

Report of the
Special Select Committee (Senate)
on the
**Miscellaneous Provisions (Trial by
Judge Alone) Bill, 2023**



**Fourth Session (2023/2024),
Twelfth Parliament**



FOURTH SESSION (2023/2024), 12TH PARLIAMENT

REPORT
OF
THE SPECIAL SELECT COMMITTEE OF THE SENATE
APPOINTED TO CONSIDER AND REPORT ON
A BILL ENTITLED, “AN ACT TO AMEND THE JURY ACT,
CHAP. 6:53 AND THE CRIMINAL PROCEDURE ACT, CHAP.
12:02 AND FOR RELATED MATTERS”

MP PARL:

Senate Paper No. of 2024

[Ordered to be printed by the Senate]

Date Laid in the Senate:

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Report of the SSC (Senate) on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023

Committee Mandate

Pursuant to a resolution of the Senate on Tuesday January 23, 2024, a Special Select Committee was re-established to consider and report by March 31, 2024 on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023.

Interim Reports

The Committee's First Interim Report was presented in the Senate on Tuesday April 16, 2024 and its Second Interim Report was presented on Tuesday June 11, 2024.

Committee Membership

Mr. Reginald Armour, S.C. - Chairman
Mr. Randall Mitchell
Ms. Allyson West
Mrs. Renuka Sagramsingh-Sooklall
Mrs. Jayanti Lutchmedial-Ramdial
Mr. Anthony Vieira, SC
Prof. Gerard Hutchinson

Secretariat Support

Mr. Julien Ogilvie, Deputy Clerk	Secretary
Ms. Sherlana Ramdeen, Assistant Clerk	Assistant Secretary
Ms. Cherylee Legair, Parliamentary Research Specialist	Researcher

Contact

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2023
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CHAIRMANSHIP

1. Pursuant to a resolution of the Senate on Tuesday January 23, 2024. Mr. Reginald Armour, SC was appointed to serve as Chairman of the Committee, in accordance with **Standing Order 85 (2)**.

MEETINGS

2. Since its appointment, your Committee held **seven (7) meetings** on the following dates:
 - Tuesday March 19, 2024;
 - Tuesday March 26, 2024;
 - Friday May 10, 2024;
 - Tuesday May 21; 2024;
 - Tuesday June 04, 2024;
 - Friday June 14, 2024; and
 - Tuesday June 25, 2024
3. The Minutes of the Meetings are attached at **Appendix I**.

REPORTS PRESENTED

4. Your Committee presented the following Interim Reports:
 - (i) The Committee's First Interim Report was presented in the Senate on Tuesday April 16, 2024. This report recommended that the Committee be granted an extension to May 31, 2024 to continue its work; and
 - (ii) The Committee's Second Interim Report was presented in the Senate on June 11, 2024. This report recommended that the Committee be granted an extension to July 05, 2024 to complete its work.

COMMITTEE'S WORK

5. At its **First Meeting** held on Tuesday March 19, 2024, your Committee acknowledged that it was mandated to adopt the work of the Special Select Committee appointed in the Third Session (2022/2023) and report to the Senate by March 31, 2024. It was also noted that in addition to the support provided by the Senate Secretariat, the Committee will be supported by the Chief Parliamentary Counsel (CPC) and the Criminal Justice Unit of the Attorney General and Ministry of Legal Affairs (AGLA).

The Committee commenced its consideration of the stakeholder comments received in the Third Session, Twelfth Parliament, 2022/2023, by the previously appointed Committee.

6. At its **Second Meeting** held on Tuesday March 26, 2024, the Committee continued discussions on the matrix of key issues and recommendations raised by stakeholders. The Committee also agreed to solicit the views and opinions of the following stakeholders on key aspects of the Bill:
 - i. The Criminal Bar Association;
 - ii. The Judiciary of Trinidad and Tobago;
 - iii. The Judicial Education Institute (JEI);
 - iv. Trade Unions, Chambers of Industry and Commerce, and other representatives of the business community;
 - v. NGOs (such as the Rape Crisis Center); and
 - vi. The Victim and Witness Support Unit of the TTPS.
7. At its **Third Meeting** held on Friday May 10, 2024, the Committee received oral submissions from representatives of the **Judiciary of Trinidad and Tobago** and the **Judicial Education Institute**. The Committee also agreed to include the following stakeholders in the list of stakeholders for an in-person engagement or to provide written submissions:
 - i. Vision on Mission;
 - ii. The Trinidad and Tobago Publishers and Broadcasters Association;
 - iii. The Media Association of Trinidad and Tobago;
 - iv. Principal of the University of the West Indies, St. Augustine Campus; and
 - v. Principal of the Hugh Wooding Law School.
8. At its **Fourth Meeting** held on Tuesday May 21, 2024, the Committee resumed discussions on the matrix of key issues and recommendations raised by Stakeholders. The Committee also reviewed and deliberated on the oral submissions made by representatives of the **Judiciary of Trinidad and Tobago** and the **Judicial Education Institute**.
9. Pursuant to those discussions, the CPC was directed to prepare a revised version of the Bill reflecting the necessary amendments based on the Committee's deliberations thus far.
10. At its **Fifth Meeting** held on Tuesday June 04, 2024, the Committee received an oral submission from the **Director of Public Prosecutions (DPP)**.
11. At its **Sixth Meeting** held on Friday June 14, 2024, the Committee reviewed and discussed the oral submissions received from the DPP. Based on those discussions, the Committee, by majority, agreed to adopt the following positions on the Bill:
 - a. the default option available to an accused shall be a trial by judge alone with the prosecution or defence having the right to make an application for a trial by jury;
 - b. the retention of special juries as opposed to the introduction of the lay assessor;
 - c. the reduction in the number of jurors for both capital and non-capital offences as follows:
 - Capital offences – 9 jurors; and
 - Non-capital offences – 7 jurors.

- d. the introduction of guidelines that the Court must consider in determining whether to grant an application for an accused to be tried by a judge and jury in the “interests of justice”. The proposed guidelines are in accordance with Part 3 of the Criminal Procedure Rules, 2023, specifically Rule 3.3 which includes factors to be taken into consideration in dealing with a criminal case justly.
12. Following the discussions, the Committee requested that CPC amend the Bill to reflect the Committee’s decisions.
13. At its **Seventh Meeting** held on Tuesday June 25, 2024, your Committee commenced and concluded its clause-by-clause examination of the revised version of the Bill comprising amendments drafted by the CPC.
14. Following the conclusion of the Bill’s examination, your Committee resolved that the Secretariat collaborate with the Assistant CPC to draft and finalise its report, together with a proposed List of Amendments to the Bill.
15. It was further agreed that Members will review the draft final report of the Committee and provide feedback via email.

REPORT

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

RECOMMENDATION

18. In accordance with Standing Order 64(3), your Committee recommends that its report on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023 be adopted by the Senate, at the earliest opportunity given the impending Parliamentary Recess period.

Report of the SSC (Senate) on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023

Respectfully Submitted,

Mr. Reginald Armour, S.C.
Chairman

Mr. Randall Mitchell
Member

Ms. Allyson West
Member

Mrs. Renuka Sagrarsingh-Sooklal
Member

Mrs. Jayanti Lutchmedial-Ramdial
Member

Mr. Anthony Vieira, SC
Member

Prof. Gerard Hutchinson
Member

Dated: July 01, 2024

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APPENDIX I

List of Proposed Amendments

THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023

List of Amendments proposed by the Special Select Committee

Clause

Extent of Amendment

3 Delete and substitute as follows:

“Chap. 6:53 amended	3. The Jury Act is amended- (a) in section 7- (i) by deleting the words “Magistrates and their clerks:” and substituting the words “Judicial officers referred to in the Second Schedule to the Judicial and Legal Service Act and their clerks;” and (ii) by deleting the words “Officers of Courts of Justice;”; (b) in section 7A (b), by deleting sub-paragraph (ii) and substituting the following sub-paragraph: “(ii) a Judicial officer referred to in the Second Schedule to the Judicial and Legal Service Act or his clerk;”; (c) by repealing section 8 and substituting the following section: <table border="1" data-bbox="678 1453 1318 1749"> <tr> <td data-bbox="678 1453 847 1749"> “Qualification of special juror </td><td data-bbox="847 1453 1318 1749"> 8. A person referred to in section 3 is qualified to serve as a special juror where he is qualified or experienced in the field of expertise, which the Court considers appropriate for the purposes of empanelling a special jury under section 29.”; </td></tr> </table> (d) in section 19- (i) in subsection (1), by deleting the words “twelve jurors” and	“Qualification of special juror	8. A person referred to in section 3 is qualified to serve as a special juror where he is qualified or experienced in the field of expertise, which the Court considers appropriate for the purposes of empanelling a special jury under section 29.”;
“Qualification of special juror	8. A person referred to in section 3 is qualified to serve as a special juror where he is qualified or experienced in the field of expertise, which the Court considers appropriate for the purposes of empanelling a special jury under section 29.”;		

Clause

Extent of Amendment

	substituting the words “nine jurors”; and (ii) in subsection (2), by deleting the words “nine jurors” and substituting the words “seven jurors”; (ii) in subsection (3), by– (A) deleting the words “eleven jurors” and substituting the words “eight jurors”; (B) deleting the words “eight jurors” and substituting the words “six jurors”; and (C) deleting the words “an unanimous” and substituting the words “a unanimous”; (e) by inserting after section 19, the following section:
“Array of jurors-joined capital and other offences	19A. (1) Notwithstanding sections 19 and 28(1), where offences arising out of the same facts are joined and one offence is for a murder or treason while another offence is not, on a joint trial for the joined offences– (a) nine jurors shall form the array; (b) subject to section 19(3) a unanimous verdict of the nine jurors shall be necessary for the conviction or acquittal of a person for the offence of murder or treason; (c) section 28(2) shall apply with respect to a verdict of manslaughter; and

Clause

Extent of Amendment

			(d) section 28(1) shall apply, except that the Judge may receive and enter the verdict if– (i) seven of the nine jurors are agreed; or (ii) six of the eight jurors are agreed, in the circumstances referred to in section 19(3).”;
			(f) in section 21A(1), by deleting the words “six jurors” and substituting the words “four jurors”; (g) in section 28– (i) in the marginal note, by– (A) deleting the words “seven jurors” and substituting the words “five jurors”; and (B) deleting the words “Verdict of six jurors.”; (ii) in subsection (1), by– (A) deleting the word “seven”, wherever it occurs, and substituting the word “five”;

Clause

Extent of Amendment

	(B) deleting the words “eight jurors” and substituting the words “five jurors”; and (C) deleting the words “six jurors” and substituting the words “four jurors”; (iii) in subsection (2) deleting the word “nine”, wherever it occurs, and substituting the word “seven”; (h) by repealing section 29 and substituting the following section: <table border="1"> <tr> <td>“Special juries</td><td>29. The High Court may in any case triable by a jury, except indictments for any offence punishable with death, order a special jury to be struck before the Marshal and every jury so struck shall be the jury returned for the trial.”.</td></tr> </table>	“Special juries	29. The High Court may in any case triable by a jury, except indictments for any offence punishable with death, order a special jury to be struck before the Marshal and every jury so struck shall be the jury returned for the trial.”.
“Special juries	29. The High Court may in any case triable by a jury, except indictments for any offence punishable with death, order a special jury to be struck before the Marshal and every jury so struck shall be the jury returned for the trial.”.		

4 A. Delete paragraph (a) and substitute the following paragraph:

“(a) in section 6-

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

	“(1) Every person against whom an indictment has been filed shall, subject to the provisions of this Act, be tried before a Judge alone unless–
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Clause

Extent of Amendment

Chap. 6:53	(a) the prosecution or defence makes an application to the Court for the trial to be conducted by a Judge and jury; and (b) the Court determines and orders that a trial before a Judge and jury is in the interests of justice. (1A)) In determining whether it is in the interests of justice for the trial to be conducted by a Judge and jury pursuant to an application made under subsection (1), the Court shall consider all the circumstances surrounding the particular case and the duty of the Court to deal with a case justly, including but not limited to the duty to – (a) deal with the prosecution and the defence fairly; (b) ensure the protection of all the rights of an accused person; (c) consider the interests of the accused, witnesses, victims and jurors; (d) deal with the case efficiently and expeditiously; (e) ensure that appropriate information is available to the court; and (f) deal with the case in a manner that takes into account– (i) the gravity of the offence; (ii) the complexity of what is in issue; (iii) the consequences for an accused and others who may be affected; (iv) the needs of other cases; and (v) allotting the case an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases. (1B) An application to the Court for a trial by Judge and jury under subsection (1), includes a trial by Judge and special jury in accordance with the Jury Act.”;
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- (i) by repealing subsection (2) and substituting the following subsection:

“(2) Subject to subsection (1), at the first hearing after an indictment has been filed, a

Clause

Extent of Amendment

Judge shall inform the accused person that he may make an application to be tried by a Judge and jury, unless the accused person indicates an intention to enter a plea of guilty.”;

(ii) in subsection (2A), by deleting the words “Criminal Procedure Rules, 2016” and substituting the words “Criminal Procedure Rules, 2023”;

(iii) by repealing subsection (3) and substituting the following:

“(3) The prosecution or defence may make an application for a trial before a Judge and jury–

(a) at the first hearing after the indictment has been filed; or

(b) by filing the application with the Registrar of the Supreme Court and serving a copy on the other party at least thirty-two days before the date fixed for trial or before such later date as the Court may order.

(3A) Subject to subsection (7), the prosecution or defence may withdraw an application for a trial before a Judge and jury by filing the withdrawal with the Registrar of the Supreme Court and serving a copy on the other party at least thirty-two days before the date fixed for trial or before such later date as the Court may order.”;

(iv) in subsection (4) by–

(A) deleting the words “shall make” and substituting the words “may make”; and

(B) deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;

(v) in subsection (5) by–

(A) deleting the word “elects” and substituting the word “makes an application”;

Clause

Extent of Amendment

- (B) deleting the words “shall make” and substituting the words “may make”; and
 - (C) deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
- (vi) in subsection (6) by—
 - (A) deleting the word “elected” wherever it occurs and substituting the word “made an application”; and
 - (B) deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
- (vii) repealing subsection (7) and substituting the following subsection:
 - “(7) Subject to subsection (8)—
 - (a) where the Court makes an order under subsection (4) or (5), the prosecution or defence may subsequently apply to the Court for the order to be revoked and to be tried by a Judge alone;
 - (b) where the first hearing after the filing of an indictment against an accused person took place before the coming into force of the Miscellaneous Provisions (Trial by Judge Alone) Act, 2024 and the accused person did not elect to be tried by either Judge alone or before a Judge and a jury at the hearing—
 - (i) the Registrar of the Supreme Court shall cause to be served on the accused person, a notice informing him that he may, at least

Clause

Extent of Amendment

sixty days before the date fixed for his trial, apply to the Court for a trial by a Judge and jury; and

(ii) the accused person may, subject to subsection (8), apply to the Court for a trial by a Judge and jury.”; and

(viii) by repealing subsection (9) and substituting the following:

“(9) Where an accused person makes an application in accordance with—

(a) subsection (7)(a) and (8), the Court shall make an order granting the application; or

(b) subsection (7)(b) and (8), the Court may, subject to subsection (1), and (4) to (6) make an Order that the accused be tried before a Judge and jury;”.

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

“(b) by inserting after section 6B, the following section:

“Rules
Committee
to make
Rules for
subject-
matter
experts

6C. (1) The Rules Committee may make Rules of Court, subject to negative resolution of Parliament, to generally regulate the use of subject-matter experts to assist the Court, where the evidence in a matter is highly technical and specialised.

(2) The Chief Justice may issue Practice Directions in furtherance of Rules of Court made under this section.”.

C. Delete paragraph (d) and renumber paragraph (e) as paragraph (d).

Clause

Extent of Amendment

- 5 Delete sub-clause (2) and substitute the following sub-clause:
 “ (2) This Act does not apply to any trial on indictment where the accused was arraigned and put into the charge of a Judge and jury or a Judge alone under the Criminal Procedure Act, prior to the commencement of this Act.”.

New clause

Insert after clause 2, the following new clause:

2A inserted

Chap. 4:01 amended	2A. The Supreme Court of Judicature Act is amended– (a) in section 65E– (i) in subsection (1) (b), by inserting after the words “with leave of the Court of Appeal or a Judge thereof, against the” the words “verdict by a Judge alone”; (ii) by inserting after subsection (2), the following subsections: “(3) Without prejudice to subsection (1), the Director of Public Prosecutions may, with leave of the Court of Appeal or a Judge thereof, appeal to the Court of Appeal against an acquittal where– (a) a person is tried on indictment by a Judge alone pursuant to sections 6 and 6A of the Criminal Procedure Act; and
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Clause

Extent of Amendment

	(b) the accused is acquitted by the trial Judge in respect of an offence on the indictment. (4) The Court of Appeal or a Judge may grant leave to appeal under subsection (3) if the Court or Judge is satisfied that – (a) there is a sufficient ground of appeal against the acquittal, which involves a point of law, a question of fact, or combination of law and fact; (b) the acquittal is unreasonable; (c) the acquittal cannot be supported having regard to the evidence; (d) the acquittal was unjustified due to errors made by the prosecution or deficiencies in the prosecution’s case; or (d) on any other ground of appeal, there was a miscarriage of justice.”; and
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Clause

Extent of Amendment

	(b) in section 65G– (i) by renumbering the section as 65G(1); and (ii) inserting after subsection (1) as renumbered, the following subsection; “(2) Notwithstanding subsection (1), on an appeal by the Director of Public Prosecutions under section 65E (3), the Court of Appeal may– (a) subject to subsection (3), allow the appeal, set aside the verdict and order a retrial; and (b) issue such directions as it considers necessary to give effect to its decision. (3) On an appeal pursuant to section 65E(3), the Court of Appeal shall not order the retrial of a matter more than twice.”.
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Long title Insert after the word “amend” the words “the Supreme Court of Judicature Act, Chap. 4:01;”.

APPENDIX II

Amended Version of the Bill

THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023

EXPLANATORY NOTE

(These notes form no part of the Bill, but are intended only to indicate its general purport)

The purpose of this Bill is to amend the Jury Act, Chap. 6:53 and the Criminal Procedure Act, Chap. 12:02 and for related matters.

The Bill contains 5 clauses.

Clause 1 of the Bill would provide for the short title of the Act.

Clause 2 of the Bill would provide for the commencement of the Act.

Clause 3 of the Bill would amend the Jury Act, Chap. 6:53, as follows:

- (a) in section 2, by repealing the definition of “special juror”;
- (b) in section 7, by deleting the words “Magistrates and their clerks:” and substituting the words “Judicial officers referred to in the Second Schedule to the Judicial and Legal Service Act and their clerks”;
- (c) in section 7A(b), by deleting sub-paragraph (ii) and substituting the following sub-paragraph:
 - “(ii) a Judicial officer referred to in the Second Schedule to the Judicial and Legal Service Act or his clerk;”;
- (d) by repealing section 8 which provides for the qualifications of special jurors;
- (e) in section 9, by deleting the words “if that person is qualified to serve as a juror, state in the prescribed manner whether that person is qualified as a special juror in accordance with section 8 and the nature of his qualifications or experience, as the case may be” and substituting the words “state in the prescribed manner whether that person is qualified to serve as a juror”;
- (f) by repealing section 11(2) that provides for the Form of the List for special jurors;
- (g) in section 15(2), by deleting the words “(except in cases where a special jury is struck)”;
- (h) in section 18(1), by deleting the words “; but this exemption shall not apply to any trial by a special jury”;

- (i) in section 19-
 - (i) in subsection (1), by deleting the words “twelve jurors” and substituting the words “nine jurors” which would reduce the panel of jurors in trials for murder or treason from twelve jurors to nine jurors; and
 - (ii) in subsection (2), by deleting the words “nine jurors” and substituting the words “six jurors” which would reduce the panel of jurors in trials other than for murder or treason, from nine jurors to six jurors;
- (j) by repealing sections 29 to 33 that provide for special juries;
- (k) in section 34, by deleting the words “other than jurors summoned on special juries”;
- (l) by repealing section 35 that provides for allowances to special jurors;
- (m) in section 36, by deleting all the words from “; but where a special jury is struck” to the end;
- (n) in the Schedule-
 - (i) in Form A, by deleting the column titled “Whether qualified as Special Juror”; and
 - (ii) in Form D, “Qualifications for a Juror” by deleting the column titled “Whether qualified as Special Juror”.

Clause 4 of the Bill would amend the Criminal Procedure Act, Chap. 12:02 –

- (a) in section 6-
 - (i) by repealing and substituting subsection (1) to provide for the mode of trial of an accused person. This new section would provide that an accused person committed for trial shall be committed on an indictment to be tried by a Judge alone unless he elects to be tried by a Judge and jury, and the Courts so directs in the interests of justice; the proposed new subsection (1A) would allow for an accused person to be tried by a Judge and lay assessors in accordance with section 6C, if the Court considers it necessary in the interests of justice;
 - (ii) by repealing and substituting subsection (2) to allow the Judge, at the first hearing after an indictment has been filed, to inform the accused person that he may elect to be tried by a judge and jury unless he intends to enter a plea of guilty;
 - (iii) in subsection (4), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
 - (iv) in subsection (5), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;
 - (v) in subsection (6), by deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;

- (vi) by repealing and substituting subsection (7) to provide for the procedure for an accused person to subsequently apply for a trial by a Judge alone after he initially elected for a trial by a Judge and jury;
- (vii) by repealing and substituting subsection (9)(b) to allow for the Court to make a subsequent order for a trial by Judge and jury;

(b) by inserting after section 6B, new sections 6C to 6L to provide for lay assessors as follows:

- (i) the proposed new section 6C would provide for the High Court to appoint lay assessors in respect of indictable offences, except those punishable with death; particularly indictable offences, including fraud, financial crimes, money laundering offences, financing of terrorism; the Attorney General would be empowered to amend the list of offences by Order, subject to affirmative resolution of Parliament;
- (ii) the proposed new section 6D would provide for the qualifications of lay assessors who must be between the ages of eighteen and seventy years; ordinarily resident in Trinidad and Tobago; literate in the English language; experienced or qualified in the administration of justice or possessing skills relevant to the trial and these qualifications would be prescribed in Rules;
- (iii) the proposed new section 6E would provide for the disqualification of lay assessors, including on the grounds of previous convictions, mental or physical incapacity or bankruptcy;
- (iv) the proposed new section 6F would provide for the categories of persons who are excepted from being lay assessors, including Members of Parliament, Judicial officers, Justices of the Peace, Ministers of Religion, diplomats, school teachers as well as, law enforcement officers;
- (v) the proposed new section 6G would provide for persons who may wish to be excused from serving as lay assessors;
- (vi) the proposed new section 6H would provide for lay assessors to take an oath or make an affirmation before assuming duty which is to give a verdict based on the evidence presented; a lay assessor would be a member of the Court except in certain circumstances where the Judge decides that he should sit alone for example to determine the admissibility of evidence or other questions of law; this section would provide for a lay assessor to provide the Judge with written reasons for his decision;
- (vii) the proposed new section 6I would provide for the Judge to give reasons for his decision;
- (viii) the proposed new section 6J would provide for the directions the Judge may give in the event of the death or incapacity of a lay assessor;
- (ix) the proposed new section 6K would provide for the costs and expenses of lay assessors would be a charge on the Consolidated Fund;
- (x) the proposed new section 6L would empower the Rules Committee to make Rules regulating the selection, appointment, qualification, exemption and training of lay assessors;

(c) in section 37, by providing that a Court shall order a Judge alone trial of an accused person unless the Court had made an order under section 6(2) that the accused person may be tried by a Judge and jury; and

- (d) by inserting after section 77, a new section 78, to empower the Attorney General to make Regulations to give effect to the purposes of the Act, subject to negative resolution of Parliament.

Clause 5 of the Bill would provide that the Act does not apply to any trial on indictment that began under the Criminal Procedure Act, Chap. 12:02 prior to the commencement of this Act.

A BILL

An Act to amend the Supreme Court of Judicature Act, Chap 4:01; the Jury Act, Chap. 6:53 and the Criminal Procedure Act, Chap. 12:02 and for related matters

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

Short Title 1. This Act may be cited as the Miscellaneous Provisions (Trial By Judge Alone) Act, 2024.

Commencement 2. This Act shall come into operation on such date as is fixed by the President by Proclamation.

Chap. 4:01 amended **2A. The Supreme Court of Judicature Act is amended–**

(a) in section 65E-

- (i) in subsection (1) (b), by inserting after the words “with leave of the Court of Appeal or a Judge thereof, against the” the words “verdict by a Judge alone”;**
- (ii) by inserting after subsection (2), the following subsections:**

“(3) Without prejudice to subsection (1), the Director of Public Prosecutions may, with leave of the Court of Appeal or a Judge thereof, appeal to the Court of Appeal against an acquittal where–

(a) a person is tried on indictment by a Judge alone pursuant to sections 6 and 6A of the Criminal Procedure Act; and

(b) the accused is acquitted by the trial Judge in respect of an offence on the indictment.

(4) The Court of Appeal or a Judge may grant leave to appeal under subsection (3) if the Court or Judge is satisfied that –

- (a) there is a sufficient ground of appeal against the acquittal, which involves a point of law, a question of fact, or combination of law and fact;**
- (b) the acquittal is unreasonable;**

Chap. 12:02

- (c) the acquittal cannot be supported having regard to the evidence;
- (d) the acquittal was unjustified due to errors made by the prosecution or deficiencies in the prosecution's case; or
- (d) on any other ground of appeal, there was a miscarriage of justice.”; and

(b) in section 65G–

(i) by renumbering the section as 65G(1); and

(ii) inserting after subsection (1) as renumbered, the following subsection;

“(2) Notwithstanding subsection (1), on an appeal by the Director of Public Prosecutions under section 65E (3), the Court of Appeal may–

- (c) subject to subsection (3), allow the appeal, set aside the verdict and order a retrial; and
- (d) issue such directions as it considers necessary to give effect to its decision.

(3) On an appeal pursuant to section 65E(3), the Court of Appeal shall not order the retrial of a matter more than twice.”.

Chap. 6:53
amended

3. The Jury Act is amended–

(a) in section 7–

(i) by deleting the words “Magistrates and their clerks:” and substituting the words “Judicial officers referred to in the Second Schedule to the Judicial and Legal Service Act and their clerks;” and

(ii) by deleting the words “Officers of Courts of Justice;”;

(b) in section 7A (b), by deleting sub-paragraph (ii) and substituting the following sub-paragraph:

“(ii) a Judicial officer referred to in the Second Schedule to the Judicial and Legal Service Act or his clerk;”;

(c) by repealing section 8 and substituting the following section:

“Qualification of special juror	8. A person referred to in section 3 is qualified to serve as a special juror where he is qualified or experienced in the field of expertise, which the Court considers appropriate for the purposes of empanelling a special jury under section 29.”;
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(d) in section 19-

(i) in subsection (1), by deleting the words “twelve jurors” and substituting the words “nine jurors”; and

(ii) in subsection (2), by deleting the words “nine jurors” and substituting the words “seven jurors”;

(ii) in subsection (3), by–

(A) deleting the words “eleven jurors” and substituting the words “eight jurors”;

(B) deleting the words “eight jurors” and substituting the words “six jurors”; and

(C) deleting the words “an unanimous” and substituting the words “a unanimous”;

(e) by inserting after section 19, the following section:

“Array of jurors-joined capital and other offences

19A. (1) Notwithstanding sections 19 and 28(1), where offences arising out of the same facts are joined and one offence is for a murder or treason while another offence is not, on a joint trial for the joined offences–

(a) nine jurors shall form the array;

(b) subject to section 19(3) a unanimous verdict of the nine jurors shall be necessary for the

**conviction or
acquittal of a person
for the offence of
murder or treason;**

**(c) section 28(2) shall
apply with respect to a
verdict of
manslaughter; and**

**(d) section 28(1) shall
apply, except that the
Judge may receive
and enter the verdict
if–**

**(i) seven of the
nine jurors are
agreed; or**

**(ii) six of the eight
jurors are
agreed, in the
circumstances
referred to in
section 19(3).”;**

**(f) in section 21A(1), by deleting the words “six jurors” and
substituting the words “four jurors”;**

(g) in section 28–

(i) in the marginal note, by–

**(C) deleting the words “seven jurors” and
substituting the words “five jurors”; and**

(D) deleting the words “Verdict of six jurors.”;

(ii) in subsection (1), by–

**(A) deleting the word “seven”, wherever it occurs,
and substituting the word “five”;**

(B) deleting the words “eight jurors” and substituting the words “five jurors”; and

(C) deleting the words “six jurors” and substituting the words “four jurors”;

(iii) in subsection (2) deleting the word “nine”, wherever it occurs, and substituting the word “seven”;

(h) by repealing section 29 and substituting the following section:

“Special juries.	30. The High Court may in any case triable by a jury, except indictments for any offence punishable with death, order a special jury to be struck before the Marshal and every jury so struck shall be the jury returned for the trial.”.
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Chap. 12:02
amended

4. The Criminal Procedure Act is amended—

(a) in section 6-

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

“(1) Every person against whom an indictment has been filed shall, subject to the provisions of this Act, be tried before a Judge alone unless—

(a) the prosecution or defence makes an application to the Court for the trial to be conducted by a Judge and jury; and

(b) the Court determines and orders that a trial before a Judge and jury is in the interests of justice.

(1A)) In determining whether it is in the interests of justice for the trial to be conducted by a Judge and jury pursuant to an application made under subsection (1), the Court shall consider all the circumstances surrounding the particular case

and the duty of the Court to deal with a case justly, including but not limited to the duty to –

- (a) deal with the prosecution and the defence fairly;**
- (b) ensure the protection of all the rights of an accused person;**
- (c) consider the interests of the accused, witnesses, victims and jurors;**
- (d) deal with the case efficiently and expeditiously;**
- (e) ensure that appropriate information is available to the court; and**
- (f) deal with the case in a manner that takes into account–**
 - (i) the gravity of the offence;**
 - (ii) the complexity of what is in issue;**
 - (iii) the consequences for an accused and others who may be affected;**
 - (iv) the needs of other cases; and**
 - (v) allotting the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.**

(1B) An application to the Court for a trial by Judge and jury under subsection (1), includes a trial by Judge and special jury in accordance with the Jury Act.

Chap. 6:53

(i) by repealing subsection (2) and substituting the following subsection:

“(2) Subject to subsection (1), at the first hearing after an indictment has been filed, a Judge shall inform the accused person that he may make an application to be tried by a Judge and jury, unless the accused person indicates an intention to enter a plea of guilty.”;

(ii) in subsection (2A), by deleting the words “Criminal Procedure Rules, 2016” and substituting the words “Criminal Procedure Rules, 2023”;

(iii) by repealing subsection (3) and substituting the following:

“(3) The prosecution or defence may make an application for a trial before a Judge and jury–

(a) at the first hearing after the indictment has been filed; or

(b) by filing the application with the Registrar of the Supreme Court and serving a copy on the other party at least thirty-two days before the date fixed for trial or before such later date as the Court may order.

(3A) Subject to subsection (7), the prosecution or defence may withdraw an application for a trial before a Judge and jury by filing the withdrawal with the Registrar of the Supreme Court and serving a copy on the other party at least thirty-two days before the date fixed for trial or before such later date as the Court may order.”;

(iv) in subsection (4) by–

(A) deleting the words “shall make” and substituting the words “may make”; and

(B) deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;

(v) in subsection (5) by–

(A) deleting the word “elects” and substituting the word “makes an application”;

(B) deleting the words “shall make” and substituting the words “may make”; and

(C) deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;

(vi) in subsection (6) by–

(C) deleting the word “elected” wherever it occurs and substituting the word “made an application”; and

(D) deleting the words “a Judge alone” wherever they occur and substituting the words “a Judge and jury”;

(vii) repealing subsection (7) and substituting the following subsection:

“(7) Subject to subsection (8)–

(c) where the Court makes an order under subsection (4) or (5), the prosecution or defence may subsequently apply to the Court for the order to be revoked and to be tried by a Judge alone;

(d) where the first hearing after the filing of an indictment against an accused person took place before the coming into force of the Miscellaneous Provisions (Trial by Judge Alone) Act, 2024 and the accused person did not elect to be tried by either Judge alone or before a Judge and a jury at the hearing–

(iii) the Registrar of the Supreme Court shall cause to be served on the accused person, a notice informing him that he may, at least sixty days before the date fixed for his trial, apply to the Court for a trial by a Judge and jury; and

(iv) the accused person may, subject to subsection (8), apply to the Court for a trial by a Judge and jury.”; and

(viii) by repealing subsection (9) and substituting the following:

“(9) Where an accused person makes an application in accordance with–

(c) subsection (7)(a) and (8), the Court shall make an order granting the application; or

(b) subsection (7)(b) and (8), the Court may, subject to subsection (1), and (4) to (6) make an Order that the accused be tried before a Judge and jury;

(b) by inserting after section 6B, the following section:

**“Rules
Committee
to make
Rules for
subject-
matter
experts**

6C. (1) The Rules Committee may make Rules of Court, subject to negative resolution of Parliament, to generally regulate the use of subject-matter experts to assist the Court, where the evidence in a matter is highly technical and specialised.

(2) The Chief Justice may issue Practice Directions in furtherance of Rules of Court made under this section.”;

(c) in section 37 by deleting the words “order a jury for the trial of the accused person” and substituting the words “order a Judge alone trial of the accused person”;

(d) in the First Schedule–

- (i) in Form 31, by deleting the words “by a Judge alone” and substituting the words “before a Judge and jury” wherever they occur;**
- (ii) in Form 32, by deleting the words “by a Judge alone” and substituting the words “before a Judge and jury” wherever they occur.**

Report of the SSC (Senate) on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023

Application
Chap. 12:02

5. (1) This Act applies to an indictment for which the trial has not begun under the Criminal Procedure Act.

(2) This Act does not apply to any trial on indictment where the accused was arraigned and put into the charge of a Judge and jury or a Judge alone under the Criminal Procedure Act, prior to the commencement of this Act.

Passed in the House of Representatives this day of , 2024.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2024.

Clerk of the Senate

I confirm the above.

President of the Senate

APPENDIX III

Matrix of Stakeholder Comments/Issues

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
Clause 3 – Amend the Jury Act			
Dr. Randy Seepersad	<u>Comments: Clause 3 (i) Number of Jurors</u> The number of jurors can be reduced without affecting the quality of the verdicts made in a court of law.	Historically, the number of jurors selected was steeped in religious inspiration and not any assessment of fairness. Team agrees that the reduction of jurors does not affect the quality of the verdicts.	
	Procedural safeguards to eliminate potentially biased persons must be applied.	The current safeguards through which jurors are selected will still be applied and opportunities for challenges of jurors are maintained.	
Law Association of Trinidad and Tobago	<u>Comments: Clause 3 General comments</u> No indication as to when a special jury was struck	Clause 3: Special juries are the same as a jury in terms of administrative arrangements and must be struck before the Marshall and empanelled.	
	What is the need for the abolition of special juries?	A special jury has never been struck and as such it is proposed that it be repealed and replaced with lay assessors.	
	Are lay assessors required?	Lay assessors must be qualified and have the requisite experience in the specific field on trial. One crucial difference between lay assessors and special juries is that first, lay assessors consist of one (1) to five (5) persons chosen from an established pool, whereas special juries must consist of	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
		nine (9) jurors in all cases.	
	<u>Clause 3 (i) Number of Jurors</u> This reduction in the number of jurors may have an adverse effect on the fairness of deliberation, it is suggested that an amendment be considered to increase the number of peremptory challenges from three (3) to five (5) as stated in Section 23 of the Jury Act Chap. 6:53.	As stated above by Dr. Seepersad, the quality of the verdict is not affected by less jurors. There is therefore no rationale for increasing the number of challenges. Further, fairness is not affected by less jurors given that jury trials are not a necessary to guarantee trial fairness and there is no right to a jury trial according to the Privy Council ruling in the Jamaican case of <i>Trevor Stone v the Queen Privy Council No. 11 of 1978</i>. The appellant argued <i>inter alia</i> that “the right of an accused person to be tried by a jury in the case of grave crimes is entrenched in the Constitution of Jamaica and it can only be removed by the special procedure prescribed by section 49 of Jamaica’s Constitution and that a Supreme Court Judge sitting in a Gun Court without a jury was inconsistent with the Constitution and therefore void”. The Privy Council dismissed the appeal and affirmed the Jamaican Court of Appeal’s decision that a Supreme Court Judge sitting without a jury is simply a matter of practice or procedure. Despite the above the Bill maintains jury trials and does not abolish same. The accused may still elect to be tried by a jury (albeit reduced) There is no criteria to be met for election and the Court makes the determination in the interests of justice.	

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Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
		Further, regardless of the number of jurors who are empaneled, the role of the judge remains the most critical , as jurors are often not knowledgeable in the different procedures and rules in law as it relates to trials.	
Public Defenders Department	<u>Comments: Clause 3(i) Number of Jurors</u> Reducing the numbers would run counter to the principles of fairness since it would restrict persons in society from participating in the trial process.	Public participation in the trial process is not a necessary element of trial fairness and the case of <i>Trevor Stone v the Queen Privy Council No. 11 of 1978</i> (supra) settles this point.	
Clause 3 – Amend the Jury Act			
Criminal Bar Association	<u>Clause 3 (i) Number of Jurors</u> What is the rationale for the proposed reduction of the jurors in the proposed amendments to the Jury Act?	The Judiciary provided insight into the practical difficulties with attempting to empanel a jury with the current number of persons required by law including – - Originally, there were difficulties occasioned by Covid-19 and the need for special, spatial arrangements for social distancing. - the unwillingness of persons to serve as jurors and therefore repeated requests for exemptions; - Time consuming and wastes limited justice sector resources; - Logistics and challenges presented in empanelling and sequestering 12 jurors - Smaller juries may encourage greater participation and more meaningful and robust deliberations.	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
Dr. Randy Seepersad	<u>Comments: Clause 4(a) Judge Alone Trial Interpretation:</u> • The amendment [4(a) of the Bill] suggests that the court can override the accused's request for a trial by judge and jury. <u>Benefits:</u> • Can serve to make the judicial process more efficient and fairer; • Reduces the time and expense in the selection and engagement of a jury; • Judges are experts in law and can understand complex cases • The ability for the accused to choose (once aware of the choice) <u>Disadvantages:</u> • Potential for unconscious bias by a judge, leading to biased verdicts. <u>Recommendations:</u> • Psychometric testing to determine a judge's suitability. • Collection and analysis of data to assess the fairness of judge alone trials vs. trial by jury. • Judges should be compelled to provide the rationale for their judgements regardless if "innocent" or "guilty."	Clause 4(a): The interpretation of Clause 4 amending section 6(1) of the Criminal Procedure Act, is to give the Court the discretion to determine whether a jury trial should be allowed in the interest of justice. In response to the cited disadvantage of potential bias, it must be noted that all procedural safeguards which maintain a fair trial are preserved under the judge only option. The accused is entitled to a right to a fair trial. There is no evidence that a judicial officer, either those who have already conducted Judge Only Trials as well as those judicial officers who act solely in the District Courts, will not uphold trial fairness. Of the 59 completed Judge Alone Trials, there have been only 6 appeals. This shows confidence in this mode of trial. All checks and balances are maintained in a Judge Only Trial: • The accused retains the option to apply to have an indictment quashed/amended. • The accused can make a submission of no case to answer. • The accused has a right of appeal. • The accused is to be provided with reasons for the decision of the Judge. (Clause 4, section 6I of the Bill). Judges are legal professionals who have been trained to interpret and apply the law objectively. They do not have personal relationships or connections with the accused or the witnesses, which eliminates the potential for intimidation or bias. Additionally, Judges have a comprehensive understanding of complex legal concepts and can ensure that the evidence presented is admissible	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
		<i>and relevant. They can also identify inconsistencies or errors in testimony or evidence and determine their impact on the case. A judge-alone trial ensures that the decision is consistent and predictable, which provides a sense of certainty for both the accused and the prosecution. This can promote public trust and confidence in the legal system.</i> <i>Justice Jacob Wit on bias at the Distinguished Jurist Lecture and Panel Discussion on the “Continuing Relevance of the Jury System in the English-Speaking Caribbean” held on June 11 and 12, 2013 at the Judiciary,</i> <i>“That judges live in ivory towers and are divorced from certain realities: “The fact that one does not live in Laventille or Carenage or anywhere else, doesn’t mean that one cannot understand the realities of everyday life. Most of the judges I know have not been born with a golden spoon in their mouths and they live pretty ordinary lives. Before they were elevated to the Bench, most of them have worked in the trenches of the Magistrates’ Courts and they have defended and prosecuted all kinds of people. They might have been magistrates at some time and, as such, have dealt with thousands of cases and hundreds of police officers. These judges, who are not supposed to know the realities of police brutality, do have to deal with important civil, constitutional and administrative cases, all without the assistance of the ordinary man. One wonders how they manage to fulfil that immense task if they are really that naive.”</i>	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
Clause 3 – Amend the Jury Act (General and Relevant Jury Act Provisions)			
Director of Public Prosecutions	• There is a need for a provision allowing for the State to lodge an appeal pursuant to section 65E and 65F Supreme Court of Judicature Act (SCJA), Chapter 4:01. This requires an express insertion of a section to like effect within the proposed Misc. Prov. (Trial by Judge Alone) Bill but also an amendment to section 65E(b) of the SCJA to insert the words “verdict by JAT or Judge and Lay Assessors” before the word “sentence.” Akin to the powers of the State to appeal a verdict of a Magistrate, similar power ought to be extended to the State to appeal a verdict of a Judge when sitting as the finder of law and fact in either JATs or Judge/Lay Assessor matters. • Consideration ought to be given to the creation of a pool of Lay Assessors following selection by random and electronic means. ○ In order to maintain the integrity of the trial process, it is suggested that a pool of Assessors be compiled and vetted in advance of any trial in this regard.		

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	• There is a need to replicate section 17 of the Jury Act provisions for Lay Assessors i.e. a husband and wife shall not both be summoned to serve as Lay Assessors in the same Session/Matter. • There is a need to replicate sections 23, 23A and 23B of the Jury Act provisions to allow for peremptory challenges and challenges for cause by both the defending the prosecuting counsel. ◦ There may be instances where the Lay Assessors have partisan positions/opinions. • There is a need to consider replication of section 27 of the Jury Act to allow for the appropriate refreshments to be provided for Lay Assessors once selected and sequestered. • There is a need to replicate section 42 of the Jury Act to insulate Lay Assessors from victimization by their employers.		
Clause 4 – Amend the Criminal Procedure Act			
Professor (Emeritus) Ramesh Deosaran	<u>Comments: Clause 4 (a)(i)(1)</u> • There is support for providing the early choice between a judge alone or trial with	<u>Clause 4(a)(i)(1)</u> There is the safeguard under Clause 4(4) & (5) that the Court must be satisfied that the accused discussed the elected mode of trial with his attorney (or waives the right to do so). This ensures that	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	judge and jury after it is carefully explained.	both options are carefully explained to the accused by his legal representative.	
	<u>Comments: Clause 4 (a)(i)(1)</u> Why is it necessary to include “as the Court so directs in the interest of justice?”	The Court is given the discretion to direct a jury trial in the interest of justice, having regard to all the circumstances of the case. It is difficult to envision many instances where the Court would refuse to grant the accused’s request for jury trial – there must be serious extenuating circumstances. Consideration may be given to including in the Bill principles to guide the Court when considering an order in the interest of justice. The following options may be considered: (a) The <i>Trial Without Jury Ordinance 2010, Turks and Caicos</i> section 4 provides as follows: “4(1) Notwithstanding anything to the contrary in any other law, a judge may order that a trial be conducted without a jury if he is satisfied that the interests of justice so require. (2) An order under subsection (1) may be made on the application of any party to the trial or by the judge of his own volition. (3) In making a determination as to whether the interests of justice require that the trial be conducted without a jury, the judge shall have regard to all the circumstances prevailing, including any or all of the following – (a) the nature of the charges; (b) the complexity of the issues or matter to be determined, and any steps which might reasonably be taken to reduce the complexity of the trial; (c) the length of the trial, and any steps which might reasonably be taken to reduce the length of the trial;	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
		(d) the likelihood that, if a jury were selected, pre-trial publicity may influence its decision; (e) or if there is any information tending to suggest that jury tampering may arise.” (b) <u>Comments of the Judiciary which includes a draft Bill as an Appendix proposes the following at clause 5(c):</u> (1B) In determining whether it is in the interest of justice for an accused person to be tried by a Judge and jury pursuant to a request under subsection (1), the Court shall consider all the circumstances surrounding the particular case and the duty of the Court deal with a case justly, including but not limited to the duty to— (a) deal with the prosecution and the defence fairly; (b) ensure the protection of all the rights of an accused person; (c) consider the interests of the accused, witnesses, victims and jurors; (d) deal with the case efficiently and expeditiously; (e) ensuring that appropriate information is available to the court; and (f) deal with the case in a manner that takes into account— (i) the gravity of the offence; (ii) the complexity of what is in issue; (iii) the consequences for an accused and others who may be affected; (iv) the needs of other cases; and (v) allotting the case an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases. (1C) Without limiting subsections (1)(b) or (1B), the Court shall not order a trial before a Judge and jury if it is not in the interest of the	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
		jury or a fair trial before a Judge and jury is not likely for any reason including but not limited to the following: (a) the trial, due to its complexity, duration or other matter is likely to be unreasonably burdensome to a jury; (b) there was substantial publicity or is substantial public awareness of the accused or other matters related to the trial which is likely to influence a jury; (c) there is a substantial risk of jury tampering, (c)Australia • Under the <i>Criminal Code Act</i>, Queensland the defendant was given the right to apply for a “no jury” order. That order will be made if the court considers it to be in the interests of justice to do so. • Criminal Procedure Act, sections 132 and 365, New South Wales; • Juries Act 1927, section 7, South Australia; • Criminal Procedure Act 2004, section 118, Western Australia; • Supreme Court Act 1933 (ACT), Part 2.2 of Sch. 2, Australian Capital Territory • 49 Covid-19 Omnibus (Emergency Measures) Act 2020, section 420D <u>Cases that considered the expression “in the interests of justice”</u> Kidd in <i>DPP v Combo</i> [2020] VCC 726; <i>R v Pentland</i> [2020] QSC 78	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
		See generally an article, 'Judge Alone Trials', by Colin Mandy SC: https://foleys.com.au/resources/1Judge%20Alone%20Trials.pdf	
	<u>Clause 4(a)(ii)</u> - There is a contradiction between this section and the previous section by having the case “tried by a judge” with lay assessors “if the Court considers it necessary in the interest of justice.” - There is a lack of clarity regarding the meaning “in the interest of justice.”	<u>Clause 4(a)(ii)</u> The appointment of lay assessors is at the discretion of the judge if in his view, the assessors will assist him e.g., where the matter is complex or requires expertise in a particular field. Therefore, where justice so requires and in order to ensure trial fairness, lay assessors will be requested by the judge. Therefore, lay assessors are appointed “in the interest of justice”. “In the interest of justice” means that the judge will use discretion to make a decision that prioritize fairness, equity and the rule of law and which ensures the well-being of all parties involved.	
The Trinidad and Tobago Prison Services	<u>Comments: Clause 4(a) Judge Alone Trial Interpretation:</u> Is it left to the Honourable Judge to determine whether the accused has made a persuasive argument upon which the accused may be granted the privilege of a Jury Trial?	<u>Clause 4(a):</u> The Court is given the discretion to direct a jury trial in the interest of justice, having regard to all the circumstances of the case. It is difficult to envision many instances where the Court would refuse to grant the accused’s request for jury trial – there must be serious extenuating circumstances. Ultimately, the judge’s decision must prioritize fairness, equity and the well-being of all parties involved.	

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Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	<u>Concerns:</u> There is the potential (based on the interpretation) for the clause to undermine Section 5(2) of the Constitution.	See response above to comments from Professor (Emeritus) Ramesh Deosaran	
	Would the accused who opted for a Jury Trial be afforded the opportunity to appeal a decision which denies them of same?	Consideration may be given to including a right of appeal where the accused is denied a jury trial.	
Clause 4 – Amend the Criminal Procedure Act			
Law Association of Trinidad and Tobago	<u>Comments: Clause 4(a) Judge Alone Trial</u> The decision for a trial by his peers unless he elects to be tried by a Judge alone resides with the Accused and there appears to be no reason to remove the discretion from him/her.	<u>Clause 4(a):</u> Election of the mode of trial is not a constitutional right and this is settled law (<i>Trevor Stone</i>). Discretion is being removed in order to achieve fairness and efficiency in the system. This Bill is one of several justice sector reforms that aim to work cohesively to achieve a more efficient justice system so that accused persons can be tried within a reasonable time.	
	<u>Comments: Clause 4(a) Judge Alone Trial</u> Erodes the fairness of the process by allowing a Judge to direct that a matter be heard before a Judge and lay assessor	Fairness is not eroded. The lay assessor assists the judge on matters of fact and the judge is not bound by the decision of a lay assessor - Clause 4-section 6I (2).	
	Look at the offences which lay assessors can address in 6C (2) and then consider the list of persons who will be exempted from	The overriding discretion to utilize lay assessors in any given matter is ultimately left with the Court who will make such determination based on the circumstances of the particular case.	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	sitting as lay assessors, <u>it is clear that those with experience in the administration of justice will be few.</u>		
	The Honourable Attorney General’s power to expand the list of offences on which a lay assessor may be included is too wide and there is not a provision for the office holder to consult with anyone.	Section 6C(3) requires an affirmative resolution for the list of offences to be expanded. The SSC may consider the AG consulting with the Hon. Chief Justice or the power to amend the list could be conferred on the Rules Committee of the Supreme Court.	
Criminal Bar Association	<u>Comments: Clause 4(a) Judge Alone Trial</u> Why give the trial judge the right to grant “Judge and Jury” trials only if he thinks it is in the interest of Justice?	See response above to comments from Professor (Emeritus) Ramesh Deosaran	
	<u>Comments: Clause 4(a) Judge Alone Trial</u> What constitutes “interest of justice”?	See response above to comments from Professor (Emeritus) Ramesh Deosaran	
Clause 4 – Amend the Criminal Procedure Act			

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
Public Defenders Department	<u>Comments: Clause 4(a) Judge Alone Trial</u> • Clause 4 (a) (i) <u>Jury trials should remain the default mode of trial</u> and judge alone trials should only be ordered with the election or consent of the accused. • Clause 4 (a) (i) The <u>interest of justice proviso should be removed</u>, this discretion is broad and ambiguous as there is no legislative articulation of what factors may or may not be considered by the Court in its assessment of whether a jury trial would be “in the interest of justice”. • The discretion to order trial by Judge and lay assessors should be made subject to requirement that the accused person consents to such a trial. • If an ‘interest of justice’ provision is to remain the legislation should provide what factors must be taken into consideration in determining whether a judge alone trial is in the interest of justice. • Clause 4 (a) (v) In the case of multiple accused persons, there should be no requirement that all co-accused persons elect trial by judge and jury; a jury trial should be ordered where any number of co-accused persons elect jury trial.	<u>Clause 4(a):</u> See response above to comments from Professor (Emeritus) Ramesh Deosaran	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
Public Defenders Department	<u>Comment/Interpretation: Clause 4 (b) - Lay Assessors</u> Lay assessors would serve no useful purpose as they are essentially replacing special juries which have never been used. The research has shown that lay assessors can be corrupted and dominated by judges. If lay assessors are to be implemented in our criminal justice system, the Bill needs significant revision to adequately regulate the process to ensure fairness.	<u>Clause 4(b):</u> Lay assessors are different from special juries. First, the framework for lay assessors is more enabling than that of special juries as his qualifications and training can be regulated by the Rules Committee, as opposed to special juries whose areas of expertise are merely listed under the Jury Act. Second, there is no requirement for empanelling. Third, less lay assessors are required than special jurors. Further, lay assessors provide greater efficiency and a neutral stance on trial matters as they are not experts for the prosecution. Lay assessors give further credence to the right to a fair trial as they are seen as guarantors of transparency and credibility. They serve to combat corruption and improve the quality of the decision-making process – this is further underscored by the fact that the judge is not bound by their decisions.	
	Clause 4 – Amend the Criminal Procedure Act		
Trinidad and Tobago Police Service	<u>Concerns: Clause 4 (b) – Lay Assessors</u> Section 6C – There is no information provided as to how the lay assessors would be selected.	Section 6C The method by which lay assessors will be selected will be determined by the Rules Committee. (Clause 4, section 6L).	
	Section 6D(1)(e) – The provision is vague; there is uncertainty regarding	Section 6D(1)(e)	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	the term “experience in the administration of justice.”	Administration of justice is used in other pieces of legislation and used in the Bill with reference to persons who may be qualified as lay assessors.	
	Section 6E(b) – Discriminatory in nature and is contrary to the Equal Opportunity Act. Seeks to disqualify persons who are hearing/visually impaired (or any other disability); uncertainty surrounding whether permanent infirmity of the body includes persons who are wheel chair-bound or otherwise impaired and are of sound mind.	Section 6E(b) These disqualifications are also listed for jurors under section 5 of the Jury Act. These disqualifications ensure that the trial is dealt with efficiently. For example, someone with a permanent infirmity is limited in his ability to perform daily activities and therefore may not be competent to serve as a lay assessor, especially where a matter is complex in nature.	
	Section 6G – Question of rationale for not including the spouses of law enforcement officers to be excused; question of why can’t a lay assessor be excused if they are not OBLIGATED to serve.	Section 6G Spouses of law enforcement officers are excused in order to prevent any potential conflict of interest.	
	Section 6J(1)(b) – Concern surrounding the “summoning” of a lay assessor; uncertainty surrounding whether a lay assessor is a mandatory or voluntary service.	Section 6J(1)(b) This will be determined by the Rules Committee.	

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Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	Section 6K – Clarity is needed regarding remuneration of lay assessors. Would payment be a general stipend or would same vary based on the qualifications of the lay assessor?	Section 6K Fees and remuneration may be prescribed in Regulations to be made under the proposed new section 78.	
Clause 4 – Amend the Criminal Procedure Act			
Criminal Bar Association	<u>Comment/Interpretation: Clause 4 (b) - Lay Assessors</u> What does the qualification “experience in the administration of justice” mean?	Administration of justice is used in other pieces of legislation and used in the Bill with reference to persons who may be qualified as lay assessors.	
	With reference to the proposed Section 6 (K), are the fees for lay assessors, stipends or professional fees in keeping with their qualification of “experience in the administration of justice”.	Section 6(K) Fees and remuneration may be prescribed in Regulations to be made under the proposed new section 78.	
	With the proposed system of “Judge and assessors” replacing jurors the fact finder will no longer be chosen at random. They will be no longer be anonymous persons. They will be a pool of persons very familiar to the judges of this country.	Section 6(I)(2) states that judges are not bound by the decisions of lay assessors. Whether they are familiar with the lay assessors or not they ultimately make their own decisions regarding the case.	
Clause 4 – Amend the Criminal Procedure Act			
Dr. Randy Seepersad	<u>Comment/Interpretation: Clause 4 (b) - Lay Assessors</u>	The Rules Committee will determine the qualifications of Lay Assessors.	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	• The classes for persons exempted from serving as Lay Assessors is reasonable. <u>Benefits:</u> • The qualifications for Lay Assessors are specified. • The reasons for non-eligibility, persons exempted and persons excused are specified. • The Rules Committee's capacity to make regulations regarding the selection, appointment, qualification, exemption and training of Lay Assessors. <u>Recommendations:</u> • It would be important to carefully consider what qualifications are required for Lay Assessors, when the rules for eligibility are specified. • The minimum number should be at least two Lay Assessors to facilitate deliberation and discussion. • The conditions for a judge's decision to sit alone should be explicitly stated to avoid arbitrary exercise of this provision. • Careful consideration should be given to each aspect identified. • These rules should be made and executed with integrity.	A range of 1-5 lay assessors was considered in the event of a very small selection of persons to choose from. The conditions for the judge's decision to sit alone are clearly stated under Section 6H(2). Further, under Section 6(1A), the Bill clearly states that the Judge may appoint lay assessors if it is considered necessary in the interest of justice.	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	<u>Benefits:</u> • Reduces the length of time spent in remand by accused persons. • Reduces the overcrowded prison population facilitating a less tense environment. • Provides the potential for persons to be released earlier.		
Clause 4 - Amend the Criminal Procedure Act			
The Trinidad and Tobago Prison Services	<u>Concerns: Clause 4 (b) - 6I - Judge to give reasons for decisions</u> • What is the criteria for this section to be applicable or will it be left up to the Honourable Judge's discretion? • There must be consideration on whether this may impact the Constitutional Right to a Fair Hearing and Impartiality.	The criteria are set out in the section and the Judge is bound by the applicability of this section due to the use of the word “shall”. 6I. (1) A Judge presiding at a criminal trial in the High Court shall – <i>(a) where he decides any question of law including any question referred to in section 6H(2)(b), whether any matter constitutes a question of law or a question of fact, give the reasons for his decision;</i> <i>(b) whether he sits with or without lay assessors, give the reasons for the decision or finding of the Court upon any question of fact;</i> <i>(c) where he sits with lay assessors, give the reasons for the decision or finding of the Court upon the question referred to in section 6H(2)(a); or</i>	

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
		<i>(d) where he sits with lay assessors and there is a difference of opinion upon any question of fact or upon the question referred to in section 6H(2)(a), give the reasons for the decision or finding of the member of the Court who is in the minority.</i> This does not trample upon the constitutional right to a fair hearing and impartiality. The Bill preserves the accused’s right to elect a jury trial where the Court so directs in the interest of justice. Further, a judge alone trial is not unconstitutional (Re: <i>Trevor Stone</i> and <i>Hilroy Humphreys</i> decisions of the Privy Council).	
Law Association of Trinidad and Tobago	<u>Comment/Interpretation: Clause 4 (b) - Lay Assessors</u> Who selects this lay assessor? Is the authority being given to the Rules Committee which essentially allows a layperson to adjudicate on matters at trial, indicative of a transparent and accountable process?	Clause 4(b)- The Rules Committee will make rules in order to select and appoint lay assessors. (Clause 4 Section 6L). The intention is to have a pool of assessors established whereby in the circumstance where a Judge exercises his discretion to have assessors sit in on a trial, it is simply a matter of selecting the most suitable candidate based on the qualifications, experience and skill needed for that particular matter.	
	<u>Comment/Interpretation: Clause 4 (b) - Lay Assessors</u> An accused person will know of the Judge’s decision and will not be practically able to challenge this lay assessor who has been selected to adjudicate on matters at his trial.	An accused retains the right to appeal the decision made on his matter and as such there is no need to challenge the decision of the lay assessor as the Judge is not bound by the lay assessor’s decision. (Section 6I()(2))	

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Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	<u>Comment/Interpretation: Clause 4 (b) - Lay Assessors</u> The details of the process and selection of lay assessors need to be addressed fulsomely before any such process may be contemplated.		
	<u>Comments: Clause 4(b)(ii)</u> What constitutes “experience in the administration of justice” and “qualifications, experience or skill in any matter which may be considered at the trial”? It appears that the Rules Committee will decide who will conduct this evaluation. If it is to be recommended that the process of selection and appointment be handed to the JLSC then LATT objects.	Clause 4(b)(ii): Administration of justice is used in other pieces of legislation and used in the Bill with reference to persons who may be qualified as lay assessors. The recommendation is not for appointment and selection to be handled by the JLSC. The selection and appointment will be determined by the Rules Committee. (Clause 4 section 6L).	
	<u>Comments: Clause 4(c)</u> The power to decide is clearly in the hands of the judiciary and not the accused person.	Clause 4(c): The Court is given the discretion to direct a jury trial in the interest of justice, having regard to all the circumstances of the case. It is difficult to envision many instances where the Court would refuse to grant the accused’s request for jury trial. “<i>Interest of justice</i>” means that the judge will use discretion to make a decision that prioritize fairness, equity and the rule of law and which ensures the well-being of all parties involved.	

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Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
		Consideration may be given to including circumstances which the Court must consider in granting the application, similar to the Turks and Caicos legislation.	
	<u>Comments: Clause 4(d)</u> There is some confusion as to what these regulations will entail and cover and therefore some uncertainty as to the propriety of an Attorney-General possibly overstepping into the Judiciary's arena.	Clause 4(d): The purpose of this clause is to allow the Attorney General to make regulations, where required to give effect to the Act. . The Rules Committee is also empowered to make Rules of Court as required. They are different functions and there little room for overstepping.	
Clause 4 – Amend the Criminal Procedure Act			
Director of Public Prosecutions	<u>Comments: Clause 4(a)(i)</u> - The status quo of trial by jury being the default position should be maintained except in specified circumstances. - There is no scope for the consideration of the views of State Counsel. - The Court in determining where the “interests of justice” lies may well be assisted by representations made on behalf of the State.		
	<u>Comments: Clause 4(a)(ii)</u> This section needs to be redrafted to reflect the procedural repositioning as “the first hearing after an indictment has been filed” will now likely be a Sufficiency Hearing.		

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	<u>Suggested Rephrase:</u> “First hearing after the accused has been ordered to appear before Judge for final case management to trial.”		
Director of Public Prosecutions	<u>Comment: Section 6D(1)(c): Qualifications as a Lay Assessor</u> - The time period seems inexplicably short. <u>Suggestion:</u> - Consideration may be given to increasing this to five (5) years.		
	<u>Suggestion: Section 6E(a): Disqualifications as a Lay Assessor</u> - The clause ought to be qualified further to ensure the highest quality of Lay Assessors is obtained. - Consideration ought to be given to use of disqualification on the basis of pending matters of a particular recency or frequency. (For example, pending matters within the last five (5) years or three or more of the same category of pending matter.) - After the words “sentenced to imprisonment”, consideration should be given to include the words “or fines as determined within the discretion of the Judge.”		

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	○ It is common for persons to be fined in lieu of imprisonment, particularly for certain offences involving dishonesty. ○ It will be necessary to capture in the disqualification provisions, persons who have been heavily fined for commission of indictable offences. <u>Suggestion: Section 6E(b): Disqualifications as a Lay Assessor</u> • The words “temporary or” should be included within this disqualification provision before the word “permanent.” ○ This is required as it would be equally unsuitable for someone of temporary infirmity of the body/mind to engage as a Lay Assessor for any particular session.		
	<u>Suggestion: Section 6F: Exceptions</u> • Consideration ought to be given to exempting “State Counsel/Legal Officers” employed with the ODPP” from serving as a Lay Assessor.		
	<u>Suggestion: Section 6G(2): Excuse from serving as a lay assessor</u>		

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	• This clause sought to be deleted. The need for including Attorneys-at-Law within the potential categories of Assessors appears to be redundant. ○ The proposed amendments make it clear in clauses 6G(2)(b) that the Judge is the sole decider of the law. ○ There will be in any trial with Lay Assessors, counsel representing State and Defence whose function is to assist the Court in matters of law through the provision of written and oral submissions. ○ Areas of clarity are assessed during Ensor hearings. ○ In matters of complex fraud or other complexities, it is not uncommon for the State to hire external specialized counsel to prosecute the matters.		
Director of Public Prosecutions	<u>Suggestion: Section 6H: Role of assessors</u> • The wording of the oath administered to the Lay Assessor needs reconsideration. ○ It currently states that he swears/affirms to “<i>give a true verdict</i>”. This is inconsistent		

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Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	with clause 6I(2) as judges need not be bound by opinions of the Lay Assessor.		
Director of Public Prosecutions	<u>Comments: Section 6I(1)(a)-(d): Judge to give reasons for decisions</u> - There is no provision for whom or within what time frame the judges must provide the reasons. - Normally, reasons are provided to the State within a 14-day time period to ensure compliance with sections 65E and 65F of the Supreme Court of Judicature Act (SCJA), Chapter 4:01.		
	<u>Comments: Section 6J(b): Death or incapacity of the Lay Assessor</u> There is a need to replicate a system akin to the section 21A provisions of the Jury Act for the use of alternate Lay Assessors.		
	<u>Comments: Section 6J(2): Death or incapacity of the Lay Assessor</u> - This clause should be deleted. - The right of an accused to change his plea at any stage of the proceedings and up to delivery		

Stakeholder		CPC/Policy Team Comments	Action to be Taken
Entity	Comments/Issues/Recs		
	of the verdict, remains an inviolable right.		
	<u>Comments: Clause 5(2): Application Chap. 12:02</u> • It is critical that this clause be redrafted. ○ This is the application provision which indicates that the Act does not apply to a trial on indictment that “began” under the Criminal Procedure Act, prior to the commencement of this Act.		

Judiciary's Proposed Amendments			CPC/Policy Team Comments	Action to be taken
Judiciary of Trinidad and Tobago	<u>Proposed Amendments:</u> Proposed new Clause 3	<u>Comments:</u> - In addition to the existing amendments to remove the existing provisions for a special jury in the Act, the following amendments are proposed: - Given proposed reduction in jurors from 12 to 9 and from 9 to 6 jurors in section 19. Other changes are needed to reconcile the numbers with respect to the continuation of a trial if one juror dies or becomes incapable – A jury of 9 becomes a jury of 8. A jury of 6 becomes a jury of 5. - This amendment seeks to avoid the need for separate trials where a person is indicted for both a capital and not capital offence arising out of the same events or facts. Separate trials are currently necessary since (1) the number of jurors for capital and non-capital offences are different and (2) capital offences require a unanimous verdict while a majority verdict may be entered for the non-capital offence. - It provides for the composition (number) jurors and the verdict required where a person indicted for a joint trial of a capital and non-capital offence. Alternate jurors in s. 21A. –. The amendment to section 19 reduces the number of jurors by 1 /3 (3 out of 9 jurors) and ¼ (3 out of 12 jurors). This amendment reduces alternates by 1 /3 Section 28(1) and (2) provides for a majority verdict (7 out of 9 or a little more than 2/3 for most offences & 9 out of 12 or ¾ for	Clause 3: These recommendations may be considered.	

Judiciary's Proposed Amendments			CPC/Policy Team Comments	Action to be taken
	(see Judiciary's Draft Trial by Judge Alone Bill ¹)	capital offences). This amendment seeks to maintain the proportion of jurors who must agree for the verdict to be accepted. • 7 out of 9 for most offences becomes 5/6 (4.66/ 6 jurors is equivalent). 6 out of 8 for a jury reduced by one, becomes 4/5 9 out of 12 becomes 7/9 (6.75/9 jurors is equivalent).		

Judiciary's Proposed Amendments			CPC/Policy Team Comments	Action to be taken
	Proposed new Clause 4 (see Judiciary's Draft Trial by Judge Alone Bill)	- The proposed new section 6 seeks to provide for either trial by Judge alone as the default or mandatory mode of trial. - Trial by Judge alone is mandatory for murder, treason and the offences listed in the Schedule. These are firearm offences, offences of a sexual nature and offences relating to human trafficking. - This amendment/ subsection seeks to indicate the matters which the Court shall consider in determining that a trial by Judge and jury is in the interest of justice. The considerations specified are intended to be non-exhaustive. - Seeks to expressly prohibit an order for trial before a Judge and jury where a fair trial is not likely or not in the interest of justice. - Seeks to clarify the process for requesting or withdrawing a request for a trial before a Judge and jury. <u>Delete insertion of section 6C to 6L. (lay assessors)</u> As an alternative to lay assessors, the Court may appoint subject-matter experts to assist the Court in matters where the evidence and issues are highly technical and specialised. - The selection of the expert(s) may be after consultation with or with the agreement of the parties to avoid perceptions or	Clause 4: It is proposed that judge-only trials with the discretionary use of lay assessors is the default option unless the accused elects to be tried before a judge and a jury and the Court so grants in the interest of justice. The Court is given the discretion to direct a jury trial in the interest of justice, having regard to all the circumstances of the case. It is difficult to envision many instances where the Court would refuse to grant the accused's request for jury trial. "<i>Interest of justice</i>" means that the judge will use discretion to make a decision that prioritize fairness, equity and the rule of law and which ensures the well-being of all parties involved. Consideration may be given to removing the term "<i>in the interest of justice</i>" or alternatively, including circumstances which the Court must consider in	

¹ NB: As part of their submission to the Committee, the Judiciary submitted a revised Draft Trial by Judge Alone Bill 2023 (See Appendix 3 of the Judiciary's submission dated 2023.06.02)

Judiciary's Proposed Amendments			CPC/Policy Team Comments	Action to be taken
		concerns that the expert appointed by the Court may be pro-/anti-one party or the other. • Substitute inserted section 78 re. Regulations of AG • The Third Schedule lists the offences of a sexual, human trafficking and firearms offences for which trial by judge alone are proposed to be mandatory under section 6 (1A). This proposed section provides for the amendment of the Schedule by Order. This Order may be subject to affirmative/ negative resolution (to be decided) to allow for a level of Parliamentary oversight and transparency. The additional of new offences is limited to offences of the type contemplated in section 6(1A) for mandatory trial by Judge alone • Insert a Proposed Schedule with the list of indictable offences where trial by judge alone applies.	granting the application, similar to the Turks and Caicos legislation. By deleting section 6C to 6L further delays may be created. The appointment of subject matter experts is a policy decision that will have to be made. A Schedule of mandatory offences for Judge alone trials is a policy decision to be made.	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
Vision on Mission	<u>General Comments:</u> If the current amendments preserve the right of an accused person to have a choice, there is no cause for concern regarding the Bill.		
	<u>General Comments:</u> Judge Alone Trial, as an option, is at the heart of crime control and due process models.		
	<u>General Comments:</u> There must be ongoing transformation for the system to remain relevant and contemporary.		
	<u>Questions about Judge Alone Trial:</u> Can Judge Alone Trials ensure speed, accuracy, reliability and finality?	Statistics received from the Judiciary dated May 11 th , 2023, accused persons do in fact exercise the option of judge alone trials. On average 2 requests were made per month for judge alone trials during the year 2022, while 13 requests were made for the month of January 2023 alone thus far. Of the 59 judge-only trial conducted thus far, there have been only 6 appeals. These statistics demonstrates the appetite for judge-only trials.	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
	<u>General Concerns:</u> Court System – The situation of an overloaded court system is aggravated due to lack of consideration by Parliament for “A Speedy Trial Act.”		
	<u>Recommendation:</u> A survey should be conducted on accused prisoners – both on remand and on bail – regarding their thoughts, expectations and concerns about the Bill.		
Debbie Jacob	<u>General Comments/Concerns:</u> These changes appear to be moving us away from the legal precedent of a trial by a jury of one’s peers as the prevalent type of court trial.		
	<u>General Comments/Concerns:</u> The long wait for justice is forcing inmates to choose a trial by judge because there is the belief it will speed up the judicial process.		
	<u>General Comments/Concerns:</u> There is the removal of a wide range of jurors with differing opinions and the presentation of people with similar skills or interests as a defendant. Will this result in a sympathy factor?		
	<u>General Comments/Concerns:</u> What is the purpose of this change from juror to lay-assessor? Potential of widening the gap between the culture of privilege and the culture of poverty – qualified jurors for specific crimes are mostly among	Regardless of the number of jurors who are empaneled, the role of the judge remains the most critical , as jurors are often	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
	the privileged class; no comparable choice for poor persons that are charged with crimes that can be punishable by death.	not knowledgeable in the different procedures and rules in law as it relates to trials. Special juries are the same as a jury in terms of administrative arrangements and must be struck before the Marshall and empanelled. It is important to note that the use of lay assessors requires that the assessor is qualified and has the requisite experience in the specific field on trial. One crucial difference between lay assessors and special juries is that firstly, lay assessors consist of one (1) to five (5) persons chosen from an established pool, whereas special juries must consist of nine (9) jurors in all cases.	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
	<u>General Comments/Concerns:</u> The problems within our judiciary system require one law – a law to address the right to a speedy trial.		
Professor Ramesh Deosaran	<u>General Comments/Concerns:</u> - Reformation of the jury system remain controversial. - There needs to be some clarity regarding the meaning of “peers.” - It is difficult to make a scientific conclusion regarding the relationship between the jury social composition and the verdict. - There is the issue of prejudice regarding trial by juries based on the composition of same. - The accused (innocent before proven guilty) a “judge and jury” option with the right hand and pulling it back with the left hand. - From personal inquiries, the management of juries need significant improvement. Re: Accommodation, food, and other amenities. - Jurors are vulnerable to pre-trial publicity. <u>Recommendation:</u> - Jurors should be allowed to make notes during a trial.	The constitutional right of the accused is not infringed upon as there is no right to a jury trial (See <i>Trevor Stone</i> and <i>Hilroy Humphreys</i> Privy Council decisions). The Court is given the discretion to direct a jury trial in the interest of justice, having regard to all the circumstances of the case. It is difficult to envision many instances where the Court would refuse to grant the accused’s request for jury trial. “Interest of justice” means that the judge will use discretion to make a decision that prioritize fairness, equity and the rule of law and which ensures	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
		the well-being of all parties involved. Consideration may be given to removing the term <i>"in the interest of justice"</i> or alternatively, including circumstances which the Court must consider in granting the application, similar to the Turks and Caicos legislation.	
Assembly of Southern Lawyers	<u>General Comments:</u> <u>Reduction of Jurors:</u> • Not satisfied that there is any justifiable basis for the reduction of the number of jurors. • No significant costs savings to the State in this respect, as the only additional costs may be the costs of refreshments for the jurors. • fairness must be uppermost in the minds of legislators when amending/proposing any legislation which may affect the right of an accused person to a fair trial. • Urge that the present provisions of the Jury Act remain in place. •	The use of reduced jury sizes is not uncommon. A jurisdictional analysis was conducted and shows as follows: • In Spain, jury trials are held only within the scope of the Provincial Court and in this regard nine (9) jurors are empaneled.	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
		• In Belize, for all offences which are not punishable by death, a jury trial consists of nine (9) jurors. • In the United States, reduced jury sizes differ among states and according to whether it is a capital or non-capital offence. • Connecticut, the use of a six (6) person jury for a capital offence is possible only if the defendant agrees to it.	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
		- Florida uses six (6) person juries with regard to non-capital offences. - New Jersey and Pennsylvania, parties can agree to fewer jurors, but not fewer than six (6). - Arizona, juries consist of eight (8) members unless it is a capital case or one that carries a sentence of thirty (30)	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
		years or more. Utah, twelve (12) jurors are required in capital cases but eight (8) are seated in other felonies.	
	<u>Removal of Special Juries:</u> - Not aware of any data to suggest that special juries were struck in accordance with the Jury Act, and problems were encountered in respect of same. - No need to amend the legislation in this respect as the current provisions regarding special jurors already address the very same mischief for which the proposed introduction of lay-assessors is intended.	A special jury has never been struck and as such it is proposed that it be repealed and replaced with lay assessors. Special juries are the same as a jury in terms of administrative arrangements and must be struck before the Marshall and empanelled. It is important to note that the use of lay assessors requires	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
		that the assessor is qualified and has the requisite experience in the specific field on trial. One crucial difference between lay assessors and special juries is that firstly, lay assessors consist of one (1) to five (5) persons chosen from an established pool, whereas special juries must consist of nine (9) jurors in all cases. Amended to empower the Rules Committee to make Rules regulating the selection, appointment, qualification, exemption and training of lay assessors, as there is no existing regulation making power in the Act. An affirmative resolution is required pursuant to section 6C (3) to expand the	

Stakeholder		CPC/Policy Team Comments	Action to be taken
Entity	Comments/Issues/Recs		
		list of offences for which a lay assessor can sit on.	
	<u>Power to amend list of matters to be heard by lay-assessors:</u> • The Executive Committee of the ASL does not agree with this proposal. If lay-assessors are to be introduced in place of special jurors, then there must be greater oversight by Parliament as to those matters which fall within their remit. To do otherwise would erode the ability of an accused person to elect trial by a jury of his peers without Parliamentary intervention. This is simply unacceptable.		
	<u>Reversal of the trial election process:</u> • There does not seem to be any justification for this reversal of the election process as based on feedback from our membership most accused persons elect to be tried by a jury of their peers. • We strongly believe that the discretion as to the mode of trial ought to remain with an accused person.		

APPENDIX IV

Minutes of Proceedings

**CONFIRMED MINUTES OF THE 1st MEETING,
[4th SESSION (2023/2024), 12th PARLIAMENT]
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023
HELD IN THE ARNOLD THOMASOS WEST MEETING ROOM
ON TUESDAY MARCH 19, 2024**

PRESENT

Members

Mr. Reginald Armour, S.C.	Chairman
Mrs. Renuka Sagrainsingh-Sooklal	Member
Mr. Anthony Vieira, S.C.	Member
Mrs. Jayanti Lutchmedial-Ramdial	Member
Professor Gerard Hutchinson	Member

Secretariat

Mr. Julien Ogilvie	Secretary
Ms. Sherlana Ramdeen	Assistant Secretary
Ms. Cherylee Legair	Parliamentary Research Specialist

Excused

Ms. Allyson West	Member
Mr. Randall Mitchell	Member

Office of the Attorney General and Ministry of Legal Affairs

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Mr. Parvin Sookhai	Senior Parliamentary Counsel
Mr. Matthew Bernard	Legal Research Officer, CJU
Ms. Nalini Ramjit-Ransome	Legal Counsel I, CJU

CALL TO ORDER

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

ANNOUNCEMENTS BY THE CHAIRMAN

- 2.1 The Chairman indicated that Ms. Allyson West asked to be excused from the meeting.
- 2.2 The Chairman introduced the Secretariat team assigned to the Committee.

QUORUM

- 3.1 The Chairman advised that in accordance with Standing Order 102 (5) of the Senate, that unless the House or Senate otherwise directs, the quorum of the Committee shall be three (3) Members inclusive of the Chair.

TERMS OF REFERENCE

- 4.1 The Chairman informed Members that Professor Gerard Hutchinson was newly appointed to the Committee and welcomed him.
- 4.2 The Chairman referenced that by resolution approved in the Senate at a sitting held on Tuesday January 23, 2024, the Committee was established to consider and report on the Bill entitled “An Act to amend the Jury Act, Chap. 6:53 and the Criminal Procedure Act, Chap. 12:02 and for related matters”.
- 4.3 The Chairman reminded Members of the Committee’s terms of reference:
 - i. to adopt the work of the Special Select Committee appointed in the Third Session 2022/2023; and
 - ii. to report to the Senate by March 31, 2024.
- 4.4 The Chairman also reminded Members that in accordance with Standing Order 67(1) of the Senate, *“any Committee to which a Bill is committed after second reading shall not discuss the general merits and principles of the Bill, but only its details”*.

DISCUSSIONS ON THE WAY FORWARD

- 5.1 The Chairman confirmed that Members were in receipt of the following documents:
 - i. Bill Essentials re: The Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023;

- ii. The Report of the previous Committee appointed in the last Session (2022-2023); and
 - iii. Matrix of Key Issues and Recommendations raised by Stakeholders (with responses from CPC and AG) dated March 13 2024.
- 5.2 The Chairman informed Members that in the last session, twelve stakeholders were invited to provide written submissions on the above-stated Bill. Of these, only the written submission of the Office of the Director of Public Prosecutions (DPP) remained outstanding. In this regard, the Secretariat was instructed to request an update from the DPP.
- 5.3 Members agreed to submit any other proposed stakeholders via email to the Secretariat.
- 5.4 The Secretariat was instructed to circulate the updated *Criminal Procedure Rules, 2023* for Members' consideration.
- 5.5 The Committee agreed to:
- i. consider the recommendation by the Chairman for an interim report to be laid in the Senate by March 31, 2024, requesting that further time be granted to the Committee to complete its work; and
 - ii. convene in-person meetings on Tuesday, and possibly Friday mornings at 10:30 a.m.

CONSIDERATION OF MATRIX OF KEY ISSUES AND RECOMMENDATIONS RAISED BY STAKEHOLDERS (WITH RESPONSES FROM CPC AND AG) DATED MARCH 13, 2024.

- 6.1. A brief discussion, led by Mr. Vieira, was held on the comments of stakeholders;
- 6.2 The Committee deliberated on the following:
- a. the different trial options that can be afforded to an accused by the Court; and
 - b. the meaning and application of the term “in the interest of Justice” **as stated in the Judiciary Bill.**

OTHER BUSINESS

- 7.1. The Committee agreed to next meet on Tuesday March 26, 2024 at 10:30 a.m. to resume its review of the Matrix of Key Issues and Recommendations raised by Stakeholders (with responses from

the CPC and AG Policy Team) and to discuss the presentation of an interim report.

ADJOURNMENT

8.1. The adjournment was taken at 10:37 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

March 20, 2024

**MINUTES OF THE 2nd MEETING,
[4th SESSION (2023/2024), 12th PARLIAMENT]
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023
HELD IN THE ARNOLD THOMASOS WEST MEETING ROOM
ON TUESDAY MARCH 26, 2024**

PRESENT

Members

Mr. Reginald Armour, S.C.	Chairman
Ms. Allyson West	Member
Mrs. Renuka Sagrainsingh-Sooklal	Member
Mr. Anthony Vieira, S.C.	Member
Mrs. Jayanti Lutchmedial-Ramdial	Member
Professor Gerard Hutchinson	Member

Secretariat

Ms. Sherlana Ramdeen	Assistant Secretary
Ms. Cherylee Legair	Parliamentary Research Specialist

Excused

Mr. Randall Mitchell	Member
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Office of the Attorney General and Ministry of Legal Affairs

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Ms. Farah Abdool	Senior Legal Counsel, CJU
Ms. Delisier Blackman	Legal Counsel I, CJU
Mr. Matthew Bernard	Legal Research Officer, CJU

CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 10:38 a.m. and welcomed Members present.

ANNOUNCEMENTS BY THE CHAIRMAN

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

CONFIRMATION OF MINUTES OF THE 1ST MEETING HELD ON TUESDAY MARCH 19 2024

- 3.1 The Chairman invited Members to consider the Minutes page-by-page and enquired whether there were any amendments.
- 3.2 The Committee agreed that the Minutes be amended at Item 6.2 (b) to include the words “as stated in the Judiciary Bill” after the words “in the interest of Justice”.
- 3.3 The Minutes were confirmed with an amendment by the Chairman and seconded by Mr. Anthony Vieira, S.C.

MATTERS ARISING FROM THE MINUTES

- 4.1 **Per Item 5.2, page 3:** The Chairman informed the Committee that by letter dated March 22, 2024, the Secretariat wrote to the DPP’s Office requesting an update on its written submission re: the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023. The DPP’s Secretariat acknowledged receipt of the letter and indicated that a response will be forthcoming.
- 4.2 **Per Item 5.4, page 3:** The Chairman informed the Committee that the Criminal Procedure Rules 2023 were circulated to Members on Friday March 22, 2024.

CONSIDERATION OF MATRIX OF KEY ISSUES AND RECOMMENDATIONS RAISED BY STAKEHOLDERS (WITH RESPONSES FROM CPC AND AG) DATED MARCH 13, 2024.

- 5.1 The Committee resumed its discussion on the Matrix of Key Issues and Recommendations raised by Stakeholders.
- 5.2 The Chairman informed the Committee that a document containing a summary of comments was submitted by Mr. Anthony Vieira, S.C. and directed the Secretariat to circulate same to Members.
- 5.3 The Committee deliberated on the following:
 - a) Using the definition of ‘interest of justice’ derived from the Bill submitted by the Judiciary and contained in the Criminal Procedure Rules, 2023;
 - b) Defining the term ‘lay assessor’ and the nexus between lay assessors and expert witnesses;

- c) The independence of lay assessors in the context of preliminary applications by the prosecution or defense for the appointment of a lay assessor;
- d) Issues of fairness and transparency surrounding the appointment of lay assessors;
- e) Utilising ‘specialised jurors’ as opposed to lay assessors;
- f) The impact of pre-trial publicity in relation to Judge alone trials for offences that persons would react negatively to, such as murder;
- g) There are two options on the table for further discussion with respect to redrafting Clause 4 of the Bill:
 - i. The option to limit the use of Judge alone trials to particular offences, such as sexual offences, trafficking in firearms and trafficking in persons. The limited offences would be listed in a schedule to the Bill;
 - ii. The option to provide that an accused person committed for trial shall be committed, on an indictment, to be tried by a Judge alone unless the prosecution or the accused elects to be tried by a Judge and jury, and the Judge so determines in the interest of justice. Further consideration needs to be given to whether the judge should have the discretion to override the option chosen by the prosecution or the accused.

DISCUSSIONS ON THE WAY FORWARD

6.1 The Committee agreed to the following:

- a) The Secretariat was directed to request another update from the Office of the Director of Public Prosecutions with respect to its written submission, if no response is provided by the deadline of March 28, 2024;
- b) The Secretariat was directed to prepare an Interim Report of the Committee to be laid in the Senate, requesting that further time be granted to the Committee to complete its work;
- c) To revisit and reflect on inserting a definition of “interest of justice” as provided by the Judiciary and the Criminal Procedure Rules, 2023;
- d) To give further consideration to the two options presented at 5.3 (g) above with respect to redrafting Clause 4 of the Bill;
- e) That the following proposed stakeholders be invited in person to a subsequent meeting of the Committee to provide their views and opinions:
 - i. Criminal Bar Association;
 - ii. Judiciary;
 - iii. Judicial Education Institute (JEI);
 - iv. Trade unions, Business Chambers and organisations representing the

the CPC and AG Policy Team) and to discuss the presentation of an interim report.

ADJOURNMENT

8.1. The adjournment was taken at 10:37 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

March 20, 2024

**MINUTES OF THE 3rd MEETING,
[4th SESSION (2023/2024), 12th PARLIAMENT]
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023
HELD IN THE J. HAMILTON MAURICE MEETING ROOM
ON FRIDAY MAY 10, 2024**

PRESENT

Members

Mr. Reginald Armour, S.C.	Chairman
Mr. Randall Mitchell	Member
Ms. Allyson West	Member
Mrs. Renuka Sagrarsingh-Sooklal	Member
Mr. Anthony Vieira, S.C.	Member
Mrs. Jayanti Lutchmedial-Ramdial	Member
Professor Gerard Hutchinson	Member

Secretariat

Mr. Julien Ogilvie	Secretary
Ms. Sherlana Ramdeen	Assistant Secretary
Ms. Cherylee Legair	Parliamentary Research Specialist

Office of the Attorney General and Ministry of Legal Affairs

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Mr. Parvin Sookhai	Senior Parliamentary Counsel
Mrs. Farzana Nazir-Mohammed	Director, Legal, Criminal Justice Unit
Ms. Farah Abdool	Senior Legal Counsel, CJU
Ms. Nalini Ramjit-Ransome	Legal Counsel I
Ms. Chelsea Fraser	Legal Counsel I

CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 9:39 a.m. and welcomed Members present.

ANNOUNCEMENTS BY THE CHAIRMAN

- 2.1 There were no announcements.

CONFIRMATION OF MINUTES OF THE 2nd MEETING HELD ON TUESDAY MARCH 26, 2024

- 3.1 The Chairman invited Members to consider the Minutes page-by-page and enquired whether there were any amendments.
- 3.2 The Minutes were confirmed without amendments on a motion moved by Mr. Anthony Vieira, S.C., and seconded by Ms. Allyson West.

MATTERS ARISING FROM THE MINUTES

- 4.1 **Per Item 6.1 (b), page 3:** The Interim Report of the Committee requesting that further time be granted to the Committee to complete its work and report by May 31, 2024 was laid in the Senate on Tuesday April, 16, 2024.
- 4.2 The Chairman informed the Committee that no submissions have been received to date from the Office of the Director of Public Prosecutions, notwithstanding numerous reminders issued by the Secretariat.
- 4.3 The Committee agreed to receive a written submission from Professor Hutchinson on serving in Court as an expert witness, by Monday May 13, 2024.

DISCUSSIONS ON THE WAY FORWARD

- 5.1 The Committee agreed to the following:
- a) to include the following stakeholders in the list of stakeholders for in-person appearance and/or written submissions:
 - i. Vision on Mission;
 - ii. Trinidad and Tobago Publishers and Broadcasters Association;
 - iii. Media Association of Trinidad and Tobago;
 - iv. Principal of the University of the West Indies, St. Augustine, Campus; and
 - v. Principal of the Hugh Wooding Law School.

DISCUSSIONS IN PREPARATION FOR MEETING WITH REPRESENTATIVES OF THE JUDICIARY AND JUDICIAL EDUCATION INSTITUTE

- 6.1 Members discussed the approach to be taken with respect to the day's private hearing with the Judiciary.
- 6.2 The Committee agreed on the approach to be taken

OTHER BUSINESS

- 7.1 There was no other business.

SUSPENSION

- 8.1 The meeting was suspended at 10:05 a.m.

IN-CAMERA MEETING WITH REPRESENTATIVES OF THE JUDICIARY AND THE JUDICIAL EDUCATION INSTITUTE

- 9.1 The meeting resumed in-camera at 10:13 a.m.
9.2 The following persons joined the meeting:

Judiciary of Trinidad and Tobago

The Hon. Justice Gillian Lucky, JA
The Hon. Justice Carla Brown-Antoine, JA
The Hon. Justice Lisa Ramsumair-Hinds
Master Christie-Anne Morris-Alleyne
Ms. Kimitria Gray

Ms. Jamie Philbert

Mr. Shervon Lewis
Ms. Shalisha Samuel

Justice of Appeal
Justice of Appeal
Judge of the High Court
Consultant
Deputy Registrar and Marshal of
the Supreme Court
Deputy Court Executive
Administrator
Criminal Division Administrator
Judicial Research Counsel I
(Research Support)

Key Areas Discussed

- 10.1 The following is a summary of evidence as presented by the Judiciary:

Overview

- i. The Judiciary has been conducting Trials by Judge Alone since 2018; during the time of the pandemic, solely trial by judge alone proceedings were conducted as jury trials could not be safely held.
- ii. The Judiciary's position is that Trial by Judge Alone should be the default for **ALL** crimes.

Tradition, Fairness and the Constitution

- iii. A Trial by Judge Alone honours the principles of natural justice enshrined in the constitution in that it facilitates a fair and impartial trial. It has all of the necessary elements to be fair and just.

- iv. Flexibility and adaptation must be considered when considering tradition – specifically the historical context in which these traditions were established. This is with reference to the age of social media and its impact on juries, leading to possibly juror contamination.
- v. Regrettably, “Fairness” has become to mean ‘what is the greatest probability or possibility for the accused to be acquitted.’ The entire system is being tested – the victim, based on credibility, reliability, honesty and accuracy; the Trinidad and Tobago Police Service and other elements of law enforcement based on their procedures; and the judicial system and its effectiveness.

Challenges of Jury Trials

- vi. Letters of exemption ranged from traditional medical issues such as cardiovascular diseases to mental health issues; lifestyle circumstances such as job security and childcare.
- vii. On the other hand, judicial officers have faced “ridiculous and absurd reasons” for exemptions through blatant attempts to mislead the officers of the Court.
- viii. Jurors are easily influenced by the ‘charismatic attorney’ despite being told that the focus is not on the attorney.
- ix. Jury trials, are deemed to be time consuming as well as “resource greedy” especially as they are bound by the constraint of a physical courtroom.
- x. There is a significant concern regarding the safety of the juror as their personal information such as names and addresses are public.
- xi. Due to the complexity of the instructions given to jurors, there is the potential for a lack of ‘fairness’ in deliberations as some concepts such as provocation can be misunderstood.

Benefits of Trial by Judge Alone

- xii. Judges are well versed in the law; whereas, the average juror has only three (3) to four (4) hours to grasp complex legal concepts before they are to begin deliberations.
- xiii. Trial by Judge Alone results in more ‘agreement’ on the verdict rendered as well as more guilty-pleas.

Bias

- xiv. It is easier to determine the bias of one (1) individual versus that of twelve (12) persons. Furthermore, the risk of bias is further reduced as judges must provide reasons for their verdict.
- xv. Judges are trained to deal with bias as a part of the profession, whereas the average juror does not possess that professional skill and training.
- xvi. Ethnic bias, as well as biases that stem from religious beliefs, are prominent in trial by juries.
- xvii. There is a misconception that judges favour prosecutors in trials; however, statistics of this supposed bias regarding prosecutors and acquittals does not support the notion.

Lay Assessors/Experts

- xviii. While the Judiciary understands the rationale, it does not support the use and introduction of lay assessors. The inclusion of lay assessors within the framework is likely to make the

process more cumbersome and is seen as a troubling substitute for the inefficiencies of the jury system.

- xix. Additionally, to include lay assessors when the existing Jury Act would have otherwise exempted them except in special circumstances is counterintuitive.
- xx. The Judiciary prefers to engage a special expert as is the norm in civil proceedings.
- xxi. Furthermore, the Judiciary indicated that there are particular high court judges that are trained in areas such as anti-money laundering. These training sessions are ongoing where judges have travelled in order to further their knowledge to remain an expert in the subject area.

ADJOURNMENT

11.1 The adjournment was taken at 12:38 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

May 20, 2024

**MINUTES OF THE 4th MEETING,
[4th SESSION (2023/2024), 12th PARLIAMENT]
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023
HELD IN THE ARNOLD THOMASOS (WEST) MEETING ROOM
ON TUESDAY MAY 21, 2024**

PRESENT

Members

Mr. Reginald Armour, S.C.	Chairman
Mr. Randall Mitchell	Member
Ms. Allyson West	Member
Mrs. Renuka Sagrarsingh-Sooklal	Member
Mr. Anthony Vieira, S.C.	Member
Mrs. Jayanti Lutchmedial-Ramdial	Member
Professor Gerard Hutchinson	Member

Secretariat

Ms. Sherlana Ramdeen	Assistant Secretary
Ms. Cherylee Legair	Parliamentary Research Specialist

Office of the Attorney General and Ministry of Legal Affairs

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Mr. Parvin Sookhai	Senior Parliamentary Counsel
Ms. Farah Abdool	Senior Legal Counsel, CJU
Ms. Nalini Ramjit-Ransome	Legal Counsel I
Ms. Chelsea Fraser	Legal Counsel I

CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 9:40 a.m. and welcomed Members present.

ANNOUNCEMENTS BY THE CHAIRMAN

- 2.1 The Chairman indicated that Mrs. Renuka Sagrarsingh-Sooklal asked to be excused

from the day's meeting.

CONFIRMATION OF MINUTES OF THE 3rd MEETING HELD ON FRIDAY MAY 10, 2024

- 3.1 The Chairman invited Members to consider the Minutes page-by-page and enquired whether there were any amendments.
- 3.2 The Minutes were confirmed without amendments on a motion moved by Mr. Anthony Vieira, S.C., and seconded by Professor Gerard Hutchinson.

MATTERS ARISING FROM THE MINUTES

- 4.1 **Per Item 4.3, page 2:** The written submission by Professor Hutchinson on serving in Court as an expert witness was circulated to Members on May 20, 2024.
- 4.2 A video recording consisting of three (3) clips from the CCJ Academy for Law 7th Biennial Law Conference which took place in Barbados in October 2023 was circulated to Members on May 17, 2024. The Chairman confirmed that Members were in receipt of the recording.
- 4.3 The Chairman informed Members that the Secretariat requested the following information/documents arising out of the private meeting held with the Judiciary on May 10, 2024:
 - a. statistical data in relation to the cost of judge-alone trials as opposed to jury trials;
 - b. statistical data in relation to the number of guilty verdicts obtained in judge-alone trials as opposed to jury trials; and
 - c. latest version of the amendments proposed by the Judiciary to the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023.

CONSIDERATION OF MATRIX OF KEY ISSUES AND RECOMMENDATIONS RAISED BY STAKEHOLDERS (WITH RESPONSES FROM CPC AND AG) DATED MARCH 13, 2024

- 5.1 The Committee resumed its discussion on the Matrix of Key Issues and Recommendations raised by Stakeholders.
- 5.2 The Committee deliberated on the following:
 - a) the ability of the accused to appeal a judge's decision to not grant his application for a trial by jury and the introduction of procedural appeals as an avenue to treat with same; and
 - b) the reduction of the proposed adjustments in the number of jurors in jury trials.

CONSIDERATION OF FURTHER ISSUES ARISING OUT OF THE JUDICIARY'S ORAL AND WRITTEN SUBMISSIONS

- 6.1 The Committee deliberated on the following with respect to the Judiciary's oral and written submissions:
- a) the option to utilise expert witnesses as opposed to lay assessors; and
 - b) the prescription of rules, similar to Part 33 of the Civil Proceedings Rules in relation to experts and assessors, to guide the expert witness modality.

DISCUSSIONS ON THE WAY FORWARD

- 7.1 The Committee agreed to the following:
- a) to accept written submissions from all stakeholders, with the exception of the Office of the Director of Public Prosecutions;
 - b) the Secretariat was directed to invite the Office of the Director of Public Prosecutions to an in-person, private meeting;
 - c) the Assistant Chief Parliamentary Counsel was directed to submit a revised draft of the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023 to the Committee for its consideration;
 - d) the Secretariat was directed to prepare a Second Interim Report of the Committee to be laid in the Senate, requesting that further time be granted to the Committee to complete its work by July 05, 2024.

OTHER BUSINESS

- 8.1. Due to the hectic Parliamentary schedule, the Committee agreed to schedule its next meeting to a date to be fixed.

ADJOURNMENT

- 9.1 The adjournment was taken at 10:56 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

May 28, 2024
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**MINUTES OF THE 5th MEETING,
[4th SESSION (2023/2024), 12th PARLIAMENT]
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023
HELD IN THE LINDA BABOOLAL MEETING ROOM
ON TUESDAY JUNE 04, 2024**

PRESENT

Members

Mrs. Renuka Sagrarsingh-Sooklal ¹	Member
Ms. Allyson West	Member
Mr. Anthony Vieira, S.C.	Member
Mrs. Jayanti Lutchmedial-Ramdial	Member

Secretariat

Mr. Julien Ogilvie	Secretary
Ms. Sherlana Ramdeen	Assistant Secretary
Ms. Cherylee Legair	Parliamentary Research Specialist

Excused

Mr. Reginald Armour, S.C.	Chairman
Mr. Randall Mitchell	Member
Professor Gerard Hutchinson	Member

Office of the Attorney General and Ministry of Legal Affairs

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Mr. Parvin Sookhai	Senior Parliamentary Counsel
Ms. Farah Abdool	Senior Legal Counsel, CJU
Ms. Nalini Ramjit-Ransome	Legal Counsel I
Ms. Chelsea Fraser	Legal Counsel I
Ms. Amani Abdullah	Graduate Intern, CJU

¹ Elected as Chairman for the day in accordance with Standing Order 102(4)

ELECTION OF CHAIRMAN FOR THE DAY

- 1.1 The Secretary indicated that the Chairman, Senator the Honourable Reginald Armour, S.C., would be absent from the day's meeting.
- 1.2 Pursuant to Standing Order 102(4) of the Senate, the Secretary invited nominations for the position of Chairman for the day.
- 1.3 Ms. Allyson West moved that Mrs. Renuka Sagrarsingh-Sooklal be nominated as Interim Chairman. Mr. Anthony Vieira seconded the nomination.
- 1.4 There being no other nominations, Mrs. Renuka Sagrarsingh-Sooklal was declared the duly elected Chairman for the day and assumed the Chair.

CALL TO ORDER

- 2.1 The Chairman called the meeting to order at 9:37 a.m. and welcomed Members present.

ANNOUNCEMENTS BY THE CHAIRMAN

- 3.1 The Chairman informed Members that Mr. Randall Mitchell and Professor Gerard Hutchinson requested to be excused from the day's meeting.
- 3.2 The Chairman indicated that Mrs. Jayanti Lutchmedial-Ramdial requested to attend the day's meeting via Zoom video conference.

CONFIRMATION OF MINUTES OF THE 4th MEETING HELD ON TUESDAY MAY 21, 2024

- 4.1 The Chairman invited Members to consider the Minutes page-by-page and enquired whether there were any amendments.
- 4.2 The Minutes were confirmed without amendments on a motion moved by Ms. Allyson West and seconded by Mr. Anthony Vieira, S.C.

MATTERS ARISING FROM THE MINUTES

- 5.1 **Per Item 4.3, page 2:** Pursuant to the Committee's request for additional information, the statistical data in relation to the cost and number of guilty verdicts in judge-alone trials as opposed to jury trials was received from the Judiciary and circulated to Members on May 30, 2024. The Chairman advised Members that the Judiciary's latest version of the Bill with proposed amendments will be submitted on a later date.

5.2 Per Item 7.1, page 3:

- a) the Written Submission of the Office of the Director of Public Prosecutions dated May 29, 2024 was circulated to Members on May 30, 2024.
- b) the revised draft of the Bill prepared by CPC was circulated to Members on May 27 and 30, 2024.
- c) the Draft Second Interim Report was circulated to Members on May 29, 2024.

CONSIDERATION AND APPROVAL OF THE DRAFT SECOND INTERIM REPORT OF THE COMMITTEE

- 6.1 The Chairman enquired as to whether Members had any comments/feedback on the Committee's Draft Second Interim Report.
- 6.2 There being no comments or amendments, the Committee agreed to present the report to the Senate at the next available opportunity.

DISCUSSIONS ON THE WAY FORWARD

Requests for Written Comments from Additional Stakeholders

- 7.1 The Chairman informed Members that, to date, the Secretariat has only received an email containing comments from Mr. Roger Ramgoolam, Tutor and Course Director for Criminal Practice and Procedure, at the Hugh Wooding Law School. Copies of the email were circulated to Members.

DISCUSSIONS IN PREPARATION FOR MEETING WITH REPRESENTATIVES OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

- 8.1 A document containing proposed questions for the Office of the DPP was prepared and circulated by the Secretariat for Members' use.
- 8.2 Members discussed the approach to be taken with respect to the private hearing with the Office of the DPP.
- 8.3 After some discussion, the Committee agreed on the approach to be taken.

OTHER BUSINESS

- 9.1 There was no other business.

SUSPENSION

10.1 The meeting was suspended at 9:58 a.m.

IN-CAMERA MEETING WITH REPRESENTATIVES OF THE OFFICE OF THE DPP

11.1 The meeting resumed in-camera at 10:06 a.m.

11.2 The following persons joined the meeting:

Office of the DPP

Mr. Roger Gaspard, S.C.

Director of Public Prosecutions

Ms. Valene Guerra-Abraham

Assistant Director of Public Prosecutions

Key Areas Discussed

The following is a summary of evidence as presented by the DPP:

Overall Position:

- i. The DPP emphasised the importance of retaining the trial-by-jury system within the country as it forms a significant connection between the criminal justice system and the average citizen.
- ii. In Trinidad and Tobago, we enjoy a system commonly referred to as “a system of participatory democracy” and as such, the contributions of average citizens should be taken into consideration. The creation of a system that potentially imposes justice on persons can result in the perception of being alienated from the operations of the criminal justice system
- iii. The position of the DPP is that trial-by-jury should remain the default process, however, in certain circumstances, it may be the preferred option to utilise trial-by-judge alone. This would apply specifically in complex criminal trials that require the appraisal of technical evidence, such as matters involving white-collar crime.

Interest of Justice

- iv. “Interest of Justice” as stated in the Bill is unclear and vague. The Bill does not prescribe the considerations a trial judge ought to employ when deciding to move away from a trial-by-jury to a trial-by-judge alone, in the interest of justice.
- v. Other jurisdictions outline various factors that the trial judge should consider when making this determination, such as:
 - a. the complexity of the trial;
 - b. the ability to corral pre-trial publicity;
 - c. matters that treat with and relate to national security;
 - d. matters that can have an impact on State relationships with other jurisdictions;
 - e. sensitive matters that ought to be treated with a degree of confidentiality.

- vi. While Part 3 of the Criminal Procedure Rules – which includes considerations for dealing with a criminal case justly – is helpful as the exercise of the judge’s discretion would be tethered to “something less amorphous than the term interest of justice”, it may not be sufficient.

Application for Trial-by-Judge Alone by the Prosecution

- vii. The absence of a provision in the Bill that allows the prosecution to make an application for trial-by-judge alone is short-sighted and unfair.
- viii. The jurisdiction of the State of New Zealand allows the prosecution to make an application for trial by judge alone on the basis of the complexity of issues – factually and legally. There are complex matters in Trinidad and Tobago which may require the same approach.

Fairness/Transparency

- ix. The provision or requirement for a judge to provide reasons for a judgement promotes transparency but it is not a sufficient reason to establish Trial by Judge Alone as the default position.
- x. One must be mindful that due to trial by jury not having such requirement, the jurors are comfortable to deliberate without having to account by way of the provisions of reasons.
- xi. The jury system allows the criminal justice system, as a whole, to be viewed panoramically rather than microscopically as it contemplates the amalgamation of views by different persons, from different and differing walks of life which is a fairer appraisal system than that of a single judge.

Lay Assessors/Special Juries/Experts

- xii. In the context of the removal of special juries, the requirement for the lay assessor seems challenging to grasp.
- xiii. There are questions as to the exact working nature of the lay assessor and the judge, especially as the judge can disregard the input of the lay assessors as stipulated in the Bill.
- xiv. The expertise that is required so as to amplify the issues on hand should be the experts called by both or either side with the Court seeking direction and guidance from those experts.

Jury Pool – Availability of Jurors/Reduction in the Number of Jurors

- xv. There is no major difference in difficulty in obtaining twelve (12) jurors as opposed to nine (9) for a matter.
- xvi. With the exception of the trial of Dole Chadee, the DPP does not recall a time where there was a significant amount of time spent on securing a jury panel.

- xvii. While having the same number of jurors for both a capital and non-capital offence is practical, the issue of prejudice must also be considered where the different types of charges are concerned.
- xviii. The reduction in the number of jurors is, in the view of the DPP, not a valid consideration.

Addressing the Common Challenges of Jury Trials/Criminal Justice System

- xix. In order to address the issue of pre-trial publicity, the trial judge can adjourn the trial in order to allow sufficient time for interest in the matter to be lost.
- xx. Additionally, the Criminal Procedure Act allows the DPP to move a trial from where the matter would have taken place to a different area – for example, from Tobago to Trinidad; or South Trinidad to Port of Spain.
- xxi. The issues surrounding the expediency of the Criminal Justice System must be holistically addressed.

ADJOURNMENT

- 12.1 The adjournment was taken at 11:45 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

June 12, 2024

**MINUTES OF THE 6th MEETING,
[4th SESSION (2023/2024), 12th PARLIAMENT]
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023
HELD IN THE J. HAMILTON MAURICE MEETING ROOM, CABILDO BUILDING,
PARLIAMENTARY COMPLEX, ST. VINCENT STREET, PORT OF SPAIN
ON FRIDAY JUNE 14, 2024**

PRESENT

Members

Mr. Reginald Armour, S.C.	Chairman
Mrs. Renuka Sagramsingh-Sooklal	Member
Ms. Allyson West	Member
Mr. Anthony Vieira, S.C.	Member
Mrs. Jayanti Lutchmedial-Ramdial ¹	Member

Secretariat

Mr. Julien Ogilvie	Secretary
Ms. Sherlana Ramdeen	Assistant Secretary
Ms. Cherylee Legair	Parliamentary Research Specialist

Excused

Mr. Randall Mitchell	Member
Professor Gerard Hutchinson	Member

Office of the Attorney General and Ministry of Legal Affairs

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Mr. Parvin Sookhai	Senior Parliamentary Counsel
Ms. Farzana Nazir-Mohammed	Director-Legal, CJU
Ms. Nalini Ramjit-Ransome	Legal Counsel I
Ms. Chelsea Fraser	Legal Counsel I

CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 9:56 a.m. and welcomed Members present.

¹ Senator Lutchmedial-Ramdial participated virtually

ANNOUNCEMENTS BY THE CHAIRMAN

- 2.1 The Chairman informed Members that Mr. Randall Mitchell and Professor Gerard Hutchinson requested to be excused from the day's meeting.
- 2.2 The Chairman indicated that permission was granted to Mrs. Jayanti Lutchmedial-Ramdial to attend the day's meeting virtually via Zoom video conference.

CONFIRMATION OF MINUTES OF THE 5TH MEETING HELD ON TUESDAY JUNE 04, 2024

- 3.1 The Chairman invited Members to consider the Minutes page-by-page and enquired whether there were any amendments.
- 3.2 The Minutes were confirmed without amendments on a motion moved by Ms. West and seconded by Mr. Vieira, S.C.

RATIFICATION OF 5TH MEETING HELD ON JUNE 04, 2024

- 4.1 Due to the fact that the term of the Committee had not yet been formally extended by the Senate when the meeting of June 04 was convened, the Chairman asked Members to ratify the proceedings of the meeting and confirm that the said meeting was duly constituted.
- 4.2 There were no objections.
- 4.3 The Committee ratified the proceedings of the 5th Meeting and confirmed that it was duly constituted.

MATTERS ARISING FROM THE MINUTES

- 5.1 **Per Item 6.2, page 3:** The Committee's Second Interim Report requesting an extension of time to complete its work and submit a final report by July 05, 2024 was presented in the Senate on June 11, 2024.
- 5.2 **Per Item 7.1, page 3:** The Secretariat had requested an update on the submission of written comments from additional stakeholders including Trade Union and representatives of the business sector. To date, no further stakeholder comments have been received.

REVIEW OF THE STAKEHOLDER ENGAGEMENT SESSION HELD WITH THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

- 6.1 The Chairman invited discussion on the session with the DPP's Office held on June 04, 2024.

6.2 The Committee deliberated on the following key issues:

- a. the overall stance of the DPP with respect to his position on retaining the status quo, i.e., retaining trial by jury with the option for trial by judge alone as the default position;
- b. whether or not more stakeholder consultation is needed;
- c. the importance of adopting a holistic view of interest of justice considerations rather than focusing primarily on the interest of the accused.;
- d. the importance of acknowledging that the Constitution does not afford an accused the right to trial by jury. Rather, it grants an accused the right to a fair and public hearing by an independent and impartial tribunal and a fair hearing in accordance with the principles of fundamental justice;
- e. interest of justice considerations when dealing with applications from the prosecution or defence for trial by jury, if the default position is trial by judge alone;
- f. retention of special juries as opposed to introducing lay assessors; and
- g. reducing the number of jurors in capital and non-capital matters.

6.3 Following the discussions detailed at item 5.2 above, the Committee, by majority, agreed that the Bill should be amended by the Chief Parliamentary Counsel (CPC) to prescribe the following:

- a. trial by judge alone as the default position with the option of an application being presented by the prosecution or defence for a trial by jury;
- b. retaining special juries, with modifications, rather than introducing lay assessors;
- c. reducing the number of jurors in capital offences from 12 to 9; and
- d. reducing the number of jurors in non-capital offences from 9 to 7.

DISCUSSION ON THE WAY FORWARD

7.1 The Committee agreed to the following:

- a. the Assistant Chief Parliamentary Counsel was directed to submit a revised draft of the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023 reflecting the decisions made at 6.1 to the Committee for its consideration;
- b. the Secretariat was directed to follow-up with the Judiciary regarding their updated proposed amendments to the Bill by Thursday June 20, 2024;
- c. to conduct a thorough review of the updated draft Bill mentioned at (a) at its next meeting.

OTHER BUSINESS

8.1 The Committee agreed to meet next on Friday June 25, 2024.

ADJOURNMENT

9.1 The adjournment was taken at 11:13 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

June 20, 2024

UNCONFIRMED MINUTES OF THE 7th MEETING,
[4th SESSION (2023/2024), 12th PARLIAMENT]
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON
THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023
HELD IN THE ARNOLD THOMASOS WEST MEETING ROOM, SECOND FLOOR
CABILDO BUILDING, PARLIAMENTARY COMPLEX, ST. VINCENT STREET,
PORT OF SPAIN
ON TUESDAY JUNE 25, 2024

PRESENT

Members

Mr. Reginald Armour, S.C.	Chairman
Mrs. Renuka Sagrarsingh-Sooklal	Member
Ms. Allyson West	Member
Mr. Anthony Vieira, S.C.	Member
Mrs. Jayanti Lutchmedial-Ramdial ¹	Member
Mr. Randall Mitchell	Member
Professor Gerard Hutchinson	Member

Secretariat

Ms. Sherlana Ramdeen	Assistant Secretary
Ms. Cherylee Legair	Parliamentary Research Specialist

Office of the Attorney General and Ministry of Legal Affairs

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Mr. Parvin Sookhai	Senior Parliamentary Counsel
Ms. Nalini Ramjit-Ransome	Legal Counsel I, CJU
Ms. Chelsea Fraser	Legal Counsel I, CJU
Ms. Amani Abdullah	Graduate Intern, CJU

CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 9:51 a.m. and welcomed Members present.

¹ Senator Lutchmedial-Ramdial participated virtually

ANNOUNCEMENTS BY THE CHAIRMAN

- 2.1 The Chairman indicated that permission was granted to Mr. Randall Mitchell and Mrs. Jayanti Lutchmedial-Ramdial to attend the meeting virtually via Zoom video conference.

CONFIRMATION OF MINUTES OF THE 6TH MEETING HELD ON FRIDAY JUNE 14, 2024

- 3.1 The Chairman invited Members to consider the Minutes page-by-page and enquired whether there were any amendments.
- 3.2 The following amendment was noted: At Item 8.1, delete the word “25” and replace with “21”.
- 3.3 The Minutes were confirmed with an amendment, on a motion moved by Ms. West and seconded by Mrs. Sagrarsingh-Sooklal.

MATTERS ARISING FROM THE MINUTES

- 5.1 **Per Item 7.1 (a), page 3:** The Revised Draft Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023 was received from CPC on June 18, 2024 and circulated to Members on June 20, 2024, together with the Notice of the day’s meeting.
- 5.2 **Per Item 7.1 (b), page 3:** The Judiciary’s latest version of proposed amendments to the Bill and other accompanying documents, were received on June 21 and 22, 2024 and circulated to Members on June 22, 2024.

COMMENCEMENT OF THE CLAUSE-BY-CLAUSE EXAMINATION OF THE REVISED DRAFT MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL DATED JUNE 18, 2024

- 6.1 In accordance with Standing Order 67 (3), the Committee commenced a clause-by-clause consideration of the revised draft Bill which was submitted by CPC on June 18, 2024 and circulated to Members on June 20, 2024.
- 6.2 The Committee completed its clause-by-clause consideration of the revised draft Bill.

DISCUSSION ON THE WAY FORWARD

- 7.1 The Committee agreed to the following:
 - a. that the Assistant Chief Parliamentary Counsel will submit a final list of amendments and a revised Bill reflecting the amendments agreed to by the Committee;

- b. to circulate the revised Bill stated in (a) to stakeholders who provided feedback further to the Committee's request for comments on the Bill. The document will be shared solely for the information of stakeholders;
- c. given the completion of the clause-by-clause review of the Bill, the day's meeting would be the last meeting of the Committee;
- d. the draft final report of the Committee will be circulated by email for the consideration and feedback of Members; and
- e. the final Report of the Committee would be laid in the Senate at the earliest opportunity, prior to the impending Parliamentary recess.

OTHER BUSINESS

- 8.1 Given the completion of the clause-by-clause review of the Bill, the Chairman suggested and members agreed that the day's meeting will be the last meeting of the Committee;
- 8.2 In light of the foregoing, the Chairman expressed his appreciation to Senators for their participation and to Parliamentary staff and officers of the MoAGLA for their procedural and technical support.

ADJOURNMENT

- 9.1 The adjournment was taken at 11:52 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

June 27, 2024

APPENDIX V

Attendance Record

ATTENDANCE RECORD
SPECIAL SELECT COMMITTEE ON
THE MISCELLANEOUS PROVISIONS (TRIAL BY JUDGE ALONE) BILL, 2023

Members	1st Meeting 19.03.2024	Rescheduled 2nd Meeting 26.03.2024	3rd Meeting 10.05.2024	4th Meeting 21.05.2024	5th Meeting 04.06.2024	6th Meeting 14.06.2024	Rescheduled 7th Meeting 25.06.2024
Mr. Reginald Armour, S.C. (Chairman)	✓	✓	✓	✓	exc	✓	✓
Mr. Randall Mitchell	exc	exc	✓	✓	exc	exc	✓
Ms. Allyson West	exc	✓	✓	✓	✓	✓	✓
Mrs. Renuka Sagrarsingh-Sooklal	✓	✓	✓	✓	✓	✓	✓
Mrs. Jayanti Lutchmedial-Ramdial	✓	✓	✓	✓	✓	✓	✓
Mr. Anthony Vieira, S.C.	✓	✓	✓	✓	✓	✓	✓
Prof. Gerard Hutchinson	✓	✓	✓	✓	exc	exc	✓

*exc- excused

abs- absent

APPENDIX VI

Minority Report

MINORITY REPORT

RE: REPORT OF THE SPECIAL SELECT COMMITTEE OF THE SENATE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED “AN ACT TO AMEND THE JURY ACT, CHAP. 6:53 AND THE CRIMINAL PROCEDURE ACT, CHAP. 12:02 AND FOR RELATED MATTERS”

REPORT SUBMITTED PURSUANT TO STANDING ORDER 104 (6)

Introduction

Pursuant to a resolution of the Senate on Tuesday January 23, 2024, a Special Select Committee was re-established to consider and report by March 31, 2024 on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023.

The Committee's First Interim Report was presented in the Senate on Tuesday April 16, 2024 and its Second Interim Report was presented on Tuesday June 11, 2024. The time for the submission of the Final Report was extended to July 5th 2024.

Trial by Judge Alone

The original bill brought to the Senate sought to make the following major changes to the criminal trial process:

1. Amending the Jury Act to –
 - a. Repeal the definition of “Special Jurors” thereby eliminating the use of special juries altogether;

- b. Reducing the number of jurors in capital matters from 12 to 9 and in non-capital matters from 9 to 6;
2. Amending the Criminal Procedure Act to –
- a. Make trial by a Judge alone the default mode of trial unless the accused person elects a jury trial and such request is granted by the Judge who deems such mode of trial to be “in the interests of justice”;
 - b. Introducing the concept of “Lay Assessors”.

There was broad agreement on abandoning the concept of Lay Assessors and keeping the provisions that relate to special juries with some refinement.

Stakeholders

Apart from soliciting the views of academics and other interested parties, the Committee was able to receive and consider the views of the three main participants in a criminal trial, that is, the Judiciary, the prosecution and the criminal defence bar.

In receiving, examining and interrogating the views and opinions of these key stakeholders, it is evident that there is a divergence of views on the role the public ought to play in the criminal justice process.

The Judiciary’s view is that an accused person’s right to “*a fair and public hearing by an independent and impartial tribunal*” guaranteed by Section 5(2)(f)(ii) of the Constitution was preserved and even better secured if a trained judicial mind was the tribunal of both fact and law. The Judiciary raised the issue of inherent bias and prejudice, pre-trial publicity, the impact of social media, the ease with which jurors can be threatened or may feel intimidated by interactions with members of an accused person’s family or just the public and society as a whole, depending on the type of matter. The issue of finding persons who were willing

to serve as jurors and the number of exemption requests was also an issue raised, particularly with respect to high-profile cases.

The cost and the logistics of managing a jury trial was also an issue discussed with various stakeholders. The view was expressed that Judge alone trials are subject to less delays and can result in trials being concluded in a much shorter time frame, thereby making the best use of scarce resources. Finally, the Judiciary felt that the requirement for the provision of reasons by the judicial officer brought clarity and transparency to the trial process, ensuring that findings were fact based and not influenced by extraneous factors.

The submissions received by the Office of the DPP (DPP), the Law Association of Trinidad and Tobago (LATT) and the Criminal Bar Association (CBA) do not support the view that the decision to go by way of a Judge Alone Trial should be at the discretion of the Judge.

The “Default Position”

The notion that the manner of trial should reside with the accused seemed to find favour with the LATT and CBA, whilst the DPP supported the view that trial by Judge and jury should remain the default position, with either party having the ability to request a Judge-alone trial and make submissions to a Judge in support of or against that request.

The undersigned Member finds favour with this position as articulated by the DPP. It affords an opportunity to either party to place the unique circumstances of each trial before the Judge. Each case is unique and may give rise to circumstances where a Judge alone trial may be in the interests of justice, and the instances where this course is adopted should be decided on a case-by-case basis, with either party having the option to appeal (by way of a procedural appeal) the decision of the trial Judge.

The DPP placed great emphasis on the importance of public participation in the criminal justice system and felt that the challenges with the current system did not warrant “severing the umbilical cord that attaches the man on the ground to the criminal justice system”.

The DPP also made reference to instances where issues of fact to be decided upon in a criminal trial required experiences which may be outside the realm of persons who sit as Judges. He underscored the need for the accused, victims and the public as a whole to have confidence that the arbitrators or facts were individuals who could relate to the experiences of the common, ordinary, reasonable man. The example used was that of the issue of provocation, where the reaction of the accused person had to be gauged and assessed.

Number of Jurors

In cases where a jury is empanelled, it would be favourable to have the widest possible range of views and opinions in order to ensure that deliberations are fair and that the process is one in which differing views and experiences are brought to bear. For this reason, it is recommended that the current status quo for the number of jurors and alternates be maintained.

The alternative of having a jury empanelled with 9 members, so that capital and non-capital offences which arise out of the same circumstances can be tried together, with the option to accept a majority verdict in non-capital matters (7 out of 9) was considered. The DPP did not seem inclined to this view as he expressed the view that 12 members of a jury coming to a unanimous decision on a capital matter was the safer alternative and not one from which we should depart, given the severity of the consequences.

It would appear that this matter requires wider consultation.

Conclusion

Based on the concerns raised by key stakeholders, and the lack of consensus on key issues, the undersigned member is not inclined to associate herself with certain policy decisions reflected in the amended bill which is included in the Committee's report.

The following recommendations reflect the policy positions which the undersigned member advocates for consideration and consultation with stakeholders.

Recommendation

The member recommends that in light of the submissions received from all stakeholders, the following position be adopted:

1. Default Position should remain Trial by Judge and Jury

- a. The default position in law should be that an accused person is tried by a Judge and Jury;
- b. Either the prosecution or defence can make a request to have the matter heard by a Judge alone and make submissions to the trial Judge on the matter.
- c. The trial Judge can make a decision on such an application, giving written reasons;
- d. This decision can be appealed within 7 days and should be heard as a procedural appeal.

2. Number of jurors

- a. The number of jurors should remain at 12 and 9 for capital and non-capital offences respectively, except where capital and non-capital offences are being heard together, in which case 9 jurors can sit and hear the matter, with a unanimous verdict being mandatory on the capital charge.

- b. This proposal should be circulated to key stakeholders (Judiciary, LATT, CBA and DPP) and their views solicited proper to the Bill being brought back for debate.

3. Special Juries –

- a. The empanelling of a special jury is a matter which can be raised by application on the part of either the prosecution or defence, or on the direction of the trial Judge.
- b. Where the prosecution or defence is making the application, this should be done at the first hearing after the filing of the indictment and submissions heard.

I so submit.

Dated 1st July 2024.



Jayanti Rachel Lutchmedial-Ramdial

Member