picture and now let us condescend on what is before us.

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Mr. A. Ram: Thank you, Madam Speaker. Madam Speaker, I know that if the former person, Port of Spain South indicated—

Hon. Members: [Desk thumping]

Madam Speaker: I do not think the Member needs much assistance, I would like an opportunity to hear what he is saying. Okay, so please Members.

Mr. A. Ram: Madam Speaker, I must say eh, every time I come on this platform to address you, Madam Speaker, the Member for Port of Spain North/St. Ann’s West always seems to jump up, and every time he jumps up it reminds me of this song sung by one of the islanders. You know, we are all cultured Trinidadians; “small pin does chook hard”. He reminds me of that song.

Hon. Members: [Laughter]

Hon. Members: [Desk thumping]

Mr. A. Ram: Every time I come to debate in this, he jumps up and every time he jumps up it reminds me of that song. Madam Speaker, I am responding to Port of Spain South who indicated that the genesis of this Bill first started in 2011, and the Member for Diego Martin North/East at the time, well, still north/east, he said that this Bill was first drafted in 2009, and that is the PNM for you. “Woulda, shoulda, ah coulda” Government. In 2009 he indicated that this Bill was drafted by the PNM when the Bill in 2011 was brought, and legend has it that every time the UNC brings a good Bill to the House, or when they are government, that they had it on the books, they were waiting to bring it.

    Madam Speaker, it has been five years since the PNM has been fiddling with this Act, first in 2019, then 2019 again, 2020, and now in 2023. And they have assured that enough masters are in the High Court to ensure the Act can come smoothly into operation. Of course, not. I have not heard any speaker on that side
indicating the number of masters which will be required for this Bill to be—when this Bill comes into effect, when it is proclaimed. I know recently that some masters were appointed to the criminal division of the High Court, but clearly the recent appointments are not enough. Madam Speaker, during the debate on the 18th of November 2011, the hon. Member for Diego Martin North/East made the following comment:

“There was a Bill drafted by the former Attorney General that was sent to a committee of judges to examine, and there was a series of deliberations.”

What the Minister has been silent about is that the concern of the Judiciary, which he has not told us about, he has not disclosed, is that when preliminary enquiries are abolished there is a serious and practical concern. There is a concern of the Judiciary. It is a practical concern. That is why there was an aspect of the Minister’s contribution that I was very happy to hear. I was very pleased to hear a certain statement that he made, and we in this Parliament should hold him to his words, that he would simply be moving the backlog of cases from the Magistrates’ Court into the High Court. I ask the Government, I ask the Members on the other side, what will happen with respect to this? Are they moving the backlog of cases from the Magistrates’ Court to the High Court? Because clearly if they are not resourced properly with enough masters and enough judicial staff then we are simply just kicking the can down the road. Let me repeat, Madam Speaker, that he would simply be removing the backlog of cases from the Magistrates’ Court into the High Court. So, Madam Speaker, when the hon. Attorney General spoke on the 5th of June this year, and he said:

“...as of March 2023, there were approximately 37,933 pending indictable
matters at the district courts”
—meaning the Magistrates’ Courts. And:

“To add to this number, it is an average of 8,835 indictable offences filed annually which now joins the queue of the 37,933 pending matters.”

It seems that these 40,000-plus matters will simply be removed from the Magistrates’ Court and put into the—from the Magistrate into the High Court to a master, from a magistrate to a master

6.15 p.m.

At present, there are 12 magisterial districts in Trinidad alone, and all of these courts there are at least two magistrates who hear indictable matters. That is at least 24 courts and 24 magistrates moving to two High Courts. Madam Speaker, to date, we do not know how many masters have been appointed and will be appointed to deal with this 40,000-plus matters that we have taken from the Magistrates’ Court and we are now putting to the High Court when this Act is operationalized. And we await to hear the Government’s plan in respect of treating and dealing with the backlog that we have in respect of indictable matters and the backlog that pertains in the criminal justice system.

Madam Speaker, under the People’s Partnership government, it was proposed that the High Court complex be built at Trincity, at Sangre Grande, Carlsen Field and Siparia. But, of course, the PNM Government has shelved these plans and are, again, congesting Port of Spain and San Fernando. Everything is about Port of Spain and San Fernando. We had proposed plans, the People’s Partnership government that is, for courts to be built throughout the country. So when we come to operationalize this—

Mrs. Robinson-Regis: Standing Order 48(1), please. Thank you.
Madam Speaker: So, Member, I want you to tie it quickly in to what you intend to really contribute to this Bill. Okay? So quickly tie it in.

Mr. A. Ram: Certainly, Madam Speaker. We have been told that this Bill will be a “rock and roll”, as described by the Member for San Fernando West, meaning that this Bill will create a resounding effect in the criminal justice system. And we are simply asking on this side, Madam Speaker, what are your plans? What are your plans to operationalize and bring this Bill into effect to clear the criminal justice system of the backlog that it has?

We know, Madam Speaker, since the law was perfected in 2019 by the Member for San Fernando West, how ready we were to abolish preliminary inquiries; quite now, very clearly, Madam Speaker. But again, we are in this House debating an amendment in a PNM gimmick exercise I would say, Madam Speaker. On the 5th of June, the hon. Member—the hon. Attorney General made the following statement:

“Critically, it is well known that the work of conducting”—PIs—“is shared between the Office of the Director of Public Prosecutions and the Trinidad and Tobago Police Service.”

So in respect of the DPP’s Office, the recent public rift between the DPP and the hon. AG has blown the lid on how understaffed and ill-prepared the Office of the DPP is presently. Yet we are—

Mr. Deyalsingh: Madam Speaker, Standing Order 55(1)(b), that issue has been ventilated by every speaker opposite.

Madam Speaker: I think I will have to accept the invitation with respect to tedious repetition. I think Member if you are dealing with resources, I believe resources have been dealt with extensively with almost every speaker since the
debate began. So I will invite you to go on to another point, please.

Mr. A. Ram: I am so guided, Madam Speaker. Madam Speaker, let me just indicate, from what the Attorney General indicated, that this work has to be shared between the Office of the DPP and the Trinidad and Tobago Police Service. I do not think I have heard from Members on this side or on that side talk about resources in the Trinidad and Tobago Police Service. I stand corrected, Madam Speaker, if that is so—

Madam Speaker: If you are going on to talk about the Trinidad and Tobago Police Service, sure, but you were not doing that before I stood. Okay? Right.

Mr. A. Ram: Yes, please. So what I was trying to say, he basically said, Madam Speaker, that there are two arms, the DPP’s Office needs to be operationalized, and the Trinidad and Tobago Police Service needs to work in tandem. So I will just quickly say that we have traversed and it has been traversed with respect to the shortages at the DPP’s Office.

Now I go on to the police service, just to give the listening public the context in which the debate is going. Where is the police service in terms of upgrading their Court and Process Branch? Anyone who practises in the Magistrates’ Court knows all too well the problems that police prosecutors face. Many offices have to use their personal devices for court. Many prosecutors do not have proper scanners to facilitate electronic filing. Many prosecutors do not even have updated software to allow for the combining and editing of Word and PDF documents.

Madam Speaker, clause 4 of this Bill provides for redefinitions of “audio recording”, “video” and provides for electronic filing. Any defence attorney who practises in the Magistrates’ Court will tell you the nightmare that—the prosecution disclosure and delays are involved. A recent boast from the hon.
Member for San Fernando West about the Criminal Procedure Rules is of no assistance as there are no sanctions, Madam Speaker, in the rules and barring a “bouff”, the court can do nothing to prevent delays.

So what we are simply doing here, Madam Speaker, by this Bill is exporting those from the Magistrates’ Court to the High Court if these institutions are not resourced properly. And that is what the Government is doing, they continuously put the cart before the horse. Why are we fixing legislation and not fixing the support mechanisms needed for the legislation to work?

Hon. Members: [Desk thumping]

Mr. A. Ram: Why are we doing that? Madam Speaker, in 2011, way back then, the Member for Diego Martin North East told the honourable House this:

“‘I had the opportunity to look at a report done on cases in the Magistrates’ Court recently. If my memory served me correctly”—he said—“they have 10,000 new cases per year, some number like that, a significant number of which have all the requirements for a preliminary enquiry. So that once this Bill is passed, you are going to have a situation where thousands—not hundreds, thousands of cases are going to arrive in the High Court. That is why I am holding the Minister to his words—I took careful notes—where he said that the Bill had a proclamation clause. I am glad he referred to this. Let me quote him…”—directly—“…He said, ‘Once all the procedural and administrative mechanisms are in place, the Bill will be proclaimed.’ I am taking the Minister at his word that this legislation will not be implemented until the necessary systems are in place, so that we do not have a situation where judges in the High Court are going to have to deal with hundreds of cases.”
So they know all too well, Madam Speaker, what is required when they are in Opposition. But when they reach the doors of government and the corridors of power, all falls flat, Madam Speaker, everything. All ideas out of the window, no plan.

The PNM Government has been in Government since 2015 and what we are doing to mitigate the fears of the honourable Member, Opposition at the time? Nothing, nada, zilch. Yet we come here to debate this legislation, the success of which, Madam Speaker, depends on the DPP and the TTPS. And, Madam Speaker, what about the Forensic Science Centre whose job is to analyze samples? It is still taking more than one year to get back marijuana samples and it is in the same ballistic—and what about ballistic testing?

So, Madam Speaker, those are some of the support mechanisms required to be working in a timely manner, in an efficient manner, for the proper functioning of this Bill which we are here to debate before us. And the Forensic Science Centre is not about bringing a 40-foot container, you know, Madam Speaker. It is about a proper building that we have staffed and housed with proper personnel so that they can have timely return of marijuana samples, of ballistic testing, and so forth.

So who are we fooling, Madam Speaker, by bringing this legislation, the success of which depends on so many external entities that are plagued with deficiencies? I hope my friend could help me answer that question. And, you know, the hon. Members will come and say that it is not their job to hire masters, to fix the Court and Process Branch, to hire staff at forensic and so on, in an attempt—and they will do so in attempt to pass the buck. Madam Speaker, the Government’s policy—the Government’s job is to create policy and ensure all
arms of the Government are equipped to carry out that policy. The PNM has once again failed us.

Madam Speaker, when you look at some of the clauses in this Bill, under clause 5, under the current provisions:

“Where proceedings were instituted prior to the coming to force of this Act, the prosecutor or the accused may elect to have the case determined according to the Act.”

Now, I want to raise a very important point which I think I picked up in the debate by San Fernando West and I asked this question—I think the Member used this word, he said, Madam Speaker, “indictment is the key point”. I think that were the words he used, “indictment is the key point”. And he says, where a case is before—this is a new case, Madam Speaker—where it goes before a magistrate, the magistrate—because there is an indictment the magistrate then has—these are for new cases, Madam Speaker—has to refer the matter immediately to the master. That is my understanding. So if, let us say, for example, someone is held on an indictable charge and the matter goes before the Magistrates’ Court, even though it might by an offence triable either way—because the words used—the words are, “indictment is the key point”, it is immediately referred to the master.

Now, let us go on here now to see what it says in respect of what the master can do. In a sufficiency hearing, even when the person—if the person is willing to say they are guilty and it goes to a sufficiency hearing, the master has no power according to this now—this Bill before this afternoon, Madam Speaker. It has to then go to a judge for sentencing.

So let us follow the process, Madam Speaker. Someone who is willing to plead guilty before a magistrate, because it is an indictable offence, they go before
the master—transferred to the master’s court. The master then says, yes. The accused person will now be sent, because they have pleaded guilty, will be sent to a judge for sentencing in accordance with clause 33. That is a waste of judicial time, Madam Speaker. If the person is willing to say or willing to plead guilty at the first instance, why are we then transferring them or that person to two other courts for sentencing? Madam Speaker, that is not fixing in the criminal justice system. It is not.

Madam Speaker, when we look at clause 5 again, there were certain safeguards in respect of the magistrate to determine whether the case is to be determined in accordance with this Act, and they look at the interest of justice and the fairness of the parties. Now, Madam Speaker, is it that we are changing the due process of law in respect of this matter by saying that the selection—before there was a selection, now there is no selection.

In respect of section 24 prior—under the current section 24, the DPP could apply to a judge if he:

“...is of the opinion that the accused”—person—“ought not to have been discharged...”

The new section allows for the DPP to instead appeal the decision to discharge. So these amendments are made in clause 25 which amends section 24.

The question I have for the honourable—at section 24(5), the Director of Public Prosecution may appeal the decision of the master. Under the old provisions, Madam Speaker, the DPP had the power to apply to the judge if he was:

“...of the opinion that the accused ought not to have been discharged.

Under the new amendment, the DPP must now appeal the decision of the master.
An appeal is conducted, Madam Speaker, under different rules. For example, an appeal is not a rehearing but it is rather a review, the test being the master was plainly wrong.

So, Madam Speaker, those are my comments in respect of some of the clauses in respect of the Bill before us this afternoon for active consideration by Members of the Government. And with those few words, I want to thank you, Madam Speaker.

Hon. Members: [Desk thumping]

6.30 p.m.

Madam Speaker: Attorney General.

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Thank you very much, Madam Speaker. By way of reply, may I say that my reply has been greatly facilitated and I acknowledge the remarks which have been made by my colleagues on the Government side, Member for San Fernando West and Member for Port of Spain South who have very ably addressed some of the critical points that need to be addressed in the fulsome quality of the debate which needs to be taken on a Bill of this nature and of this importance. By way of introductory remarks, may I first of all address a couple of general statements which were made by two of the principal speakers for the Opposition. The concept that this Bill somehow or the other is invading the privacy of individuals, I find it regrettable that those remarks could have been made because on a careful reading—and I will come to that in some more detail—of the legislation, both this Bill and the Interception of Communications Act, it is clear that the submissions made in that regard regrettably are scaremongering as opposed to substantive.
Sen. The Hon. R. Armour SC: The second point of general purport that I wish to make is—and this was dealt with very comprehensively by my colleague from Port of Spain South—there is no erosion of the powers of the Director of Public Prosecutions, and I would remind the Member on the other side who suggested that he needed to read at length section 90 of the Constitution so that he could inform me of the text and substance of that section in case I did not know it. I would remind him that if he goes to law reports and finds the case of Dhanraj Singh against the Attorney General and Director of Public Prosecutions, he would remind himself that when Mr. Dhanraj Singh, who I believed was a Member of the Opposition which may have been in Government at the time, but certainly a Member of the current Opposition, when Mr. Dhanraj Singh brought that constitutional Motion dealing with an accomplice witness who had been charged with murder, I appeared for the Director of Public Prosecutions—

Sen. The Hon. R. Armour SC: —and the judgment of Mr. Justice Nolan Bereaux in that matter is now part of the locus classicus that deals with the substantive differences between the powers of the Attorney General and the Director of Public Prosecutions. So I do not need to be reminded of the language of section 90—

Sen. The Hon. R. Armour SC: —nor do I accept in the least the other scaremongering point that has been made to suggest that this Bill somehow seeks to erode the independence of the Director of Public Prosecutions. Far from it. And the Member of Port of Spain South, as I had started saying, made the point very amply and I will not repeat it except to just adopt the fact that throughout this
Bill—you will see that if one takes the time and the trouble to read it—the jurisdiction and independence of the Director of Public Prosecutions is preserved by allowing the Director to be served with notice of everything done by the masters once it is done and reserving to the Director of Public Prosecutions a right of appeal under the Criminal Procedure Act to the Court of Appeal.

So there is no question of the Director’s independence being eroded. What this Bill is about is to get all stakeholders in the criminal justice system to join hands and get shoulder to shoulder in moving forward our criminal justice system. The Director of Public Prosecutions, the police, the public defenders, the Judiciary, all of whom have been consulted in the articulation, drafting and passage of the Bill which is before this House. So those are my two general comments, Madam Speaker.

If I might just deal with a couple of the points which were made in the first instance by the Member of Parliament for San Fernando—I beg his pardon if I get his constituency mistaken, hon. Rambally.

Madam Speaker: So Attorney General, just to assist you that would be Chaguanas West.

Sen. The Hon. R. Armour SC: Chaguanas West. Thank you very much, Madam Speaker. If I might address—in another place, which I am even still more accustomed to, I would have referred to the Member for Chaguanas West as my learned friend. I have to call him by the name which he must be recognized by in this House. And I was about to say, Madam Speaker, that he spent a considerable amount of time on the term “appropriate adult” that is used in the Bill that we are speaking about. But I reassure him that “appropriate adult” is properly defined and in fact is pointed to in the Bill as being “appropriate adult” as defined by section 3
of the Children Act. And “appropriate adult” means a person 18 years and over who is a social worker; a welfare officer; justice of the peace; attorney-at-law for the child; any other responsible person with whom the child is comfortable; in the case of a person with a disability the appropriate professional but does not include; and then there are a number of exclusions.

The short point is that “appropriate adult” is a person who accompanies a child in appropriate circumstances spelt out in the Bill. So I put to rest the concerns that the Member appears to have deeply troubled by with reference to the term “appropriate adult”. And I will accept when I went back to page 11 of Hansard that the record of what I said, either through my fault by being less than clear or by the record itself, may have misled the Member into thinking that “appropriate adult” intended something else. But it is very clearly defined in section 3 of the Children Act and the language “appropriate adult” is used with that definition in mind.

The wish that there would be better resources to accompany the sea-change which this legislation is introducing was another point that was made by the Member for Chaguanas West, and the Member for San Fernando West dealt with it quite ably, and just by way of emphasis, the short point is that there has been under the supervision of this Government of which I am very proud to be a part, over the last several years since this Government took office in 2015, there has been a sea-change of improvements, infrastructural, structural and other changes that boost the criminal justice system and this piece of legislation that we bring to this House today is but part of that. So we can look at the backlog identification at all levels of the court and the prosecutorial division; the creation of divisions of court; the introduction of judge alone trials; the decriminalization of road traffic offences; the
introduction of new plea bargaining legislation; the increase in judicial capacity and support systems; the creation of a public defender system to boost the small criminal defence bar; the enhancement of the prosecutorial system under amendments made to this very legislation in its previous incarnations; the introduction of criminal prosecutorial and procedural rules; and the implementation of a fully computerized case management structure.

Only this morning, I signed off with the Embassy of the United States of America on new case data activation equipment that is going to be made available to the public defenders’ department of the Legal Aid and Advisory Authority of Trinidad and Tobago. This Government is committed to an ongoing increase in the efficiency and productivity of a fair trial system of which this Bill is just the latest in an ongoing process.

If I may just turn, Madam Speaker, to some of the comments that have been made otherwise and address them? There is no question that the staffing of the DPP’s office continues. There is no question that the DPP’s office exists throughout Trinidad and Tobago and the staffing and outfitting of that Department continues. I, myself, met with the Director of Public Prosecutions. I think the record shows that on more than one occasion. I am not going to divulge the discussions that started and continue both with me personally involved and through the agencies of other agencies and persons, but I can certainly give the confident assurance that it is expected that the improvements in the criminal justice system which this Bill is committed to will include improvements in the Office of the DPP with the active ongoing cooperation of the Director of Public Prosecutions.

**Hon. Members:** [Desk thumping]

**Sen. The Hon. R. Armour SC:** I can say as well, Madam Speaker, that the issue
of search warrants is one of the issues that has been raised and seems to have raised some concerns. I have already said in my earlier remarks that I am moving an amendment to address that, and that amendment will seek to ensure that where a search warrant is issued by a master on oath with respect to specific premises to the extent that the master issues other search warrants in relation to persons who are occupiers of premises, the rigour and strictness with which section 5(1) of the AJIPA Bill before the House today, the rigour of section 5(1) will apply by the amendment that I am proposing today to the other premises that are authorized to be searched on a warrant issued by the master.

I have already spoken to the issue of the interception of communications warrants in general terms, and there appears to be some misunderstanding of intercept warrants as opposed to search warrants by which stored data, communications data and stored communications are obtained. This type of data, that is to say, this type of data in the form of stored data, communications data, and stored communications is to be distinguished from interception to which this Bill does not apply. So the suggestion that the cross-referencing to communications data, stored data and stored communications is a backdoor surreptitious attempt by this Government to invade the privacy of citizens is nothing more than, as I have already said, a very sad and lamentable attempt at scaremongering when we should be joining forces under section 53 of the Constitution to legislate for the good order, peace and governance of this country with a piece of legislation that is without question, a piece of legislation once we pass it in this House and in the other place that will contribute positively to the improvement of the criminal justice system.

**Hon. Members:** [Desk thumping]
Sen. The Hon. R. Armour SC: The question of interest of justice, I frankly do not understand how persons speaking to the issue of prescribing legislation with respect to the interest of justice who are trained lawyers can have the concerns that I heard expressed here today. There is a line of authority, of case law, that speaks in rich, sensible and careful terms about what is meant by the interest of justice and any judge, any master, any judicial officer, applying his or her discretion in the interest of justice, is going to exercise that discretion according to law and in the interest of fairness and in the public interest. So that there is no concern to be expressed seriously about the use of the term “interest of justice” in this fast-track trial law. A judicial officer of the quality of our judicial officers in Trinidad and Tobago is more than capable of determining the interest of justice where that discretion comes to be exercised and I am saddened to think that there is a suggestion that that term is either not understood by attorneys-at-law or by the judges who will come to apply it.

The issue concerning police prosecutors has also been raised. The point is that there is to be, by this Bill, a consequential amendment to the police Act with the insertion of a new section 64A to address the fact that police prosecutors will have to have legal qualifications in order to join the class of prosecutors who, at the moment, come mainly out of the Director of Public Prosecutions’ office and what possible complaint can there be about that? The purpose of introducing police prosecutors to join the cadre of prosecutors in improving the quality of criminal justice is to encourage police officers to take advantage of the options available to them to become legally qualified and to that extent to join fully qualified as practising attorneys within the police service to prosecute cases that
come before the courts. For the life of me I cannot understand the concerns or the criticism that are levelled in that regard.

And then there is the question of anonymization of witness evidence. Well, again the Member of Port of Spain South dealt with it quite adequately. What we are about when you look at the section is not anonymous witnesses, it is the anonymization of documents to be used in clearly articulated particularized circumstances which involve the protection and the respect that persons who find themselves in the criminal justice system deserve if they are going to serve the interest of justice: vulnerable persons, persons who are afraid for their lives.

So that the system is allowing, under this legislation, for an anonymization of documents with respect to witnesses and accused, not to hide the identity of persons from those whom they accuse, but to protect the identity of persons, but who, if we look at the legislation that is before the Bill, that is before this House at the initial hearing stage, all documents, all witness statements are served within a limit period of time in no time at all at that initial hearing stage on the prosecutor, on the accused. So there is no question when one comes to the anonymization of the documents, that persons do not know who—the lawyers representing these persons do not know who are the accusers. It is a measure of protection for persons to have confidence that they can come at their most vulnerable and be secure in their confidence that the system will allow them to get justice, will allow them to seek justice and will protect them from the rigours and the threats that plague our criminal justice system and plague our country.

Hon. Members: [Desk thumping]

Sen. The Hon. R. Armour SC: Why should we bemoan the fact that in those circumstances, this legislation seeks to protect persons with respect to the

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Madam Speaker, I am not going to belabour the point. I spent a considerable period of time over two days, the 5th of June and today. I have put the statistics before this House and I do not think quite frankly, and I will acknowledge that certainly I understood the Member for Chaguanas West to accept that legislation of this quality is legislation that he can support. I do not understand the scaremongering that goes with the qualified support that is being given when it is given reluctantly. The short point is let us get on with making this a safer place in which our children, our women folk, our older folk, can walk the streets of this country safely and be confident that our criminal justice system is being improved as best we can every day by the legislation that we bring to this House and that all stakeholders in a safe future Trinidad and Tobago will join hands in, in ensuring that that legislation is passed.

Hon. Members: [Desk thumping]

Sen. The Hon. R. Armour SC: So that, before I take my seat, Madam Speaker, I just wish to say that in addition to the amendment that I have already signalled, I have asked for some other amendments to be circulated. I will be seeking to bring an amendment to clause 7 which would amend section 5A(8) by including the term “stored data” in that group of other language used in the section “communications data” and otherwise so as to harmonize the definition of “stored data” that is cross-referenced from the Interception of Communications Act.

I have also asked for an amendment to be circulated with respect to clause 8 which would amend section 6(1)(A) to insert, and I acknowledge the contribution in this regard of the Member for Chaguanas West, to insert the word “reasonable” before the words “grounds for believing” so that the master will have the
“reasonable grounds for believing” that an offence is being committed.

And I have circulated an amendment further, or asked for it to be circulated, to clause 13 of the Bill which would amend section 10(2A) by removing the words “or where this is not practicable, before a Magistrate, to be dealt with in accordance to section 8A” as section 8A is being deleted and therefore those words are no longer necessary and by amending section 10(4) of the parent Act by removing references to a magistrate where the functions of magistrates are now going to be allowed for only in very limited circumstances with respect to summary offences and the transitional provisions of the legislation.

So, Madam President—Madam Speaker, I beg your pardon, without any further ado as we get about the business of the Government in making this country a safer place within which we can live, I beg to move.

Hon. Members: [Desk thumping]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to the committee of the whole House.

Madam Speaker: This Bill has 45 clauses.

House in committee.

Madam Chairman: Okay, so AG and Whip, can we take—I believe the amendments have been circulated?

Hon. Member: Yes.

Madam Chairman: Yes? And can we therefore take 1 to 5 as a block and then do the ones separately? Okay. Thank you.

Clauses 1 to 5 ordered to stand part of the Bill.

Clause 6.
Question proposed: That clause 6 stand part of the Bill.

Madam Chairman: Attorney General.

Clause 6 Delete the proposed section 5(3) and substitute the following:

“Section 5 of the Act is amended –

(a) in subsection (1A)-

(i) in subparagraph (b) (ii), by deleting the full-stop after the words “to be searched” and substituting the words “; and”;

(ii) by inserting after subparagraph (b) (ii) the following subparagraph:

“(iii) the requirements of subsection (1) are met.”; and

(b) in subsection 3, by deleting paragraph (b) and substituting the following paragraph:

“(b) file the report in the High Court within fourteen days.”.”

Mr. Armour SC: Thank you very much, Madam Chairman. The amendment as circulated, clause 6 is to amend section 5 of the Act and the intention there is to allow—well let me read the amendment. Section 5 of the Act is amended in subsection (1A) in subparagraph (b)(ii) by deleting the full stop after the words “to be searched” and substituting the word “and” introducing Roman (ii) by inserting after subparagraph (b)(ii) the following the subparagraph (iii) “the requirements of subsection (1) are met” and introducing (b) in subsection (3) by deleting paragraph (b) and substituting the following paragraph (b) “file the report in the High Court within fourteen days”.

Madam Chairman: Right, so the question is that the clause 6 be amended as circulated.

Question, on amendment, put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.
Clause 7.

*Question proposed:* That clause 7 stand part of the Bill.

**Madam Chairman:** Attorney General.

Clause 7 Delete the proposed section 5A and substitute the following:

“Section 5A of the Act is amended—

(a) by repealing subsection (1) and substituting the following subsections:

“(1) Where a search warrant has been issued under this Act for the purpose of obtaining communications data, stored communication or stored data, sections 13(2) to (4) and 14 of the Interception of Communications Act apply.

(1A) Subsection (1) applies to a search warrant issued by a Master under this Act or to a search warrant issued by a person referred to in section 10 who exercises concurrent jurisdiction with a Master.”. and

(b) by repealing subsection (8) and substituting the following subsection:

“(8) In this section “communications data”, “stored communication” and “stored data” have the meanings assigned to them under section 5 of the Interception of Communications Act.”.”

**Mr. Armour SC:** Thank you very much, Madam Chairman. The proposed amendment to clause 7 will effect an amendment to clause 5A of the Act and 5A is

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amended (a), by repealing subsection (1) and substituting the following sections which is to maintain A and (1A) and then by repealing subsection (8) and substituting a new subsection and sub (8) will say: in this section “communications data”, “stored communication” and “stored data”—those are the words that are being added—have the meanings assigned to them under section 5 of Interception of Communications Act.

**Madam Chairman:** Good.

*Question, on amendment, put and agreed to.*

*Clause 7, as amended, ordered to stand part of the Bill.*

**Clause 8.**

*Question proposed:* That clause 8 stand part of the Bill.

**Madam Chairman:** Attorney General.

Clause 8 In the proposed subsection (1A), insert after the words “that there are”, the word “reasonable”.

**Mr. Armour SC:** Thank you, Madam Chairman. There is a short amendment that is proposed to clause 8 which will be an amendment to subsection (1A), upper case A, at the moment, subsection (1A) reads:

“A Master may, if he is satisfied that there are grounds for believing…”

And the amendment introduces the word “reasonable” before the word “grounds”.

**7:00 p.m.**

So it will read:

A Master may, if he is satisfied that there are reasonable grounds for believing.

That is the proposed amendment.

**Madam Chairman:** Whip?

**Mr. Lee:** [Assent indicated]
Question put and agreed to.

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

Clauses 9 to 12 ordered to stand part of the Bill.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

A. Delete the current paragraph (e) and to substitute with the following paragraph:

“(e) will read in subsection (2A) by deleting the words –

(i) “or a Magistrate or Magistracy Registrar and Clerk of the Court”; and

(ii) “or where this not practicable, before Magistrate, to be dealt with in accordance with section 8A”.

B. Delete paragraph (g) and substitute the following paragraph:

“(g) in subsection (4) by deleting the words –

(i) “, the Registrar or a Magistrate or Magistracy and Clerk of the Court” and substituting the words “or Registrar”; and

(ii) deleting the words “or Magistrate”.

Madam Chairman: Attorney General.

Mr. Armour SC: Thank you, Madam Speaker. The proposed amendment is to clause 13 of the Bill. And that proposed amendment is to delete the current subparagraph (e), that is to say proposed subparagraph (e) to section 10 of the Act, and to substitute with the following paragraph. And (e) will read:

“…in subsection (2A) by deleting the words –

(i) ‘or a Magistrate or Magistracy Registrar and Clerk of the Court’; and

(ii) ‘or where this not practicable, before Magistrate, to be dealt
with in accordance with section 8A’.”

And then secondly to:

“Delete paragraph (g) and substitute the following paragraph:

‘(g) in subsection (4) by deleting the words –

(i) ‘the Registrar or a Magistrate or Magistracy and Clerk of the Court’ and substituting the words ‘or Registrar’; and

(ii)”—deleting the words—“‘or Magistrate’.”

Madam Chairman: Whip?

Mr. Lee: [Assent indicated]

*Question put and agreed to.*

Clause 13, as amended, as ordered to stand part of the Bill.

Clauses 14 to 45 ordered to stand part of the Bill.

*Question put and agreed to:* That the Bill, as amended, be reported to the House.

*House resumed.*

*Bill reported, with amendment.*

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

Madam Speaker: Hon. Members, the question is that a Bill entitled an Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011), be now read a third time and passed. All in favour say aye.

Hon Members: Aye.

Madam Speaker: Any against? The ayes have it.

Clerk: Mrs. Robinson-Regis?

Mrs. Robinson-Regis: Aye.

Madam Speaker: Just one minute, there were no noes.

Hon. Member: [Inaudible]—division.

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Madam Speaker: Yes, but there were no noes. Were there any noes?
Ms. Ameen: But I said no.
Madam Speaker: Okay. So if there were noes, you would have a division.
Ms. Ameen: I said no.
Madam Speaker: It is a pity you did not have your mike on.
Hon. Members: [Crosstalk]
Dr. Moonilal: Madam Speaker, just for clarity, you did not hear “no”. Did you hear “abstain”?  
Madam Speaker: No question was put as abstain.
Dr. Moonilal: Well, that is why it was not—[Inaudible]
Madam Speaker: Okay? But if I do not hear any noes, there is no reason to call a division.
Ms. Ameen: [Inaudible]

Question agreed to.

Bill accordingly read the third time and passed.

Madam Speaker: Attorney General.

Dr. Moonilal: Ma’am, excuse me, just for a point of clarity, Madam Speaker. On what Standing Orders are we—[Inaudible]

Madam Speaker: I have already ruled. The Attorney General.

ARBITRATION BILL, 2023

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Madam Speaker, I beg to move:

That a Bill to repeal and replace the Arbitration Act, Chap. 5:01, to provide a modern legal framework—

Ms. Ameen: [Inaudible]
Madam Speaker: Member for St. Augustine, could you stop disturbing the proceedings? Please proceed.

Sen. The Hon. R. Armour SC: Madam Speaker, thank you very much, if I may begin. I beg to move:

That a Bill to repeal and replace the Arbitration Act, Chap. 5:01, to provide a modern legal framework to facilitate domestic and international trade and commerce by encouraging the use of arbitration as a means of resolving disputes and for related matters, be now read a second time.

And may I just ask your leave to get my papers, Madam Speaker? Thank you.

Mr. Ratiram: Madam Speaker, can seek clarification from you with respect to what just transpired, where only one person in the House was allowed to vote?

Hon Member: [Interuption]

Madam Speaker: Member for Couva North, apparently you may have now come into the Chamber.

Mr. Ratiram: No, Ma’am.

Madam Speaker: Okay? Let us proceed. We are on the Arbitration Bill. Okay?

Hon Members: [Desk thumping]

Sen. The Hon. R. Armour SC: Thank you very much, Madam Speaker. Madam Speaker, as I said in the other place, I consider it a significant privilege to rise today to speak with respect to this Bill, which is:

“An Act to repeal and replace the Arbitration Act, Chap. 5:01, to provide a”—comprehensive—“modern legal framework to facilitate domestic and international trade and commerce by encouraging the use of arbitration as a means of resolving disputes for related matters.”

And that it now be read a second time.

Madam Speaker, I consider myself privileged to stand here today to pilot
this Bill, which is of great importance to the Republic of Trinidad and Tobago. It can breathe new life into our commercial climate and attract business—international business—and promote the ease of doing business in our jurisdiction.

With this Bill, Madam Speaker, the aim is to introduce a legal framework which facilitates the use of arbitration as a means of resolving disputes. Provision is made in this Bill for both domestic and international arbitration. Undoubtedly, updating our current legislation will greatly benefit trade and commerce in Trinidad and Tobago by signalling to the local and international community that we have met the gold standard, the international benchmark in this era, that is to say the United Nations Commission on International Trade Law, UNCITRAL—to use the acronym—the UNCITRAL Model Law on arbitration as adopted on June 21, 1985, and amended on July 07, 2006.

The Bill before this House, Madam Speaker, not only complies with the UNCITRAL Model Law, it also closely follows the Impact Justice Model Arbitration Bill, 2022; IMPACT Justice being a Caricom initiative funded and ably supported by the Government of Canada.

7.10 p.m.

This harmonization with, therefore, the regional and internationally-accepted standards for arbitration, will encourage increased trade and commerce in our twin-island Republic. The question arises relevantly, Madam Speaker, as we engage in this discussion today, what is arbitration? Arbitration, Madam Speaker, refers to a method of alternative dispute resolution, which facilitates the resolution of disputes, which are submitted to an arbitrator or arbitrators for a binding and enforceable determination of their dispute which has arisen between the parties. By the arbitration process, importantly, the parties to the dispute consent to an arbitration agreement as part of their commercial engagement with each other, with
the intention of not going to court to resolve those disputes. Rather, it is a consensual alternative agreed by the parties in preference to engaging in time-consuming and expensive litigation in the national courts.

Arbitration is therefore facilitated, Madam Speaker, by:

(a) the consent of the parties;
(b) the selection of arbitrators by the parties;
(c) the procedure being neutral;
(d) the procedure being private and confidential; and
(f) the finality of the decision of an arbitrator or arbitrators.

Madam Speaker, arbitration has become increasingly the safeguard preferred method of resolving disputes worldwide, as opposed to engaging in litigation. The process is recognized as an attractive alternative to litigation for a number of reasons. The parties enjoy a faster resolution to their disputes since the process is simplified; a reduced resolution time results in lower costs associated with determining the dispute; the process itself is more flexible in that it allows for the parties to agree on all aspects of the procedure; arbitration allows for the parties to select a person or panel whose expertise is directly relevant to the specific dispute; and the parties can rely on the finality of the award since a court’s intervention is limited. Arbitration, Madam Speaker, is usually conducted in private as a confidential process allowing for confidential information such as trade secrets to be kept private while the dispute is engaged, and, in due course, resolved. There are international arbitration rules that parties can agree to beforehand.

Only this morning, I read in the newspapers, and I was very proud to read, that the Office of the Attorney General and Ministry of Legal Affairs, which carries under its remit the Office of Intellectual Property was able to assist the farmers of Moruga to now market their intellectually property-owned products
worldwide as a result of the intellectual property office being able to register their intellectual property in the rice which they grow in Moruga. And the point there is, if a dispute were to arise between the sellers and the buyers of this property, which is now protected by the intellectual ownership of the trademark attaching to that particular market product out of Trinidad and Tobago, the parties can engage in an arbitration in which the trade secrets that go towards this particular property of Moruga rice can be protected in a confidential dispute resolution process.

And at the end of that dispute, when it has been resolved through arbitration, the parties will be able to continue to do business with each other without the unnecessary adversarial differences, and sometimes animosity, that envelopes and too often embraces the world of adversarial litigation. That is one of the significant advantages that this country is now going to get on board with by adopting this Bill as part of our legal environment.

Madam Speaker, in promoting this Bill, I say with confidence therefore that Trinidad and Tobago has the capacity and the competence to become a seat of arbitration since there are capable persons who can sit as arbitrators in this country. As at the 1st of June 2023, the chair of the Trinidad and Tobago Chapter of the Chartered Institute of Arbitrators confirms that the Trinidad Chapter has 80 members, which include associates, members and fellows who can function within the arbitration process that will be enabled once this Bill passes into law.

This country’s arbitration legislation currently is governed by the Arbitration Act, Chap. 5:01, which was enacted—pause, emphasis—in 1939 and was last amended in 1997. The 1939 Act is itself based on earlier arbitration legislation, namely the United Kingdom Arbitration Acts of 1889 and 1934. The 1939 Act of Trinidad and Tobago, Madam Speaker, is antiquated, and it does not get past the front door of modern alternative dispute resolution aimed at embedding in our
society the ease of doing business for this country’s commercial life. I do not think, with respect, that I need to persuade this august Chamber that Trinidad and Tobago should not volunteer to remain embedded in a 1939 legislative mechanism for doing business in 2023.

The United Nations Commission, Madam Speaker, on International Trade Law (UNCITRAL) is the internationally-accepted model of arbitration and arbitration legislation. It is the gold standard. UNCITRAL was itself established in 1966 by United Nations General Assembly Resolution, and the General Assembly recognized that disparities in national laws governing international trade created obstacles to the flow of trade and regarded the commission as the vehicle by which the United Nations could play a more active role in reducing or removing those obstacles. The General Assembly gave to the commission the general mandate to further the progressive harmonization and unification of the law of international trade.

That commission has since become the core legal body of the United Nations system in the field of international trade law. That law was developed to harmonize arbitration, to address the inadequacies and disparities in national laws on arbitration and has come to represent the internationally-accepted legislative standard. As pinpointed by UNCITRAL, in an increasingly economically interdependent world, the importance of an improved legal framework for the facilitation of international trade and investment is widely and universally acknowledged.

The model law covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award. To date, Madam Speaker, legislation based on or influenced heavily by the UNCITRAL Model Law has been adopted in 87 states in a total of 120 jurisdictions. Such
jurisdictions include, among others, Australia, Barbados, the British Virgin Islands, Canada, Hong Kong, India, Jamaica, Malaysia, Singapore, the United Kingdom and the United States of America. UNCITRAL is the established body to which all right-thinking trading nations would seek to associate themselves with as a model law to harmonize and unify the jurisdictions in promoting arbitration. And this has been ongoing since 1966. Such assistance also includes the publication of arbitration rules.

I am able today, Madam Speaker, to assure this House that my office extended an invitation to the UNCITRAL Secretariat to consider the very Bill presently before this House, as, according with the UNCITRAL Model Law, and by letter of the 6th June, 2023, the UNCITRAL Secretariat commented on the actual Bill presently before us and advised, with your leave, Madam Speaker, and I quote:

We are very pleased to see that one of the objectives of the Bill, clause 5, is to adopt the UNCITRAL Model Law on international commercial arbitration which is being adopted by a number of jurisdictions to achieve harmonization. Having conducted a review of the Bill—the UNCITRAL Secretariat said—we can confirm that the Bill is indeed in line with the model law and, if enacted as such, Trinidad and Tobago could appear among the list of jurisdictions that have adopted this model law.

The reference there to Trinidad and Tobago appearing among the list of jurisdictions, Madam Speaker, is because when once this Bill passes into law, there is a schedule to the UNCITRAL Model Law that is constantly updated and Trinidad and Tobago will become the listed 121st jurisdiction which has adopted this model law. 

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IMPACT Justice, Madam Speaker, as I said, is a Caricom regional civil society justice sector reform project funded by the Government of Canada. The project goal of IMPACT Justice is:

“To strengthen legal frameworks, to improve legal professionalism and the sharing of legal information, and facilitate increased knowledge and use of Alternative Dispute Resolution (ADR) mechanisms in Caricom Member States.”

This Arbitration Bill before this House today also closely follows the IMPACT Justice Model Arbitration Bill, 2022 as provided at the explanatory memorandum to that Bill. That Bill states itself as the model law proposed by IMPACT Justice for Caricom in order to modernize and harmonize the arbitration laws in the Caribbean and is based, for the most part, on itself, on the UNCITRAL Model Law.

Madam Speaker, by the passage of this Bill into law, Trinidad and Tobago is better positioning itself to, among other things, negotiate contracts including international contracts, to attract business including international business at a regional level, to have increased ease of doing business within the Caribbean, and to help build capacity in the region for arbitrators and the profession. With the passage of this Bill then, located as we are in the gateway between Europe and the Americas, and as we build out our already strong commercial links to Guyana and our other Caricom neighbours, Trinidad and Tobago will be sending a very strong signal that we continue to be at the centre for commercial international business. Arbitration is used in a plethora of areas such as the energy sector, the construction industry, sport, telecommunications, and in land disputes to name only a few.

An immediate and well-known example, FIDIC, the International Federation of Consulting Engineers, is the global representative body for national associations
Arbitration Bill, 2023

Sen. The Hon. R. Armour SC (cont’d)

of consulting engineers. In contracts, all contracts, for construction projects, the FIDIC rules provide standard clauses for arbitration. It will therefore be possible in the FIDIC rules that these FIDIC rules can be introduced into construction contracts in this country, so that Trinidad and Tobago, with the passage of this legislation, will not only be signalling that it is consistent with the international gold standard, but can have its companies insert clauses into those contracts so that the seat of arbitration arising out of any dispute in a FIDIC context can be right here in Trinidad and Tobago.

The recognition that Trinidad and Tobago is UNCITRAL compliant, therefore, paves the way for the international community and the Government of Trinidad and Tobago to enter the commercial community and identify this country as the seat of arbitration in negotiating our commercial contracts, since arbitration being conducted in Trinidad and Tobago to resolve commercial disputes will be capable of being promoted as a viable option right here.

Madam Speaker, the Arbitration Bill is informed by, among other, a policy that was prepared by the Law Reform Commission of the Office of the Attorney General and Ministry of Legal Affairs. It was also extensively informed by a process of consultation with stakeholders on this Bill; an important part of the process engaged in by the Office of the Attorney General.

4.05 pm

A draft Bill was first introduced in 2019 and stakeholders were invited to submit comments on it. The comments as submitted by stakeholders were considered by the Office of the Chief Parliamentary Counsel, and a new draft from the 2019 draft was introduced in 2021 and continued to evolve. The Bill was further reviewed and is inclusive of the consideration of the comparative
arbitration legislation out of Jamaica, Barbados, and the British Virgin Islands, following the model IMPACT Justice arbitration law.

That revised Bill, Madam Speaker, was then submitted for further review by stakeholders in August 2021, and comments were received from those who responded and those who responded have been considered. Those who were reached out to include the Trinidad and Tobago Chapter of Chartered Institute of Arbitrators; the Association of Trinidad and Tobago Insurance Companies; the Ministry of Trade and Industry; the Judiciary of the Republic of Trinidad and Tobago; the Trinidad and Tobago Chamber of Commerce; the Bankers Association of Trinidad and Tobago; the Office of the Director of Public Prosecutions; the Financial Intelligence Unit of Trinidad and Tobago; the Law Association of Trinidad and Tobago; the Registrar General’s Department; Trinidad and Tobago Contractors Association and the Trinidad and Tobago Police Service.

What are the benefits, Madam Speaker, which will accrue from this new legislation? We have already touched on some of them. A modern arbitration regime will signal to the international community that we are a jurisdiction well-suited for international trade, business and foreign investment with increased ease of doing business. It will herald the requisite recognition that disputes can now be resolved through a modern, efficient, and internationally recognized arbitration procedure that can be utilized in respect of transnational contracts.

There will be savings for our local court system since arbitration will bring the significant benefit that resolving commercial disputes through arbitrations allows the High Court in its commercial jurisdiction to concentrate on other commercial disputes and, therefore, saves the time and resources available to our local courts. This is particularly relevant where a commercial dispute may not be ideally suited for adjudication on the scale, complexity and unfamiliarity of an
issue within our jurisdiction. Foreign international companies considering whether to invest or do business in Trinidad and Tobago will be more inclined, I dare say, to do so if there is modern legislation that facilitates arbitration to the same standard as the UNCITRAL Model Law. Further, it will be attractive to foreign investors, Madam Speaker, and companies, if there is a mechanism to settle disputes through arbitration rather than an expensive, time-consuming litigation in the courts in Trinidad and Tobago.

Our local companies are also increasingly turning toward arbitration given the advantages over litigation where time and cost are concerned. A modern arbitration Act therefore benefits our local international stakeholders who conduct business within Trinidad and Tobago.

For some time now, Madam Speaker, there has been a lot of competition among an increasing number of jurisdictions to be chosen as the seat for arbitration disputes. Regionally in 2015, Jamaica established the Jamaica International Arbitration Centre Limited and has been lobbying the international arbitration community as a viable arbitration centre in the Caribbean. Likewise, the British Virgin Islands International Arbitration Centre was launched in 2017. A modern arbitration Act will undoubtedly aid in positioning Trinidad and Tobago as a preferred place for international arbitration. Particularly, a country such as Trinidad and Tobago, which already has a large international investment community, particularly in our energy industries. The Bill signals that as a nation we are suited to conducting international arbitration and will allow foreign representatives to appear before a court or the arbitral tribunal and to have rights of audience.

Furthermore, and we will see when we get to examine the Bill, there are provisions for tax exemptions and on fees charged and expenses incurred by an
arbitrator or foreign representative in an international arbitrator, which lasts for a continuous period of 30 days or less so that expedition is encouraged in a period of 365 days in any one annual period.

Trinidad and Tobago, Madam Speaker, as I have said before, and it cannot be emphasized too much, is in a unique geographic location being a Caribbean island in the gateway from north and Latin America to Europe. Flowing from this, there can be significant derivative economic benefits provided we attract parties from Central, Latin America, South America, North America to settle their arbitral disputes in Trinidad and Tobago when they are contracting with us. Should this Bill be brought into law, there would therefore be an opportunity for the development of an arbitration centre.

Indeed, Madam Speaker, the Port of Spain International Waterfront Centre was originally intended as a beacon for international investors to Trinidad and Tobago. There is a publication which I could read at length, but I would not trouble this House, August 25th 2021, in which the right honourable late Prime Minister Patrick Manning spoke to that International Waterfront Centre becoming the beacon for international trade and commerce. That is the vision which we are now giving reality to by the passage of this Bill into legislation.

Hon. Members: [Desk thumping]

Sen. The Hon. R. Armour SC: Madam Speaker, this Bill will speak to the diversification of our economy coupled with the need to earn more foreign exchange as well as to arrest the flight of foreign exchange, and in this regard, it is ever more important to attract foreign investment from different sectors.

Arbitration matters are currently being sent to other jurisdictions such as New York, the United States of America, the United Kingdom. The designation of Trinidad and Tobago as an arbitration centre once this Bill passes into law will
Arbitration Bill, 2023
Sen. The Hon. R. Armour SC (cont’d)

contribute to earnings of foreign exchange as we establish ourselves as a preferred option for arbitration with qualified arbitrators, 80 of them as at June 2023, in this very jurisdiction. And with being able to attract Caribbean-based disputes from countries such as Guyana and other Caricom nations, attracting disputes and identifying ourselves as a training centre for arbitration.

Madam Speaker, I could speak at length but I will turn at this stage to look at the Bill for the purpose of assisting Members of this honourable House to understand the significance of the legislation that we are seeking to ask this House to bring into effect as the law of Trinidad and Tobago. This Bill is in 10 parts, Madam Speaker. Part I of the Bill, most importantly, at clause 5, speaks to the objectives. When we look at clause 5 of the Bill:

“The objects of this Act are to:

(a) facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes;
(b) facilitate and obtain the fair and speedy resolution of disputes by arbitration without unnecessary delay or expense;
(c) facilitate the use of arbitration agreements in domestic and international matters;
(d) facilitate the recognition and enforcement of arbitral awards;
and”

And (e) and this was pointed to by the UNCITRAL Secretariat, to:

“(e) adopt the UNCITRAL Model Law.”

We see, for example, Madam Speaker, in Part I that the Act and one would find this in the 1939 legislation, the Act in this definition—one would not find this in the 1939 legislation that the Act in its definition section defines what we now
understand to be “data message” and “electronic communication”. So “data message” is defined in this Bill as:

“…information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange (EDI), electronic email, telegram, telex or telecopy;”

That is just one example, Madam Speaker, why I have said that I do not consider that I need to persuade this honourable House that we should decline to pass this Bill into law and remain embedded in the 1939 legislation, which is presently the law that obtains in Trinidad and Tobago.

Madam Speaker, a little time on clauses 8 and 9 of the Bill:

“(8) In matters governed by this Act, a Court shall not intervene except as provided in this Act.”

And clause 9 tells us in detail Madam Speaker, and I will read clause 9 for the benefit of this House:

“The functions referred to in this Act in sections 14, 16, 17, 19, 36, 42, 53, 58, 59, 60 shall be performed by the Court.”

Now may I pause there to elaborate just briefly on a point that is of importance? When we look at the definition section of the Bill, we see that “court” means the Supreme Court of Judicature. That is to say the Supreme Court of Judicature of Trinidad and Tobago. So the Act tells us even though by consent the parties are agreeing to go to arbitration and to settle their disputes by the arbitral process on the UNCITRAL Model Law basis, the Act tells us in section 9, and there are other sections that there are aspects of the supervisory jurisdiction of the supreme court of Trinidad and Tobago, which can still be had access to for the purpose of defining and resolving disputes that are capable of being referred from the arbitration Act by the parties to the court.

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We will look at that when we go through the Bill in detail, but the significance of that is to give effect to the UNCITRAL Model Law, which although essentially allowing the parties by consent to determine among themselves access to the speedy process of the arbitral process, the courts of Trinidad and Tobago are not excluded from their supervisory jurisdiction of issues arising in the course of arbitration.

The intention behind the UNCITRAL Model Law, Madam Speaker, is to give contracting parties the confidence that by having chosen and opted for a process of commercial arbitration in the framework that this legislation is setting up, the disputes will not get mired in the lengthy, expensive, protracted process, that now obtains so unfortunately in the Supreme Court.

What this Bill is speaking to in its vision and in its declaration to the international community is the expeditious resolution of commercial disputes so that parties can with confidence know that they will not only be able to resolve their disputes within an expeditious period of time, but can get on with their doing business—

Madam Speaker: Leader of the House.

PROCEDURAL MOTION

The Minister of Housing and Urban Development (The Hon. Camille Robinson-Regis): Thank you very kindly, Madam Speaker. Madam Speaker, in accordance with Standing Order 15(5), I beg to move that the House continue to sit until the conclusion of the businesses before it.

Question put and agreed to.

ARBITRATION BILL, 2023

Madam Speaker: Attorney General.
Sen. The Hon. R. Armour SC: Thank you, Madam Speaker, and my gratitude to the Leader of the House.

Madam Speaker, when we look at Part II of the Bill, Part II deals with the arbitration agreement. And we see that clause 10 defines the form of the arbitration agreement and again, there are some significant passages in here that tell us that we could not possibly imagine accomplishing any of this in the 1939 time warp that the Arbitration Act, Chap. 5:01 has had us engaged in.

When we look at clause 10(4):

“The requirement that an arbitration agreement be in writing is met by electronic communication, which contains the terms of arbitration agreement, if the information contained therein is accessible so as to be useable for subsequent reference.”

Throughout this Bill, Madam Speaker, we recognize that the reality is that we live in, we engage and trade in commerce today, propelled and developed through the medium of electronic communication, and therefore the legislation that we are looking at today that we seek to pass recognizes that contracts can be formed by an exchange of emails in no time at all, provided according to normal contract law, the terms of the contract is sufficiently clear so as to be enforceable. So that without dwelling unduly, I emphasize the modern concept that this legislation, this Bill, is asking this House to embrace so as to put Trinidad and Tobago on a platform from which it can attract significant international commerce and business.

Madam Speaker, Part III of the Bill speaks to the composition of the arbitral tribunal, and we see from clause 13, which tells us immediately, and this is the core of what arbitration is about:

“The parties are free to determine the number of arbitrators…”

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So that it is the parties to the contract who in the first instance are going to choose those persons who will enable them to resolve their disputes which may arise in the currency of the performance of the contract. So that we can see that this will go in the areas and the benefits that we will get in the areas of energy, in the area of telecommunications, other highly specialized areas by which we will be able to select, by agreement, one or more arbitrators who are specialized and skilled in the area of the contract, so as to be able effectively to give justice to a fair determination of the dispute which has arisen amongst the parties.

And clause 13 goes on to tell us that if the parties fail to be able to choose their arbitrators, that is to say, in one of the limited instances, clause 14 we might go to the court to ask the court to appoint an arbitrator if the parties are unable to agree. So it is not that the court—the Supreme Court is being entirely excluded but that the function and role of the court is limited to allow primacy for the agreement of the contracting parties not only to contract but to resolve their disputes which may or may not arise and that goes very significantly, Madam Speaker, to the composition of the arbitrators.

7.40 p.m.

And we see at clause 14 that there is explicit inclusion, in that:

“(i) A person shall not be precluded by reason of his nationality from acting as an arbitrator...”

The significance there being, in an international business community, which Trinidad and Tobago is very much part of, we will find that international businesses come in to do business in Trinidad and Tobago. Where there is a dispute which has arisen in a highly specialized area, those businesses will have the confidence of knowing that they can approach the other party to agree to the dispute being arbitrated by bringing in someone from outside of Trinidad and
Tobago who has that requisite degree of specialization in the area in which the dispute has arisen, so that the parties will be confident that the dispute will not only be expeditiously resolved, but resolved by persons who have specialized competence in the area of the dispute. And again, I give the example, telecommunications, intellectual property, energy contracts, where you may require a particular level of expertise that is not ordinarily available, or even not available at all, notwithstanding the competence of the judges of our commercial courts.

We see from clauses 14 to 18, Madam Speaker, allowing for a procedure for grounds to challenge an arbitrator where justifiable doubts exist as to his or her impartiality or independence, or qualifications, and the procedure for such a challenge is set out at clauses 15 to 16.

Clause 17 addresses the circumstances in which there may be a failure of:
“...an arbitrator...to perform his functions or...fails to act without...delay...”

Clause 18 addresses the “Appointment of a substitute arbitrator”.

Part IV of the Bill before the House, Madam Speaker, speaks to the “Jurisdiction of the Arbitral Tribunal”, and the jurisdiction there is emphasized at clause 21:

“An arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence of validity of the arbitration agreement.”

There are provisions in this Bill, Madam Speaker, which speak, again, to the issue of expedition. Even where there may be disputes that arise where the arbitral panel is being asked to ascertain whether it has proper jurisdiction, the process continues in the interim and that speaks to one of the areas that becomes quite pervasive in commercial litigation, that is to say, collateral attacks which is a
very—used to be a very popular—and the lawyers in this House will know what I mean by collateral attacks. One could stymie, frustrate a bona fide dispute before the courts by simply bringing what are known as interlocutory challenges on any number of bases and the court has to stop in a resolution of the dispute that it is engaged in, in order to determine those collateral challenges. Well, the legislation of this Bill says that even if you bring challenges to jurisdiction, the arbitral tribunal may continue to sit to resolve the dispute, and at the end of the day will provide a comprehensive and fulsome resolution, including those collateral challenges, so that the progress of the expeditious resolution of the dispute by the panel of arbitrators, by way of interim disputes, does not become stymied or frustrated.

Madam Speaker, built into the jurisdiction of the tribunal, which we are asking this Bill to pass, are safeguards against those collateral challenges. Madam Speaker, Part V deals with “Interim Measures and Preliminary Orders”, and that is an important part of the interim protection that can be afforded to parties, even whilst the tribunal is adjudicating on the dispute. So that clause 22 says:

“Unless otherwise agreed by the parties, an arbitral tribunal may, at the request of a party, grant interim measures.”

And there is detailed provision for interim measures and preliminary orders to be made by the arbitral tribunal, whilst the dispute is ongoing, to provide for protection with adequate security being provided by the party who is asking for interim measure measures so as to ensure that the process is not abused.

Madam Speaker, clauses 20 through 30 of the Bill deal with those interim measures and preliminary orders and are quite detailed: protect the parties from interim damage that may occur while disputes are engaging the attention of the arbitrators. And are comparable and even improve on the processes that have been
developed by the common law in our civil courts to ensure that throughout the arbitral process parties are adequately protected and are confident that at the end of the arbitral process they have got due process and the protection of the law.

When we go to Part VI, Madam Speaker, “Conduct of Arbitral Proceedings”, we see that equal treatment is accorded to the parties, clause 33.

Clause 34 allows the:
“...parties...”—to—“...agree on the procedure...”— they will employ in the manner in which—“...the...tribunal...”—conducts its business.

Clause 35 allows in today’s world, not I dare say in the world of 1939, for virtual hearings to be conducted in arbitration so that parties can—one party in Trinidad and one party in London—be assured of the fact that in a seat of arbitration taking place in Trinidad and Tobago, parties engage in the hearing of their dispute and are assured of a fair hearing.

Clause 39(1) allows for the:
“Parties...”—to—“...agree on the language...to be used in arbitral proceedings.”

And we recognize that in the international world in which we live, not everyone speaks the same language, and therefore parties can make agreement for the language in which the arbitral tribunal will engage in, in the fair adjudication of their dispute.

Part VII of the Bill allows for the “Making of Award and Termination of Proceedings”. Some notable features, clause 46:

The—“...arbitral tribunal...”—is to—“...decide a dispute in accordance with... rules...chosen by the parties as applicable to the substance of the dispute...”—or—“the law...of a State...”—with which the subject matter of the proceedings is most closely connected.
Clause 47, any decision of the arbitral tribunal where there is more than one arbitrator is to be made:

“…by a majority of all”—of—“its members.”

Clause 49, provision for the form and content of the:

“...award...”—to—“...be in writing and...signed by the arbitrator or...the majority of...”—arbitrators.

Clause 50, every written:

“...agreement...”—is to—“...be deemed to include a provision that the costs of the arbitration shall be in the discretion of the arbitral tribunal.”

Clause 51, it is provided that the arbitral tribunal has the power to award interest.

And we see in Part VIII, “Recourse Against Award”, which takes us to clause 55—and I would emphasize with reference to clause 55, the number of circumstances in which the parties are allowed to ask the court to allow for an interventionist role. Clause 55(2) of the Bill, Madam Speaker, allows the parties—and I go to that briefly. Clause 55:

“(2) An award may be set aside by the Court specified in section 9 only if—

(a) the party making the application furnishes proof that—

(i) a party to the arbitration agreement, referred to in section in section 10 was under some incapacity;

(ii)the agreement referred to in section 10 is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the laws of Trinidad and Tobago;”

And they continue through to subclause (v), and the Court is given the discretion and the jurisdiction to find that:
“(i) the subject-matter of the dispute is not capable of settlement...under the law of Trinidad and Tobago; or
“(ii) the award is in conflict with the public policy of Trinidad and Tobago.”

So parties are given ample recourse to the courts of Trinidad and Tobago to set aside or challenge awards in the limited circumstances—and I emphasize this, in the limited circumstances allowed by the Bill which we are debating today.

Part IX, Madam Speaker, deals with the “Recognition and Enforcement of Awards”. And finally, Part X. In the totality and the complete overview of this Bill which is before this House, Madam Speaker, I would like to emphasize that the urgent implementation of a modern arbitration regime is required consistent with the UNCITRAL Model if Trinidad and Tobago is to get in line and stay in line with the growing trend in favour of the resolution of commercial and other disputes by non-judicial mechanisms. It is vital that modern arbitration laws of Trinidad and Tobago are enacted if we are to be considered a place that is good for international trade and business, and for attracting foreign investment.

Madam Speaker, I beg to move.

Hon. Members: [Desk thumping]

Question proposed.

Madam Speaker: Member for Mayaro.

Hon. Members: [Desk thumping]

Mr. Rushton Paray (Mayaro): Thank you, Madam Speaker, for the opportunity to respond to the Attorney General who has now laid this Arbitration Bill, 2023. Madam Speaker, the ingredients of this Bill are really to grow trade and investment, and it is encapsulated in legal procedure and processes. Madam Speaker, while one can hardly disagree with the intent of the Bill as it is laid, I know my colleague, the Member for Chaguanas West, will interrogate the law in
some more detail in terms of constitutionality and process if any of these issues exist.

Madam Speaker, as indicated by the Attorney General, this Bill is based on the UNCITRAL Model Law on International Commercial Arbitration which was adopted by the United Nations Commission on International Trade Law on June 21, 1985 and it was further amended on July 07, 2006. Madam Speaker, this is really a model that all jurisdictions who want to update their arbitration laws, it must conform to this particular model. Madam Speaker, it was really designed to assist countries in reforming and modernizing the law, so that arbitral procedures will have some consistency throughout all the jurisdictions and they will have, you know—this need for commercial arbitration will be consistent throughout.

As of today, Madam Speaker, this legislation, in terms of the Caribbean region, you can find this model been adopted in Bermuda since 1993, the Dominica Republic since 2008, and the British Virgin Islands in 2013, and most recently Jamaica in 2017. Madam Speaker, we on this side, we agree that arbitration laws—good arbitration laws are needed. And it is also critical, absolutely critical, to trade and investment because in that realm it establishes a fair, neutral and enforceable framework for resolving disputes. Madam Speaker, they also provide confidence to investors which is absolutely critical. It ensures efficiency and flexibility and also safeguards the confidentiality of sensitive business information.

Madam Speaker, should Trinidad and Tobago aim to be a seat of arbitration, as indicated by the Attorney General, we have great examples that we can follow. Madam Speaker, one only has to look at the International Chamber of Commerce
(ICC); the New York Convention; Singapore’s arbitration framework; and the Swiss Rules of International Arbitration.

7.55 p.m.

Madam Speaker, they all illustrate the importance of strong arbitration laws in facilitating international trade and investment. There can be no denying the essential merits of the provisions of the legislation before us today. Similar legislation is commonplace in many democracies and investment-friendly societies. In fact, Madam Speaker, I am hopeful that this legislation before us today takes Trinidad and Tobago into an era of modern commercial arbitration legislation that can enhance trade and investment opportunities for the benefit of the citizens of Trinidad and Tobago. Madam Speaker, more critical in terms of trade and investment, not only for foreign investment, but this legislation can have an impact on the small and micro-business sector in Trinidad and Tobago.

The SMEs can benefit from this legislation as it really offers an alternative to costly legal fees and lengthy courtroom trials. Good arbitration laws, Madam Speaker, encourage voluntary resolution of issues. It prioritizes speed and efficiency. Its flexibility is well known in arbitration matters. There is some informality in the fact that it is done in private. You have experts who sit as arbitrators. You have specialization in certain fields so you can have the best people arbitrate on your behalf, and, obviously, in arbitration, you have enforceability of the awards that are determined. So, Madam Speaker, these laws ultimately reduce the court clutter. It relieves the local courts and it enhances the overall efficiency of the justice system, so it creates an overall speed of access to justice in all matters.

Madam Speaker, I want to touch a bit on, for the public, for them to understand a bit of the advantages of the arbitration process. It offers, especially
the small business in the domestic realm, swift resolution to disputes, ensuring timely conclusion for all the parties involved, because you may have disputes among one, two or three, or many parties in terms of dealing with contracts, and so on, as so explained by the Attorney General when he laid the Bill. Again, the issue of flexibility, which allows several parties to tailor and they can cut to suit the process to their specific needs and circumstances. Thirdly, most importantly, Madam Speaker, the confidentiality is maintained throughout the arbitration process, ensuring that companies that have sensitive business information remain protected. The Attorney General made reference to the Moruga rice patents and the intellectual property, and I think that is what he would have been alluding to in terms of being able to maintain confidentiality when you have these types of matters being disputed at some point in time.

Madam Speaker, decisions that are made by arbitrators are final and enforceable so it provides in law certainty and it brings closure to all the parties involved. So these are good things that arbitration can bring to business parties. Unlike traditional litigation, Madam Speaker, arbitration eliminates the need for separate expert evidence. It simplifies the proceeding and in some cases can reduce your cost as well. So in speaking of cost, Madam Speaker, arbitration is generally more cost-effective than court litigation that could go on for years upon years, upon years, making it an attractive option for resolving especially commercial disputes that can be time sensitive in terms of windows of opportunities for your investor at the end of the day. So, Madam Speaker, each of these advantages will contribute to the overall ease of the arbitration process for parties involved in commercial conflicts.

Madam Speaker, it is worth mentioning the significance of clauses 50 to 54, which pertain to the binding nature of proceedings and the enforceability of
awards. These provisions ensure that the arbitration process maintains its integrity and its effectiveness. Furthermore, Madam Speaker, certain aspects of other clauses, particularly 48, 56 and 57, should be highly regarded for their collective aim of protecting commercial relationships, even during legal disputes. Such provisions, they demonstrate the commitment to maintaining healthy business connections in the face of conflicts. Moreover, Madam Speaker, the implementation of alternative dispute resolution would result in reduced legal fees, as mentioned before, a matter of concern for litigants and taxpayers alike, especially when you have the State involved in arbitration because the cost is borne by the taxpayer. The high cost associated with legal proceedings can have a significant impact on both the public and the private sectors.

Considering that time is of great value, Madam Speaker, the speedier resolution provided by arbitration becomes a substantial financial advantage for the contesting parties. Additionally, opting for arbitration over a courtroom trial eliminates the potential burden of legal appeals; that too can take many years and your cost goes up, and in turn, that procedure in terms of arbitration saves both money and valuable resources. Madam Speaker, all of these factors become even more critical given the congested Judiciary and the slow pace of justice that we have here in Trinidad and Tobago. In fact, the Judiciary here in Trinidad and Tobago has endorsed ADR, alternative dispute resolution, in recognizing its efficacy. ADR has become an integral part of legal systems worldwide. With timely arbitration proceedings and effective enforcement measures, justice can be delivered much faster in commercial disputes.

Furthermore, Madam Speaker, recently the Caribbean Court of Justice has expressed its welcome to the techniques and practices of ADR, further endorsing the process. Madam Speaker, you would know that within the next week the
Caribbean Community, Caricom, is approaching its 50th anniversary and it will be worth considering revising the Treaty of Chaguaramas to include the arbitration process as an essential aspect of the Caribbean Single Market and Economy, Madam Speaker. Such legislation at that level, Madam Speaker, would create opportunities for specialized arbitrators and Trinidad and Tobago should aim to have more certified arbitrators in due course. As the Attorney General mentioned, we do have 80 specialists in terms of our charter that exists in Trinidad and Tobago. Madam Speaker, I see arbitration can be developed as a career path for emerging professionals should we achieve what the Attorney General is proposing today. This recognition would highlight the importance of arbitration and encourage the integration of this new reality into the tertiary education system, Madam Speaker.

Madam Speaker, in doing a bit of research for this debate today, we saw options where in some jurisdictions there was the formation of what you call, specialized commercial courts, that can expedite ADRs within the existing judicial system. So given the persistent complaints about the overloaded legal system, prioritizing such courts would help address the backlog and provide a more efficient avenue for resolving some of these commercial disputes. So, Madam Speaker, if you would allow me to spend a couple of minutes, a bit, on this alternative of having these commercial courts I will just give you some examples where they exist in other jurisdictions and the type of matters they handle. And I listened carefully to the Attorney General with his ambition and his goal for Trinidad and Tobago to be a seat of arbitration here in the Caribbean, which I think is a good thing for Trinidad and Tobago, and if we can accomplish that, it opens up the realm for business, new business, more business for us at the end of the day.

So, Madam Speaker, heading the list of these commercial courts in
jurisdictions in Europe, you have the Commercial Court in London, and that particular court, Madam Speaker, handles specifically complex commercial disputes, and disputes in arenas like international trade, shipping and financial matters. As you go across the continent, Madam Speaker, you have the Singapore International Commercial Court; again, it is a specialized division within the Singapore court system. They too, they are dedicated to resolving international commercial disputes, but they specifically are honed into cross-border commercial disputes, construction claims, intellectual property disputes and complex contractual disputes. Again, all these are specialist areas that, as we develop our own arbitration space here in Trinidad and Tobago and we aim at being the hub for arbitration in Latin America and the Caribbean, those are areas that we can look to train our arbitrators, specializing in those areas.

Madam Speaker, if you look closer to home, you have in the United States, you have the Commercial Division in New York State Supreme Court, they too handle commercial cases, but they look at specific to financial issues, real estate and intellectual property. The Delaware Court of Chancery is renowned for handling corporate and business disputes, particularly those involved in corporate governance and shareholder rights, which is another big open area in terms of big business, global business, and when you have shareholder issues; that type of complex challenges. We can look at being specialized in some of those areas as well. And finally, the last jurisdiction that I looked at, Madam Speaker, was the Hong Kong Court of First Instance. They do have a reputation for handling international trade disputes, maritime matters, financial disputes and complex contractual disputes. That court particularly, Madam Speaker, has experience in a lot of matters which involve cross-border commercial disputes, insolvency matters and shareholders disputes.

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So, Madam Speaker, while we on this side have very little objections in terms of the intent, I do have some issues and challenges that I want to lay on the table here for the Attorney General to be cognizant of. There is a fact that a modern and internationally accepted arbitration facility can only do so much to assist Trinidad and Tobago in becoming an attractive investment market. Madam Speaker, if I were to briefly remind you of the Minister of Finance’s 2021 national budget presentation, the hon. Minister stated that it took three and a half years to enforce contracts and two and a half years to resolve insolvencies. To date, the Government has not provided an update on that statement leading us to safely conclude that these benchmarks may have not improved. In fact, given this style of governance, it may even be possible that these time frames may have even deteriorated. Madam Speaker, in other parts of the Caribbean and Latin America, these matters are resolved in roughly half of that time.

So this significant delay in contract enforcement and insolvency, insolvency resolution, it acts really as a major disincentive for business investments. So it is no surprise, Madam Speaker, that Trinidad and Tobago has really dropped off, over the last few years under this administration, from the global investment map at a time, Madam Speaker, when the—

Mr. Imbert: Madam Speaker, point of order, 48(1), there is not a single clause that refers to that—[Inaudible]

Madam Speaker: Yeah. I will give you some leeway and tie it in. I understand that you are trying to build a framework. Yes, go ahead.

Mr. R. Paray: So, Madam Speaker, I wholeheartedly agree that Trinidad and Tobago must enhance its commercial competitiveness, but herein lies the concern that I have. What value does this arbitration mechanism hold if our country is no longer attracting the business in the first place? So arbitration is when you have

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them here and we get into conflict, but if the environment is not conducive to bring them here, well then I have the concern that having this wonderful arbitration law, it may not achieve the objective, as which the Attorney General said at least three times in his delivery, that it improves the ease of doing business in Trinidad and Tobago.

8.10 p.m.

So that is one of the concerns that I have, Madam Speaker. So in other words it is like opening a shop, but nobody is coming to buy, so that is something that we have to address. How would modern arbitration methods, as described by the Attorney General, assist our country if the commercial investors are bypassing us? Clearly, in my respectful view, there is an urgent need to improve and revamp our overall standing in the ease of doing business. Matrices.

Madam Speaker, regardless of how desirable and updated the arbitration process may be, it would hold little significance for our society if we do not fix the other issues which prohibit foreign direct investment from entering Trinidad and Tobago. We must become very swift in appealing to discerning international investors who have numerous other potential destinations to choose from

Mr. Imbert: Madam Speaker, point of order 48(1). This Bill has nothing to do with investment. It is dispute resolution.

Madam Speaker: Again, I will give you some leeway because I understand the context that you think.

Mr. R. Paray: Thank you. Madam Speaker, rather than treating arbitration as a standalone measure, the Government should urgently undertake a comprehensive review of the entire investment environment, just to bring it back. We cannot have these wonderful arbitration laws, but if the business is not coming. So we have been staggering in the ease of doing business for many, many years, getting power,
getting water, getting your business registered and so on.

Hon. Members: [Desk thumping]

Mr. Ruston Paray: So we need to fix that. So my concern is the Government should really look at it as a whole, rather than just dealing with the arbitration component alone.

Madam Speaker, there is an issue that I want the Attorney General to address, and it is something called “cultural apathy”. Along with this timely implementation is the matter of marketing arbitration as an effective resource as well, because you have to get businesses to want to use arbitration rather than going through the court process. The reluctance to utilize arbitration measures has been associated with this term called “cultural apathy”.

One commentator said that Caribbean people want to have their day in court. We rather go to court, let us thrash it out in court, rather than sit and rationalize through arbitration. Madam Speaker, there is an expert on arbitration, her name is Akima Paul Lambert, a partner of the firm Hogan Lovells. She wrote in a publication of Thomson Reuters in April 20, 2022:

“…that the Caribbean was left as a relative outlier in growing world of commercial arbitration.”

She said that the Caribbean generally:

“…ignored the…trend…to use…arbitration as an alternative”

—but she noted that in recent times there has been a demand for:

“…faster and more flexible mechanisms to resolve…disputes”.

The Government has to ensure that this trend can continue here when we pass this legislation, that our businesses want to go into arbitration.

If I just were to use one example that she quoted. As recently as December 13, 2022, the Jamaica Gleaner newspaper reported Minister of Justice, Delroy
Chuck, as saying that Jamaicans:

“...are yet to be convinced of” the “effectiveness of “an alternative to...well-established court proceedings.”

He said:

“...you still have the challenge of convincing Jamaicans to really settle matters even before they come to court.”

So the Minister said:

“...this is the challenge for...how do you promote ADR...”

—and I think that is something the Attorney General has to address going forward as he brings this Bill to fruition.

Madam Speaker, as I wrap up my very short contribution in response to the Attorney General, the passage of this legislation should not be viewed as the ultimate goal by this Government, particularly the Attorney General. Instead, they should take proactive steps to foster acceptance among stakeholders. Neglecting to do so could result in arbitration remaining a mere provision in the country’s legal framework, without being effectively utilized for resolving commercial disputes.

To set an example, for the public sector the Government should actively embrace arbitration, and subsequently share pertinent details regarding the time and cost savings that you would achieve through the process. It is crucial to keep taxpayers informed about the reduced expenditure on legal fees as a matter of encouraging them to go the route of arbitration, rather than through the court process. However, implementing cultural change can often be very challenging, and this initiative may have to be one such endeavour.

It is important to recognize that arbitration is just one crucial tool for promoting efficiency in business transactions. While it holds significance, the Government must also address other pressing matters such as the crime epidemic
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Mr. Paray (cont’d)

and the enactment of modern cybercrime legislation. Merely relying on arbitration procedures alone will not be sufficient to stimulate economic growth and enhance overall quality of life for citizens.

I remain hopeful that the benefits as intended by this legislation bear the fruits which will benefit us all. Thank you very much, Madam Speaker.

Madam Speaker: Minister of Finance.

The Minister of Finance (Hon. Colm Imbert): Thank you very much, Madam Speaker. It is interesting that the first speaker on the Opposition Benches was the Member for Mayaro, whose unfamiliarity with arbitration was evident. Many of the statements made by the Member are simply wrong.

One of the issues that we have to deal with and what this Bill addresses, in a very interesting way, Madam Speaker, is the fact that at the present time, using the old Arbitration Act, someone who is dissatisfied with a decision of an arbitrator can apply to the High Court to have the award set aside, and if the High Court does not rule in their favour, they can also apply to the Court of Appeal to overturn the decision of the High Court. And if the Court of Appeal does not rule in their favour, they can then go to the Privy Council.

We have many situations in Trinidad and Tobago where parties to an arbitration agreement, having gone through the process of arbitration, which by the way, if it is a complex arbitration, a complex commercial arbitration, will take years, not days, not weeks, not minutes as indicated by the Member for Mayaro. And after going through an arbitration process, and completing it after two to three years, one can then find themselves embroiled in litigation in the court for another five, six, seven, eight, nine years. That is one of the problems with our current Arbitration Act, which is a very old law, extremely old. It is modelled on the old English law of arbitration, which the Parliament in the UK amended in 1986 when

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it had its first reform of its archaic arbitration law, and it introduced new principles of arbitration in the 1986 Act. Since then the Parliament in the House of Commons has been continuing to improve and modernize its arbitration laws.

I was just showing the Attorney General something that we may wish to consider here in Trinidad and Tobago. At this time, and even in this Bill before us, the process of arbitration must go through its natural progression, starting with the reference to arbitration, the appointment of an arbitrator, the statement of facts and issues, the submissions, the statement of claim, the defence, then the hearings, then the evaluation by the arbitrator of the evidence, and then the award. In the United Kingdom in September of 2022, not so long ago, the law—Madam Speaker, I am hearing murmur over there. I do not know what the problem is.

Madam Speaker: I think that must be support for you. But Members—

Hon. C. Imbert: They do not like it when people demonstrate knowledge in this House.

Hon. Members: [Desk thumping]

Hon. C. Imbert: So, in September of 2022, the Law Commission of England and Wales published a consultation paper on the reform of the English Arbitration Act, 1996, because that was another evolution of the law, and the Law Commission proposes to amend the Arbitration Act, the UK Act, to empower an arbitral tribunal to summarily dispose of unmeritorious claims. So that all or part of a dispute can be decided at an early stage of the arbitration.

Now, there is a parallel in litigation where a lawyer can make a no-case submission, or ask for a summary judgment. There is no such parallel in arbitration, nor is it in this law, but this is very new. As I said, this is a consultation paper published by the Law Commission of England and Wales, just in September 2022, and they have not yet drafted amendments to the law, and the
British Parliament has not yet agreed to this. But this is something that we should consider here in Trinidad and Tobago.

One of the other errors of fact made by the Member for Mayaro is that lawyers are certainly involved in arbitration, most certainly. In fact, I am not aware of any complex arbitration that does not include lawyers. In fact, every one of them has a senior counsel, a junior counsel, instructing attorneys, on both sides. So one of the problems in arbitration is that they started long ago—and in fact I have a document here, and it speaks to arbitration in England. It is very interesting and I will ask the lawyers among us to take note. The book is *Arbitration In America: The Early History*, 31 Law & Hist. Rev. 241. It says as follows:

“In England in 1698, Parliament enacted an arbitration statute that had been drafted by John Locke. In drafting the statute, Locke was executing an assignment for the Board of Trade, of which he was a member. He clearly was seeking a formula that would encourage private dispute settlement between merchants without legal entanglement. Locke was not an admirer of the legal profession.

In his journal for 1674,…”—a while back—“he listed among those who hindered trade, ‘Multitudes of lawyers.’”

So here we have—what happen?

**Dr. Moonilal:** Madam Speaker, to remove the smirk from our face, but 48(1). We could be spared the European history education.

**Madam Speaker:** So Minister of Finance please continue, but let us not go right back to 16th, the 17th Century to come to the current century, okay? Please.

**Hon. Members:** [*Desk thumping and laughter]*

**Hon. C. Imbert:** Madam Speaker, I have no intention of traversing the last 350 years. I can assure you, this is the only historical reference I will make. I found it
very interesting, and I repeat:

“Locke was not an admirer of the legal profession. In his journal for 1674, he listed among those who hindered trade, “Multitudes of lawyers.”

Now, that gives us some clue as to the origin of arbitration.

Arbitration has been with us for thousands of years. It was codified in the UK and in America 300/400 years ago, but the genesis of arbitration, and it leads into this Bill that we are debating today, was particularly for merchants whose cargo was transported by sea. So you had perishable cargo. You would have cargo coming from the colonies of France, of England, of Belgium and so on, and you might have a dispute about cargo on a vessel that is on the high seas, and you cannot wait for litigation to go through the High Court, the Court of Appeal, the House of Lords and so on, because that might take a year. By that time the cargo might have perished, and therefore the arbitration, the litigation would be useless.

So the merchants in the UK came up with this concept of dispute resolution, where you take out the court and you choose someone, because that is the whole point of arbitration, you choose someone or more than one who you believe has the competence, the knowledge, the skill to determine the facts and issues, determine the law, and make a decision based on the evidence, but make it quickly without resort to court procedures.

Now, one of the weaknesses of that, and this is cured by this Bill before us—one of the weaknesses of arbitration is that there are no rules. So that the proceedings are subject to the discretion of the arbitrator. When looking at this Bill—and I must congratulate the Attorney General for the excellent work he has done on this legislation.

Hon. Members: [Desk thumping]

Hon. C. Imbert: When looking at this Bill, there is an interesting innovation in
clause 40, and clause 40 reads as follows:

“40(1) Within the period of time agreed by the parties or as determined by the arbitral tribunal –

(a) a claimant shall state—

(i) the facts supporting his claim;

(ii) the points in issue; and

(iii) the relief or remedy sought, and

(b) the respondent shall state his defence in respect of the particulars set out in this subsection unless the parties have otherwise agreed to the required elements of those statements.

(2) Parties may submit with their statements under subsection (1) all documents they consider to be relevant or may add a reference to all documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, any party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or the supplement, having regard to the delay in making the amendment or providing the supplement.”

8.25 p.m.

Now, these are basic rules of court, Madam Speaker, if anybody has been to court and you understand process and you understand the rules of court, in particular the Civil Proceedings Rules in Trinidad and Tobago, one will see this is really the basis for case management but you do not have case management in arbitration. So what the Attorney General is doing with this Bill is introducing the basic elements of case management, putting everything on all fours, giving each party a better understanding of their rights in an arbitration. What they are supposed to do,
what documents they are supposed to submit, the whole question of pleadings and a defence, pleadings being in this case being the claim in the arbitration, previously, in the old Act there is nothing like that. All the Act does was give the arbitrator the supreme jurisdiction to decide what the procedures should be. Now they are being codified in this new law which is certainly a significant improvement.

The other point I would like to make, we have an interesting judgment in our local courts from Justice Frank Seepersad and that decision, Madam Speaker, that decision is in Claim No. CV2022-01832, and I am simply reading from the decision of Justice Seepersad and not any findings or fact that he made. The judge made an interesting contribution to the learning on arbitration and that is contained in paragraphs 23 and 24 of his decision.

In paragraph 23, he points out that in a decision in 2002, Justice Jamadar made the point that the current Arbitration Act of Trinidad and Tobago provides that:

“18. (1) In all cases of reference to arbitration the Court may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.”

Justice Seepersad went on to make this very interesting point.

“24. The Court also has an inherent jurisdiction to set aside an award when the following factors apply, namely if it is:

a. subject to an error on the face of the award;

b. wholly or in part in excess of jurisdiction;

c. subject to a patent substantive defect; or

d. subject to an admitted mistake.”

And the judge went on to make his decision using para 24, those points I have just
raised as the points of departure leading in to his decision.

Now, this is very interesting, because if you look at the Act itself, the Bill before us, and you go to Part VIII which is entitled, “Recourse Against Award”, unless you are familiar with the arbitral process, unless you are familiar with the way the court treats with arbitral awards, you would not get that from clause 55. Because clause 55 which is under the general rubric “Recourse Against Award”, says:

“55. (1) Recourse to a Court against an award may be made only by an application for setting aside in accordance with subsections (2) and (3).”

And subsection (2) says:

“(2) An award may be set aside by the Court specified in section 9...”

And I will come to that in a little while, because this is another very innovative and interesting innovation establishing Trinidad and Tobago’s jurisdiction with respect to international arbitration. But I will come to that in a little while.

“55. (1) Recourse to a Court against an award may be made only by an application for setting aside in accordance with subsections (2) and (3).

(2) An award may be set aside by the Court specified in section 9 only if –

(a) the party making the application furnishes proof that –

(i) a party to the arbitration agreement...was under some incapacity;

(ii) the agreement referred to...is not valid under the law to which the parties have subjected it...

(iii) the party making the application was not given proper notice of the appointment of an arbitrator...

(iv) ...the award deals with a dispute not contemplated by

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or not falling within the terms of the submission to arbitration...

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties...”

So if you are not familiar with the manner in which a court will intervene in an arbitration, you would just read this and you would think that there are very limited grounds on which you can challenge an award and ask a court to set aside an award.

But Seepersad has, I dare say, got it right, where he lists all of these things:
“...an error on the face of…”—it;
“...in excess of jurisdiction;
subject to a...substantive defect;”—et cetera.

So we are not ousting the court and Members need to understand that. But what we are ousting, and which I found very interesting, and we will see where that goes—because when you go to the definition of “Court” in the Bill, and let us go to the interpretations section, Madam Speaker, and if we look at the definition of “Court”:

“‘Court’ means the Supreme Court of Judicature;”

Now, what does that mean? Again, if you are not familiar with court procedure you might be forgiven for assuming that the Supreme Court of Judicature means only the High Court, but it does not. The Supreme Court of Judicature in Trinidad and Tobago means the High Court and the Court of Appeal.

So if one looks carefully at various clauses in the Bill which speak to the right of appeal, and I will take you to clause 60(4), well, clause 60 on the whole. And this deals with applications with respect to publication of proceedings, whether they should be in private and so on and it gives the court certain jurisdiction as to
whether the decision of the arbitral tribunal could be published in “law reports” and “professional publications” and goes on to say:

“...if any party to the proceedings...wishes to conceal any matter...the Court shall –

(a) give directions...”

—and so on with respect to that. But interestingly, when you look at 62(4) it says:

“(4) A direction of the Court under this section is final and not subject to appeal.”

And that is throughout the Bill, where the appeal process ends in the Supreme Court of Judicature of Trinidad and Tobago. What this means is that the current situation where under the old Act or the existing Act, if you want to call it that, if an aggrieved party is dissatisfied with the award of an arbitrator, he can go to the High Court, he can challenge the award, he can ask that it be set aside for various reasons, misconduct of the arbitrator, that is the simple wording in the current Arbitration Act that we have now. It is very limited, it speaks to misconduct of the arbitrator and if someone wants to challenge an award, that person has to prove misconduct on the part of the arbitrator.

8.35 p.m.

But that challenge can go to the High Court, the Court of Appeal and the Privy Council. Now with this, it ends in the Court of Appeal. And that is something I find so satisfying as a citizen of Trinidad and Tobago that we are finally establishing our jurisdiction that we shall decide when an end comes to a challenge to an arbitration award. It ends in our Court of Appeal.

Hon. Members: [Desk thumping]

Hon. C. Imbert: We have similar parallels in law, election petitions, for example, end at the Court of Appeal. We do not ask the gentleman in the judicial committee
of the Privy Council to adjudicate on elections petitions. And similarly, when this law is passed—because I do not detect any serious opposition on the other side—we will be passing into a law a situation where, not only are we going to make Trinidad and Tobago a centre for arbitration in the region—and there are just two or three others, there is one in the British Virgin Islands and there is one in Jamaica, as the Attorney General mentioned but not many others.

Trinidad and Tobago with this new modern arbitration law which as previous speakers have said is modelled on the UNCITRAL modern arbitration law, will in my opinion, quickly become a centre for arbitration in the Caribbean region. And what it means is that when people come here, they will know that once the arbitration process is completed and the award, if challenged, goes to the High Court, it will end in the Court of Appeal. And I really feel gratified as a citizen that we are now establishing our own jurisdiction, our own supremacy as a legal jurisdiction and we will no longer have to rely on decisions of the Privy Council in this particular matter, Madam Speaker.

There are many other innovations in the Bill compared to the old Arbitration Act, many innovations. It allows arbitrators to make interim decisions and quite often you find in a complex dispute as well, that there may be a dispute over money and a party may require money to do something. Let us take the simplest form, a construction dispute. A contractor may not be paid what he thinks he deserves to be paid and he may want it settled very quickly. And in this new arbitration paradigm that we shall pass today with the support of the other side, I assume, it gives arbitrators now the ability to make interim awards and prescribe interim measures. So that an arbitrator looking at a claim, for example, a contractor might claim $50 million and an arbitrator may decide to do a partial interim award of $10 million. And what is interesting about that, is that in the
construction industry cash flow is the life blood of that industry and if a contractor’s money is tied up in litigation for years, by the time they finish the litigation and they get satisfaction, they may have gone bankrupt or whatever project they were working on, they may have to have abandoned the project. So that is an interesting innovation in this modern arbitration law that we are seeking to pass today, the ability to allow arbitrators to provide for interim awards and interim measures.

In addition, Madam Speaker, one really does want to try and move away from the situation in traditional litigation in the settlement of commercial disputes. Matters of public law, matters of human rights, criminal matters, I see no substitute for the High Court and the court of itself. I see no substitute for that. But I see as these merchants saw so many 100 years ago, a very burning requirement for an arbitration process that is speedy, where the rules are well-known, where there are timelines and time frames for arriving at a decision. There are parallels in the UK. In the UK there is a system called adjudication. We do not have that yet. I had thought of that. I had promoted that some years ago but the government changed. And in the UK in the construction industry you have an even—a first step called adjudication before you get to arbitration. And there are court-appointed adjudicators who would be quantity surveyors, architects, engineers, construction professionals. And aggrieved parties to a construction contract can submit their dispute to an adjudicator and the adjudicator is required to make a decision in 28 days. That is how far ahead of us the UK is in terms of alternative dispute resolution. And what the learning showed was that system of adjudication as opposed to arbitration was settling more than 80 per cent of construction disputes. Only 20 per cent went on to arbitration and then after that maybe a couple per cent, 2 per cent went on to litigation. So it is something that we should perhaps think
about because if we are going to be a centre for alternative dispute resolution, then I would ask my colleague the Attorney General to look at the adjudication Act in the UK and see whether when we create this arbitration centre here, we could also perhaps, as a subset also create an adjudication centre as we have already established, well-established a mediation paradigm in Trinidad and Tobago.

I remember years ago in the thrust towards alternative dispute resolution there was quite a big push towards the training of mediators in Trinidad and Tobago and the establishment of a list of certified mediators that could be used by a court to deal with family matters in particular in order to avoid expense and delay and acrimony and so on. So those are the three levels, mediation, adjudication, arbitration and then of course, the fourth level, litigation.

So, I wholeheartedly support this modern approach to arbitration. I totally agree with the premise piloted here in this House by the Attorney General that because we have adopted, more or less, the UNCITRAL model Arbitration Act because that creates certainty, because one the problems with arbitration is conflict of laws and doubt and uncertainty with respect to jurisdiction. But since we have adopted the UNCITRAL model law as the backbone of this Arbitration Bill before us, all of the countries of the world and the jurisdictions of the world that use or rely upon the UNCITRAL law will look at Trinidad and Tobago as an attractive location because we have a very significant pool of lawyers, in fact, some say we have a little too many. I think we have about 5,000 of them, but we have many educated professionals in Trinidad and Tobago. We have a wealth of precedent with respect to the settlement of disputes. We have a well-established Supreme Court of Judicature. We have, in very interesting framework, you have arbitration has been taking place for years at the Chamber of Commerce but in a very rudimentary sense, as far as I am concerned, using rules that are not really fit for
purpose. What this is doing is taking us into the modern era, using the UNCITRAL law which all of the arbitrators in the world are familiar with and establishing Trinidad and Tobago as a centre for arbitration. I totally support this law.

There is only one part of it that I need to flag. In this particular Act before us there is a clause that exempts arbitrators from taxation if they are involved in an international arbitration. Now, that is lifted or it is identical to the Jamaican Arbitration Act of 2017 and our clause that deals with exemption of taxes for arbitrators involved in international arbitrations is word for word what is in the Jamaican law. And clearly that has been put there to attract persons to come to Jamaica and now to Trinidad and Tobago to conduct arbitrations. In the British Virgin Island however, they have a slightly different approach.

Madam Speaker: Minister of Finance, you have one more minute of ordinary time. You have 15 more minutes.

Hon. C. Imbert: I will not use the whole 15 more. Just a few more.

Madam Speaker: So, okay. So you are granted the extended time.

Hon. C. Imbert: Thank you very much. I am almost done. In the BVI legislation there is a distinction that is drawn between foreigners and residents. And in the BVI Arbitration Act, persons who are resident in the British Virgin Islands do not enjoy the tax exemption, just international arbitrators that come from overseas to conduct arbitration. And that is what we want here in Trinidad and Tobago. The Attorney General has given me an assurance, he is going to look at the BVI precedent and make whatever adjustment he thinks is appropriate, but I totally support the passing of this law as is, where is, without any changes whatsoever.

And on a personal note, Madam Speaker, before I conclude, I completed a master’s degree in arbitration in 2007—

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Hon. Members: [Crosstalk]

Hon. C. Imbert:—15 years ago. I became a member of the Chartered Institute of Arbitrators of the United Kingdom 15 years ago. When I was Minister of Works and Transport in 2009 I was invited by the London Court of International Arbitration to be the sole arbitrator in a complex construction dispute but I was Minister of Works and Transport at the time, so I had to respectfully decline. And therefore, I am overjoyed that the Attorney General is now bringing Trinidad and Tobago into the modern era so that persons who are qualified arbitrators will be able to take advantage of this new and modern law. I thank you, Madam Speaker.

Hon. Members: [Desk thumping]

Madam Speaker: Member for Chaguanas West.

Mr. Dinesh Rambally (Chaguanas West): Thank you, Madam Speaker, for the opportunity to contribute.

Hon. Members: [Desk thumping]

Mr. D. Rambally: Madam Speaker, I will try to be extremely quick bearing in mind the time that we are at. Madam Speaker, I listened with some amazement to the hon. Minister of Finance and he started off by criticizing the Member for Mayaro, accusing him of somehow being unfamiliar with the arbitration laws and the system of arbitration in Trinidad and Tobago. And then he went on, it was an attempt to show his own familiarity by going back to Locke and he went back to the UK Act and 1674 and so he was building his way up and it is interesting to note that after all of that, Madam Speaker, not having added anything of value to this debate, he ended up—

Hon. Members: [Desk thumping]

Mr. D. Rambally:—the hon. Member ended up with a résumé at the very end, his penultimate conclusion and contribution was that, well, 15 years ago he was
somehow certified with a master’s, et cetera, et cetera—

**Hon. Members:** [Crosstalk]

**Mr. D. Rambally:**—and poor hon. Minister of Finance he was not able to show and to apply that certification with his master’s degree in arbitration and what have you, he had to decline the one time he was approached to be an arbitrator in proceedings. So, I feel for him, Madam Speaker.

Madam Speaker, that being said, there are certain points that I wish to make, and because of the historical context which hon. Minister of Finance took us to, and the UK Act 1986 and coming forward after having gone through the historical development from 1674, I think it is just important to point out just one or two historical points so that it is on the record, that what you have is that, in 1976 you had the United Nations Commission on International Trade Law and that is where we get this UNCITRAL arbitration rules. So it started off, and I think the hon. Attorney General in piloting did touch on some of these facts and so it is not something that we need to go to back to 1674. The fact is that the goal of the UNCITRAL was to remove obstacles to international trade.

**8.50 p.m.**

So when the Member for Mayaro was criticized as being irrelevant when he was talking about investment, it is clear that there is a direct link between investment—investors, investment and arbitration law, because what they look for when they want to invest in a country is that there is quick dispute resolution. That is just clear. The fact that the Minister of Finance seems to be aloof of that or it somehow eludes him does say a lot, Madam Speaker.

So you have UNCITRAL arbitration rules developed through extensive consultation. We are not reinventing the wheel here if it is we decide that we are going to adopt the UNCITRAL rules in arbitration, and so what we are looking at
is that you want to have, and what the UN wanted to have, was something that was acceptable to countries bearing in mind different legal, social and economic systems. I say that not to be weighty at this point in the session, but because it will have some bearing to where I want to go with my contribution, Madam Speaker.

You see we have in Trinidad and Tobago, we have an old Arbitration Act, and whilst it is in use you do have a situation where it can be very lengthy from the commencement to its conclusion, and there are a series of factors that contrive to that lengthy, you know, trial that has to be undertaken to get dispute resolution. First, you have to have the agreement of the parties to have someone who will be the arbitrator, and if you get past that that can actually take quite some time because you are trying to get a person who is not only qualified but who the parties would agree to. And if you get beyond that that is where you now start to put forward your submissions, et cetera. And when you do have an award of course you can have the setting aside of the award, and that was something referred to by the Minister of Finance going through the High Court, the Court of Appeal, and what can actually take place in the proceedings.

But when you are talking about UNCITRAL rules, Madam Speaker, despite many changes from the original rules put forward what you have is that you have had continuous modernizing of the rules. And I say this so that we would understand that the common theme that remained throughout the last probably 38-plus years is that you would improve efficiency and lower the cost and time associated with arbitrations. And why is that important? Because you can look at the revisited rules, you can see it on the website, unctral.org. And the question we have to ask ourselves today is whether despite the modern revision of the UNCITRAL rules, whether what we are adopting is going to increase efficiency, it will reduce cost and time of arbitration. And so this is what I think we should be
focusing on, Madam Speaker.

And so, in principle, there can be no objection to wanting to have quick dispute resolutions. But the question is whether in the version that we have before us whether we will actually accomplish that, and I do not wish to rehash what the Member for Mayaro would have indicated on our side. I want to go specifically to certain parts of the Bill which deal with the power of the arbitral tribunal to order interim measures. And I think this is important. Because what you have is that is it being proposed that unless otherwise agreed by parties an arbitral tribunal may at the request of a party grant interim measures, and they have specified what an interim measure is. It is:

“...any temporary measure, whether in the form of an award or in any other form, which at any time prior to the issuance of the award”—by which a—“dispute is finally decided, the arbitral tribunal orders a party to”—do certain things.

So whether before or during the progression of arbitration proceedings you can have recourse to the arbiter to seek these interim measures. And what is it? You can have an order to:

“...Maintain or restore the status quo pending determination of the dispute;

...Take action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice the arbitral process”

—itself.

“...Provide a means of preserving assets out of which a subsequent award may be satisfied; or

“Preserve evidence that may be relevant and material to the resolution of the dispute.”

So what we are seeing here, and the lawyers and even non-lawyers would be
familiar, you are looking at the—seeking orders which resemble in law a Mareva injunction, an Anton Piller order, so you can have the preservation of assets, you can have the freezing of assets, you can have seizing of certain items, subject matter, you can have the arrest of subject matter, so that the status quo remains whilst the arbitration is proceeding.

Then you have that the party requesting the interim measure shall satisfy the arbitral tribunal that harm not adequately reparable by an award of damages is likely to result if the measure is not granted. So this goes back to American Syed Mohammed and the cases that deal with interim injunctions. So what you have and I do not wish to go into that—into detail, there is no need. What it is is that they are introducing settled principles, or contemplating I should say, settled principles of injunction according to the common law. And why I rise this is because the question arises, Madam Speaker, do we—is it better to have parties have recourse to the courts?

**Hon. Members:** [ Interruption ]

**Madam Speaker:** Okay Members, I know it is late but I really think we should give the proper respect to the contribution being made by the Member for Chaguanas West. Please continue.

**Mr. D. Rambally:** Thank you, Madam Speaker. The point I am making, Madam Speaker, very quickly is that the question is, would it be more efficient, would it be a better utilization of resources, would it be something which would be even more substantive in terms of benefits to be acquired by the parties if it is they do not seek these same orders as obtains now before the High Court; before the Supreme Court? The reason being is because all of these matters are already embodied, it is already applied, it has been distilled by the courts, and therefore you can get these interim measures, certainly what is contemplated here, you can get it before the

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High Court. And there is no reason why either before or during arbitral proceedings a party cannot apply to the court to get the interim relief. There is nothing here that shows that there is any hindrance in doing so.

And therefore the availability of court order interim protective measures would—in my view, Madam Speaker, it will encourage parties, whether you have persons who are investing from outside, external entities, or whether both external and an internal domestic entity, it would actually allow them, it would encourage them, Madam Speaker, to place more confidence in proceeding by way of arbitration. So it is actually an incentive that, listen, whilst you are adopting and you are going to utilize arbitration under this system which is modelled on the UNCITRAL arbitration rules, that is fine, it is something that they will know that if they need emergency orders it is something that is going to be acquired utilizing hundreds of years of common law, something that is settled and the world over, certainly in commonwealth jurisdictions, it is settled principles and so you can have access to that. So I say that that is something that we should consider.

A party does not have to waive its right to arbitration merely by seeking a court-ordered interim measure. So they are protected, Madam Speaker, and that is something that I know that in my own research when we look— I am looking at the Bill Essentials that was presented prior to the debate today, Article 9 of the model law is not limited to any particular kind of interim measures and applies to measures to conserve the subject matter of the dispute, measures to protect trade secrets and proprietary information, measures to preserve evidence, pre-award attachments to secure an eventual award and similar seizure of assets.

Article 9 of the model law, please, Madam Speaker, also applies to garnishments, the Mareva injunctions, arrest of a ship in order to obtain security for the arbitration, all of these things, Madam Speaker, are contemplated. So why
is it that I find this important to make the distinction and also to go in the direction of seeking that we can have recourse to the Supreme Court, it is because, I think, Madam Speaker, the time has come, and in a prior debate here today that time has come where we can actually go in the direction of a specialist commercial court. And that is something that if we have established it is—it can run parallel whilst being in sync with this particular Bill that we are debating here. So I know I will not go into the benefits of the specialist court because Member for Mayaro I think summed it up properly and sufficiently before. And so I want to say that in the specialist court you will have the judges who are obviously trained and they have the legal expertise, how to weigh the evidence, what are the relevant principles of law, and they will now be applying it in different contexts, whether it be construction, whatever it may be, contract, commercial, et cetera.

And I think, Madam Speaker, that is the direction in which we should explore and we can do that. And what happens is that in UK, which the Minister of Finance had great recourse to, what you have in the UK is that you have different tracks by which you can actually litigate your matters. So what you would expect in these types of matters, if it is a specialist court you can actually have rules which will govern it, something similar to the fast-track courts, and therefore you would have quick relief, you would have quick determination of matters.

So I think, Madam Speaker, that the specialist commercial courts would allow for the advancement of claims in a prompt manner, I do not want to go back into that, quick resolution mechanisms as Member for Mayaro had said can be particularly advantageous for businesses, they can efficiently navigate commercial disputes, and one of the matters that you hear even in private disputes not only limited to commercial disputes, you have the judges, you have all the relevant
stakeholders adopting a position and we tend to use the common phrase, “yuh doh want the candle to cost more than the funeral”, but what they mean, Madam Speaker, is why would you want to really invest moneys in litigation when you can simply make a business decision? You have to look at it in dollars and cents at all points in time, and I think this is where this court will become very relevant.

So, Madam Speaker, I have said why it is I took the time to go through the UNCITRAL rules. I have also linked it to why it is I am saying with respect to, I believe that would be Part V of the Bill, dealing with interim measures and preliminary orders and why it is I am saying that, you know, we can have recourse to the specialist commercial court, my colleague had spoken about the benefits of that, and so I have treated with that. There is one last matter which I would like to raise in light of certain submissions or part of the contribution made by the hon. Minister of Finance, and when we talk about confidential information, or keeping arbitration proceedings, or the matters or the nature of the matter itself warrants that the arbitration proceedings be kept confidential, we can understand why, because you may have sensitive disputes, you do not wish to have it litigated or finding its way to be litigated in the public domain.

Madam Speaker, we see the value of that, we understand, but one issue or difficulty that one would find themselves in is when you know that the arbitration actually involves a state entity, and that is where I think it becomes a little bit more complex than simply saying that you need to keep the nature and the sensitivity confidential of the particular matter that is being arbitrated. So when you treat with Government and state entities the question is, is it desirable to have confidentiality provisions in the Bill that would circumscribe the public’s right to know. So I am not trying to upset any position of principled position, I think that we can make allowance when you have a state entity being one of the contracted
parties. Now we know that when parties are negotiating to enter contracts with each other they tend to keep that, and this will not get into that. They can keep the confidence of what they are negotiating because they are trying to arrive at that point where they finally seal the deals, so to speak.

But clause 58 which provides for the arbitration proceedings to be private and confidential, a list of exemptions to that general rule is provided for by subsection (2), and this is something that my note here, which I have in the Senate, I think the hon. Attorney General had in relation to some of these matters being raised and talking, I think he was addressing a Member in the other place interpreting this particular aspect of the Bill, said that, you know:

“’Arbitral proceedings shall be private and confidential…’

“Notwithstanding that, disclosure may be permitted in the circumstances outlined”
— in the Bill itself. What you have is have it will be in the discretion of the arbitral party or a party to the dispute and this is significant. I think I want to make it very clear, Madam Speaker, that we can cannot take a construction of the section where the general rule is that the proceedings are to be kept confidential.

9.05 p.m.
It means that we will also be looking for exceptions to the rule as the starting point. We would have to find an exception which we can put some weight behind it even before we can determine whether or not the matter can be made public. And I am speaking specifically where the State or a state entity is a party to the arbitration.

So we have major players in commercial contracts in the country. It is obvious, I do not think I have to spell out why government entities and other public authorities and companies, when they are engaged in contracts, why the public would want to know or be updated as to what is taking place, because they want to
know how taxpayers’ dollars are being spent. How you are going to treat with these matters are obviously in the public interest, there is that element. When matters are litigated in the court, Madam Speaker, the public is made aware. If you have a situation where the State or the state entity loses millions of dollars in a court case, we can read about it because court proceedings are public proceedings. But I do not think that we can treat with, when we are dealing with arbitration, to simply adopt the confidentiality position in relation to the state entities.

Madam Speaker, we had a Privy Council judgment. I will not go into the details but to reference that judgment. I think all Members would be aware of the Maharanj v Petroleum Company of Trinidad and Tobago Ltd, 2019, UKPC 21, where the Privy Council, in dealing with an application under—made under the Freedom of Information Act, request for documents from arbitration proceedings involving Petrotrin, this is what the Privy Council had to say, and I quote at paragraph 46:

“So far as concerns possible benefits for the public interest of disclosure of the Baptiste and Chan Tack statements, the Board considers that it is arguable that they are of significant weight, with a view to securing transparency and accountability in relation to relevant decisions in a number of respects. Without seeking to be in any way exhaustive, the Board—referring to the Privy Council—refers to the following possible public interest benefits of disclosure: (a) to enable the public to understand and, if appropriate, criticise decisions taken by Petrotrin in embarking on the joint venture and in entering into the guarantee which have proved to be so costly to it; (b) to enable the public to be fully informed about those matters and Mr Jones’s involvement in them so that they could, if appropriate, criticise or oppose the appointment of Mr Jones to roles within government with a focus
on energy matters, such as his appointment as a member of the Cabinet Standing Committee on Energy; and (c) to enable the public to understand, and if appropriate criticise, the decisions to bring the civil claim against Mr Jones in the first place and then to abandon it.”

So on the facts of that matter, the board was applying why it is it felt that the public had a right to know, so that they could answer some of these questions. So I simply highlight the fact, Madam Speaker, that we will now have under this particular Bill, a section, that when the State is involved in arbitration, hard-working taxpayers of this country will know where their money is going and they will be able to ask pertinent questions.

Madam Speaker, I was having a chat recently with the Member for San Fernando West. You have—these points are being raised, and the hon. Attorney General will definitely be aware of this, where you have the points being raised, that even though you may have the right to acquire information, the right to voice your opinion, you have certain fundamental rights which protect these aspects of how you conduct yourself in this society. There is also the section 1 right under the Constitution that if we are in a sovereign democratic state certain matters will be conducted in a particular way, that even though it touches and concerns an individual fundamental right, it also goes beyond the landscape and it applies to the general public. And that is something that I think in this Bill, if we are going to adopt it, we should take into account the need to have greater accountability in terms of state entities and other public authorities not be subjected or caught or captured or protected, as the case may be, under the confidentiality clause.

So, Madam Speaker, very quickly I think that, in principle, this is good. We are moving in terms of the times with the UNCITRAL rules that have been revised time and again by the United Nations. And so I think that at the end of the day,
what we have heard from the hon. Attorney General, in principle, is something that we have no difficulty with, but at the same time, I make it subject to the caveats that I have highlighted here today.

Thank you, Madam Speaker.

Hon. Members: [Desk thumping]

Madam Speaker: Hon. Members, there is agreement that we will take a short break at this time. This House is now suspended for 15 minutes. We will be back here at 9.25 p.m.

9.10 p.m.: Sitting suspended.

9.25 p.m.: Sitting resumed.

Madam Speaker: Member for Port of Spain North/St. Ann’s West.

The Minister of Energy and Energy Industries and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam Speaker.

Hon. Members: [Desk thumping]

Hon. S. Young: Madam Speaker, it is quite unfortunate that my friends on the other side are not here because it was quite an important proposition that I am about to make, but I will start anyway.

Madam Speaker, I would like to start at the outset by congratulating the hon. Attorney General and all those who worked with him to be able to bring this modernizing piece of legislation to the Parliament. Because for those of us who have practiced in the arena of law, and in particular on the commercial realm in litigation, would have been very familiar with the unfortunate difficulties that we would have encountered over a time dealing with the quite archaic Arbitration Act that applied before. And just for those who would be following, the members of the public, to let them know, through you, Madam Speaker, that arbitration has a
very important role to play in the world of commerce and in commercial entities and how they resolve their disputes, et cetera, but also for the Government.

The Government enters into many contractual arrangements over time. And if I may recount one of the experiences I have had in litigation, and it was with respect to the National Oncology Centre that the Government had tried to construct many decades ago. And it eventually ran into problems with the Canadian entity that was to build it, et cetera, and it was subjected to arbitration. So you had the Government of Trinidad and Tobago in arbitration with arms of the Canadian Government, et cetera. The arbitration was carried out in Miami and it is a perfect example of how arbitration can work. Because what you are able to do is, you had a single arbitrator; there was very limited room and recourse for appeal; the parties sat down and basically, with experts, went through the whole arbitration proceeding.

Now, there are a number of differences and it dawned on me—I was listening to some of the previous speakers. One of the things you give up by going for arbitration is you are going to have to incur the cost of arbitration. So I just want to put that there. And the cost of arbitration would differ because, of course, we do not have a cost of paying judges in the Judiciary, ourselves, apart from through taxation, but litigants do not pay judges to hear their case in arbitration. Of course, you must pay the arbitrator and as the Bill provides for, it can be up to three arbitrators.

One of the points that was made by my friend from Mayaro—and it requires correcting because unfortunately it is from a script of the Opposition where they are constantly trying to peddle information in the public that there has been no foreign direct investment in the country and no money is being spent in the country and nobody wants to invest their foreign exchange in the country. Just to give one
example that is irrefutable. During the period of 2017 to 2021, in the upstream alone in energy sector, in gas—so this is the upstream producers in our gas sector in Trinidad and Tobago. For the period 2017 to 2021, US $9.2 billion, which is TT $62.5 billion, have been spent in upstream and that is direct foreign investment.

So to continuously hear from the Member for Mayaro, as he likes to peddle here and elsewhere, that there is no foreign investment taking place, that is only in the gas upstream investment to keep the gas production going; TT $62.5 billion, US $9.2 billion. That does not include, of course, all of the investments that have gone in our pet-chem industries and other industries. So just to put that to rest and to alleviate any concerns that the population may have had listening to the unfortunate peddling of misinformation sometimes by those on the other side, there is a host of foreign direct investment taking place in Trinidad and Tobago. You look at a project like Manatee to come on stream, we are looking at about 1 billion to US $1.5 billion.

Now, to deal with the issue I wanted to come with—and it is very, very, relevant, the previous speaker for Chaguanas West touched on it, and that is the issue of confidentiality and why there is a need on occasions—because I accept the proposition that there are times when with arbitrations, where the State is involved, either as the Office of the Attorney General and Ministry of Legal Affairs or state entities and state enterprises, state companies that have undergone arbitration, may be sometimes it should be made public, and that is why the Bill provides for in the public interest. But just to put on record for persons to understand, there are many instances, in particular in the energy industry, where this should not happen and cannot happen. For example, when you have a state entity that is contracting with a number—let us use NGC as an unfair example—contracting with a number of different pet-chem companies, meaning ammonia companies, methanol companies,
et cetera, and if they get into disputes and they go to arbitration, as has happened—this is a live example—the period of 2010 to 2015 left the NGC with $9 billion in claims, some of those had to go to arbitration. Very often in those contractual arrangements, you would enter into different pricing arrangements.

So if Chaguanas West is getting a certain price and a certain structure of their deal for the provision of gas, Barataria/San Juan may be getting a different price and different deal and structure. And one of the difficulties you have when you are operating in a complex, sophisticated, commercial environment like the energy sector, and in particular the gas industry, you would not want the type of information as to what Chaguanas West is getting versus what Barataria/San Juan is getting. And if that goes to arbitration and both of you all have me in arbitration, for example, you would not want it to be made public if there is an award made with respect to Chaguanas West, that then gets and falls into the hands of Barataria/San Juan.

So I just want to put on the record, and it is an appropriate time to sensitize the population, it is not that the Government has anything to hide or any state entity in those instances have anything to hide from the public or from the public interest. In fact what you are doing is that you are protecting the public interest. Because, you see, the global energy sector operates with a certain accepted level of confidentiality. The deal that BP may give to the Government is going to be a different deal to the deal that Shell gives to the Government, and EOG gives to the Government. And they operate on the understanding that their trade secrets and how they structure things will be kept confidential, because if it gets into competitors’ hands of course it eradicates immediately the competitiveness, and of course that applies to arbitration proceedings.

So just to put on record—because very often you hear it being proffered that
there are secrets and that the State is hiding something or the state enterprise. In particular, in the energy sector, it is a very, very, sensitive sector. It is something where we are competing globally. So right now you have these companies taking decisions in their boardrooms many thousands of miles away, in a boardroom in England, in London, or a boardroom in The Hauge, in Holland, and they are deciding where do I spend my capital expenditure. And if we in Trinidad and Tobago expose ourselves, so they say, “Well, I cannot go and do business in Trinidad and Tobago anymore”—because, of course, it is confidential. A deal they may do with us here, they may not do it in Indonesia, they may not do in Africa, they may not do in other jurisdictions.

So to sensitize the population to those instances where it is absolutely essential that we, together, meaning the population of Trinidad and Tobago, protect our industry by not saying, “Well, produce it for the population, produce it for the public”—because, for example, the deal that we are able to negotiate on pricing of gas, one of our upstream gas suppliers who also operates in other jurisdictions, they would not want those other jurisdictions—the same way I do not know what is the price of gas they are getting in Norway, or in the North Sea, in the UK, or Sierra Leone, et cetera. So we must continue to protect those instances.

As I was saying at the outset, I would like to commend the hon. Attorney General and all those who worked on this piece of legislation. It was high time that we modernize the legislation. And you can see it immediately as you start to look through it, we have taken the approach of accepting the UNCITRAL Model Law, and anybody who has participated in international arbitrations would know that one of the accepted models is the UNCITRAL Model. And in fact I heard my colleague, the Member for Diego Martin North/East, talking about the rules and whether rules would apply for arbitration. Of course, the parent legislation does

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not set out the particular rules of procedure but again, to alleviate any concern, whilst the parent Act does set out the need for the statements of case and exchange of evidence, et cetera, the rules would be determined by the parties to the arbitration, as happens all of the time.

9.35 p.m.

Very often you would accept the UNCITRAL rules of procedure and that is what would dictate. They can have case management conferences. It is up to the arbitrator and the parties to decide these things, and in fact that would be prudent in the management of arbitration. And my colleague for Diego Martin North/East is very familiar not only from an academic point of view with arbitrations, but also in advising on arbitrations. I recall previously when he was a client—

Hon. Members: [Laughter]

Hon. S. Young:—not personally, as a member of previous government, et cetera, and having to take instructions. It was always difficult for him to take advice. I will put that on the record.

Hon. Members: [Desk thumping]

Hon. S. Young: But when he would take the advice and when we would be participating and preparing for arbitrations with some of the previous hats that he wore.

Mr. Imbert: He followed instructions.

Hon. S. Young: I would not give that story here. I will put it on the record.

Mr. Imbert: And he will win the case.

Hon. S. Young: That is true. I heard our friends on the other side teasing my colleague as he stood in the box and I was remarking to them there is no need to tease him because from the time he changed lawyers we won the case all the way up to the Privy Council.
This piece of legislation that is before us, whilst it does oust the court’s jurisdiction in certain instances, I think we have gotten the balance correct here with specific and express provisions that protect the safeguards and you see it throughout the Bill.

If I may just quickly turn to quite an interesting one which is at clause 2(6) where they say:

“This Act shall be interpreted and administered in accordance with the following principles:

(a) subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved;”

It is very reassuring to see that type of provision as an express provision in the legislation because they are setting at the outset how the arbitration should be conducted. In other words, one of the key principles of arbitration, parties should be allowed to decide how they are going to deal with the dispute in front of them and how the dispute should be resolved. (b) sets out and limits the intervention of the court’s say for specific circumstances. 6(b) says:

“the Court shall not interfere in the arbitration of a dispute, except as expressly provided in this Act;”

And then interestingly at (c):

“where the Court interferes in the arbitration pursuant to the express provisions of this Act”

—so it is immediately ring-fencing the authority of the court to intervene and this is the principle to be applied—

“it shall, as far as possible, give due regard to the wishes of the parties and the provisions of the arbitration agreement.”
So at the outset you see them setting the foundation upon which arbitration should be applied.

I just wanted to quickly and briefly turn to clause 5 of the Bill:

“The objects of this Act are to—”

—and they set out the objects of the Act:

“(a)…”—to—“facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes;
(b)…”—to—“facilitate and obtain the fair and speedy resolution of disputes by arbitration without unnecessary delay or expense;
(c)…”—to—“facilitate the use of arbitration agreements in domestic and international matters;
(d)…”—to—“facilitate the recognition and enforcement of arbitral awards; and
(e)…”—to—“adopt the UNCITRAL Model Law.”

So we reinforce that there. It also modernizes and accepts, unlike the previous Act that it is replacing, that we are now in an age of use of electronic communications. So we set that out at clause 6(2):

“Unless otherwise agreed by the parties, an electronic communication is taken to be received —”

It is good to see as we are already in that electronic age, now our legislation is evolving and accepting that these are acceptable modes of communicating and we set out.

It talks about the “Waiver of right to object” which is necessary. In arbitration two of the things that you need especially in commercial arbitration are certainty as to how it is going to be dealt with, and finality. Finality meaning that you cannot just run when a decision goes against you by the arbitrator to court and
delay the arbitration proceedings. I think the Bill gets it right and sets out very limited circumstances when you can “appeal” to a court. The previous legislation, the law had grown in that area that really sometimes frustrated the hearing of arbitrations. So you see here at section 8—clause 8, sorry:

“In matters governed by this Act, a Court shall not intervene except as provided in this Act.”

So at the outset they are setting the stage and it is a general ouster provision, and then it goes on to set out through the rest of the Act the instances that you are allowed to have a court intervene.

You see at clause 11 the “Arbitration agreement and substantive claim before Court”, and this is done exactly to provide certainty and also permits the arbitration to proceed even though issues are before the court, and this is a very forward thinking provision that says even if you have issues before the court in limited circumstances whilst the court is determining it, for example, the parties agree on a very limited issue to go before the court, the:

“(2) …arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the Court.”

So you see, what you are telling the commercial world is, you do not have to be subject to the delays of the court but you can really proceed and have flow while something is being looked at by the court.

I think the previous speakers, some of them who spoke, talked about the interim measures. We talk about the court’s involvement when you cannot decide an arbitrator. That is normal in these types of matters. It talks about the grounds to challenge an arbitrator, and interestingly at clause 15(3) says:

“Subject to subsection (4), an arbitrator may be challenged only
if—
(a) circumstances exist that gives rise to justifiable doubts as to his impartiality or independence; or
(b) he does not possess the qualifications agreed to by the parties.”

I think this provision—not I think. This provision is meant to limit some of the challenges you have seen in the past where one of the parties is seeking to delay the arbitration proceedings by challenging the appointment of the arbitrator and is limiting it in that way. And then subsection (4) says:

“A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for the reasons of which he becomes aware after the appointment was made.”

So sometimes, as you are proceeding in the arbitration you did not challenge the arbitrator, but something comes up later on that gives you cause for concern and you are allowed to challenge the arbitration at that stage.

Essential for arbitrations especially of international natures or in commercial arbitrations is clause 21(1).

“21(1) An arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.”

Previously there was a body of law that questioned whether the right forum to challenge jurisdiction was the arbitrator or you should go to court. This is saying, look, in the first instance the arbitrators themselves can determine whether they have jurisdiction or not, and then it goes on at 21(9) to provide a level of protection that permits the courts still to have oversight on arguments of jurisdiction, but it also provides, as I said, that finality because there is no appeal of the court. So at 21(9) it says:
Where the arbitral tribunal rules on a plea as a preliminary question that it has jurisdiction, any party may, within thirty days after having received notice of that ruling, request the Court to decide the matter and the decision of the Court shall not be subject to appeal.”

So in other words, you could go to a court at first instance, they will determine whether they got the jurisdictional point correct or not and you cannot go any further.

It talks about the interim measures, I think we have heard about that. My friend from Chaguanas West quite rightly pointed out what it is meant to capture, which are injunctive relief things like—well, we used to call them Mareva injunctions and Anton Piller orders. I know the law moved away from that and it is freezing orders and international freezing orders, and this is all done to protect the assets. So, for example, in an OAS-type situation where you did not want assets being disbursed and dispensed with before you had a chance to get the fruits of your award.

So, Madam Speaker, I did not want to take up too much time. I think it is a good piece of legislation. I commend it. And, as I say, it is something I fully support having been a litigator for many years, seeing the immediate benefits of what this piece of legislation provides for, especially in the realm of commercial certainty and parties deciding in commercial instances that they want to go down the road of arbitration as opposed to court proceedings. And the main point I wanted to make, I made, and is worth repeating and concluding with is, there are many instances, especially in Trinidad and Tobago, in particular in the energy sector, that we have to protect confidentiality.

So this conversation that is taking place that you must expose everything in the public interest, I just caution us on that because if we begin doing that it is
going to take away some of the little competitive advantage we have globally in that very sophisticated sector. I think I have given sufficient examples which would apply to arbitration proceedings. So, Madam Speaker, with those few words, I thank you for the opportunity to have contributed and just to put those few points on the record.

**Hon. Members:** [Desk thumping]

**Madam Speaker:** Member for San Fernando West

**The Minister of Rural Development and Local Government (Hon. Faris Al-Rawi):** Madam Speaker, I proposed to be very short in my contribution on this Bill. I would like to say that I join in celebrating the arrival of this Bill. I had the pleasure of supervising the original work beginning in 2018, 2019, 2020, 2021, and I would like for the record to thank publicly the members of the several entities who have spent dedicated time in ensuring this happened. That is the Trinidad and Tobago Chapter of Chartered Arbitrators, ATTIC, the Ministry of Trade and Industry, the Judiciary, the Trinidad Chamber, the Office of the DPP, the Bankers Association, the FIU, the Legal Aid and Advisory Authority, the Trinidad and Tobago Police Service, the Trinidad and Tobago Centre for International Arbitrators. In particular I would like for the record having spent a few years well engaging with two people, I would like to put them on to record, Mr. Dennis Gurley SC and Ms. Salma Rahaman. These two individuals spent dedicated hours, energy and effort in producing the drafts before us which had several iterations. I would also like to publicly compliment the Judiciary of Trinidad and Tobago for ensuring in the open consultative process, that a lot of this was to put on record in the right form.

Now, Madam Speaker, the hon. Attorney General speaks not only with passion but with great experience in this area, and I would like to say that this Bill represents
for us a few things that are of worth in connecting the dots to our system. First of all, the Bill in producing a modernization of the arbitration law, takes us away from the 1939 perspective when the world was just about to go into World War II, when the Franco war was—just as the Spanish war was being won by Franco, when industrialization was at the point. Minister of Finance gave us the mercantile history and background. But I would like to say, Madam Speaker, that this law really brings us into modern session and it adds to our civil justice system.

Minister Young put onto the record the objects which are contained in the Bill at clause 5. In looking at the fact that clause 2 of the Bill centres with arbitration grounded in the matrix of confidential information with the use of electronic submissions and management capturing both domestic and international arbitration, Madam Speaker, specifically saying that an aim and objective is to bring UNCITRAL into effect, I would like to say that what this Bill does in bringing forward not only UNCITRAL but with a dedicated marriage to the IMPACT Justice Model Arbitration Bill of 2022, is that it brings to life a very important feature which our Prime Minister has championed for Trinidad and Tobago. And, that is the Caribbean single economy perspective, the single market perspective. As we head into the celebration of Caricom, the Treaty of Chaguaramas I want to remind that the CSME and the integration of our economies find itself in the matrix of this Bill because this Bill recognizes that the law of contract can prevail.

9.50 p.m.

This law recognizes that transaction contracts and evidence of arbitration agreement in a series of agreements can bring to life an arbitration position. This law in creating—with the Treaty of Chaguaramas as basis with Trinidad and Tobago where it is, this law fits into the vision of this Government. It is why we
moved the civil courts to Tower D, it is why the civil courts do not occupy all the floors because it allows for the utilization of arbitration in Trinidad and Tobago, not only in the local, commercial arena but in the Caricom arena which fits into the international perspective.

So, Madam Speaker, I dare say that this Bill, clause 5, its objectives to:

“(c) facilitate the use of arbitration…in domestic and international matters;”

To:

“(b) facilitate and obtain fair and speedy resolution…”

To:

“(a) facilitate domestic and international trade…”

I want to plug the fact that we are looking at regional trade as well. Madam Speaker, I spent a lot of time in commercial law and in commercial law and in joint venture agreements and in structures, the point in commercial business law is to win the war, not the battles. It is the overall outcome that matters, it is the dominance of the marketplace.

This Bill underwrites a more prosperous Trinidad and Tobago, a commercialization of our sector. It takes into effect, Madam Speaker, that most of our judges, prior to us raising the age of retirement to 70 would in fact retire at 65 and then serve in other jurisdictions. This law allows us to broaden from the Civil Proceedings Rules, from the alternative dispute resolution mechanisms contained in the overriding objective and in the specifics of the Civil Proceedings Rules, it ties into this law that arbitration can be done by way of election.

Now what is beautiful about it, and Minister Young touched upon it, is the fact that costs are to be factored. Yes, there will be a cost for the arbitrator per se but I do believe that by adopting the formula for the once in 360 days, exception if
it is under 30 days for tax-free status as the British Virgin Islands and as Jamaica
does and as the UNCITRAL Caricom model in its position does allows us to
provide an invitation to come and do business into Trinidad and Tobago.

Madam Speaker, I will turn quickly to the issue of confidentiality to give
just a small perspective on that that I think is relevant. I would like to remind, in
answer to Chaguanas West, that we are not proposing by clauses 58, 59, 60 that the
arbitral proceedings shall be private per se. There is an exception, Madam
Speaker, if you look to clause 60. The exception of clause 60 says:

“(62) (1) A Court hearing...proceedings in private shall, on
application of a party to the proceedings, give directions as to whether any
and, if so, what information relating to the proceedings may be published.”

The Bill itself specifically says that where it is of an important matter, a national
interest, an international interest, that it will also consider publication or
proceedings, hearing from the parties, nonetheless, as to whether they wish “their
business” to be in the public domain. But the hallmark of the generation of
business is one thing. There is merit in the point that state enterprises, state
companies, et cetera need to be subjected to scrutiny, but I want to remind that this
law binds the State, this law does not seek to accept the Freedom of Information
Act, this law does not seek to accept any form of disclosure that is otherwise
lawfully permitted including under the Public Procurement and Disposal of Public
Property Act. So there is an alternative remedy for information to be made known
but we cannot throw the trade marker out as a baby with the bathwater.

Madam Speaker, the structures surrounding ouster therefore do not exist.
We do have those provisions under the Freedom of Information Act, the Public
Procurement Act, the public accounts, the state enterprise manuals, et cetera,
Madam Speaker, and they are tied into our objects.
Madam Speaker, we can demonstrate that in the cost of consultation, we specifically, and for the benefit of interpretation that may come later in looking at these *Hansard* proceedings, I would like to say for the record that the Trinidad and Tobago Bill, 2023, having had a Bill drafted since 2019 in a different form, took into effect the British Virgin Islands’ Arbitration Act, 2013, the Barbados International Commercial Arbitration Act, 2007 and the Jamaica Arbitration Act, 2017 apart from the UNCITRAL model and the Caricom IMPACS model.

Madam Speaker, the provisions are laced with due process, they are well and properly set out. The confining of limitation of appeal to our Supreme Court brings for certainty as the Minister of Finance put onto the record, that is not uncommon to our laws. You could look to our election petitions, et cetera. This law says that Trinidad and Tobago is open for business.

I would like, as I end, Madam Speaker, to say a particular thank you to the drafting department at the process review team headed by Ms. Nirana Parsan for the time that I worked with her and Ms. Varuna Chatoor prior to her incarnation in 2018 in ensuring that this came together. It is tied to a concept of civil division and to the ease of doing business in Trinidad and Tobago. I wish to compliment the hon. Attorney General in bringing this home.

For the record, Madam Speaker, I disclose that my wife’s firm is engaged in aspects of arbitration where one of the partners is a certified arbitrator so I put that on to the record. I myself have a Masters in alternative dispute resolution and I have spent a significant amount of time in this arena and in commercial law. I am a huge fan of this law and I believe that this will bring benefit for Trinidad and Tobago. As we come to the celebration of the Treaty of Chaguaramas, as we come closer to a single market, we come back to 1939. In 1939, there were trade embargos, there were difficulties in Caricom, our food importation bill was an
issue there, it is now. In having commercial arbitration in part of this structure, Madam Speaker, we bring to life the mechanisms of COTED and of Caricom and we say that Trinidad and Tobago is open for business. I thank you, Madam Speaker.

**Hon. Members:** [Desk thumping]

**Standing Order 48(5)**

Madam Speaker: Okay. So, hon. Members, I have noticed a development and I just want to bring it to our attention lest it becomes settled practice and it is to remind Members with respect to Standing Order 48(5):

“A Member shall be referred to in the House by reference to his constituency or to his official portfolio.”

Okay. So I just want to remind Members. So to say Minister’s name, Minister’s title and the name, does not conform with the particular Standing Order. Okay? Attorney General.

**ARBITRATION BILL, 2023**

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Thank you very much, Madam Speaker.

**Hon. Members:** [Desk thumping]

Sen. The Hon. R. Armour SC: Madam Speaker, the contributions which have followed my opening the debate on this Bill, I pay tribute to all of them. I think that they have been significant and I in particular want to acknowledge some of the remarks that have supported the acclamation of this important piece of legislation that we are committed to passing this evening. I am particularly—and I say this even though I have a smile on my face and I will allow myself a light tease. I am particularly pleased by the support, the fulsome and enthusiastic support of the hon. Member for Diego Martin North/East.

UNREVISED
Hon. Members: [Desk thumping and crosstalk]

Sen. The Hon. R. Armour SC: In particular, his acclamation of the fact that this legislation that we are hoping to pass this evening is significant in terms of the culture of alternative dispute resolution, the culture that we already embrace in this country as a mediation centre which we are continuing to build on. He has pointed me to some of the legislation out of the United Kingdom with respect to the adjudication centre legislation which I am going to put on my legislative agenda to come to the Parliament within the new term.

And there is this tease that I will allow myself while I endorse the support of the Member to articulate and it is that he spoke of expedition, which is one of the hallmarks of this particular piece of legislation. It is identified in the objects of the Bill and it is identified throughout and in speaking of expedition, I just want to reassure the hon. Member of the fact that he will appreciate because this is something that I have had a conversation with him on, he will appreciate the huge significance in terms of protracted litigation to resolve commercial disputes, he will appreciate the huge significance of clause 56(3) of the Bill before this House, clause 56(3) which says and I read it in its entirety for the record:

“Fees charged and expenses incurred by any arbitrator or foreign representative in an international arbitration which lasts for a continuous period of thirty days or less in a period of three hundred and sixty-five days shall be exempt from the income tax and any other tax of Trinidad and Tobago.”

The significance of that clause in this Bill that we are about to pass into law is that it gives a very real incentive to the most important players in the arbitration process to bring home the results of the dispute resolution in a period of 30 days or less. That is a significant incentive. In a culture in which we have become
accustomed to litigation labouring through years of unresolved disputes the idea that we are passing legislation now and giving a reward to persons who are going to function expeditiously and bring home the result of the arbitration in a period of 30 days or less in a calendar year of 365 days, I think bodes well for the quality of expedition that this legislation is going to bring to bear. Of course, he has made the point that there are precedents that we will have to continue to look at. There is the precedent out of Jamaica, there is the precedent out of the BVI and we will have to continue to look at that as we tweak the legislation going forward but I think we are making a very significant start with that first incentive, to bring home the results in 30 days or less.

I also want to pay particular tribute to the hon. Member for Port of Spain North/St. Ann’s West who speaks from the authority of the portfolio that he holds as Minister of Energy and Energy Industries because in my pilot today, both here and in the other place, one of the areas that I identified as being an area of high specialization, particularly germane to Trinidad and Tobago and the historical growth and richest of our economy is that we have always been, for as long as we can recall in our youthful memory, we have also been an energy-based industry, an energy-based economy.

10.05 p.m.
And therefore, the fact that we can now put onto our books, our law books, legislation that is going to enable us to offer to the investment sector in Trinidad and Tobago from outside of Trinidad and Tobago; the fact that we have brought ourselves up to the 21st Century, in terms of our arbitral platform, is significant. So I was very pleased to be able to have as one of our colleagues on the bench today, on the Government side, the Minister of Energy and Energy Industries, who was able to speak, and the figures that he has put on the table, a US $9.2 billion direct
foreign investment in gas upstream. That gives us a tangible example of the value of this piece of legislation that we are looking to pass this evening in terms of alternative dispute resolution in the name of arbitration.

And he spoke also with authority, and this crosses over to a point made by the Member for Chaguanas West, the importance of confidentiality. The Member for Chaguanas West spoke to it as well, the importance of confidentiality in energy sector. It is not that the Government of Trinidad and Tobago is looking to hide secrets or to have secrets, or to hide anything from the population. But when you are out there in the real world and you are dealing with international players and they are sensitive to the direct international competition that they have to engage in, confidentiality is an important—very important litmus test in the capacity of international investors to be able to come to your country and to say, “We can confidently do business with you because our trade secrets and other confidential information will be protected”.

And therefore, if in a dispute resolution process we can promise them, with our UNCITRAL-based legislation, the Arbitration Act of 2023, which is what this Act will be called when this evening, I hope, we pass it into law, we will be able to say with confidence to our potential foreign investors, “Your confidentiality will be respected”, not by way of keeping secrets from the citizens of this country, but by enriching them for the future lives of their children, and their children’s children.

So I am grateful for the support that I have had from my colleagues on the Government side and, of course, I acknowledge the contributions from Member for San Fernando West, hon. Al-Rawi, who is the predecessor in the office which I now have the privilege to serve in, and I acknowledge and I thank him for the considerable work that he has done to enable me this evening to bring this Bill
before this House. And I particularly wish to associate myself with the recognition that he has given publically to the names that he has called, Mr. Dennis Gurley SC and Salma Rahman who have made invaluable contributions. And, of course, it would be remiss of me if I did not—and I will come to that name in a little while. It will be remiss of me if I did not acknowledge one other name but will get there in due course.

Madam Speaker, I also want to acknowledge the contributions of the hon. Member for Mayaro. He made some significant, in my view, contributions in terms of the acknowledgement and the support that I understood him to have uttered in response to this Bill that is before us. There are aspects of his contribution, of course, which I do not share but, you know, that is not to take away from the areas in which I am grateful for the support. So, for instance, the fact that he was able to speak to the desirability of specialized commercial courts, that is something that this Government is working towards. Because the entire—and when I was speaking earlier today on the other efforts that this Government is making, in other areas of the improvements in the justice system, we are committed to, not only in that other area that I was speaking to earlier, improving our criminal justice system, but also our civil justice system, so that it is entirely compatible with the Arbitration Bill that we have before the House this evening, that in due course we will be looking to come back to this country and to the citizens of this country to speak to strides that are expected in terms of developing specialized commercial courts.

The hon. Member for Mayaro also made an interesting comment in relation to Caricom and the Revised Treaty of Chaguaramas. And I acknowledge the contribution, in that regard as well, of the Member for San Fernando West; my good friend, the hon. Member for San Fernando West, who made an interesting
tribute, which is very apt, and I am grateful to him for reminding me that next week we are celebrating the 50th anniversary of Caricom. And that takes me back to the comment made by the hon. Member for Mayaro who spoke to the possibility that perhaps—and I hope I do not misquote him—we could look to addressing the Caricom revised treaty to enable us to get into more arbitration. Well, the reality is, as we celebrate the 50th anniversary of Caricom next week, that Chapter 9, “Disputes Settlement”, Article 223 of the Caricom Revised Treaty of Chaguaramas, signed right here in Trinidad and Tobago, states at 223.2:

“…each Member State…”

With your leave, Madam Speaker, I quote:

“…each Member State shall provide appropriate procedures in its legislation to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.”

Hon. Members: [Desk thumping]

Sen. The Hon. R. Armour SC: So our Revised Treaty of Chaguaramas, signed right here in Trinidad, which gave birth to Caricom, celebrating appropriately its 50th anniversary next week, has always invoked for us, the citizens of Caricom, the step that we are taking today to bring this revised UNCITRAL Model Law onto our law books consistent with, as I said in my pilot, the desire, the dream and the vision of the late hon. Prime Minister, Patrick Manning. So I acknowledge that.

And if I may then come to one final point in my wind up, Madam Speaker, and it is to acknowledge the remarkable resourcefulness—and I say this almost every time I stand here to speak to the legislation that I have the privilege to pilot, the resourcefulness of the team out of the Office of the Attorney General and Ministry of Legal Affairs that I have the privilege to lead. And I got from that lady—that very lady that hon. San Fernando West, Member, mentioned, Ms.
Nirana Parsan—a WhatsApp, literally as I was sitting here, that provided me with some material that I am going to close with. Ms. Parsan is the head of process review. She has been the one who has been leading the work that has supported me in bringing this Bill to the Parliament, of course ably assisted and supported by the Chief Parliamentary Counsel’s department. I received from her 7.00 p.m. this evening, an article, a blog dated April 2022, Thomson Reuters’ Practical Law Arbitration Blog by Akima Paul Lambert, Partner at Hogan Lovells.

And I hope you will forgive me, Madam Speaker, and my friends will forgive me if I quote at some length from this article because it is so apt—April 2022—it is so apt that to everything that we are saying here today and is a recognition from outside of Trinidad and Tobago of the ethos and the purpose of what we are about here. So the article begins with a reference to a previous article written in 1994, in which that previous article had:

“…highlighted the limited success of commercial arbitration in the Caribbean region.”

And then the article says:

“The causes of these early failures were…”

And I quote, Madam Speaker:

“The causes of these early failures”—that is to say the failure of the Caribbean Community to take advantage of arbitration—“were attributed to combination of cultural apathy in the concept of arbitration…”

10.15 p.m.

(it appeared as if Caribbean citizens wanted their “day in court”), general resistance to the harmonisation of arbitration legislation and perceived disinterest by the business community.”

And then it continues:
“However, recent developments”—again I quote—“demonstrate that dispute resolution services in the Caribbean region are demanding faster and more flexible mechanisms to resolve their disputes...a renaissance for international arbitration in the Caribbean is on its way...

...there have been recent efforts by stakeholders to encourage the growth of arbitration in the region.”

And the article cites the Caricom IMPACT JUSTICE work that I have cited in my pilot and is cited throughout the work of the Bill that is before the Parliament today because it is modelled off of that Bill, the CARICOM Justice IMPACT’s Model Law on the UNCITRAL law.

And the article says:

“The impact of this”—that is to say the recent efforts by stakeholders—“the impact of this cannot be overstated.”

And I quote last this paragraph; so pertinent to what the Minister of Energy and Energy Industries was saying earlier:

“Recent changes and potential transformations in the energy sector are also likely to have an impact on the choice of dispute resolution. The Caribbean has already seen a spate of international investment disputes, notably in the energy sector and we are likely to see more.”

Guyana is mentioned, and then it concludes:

“Also, the impact of alternative energy transitions should not be understated. The Caribbean is heavily impacted by climate change, and is poised to be the beneficiary of climate mitigation funding. If disputes arise in relation to the implementation of any transactions relating to climate or alternative energy, parties will look for a dispute resolution process that is efficient, location-neutral and where parties have influence over the composition of
the tribunal.”

Madam Speaker, that is an April 2022 article, speaking to the very business that we are about in this House today and recognizing the sea change that has occurred in the Caribbean, which Trinidad and Tobago is now committing to in the very piece of legislation that I ask my colleagues in this House to join with me on, in order to pass this into law.

With the greatest of respect, Madam Speaker, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole House.*

**Madam Speaker:** This Bill has 66 clauses.

*House in committee.*

**Madam Chairman:** AG, any order? Okay. So, can we agree to do this in parts?

*Clauses 1 to 9 ordered to stand part of the Bill.*

*Clauses 10 to 12 ordered to stand part of the Bill.*

*Clauses 13 to 18 ordered to stand part of the Bill.*

*Clause 19 ordered to stand part of the Bill.*

*Clauses 20 to 30 ordered to stand part of the Bill.*

*Clauses 31 to 43 ordered to stand part of the Bill.*

*Clauses 44 to 52 ordered to stand part of the Bill.*

*Clause 53 ordered to stand part of the Bill.*

*Clauses 54 to 55 ordered to stand part of the Bill.*

*Clauses 56 to 66 ordered to stand part of the Bill.*

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

*House resumed.*

*Bill reported, without amendment, read the third time and passed.*
Madam Speaker: Leader of the House.

ADJOURNMENT

The Minister of Housing and Urban Development (Hon. Camille Robinson-Regis): Thank you very kindly, Madam Speaker. Madam Speaker, I beg to move that the House now adjourn to a date to be fixed.

Madam Speaker: Hon. Members, there are two matters that qualify to be raised on the Motion for the Adjournment. I have been told that those matters are being deferred. Whip.

Hon. Members: [Desk thumping]

Madam Speaker: Well, I only see applause on one side. But, Whip you are the one to confirm that I am correct.

Mr. Lee: Yes.

  Question put and agreed to.

  House adjourned accordingly.

  Adjourned at 10.28 p.m.