

SENATE

Tuesday, May 29, 2018

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]



LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. Dr. Lester Henry, Sen. Avinash Singh and Sen. David Small, all of whom are out of the country, and to Sen. H. R. Ian Roach who is ill.

SENATORS' APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. GARVIN SIMONETTE

WHEREAS Senator DR. LESTER HENRY is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the acting Prime

Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and

Tobago, do hereby appoint you, GARVIN SIMONETTE to be temporarily a member of the Senate, with effect from 29th May, 2018 and continuing during the absence out of the country of said Senator Dr. Lester Henry.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 28th day of May, 2018.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes
President.

TO: MS. AYANNA LEEBA LEWIS

WHEREAS Senator Avinash Singh is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the acting Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, AYANNA LEEBA LEWIS, to be temporarily a member of the Senate, with effect from 29th May, 2018 and continuing during the absence out of the country of Senator Avinash Singh.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 28th day of May, 2018.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. RONALD GAHERIS DUKE

WHEREAS Senator DAVID SMALL is incapable of performing his duties as a
Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in
exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the
Constitution of the Republic of Trinidad and Tobago, do hereby appoint you,
RONALD GAHERIS DUKE, to be temporarily a member of the Senate with effect
from 29th May, 2018 and continuing during the absence from Trinidad and Tobago
of the said Senator David Small.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 28th day of May, 2018.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes
President.

TO: PASTOR CLIVE DOTTIN

WHEREAS Senator H.R. IAN ROACH is incapable of performing his duties as a Senator by reason of his illness:

I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1) (a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, PASTOR CLIVE DOTTIN, to be temporarily a member of the Senate with effect from 29th May, 2018 and continuing during the absence of Senator Ian Roach, by reason of illness.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 28th day of May, 2018.”

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Garvin Simonette, Ayanna Lewis, Ronald Duke and Pastor Clive Dottin.

Joint Select Committees (Appointment to)

Madam President: Hon. Senators, I have received the following correspondence from the Deputy Speaker of the House of Representatives:

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“May 28, 2018.

Sen. the Hon. Christine Kangaloo

Office of the President of the Senate...

Dear President of the Senate.

Establishment of Joint Select Committees.

On Friday, May 25, 2018 the House of Representatives agreed to the following resolutions—

1) ‘Resolved:

That in accordance with Standing Order 64(1)(c), the Trinidad and Tobago Revenue Authority Bill, 2018 be referred to a Joint Select Committee to be established for its consideration and report.’

2) ‘Resolved:

That in accordance with Standing Order 64(1)(c), the Income Tax (Amendment) Bill, 2018 and the Mutual Administrative Assistance in Tax Matters Bill, 2018 be referred to a Joint Select Committee to be established for its consideration and report.’

Subsequently, on Monday May 28, 2018, the House of Representatives agreed to the following resolutions—

3) ‘Resolved:

That in accordance with Standing Order 64(1)(c), the Tax Information Exchange Agreements Bill, 2018 be referred to the Joint Select Committee established for the consideration and report on the Income Tax (Amendment) Bill, 2018 and the Mutual Administrative Assistance in Tax Matters Bill, 2018.’

4) ‘Resolved:

That, subject to concurrence of the Senate, the following six (6)

Members be appointed to serve with an equal number from the Senate on the Joint Select Committee established to consider and report on the Trinidad and Tobago Revenue Authority Bill, 2018:

Mr. Colm Imbert, MP

Mr. Faris Al-Rawi, MP

Mr. Terrence Deyalsingh, MP

Mr. Adrian Leonce, MP

Mr. Barry Padarath, MP

Mr. Rudranath Indarsingh, MP

and the Committee be mandated to report by July21, 2018.’

5) ‘Resolved:

‘That, subject to the concurrence of the Senate, the following six (6) Members be appointed to serve with an equal number from the Senate on the Joint Select Committee established to consider and report on the Income Tax (Amendment) Bill, 2018, the Mutual Administrative Assistance in Tax Matters Bill, 2018 and the Tax Information Exchange Agreement Bill, 2018:

Mr. Colm Imbert, MP

Hon. Faris Al-Rawi, MP.

Ms. Marlene McDonald, MP

Dr. Lovell Francis, MP

Mr. Fazal Karim, MP

Mr. Rodney Charles, MP.

and that the Committee be mandated to report by June30, 2018.’

I respectfully request that these matters be brought to the attention of the Senate for its concurrence please.

Respectfully,

Mr. Esmond Forde, MP

Deputy Speaker”

PAPERS LAID

1. Annual Report of the Central Bank of Trinidad and Tobago for the year ended September 30, 2017. [*The Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
2. Consolidated Audited Financial Statements of the Petroleum Company of Trinidad and Tobago Limited for the year ended September 30, 2017. [*Sen. The Hon. A. West*]
3. Annual Audited Financial Statements of Trinidad Nitrogen Company Limited for the year ended December 31, 2017. [*Sen. The Hon. A. West*]

1.45 p.m.

URGENT QUESTIONS

**Late Salary Payment to Principals
(Steps Taken to Resolve)**

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Education: Owing to the late payments of salaries to Principals of private secondary schools which are affecting close to 90 per cent of these schools, what steps are being taken to resolve this issue?

Madam President: Minister of Education.

The Minister of Education (Hon. Anthony Garcia): [*Desk thumping*] Thank you very much, Madam President. For fiscal year 2018, the Ministry of Education has remitted funds to the private secondary schools for fees for students placed at these schools for terms one and two.

On the 21st of May 2018, the Ministry received claims for term three payments of fees for students at five schools, namely: Bishop’s Centenary College,

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Corpus Christi College, Christ College Vocational Trade School, Open Bible High School and Elders' Classes. And on the 29th May of 2018, an additional claim was received from Johnson's Finishing School, totalling six out of 13 schools.

The Ministry is at present processing payments for term three to private secondary schools for students placed by the Ministry of Education at their establishments. Thank you.

Madam President: Sen. Mark?

Sen. Mark: Yes, thank you, Madam President. Madam President, through you, can the Minister indicate what mechanisms or measures would he be taking or on behalf of the Government to avoid this situation recurring in the future?—particularly in reference to the statement that he has made about six out of 13 schools not being able to receive their third-term fees.

Madam President: Minister of Education.

Hon. A. Garcia: Madam President, it is quite clear to me that Sen. Mark was not listening attentively when I was speaking. I never said that there were six schools who are unable to receive their claims. What I stated was that six schools had sent claims to the Ministry of Education, and therefore, I would suggest that Sen. Mark would listen more attentively whenever I answer any question. Thank you.

Madam President: Sen. Mark.

Sen. Mark: Yes. I am listening more attentively now. Can I ask the hon. Minister, when he intends to settle these claims from those schools as it relates to outstanding fees?

Madam President: Minister.

Hon. A. Garcia: Thank you very much, Madam President. In my response I stated clearly that six schools had submitted claims. It depends on the schools when they submit their claims, and it is only when they submit their claims, then

we can effect payments. So, as soon as the remaining schools submit their claims, we are going to treat with those claims and pay the schools as soon as possible. Thank you.

Madam President: Next question, Sen. Mark.

**Crude Oil Leak
(Steps Taken to Address)**

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Energy and Energy Industries: In light of reports of the presence of thick crude oil near the 'Three Sisters' off of Columbus Bay, has the source of the oil leak been determined and what steps, if any, are being taken to address the problem?

Madam President: The Minister of Energy and Energy Industries.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, Petrotrin reported to the Ministry of Energy and Energy Industries that an oil spill of approximately two to three barrels occurred in the Soldado north field on Friday, the 25th of May, 2018. The origin of the spill is currently believed to be the well, Soldado 694, which was being abandoned by rig number 50; that is the spill that occurred a couple of weeks ago.

The trajectory analysis of this spill showed that the oil will move in a north-westerly direction. Vessel and aerial surveys conducted verified this. No other oil spill was reported or observed since the 25th of May, 2018 in the Soldado Field to the Ministry of Energy and Energy Industries. This spill, however, was small and was contained and cleaned up.

Petrotrin responded to the report of an oil spill that was apparently sited near the rocks known as the "Three Sisters" off Columbus Bay on Sunday the 27th of May, 2018. However, Petrotrin reported that no oil was observed by them in that area upon conducting a site visit. As such, no further response was deemed

necessary.

An aerial survey was conducted by the Ministry of Energy and Energy Industries, and the Trinidad and Tobago Air Guard yesterday, Monday the 28th of May, 2018. The Icacos area was included in the survey. No oil was observed by the surveillance team.

Madam President: Sen. Mark.

Sen. Mark: Madam President, having regard to the frequency of oil spills and oil leaks particularly by Petrotrin, can the Minister advise this Senate, what steps are being taken by Petrotrin to address this recurring problem particularly in our coast lines?

Madam President: Minister.

Sen. The Hon. F. Khan: Madam President, as is common knowledge throughout Trinidad and Tobago and as I have been on the record as saying on numerous occasions, one of Petrotrin's bigger risk items is its asset integrity. And we are aware of that, we are concerned about that, and very often as the Prime Minister rightfully said, when he goes to sleep at night he is scared about that.

We are using our best efforts in terms of surveillance and we are, through risk analysis, attempting to replace the assets that are most at-risk in terms of oil spills, but it is a major challenge and we continue to monitor the Gulf of Paria very, very closely.

Madam President: Sen. Mark.

Sen. Mark: Madam President, could the hon. Minister indicate to this House, what specific steps can you share with this House that the Government has taken or will be taking to address this matter, because you have indicated that this is a nightmare and, therefore, could you share with us what specific steps have been taken or are being contemplated by the Government to address this entire issue?

Madam President: Minister.

Sen. The Hon. F. Khan: Madam President, as I have said, we are using risk analysis to determine what are the assets that are of the greatest risk. We are monitoring it very closely, we are shutting off systems where the pipelines, for example, are under severe stress, and the integrity is in serious question. So as a matter of fact, that is one of the main reasons that Petrotrin's oil production has been dipping slightly, it is because of safety concerns. And while it is not the ultimate solution, the ultimate solution will cost billions of dollars, but we are monitoring it very closely, and I knock on wood [*Senator knocks on the desk*] that nothing more significant has been happening over the last year.

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the Government is pleased to announce that it will be answering questions No. 111 and question 134. We ask for a deferral of questions Nos. 135 and 136.

Madam President: Questions Nos. 135 and 136 are deferred for two weeks, for 14 days.

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper in the name of Sen. Wade Mark:

Complaint by Former Employee (Details of)

- 135.** Can the Minister of Sport inform this Senate whether:
- i. the Minister had prior knowledge of her Ministry's intention to engage in a \$150,000 settlement with a former employee of the Ministry;

- ii. the Minister had sought and obtained information on the details of the complaint made by the former employee;
- iii. if the answer to (ii) is in the affirmative, whether the complaint involved any sexual harassment accusations; and if so
- iv. against whom?

**Ministry of Sport and Youth Affairs
(Details of \$150,000 Settlement)**

136. As regards a \$150,000 settlement with a former employee of the Ministry of Sport and Youth Affairs, can the Attorney General inform the Senate of the following:

- i. what were the circumstances that led to a non-disclosure agreement in this matter;
- ii. was the advice/guidance of the Attorney General sought and/or obtained prior to this matter being settled; and
- iii. which party requested the non-disclosure agreement?

Questions, by leave, deferred.

**Sandals Resorts International
(Memorandum of Understanding)**

111. Sen. Saddam Hosein asked the hon. Prime Minister:

In light of statements from the Government that a Memorandum of Understanding was signed between the Government of Trinidad and Tobago and Sandals Resorts International, can the hon. Prime Minister indicate:

- i. the date on which the Memorandum of Understanding was signed; and
- ii. the parties who signed the Memorandum of Understanding?

Madam President: Minister of Agriculture, Land and Fisheries.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence

Rambharat): [*Desk thumping*] Madam President, I thank Sen. Hosein for this question and for his patience in awaiting the very brief response.

In relation to the date on which the MOU was signed, the MOU was signed by the Government of Trinidad and Tobago on 10 October, 2017. And in relation to the parties who signed the memorandum of understanding, that is implicit in the question. The parties are the Government of Trinidad and Tobago and Sandals Resorts International. I thank you. [*Desk thumping*]

Madam President: Sen. Hosein.

Sen. Hosein: Madam President, can the Minister indicate whether or not in the MOU any concessions or tax breaks are being given to Sandals Resorts International?

Madam President: Sen. Hosein, I will not allow that. That question does not arise. The question, if you look at it, it is very specific. Sen. Mark.

Sen. Mark: Can I ask hon. Senator and Minister, whether the memorandum of understanding that has been signed, whether the Government would be prepared to table it in the Parliament for public viewing?

Madam President: Minister.

Sen. The Hon. C. Rambharat: Madam President, I would not be able to answer that. I am not familiar with the contents, and it is a question that Sen. Mark may be able to pose at a later date.

Madam President: Sen. Hosein.

Sen. Hosein: Madam President, can the Minister indicate, based on the memorandum of understanding being signed on the 10th of October, 2017, when is the projected date on which this project is taken to actually start?

Madam President: Sen. Hosein, I would not allow that question either. Next question, Sen. Mark.

Sen. Mark: Thank you, Madam President. Question 121 to the Prime Minister. [*Crosstalk*] Seeing that I am hearing—yes, may I invoke?

Madam President: Not at this stage. You remember that there is a time at which you can invoke?

Sen. Mark: Okay.

Madam President: All right. So—

Sen. Mark: I am so guided.

Madam President: Yes.

Sen. Mark: Let me go question 134.

Trini Flash
(Details of)

134. Sen. Wade Mark asked the hon. Minister of Works and Transport:

In light of the incident which led to sixty-three (63) passengers and crew members of the *Trini Flash* Water Taxi having to be transferred, while at sea, onto the *Cabo Star*, what action does the Minister intend to take against the persons responsible for the maintenance of the vessel?

Madam President: Minister of Works and Transport.

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): [*Desk thumping*] Thank you, Madam President. Madam President, the Ministry regards the incident as extremely serious, and in this regard two separate investigations into matter were commissioned. NIDCO commissioned one independent investigation, and the other was commissioned by the Maritime Services Division.

The report of both investigations were submitted and their conclusions are not at variance. Basically, the report concluded that a primary cause of the fire was due to poor workmanship in the installation of the lagging around the exhaust silencers over one of the replaced engines.

The supply and installer of the lagging was done by R&R Industries

Supplies Limited through a competitive tendering process. Madam President, based on findings of this investigation, I have directed NIDCO to immediately refer the matter to the Attorney General's office for consideration and action, and a private legal counsel to consider NIDCO's recourse against the company responsible for installation. I thank you.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the Minister indicate, having regard to the challenges faced by this particular water taxi whether the Government is considering removing that particular vessel completely from the route?—that is, travelling or traversing between Scarborough and Port of Spain and confining it to its original destination San Fernando to Port of Spain.

Madam President: Minister.

Sen. The Hon. Rohan Sinanan: Madam President, these vessels were designed for the waters between Trinidad and Tobago. What—again, the cause of the fire was poor installation and the lagging of the exhaust silencer, and once that is rectified and certified by the class certification, we see no reason to withdraw the vessel from the Trinidad to Tobago or the Port of Spain to San Fernando vicinity. Thank you.

Sen. Mark: Madam President, through you, can the Minister report on the state of that vessel, since the replacement of the part that he mentioned, has the vessel performed adequately to the satisfaction of both NIDCO and the Maritime Services Division?

Madam President: Minister.

Sen. The Hon. R. Sinanan: Madam President, since the incident the vessel has not been put back into service because we would appreciate once there is a fire on a vessel, certain class certification has to take place, and there are some repairs that

would have arisen because of the fire in terms of the cables and the cable racks that were destroyed. So, since then the vessel has not been back in service, it will only be back in service once it is certified by the class certification. Thank you.

Madam President: Sen. Mark, before—Sen. Ramkissoon wishes to—

Sen. Mark: Sorry.

Madam President: That is all right.

Sen. Ramkissoon: Thank you, Madam President. Through you to the Minister, I would like to know, these are not new vessels, so I would like to ask, you had spoken about design, these vessels are designed for the route between Trinidad and Tobago. Now, is it maintained for the routes between Trinidad and Tobago?

Madam President: Minister.

Sen. The Hon. R. Sinanan: Madam President, I have said on numerous occasions that we do have a problem with proper maintenance in Trinidad and Tobago, and the water taxis are no exception. And that is why the Government through NIDCO has gone out for technical maintenance service contract, and the purpose of that is to put all government vessels under a proper maintenance contract, because we do have challenges. These vessels are fairly new. These vessels came in 2010, 2010 to now, these vessels are not considered old in that they are just seven years in the making.

So, I would admit that we do have challenges with the maintenance, and this is being addressed as we speak.

Madam President: Sen. Mark.

Sen. Mark: Madam President, through you to the hon. Minister. In light of the critical importance of this water taxi for citizens travelling between San Fernando to Port of Spain and back on a daily basis, can you provide this House with any degree of assurance as it relates to when this particular vessel will be back in

service?

Madam President: Minister.

Sen. The Hon. R. Sinanan: Thank you, Madam President. Madam President, there are four—in 2010, four water taxis were purchased. As we speak, three of these vessels have been down. Since the fire what we have decided to do is to check the lagging on the other vessels. So, by next week we will have two of the vessels up which will satisfy the needs from the San Fernando to Port of Spain route. And once the *Trini Flash*, which was involved in the fire has been class certified and the repairs completed, then we will have the third vessel back on. And sometime later on this year NIDCO is expected to have the fourth vessel back in service, but two vessels do satisfy the needs on a daily basis.

Madam President: Sen. Mark.

Sen. Mark: Hon. Minister, can you share with this honourable Senate, how long these vessels were withdrawn from service to undergo precautionary repair measures as you have indicated? How long has this happened?

Madam President: Minister.

Sen. The Hon. R. Sinanan: Thank you. Madam President, since the incident, NIDCO has undergone a complete check of the three vessels that were in use, and that is the reason why two were taken off, and we expect by next week one to come back on. Because what they did was that they had the class inspect the other vessels to make sure that what happened with the *Trini Flash* does not reoccur with the other vessels. They were very proactive to use that incident to recheck the lagging on the other three vessels. So these two vessels would have only come off just the day after the incident.

Madam President: Sen. Ramkissoon.

Sen. Ramkissoon: Thank you, Madam President. To the Minister, since there is

insufficient maintenance right now by the Ministry to handle these vessels, and I understand that you are putting things in place for that, now this poses a greater risk to persons who are using—

Madam President: Sen. Ramkissoon, ask the question, please.

Sen. Ramkissoon: The question is: What now exists, other than the matters with the lagging, what risk mechanisms have been identified that can pose a risk to the members who are using the *Cabo Star* vessel at this time?

Sen. The Hon. R. Sinanan: Madam President, I think the hon. Senator might have been a little mixed up with the vessels. The *Cabo Star* is a cargo vessel. What we are speaking here is about the water taxis. The water taxis are completely different, the maintenance is handled completely differently. The *Cabo Star* is a vessel that we leased and the owners of the *Cabo Star*, they are responsible for the maintenance.

The water taxis are maintained by NIDCO, and I did not say that there is no maintenance, what I said is that we are not satisfied with the level of maintenance, and they have been no established risks outside of what had happened with the *Trini Flash* at this point in time.

Sen. Ramkissoon: Thank you.

Madam President: Sen. Mark.

Sen. Mark: Yeah. Madam President, I would like to invoke Standing Order 27(15) as it relates to question No. 121. And, Madam President, as I am on my legs, may I enquire through you, what is happening with question No. 13, as well as question No. 78 for written answers?

Madam President: Sen. Mark, you may be aware that the Standing Order was invoked for question No. 13. If you wish to invoke the Standing Order for question No. 78, you can do so.

Sen. Mark: Madam President, I would like to invoke the appropriate Standing Order as it relates to question No. 78.

Madam President: Hon. Senators, Standing Order 27(15), will be invoked for question No. 121, and Standing Order 27(16) will be invoked for question No. 78.

ARRANGEMENT OF BUSINESS

Madam President: Leader of Government Business. I understand that you want to ask that it be deferred.

The Minister of Energy and Energies Industries (Sen The Hon. F. Khan): I understand that—

Madam President: Hon. Senators, it is my understanding that the Members are desirous of having this particular business matter be deferred to later in the proceedings. So, hon. Senators, we will defer and return to item No. 14 later in proceedings.

ADMINISTRATION OF JUSTICE (DEOXYRIBONUCLEIC ACID) REGULATIONS, 2018

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. [*Desk thumping*] I thank my colleagues for that warm, but slightly delayed response as well. [*Laughter and desk thumping*] I think it is standing in the back of this Chamber. Madam President, I beg to move the following Motion standing in my name:

Whereas it is provided by section 34(1) of the Administration of Justice (Deoxyribonucleic Acid) Act, 2012 (hereinafter referred to as “the Act”) that the Minister may make Regulations for the purpose of giving effect to this Act, and all such other matters and things as may appear necessary or expedient or are required to be prescribed for effectively carrying into operation the provisions of the Act:

And whereas it is provided by section 34(2), that Regulations made under the Act shall be subject to affirmative resolution of Parliament:

And whereas the Minister of National Security has on the 5th day of March, 2018 made the Administration of Justice (Deoxyribonucleic Acid) Regulations, 2018:

And whereas it is expedient that the Administration of Justice (Deoxyribonucleic Acid) Regulations, 2018 now be affirmed:

Be it resolved that the Administration of Justice (Deoxyribonucleic Acid) Regulations, 2018 be approved.

Madam President, it gives me great pleasure, having successfully navigated the pronunciation of deoxyribonucleic acid on at least five occasions, to now refer to that term as DNA for the benefit of all Senators and Members present.

May I say, Madam President, it gives me great pleasure to stand here today to bring to life an aspect of the fight against crime in the area which is sharply pointed to the most vulnerable in society and that resonates, Madam President, in the ability of using technology which has been tried and tested and developed and practised in many jurisdictions to the forefront of crime fighting in Trinidad and Tobago.

Madam President, it is a fact that Trinidad and Tobago is not new to DNA, it is not new to forensic sciences. Trinidad and Tobago has in fact, as a country, sat on several occasions, specifically on occasions where this Parliament, both Senate and the House, have been moved to consider the introduction of DNA laws.

We started this journey, Madam President, on the 30th of November, 1999, when then Brig. Theodore, sitting as Minister of National Security under a UNC-led Government piloted the Deoxyribonucleic Act (DNA) Identification Act,

2000. That was dealt with on the 10th of December, 1999 in the Senate, and that Act was never proclaimed. That Act was a feature of deep analysis then trumpeted to be a potential fillip to the reduction of crime, a weapon in the arsenal of law enforcement to save victims from the trauma of testimony when science could instead give the testimony.

And that that testimony could be testimony which stands almost on a near incontrovertible basis, because the DNA facility, the ability to genetically map something with the area or precision that DNA allows whether it is short-chain or long-chain DNA analysis and profile creation, allows for nearly over a 99 per cent certainty as to probability. When one considers that the criminal standard in Trinidad and Tobago is proof beyond reasonable doubt, that DNA evidence has been held traditionally around the world to meet the standard of proof beyond reasonable doubt.

So imagine the impact of telling a victim of a rape, of telling a victim of a sexual offence, of worse yet, telling a child who is a victim of sexual offences, that “the evidence can speak for you”. And that evidence can be managed and marshalled in a quick fashion. That with a swab, that with the utilization of analysis of a stain of crime scene material, that we can have evidence pointed to an alleged perpetrator, an accused. We can have a certified analysis saying, listen, there is a 99 per cent probability that you are the person who conducted this, and then telling that person when faced with plea bargaining legislation, admissions of guilt, sentence reduction on early pleas, the host of criminal justice remedies which we as a Senate have just recently improved.

Imagine the relief that that causes for a child victim in understanding that the law can have the evidence testify for you.

2.15 p.m.

Where do we stand today? We are nearly 19 years later from November 1999, 19 years later. But it was not only that piece of legislation we passed through. We next passed through Act No. 24 of 2007. This particular piece of law was labelled, The Deoxyribonucleic Acid (DNA) Act, 2007. We then went to the laws which came in 2012, The Administration of Justice (Deoxyribonucleic Acid) Act, Chap. 5:34, which is an Act, No. 5 of 2012. We did not stop there; we went to Act No. 11 of 2014 which amended the 2012 Act.

In getting to this space, the 2007 legislation came about. The 2007 legislation saw the Parliament being invited to consider material deficiencies in the 2000 Act, when a consultant from the United Kingdom was brought on board to advise the Government as to operationalization, because that is the key; operationalization of the law. And the consultant in looking at the 2000 Act felt that there was inadequate definition of samples to be taken. The procedure for taking samples needed improvement, the establishment of databases and the management of forensic DNA science bank had to be improved.

And so, what we saw was the Parliament enter into discussion, we saw unanimity in the Senate, unanimity in the House of Representatives, with everyone voting yes, as they did in the year 2000, as they came to consider the position in the year 2007, the entire Parliament said, yes. But, Madam President, that was 12 years ago.

In 2011, we saw the previous Government come with DNA legislation; the Administration of Justice (DNA) Act, which is now being considered before us now. That particular Bill went to the House of Representatives. There were voices against the Bill then because the Bill as brought to the Parliament ran afoul of a

number of provisions. And in the House of Representatives a then PNM Opposition looked at the Bill and said, look, number one, you are colliding with the classic case in the European Court of Justice when you are looking at the Marpa principles.

I remember vividly when that Bill came to the Senate as I sat in Opposition telling the Minister of Justice then, about the Marpa case. He did not know about it then. He did not know that 25 judges of the European Court had actually trounced the English position. But in credit to him, and to the Senate, we sat and we did surgery to the legislation. As a result of which, we were able with unanimity in the Senate, to return a Bill approved by the entire Senate to the House of Representatives where it was supported. That, Madam President, was six years ago; 2011, 2012, 2013, 2014, 2015, we had the past Government undertake to operationalize the law, collectively across the Ministry of Justice and the Ministry of National Security alone, \$22,927,938,071 was spent. Let me repeat that, \$22,927,938,071 was spent across two Ministries.

So, what was wrong? Why is it that we took six years to consider the operationalization of the law? And I will say, again, that the previous Government came to Parliament and brought important amendments to the DNA Act. And those important amendments are to be found in the DNA Act as it relates to matters which the Opposition then raised. How do you dispose of DNA samples? What about the indefinite right of retention? What about the complainant who no longer wants the DNA profile on the point? What about in—all of those matters which we advocated as an Opposition then were addressed in the 2014 position, the amendments to the DNA Act came as an omnibus element together with other laws which personally we did not agree with and therefore then Opposition did not

agree with the laws which amended this because it came as part of a package. We did not, for instance, believe that certain of the other laws should have been amended.

So I want to be careful, when you see that there were five votes against the 2014 amendments it was for other reasons, not the DNA Act as the *Hansard* will show. What happened next? [*Interruption*] Well, yes, one must always take in front. The point is to set the record straight. We have come now as a Government and we have said, this Senate is testimony to what is being done. It matters not how many laws we have on the books of Trinidad and Tobago, it is whether you can operationalize them. The ultimate law of the land is that if you commit murder you shall hang as a saved sentence, yet murders happen every day and have happened every day.

It matters not how much you make money laundering an offence, how much you make dangerous drugs an offence, how high you climb the penalties for firearm possession. It matters on how many convictions you can have so that there is a fear of sanction, there is a weight of the law and therefore we as a Government have focused upon operationalization at the same time as we legislate, and we will talk to that a little bit later. But in this DNA legislation, the fact is section 34 of the Administration of Justice (DNA) Act, Chap.5:34, says that you must come with Regulations and that those Regulations must be subjected to the affirmative resolution of the Parliament.

So the Minister of National Security has signed these Regulations on the 5th of March 2018, and we went to the House of Representatives and we dealt with the affirmative resolution and we have come to Senate now. One clause says, you have got to have Regulations. Substantively, the Act requires Regulations, really,

in two specific points. Section 23 has the requirement and section 23A has the requirement that you must have Regulations. That is it, two clauses say, you ought to have some Regulations. Let us read them.

When we look to the parent Act we can see that section 23 says:

“(1) A person who takes a sample under this Act”—and we jump to 23(1)(b):
“shall—
ensure that...”—it—“is properly stored;”

I am skipping past several words. We go down to subsection (2)(b):

“A person who receives the package....shall—
record such information as may be prescribed by Regulations”.

23A subclause (2):

“The procedures for the keeping of the DNA Record shall be prescribed by Regulations”.

That is it.

The Government could have satisfied the DNA laws at any point in time, between 2011 to now by coming up with Regulations which match 23 and 23A. But that would be to be making a mockery out of the situation. There was a lot more to be done, because to operationalize this law you must have certain other elements in place and the operationalization required obviously, firstly, the appointment of a Custodian.

Secondly, the acquisition of data, systems, firmware hardware. Thirdly, the acquisition of a site to manage the procedures. Fourthly, it required procedures to be adopted. Fifthly, it required the expenditure and coordination in training. And I had a brief chat with Sen. Sobers who mentioned certain aspects about concern

which I share with him, that it is one thing to have the law but you have got to train people to conduct the law properly lest the case falls apart through improperly managed evidential routes. And that is a matter of course.

You see, in Trinidad and Tobago we have been stuck, we as a country have been stuck in analysis paralysis on everything. Constitutional reform, judicial management, revenue management—

Sen. Gopee-Scoon: Why?

Hon. F. Al-Rawi:—diversification. And let me say why. Sometimes the procedures take a while. Sen. Mark is one of the principal advocates for affirmative resolution. But respectfully, we signed the DNA regs since the 5th of March, we are now on the 29th of May, and that is having worked full bore because there are other matters to be taken care of. What I can say is what the cost of not doing this equals.

So let me jump to my favourite theme which is data. I made a vow when I was in Opposition that if ever I got the opportunity to address the nation from a governmental point of view that it should be data driven. So we know who we are. We know how many child marriages we have. We know how many preliminary enquiries we have. We know how much it takes to upkeep a prisoner in custody for each month. And dare I say this is the first time Trinidad and Tobago has received data, be it on the energy spotlight, financial situation spotlight, this Government has said in its commitment to transparency, let us know who we are first, to know where we are going.

So let us look to some of the data. The law, the parent Act, says in section 15, that protective service people, as whatever they are described, including army, police, et cetera, across the spectrum, customs, those people are required when you

are applying for the job or if you are in the job, you must give a DNA sample and no consent is required. You see, this consent issue is what plagued Trinidad and Tobago in its analysis paralysis—we were afraid as a country to say as a Parliament, I am going to take your DNA sample or your fingerprint without your consent. That is why the 2007 Act did not launch. That is why the 2000 Act did not launch. Because we as a Parliament did not want to go far enough in intruding on the rights of privacy to say, I will take your DNA without your consent. But we did it in 2011 and we did it unanimously, and we did it in 2014 and effectively unanimously disaggregating the support for DNA from the other bits.

So, number of police officers who are mandatorily required to give DNA samples—Madam President, could you let me know the precise minute that I must end.

Madam President: You are ending at 2.54 p.m.

Hon. F. Al-Rawi: Thank you very much. Number of police officers: 6,839; number of prisons officers, 3,329; number of persons in the Trinidad and Tobago Defence Force, 5052; number of fire officers, 2,190; number of immigration officers, 375; number of customs officers, 306. That is 18,091 service personnel. The law goes further than that, mind you, because protective services are also included. Meaning, people employed in security by their employer can be required to mandatorily give DNA. So we are potentially looking at the entire private security network as well.

What does that mean? Let us add some more. Number of convicted persons in jail as of March 16th, 1,515; number of persons on remand at the same date, 2,317. Again, aggregating 3,832. Why are these numbers here before us?—because, in ensuring that Trinidad and Tobago is able to extrapolate and exploit the

DNA phenomenon in a positive way, we say, let us create a databank. DNA samples go to the Trinidad and Tobago Forensic Science Centre, they are analyzed there, profiles are generated, the profile is taken to the DNA custodian, the DNA custodian uploads it into a databank on an anonymous basis without reference to the personalities and you have a databank, 18,091 people; 3,832 people and the whole private security industry. You are crossing up to close to 60/70,000 people, potentially.

What benefit is that? If you have DNA samples, including ongoing addition of samples for suspects, detainees, deportees, prisoners, aggregating about 1,000 profiles per month, you are looking at mapping Trinidad and Tobago, so that when you get to a crime scene you at least have 60,000 to 70,000 known profiles. And then it adds. And therefore, if some crime scene is analyzed and a profile is generated, you know who your reference samples are as the Regulations provide, because the reference sample is a very different thing from a crime scene sample. And I will explain that when I get to regulation 2 and 3 in just a short while.

But when you have these profiles known, you are able to discount the known from the unknown. You are able to find a potential criminal or a potential assistant against a criminal, because obviously the policeman who is on the crime scene who picks up the sample, his DNA would have to be discounted as a reference sample versus a crime scene sample. And, Trinidad and Tobago is crying out for this.

What I can say is that the Government has retained, under the provisions of section 9 of the parent Act the DNA Custodian, the Government has managed to lock on board all of the 11 personnel that we need to run. We have the firmware, we have the hardware and I am pleased say today 15,000 buccal swabs are being

cleared through Customs as we sit here. Fifteen thousand DNA samples have the potential in a six-week period to be analyzed by an appropriate laboratory and uploaded to the database, 1,000 detainees per month have the ability to go onto the DNA database.

That means that after 19 years of analysis paralysis we are able to operationalize the laws. I mean, surely we must abhor the situation of having laws on the books of Trinidad and Tobago without them being operationalized. Let us look further. Let us look to further statistics. Let us look to the number of persons convicted in a subcategory of offences, for sexual offences for the 19-year period. Let us take 18 years, 2000 to present.

There have been, in terms of offences, cases reported, listen to the number, 13,630 sexual offences cases. Number of persons convicted of that 13,000, a whopping 321. Number of sexual offences cases solved using DNA evidence from the year 2000 to present, guess what the number is? Zero. Nineteen years of law, four sittings of Parliament, times two, because it is Senate and House, add 10 sittings of a JSC, add billions of dollars between national security and other Ministries and we have zero convictions on DNA evidence. Zero, for sexual offences only. This does not include murder, which could easily be another subcategory fit for analysis. We are talking about sexual offences only.

We saw in the papers the memory of Akiel Chambers who would have been 31 years old, but DNA evidence is available from that site. And that unknown perpetrator could have been brought forward as they found evidence of sexual abuse of, God rest his soul, that beautiful young boy found on the bottom of a pool. But 19 years later no operationalized DNA laws. Number of DNA samples sent, we have got a number for that. We have cost of services, we are sharpening our

pencils and let me tell you this, you know how much the DNA profile kits cost us, the buccal swabs? A massive TT \$20 per kit; TT \$20 per kit. Billions spent. “Lots ah ole talk”. So I think I have established the point that we must be intolerant to any more delay. So let us get to the Regulations.

We propose in the Regulations before this honourable Senate for affirmative resolution that we address more than just the two mandatory provisions of the Act. Section 34 says you must have regs, affirmative resolution, we are now here assembled. Section 23 and section 23A say what we must have regs for. We have traversed that. We say, most respectfully, that we ought to provide for at least eight other factors.

One, we should provide in the Regulations for a distinction between reference sample and crime scene material. Two, we should expand on the role and responsibilities of the Custodian especially in establishing the minimum standard criteria and moving a little bit beyond. Thirdly, we say the procedure for taking samples from the category of persons that we ought to consider ought to be particularly careful when we get to the concept of the complainant. For non-lawyers, the complainant is the person who is the victim of a sexual offence. The complainant is set out at section 18 and section 19; we deal with children and section 20 of the parent Act. And we treat complainants very differently from everyone else, where we require the complainant to give, express consent to the DNA sample because we do not want to retraumatize a victim of sexual offences.

We say next, as the fourth limb, that we should establish procedures for searching the national forensic DNA databank. We anchor back to section 10 and section 24 of the parent Act. We say as a fifth ground that we ought to address matters relating to the DNA register of the Trinidad and Tobago Forensic Science

Centre and we harken back in terms of a springboard for legislative authority to section 5 of the parent Act.

We say, sixthly, that we ought to expand the requirements under the Act for the storage of reference samples and crime scene material and we look specifically, that is where the mandatory provisions for Regulations come in, section 23(1)(b), section 23(2) (b), section 23A. We also link it with section 25 of the parent Act, which relates to the keeping of samples and section 26 which treats with the destruction of samples.

Seventhly, we propose that we provide for early submission of reference samples and crime scene materials and the conditions under which they are transported to the Forensic Science Centre. Why? You do not want to destroy the evidence. You want to make sure your chain of custody issues are kept. You want to make sure that there is no break so that the evidence is sabotaged because proper procedure was not managed. The person who took the sample must manage it in a secure way until the storage happens, it must be stored under careful conditions.

After storage, the profiling must be done by transportation to the Forensic Science Centre, when analyzed there records must be kept and sent back, then the profiles generated go to the DNA Custodian and then they search parameters, et cetera. We must always be diligent to be methodical in managing evidence, because if you do not have evidence you do not have a conviction or you do not have an exoneration, both of which are equally important.

As a last matter, we say we ought to address privacy, security and access issues, which in our view were not adequately addressed in the parent law. And in particular reference we have harkened back to section 26 which deals with the expunging of files in the parent Act, section 29 which is disclosure and

confidentiality and then we have looked at the offences in sections 30 and 31 of the parent Act. So those are the essential eight broad areas covered in the Regulations and what we propose is that we are assisted in treating with the Regulations by managing the information and processes in a logical and clear fashion.

Hon. Senators, is this a perfect Regulation? No. Is there any one perfect piece of law? No. Can it be worked upon and improved over time? Yes. Is there precedent for that elsewhere in the world? Yes. We have had a problem in our jurisdiction of people just starting. We are always invited, let us discuss some more, let us have more discussions, let us come up with a perfect product. What about this, what about that. Well, what about starting? What about getting past 19 years of talking and starting for the 13,000 sexual offences.

So let us get now to the Regulations themselves. Let us look to the specifics of the regs. We start by noting that the Regulations are 10 parts long. They consist of 30 Regulations and there are three Schedules. Obviously, the regs articulate with the parent Act, which is why I have taken time and care to reference hon. Members to the springboard provisions in the parent Act.

We have divided them into preliminary issues, that is in Part I. We deal in Part II with roles and responsibilities of the Custodian. In Part III, with the taking of samples; in Part IV with analysis; Part V with searches of the databank; Part VI we deal with the records; Part VII we deal with the storage of reference samples and crime scene materials; Part VIII we deal with transport; Part IX we deal with privacy standards, security and access and Part X we treat with the miscellaneous provisions and then the three Schedules, treat with the specifics of the forms and procedures that we adopt which are broader than the four Schedules that appear in the parent Act.

I refer hon. Members to clause 2, regulation 2 regulation 2, and this is going to be a bit difficult because we do not have a committee stage on Regulations that come for affirmative resolutions. That is not what we are doing today. So, hon. Members I know it may be hard to have all questions answered, so sometimes in your submission if you have asked a question and you want to have a reply from me specifically, I would ask you to allow that opportunity. I do not consider this a combative debate on this particular one, I think we are of equal purpose that it is high time that we dealt with it.

Regulation 2. I ask hon. Members to note “crime scene material” and “crime scene material register”, is to be factored in mind against reference samples and a reference sample meaning as set out. Let us give this in the context of sexual offences. A reference sample as is set out in the Regulation is:

“...a sample whose origin is known and which can be compared with a DNA profile”.

A crime scene material is:

“any material taken from a crime scene”.

We have proposed that we step beyond the data record phenomenon. In clause 4 of the parent Act you will see the expression data record. A data record is the thing which you must keep at every place where you collect DNA. Police station, hospital, prison, deportation at the immigration centres, everywhere you treat with DNA collection you have to have a DNA record.

We have gone a step further to say you need to have a crime scene material register and separate it out from a known registrar. So we are therefore introducing the differentiation between reference and crime scene material, because of the complexity of treating with sexual offences cases. If you looked at the definition

of crime scene, in the parent Act, crime scene can include anything contained within a body part or the human body. And therefore in particular, in sexual offences matters you may take one sample which may be both a reference sample and evidence in the crime scene. And therefore, it is important to disaggregate those two in a more logical matrix in keeping with what we have done in other jurisdictions in which we have taken legislative notice of as we have done in these Regulations.

I ask hon. Members to look at regulation 3. In regulation 3, regulations 4, 5 and 6, under Part II, we are treating with the roles and responsibilities of the Custodian. The Custodian's roles and responsibilities are set out in section 10 of the parent Act, but they were a little bit limited. We felt that the Regulations, a subsidiary legislation provided a very good opportunity to broaden and expand the positions of the roles and responsibilities of the Regulator and we have specifically added into that pack that there should be an expansion.

We have added in ensuring that data is accurately loaded into the national forensic DNA Databank. We have added in that there is to be a conduct of an annual on-site visit to the Forensic Science Centre to ensure that it has capability to perform the requested DNA services and we have added in that we should accept DNA profiles and documentation generated from the Forensic Science Centre and approved laboratories under section 6 of the Act.

So we have broadened the scope. And we have done that knowing fully well that the Government is currently in the middle of perfecting a brand-new forensics institute, which the hon. Prime Minister will no doubt speak to in the course of his press conference that he is talking about today. So I will leave that for another occasion.

2.45 p.m.

Madam President, we believe that regulation 6 is important. We have allowed for the Custodian to develop effectively standard operating procedures, or soft-side descriptions of technology improvement, which are not prescriptively set out here, and we do so because we do not want to have technological specificity stymie the growth of the area when, constitutionally, it is open to a Commissioner of Police or to a DNA Custodian to develop these standards by him or herself.

I would like to specifically draw in aid for support, the case of *R(GC) v the Metropolitan Police Commissioner*. It is a 2011, *All England Law Reports* case at page 859, where the Supreme Courts of the United Kingdom opined in its majority judgment, Parliament is entitled to give the police the power to create a scheme. No doubt it would have envisaged that a national scheme would be produced as such part of guidelines. The Secretary of State is accountable to Parliament, et cetera. And then they go on to say at paragraph 43:

There is no reason in principle why the police, together with Secretary of State, should be less well equipped than Parliament to create guidelines.

And therefore we lend our proportionality and ability to avoid technological specificity by calling in aid the ability to allow the Custodian to develop best practices, published as the Regulations require, gazetted as the Regulations require and upon which there is training as the Regulations require, so that we can fall in aid for development of the law as it progresses.

Similarly, we look to Part III now. When we look to regulation 7, here is the centre point upon the complainant. Remember, complainant is not your average plaintiff or claimant as we call it in the civil law. A complainant here is a specifically defined term under the parent Act which refers to the alleged victim of

a sexual offence. We have, again, put in terms of the process flow, the application of the use of a qualified person and how the material is to be treated with.

Regulation 8 treats with taking of reference sample and retrieval of crime scene material by a police officer or qualified person. That harkens back to section 13 of the parent Act, where we are looking again to this concept of the DNA record and, in particular, the register of crime scene material, making sure that we have records of how we treat with data for an evidential purpose and utilization.

Regulation 9—Madam President, you said 53 or 57?

Madam President: Fifty-four.

Hon. F. Al-Rawi: Fifty-four. I must hustle. regulation 9, we treat with taking of a sample from a person admitted to a private hospital. We then adopted the same process and flow. We go to 10, which is the taking of a sample from a person in prison. So we are again dealing with all of the sub-categorizations of section 13. Section 13 sets out the broad range: prisoner, detainee, suspect, security aspects, persons from whom samples can be taken without consent. That is to be married with section 15 which treats with your protective service personnel.

When we get to Regulation 11 we are taking a reference sample at a port of entry. Again, that is back to section 13: detainees and deportees, et cetera. When we get to 12, we are looking at taking a reference sample for a person detained in a child rehabilitation centre. Obviously, there was an amendment away from the description of juvenile centres. When we did the family and children division amendments, we removed the concept of juvenile offenders and we turned instead to—in that category—children in need of care or child offenders. We have dealt with in Part IV with the analysis provisions. And there are two sections there, very important.

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

Hon. F. Al-Rawi: Thank you, Madam President. Analysis of reference samples and crime scene materials is at regulation 13, and what we are doing here is making sure that the reference samples are handed over in prescribed fashions. But in 14, that is where we find the anonymity of DNA profiles, a major safeguard to make sure that the Forensic Science Centre has one limb of it. They know the sample; who is it from. When the profile is generated, only the profile goes to the DNA Custodian, because when the DNA Custodian is doing a match analysis, you do not want the risk of prejudice entering the mind of the DNA Custodian.

Part V treats with searches of the databank, and regulation 15 really prescribes 10 steps of how we treat with analysis. In summary, the analysis is, when you get the profile, run a search every time when you are loading. So as you are loading up something new, run a search every time to see if you know who is on it. Secondly, run where requested. Run a search where a request is made. Thirdly, search even though you have a poor quality sample, because you may get a hit with a partial sample, which can then be drilled down with circumstantial evidence otherwise.

Fourthly, do not upload poor quality sample data. You can search it, but do not upload it, because we do not want to add untrustworthy information. Fifthly, where you have a duplication, let us know. Was somebody mislabelled? Is it a genetic twin? Was it an uploading error? Was somebody tampering with the evidence? And when that happens, a Police Commissioner's enquiry as a matter of immediacy so that the turpitude of manipulation or errors are treated with in a logical fashion.

We treat with duplication information, that we remove duplicates where it is

found. We treat with the phenomenon of genetic twins, so that that fact and reality of duplication of DNA can be treated with. And then we deal with match reports, how we send to the Forensic Science Centre and how we send to the Commissioner of Police. So that again, we trace in a logical fashion this material and process flow. We deal with forms and we deal with reports.

So regulation 15 is a biggie. It is an important provision which has a number of safeguards managed in the process. Part VI treats with records. regulations 16, 17, 18, we deal with where we keep records, straight down to 23, in every institution that section 13 requires. Section 13 of the parent Act gives multiple platforms. The Regulations now treat with the steps that are to be taken in the management of records so that every location we have records that can be matched up to a court of law.

We deal next with Part VII, which is Regulation 24: Storage of Reference Samples. I want you to note here, we have not prescribed temperature, location, management, because what happens with the sample technologically can be managed elsewhere. Again, we fall in aid to the Metropolitan Police Commissioner, 2011 case, where that is a proper matter for guidelines. Remember, there is a safeguard for publication and gazetting of these guidelines. Is it perfect? No. It does depend upon training; it does depend upon resonance of training throughout the process, but legislatively around the world this is the way it is treated.

We treat with transportation in Part VIII, where you are transporting and you are delivering samples. We treat in Part IX with privacy standards and access. Privacy standards are in regulation 26 where we deal with the encryption—end-to-end encryption bases, so that we run less risk in turpitude finding its way through

from manipulation of systems. We deal with DNA disclosure in regulation 28, and then we get down to the miscellaneous provisions which is an important but practical step in how we manage records, where the original is kept, where the counterpart is kept.

Thirty seconds left. Hon. Members, it is high time. It has been 19 years. It has been billions of dollars. It has been thousands of cases. This Senate is faced with an excellent opportunity to just start. Just start. Get a fighting chance. It applies to sexual offences; it applies to murder; it applies to any place where forensic material may be used.

Madam President, I beg to move. [*Desk thumping*]

Question proposed.

Madam President: Sen. Mark. [*Desk thumping*]

Sen. Wade Mark: Madam President, I am very happy and pleased to rise and speak to the Regulations governing DNA. I would not go through the entire word. I am very familiar with it. [*Laughter*] I am dealing with the DNA Regulations of 2017 which would address the collection, the transportation, the storage, and most importantly, the entering into the DNA databank of DNA samples or other related matters relevant to that process.

Now, before I go into my contribution, I want to indicate from the outset, we would like to stand very firmly with the Attorney General, but I want to let him know that we do not like to stand on quicksand. These Regulations leave a lot to be desired and we intend to propose several amendments to these Regulations as we proceed. But I will explain as I go further why we see deficiencies, weaknesses, shortcomings, in these Regulations that are before this honourable Senate today.

Madam President, may I set the record straight? The Attorney General indicated—and maybe it might have been a genuine error on his part, but may I remind the Attorney General that the Opposition, then PNM, even with the amendments—first of all, they voted against the Bill of 2012 in the Lower House.

Hon. Al-Rawi: I said that.

Sen. W. Mark: But you also misled this Parliament—

Madam President: No, Sen. Mark—

Sen. W. Mark: All right, okay. All right. He made a statement to the effect—

Madam President: Yes.

Sen. W. Mark: Yes, I will try, Madam President. But, Madam President, he did make a statement to the effect that when it came to this House, they spent a considerable amount of time amending, and when it was returned to the other place it was unanimously agreed upon.

Madam President, he is showing—and that is why technology is so important. The record is showing that every single Member of the PNM Opposition voted even against the amendments. [*Desk thumping*] Every single one of them. I have their names here. And the date of that exercise is Thursday, April 26, 2012. It is in the *Hansard* record. So do not come and tell this Parliament that the PNM voted unanimously both in the Senate and in the House. That is wrong. So I needed to correct the record, Madam President. So, please, do not try that, especially when I am here. [*Laughter*] Try that when I am absent, not when I am here.

Madam President, the second thing I want to just bring to my colleagues' attention is a simple thing. It was in a *Newsday* article of—it was the 6th of March, 2018. At that time the hon. Attorney General was addressing or launching

something called: “Model Guidelines for Sexual Offence Cases in the Caribbean Region” at the Hyatt Regency. And my hon. colleague, the Attorney General, did indicate at that time that some 15,000 DNA kits were en route to Port of Spain. That was two months and 10 or to 11 days ago.

Now, the AG addresses us today, he said, as he is speaking, those DNA kits are being cleared at the Customs level. And I am happy that—it took longer almost than the *Fatel Razack* to arrive here, [*Desk thumping*] longer than the *Fatel*—and “ah doh know about de *Galleons Passage*, becör we are in trouble with that.” So, Madam President, here it is we have these DNA kits now arriving. I am happy that they have arrived. And as he said, they are being unloaded right now in Port of Spain at the Customs level. We are happy about that.

Madam President, may I indicate to you that this matter I want to deal with first of all, addresses the role of the Custodian, and I also want to spend some time dealing with the Forensic Science Centre. But before I do so, I want to share with you the importance of ensuring the independence of the office of Custodian. That is a very important office. And even the legislation talks about its independence.

Madam President, when you are dealing with DNA samples and profiles that are generated from those samples, you are dealing with people’s privacy and, therefore, the whole question of security and safety of those samples becomes very critical and very important. So we need strong security measures which are largely absent in the Regulations here. We are seeing some very vague—it is like the doctrine of vagueness permeating throughout these Regulations: “as soon as possible”, Madam President, “as soon as is practical”. You cannot deal with DNA in that kind of manner. We have to be more serious.

So, Madam President, we are advancing that strong security measures must

be implemented to ensure that the information on the database is used for the permitted purposes set out in the legislation and now in the Regulations. The Government requires stringent and effective safeguards in these Regulations, if we are to put in place and to ensure that the biological samples which are to be stored, are stored in appropriate and secured conditions.

It is therefore very important that the Custodian, Madam President, in Part II of the Regulations, deals with the roles and responsibilities of this officeholder. All we are told—and I will come to that in a short while—is that the Government has engaged a Custodian. We do not know when, but I know when it was, because it is in a report that was generated by the Joint Select Committee on National Security. So we have the date when the Custodian came on board. So we know the Custodian has been on board since January of 2017. They brought a Custodian on board.

Madam President, do you know in the legislation, as well as the Regulations, we do not know what are the qualification and/or credentials of this Custodian? We do not know if he is a scientist in genetics. We do not know if he is a molecular biologist. We do not know what the background of this individual is and the Attorney General spoke for his entire 40 or 45 minutes and he did not let us know who this person is; where this person is from. I understand the person is from Jamaica. Well, I am a Caribbean man, so I welcome Jamaica. But let us know if that is true. Is the Custodian a Jamaican?

Madam President: Sen. Mark, I am sorry, but I do have to interrupt here a little bit. We are dealing with the Regulations. The principal Act sets out how the Custodian is to be appointed. The Regulations are dealing with something different. So whether the Custodian, where he is from, that is not relevant to the

issue that we are dealing with—to the Regulations. Okay?

Sen. W. Mark: Madam President, that is the law that we are passing here, you know, and if we are passing law that is going to impact on the rights of citizens of this country, you are going to be asking people, as the hon. Attorney General has indicated, that close to—he talked about 70,000 citizens who will be forced, without their consent, to give their DNA samples. And we, here, are passing these Regulations, or they would like us to support those Regulations, and we are talking about the roles and responsibilities of a Custodian. And what we are saying is that, we would like to know—and I thought that was a legitimate area, but I am guided by you, Madam President. That is an area that we wanted to get some clarification on. We would have wanted to get some clarification of how would this person, if he is to maintain his independence, carry out these roles and functions?

Madam President, hear what the Regulations say:

“The Custodian shall ensure that all data entered into the Databank is accurately loaded at time of entry onto the Databank.”

Right? It goes on to say:

“The Custodian shall at least once a year conduct an on-site visit to the Forensic Science Centre to ensure that the Forensic Science Centre has the capability to perform the requisite DNA service.”

Madam President, how is this going to be executed? This Custodian is going to be operating from where? The Attorney General did not tell us where. All he said is that there are five critical areas. He talked about Custodian; he talked about location; he talked about equipment; he talked about two other factors; technology as one and expenditure and training. We are being told that this Custodian is going to be responsible for entering into the databank, all these samples. But nowhere in

the section that deals with the roles and responsibilities of the Custodian, are we told what are the standards that will guide this individual.

So what we have seen, Madam President, in 4(1) of Part II, all we are told is that:

“The Custodian shall, from time to time, set the minimum standards, in accordance with international best practices, for entry onto and removal of data from the Databank, which shall be published in the *Gazette*.”

Madam President, we are passing laws. You are going to take samples of accused persons, of suspects, of detainees, of prisoners, of deportees, persons of interest to national security, and we are being told that the Custodian will be able, on his own, to establish minimum standards.

Madam President, do you not believe that we should have sight of those standards? Because I understand that this Custodian has been engaged for one year and almost two months now, or maybe three months. Should we not have some minimum standards before us? So that we are dealing with Regulations and we would like to know: What are the minimum standards that are being set by this Custodian, and his deputy?

Madam President, what is even more alarming is that this Custodian is appointed by the Executive. *[Interruption]* No, we are talking about the independence of samples. Madam President, do you know that samples can be fabricated, can be contaminated, can be intentionally compromised? These are real situations. You are dealing with people's personal lives. You are dealing with people's personal characteristics. And if you do not have proper systems in place, you are going to compromise people's personal security and safety in the country.

Hon. Al-Rawi: What about the victims?

Sen. W. Mark: The victims are important. I am not arguing that. But let me tell you something. People have—anyway, “leh me doh take him on.”

Madam President: Yes.

Sen. W. Mark: I agree with you. Let me just “doh take on this gentleman.” He is there temporary, in any event.

Hon. Senator: And he causing trouble?

Sen. W. Mark: And “he causing trouble” already. So, Madam President, what we are advancing here is simply this. Hear what it goes on to say:

“The Custodian shall at least once a year conduct an on-site visit to the Forensic Science Centre.”

Madam President, I would have liked the Attorney General to tell us if the Forensic Science Centre has been accredited under ISO/IEC17025 Standards. I would have liked to know this because if you are certified and accredited, standards are established for you. But if you are not accredited, anything can happen. And not only that. This individual, the Custodian, is being asked to go to this centre, the Forensic Science Centre, at least once a year to ensure everything is—the requisite DNA service is in place, et cetera.

But, Madam President, there is no provision in the Regulations for this gentleman to visit the private laboratories. Who is going to establish the standards for the private laboratories? Who is going to visit those private laboratories, not that same Custodian? But how come in the Regulations there is no provision for this gentleman to go to these private laboratories to ensure that the standards that are set and established at the Forensic Science Centre to deal with DNA sampling—how come he is not extending that to those other private laboratories that would be conducting sampling exercises on behalf of the Government? That

is missing from the Regulations, Madam President. That is why I say that we have to propose certain changes to these Regulations. In their current form they cannot stand.

So, Madam President, we are seeing where the Custodian has a lot of power and we have no problem with that because he has a very critical role and responsibility to exercise, and we expect that. But when we look at regulation 4(1) of the Regulations again, we find that, for instance, it is purely subjective; it is discretionary. And why are we seeking to establish minimum standards? Why do we not establish standards that are acceptable in terms of international best practice? But we are going to, what is called, minimum standards?

3.15 p.m.

Madam President, hear what regulation 4(2) of the section dealing with roles and responsibilities of the Custodian, hear what this gentleman does. He sets standards under this regulation, and standards shall be observed for the entry and the removal of data in the databank; he has the power to reinstate, suspend and amend DNA profiles in the databank; and he has the power to search the databank. This Custodian has a lot of power. The question here: What are the mechanisms in place in these Regulations to ensure proper accountability? In other words, to whom is the Custodian accountable? To whom is the Custodian accountable? Is he accountable to the Minister of National Security and the Cabinet who appointed them? These are areas, and so on, that we are concerned about. And, Madam President, as you proceed, you see the kind of power that this gentleman has in this whole arrangement.

Madam President, may I advise that when you look at the South African DNA Regulations, you would see where in those Regulations there are serious

standards that have been established under the South African arrangement where we do not find the same standards being established under the arrangement that we are now examining as it relates to the Custodian who is going to be visiting at least and conducting at least once a year, a site visit. That is an area that we have some concern about. So, we are saying when we look at the standards that have been established by the South Africans, we look at the United States in terms of Rhode Island state, we are seeing some very solid, robust standards that are being established to ensure that there are proper systems in place to avoid any tampering, any contamination, any fabrication, or any compromising of those samples that are being provided.

Madam President, I am very happy to report that when I looked at the National Security Committee Report, they reported since in 2016 the need for the Government to bring Regulations to this Parliament. That was since June and July of 2016. We are today, based on the 5th of March, the signing-off of these Regulations, we are now dealing with those Regulations in 2018. So for 2016 to - 2017, 2017 now to 2018, almost two years. What was the Executive doing as it relates to bringing these Regulations to the Parliament so that we can use it as a tool to fight crime in this country?

Madam President, the Forensic Science Centre which is very critical in these Regulations that we are debating today, that centre has a lot of challenges, and that is why I was hoping that the Attorney General would have told us—he said when the Prime Minister comes this evening from his visit abroad he will bring us up to speed with a new laboratory.

Madam President, we read in the literature that some five years ago a centre was supposed to be established in Carlsen Field, but nothing has happened and I

would like to know, where is this new centre going to be established? Do we have to wait until the Prime Minister tells us about it? But, Madam President, I want to also indicate to you the importance of ensuring that we have proper standards so that, for instance, people's DNA samples would not be compromised.

The hon. Attorney General made reference to this young man who would have been 31 years today had he lived, the young Akiel Chambers. I read with shock and somewhat almost—it is almost incredible to believe that from the Forensic Science Centre, if the report in the *Express* turns out to be true, swabs that were taken of this child at that material time, just went missing from the Forensic Science Centre. They say that there was an underwear, a shorts—

Madam President: Sen. Mark, please let us not go into it. You may—

Sen. W. Mark: Yeah, but what I am saying, I am just telling you, Madam President, that the centre seems to be a hotbed for all kinds of activities. So they steal material from the centre, the centre is understaffed, there are thousands of matters that are pending at the centre, and this is the same centre that we have now officially designed, or designated, as the official centre for DNA sampling and for the establishment of the DNA database. That is the centre. So, are we serious? I do not think we are. These are very serious matters that we are debating this afternoon.

Madam President, I want to ask you and invite you to look at page 6 of these Regulations, where we are told that persons can be detained by a police officer, and/or a qualified person. Okay? If you are coming into the country, Madam President, you can be held at the Chief Immigration Officer level, that is, the port of entry which could be the place of detention. So you are coming into Trinidad and Tobago, you can be detained at the port, at the pleasure of the Chief

Immigration Officer who shall arrange, according to the Regulations, to have a qualified person to attend to the port of entry, or place of detention for purposes of taking a sample.

Nowhere in the Regulations does the Government, or the Attorney General, tell us whether the infrastructure is in place. What kind of infrastructure would be in place to facilitate this arrangement? Not only that, when somebody arrives at the port and they are detained, how long, what is the time frame it must take for the Chief Immigration Officer to get a qualified person to take that person's DNA? That is absent from the Regulations.

Madam President, you go to the area of whether it is a rehabilitation centre involving children, whether it is a psychiatric ward or hospital, what you have is a situation where there are no specific timelines given for the taking of DNA samples. Everything is up in the air. Everything is as soon as possible. You cannot run an administration like that. When you go to the South African Regulations and you go to the Regulations out of the United States, there are specific standards and there are specific timelines that you must satisfy. We have left it open and loose, how can that be justified and be fair? Even though as my colleague said next to me, opposite me rather, what about the victims? In other words, the people who have committed the crime they must do the time and they have no rights. Forget them.

We do not live in that kind of society. Everyone has rights even though they are convicted. [*Desk thumping*] But for the PNM anytime you are convicted you have no rights, and the gentleman who made the remark is a lawyer.

Madam President: Sen. Mark.

Sen. W. Mark: Sorry, Ma'am.

Madam President: Sen. Mark, do you know what you are sorry for?

Sen. W. Mark: I am sorry about the lawyer.

Madam President: Right. He is a Member of the Senate.

Sen. W. Mark: Yes, the hon. Member of the Senate—

Madam President: Thank you.

Sen. W. Mark:—who is an attorney-at-law.

Madam President: Thank you very much.

Sen. W. Mark: And I was surprised that he would have made that statement.

So, Madam President, this an issue that we are concerned about because we are not getting from these Regulations any specifics coming from the Government as it relates to this matter. So these are areas that we would like to have some further clarification on.

Madam President, we talk about information technology. What is the technology that will be introduced to effect this measure? You know, the Attorney General did not tell us. All he said that equipment has been purchased, technology has been purchased and the Prime Minister will report, but the Prime Minister is not in the Parliament. We want to get answers on these matters.

Madam President, you know who are the people who are qualified to take samples? Any police officer and a qualified person, either a medical practitioner or a registered nurse in accordance with the relevant Act. The question I want to pose to the Attorney General who is not here, I would like to ask, Madam President, through you, what kind of training are these police officers going to be experiencing? [*Desk thumping*] Have these police officers been given the appropriate training, and have they been certified by the appropriate institution for the taking of samples of citizens of this country even though those citizens may

have offended the law? I am not seeing these things in the legislation. So we do not know if these policemen—

Well, Madam President, I do not know—I read with alarm this morning where somebody who has been charged was charged under the wrong law, and that is a simple matter. So, if you are charging somebody under the wrong law, which is a simple matter, and you are trained and you are supposed to be there for a number of years, what would happen when you have introduced new legislation and these are the people who are supposed to be taking DNA samples of citizens of this country? Have they been trained?

There are technicians involved, there are analysts involved, there are police officers involved, there are nurses involved, there are doctors involved. They are supposed to be trained, they are supposed to be certified, but where is the evidence here? Did we get that from the hon. Attorney General's submission? We did not. So we do not know. We do not know what is going on with the technology. And, Madam President, you know and I know, when you engage in the actions that this Government is about to embark upon, we want to make sure that the rights of the citizens are not infringed unnecessarily. Everyone has rights and we have to protect those rights. So that is an area that we would like to have some clarification.

Madam President, I go to page 8 of this report and this one is frightening. I want to read it very slowly so that you will understand the slipshod approach that this Government is taking when it comes to this question of DNA Regulations and DNA sampling. Hear what the Government is saying in regulation (3) on page 8:

“Notwithstanding the fact that a DNA profile”—

“Da’is after yuh put in yuh sample, eh”. You have your sample, from your sample

you get your profile, and you input that into the system and a number emerges.

They are saying:

“Notwithstanding the fact that a DNA profile does not meet the minimum standards for loading onto the Databank, the Custodian may, at the request of—

- (a) the Commissioner of Police;
- (b) an investigating officer...; or
- (d) the Central Authority,

conduct a search of the Databank against the DNA profile”.

So here it is, the—

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

Sen. W. Mark: Yeah. Madam President, so fast? [*Laughter*]

Madam President, imagine DNA standards are at a minimum, and even with minimum standards they are saying to this Parliament that the Custodian, even though the DNA profile does not meet the minimum standard, he, once a request is made by the Commissioner of Police, an investigating officer acting in the course of a criminal investigation, or the Central Authority, they shall conduct—that is the Custodian shall conduct a search of the databank. How serious are we? We are not guinea pigs, you know, that are on an experiment. We are dealing with human beings who have human dignity, and you must protect people’s human dignity in spite of whatever offences they might have committed.

So, we are very, very, very concerned about—and, Madam President, there is a provision that says:

“(7) The Custodian...where he is informed by the Commissioner of Police of the source and reason for the duplication devoid of any personal

information”—he shall—“take all reasonable steps to remove the duplicate DNA profile...”

What does that mean? It goes on to say that:

“... the Custodian shall, as soon as possible, prepare a match report and issue the match report to the investigating officer...”

It is “as soon as possible”, “take all reasonable steps”. These are vague expressions. We cannot be serious. The Government cannot be serious to bring this here, this afternoon, and expect us to pass it with—blindfolded. You cannot be serious.

So we are going to be proposing, at the appropriate time, several amendments to strengthen these Regulations and we will submit them to you, hon. President, so that you will have sight of those amendments because we believe that as legislators, as lawmakers, we are here to strengthen legislation and to ensure that there are standards, that there are procedures, that there are safeguards, that there is security for all and sundry in this country and not allow people to simply exploit circumstances and situations.

Madam President, there are several instances where DNA has been fabricated, contaminated, compromised and innocent people have been jailed, and sentenced, and put away for life, and we cannot allow, “because the Government say so”. They bring Regulations and say, “Well look, we must pass it”. No, no, no, we are not passing Regulations “just so”. We are saying that we want to help the Government, we want to get this thing working, but we want to ensure that the Regulations are robust and they can stand the test of time. That is what we want to ensure.

Madam President, there is so much that we have to say, but I cannot take up

everybody's time. So I will have to rest my case, but I will tell the Government that—do not bring weak, deficient, unacceptable Regulations to this Parliament and expect a blanket support from the Opposition. [*Desk thumping*] We are going to do our duty to the people of this country. We are going to strengthen the legislation. We are going to submit amendments to you, Madam President, to make sure that we strengthen this legislation through the Regulations so that we will have a better arrangement at the end of the process.

Madam President, as I said, I can pass on to you, and to this honourable Senate, the DNA Regulations of South Africa, the DNA Regulations of Rhode Island state, and also the Jamaican legislation and to see the standards that they have set. Madam President, I want to thank you for giving me the opportunity to make my contribution. Thank you very much. [*Desk thumping*]

Sen. Taurel Shrikissoon: Thank you, Madam President, and colleagues, as we assemble here today in this honourable house to debate the Regulations concerning the DNA Act of Trinidad and Tobago, and I think the latest edition would be 2014. Today is indeed a very important date for me in the life of using DNA in Trinidad and Tobago, but I have noted that in 2012 the 2007 Act was repealed, and in 2014 amendments were brought to 2012 Act which really demonstrates, or which really places DNA or positions DNA for use in the courts of Trinidad and Tobago.

As I begin, because of that time we were being governed by a different political party, I wish to commend the efforts of the last administration in really [*Desk thumping*] amending the DNA laws so that it can be more relevant and more appropriate in determining or in the administering of justice in Trinidad and Tobago. So, I do think they need to be commended for that and I acknowledge their efforts.

The Attorney General in his opening presentation outlined the many functions and use of DNA in Trinidad and Tobago, and I too would just like to touch on a couple of benefits of using this DNA legislation, or allowing this DNA legislation to be enacted in Trinidad and Tobago because one of the primary benefits of DNA is that no two persons would have the same DNA profile, probably except in the case of identical twins maybe, and DNA evidence collected from a crime scene can link a suspect to a crime or eliminate one from suspicion of having performed that crime.

It can also be used to identify relatives of a criminal or someone who is related to the criminal, or the person involved. It can be used to match a suspect to a crime scene, or for one single person, to link one single person to multiple crime scenes, or even those involved in performing sexual assault and other violent crimes.

In Trinidad and Tobago, today, we have a significant problem with crime and, therefore, if this piece of legislation helps us administer justice, then so be it, I welcome it. Just in a matter of reflection, and just for a minute or two, I just would like to reference one statistic and it is that of the murder rate of Trinidad and Tobago over the last five years. In 2013, we had 408 reported murders; 2014, 403; 2015, 420; but I just would like to report against these statistics the murders that have been detected. So in 2013 while it was 408, it was just 56 detected in 2013. A detection rate of 14 per cent; in 2015, it was 420 reported, 57 detected, just about 14 per cent; and in 2017, 495 reported, 89 detected, just about 18 per cent.

What is my point with this? My point is saying, here we have a runaway murder rate as in other areas of crime, but our level of detection is extremely low and it is not even touching 20 per cent and, therefore, if this piece of legislation can assist in the detection of criminal offences and offences against the people of

Trinidad and Tobago, then I would support it because it has its place. [*Desk thumping*]

I can quote the statistics for break-ins and robbery as well, but I do not think we need to go into that because the statistics on murder clearly demonstrate that we have a low detection rate and, therefore, as a country we need to address this, and an increase in detection rate on its own can serve as a prohibition against criminal offences.

Madam President, with respect to the Regulations here before us today, the Regulations before us are divided into a couple sections and it pertains to the role and responsibilities of the Custodian taking samples, analysing profiles or samples, searching the databank, records being held, storage of samples, transportation of samples, privacy of information, and a miscellaneous section. So, the Regulations before us are quite comprehensive because they address a number of areas.

Madam President, at the beginning of the Regulations, regulation 3(2) and Sen. Mark touched on it briefly, it says here that:

“The Custodian shall at least once a year conduct an on-site visit to the Forensic Science Centre to ensure that the Forensic Science Centre has the capability to perform requisite DNA service”.

I am saying here, if this level of service, and this level of analysis, and this level of research is so critical to Trinidad and Tobago, then I am a little bit concerned that we are only going to do this at least once a year. I know that the interpretation of “at least” can mean more than once, but I am of the belief that the Custodian shall ensure that the Forensic Science Centre has the capability to perform DNA analysis at all times.

I really do not think that this once a year visit is sufficient to convince me

that the centre will be operational for the purpose of DNA analysis at all times because it is a critical statistic. It is a critical piece of research and a critical piece of information that will link evidence to a criminal activity, and this Forensic Science Centre has to be effective and efficient in the administering of the information that is required, and once a year in my mind is not convincing that this centre will be fully operational. So, I ask for consideration for that and the Custodian will be responsible for ensuring that the Forensic Science Centre has the ability to perform its work at all times and not just at a one-time visit per year.

Madam President, as we link this to the roles and responsibilities of the Custodian, regulations 4 to 6 refer to the standards to be determined by the Custodian, and Sen. Mark touched on a very important point with respect to the Custodian. It says here in regulation 4 of the Regulations before us, regulation 4 states that:

“The Custodian shall...set the minimum standards...for entry onto and removal of data”—on—“the DNA Databank”.

So, the Custodian can set the standards for entry as well as removal. Then clause 4(2) says that the Custodian can also now, in addition to setting the standards, he or she can enter, he or she can amend, or he or she can delete.

So not only is the Custodian responsible for the standards, but the Custodian is also responsible for entering data actually onto to the database.

5(2) is saying that:

“The Custodian shall keep an up-to-date log of all data reinstated...suspended, amended or deleted...”

So now the Custodian, who has set the standard, is now entering and has the ability to delete or amend, and then 5(2) is saying when he does that he or she keeps the

log. And then regulation 5(3) says the Custodian shall now report to the Minister, or give an annual report I should say, or submit an annual report indicating the samples that have been suspended, amended, reinstated or deleted.

So, the Custodian is the check and balance of the power onto himself because he is establishing the standards by which to do it, then he is doing it, then he is saying okay, then in 5(2) I will keep the log to myself, but I will report onto me of the activities that I have done and then I will report annually on what I have done. In my mind, there is no segregation of duties and no internal controls that keep the Custodian in check in performing his function. Too much autonomy is given to the Custodian here with no check and balance. So, if the Custodian decides that he wants to delete or amend, the Custodian is well within his right to do so.

If he does not update the records because it is his records that he is keeping, it is okay, and then if he does not report on it the entire thing slides. And so, as an audit function, or on an internal check and balance on the role and function of the Custodian, I think this needs to be addressed. Too much powers vested in the Custodian and it remains unchecked.

Madam President, there is an aspect of that regulation which concerns me a little and it says here in regulation 5 that the Custodian can delete or reinstate. If the Custodian is deleting and has the ability to reinstate, then where is the data held during that time? How can something be referred to as having been deleted and then at a later date reinstated? Where is the reservoir, where is that storage, or where is that data being held and what are we really referring to as deletion when we say the Custodian has the ability to delete and reinstate?

I am little bit concerned about that.

3.45 p.m.

Part III of the Bill refers to taking samples. We were told today, by the hon. Attorney General in his address, that there are probably some 15,000 swabs somewhere that will become available for testing. What I am seeing here is that regulation 7 of the Regulations refer to taking samples, but nowhere in the Regulations does it specify how the sample is to be taken. It does not specify the type or the mechanism or the package or the swab that will be used to take the sample. And then, how is it that the Attorney General can list here the type of swab that will be introduced, but the regulation does not govern what type had to be purchased?

So I am a little bit confused here, and whether or not the swab or the package that he has proposed is appropriate. All I am saying is we need to specify in the regulation, the type of sample kit that will be used and the content.

And I just want to quote from the DNA Regulations of Canada which says: “The Commissioner”—and this is from Canada—“must approve a DNA Data Bank sample kit that ensures the integrity of samples of bodily substances transmitted to the Commissioner. The kit must include

- (a) detailed instructions on the procedure for collecting and preserving a sample and how to prevent its contamination;
- (b) a sample collection medium that allows the sample to be safely handled and preserved...; and
- (c) the items necessary to collect the sample.”

If we are empowering many people to take samples then the operating procedure to collect the samples should be standardized, the equipment used should be standardized, the procedure and the instructions along with it should be labelled

effectively to each package. And I do believe that should be part of the Regulations as well.

Madam President, in terms of the taking of samples, regulations 7 to 12 also specify samples being taken from crime scenes, private hospitals and health facilities. In each of these regulations, it goes on to say that the sample shall be forwarded to the Forensic Science Centre. That word “forwarded” there gives me the impression that once taken, and a third party can get involved in transporting this sample from where it is taken to the Forensic Science Centre. That is the impression of “forwarded” for me.

But when you go the Act that governs the DNA collection and you go to section 23(1), it says here a police officer or qualified person who takes a sample from a person under this Act, as soon as practicable, shall submit. So in one case we have the Regulations saying “forwarded” and the Act is saying “submitted”. In my mind, “submitted” has a personal connotation with it, where one submits a sample that he or she would have collected. Whereas the Regulations are saying it can be forwarded and the Regulations even provide for storage and transportation. So, in my mind, there is some issue there that I think we need to address to indicate whether or not the word “submit” in the parent Act requires the person who collected the sample to submit or, according to the Regulations, where it says to be forwarded, the sample can be forwarded. In my mind, that needs to be addressed in the Regulations, if it has to be harmonized with the parent Act.

Madam President, Part IV of Regulations also pertains to analysis of samples. This analysis of samples can be performed by the Forensic Science Centre or an approved laboratory regulation 13 says:

“(1) Subject to subregulation (2), where the Forensic Science Centre

receives a reference sample, the Director of the Forensic Science Center shall ensure that the reference sample is analysed and a DNA profile generated as soon as possible by a Forensic Science Centre or an approved laboratory.”

It also says the same in regulation 13(2), with respect to crime scene material. Here is my question: Under what conditions would a sample be sent to an approved laboratory and not to the Forensic Science Centre? I do not know. How will the laboratory become approved? Who is responsible for transporting the sample from the Forensic Science Centre to the approved laboratory? Is the software at the approved laboratory consistent and compatible with the software at the Forensic Science Centre? My reason for that is to say that the reporting requirements, the output of the software has to be almost the same in order for us to have consistency in reporting it.

What is in place to ensure that the approved laboratory does not maintain a copy of the profile or maintains confidentiality of the sample and data generated? Who establishes the paper trail to indicate that the Forensic Science Centre has released a package to an approved laboratory? And who is accountable when the packages return? All of this concerning an approved laboratory is absent from the Regulations. And if regulation 13(1) and 13(2) refers to the use of an approved laboratory then, in my mind, we need to establish Regulations that govern how the approved laboratory would function. I think that is missing in the regulation.

Madam President, also there may be times that the sample received may not be appropriate or may not be of the form that can receive the proper analysis. And I am asking in the Regulations: Is it possible for the Regulations to consider where a second sample can be requested, probably based on the fact that the first sample is inadequate, noncompliant, decomposed or even contaminated? Is there a

process whereby a second sample can be referred to or can be requested?

Madam President, regulation 15 of the Regulations pertains to the request for information from the Custodian, with respect to DNA samples. It outlines, in Schedule 1, a form which specifies or which must be filled out in order to access information from the Custodian.

However, this form fails to address the purpose for which the search is being requested. It does not address whether it is for criminal proceedings, human trafficking, sexual offences, anything like that. The Schedule or the Form 1 which will be used to request information from the Custodian does not indicate the purpose for which the request is being made. And therefore, I ask for that to also be considered, with respect to that form.

Part VI of the legislation pertains to records that are being kept or that are required. Regulations 7 to 12 says when samples are collected, it needs to be accompanied by an entry into the DNA record when it pertains to a sample or an entry into the register of crime scene material where the crime scene material is being sent for analysis. However, Schedule 3 of the Regulations gives a step-by-step listing of the information that should be submitted to the Forensic Science Centre. These include:

1. "Date received
2. Name and date of birth of donor
3. Involvement in matter..."

—among other things. There are eight of them.

However, at no place in that Schedule 3 is a copy of the DNA record or a copy of the entry onto the crime scene material register is required. And therefore, when a sample is being submitted at the Forensic Science Centre, I do believe, as

regulations 7 to 12 specify, a copy of the entry of the DNA record or of the crime scene register also needs to be included in Schedule 3 for submission at the Forensic Science Centre.

Further, Madam President, with all of this information requirement at the Forensic Science Centre, when a sample is to be submitted, then we need to ask the question: What happens when a sample is going to be submitted and there is missing information?—the forms are not completely filled out, or the seal on a package appears to have been broken or even tampered with. When that person at the Forensic Science Centre is receiving that package, if that person is not comfortable with the quality of the package or the information requirement that he or she is not being made available, then what happens to the sample at that point? The Regulations do not speak to that. Where an unacceptable package is presented for whatever reason, the Forensic Science Centre is unable—from the Regulations, we do not know how a package like that would be handled.

Part VII of the Regulations pertains to storage, storage of the material. Regulations 24(1) and 24(2) outline where and how the packages are to be stored. It is very specific, even with the parent Act, saying that the packages need to be sealed and labelled and need to be held in a designated area and an officer will be responsible for managing that area.

The regulation here does not state what happens when the package that is delivered is not sealed, or, when the package, having been received that is sealed, is now leaving after storage and the seal on it is broken. The person who is designated to manage this facility needs to confirm that a sealed package was received and upon retrieval a sealed package was delivered. That way the integrity of the sample or the package is maintained and that too is absent with respect to

storage.

Section 8 of the Regulations pertain to transportation, and very specific care was given to ensure that the transportation of the sample is done in a way to ensure the integrity of the sample and the sample is not damaged. However, we all know that during transportation many things can occur. What happens to a package when it becomes damaged during transportation? The regulation here is also absent on how to treat with that.

Part IX of the Regulations pertains to privacy standards, security and access. Part IX of the Regulations here, which deals with regulation 26, regulation 27 and regulation 28, pertains to privacy and access to the databank and disclosure of DNA data.

I raised this point earlier, that with respect to an approved laboratory, what is in place to prevent an approved laboratory from sharing information with unauthorized sources? I raised that before. However, regulation 28 also allows a country who wishes to access the DNA data to be able to request this assistance through the Central Authority in Trinidad and Tobago, and they shall do so in writing. I am asking, given that we are now sharing this information on an international sphere, or globally, are there any arrangements in place to ensure that when the country receiving the assistance from Trinidad and Tobago, is obligated to provide confidentiality of the data provided? Because once it gets out of the hands of Trinidad and Tobago, we have no control over it, and, therefore, a privacy element or confidentiality element, with respect to international partners, also needs to be considered.

Madam President, my intent here today is not to be long but to say that while I do commend the last administration for the work done in tabling the DNA

legislation, I really want to commend the efforts of this administration in bringing the Regulations to this House in such a short time since they have been here, to operationalize this Act. [*Desk thumping*]

However, Madam President, in going through the Regulations, I have found some element of gaps that I am seeking to have addressed in an appropriate way and I trust that the Government would be receptive to the suggestions.

So, with that in mind, Madam President, to just wrap up and to conclude my contribution today, I did ask for some bit of consideration for the Custodian to be able to ensure that the Forensic Science Centre is able to perform its work at all times and not just limited to at least once a year.

I have raised the issue of the powers of the Custodian. The powers given to the Custodian makes the Custodian accountable unto himself or herself. Segregation of duties and internal controls to ensure that the role and function of the custodian is not performed in any ill manner and as a check and balance for the integrity of the information need to be considered in strengthening its role and function of the Custodian.

The sample kit referred to by the hon. Attorney General also needs to form part of the Regulations to define what the sample kit entails, the procedures for taking a sample and the procedures for storing—reason being not all persons will have full information at the time they are required to take the sample. So the information with the sample kit should also be part of the Regulations.

I did have some element of confusion in my mind with the samples either having to be forwarded to the Forensic Science Centre or, according to the Act, submitted. I do ask for some element of clarity with respect to that.

In addition, when the data is being submitted to the Forensic Science Centre,

Schedule 3 does not permit a copy of the entry into the DNA record or a copy of the entry into the crime scene register to be submitted with it. I am asking that Schedule 3 be amended to include this. The Regulations in no way address how to treat with samples when they are being submitted and there are incomplete records or damaged sample packages.

Part VIII, which deals with storage of samples, does not ensure that samples received are sealed and the person who is retrieving the sample is retrieving a sealed package. It just needs to be strengthened there. Under what conditions could a second sample be requested? And the purpose of the search should be included in Form 1. Defective packages due to transportation also need to be addressed.

And lastly, very importantly, I think the area of using the approved laboratory remains very much unaddressed. There are several issues, with respect to the approved laboratory, in terms of how it obtains approval, the software requirement, the privacy element, the sharing of information.

And so, Madam President, with respect to approved laboratories, I do not think a piecemeal fix to the Regulations can help but an entire section designated to approved laboratories addressing all of the concerns would be really welcomed in strengthening the legislation.

And with respect to international cooperation, I did ask that some element of agreement with international bodies be established, that the privacy and confidentiality of the information obtained be kept confidential between the agencies or among the agencies.

So, with that, Madam President, I thank you for your time. I do commend the Government for bringing these Regulations. I trust that they will receive my

recommendations in good light and I trust that this really helps Trinidad and Tobago in the delivery of more effective justice to our citizenry. Thank you, Madam President. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President for the opportunity to join this debate. Madam President, we are here on account of section 34 of the Administration of Justice (DNA) Act, No. 5 of 2012. And Section 34 of that Act, Madam President, provides for the Minister to make Regulations for the purpose of giving effect to this Act and provides that Regulations made under this subsection are subject to the affirmative resolution of Parliament.

Madam President, let me make a few things clear. The first is, I followed the proclamation of the anti-gang legislation recently, and I congratulate the Attorney General, the Parliament and the country for putting that legislation in place. It is vital legislation. But, not too long after it was proclaimed, I saw a report attributed to the Commissioner of Police. The Commissioner of Police was saying the legislation is no magic wand, and it is consistent with what I say with every piece of legislation that comes to us.

Sometimes a Bill comes to us and we create the Act, and we leave the Regulations unattended. Sometimes we create the Bill, and the Regulations come before us and they are approved, but the administrative, technical, financial, human resource, all those matters are left unattended, and our very good work fails. We have before us a rare opportunity to get everything together, as it relates to the use of DNA evidence in the criminal justice system in Trinidad and Tobago. It is a rare opportunity for us as legislators, and it is one that we should embrace today.

Madam President, this piece of legislation, or these Regulations, does not

work on its own. We have as a Senate, worked on several pieces of criminal law legislation already and we have those that are still to come, based on the legislative agenda. Madam President, these Regulations and the Act, giving rise to the Regulations, will work in tandem with plea bargaining, for example. The disclosure of evidence rooted in DNA may lead to a plea bargain. And we have had the opportunity to set in train in this country, plea bargaining legislation. This, if it is the sort of evidence that is disclosed, may lead to a decision on the form of trial, because in this Senate, we have had the opportunity to participate in a debate on judge-only trials. And it may give evidence that is available, it may give rise to a decision and election on the type of trial. This may work in tandem with electronic monitoring. Of course, that is the classic example of a piece of legislation that has been passed but suffers on account of the administrative and other arrangements not being in place.

This, Madam President, will work in tandem with bail legislation. And we have worked on bail legislation in this House. We have worked to, for once, give something for criminal accused looking to access bail to work with. And we made some changes in relation to the access to bail.

This will work with the current piece of legislation being considered in the other place, relating to the establishment of a court with criminal jurisdiction, a specialized court with criminal jurisdiction.

This may work with pretrial procedure, which has been in and out of Parliament in various forms, but I am speaking about legislation that aims to eliminate or address the issues relating to indictable offences and the proceedings relating to those offences.

This will work with anti-gang, and it will work with anti-terrorism. So this

is not a simple piece of work we are doing here today. We are advancing the cause of the criminal justice system. We are trying finally to introduce a piece of technology that has existed and has been used in other jurisdictions, which we wish to emulate. And it is in our hands today and I hope that we do the right thing. So section 34 brings us here.

Madam President, let us look at the history. As the Attorney General has said, almost 20 years ago, we embarked on this road, almost 20 years ago, 1999. And 1999 is a very interesting year. It is the last time, Madam President, that the murder figure had been under 100 murders a year, 1999. And I am not saying that DNA is used exclusively in murder trials. It is used in trials across the board. But 1999, we were at 93. And in very few years thereafter, we went down. A most significant year in which we went down was the year of the infamous state of emergency. In very few years we went down.

In 1999, we introduced the DNA Identification Act, 2000, and that piece of legislation addressed the basic elements of DNA legislation. Of course, in retrospect we would see that it was deficient. But in the year 1999, and in 2000, when it was passed, it represented, I suppose, the best that the legislators could do at the time.

It addressed the issue of taking the samples. It addressed the issue of a court order leading to the taking of the samples. It addressed the process. And towards the end I will talk about the process, and perhaps, one of the most vital parts of DNA legislation is the chain of custody in relation to the samples, and other parts, in terms of the establishment of the DNA board and the labs and the work of the forensic analysis, and so on. That was the 2000 Act. But it was never proclaimed. It sat there and it was never proclaimed.

And eight years would pass before, as a Parliament, we got back on track with DNA legislation. But happened from 1919 to 2007, when we got back on track? Well this country experienced 2,000 murders. On the one hand, we understand that we have a role in suppressing criminal activity, discouraging criminal activity. Some people believe that hanging is a disincentive. We could argue over that. But we were dealing with 2,000 murders from 1999 to 2007; that period when we had DNA legislation, we had a piece of legislation and we did nothing.

So that, on the one hand, you have suppression in relation to crime. But on the other hand you also have the criminal justice system. And think, think about whether this may have been a catalyst in dealing with criminal cases at the time. And it may have, I do not know, the extent to which. We could only reflect on it.

In 2007, we got back on the ball and out of that came Act No. 24 of 2007. And that, Madam President, in the similar way, built on what was in place in 2000 and not proclaimed. So again, Act No. 24 of 2007, the DNA Act, dealt with taking the sample, introduce the concept of the protective services and persons who may be at a crime scene or may be expected to be at a crime scene volunteering their samples. It dealt with what was called post-collection procedures, addressing the issue of chain of custody. It dealt with the lab, which we have discussed here and everybody would talk about the pros and cons of the Forensic Science Centre as the lab. It dealt with the issue of the DNA board and the databanks, and so on. So this expanded on what was in place in 2000, and what was not proclaimed. And the Act No. 24 of 2007, as the Attorney General pointed out, repealed the 2000 legislation, which was never proclaimed.

Madam President, from 2007 to 2011, nothing was done in relation to DNA,

including implementing that Act. Nothing was done. And between 2007 and 2011, four years, there were another 2,000 murders. And again, on the one hand you would say that law enforcement should have been engaged, and we as a society should have been engaged in suppressing, disincentivizing, discouraging the murders. But you have to ask yourself if the prosecution, if the investigation, the Judiciary had at its disposal something which has clearly assisted criminal justice systems around the world, those numbers may have been different.

So from 2000, Madam President, 1999, the last year we were under 100 murders a year, from 1999 to 2011, 4,000 murders. And I am not even going into the other categories of crime.

4.15 p.m.

And then in 2011, we embarked on a piece of legislation that gave rise to the Motion that is before us today. And that is the Administration of Justice (DNA) Act. And I listened to my friend, Sen. Mark, my very good friend, and I make two comments on his contribution.

First is to say, I think the word is “gall”, Madam President, I do not know if it is—I hope it is parliamentary—but it is a proper English word. [*Interruption*] No I think it is gall. My friend had the gall to ask, what were you doing, what was the Executive doing from 2016 to 2018, in bringing these Regulations?

Well, we were busy fixing everything you left undone and halfway done. That is what we were doing. [*Desk thumping*] Because in the same breath when that part of your brain reaches to formulate the question—“What were you doing from 2016 to ’18?”—it should have triggered a question in your own mind: What was I doing from 2011 to 2015? [*Desk thumping*] To me, that is how it should have worked. [*Laughter*] I plead corrective action. What were you doing, Sen. Mark?

This was a piece of legislation. On one occasion before that, you did not get the support of the PNM in Opposition, but on this occasion you had, whatever the deficiency of the Act, you got the required support and you sat there doing—with all the resources—doing nothing. Not little you know, nothing. What we were doing from 2016 to 2018 was working on the recruitment, the administrative part, working on setting up the physical infrastructure, working on eventually recruiting a Custodian, and working on the Regulations that are before us today. That is what we were doing. [*Desk thumping*]

And, you know, Sen. Mark, I really do not like to bring back bad memories for you. But sometimes you force my hand. And, I am listening to you on this Custodian, still unknown and unidentified—well at least to me—questioning the independence, the trust, the training, the integrity and again—[*Interruption*] no you may ask that to Her Excellence become the Custodian. Again, when your brain reached—when you reached to formulate—

Sen. Mark: “My brains good, my brain good”.

Sen. The Hon. C. Rambharath: Okay, when you were formulating the issue of training. The issue of training of the Custodian and the trust and independence, and we rely on and so on. I wondered if you considered Resmi.

Hon. Members: “Ohhh”.

Sen. The Hon. C. Rambharat: I know it hurts you. I know. [*Crosstalk*] And I did say in the spirit of goodwill I did not wish to spoil your afternoon. But the legislation that created the Strategic Services Agency created an apparatus dealing with Trinidad and Tobago’s counternarcotics strategy. It was not a small thing. It was a big thing recognizing Trinidad and Tobago’s role in the transnational movement of narcotics from one part of the world to another part of the world.

And it was not a simple matter, and the head of the SSA was meant to be a highly qualified, highly connected person who would advise not only the country but would play a pivotal role in the world of counternarcotics strategy, recognizing that the movement of narcotics touched several jurisdictions. And, I am not questioning the choice, but Resmi Ramnarine, at best was qualified in IT, a basic degree in IT with zero—zero experience, expertise. Nobody in the world of counternarcotics strategy knew Resmi Ramnarine. [*Crosstalk*] No, it is very difficult, very difficult to understand—

Madam President: Minister, I understand that you are making a point to answer a point that Sen. Mark raised. But having made the point, I would ask you move on now.

Sen. The Hon. C. Rambharat: Thank you very much, Madam President. [*Desk thumping and crosstalk*] As I said, I expected that it would be a hurtful discussion.

So, Madam President, having established that, these DNA Regulations, which stem from the DNA Act, are never going to be a very simple matter. It is one of those areas in which science and law interact, one being exact, but not fool proof and that is not law, and one being continuously adapting to new trends and new technologies, and new social situations and dealing with DNA technology, and dealing with the use of technology. We also enter onto very dangerous ground because what the Act and what the Regulations recognize is that we are dealing with, first, an interference with fundamental rights. Secondly, as part of that interference, an interference with privacy rights. We are dealing with risk and every speaker on these Regulations will talk about risk in relation to collection, handling, chain of custody, preservation, integrity, trust, reliability. Every speaker will address those issues.

So that there will always be concerns, and there will always be a temptation to be highly prescriptive in protection, or at least in striking the balance. There will always be—and I listened to Sen. Shrikissoon, who has pointed out his concerns as he is entitled to. There will always be the temptation to be highly prescriptive, to cover every single possibility, and, Madam President, to run the risk of another 19 years passing.

In our view, the Regulations that are before us target what we consider to be the key issues flowing from the Act. And I have to say, Madam President, that we have to be careful. Before us—and that is why I started off with the reference to section 34 of the Act, before us is not a Bill to amend the Act. We are not trying to change the Act, or to fix deficiencies in the Act. In reality, Madam President, the AG has said we are expanding on what is set out in the Act, and the AG identified eight areas and cross-referenced those areas to the Act itself, and what we have before us are Regulations which aim to develop on matters set out in the Act. And we have to be careful that we do not attempt to prescribe, be prescriptive about every human emotion, every practical situation foreseeable, and in doing that we spend another 19 years. And the Attorney General, Madam President, has identified the eight sections of the Regulations and I would identify of the eight the ones that I believe require our close attention.

The first thing I would point to is the issue of the Custodian. And I want to correct something Sen. Mark said in relation to the Custodian, that there is—the section does not address laboratories other than the Forensic Science Centre. I accept what he says in relation to the once a year visit to the Forensic Science Centre. But regulation 3(3) says specifically that:

“(3) The Custodian may, subject to”—the—“Regulations and standards

made hereunder, accept...profiles and documentation generated from the Forensic Science Centre or an approved laboratory.”

So it addresses the role of the Custodian in relation to not only the Forensic Science Centre but the approved laboratories which are the defined in the parent Act.

The second area I want to draw your attention to is the part of the Regulations dealing with what I call “process” and that is the part that begins at regulation number 7 and ends at 12. And that is to me one of the most important parts of any piece of statutory instrument dealing with DNA because the collection first, at the site, the management of the samples taken, the transfer of custody from hand to hand. We talk about transport. Sen. Shrikissoon referred to the use of the word “forward”. All of those things, not new to criminal law jurisdiction, not new to jurisdiction in relation to any prosecution. This matter of collection, recording, identification, chain of custody, preservation, presentation are vital factors or any criminal prosecution.

So that the process is something that we are trying to right, to cover as many of the practical situations that may arise, as may arise. But we have to allow, we have to allow for interpretation, extension, application to situations that we may not have directly provided for. And we have to be careful that we do not try to write Regulations to cover those things which may not arise, may not be foreseeable, may arise in the future. We have to deal with what is before us, and to me the process set out in regulations 7 to 12, adequately cover what we are likely to encounter in dealing with DNA collection, sample collection, and custody, transport and forwarding and all those matters.

Madam President, regulation 16 in Part VI, deals with the vital issue of

record keeping. Regulation 16 onwards deals with record keeping; 16 to 23 and again as the Attorney General has pointed out, this is important, this is important for—thank you.

Madam President: Hon. Senators, we will suspend at this stage and return at 5.00 p.m. so the sitting is suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Mr. Vice-President: The hon. Minister of Agriculture, Land and Fisheries, who spoke for 29 minutes. [*Desk thumping*] You have 11 minutes remaining.

Sen. The Hon. C. Rambharat: Okay, thank you very much. Mr. Vice-President, when we took the break I was making the point that, vital to the success of the legislation and the Regulations is the issue of chain of custody. And I want to make one point in relation to DNA evidence, and that is that the presence of DNA at a crime scene is not proof of guilt. It is very easy for the layman or the public to believe that the identification of DNA, or the presence of relating to a particular individual is proof of guilt, and there are a lot of things that must go on before we get to that point.

I want to refer to, just to highlight the point in relation to chain of custody and other matters, to make the point that, as difficult as it seems, sometimes we have to remove emotion and focus on fact, balancing rights and the particular circumstances of a case. And I use this in relation to the matter of chain of custody and it is a case from the High Court of South Africa, *Zukisani Tshantsani, the Appellant versus the State, the Respondent*. And it is an appeal after the appellant was convicted and sentenced in the High Court, on the charge of housebreaking

with intent to rape, and rape.

And in relation to the Motions I spoke about, it was not disputed in this matter that the complainant, a four-year-old was raped. That was not an issue in the matter. And this was a case, Mr. Vice-President, where the mother of the child put the child to sleep. The appellant was known to the family and lived nearby. The mother woke up, hearing sounds around the house at approximately 2.00a.m. and went to the door and found the child crying at the door.

The child was—her face was dirty and her hair had grass and so on and her private parts were bleeding—a four-year-old child. And, of course, the process flowed from there. The child pointed out the house and named the person who was the perpetrator of the act, the person was charged and all of that, and in the normal course of things, to the layman, that is the smoking gun. And what more do you want to find a successful prosecution?

But on appeal, the court looked at the DNA evidence which was used in the trial. And eventually, the court concluded that the chain appeared to be broken, and the critical evidence which should have been now—the evidence showed that it should have been in the hands of one particular law enforcement person at a particular time. It appeared that it was not in fact in the hands of that person and the person could not give evidence in support of them having custody of the sample at a particular time as the records and the information showed.

Thankfully, Mr. Vice-President, the particular law allowed the Appellate Court to remit the matter back to the Trial Court for the court to look at the totality of the evidence to see if the court in its mind could establish using other evidence available to it that the chain of custody was in fact unbroken.

And I say that to say, as I always do, that I support the concept of bringing

DNA legislation and regulation into Trinidad and Tobago's criminal justice system. I think it is vital. But as I have always said and going back to what acting Police Commissioner Williams said on the proclamation of the Anti-Gang Bill, it is not a magic wand.

And as I always say, these Regulations fall in the hands of persons outside of this Parliament who are far more vital to its effectiveness than we are. We have no role. Once this gets through this House we are observers. And a critical part and a critical point made by Sen. Mark is this issue of training, because you have—the legislation deals with, and the Regulations deal with, the police officers who are gathering the evidence at the crime scene, what the Regulations describe as qualified persons who are dealing with the gathering and management of evidence collected at the crime scene, and a series of persons involved in this chain.

And Sen. Mark raised the issue not insofar—not related to the quality of the Regulations before us but in the ability to give effect to these Regulations. And it requires somebody else to look carefully at the selection of personnel, the deployment of people to a crime scene, the training and the support that is provided. So that we can comply with the Regulations and we can find a successful prosecution in criminal law.

One of the areas, Mr. Vice-President, that I want to draw attention to relates to that instance where the sample is not at the crime scene and not in the Forensic Science Centre. And that is in regulation 24, which provides for the storage of reference samples and crime scene materials before they are transported to the Forensic Science Centre. And regulation 24 says that:

“24(1) In every place where a reference sample is likely to be taken or crime scene material is likely to be routinely retrieved or carried, —

- (a) there shall be assigned a secure room or receptacle for the storage of the reference sample the crime scene material before they are transported to the Forensic Science Centre or approved laboratory”

And, Mr. Vice-President, when I read this, and when I considered this issue of gathering evidence at the crime scene my mind went back—I do not know how many persons remembered this story about the bombing in downtown Port of Spain of the dustbin and the lady losing her leg, and the helicopter coming down on the crime scene and sending everything scattered.

And I also went back to the many occasions and stories where we have heard about cocaine walking out the police station, or the rats eating this, about the guns walking out and coming back in. And all those situations where samples, after collection from the crime scene, and before being entrusted to the Forensic Science Centre, are somewhere before it moves on. And that raises a concern, not in the context of the Regulations not providing for it but in the ability of the people out there responsible for the police service, responsible for the infrastructure and the integrity of the infrastructure, to be able to ensure that the integrity of samples are maintained throughout the process.

To me as I say, it raises concerns about the integrity of the sample, the integrity of the process, and the continued protection of the rights of the individual, the rights of the accused, the rights of all those involved that we strike the appropriate balance. Mr. Vice-President, as I have said, this is not simple legislation. This is legislation that is very invasive. It interferes with rights and we have already addressed that issue. In the passage of the Act, we have addressed the issue of the fundamental rights in terms of law allowing us to do what we need to

do.

But the fundamental rights do not end there. They extend throughout the process because this evidence is gathered in support of a trial and the person ought to be protected throughout. These Regulations are necessary. I do not think we should go beyond today without giving this country after 19 years—that we close this off today. I understand that in a matter so complex that there will be additional pieces of Regulations. I think my concern, if I can flag that concern, is not in the quality of the Regulations, the comprehensiveness of the Regulations, but in the ability of the people to whom this responsibility will be entrusted to discharge the functions so that we balance all the rights involved in this matter. I thank you very much.

[Desk thumping]

Sen. Sean Sobers: Mr. Vice-President, let me from the onset say that this is a very important piece of regulation that has come before the House. It is definitely a pleasure and a privilege to contribute to what is known as the Administration of Justice (Deoxyribonucleic Acid) Regulations, 2018, or more commonly known as DNA.

I have in fact gone through the Regulations with a fine-tooth comb. And being a quasi-criminal practitioner before the courts, I can appreciate and understand the need for these Regulations. DNA is often considered a signature that is left by an unsuspecting criminal that can be tantamount to about a 99per cent, thereabouts, accuracy with respect to its usage.

The DNA in the criminal justice system will definitely assist both the prosecution and the State in terms of furthering their agenda, with respect to convictions and securing good convictions as well too, but equally it will also benefit defence counsel as well because there may very well be persons who were

suspects that have been arrested and detained and with the testing of certain DNA material and samples provided by those individuals their innocence may be demonstrated by the samples coming back, not revealing them being present at the crime scene or taking part in the criminal activity.

Mr. Vice-President, with that being said, I did in fact take notice that the Regulations themselves provide for the operation of this Custodian, and the office of the Custodian, and what does it really mean in terms of the system itself? One of the fundamental key issues that I took note of is the fact that the operation of this unit, this Custodian, is intrinsically tethered to the Forensic Science Centre and other laboratories—approved laboratories.

And because of this link with the Forensic Science Centre, in particular, which is no secret, is in fact a failing institution. I have some serious concerns about that. Much has been said, time and time again, about the Forensic Science Centre. I have heard hon. Members on the other side speak about that process as being made to alleviate some of those issues, and I would definitely welcome concrete information that may be presented to us in wrap-up as it pertains to, you know, fixing certain scenarios at the Forensic Science Centre.

5.15 p.m.

One of the biggest concerns I have, and I will touch on it later on when I get into the Regulations themselves is the fact that, in terms of the turnaround time from the Forensic Science Centre, it has proven to be a very, very big problem for practitioners before the courts. Many of us who practise before the criminal courts can attest to the fact that when exhibits such as firearms or drug exhibits—marijuana or cocaine—go to Forensic Science Centre for tests to be conducted and for certificates of analysis to be returned to the courts so that the matters can

proceed, those usually take anywhere between one to three years to come back, and that is a paralysis that we cannot now continue to affix to the operations of the Custodian, hence the reason why part of my contribution will revolve around the fact that I think we need to be proactive in terms of implementing time frames, so that this ill that has plagued the Forensic Science Centre—not affixing time periods for the return of certificates of analysis—does not cripple the operations of the Custodian and his office, and thereby not setting him up to fail as well too with respect to turnaround times.

As I mentioned before, my contribution will focus on, largely, especially oversight, which I think is missing in the Regulations. I heard the hon. Sen. Minister Rambharat talk about the fact that the Regulations do not provide for certain oversight with respect to the collection of the DNA samples at the crime scene and from suspects and other individuals, and then its onward transmission to the Forensic Science Centre and then, ultimately, at the Custodian's office.

The difficulty is, it is an issue that we cannot just leave as it is. And if the Regulations have, which I, in my respectful view, put in significant safeguards and security at the level of the databank, the DNA databank at the Custodian's Office, then I think in an effort to ensure that we have some level of conformity throughout, and to cure that issue with respect to oversight, we can have some security systems being put in place at the collection process from individuals and from crime scene material and going through, so that the onward transmission up until the Custodian's office is also protected and that is, in my opinion, it would be actually reflecting through end-to-end encryption of information being passed up the chain.

I would also, as I mentioned before, speak to some time frames and just

some simple cosmetic changes throughout the Regulations that I think will also assist in the matter of conformity with respect to the landscape of the Regulations themselves and the achievements that it tries to so achieve. I would jump directly into the Regulations because there is a lot to cover.

Part II of the Regulations deals with the Roles and Responsibilities of the Custodian. I know many persons—and I apologize for my elevated space, it is just a lot to get through. Part II of the Regulations deals with the Roles and Responsibilities of the Custodian, in particular, regulation 3(2) speaks to:

“The Custodian shall at least once a year conduct an on-site visit...”

My difficulty here—I know Sen. The Hon. Rambharat spoke about the fact that it does not limit it only being to visit at the Forensic Science Centre, but in actuality it does, because when he referred to regulation 3(3), it just speaks to the Custodian receiving samples from the Forensic Science Centre and the approved laboratory. But it does not actually speak to the Custodian visiting these approved laboratories, and I think it is a deficiency in terms of that regulation, because if the Custodian is going to be accepting material from approved laboratories, he should also conduct visits at those labs to ensure that they are operating efficiently.

I also would want to extend those visits to be conducted at other storage facilities along the transmission of the material, such as the police stations, wherein storage receptacles have already been placed or have been placed from before time—before the coming of these Regulations—but just to also ensure that those storage facilities and the operations at those police stations where the storage facilities are held are also being operated efficiently as well. Because we are dealing with something as serious as DNA and the effects that it could have on criminal cases, I believe as well too, a one-year visit is also not enough. I know it

is the minimum standard that has been prescribed, but I think it should, at least, be bumped up that the minimum standard is, at least, quarterly or at least biannually to cure that.

Going on to regulation 4(1):

“The Custodian shall, from time to time, set the minimum standards, in accordance with international best practices, for entry onto and removal of data from the Databank, which shall be published in the *Gazette*.”

I appreciate that those standards are being published in the *Gazette*. It lends to a degree of transparency which I welcome. My difficulty here is, because we are dealing—and I also appreciate the fact what was prescribed was minimum standards with respect to international best practices—with something as scientific as DNA, what operates today may not operate tomorrow. So to put in the Regulations a particular wording or framework as it pertains to what standards should operate now in the Regulations, I think would be curtailing the effect of the Regulations.

What I would want to add here though is that some ethics committee or steering committee be formulated to steer and to conduct examination as to what best practices in the opinion of the Custodian are being implemented. In that way, we have a committee with a certain degree of technocrats being comprised in the committee who will be able to regularize those standards and those issues to ensure then that we are really meeting best practice standards at regulation 4(1). So that is something I would want the hon. Attorney General to consider as well too.

So I would now want to also move on—before I move on, with respect to the ethics committee as well too—and that point I will speak on later—one of the main purposes of that ethics committee, in my opinion, is because we are going to

allow for samples to be tested which fall under the minimum criteria. That is an area of scientific study that is a hotbed for activity.

Currently, right now, yes samples that fall under minimum standards are tested, but it has been admitted by most of those scientists that those samples are the ones that are often contaminated regularly, but they still do return positive matches on the DNA databank. So it is something—it is a norm—but the difficulty is because it is a hotbed for activity and it could change at any time, we need to have an ethics committee in place to report on these things too, to assist the Custodian in terms of his evaluations of the best practices with respect to international criteria and levels.

At regulation 5(2) we deal with this log:

“The Custodian shall keep an up-to-date log...”

And I am thinking at that section, a recommendation as well too is that should be married with regulation 6, because regulation 6 deals with the implementation of information technology in the assistance and operation of the Custodian himself. And if there is a log that is being created, I am thinking that that log should also share some type of IT-related background, so that there is a certain level of security, and it is concretized in a particular way so that one can appreciate what is actually being done. It appears safe and it would be, in my opinion, a bit more tidy with respect to where we are going with this particular piece of regulation.

As well as regulation 5(3) which speaks to:

“Where data is reinstated, suspended, amended or deleted under this regulation...”

And it speaks to:

“...deletions made to the Databank in the annual report required to be

prepared under section 11 of the Act.”

Now, that particular report, as it pertains to the Act, is a report that would be done by the Custodian and then subsequent to the year passing, and then passed on to the Minister for his perusal and then laid in the Parliament thereafter.

If we also implement the ethics committee, this is something that they can assist with, because it could make the report that comes from the Custodian a lot more palatable for the Minister and then when it is laid in the House, we will have the benefit of accessing that committee to assist members who, just like myself, who are not scientifically inclined, in terms of their discipline to appreciate what is being put forth in the report, and then we can make some substantial recommendations to help better the operations of the Custodian. So that is something I think we need to consider, hon. Attorney General.

Now, I move on to Part III, which deals with taking of the samples. In regulation 7(1)—and this particular Part III, with respect to taking of the samples, is where I would focus heavily on time frames, because throughout Part III, we deal with taking of samples at different institutions and from different persons, and then the onward transmission of those samples. But there are no time frames specifically attached or affixed to the taking of the samples themselves.

It could be argued that it could actually curtail the work that has to be done, but in terms of reviewing Part III, in particular, I took note that regulation 7(1) is without a time frame, regulation 7(3) does not also have a time frame, regulations 8(1) and 8(2) as well do not have a time frame attached to them, and I think that we should implement the time frames there. And I say that in contrast with regulation 9(1) where there is no time frame and regulation 9(1) actually deals with DNA material being taken from a suspect who has been admitted to a private hospital or

health care facility.

Very often, sometimes in the commission of an offence, suspects or when the police are conducting investigations, suspects may attempt to flee and there could be an exchange of gunfire and whatnot and the suspect could in fact be injured. And so, the suspect, in terms of being admitted to a private institution or a hospital may have to undergo some degree of surgery and it would really be unfair and unfortunate for the police, at that stage, to take any sample from the individual.

So subsequent to the surgery or whatever medical procedures that have to be done, the sample can be taken. So there is no time frame allotted there and I appreciate that. But with respect to regulations 7(1), 7(3), 8(1) and 8(2), I believe we need to have some time frames put in there so that there is some level of expediency with respect to how these matters are dealt with.

Many times when persons are detained, especially suspects for sexual activities or sexual offences in this country, many persons do not know that what operates in Trinidad is not what you may see on television. It is not a situation where, you know, the individual goes into the police station, makes a report. The police take the report, they send them—they take the medical or the swabs or the DNA whatever the case is, and then they go out and they canvass the scene and they take statements from witnesses and whatnot. No, that is not how it works in Trinidad. The individual comes, they make a report. The police take a statement, they carry them for the medical report, after that they go and lock up the suspect and then they charge you.

So that you could actually now have an opportunity, if when they take these samples in a time frame, to have that suspect be vindicated by the fact that the material does not belong to him, whatever material is found. With respect to it

being consensual or not, that is an entirely different issue. But I think with respect to these particular sections in the taking of the samples, we need to have a time frame to alleviate that problem.

With respect to regulation 9(4), this deals with the Commissioner of Police maintaining a database. Again, I think this is something that is welcomed. That particular database, I know for a fact it is called the SERU which is the Special Evidence Recovery Unit located at Cumuto, I believe it is, and it is a very highly classified and organized institution. If only more institutions within the police remit are operated like that, I think we will be on the best part for success with respect to the criminal justice system.

Under 10(1)— so this is one of the cosmetic amendments that I referred to. Regulation 10(1) deals with:

“Where a person who is detained at a prison for a first time or a subsequent time and a reference sample has not been taken from him, a qualified person at the prison shall take a non-intimate sample as soon as practicable.”

I think if we want to have some level of conformity, we should also include there, just like what is demonstrated in regulations 9(1) and 9(3), “and in any event before the person is released.” I think that would assist in terms of making it a bit more tidy. Just to say that it has to be taken as soon as practicable, let us cover the hole, so at least before the person is released back into society, that the sample is, in fact, taken. It is demonstrated in 9(1) and 9(3) as well too.

Regulations 10(3) and 10(4) on that same page, again, I am saying that we should have some establishment of some time frames at these institutions here. At 12(1), we deal with the same thing:

“...a child rehabilitation centre for the first time or a subsequent time, and a sample has not been taken from him, a qualified person...child rehabilitation centre shall take a non-intimate sample as soon as practicable.”

I think that should also be tidied a bit, so that it can conform to 9(1) and 9(3) and we could include “or before the person is released.” It would assist with respect to what the Regulations are able to achieve, and it looks more tidy in terms of conforming with what has transpired before.

At 12(3), again, I would want to say that some time frame should be considered with respect to the onward transmission of the DNA samples for analysis at the Forensic Science Centre or an approved laboratory. It is very, very important, very, very vital that we, in my humble opinion, include these time frames—at least some measure of time frames—so that we have the office holders having a higher degree of responsibility and accountability in terms of what they are, in fact, doing.

At Part IV, where we deal with analysis, under 13(1) and 13(2), it speaks to:

“Subject to subregulation (2), where the Forensic Science Centre receives a reference sample, the Director of the Forensic Science Centre shall ensure that the reference sample is analysed and a DNA profile generated as soon as possible by the Forensic Science Centre or an approved laboratory.”

When these samples are, in fact, generated by the FSC, if we are to use the manner in which the FSC operates currently right now, those samples for preparation for onward transmission to the Custodian could take years. And we have to appreciate then that whilst this is being done, there could in fact be persons who are languishing in custody waiting for these samples to come back with some type of

report on them, whether or not they match any other sample that is currently being housed at the databank. This is an opportunity for us to correct the ills that currently plague the Forensic Science Centre in relation to, as I mentioned earlier on, drug exhibits and firearm exhibits, and it would assist in terms of curing that ill from being passed on intrinsically now to the Custodian's office and the operations therein.

Part V, "Searches of the Databank", 15(2) and 15(3), which also include—right—so 15(2) and 15(3) deal with certain applications that could be made for searches of the databank by particular scores of individuals such as:

- “(a) the Commissioner of Police in the course of a criminal investigation or criminal proceedings;
- (b) an investigating officer acting in the course of a criminal investigation or criminal proceedings; or
- (c) the Central Authority at the request of a country which has been accepted by the Central Authority”

I think if we have a look at 28(2) of the Regulations, we would see that included there are also—

“...a person from whom a sample was taken or his representative...”

—as a person who could make certain applications at the DNA registry operated and managed by the Custodian. And I think here we should also consider, hon. Attorney General, possibly having a person or his representative being placed in the categories of persons here who can make the necessary applications to the databank as well too.

And here at 15(3) as well too is where we also, as I mentioned earlier on, the need for the ethics committee with respect to these minimum standards, the DNA

profiles that fall below the minimum threshold. It is something I really, really would like the hon. Attorney General to consider, because as I said before we are dealing with technology. It is something that is constantly going to be changing, and we need to be on top of those things.

At 15(5), again, you actually have a time frame here with respect to when, in terms of governing certain operations at the Custodian with respect to removing a DNA duplicate. And if we can legislate and put a time frame here for the Custodian, I think it definitely shows that we should definitely consider putting time frames throughout, as I mentioned earlier on.

At 15(8) and 15(9) we speak about certain investigations:

“Where a search under subregulation (1) yields a match to a DNA profile obtained from crime scene material, the Custodian shall, as soon as possible, prepare a match report and issue the match report to the investigating officer and to the Forensic Science Centre.”

Again, we need to put a time frame here instead of saying “as soon as possible”. This is another example of where a person could, in fact, be in custody waiting for the match or the match report to come back to vindicate him, if necessary, or to lay the charge. Because at the end of the day, whilst that person is being detained, he is not charged. It is against his right for liberty.

So that we need to—just because as I mentioned before, using the Forensic Science Centre as some benchmark position, we cannot just leave these things up to people to decide when they are going to do a match report what constitutes in their mind “as soon as is practically possible”. We need to put a time frame in there, so that we could assist persons, if it is they retain counsel, to make certain applications to the court in terms of a writ of habeas corpus, we have something to

submit to the court as to why the time frame has not been adhered to and the person should be released pending further investigation by the police.

Part VI deals with the records. Just simple cosmetic changes I would want to proffer. At 17(2) we are dealing with:

“The senior officer being in charge of a place directed by the Commissioner of Police under subregulation (1)...”

I am thinking maybe we could change that to reflect “a senior officer of a particular rank either inspector or above” because of in terms of their working knowledge of certain systems, it would assist in terms of the running and operations contained therein.

And also in 19(2), where we deal with:

“The senior immigration officer in charge”

I think we should put a senior immigration officer holding the rank of IO III and above for the same reason as outlined before in 17(2).

So Part VII. This is where the majority of my contribution I would want to place some square frontal focus on. Part VII deals with “Storage of Reference Samples and Crime Scene Materials”. Now this, in particular, as it pertains to oversight, is very important to me you see, because I think many Trinbagonians are not entirely certain how DNA operates in this country. DNA has actually been in operation for quite some time. That means it has been used by the TTPS on a number of occasions. They are currently using it right now.

What happens? I can say this from experience. Individuals would attend the crime scene. They would put on their nice white outfits and whatnot and they would start collecting evidence. The evidence is usually placed in a bag and there is a form on the back of the bag where they endorse certain things as prescribed by

the Schedule. But what the public is not aware of is the fact that in terms of investigations, sometimes the same individual who would come well dressed in their white outfit, when they are picking up—let us say on the crime scene there is a gun and a bloodied pair of jeans—is the same individual now, who is going to come in the same white outfit with the same pair of gloves and handle the gun and place the gun in the bag, not changing the white gloves and handle the jeans with the blood and place the blood in the bag, or he may handle the bloodied jeans first, and then pick up the gun and place it in the bags, and there is contamination right there of the crime scene itself.

So you do not need—as the hon. Minister of Agriculture, Land and Fisheries, Sen. Rambharat said—you do not need a situation where the helicopter comes and messes up the crime scene. It actually operates right now. I have crossed several crime scene specialists when they come to court and asked them that same question all the time: “When you enter the crime scene you was wearing gloves?” Yes. “And you use those gloves to pick up the exhibits?” Yes. “You change the gloves at any point in time? No. And it happens all the time. [Interruption] Yes.

And it underscores the issues then, that both the hon. Attorney General, when he and I spoke briefly, the hon. Sen. Clarence Rambharat and Sen. Wade Mark spoke with respect to re-educating our police officers when they go out on these crime scenes, because as I mentioned earlier in my contribution, what operated as good scientific operations today may not be so next year or the year after. Things constantly change, and I know there may have been somewhere within the region of an odd-14,000 police officers who have been trained in terms of taking up crime scene material. I think, you know, the question should be now

asked: When was the last time they had a refresher in the area with respect to international standards that operate today? I am certain that they would be surprised at what transpires today and what should be the mode of operation today.

In any event, subsequent to the collection of those material, when that material is now bagged, where is it stored? When a crime takes place, it does not take place during a shift as you may want it to be, or it does not take place when it is bright and early and it is sunny. A crime could take place at any point in time. So if you are on a shift and a crime takes place at two o'clock in the morning, and you have to go to the crime scene—you are there at two o'clock in the morning, and you do your mischief and your nonsense as it may be—you bagged the items and whatnot, but you are telling yourself, you are not going to drop off those things to the Forensic Science Centre now. The centre is not even open. So, what do I do?

I go to the police station where I have a receptacle to store these things. What is the receptacle which is what operates right now? The receptacle is a fridge that is somewhere in the police station. Sometimes, in best-case scenarios, those fridges are in the Charge Room. So there are a lot of police officers there to see that nobody should have access to the fridge other than these crime scenes persons. But, in most instances, the fridge is where the fridge would be in our house, in the kitchen.

So you have the receptacle storage unit in the kitchen and you have the normal kitchen fridge there, and all they have plastered on the crime scene fridge is “Not to be used for anything other than crime scene material, no personal items to be placed there.” When you open the fridge now to put your crime scene material, you have to push aside the Sunday pelau food and the juice and whatever else you

put in the fridge to put your—I mean, I find it is highly unsanitary that you have food and juice next to bloodied pants and whatever, but it happens. It happens.

And I am saying that if we want to be serious about the Regulations, we need to have some system in place to guard against that. Because apart from persons just having arbitrary access to this fridge, persons with ill intentions who may be paid—the majority of the police service has good working police officers—but there may be the few errant ones who may take fees from persons to do all sorts of foolishness—we should have some system in place where we guard against that.

So that we actually have a Custodian set up there possibly and evidence lock-up as what transpires in the States, so that when persons come to deposit material there, just for safekeeping for their onward transmission to the Forensic Science Centre or the approved laboratories, you actually have to sign some log or something like that there, and the material is taken from you by the Custodian there, deposited in the receptacle or the storage and then you come back for it the following day or whatever to take it up for the onward transmission. The Regulations are lacking in that department.

Further, when the crime scene material now is picked up from the receptacle, the storage unit in the police service, it is then onward carried up to the Forensic Science Centre and deposited at the Forensic Science Centre or the approved laboratory. The Forensic Science Centre or the approved laboratory, again, is not a place that is infallible. In particular, in our country, the Forensic Science Centre has had many jokes made about it, based upon some serious breaches in terms of standards. So the hon. Sen. Clarence Rambharat spoke about the rat eating the cocaine. That happened at the Forensic Science Centre. Forty-

two guns in 2014 magically disappeared—42 guns magically disappeared from the Forensic Science Centre in 2014 and they have not been heard of since. Investigations are still ongoing. This is the same centre now that we are going to rely on to put these samples into?

Even if we want to overlook these ills that have taken place at the Forensic Science Centre, laboratories as well too and the centre, they can be open to attack from the inside. I would want to make reference to, most of us may know, there is a Trinidadian who used to work in a Boston laboratory, Annie Dookhan. She worked at the laboratory responsible for certain DNA transactions and whatnot and when, as they say, “the mark buss” is because it is over 25,000 cases this woman would have mismatched samples for just because she wanted to prove to everyone else she was good at what she was doing; falsifying data.

That situation as well too can be juxtaposed with the OJ Simpson case. All of us know about OJ Simpson, and it was not the case where most persons commonly know “the glove does not fit, so you must acquit”; that is why OJ Simpson walked free. OJ Simpson walked free because the defence was able to pick apart DNA evidence that was heavily relied upon by the prosecution with respect to a bloodied glove, a bloodied sock, blood being found on the famous Ford White Bronco and blood being found in the driveway.

The defence was able to demonstrate, through cross-examination by this police officer who was part of the investigation, Mark Fuhrman or something, his name was. Mr. Fuhrman was cited as being a racist. I cannot comment on that. But what he did do is a suspicion, reasonable doubt was raised, based upon the procuring of the samples—the blood on these items—and the fact that certain preservatives were found in the blood, which basically told the jury that, listen, this

blood was taken. It was chilled, it was frozen, these preservatives were added, and it is not that it might have just come from the scene as it was found.

5.45 p.m.

Then there was an issue in that case as well too where the laboratory technician, she admitted under cross-examination that she had blood samples from Mr. Simpson in her pocket, and she strolled out of the lab free to do what she wanted, to interact with several different persons who could have had all sorts of ill intentions in that matter. Those things came out because there was insufficient oversight at the laboratory which is also not present in these Regulations here. Even in another famous case that just recently passed through our court system, the Vindra Naipaul-Coolman case. There was forensic evidence that tried to be advanced by the prosecution in that matter with respect to a glove as well as too, and under cross-examination that as well was dispelled.

So that, we need to focus on these things now and try to fix it in the Regulations. And I agree with many commentators that may come and go, and other honourable speakers that may mention, we definitely cannot legislate against everything and every eventuality, but for the ones that arise based upon our experience in the system, based upon practice that we have seen happening time and time again, if we can see evidential failures in what we have put together today—I am not knocking the Regulations and being unfair to them, I think for the most part the Regulations are in fact good. There are a few tweaks that could be made to better them, especially as it pertains to oversight, because if these Regulations go—with the greatest of respect to the Government—if these Regulations go and stand as they are they are going to be destroyed in cross-examination. [*Desk thumping*]

There is nothing in these Regulations that would prevent eminent counsel, as we have seated here with us in the form of hon. Sen. Sophia Chote, Senior Counsel, being able to cross-examine individuals and get certain information out of them wherein they did not, you know, conform to simple procedures with respect to cross-contamination with respect to the fact these samples may have been left, you know, open for other persons who may have been connected to the case to interfere with these samples and cause a high degree of mischief. It is an opportunity for us to get it right. We do not often get these opportunities.

I appreciate that the Regulations have been long outstanding and overdue, they are here right now, and we have an opportunity to fix them. I am available to pass whatever information on to the necessary departments to have these things done, but we need to get serious and try and put our best foot forward. Mr. Vice-President, I thank you very much. [*Desk thumping*]

Sen. Melissa Ramkissoon: Thank you, Mr. Vice-President, for acknowledging me and my willingness to join in this debate for the DNA Regulations, 2018. But before I start I want to just mention that as tomorrow is Indian Arrival Day, and I know we will bring greetings on that later on in the proceedings, but I just want to say it is a big joy and pride to stand today in the Parliament of Trinidad and Tobago in the Indian attire, because it really shows that every creed and race find an equal place in our country, [*Desk thumping*] and I am proud of that.

So, Mr. Vice-President, we have all listened attentively to the piloting of these Regulations from the Attorney General, and it is understood that the amended DNA Act was assented to on the 10th of September, 2014. Now, four years later—but I am hearing it is 17 years in the making—we have before us the DNA Regulations, and because of section 34(2), the Regulations are subjected to the

affirmative resolution. So, before us today this is one of the first times that I have to stand to review actually, the Regulations for a particular Act.

So, I only now understand the importance of the affirmative resolution of Regulations after reading the present Regulations before me. Because I always thought that the subject matter experts were the ones to really get it right, and ensure that the parent Act would be brought across in a manner in which would ensure that it is carried out in a manner that will not need parliamentarians to have oversight on. But after looking at this Regulations, and not only listening to the Senators who spoke before me identifying many gaps before us, I cannot understand how this could be 17 years in the making.

So, I do hope to identify some areas. As I said, this is not my area or field of expertise. I have just read many different pieces of legislation or Regulations related to DNA, because this is not new, and there are many countries, even in the Caribbean that have practised DNA Regulations that can be looked at, and we can even learn some lessons from it. So one point that I saw that is being made, and I am seeing it in particular from the Government Senators who are here, and only one has spoken before us, is the plea to the Senators today that this is overdue. It is 17 years and we need to pass these Regulations. We need it now. We need it to be operationalized, but my concern today is, we should not be asked as Senators, to just say yes to Regulations because it is too late in the game. It should have a level of efficiency to ensure the effectiveness of a proper operationalized system for the DNA or Forensic Centre. So, I do hope that if we want to impact directly to the operationalizing of the parent Act, which is the DNA Act, Chap. 5:34, then we should ensure that we do it in a manner that we can all leave here comfortable with.

Mr. Vice-President, before I dive into the Regulations I wanted to just touch on some work that was actually done by this administration with the JSC on National Security, and I was very proud of the work that they did, because they did look at the enquiry in June, 2016, the operations of the Trinidad and Tobago Forensic Science Centre, and the issue of DNA sampling in Trinidad and Tobago. The enquiry did deal directly with what we are talking about today which is to gain an understanding of the operations of the Trinidad and Tobago Forensic Science Centre, and to not only deal with the operations but look at challenges that they could overcome, and as well as the effectiveness of the forensic sampling and the process of the collection of the DNA Act, 2012.

Some of the statistics from this report were quite alarming, because I took this into consideration when looking at the Regulations, because it said that in 2015 there were 3,105 cases that were referred to the Trinidad and Tobago Forensic Science Centre, and that amount of cases comprised of 19,441 pieces of evidence required for examination. And then they gave some additional information on May 31, 2016, the Trinidad and Tobago Forensic Science Centre received 1,301 cases, which included 8,631 pieces of evidence. As the speaker before us did inform us that this is being practised in Trinidad and Tobago for some time.

So, to see the workload of the existing Forensic Science Centre it is somewhat a challenge, and to have these Regulations probably being implemented can be more of a challenge, because the report went on to say that based on the evidence that was submitted to the JSC on National Security, they said that sections 13 and 16 of the DNA Act, 2012, are not being conducted. Now, Mr. Vice-President, that is a very big part of the Regulations before us, because that

deals with obtaining non-intimate and intimate samples. So, it deals with when:

(2)“a police officer or qualified person shall take a non-intimate sample from a person without his consent where—

(a) the person is a suspect”—or—“detainee...”—or a suspect.

And which is for me, a very, very big part of what the Bill, or the parent Act, or even the Regulations are dealing with because it deals with taking of samples and records, and building of the register and building of the databank, and to learn that—well, the committee learnt that in 2016 that is not being done. So, it just raised some questions or flags, so what is happening now, where are we at, and what are we really being asked to do?

So, this was a big flag that went off. Then it went on to say that—well, obviously the DNA databank will be independent because we are appointing a Custodian to oversee this particular databank, or actually have their roles and responsibilities for that databank, and it will be managed by the Custodian. But we did not get to learn about the quality manual or the policies. We did not learn of the procedures. We did not learn of the test methods or the work instructions, or the standard operating procedures. We did not hear about the master list, or list of all the quality systems, documents established to meet these requirements, or the records, but we did hear about this in an article dated the 8th of March, 2007, *Newsday*. It is an article to the question of forensics, and it was the editor—as the Director the Trinidad and Tobago Forensic Science Centre.

So, it is very difficult to hear—well, we did hear earlier in this proceedings that guidelines will come afterwards. These quality manual procedures will come afterwards, and it can only help to build, but it is hard to not see or know where we are at—we are in 2018—and not understand how we are going to accomplish some

of these things without such procedures or guidelines already established.

So, after learning about these 19,441 pieces of evidence, I am afraid, Mr. Vice-President, to ask even if we have a case of backlog in the system currently. I fear the response. But, I did learn after the JSC that we did have a Custodian appointed in 2016; actually to be correct in August 2016. Now, the DNA Act, section 11, says that:

(1)“The Custodian shall, within three months after the end of each calendar year, submit an annual report of his operations to the Minister”.

To date, I have asked the Parliament staff or the library to check and no annual reports have been laid. Now, I can be forgiving for 2016 because he has now been appointed, but what about 2017? We are in May 2018 and no report has been laid. I do not know what the Custodian has done already. We do not know about his operations, his roles and responsibilities which we are debating today based on the Regulations, and it is a lot of roles and responsibilities, and a lot we are asking of the Custodian, but yet there was no report laid so we are uncertain at this point where we are at with that.

Now, Mr. Vice-President, the purpose of the DNA register or databank is to add value of putting individuals' DNA profiles into a database to introduce new suspects into past and future investigations. I have just spoken about the Custodian, and Part II of the Regulations deals specifically with the roles and responsibilities of the Custodian. If you look at regulation 4(2)(a), the entry removal of data to the databank, and (b), the reinstatement, suspension and amendment of the DNA profiles in the databank, now, again, this could be a little bit of a challenge because the committee, the JSC on National Security, one of their recommendations was to conduct periodic follow-up with the PS of the

Ministry of National Security towards operationalizing the comprehensive timeline for the implementation of solutions as identified by the Director of the Trinidad and Tobago Forensic Science Centre. And they said to list the resources required by the Trinidad and Tobago Forensic Science Centre, and they also had another recommendation for the improvements of the operations of the Trinidad and Tobago Forensic Science Centre under the current resources.

So, Mr. Vice-President, it is very difficult to understand what is really written in the roles and responsibilities when we have these big gaps presently in our system. We also went on with 4(3) to say, standards—under subregulation (1)—shall include, and it went on to say that it should have data integrity control measures. If we look at the post-note from the UK Parliamentary Office of Science and Technology, the National DNA Database, they have in this article safeguards and quality standards, and strict protocols are followed throughout the collection, submission, and analysis of DNA samples to minimize the possibility of administrative or analytical error and combination. They have six organizations in the UK approved to provide DNA profiles. Do we have any organizations approved? Do we have anyone cross-referencing the Custodian's work? I am uncertain. After we have completed investigations it is read from in the Act that these DNA profiles are kept indefinitely, but are the samples kept indefinitely? And that for me was a grey area, I was not able to pinpoint if the samples are kept indefinitely, and for that I would have an area of caution—[*Interruption*] Okay, I can give way.

Hon. Al-Rawi: Thank you, hon. Senator, just because the wrap-up may be difficult, the parent Act treats with firstly indefinite retention of samples that the complainant may request samples to be destroyed, but samples may be kept for

five years that a court may order otherwise. So, all of it is traversed in detail in the parent Act and not in the Regulations.

Sen. M. Ramkissoon: Through you, Mr. Vice-President, thank you, AG. Okay, if you are saying that, if we look at the parent Act—I know we are not debating the parent Act, but 7(2) says:

“Subject to section 26, DNA profiles stored in the Forensic DNA Databank shall be kept indefinitely.”

And that is my question, profiles are different from the samples. The samples are what I have the concern with, because there are a lot of controversial hot topics about the generic research also using people’s DNA without their consent, and that for me really brings up a lot of human rights laws, and I, personally, did not see it in parent Act or in the Regulations being addressed. So this is why I raised it at this point.

Hon. Al-Rawi: Senator, please, just to clarify, so the matter that you want clarified is whether the samples are to be destroyed or the profiles?

Sen. M. Ramkissoon: Samples.

Hon. Al-Rawi: Samples. And I thank you for giving way, of course, but the Act does provide for the samples to be destroyed, but I will get the reference for you.

Sen. M. Ramkissoon: Okay. Thank you. I did read that through a Court Order that once you have been proven innocent and after a certain time you can request that your profile be deleted, and, again, that is different. I actually read that and it does not deal with what the issue I am specifically dealing with, and there are Regulations that have dealt with the destroying of samples. The only way that our parent Act allows the destroying of samples is when it is brought before a court and a client has specifically asked that it be removed, and it was more tailored to

the profile. And that is the thing, when we are talking about, we have a databank, we have a data register, and then we have a DNA record, and I will deal a little bit with those tricky terms a little later on in my debate.

We have listened and learnt of the DNA legislation with relation to sexual offences, and I could be corrected on the figures; from 2007 to presently we have about 13,000 sexual offences, and to date there have been zero convictions for the sexual offences based on the DNA data that has been gathered. But I looked at an article that was written by Helen Wallace, The UK National DNA Database: Balancing crime detection, human rights and privacy, and in this article by Ms. Wallace says:

“It is unlikely that it will be possible to obtain DNA profiles from more than 1% of crime scenes for several reasons... DNA is simply not left at many crime scenes and not all DNA samples yield useable profiles...”

So, as much as we want DNA regulations and DNA legislation to help with the fight of crime in our country, there are studies that show that it is not a guarantee, but we welcome any measure to fight crime because crime in our country is something that we—I am not forgiving towards it, it is just something that we do not want.

Regulation 28(1):

“where the Custodian is authorized to disclose DNA data stored on the Databank, the disclosure shall be made either upon request or by Order of the Court”.

And then (2) goes on:

“Where a request to the Custodian for a disclosure under sub-regulation (1) is made by-”—and they have (a), (b), (c), but (c):

“a government agency or an educational institution approved by the Minister for the sole purpose of research, provided that no readily identifiable personal information is disclosed,

it shall be made on the form prescribed as Form 2 in Schedule I.”

So now we are allowing, through Order, or by a request to the Custodian that a government agency, an educational institution, once it is approved by the Minister can be given for means of research. And I, again, have some fear in terms of sharing of the databank information, which is DNA profiles, to this option, because it also impacts on DNA samples where businesses use DNA profiles for personality tests. We are also opening it up also for misuse by future governments because—not this one—future governments or made available to a much wider range of organizations in the future that anybody can now, based on research, apply for this. And I find this even more opens up or infringes on the rights of persons who have voluntarily offered up their sample, their DNA sample, or even by means of the Act before us. So, I feel a little bit that this subregulation (c) should be deleted.

Taking samples, and there are different types of samples that can be taken, but for the crime scene, if it is taken, if it is a hair sample, hair from a hairbrush, fingerprints; and fingerprints are something that I just wanted to touch on because it did not really highlight in the Regulations before us. I am not sure of this because we have an Act, the Police Service Act, 15:01, section 50K, that has a National Fingerprint Database by the divisional fingerprint office. And normally when we go for a certificate of character we would normally have to give our fingerprints and this certificate would be valid for six month, but there is something like a DNA fingerprint, so I do not know if this division now will be

dissolved and this will be sent now to the Forensic Science Centre instead of having a duplication of the same thing. So, I am not sure if we want to—I am not sure if that is why it was left out in the Regulations, if that is because it would be covered under the Police Service Act. I am not sure if that was the intent, but if it is then so be it, but it will be a duplicate of powers in my mind.

Obtaining non-intimate samples, section 13(1):

“a police officer or qualified person shall take a non-intimate sample from a person without his consent where—

(a) the person is a suspect, detainee or accused;”

—and my question in this: When a person is held for drunk driving, disorderly conduct, failure to pay his or her maintenance, would DNA samples be taken? Yes?

Hon. Al-Rawi: It is any detainee or arrestee, there is a sample.

Sen. M. Ramkissoon: Well that is now overloading your system, unless you want to build a system that would have all the citizens of Trinidad and Tobago on it, but it really opens up your existing overloaded forensic centre, but if that is the intent, so be it. And it is good for people to know, if you are detained your DNA sample will be taken without your consent—could be taken is a better word—could be taken without our consent. Sorry, will be taken—

Hon. Al-Rawi: Shall be taken.

Sen. M. Ramkissoon: Shall be—“oh my goodness”, even worse. So, if you are just detained for being an unruly or disorderly person in the public and you end up in the police station your DNA sample can be taken or shall be taken. I am not sure how come there is no—[*Crosstalk*]
—anyway, moving on, because my time is before me. Regulation 1, where a police officer or qualified person takes a

reference sample do not expect—do we expect all police officers, and my concern with this is with the term, a police officer.

Now, we specifically said a qualified person, right, taking these reference samples, but what about a police officer, and that is my concern. Because even we learnt from the Joint Select Committee in June, 2016, they have a recommendation for the Commissioner of Police: Ensure that all officers qualified persons responsible for taking DNA samples, to be aware of the provisions of the DNA Act, 2012, regarding the taking of DNA samples, whether non-intimate or otherwise. And to have a recommendation like that in a Joint Select Committee of Parliament, is alarming. Why does a Parliament committee need to tell the Commissioner of Police that your police officers need to be aware of the Bill that we have passed? What is going on? What is the disconnect there?

That is amazing that a Joint Select Committee of Parliament says, you know, we passed a law, please read it. I think that is blowing my mind. And to add to that, if you look at the Evidence Act, section 19(2B):

“Where any substance or thing is required to be submitted to a Government expert for examination, analysis or report, that substance or thing can be lawfully received by any person duly authorised by the Director of the Trinidad and Tobago Forensic Science Centre”.

And that is what I think our Regulations should have. Not a police officer, but a duly authorized police officer authorized by the Director of the Trinidad and Tobago Forensic Science Centre—a duly authorized police officer who is duly authorized by the Director of the Trinidad and Tobago Forensic Science Centre should be the person, because they would have gone through training, they would have been read the law, they would have been asked questions, and allow that kind

of comfort in this is what we are expected to do.

I would feel more comfortable because now you are not having any particular officer that can just miss things, because, just because you cannot see a strain does not mean there are not enough cells for a DNA type, and that is something we really need to be concerned of. This brings me to the point of regulations 8(2), where the police officer believes that the crime scene material requires DNA analysis; it is very vague, because now you are saying any police officer, and if they think this would have a DNA sample worth it as—then we will collect it. And a regulation should be very defined, and a police officer should easily be able to pick up and say, this is what I need to gather from the scene and this is what is going to help the lawyers win their case and be able to ensure that the suspects and the criminal aspects are behind bars where they should be.

So regulations 9(4) and 10, there is a particular statement that was not carried across, and I am not sure for what reason, and it really deals with:

(4) “Where a qualified person takes a reference sample under this regulation, he shall forward the reference sample to the Forensic Science Centre together with a copy of the entry in the register of the crime scene material created and maintained by the Commissioner of Police”.

I did not see that being used for the port of entry or the Child Rehabilitation Centre, and after we learnt that there are about 50,000 cases in the port of entry. I do not understand why we would not want to have this maintained by the Commissioner of Police.

6.15 p.m.

I would like to now look at regulation 10(1) which deals with “detained at a prison for the first time”. Section 14 of the Act gives authority for a second sample

to be taken but in a specific way, where a repeat non-intimate sample is to be taken, it shall cause a notice to be served personally on the person from whom the non-intimate sample is to be taken, and it is a specific process that needs to be followed. But in terms of the DNA Regulations before us, it is not that clear, and they only really spoke about the first sample to be taken. So, I am not sure—because this is in a parent Act where a second sample needs to be taken but there are no provisions in the Regulations to outline how it is going to be done. I am not sure if it is because we would probably allow a third, a fourth, a fifth or sixth sample to be taken, and that again I would not support.

Regulation 15(6), that deals with:

“The Commissioner of Police upon being informed under subregulation (5) shall—

- (a) cause an investigation to be conducted to determine the correct identity of the person from whom the DNA profile was generated...”

—so—

“The Commissioner of Police upon being informed under subregulation (5) shall—

- (a) cause an investigation to be conducted to determine the correct identity...”

So, does this mean that he would be given—the police officer who has been assigned—the authority to now take a second sample from this person who they want to confirm that this is truly the correct DNA profile for you? And if that is the case, then you cannot just have the Commissioner of Police just send a police officer to get this information. You have to follow the section 14 of the parent Act which says that:

“...a police officer shall cause a notice to be served personally on the person...”—and you have 24 hours before you need to come in for that.

So this section kind of contradicts what provisions we have given the citizen of Trinidad and Tobago or any deportee or any person who needs their DNA sample, DNA profile, to be taken. So, I would like for that regulation to be relooked at to make sure we are not contradicting the parent Act that we have unanimously agreed to in the prior Parliaments of Trinidad and Tobago.

Regulation 14 speaks about the name and the address of the donor. Let me just pull regulation 14—so, prior to a profile being sent to the Custodian, the Forensic Science Centre or the approved laboratory shall ensure that the profile sent to the Custodian does not identify the person to whom the profile relates. So that means their name or address will not be on this databank, and after we gave the Custodian so many roles and responsibilities for doing searches and for making sure it is up to date, we are saying that you cannot have the names and the addresses of your donors, or whoever the samples belong to. But then I am a bit confused because now you are saying no to the Custodian having information, but yes to the Forensic Science Centre having this. Because the Forensic Science Centre is allowed to have the information, like the date received, the name and date of birth of the donor, involvement in the matter, reference sample, crime scene material.

So we are giving a lot of information, or even more information now is recorded in the Forensic Science Centre register who I am not sure who we have given the authority to, to update and ensure that the data is correct.

[MADAM PRESIDENT in the Chair]

So we have given a Custodian such great responsibility, according to the

parent Act and the Regulations, but we have withheld some information like name and address which I think would have been important if you want to do matches and searches, but yet the forensic register has even more information, like name and date of birth of the donor.

Hon. Al-Rawi: Just to clarify. Do you propose the Forensic Science Centre should have that?

Sen. M. Ramkissoon: My suggestion is, we already have given—sorry Madam President, through you—we have already given the databank, or the Custodian of the databank, so many roles and responsibilities and a lot of independent defining how he or she should operate. Why not have the name and address on this one databank, as opposed to having it in the forensic centre, and we do not have a management system for that register. So we have the databank, let us have that which is being managed in a proper way, and that is what I would suggest.

So, we regulate the manner in which the DNA is collected, transported, stored and entered, that is what—because actually when you look at the Regulations it says the manner that the DNA is collected, transported, stored and entered into the DNA databank. So it does not even speak about regulating the manner in which the forensic science data register is updated or kept abreast of the DNA profiles. So I thought it was more useful and also more trustworthy to have that data, because in the court of law you would refer to the databank, not the register.

All right. So, there was one question I wanted to ask, Madam President, and that is in relation to the databank, regulation 15(2). It deals with:

“Where—

(a) the Commissioner of Police in the course of a criminal investigation

- or criminal proceedings;
- (b) an investigating officer acting in the course of a criminal investigation or criminal proceedings; or
 - (c) the Central Authority at the request of a country, which has been accepted by the Central Authority.

requires a search to be done of the Databank, he or it may request the Custodian to search the Databank.”—only in these three areas.

My question is, do missing persons fall under this? Do unknown identities fall under this? Do people who are severely damaged, like brain damage, amnesia, are they allowed to make a request to the Custodian to search the databank for those areas? Because the DNA profiles will help in identifying this situation, but it is not covered in the Regulations under (2).

The DNA record in Schedule 2 of the Regulations deals with the name of the person to whom the sample relates, the date or birth of the person to whom the sample relates, the sex of the person to whom the sample relates, the race of the person to whom the sample relates. So it is race, sex, date of birth, name of person. We are giving powers now to different groups to manage their DNA record. So we are giving privileges to the senior officer in charge of the place, which is directed by the Commissioner of Police. We are giving this authority to the senior Immigration Officer at the ports of entry. We are giving the Commissioner of Prisons to have a DNA record at the prison. We are giving the DNA record at the Child Rehabilitation Centre. We are even giving a privilege to a private hospital, a health care facility. But it is very unclear at this point to where these DNA records that would be forwarded—is it going back to the Forensic Science Centre register? I also find, by having all these different groups having

their own database or their data record of the name, the date of birth, the sex, the race, it also opens up areas for external interference and even areas of mischief.

I find that this information should not be retained by all these groups, but they should, after seven days forwarding it to the Forensic Science Centre Register, they should be destroyed. They should not be kept, because you are giving up people's personal information to all these different groups.

Hon. Al-Rawi: Thank you for giving way. May I ask a question?

Madam President: Attorney General, before you ask a question, Senator, you have five more minutes.

Hon. Al-Rawi: Oh no. Quick question. Senator, if you could just complete the thought please, and thanks for giving way. So you propose that it be destroyed. What about evidential clawback to the station and the evidence trail?

Sen. M. Ramkissoon: Thank you, Attorney General. My thought is that the DNA records that are captured in this manner are to be entered by these different groups I have called. You are going to send this information to the register, and then the databank will also have the information that would be controlled by the Custodian. What I am trying to say is that by allowing these different groups, you are more opening it up for contamination as opposed to trying to verify that this was in fact, be taken at the prison, because you would have had the date and time it was received, or sent, logged.

You will have all that information sent already to the register, and it would have been verified because I think they would sign for it and these things like that. So by keeping it, say for example you have kept a sample at the prisons, you bring it up in court and it does not match your register or your databank profile, what happens? It is contamination of information. So I find there is a lot of, when you

give so many groups so much power, you are really opening up for mischief, and we do not want that with your DNA information for people and citizens of this country.

So, Madam President, with five minutes left, I do want to—well, probably less than five minutes left, sorry, my apologies—regulation 24 which deals with storage of reference samples and crime scene material, and I have heard the Attorney General say that we do not want to speak about temperature. But my concern is that they should record the temperature of the storage room or the receptacle. It should also have the date and time and the person collecting the reference samples and the crime scene material with the logged-out time as well. And Form 2 needs to be amended, from 2016 to 2018, and again to grant access to the government agency, I would ask that that be removed, because you should only grant that access with the consent of the donor for research purposes, not without the consent.

Schedule 3 did not capture the requirements of the parent Act, 23(2). I do not know what that comment is about right now. So 23(2):

“A person who receives the package containing the sample at the Trinidad and Tobago Forensic Science Centre...”—right.

So there are a few things that were not captured in Schedule 3—if I could find it quickly. For example, the date received and time, according 23(2)(b)(4), that was not captured, and as well as the name and designation of the person receiving the package, 23(2)(b)(5), that was not also included in the form.

So there are many gaps that I have identified and addressed. For example, permitting a person of staff to search the Forensic Science Centre register or the DNA record, can that be allowed? Can a member of staff just be allowed to do

this? Because we are not talking about Custodian's databank, but we are talking about the DNA record and dealing with the Forensic Science Centre register.

Also, taking a sample from a deceased person was not addressed in the Regulations. Also it is not clearly defined the guidelines of evidence gathering and preservation of evidence and storage of evidence. It is quite critical for any DNA legislation, Regulations, any such thing, it really is something that is important, and it should not be given in a manner that would allow the Evidence Act, Chap. 7:02, section 15T to be implemented where persons can just say it has been contaminated and we cannot use it.

So, Madam President, I thank you for this opportunity to share my points on the Regulations. I understand we cannot go into committee stage, so what I am probably asking is, please do not rush it, because there are a lot of areas and gaps that can be abused by those.

I thank you.

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you kindly, Madam President, for allowing me to join in this debate on these DNA Regulations. Like my friend Sen. Mark, I do not want to end up on *The Rundown* so I would not try to pronounce the terminology. I would just protect myself by referring to the DNA regs. [

It is indeed an honour to be part of a government and a legislative process that takes our country forward into this century. Madam President, this House may recall that on 8th of February 2012, just over six years ago, the Administration of Justice Act, 2012, was passed, with the Act being assented to shortly thereafter on 10th of May, 2012. The principal objective of the Act is to make available to the police the results of DNA profiling, which is another tool now available to the

State in the detection and prosecution of criminal offences.

Madam President, this piece of legislation is supported with improved and additional resources that would lead undoubtedly to institutional strengthening of this country's forensic and evidence-based interdiction capabilities. The training of the nation's law enforcement officers is being augmented to ensure that they can deliver within the new provisions of this law.

Madam President, this Act broadens the scope of the previous legislation to include additional categories of persons from whom intimate and non-intimate samples of DNA can be obtained. It also provides for the sampling of certain categories, and it also provides for the sampling of other categories of certain accused persons and offenders.

Madam President, the Administration of Justice (DNA) Regulations, 2018—the forensic analysis DNA evidence, all of us in this Chamber would admit, is an important tool in the arsenal of the State's crime-fighting artillery. As such, in keeping with section 34(1) of the Administration of Justice Act, 2012, herein after referred to as the Act, the Minister of National Security has on the 5th day of March 2018 made the Administration of Justice Regulations, 2018.

Madam President, these Regulations are before this Chamber, this House, for consideration, as the objective is really to give effect to this Act. And, as such, all other matters and things as may appear necessary or expedient or are required to be prescribed for effectively carrying into operation the provisions of this Act.

Now, let us look at the success of the use of DNA evidence in criminal investigations. Madam President, I would like to place into context just how powerful a tool DNA evidence can be. We have heard from our friends on the other side lots of negative aspects. I want to focus on the positivity of DNA

Regulations.

Madam President, DNA can be used to identify criminals with incredible accuracy when biological evidence exists. By the same token, DNA can be used to clear persons, suspected persons, and to exonerate persons mistakenly accused or convicted of crime. We see it all the time. Persons spending 20 years, 30 years in jail, but on the evidence of DNA they were freed because they were proven to be innocent. In all, Madam President, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system.

If we look at countries around the world and their successful use of DNA, these Regulations actually sell themselves. In the United States for example, New York authorities linked a man through DNA evidence to at least 22 sexual assaults and robberies that had terrorized the city in the year 1999—interestingly, the same year that the piece of legislation was passed in this country.

Again in 2002, authorities in Philadelphia, Pennsylvania and Fort Collins, Colorado, used DNA evidence to link and solve a series of crimes—that is, rapes and murder, at least one murder—perpetrated by the same individual.

Madam President, in 2001 Green River killings, DNA evidence provided a major breakthrough to law enforcement officers in a series of crimes that had remained unresolved for many years, despite a large law enforcement task force plus a \$15 million investigation.

In South Africa, DNA database led to the successful conviction of a serial rapist. On 06 June, 2011, Shivani Pofi known as the “Muldous Riff rapist” was found guilty of six rapes, three robberies with aggravating circumstance and two cases of theft. Five of the rape victims were adult women to whom Pofi offered work and then lured them and raped them. The Investigative Psychology Unit

used a number of strategies, including DNA, to successfully link all the adult rape cases and to locate the suspect where he was in his shack. After arrest, the suspect was then also linked through the DNA database to the rape of a 10-year-old girl in 2005. Madam President, without that database the case of the little girl would not have otherwise come to the attention of the police, because the other victims were adult females raped between June 2009 and May 2010. Pofi subsequently stood trial for all of these cases of sexual assault, and received a combined sentence of two lives sentences and a further 95 years behind bars, all on DNA-based evidence.

So those are some of the positives. Let us look at some of the challenges that may be faced with the use of DNA admittedly. Whilst the value of the use of DNA evidence is enormous, I think we all recognize that systems must be put in place for its effectiveness and efficacy. One of the possible problems that the criminal justice system may face is a substantial backlog problem that the criminal justice system is faced with, particularly in Trinidad and Tobago, and of unanalysed DNA samples and biological evidence from crime scenes, especially in sexual assault and murder cases.

There is a risk that crime scene samples will wait unanalysed in police or crime lab storage facilities, as my friend Sen. Sean Sobers highlighted earlier in his contribution, where in police stations sometimes you get the evidence along with other items that should not be there. As pointed out by the hon. Attorney General in the House of Representatives, and right here earlier today, in an effort to avert issues such as this, the Government has already moved to have key officials appointed and to have them be given the tools they need to perform their jobs.

This Government also recognizes that action is required on the part of several stakeholders such as the police and even the Chief Personnel Officer who

must appoint finalized positions as well as appoint deputy custodians. The Chief Personnel Officer is required to develop terms and conditions for many of these new positions that would evolve as a consequence of the introduction of DNA Regulations.

Madam President, timely analysis of these samples and placement into DNA databases can avert tragic results. One such example was found Florida in 1995, where the Florida Department of Law Enforcement linked evidence found on a rape homicide victim to a convicted rapist DNA profile just eight days—eight days—

Madam President: Minister, a lot has been said already in the debate about the benefits of DNA, and I really would like us now to kind of go to the Regulations and sort of tie in what you are saying to the Regulations. But I think the issue of DNA and what the effects it can have—I think that has been stated already by all the previous speakers. Yes? Thanks.

Sen. The Hon. J. Baptiste-Primus: Thank you, Madam President, I am so guided. So I will go straight into the significance of the Regulations.

Regulation 3, which is in Part II of the Regulations, treats with the roles and responsibilities of the Custodian, and very importantly in regulation 3 and regulation 4 we have an improvement beyond the description in section 10 of the parent Act. Section 10 of the parent Act falls under Part III, which is the national forensic DNA databank of Trinidad and Tobago, and section 10 of that law says, and I quote:

“The custodian shall...”—and then it lists items (a), (aa), (ab), (ac), (b), (c) and (d) and it describes what the functions are that the Custodian should act independently, et cetera, et cetera et cetera.

What we felt necessary was, for an expansion largely coming off the springboard of section 10(1)(d) of the parent Act to provide for the Custodian to ensure that all data in the databank, accurately loaded at the time of entry, the Custodian should at least once a year conduct an on-site visit at the Forensic Science Centre to ensure that it is within the capacity to perform the requisite DNA service, and that the Custodian may, subject to the Regulations and standards, accept DNA profiles and documentation generated by the Forensic Science Centre or an approved laboratory.

Madam President, regulation 5 of the Regulations treats with the preservation of the integrity of the databank, and these are really anchored back to Part III of the parent Act, and in particular sections 7, 10 and 29. What we are doing is ensuring that the Custodian preserves the integrity of the databank and that he or she keeps an up-to-date log of all data—reinstated, that is data that has been reinstated, suspended, amended or deleted.

Regulation 6 again relates to sections 7, 10, 11 of the parent Act. Indeed, also section 29 and section 30, for the record. They refer to the creation of the obligation for confidentiality and non-disclosure, and also in section 30 for the criminalization of breaches of disclosure and confidentiality. In regulation 6, the Custodian shall develop IT systems and ensure that the data protection is managed. Obviously, data protection has become a very important aspect and part of the laws of Trinidad and Tobago, and no doubt it is something that we must ensure and we must manage very carefully.

Part III, which causes regulation 7 straight down to regulation 12, inclusive, deals with the taking of samples under Part III of the Regulations. In particular, regulation 7 treats with the taking of samples from a complainant. Here is where

we see the bringing to life of the disaggregation between reference samples and crime scene material, so that we can make sense where the parent Law had not in fact gone far enough of how we treat with the savagery related to some sexual offences in this country, and those offences including rape.

6.45 p.m.

Madam President, as outlined by the Attorney General in his contribution in the House of Representatives and also here earlier today a short while ago, this Government has specifically ensured that we have adhered to the parent law in that only certain categories of persons can treat with the taking of evidence.

I recall the concerns raised by my Senatorial colleague Sen. Ramkissoon that too many persons have access to the personal information of persons. But, Madam President, the qualified—it is not just any and anyone who would have access to such personal and private information. The qualified persons are defined at section 4 of the parent Act to include the person so prescribed.

Further, Madam President, regulation 8 treats with section 13 and its requirements, and the maintenance of entries at the Forensic Science Centre and the DNA record. I have had cause over the years to interface with those public officers who function at the Forensic Science Centre, and they are the most professional of public officers, highly confidential public officers, hard-working public officers. And over the years, I am quite sure my Senatorial colleague would admit she would not have heard a complaint from any member of the public regarding the lack of confidentiality at that centre. So, I ask her to be assured that those public officers, I have no doubt, would continue to be professional in the conduct of their duties.

Madam President, we have to remember that the DNA record was included

as a definitional term in the parent Act, and therefore, regulation 8 takes avail of the two forms of registration that we must have.

Regulation 9 treats with the taking of a sample from a person admitted to a private hospital, and that there must be the presence of a witness, particularly if we are dealing with people who are incapable, as the parent law describes, or persons with diminished responsibility or capacity, meaning—I mean, if you are dealing with someone who is mentally challenged or otherwise.

Regulation 10 treats with those persons incarcerated in prison. Again, with the prescriptive cautions that we have, and the separation of crime scene material versus DNA record being carefully observed.

Regulation 11, Madam President, treats with reference samples at a port of entry where we deal specifically with deportees or detainees at set ports of entry. Again, here, Madam President, the parent law provides for them to give samples on a compulsory basis and as a consequence there is no need for consent in this regard.

Madam President, the use of DNA has a direct impact on the determination of guilt or innocence of a person who is investigated for a crime. It also means that scarce evidence can still yield vital clues regarding the perpetrator of a crime.

In closing, Madam President, DNA has been important in revolutionizing the entire field of forensic science. This impact is felt within the criminal justice system, and contributes to the accurate safeguarding of any society in this modern world. There are numerous instances all over the world that demonstrate the power of DNA within the criminal justice system.

DNA testing has helped law enforcement to identify criminals and solve difficult crimes, and DNA evidence has helped to prove the innocence of many

wrongfully convicted persons. It is provided by section 34(2) that:

“Regulations made under...”—the Act, shall be—“...subject to affirmative resolution of Parliament.”

And it is expedient that the Administration of Justice (DNA) Regulations, 2018 now be affirmed by this House having been affirmed by the House of Representatives on April 09, 2018.

Finally, Madam President, I am compelled to remind this House that the introduction of the DNA laws in Trinidad and Tobago has spanned also two decades. We must, therefore, not delay the affirmation of these regulations as we will be failing the people and citizenry of this country if we delay in operationalizing the Act and thus enhancing the State’s ability to fight crime at a higher level. Simply put, Madam President, we must act. We must affirm these Regulations and we must give life to the Act. These Regulations, I would argue, I submit, are guaranteed to change very important areas of this law. Madam President, I thank you for your kind attention. [*Desk thumping*]

Madam President: Sen. Haynes.

Sen. Anita Haynes: [*Desk thumping*] Thank you, Madam President, for the opportunity to contribute on this debate on the Administration of Justice (DNA) Regulations, 2018, and I know quite a lot has been said so I will not go over what was said before. Part of—I would just like to start off by—starting off where Sen. Ramkissoon left off almost because I think where Sen. Ramkissoon left off was the beginning of a very interesting and nuanced debate.

Senator, Minister Baptiste-Primus, started to speak about the importance of DNA and DNA Regulations, and we, I think, are all in agreement that this is important, and it can lead to great things in the justice delivery system. However,

as many speakers have noted before, the genesis of the DNA in the Trinidad and Tobago justice system goes as far back as 1999, and in the area of technology and in the area—1999 is world away from 2018 in terms of technology, and that is not something that we should forget when we discuss this.

And the reason I said I am starting where Sen. Ramkissoon left off is because Sen. Ramkissoon raised a very important part about the DNA profiles and where they will be stored and how they will be stored. And what was interesting about that was that the Attorney General in his opening contribution, as well as in his response to Sen. Ramkissoon said something that I think is quite worrying which is, he was— the Attorney General in the first instance stated that over 70,000 persons will have to give a sample of their DNA not on a voluntary basis. This included police officers, et cetera, which is fine. However, it was the tone that I think was trying to be set.

So, I will take a step back and say, we are all aware that crime is a problem in this country and that it has gotten worse over time. We are extremely aware that our citizens live in fear, and that victims matter, and that increasing the detection rate matters, and these are all things that you will not find anyone in here disagreeing about.

However, if you make laws and regulations in a space of fear, then you can find yourself compromising the human rights of citizens and, if you make decisions in that space of fear, then you may not necessarily be making the best decisions.

So, Sen. Ramkissoon asked about the DNA profiles and the Attorney General—and if it was that we were trying to establish this massive database where all citizens could come within the database of the DNA profile, and the Attorney

General nodded and that would not have been caught. But I would just like to point the Attorney General to a decision made in Kuwait which, you know, may be not even your example of your most flourishing democracy, but their constitutional court on October 05, 2017, moved to strike down a DNA law that was seeking to bring everyone in their country under the database. And Human Rights Watch notes and I am quoting here:

“Kuwait: Court Strikes Down Draconian DNA Law

“The court found that the DNA law violated Articles 30 and 31 of the Kuwait’s constitution...protect”—a person’s—“...personal liberty and privacy.”

And the only reason that I am bringing this up is that in our exuberance to bring down the crime rate and to improve detection and to fight crime, let us not forget that we are a democracy and that we stand for the rights of the citizens of this country. [*Desk thumping*] And so I just wanted to contextualize.

When we are talking about developments in science and technology, we can note that it has developed considerably over time, and the forensic use of DNA can be of great benefit to the delivery of justice. It is no denying that those of us on this side know that, because the parent Act was indeed passed under the People’s Partnership led by Kamla Persad-Bissessar, so we are not here to dispute any of those things. Right? What we are here to talk about is where we can look at the Regulations and see if they will best serve what we hope they are intended to serve.

And so, I would just like to also look at in the passage of the parent legislation, and I will not take too much time on this, but I went through all the material from 2012 come up and I noted a very interesting position from the

Minister of Finance, Minister Imbert, who in 2011 made a contribution that was very pointed that the People's National Movement could not support the legislation until systematic changes were implemented. And I am going to quote here from the *Hansard* of Wednesday, November 09, 2011, because I just want to put on record what the major concerns were, namely, the inefficiencies amongst various arms which will be tasked with undertaking the initiative.

And Minister Imbert said and he was talking specifically about the Amanda Knox case in Italy. And the point is that Italy is a developed country, and we are not talking about a developing country where resources, the infrastructure, the equipment, the knowledge base, the techniques, training mechanisms are not available. We are talking about a highly developed country.

Now, Mr. Imbert was talking here in 2011. So he called Italy which at that time was the third largest economy in the eurozone; that is not so much right now—that if police officers in Italy had such a high-profile case, namely the Amanda Knox case, which makes basic fundamental errors with respect with the contamination of DNA, then it is quite possible, it is logical, it is quite possible that unless we take adequate precautions in Trinidad and Tobago we would find every single DNA case thrown out, based on the developments in science over the last two years.

And so, as I started looking at the Regulations I wondered what exactly had changed since the Minister made these comments in 2011? What infrastructure has been developed to enable these Regulations to be successful because, again, rest assured we all want them to be a success, but for them to be a success these questions have to be answered.

You would find that the majority of my questions here will not be for the

Attorney General, but hopefully there is a Minister of National Security that sits in this Chamber with us, and he may be best poised to answer some of my questions; but what equipment has been put in place? Minister Imbert spoke about the knowledge base being in place, and I will go into some detail, but not a lot on some of these things, but let me just go on that question of equipment.

If you look at Part IX of the Regulations, “Privacy Standards, Security and Access”. And it talks about:

“Where a DNA profile is generated by the Forensic Science Centre...”

—it would be—

“...uploaded onto”—DNA—“Databank,... established under regulation 4.”

—and then this profile, if you look at 26(3), the:

“...DNA profile is forwarded electronically under subregulation (1) or (2)...”

It quoted:

It “...shall be...encrypted...”—on an encrypted—“...security network with controlled access at the points of entry and receipt.”

And then you go on, if you are still talking about this system, this secured encrypted system where your DNA data profile can be transmitted electronically.

And regulation 27, subregulation (3) says:

“In order to restrict access under this regulation, the Custodian shall ensure that operational programmes and systems are implemented in order to pre-empt, detect and record all unauthorized attempts to access the Databank.”

Now, this is fine, excellent on paper, terrible if not properly enforced. I mean, detrimental if not properly enforced.

And so, as the Government comes, and rightfully so, implores us to pass the Regulations and that we just need to start somewhere and just give it a start, give it a fighting chance. Well, tell me about these “Privacy Standards, Security and Access”, and let me know, give me a start in assuring me that if my DNA profile is in your system voluntarily or involuntarily speaking, that these operation programmes, systems that are meant to be implemented to prevent people from accessing my personal data, and this goes beyond your fingerprints and your photographs and these things, this goes into DNA, can look into your health data, your family, your lineage, it goes beyond what are surface-level things.

So just on Part VI, if there is one thing that you can tell me, because the Attorney General when he talks about the equipment that we have to facilitate the DNA regulations, we are only hearing about the 15,000 DNA kits, but it is much more than that. It is an IT infrastructure that needs to be robust, well-protected and quite frankly I just do not think exists right now and somebody needs to come before asking me to pass these regulations, tell me if it exists and if it has the capability to do what they are asking us to do here today.

And that brings me to a point that a lot of persons have raised so far and I will not belabour, but the Trinidad and Tobago Forensic Science Centre. So as you are talking about, just give us that and just give us a head start, let us start something, start somewhere, anywhere if possible. You could have started by fixing the Forensic Science Centre. You did not need these Regulations to do that, you could have started there. [*Interruption*] The facility has been—well, you cannot be talking to me because I was not there. [*Interruption*] Yes, sorry. I said that it brings me to the point of the Forensic Science Centre and if it is that we are looking to start somewhere, we could have started by fixing the Forensic Science

Centre. [*Desk thumping*]

And the facility has been in operation for decades, [*Interruption*] not five years, Minister Gopee-Scoon, but it has been in operation for decades. And that when you are looking to introduce something new and something that is advanced, right? In the same old framework where, if you look— [*Interruption*—I am not saying that, you know. Right. If you look at just as recent as September 2017, there was an article published in the *Newsday* on Tuesday, 05, 2017 entitled, “Families call Forensic Sciences Centre a ‘national disgrace’”, that there is no parking, the place smells, it is overcrowded, and no one knows exactly what is going on.

And again, I said, if you want to start somewhere, and as Sen. Sobers noted and quite a number of others, if you are using the Forensic Science Centre here as part of these Regulations and you look at what we have now, it seems as if that we are passing these DNA Regulations and saying that you are enabling the Government to have a chance to fight crime, but that is all surface level. If you look beneath the surface and what is actually being done, you will find that it is quite less, because none of these issues have been addressed at any point in time.

If you go back looking at staffing and Minister Baptiste-Primus noted that the CPO has a role to play, and the role that Minister Baptiste-Primus was talking about would be in staffing. And the Minister of National Security had noted that the Ministry of National Security was not fully satisfied with the Forensic Science Centre at St. James that it is adequately staffed, and had asked the Director of Personnel Administration to fill additional posts. He said this in November 2017, and I guess, again, as I said, most of my questions would be for a Minister of National Security to perhaps give us an update on this request for additional staff

in 2017.

I mean, much is being said about a Custodian that was hired; all well and good. The Custodian will not be able to work by themselves, so for this and for these Regulations to work, we would need to know what is being done in terms of staff. How are you intending to facilitate these Regulations, who is going to be tasked with it, and I will get to that—

Madam President: Sen. Haynes, if I could just interject here. You have now been speaking for about 15 minutes, and I want you to just remember that there have been speakers before you. You yourself just said that several speakers before me have spoken about this. So, I really would like you to move on and not go into repeating what other speakers have said.

Sen. A. Haynes: No problem, Madam President.

When you look at Part VIII of the Regulations which speaks to Transport:

“Where—

- (a) a reference sample is collected; or
- (b) crime scene material is collected is submitted for DNA analysis by the Forensic Science Centre,”

and “...it should be forwarded as soon as practicable...and not “...be delivered...”—in less—“...than seven days.”

And so, my question here, Madam President, is that if we understand the day-to-day operations of Ministries even of the TTPS, moving something as simple as correspondence, sometimes between floors, can take weeks. Right? And I am not saying that this will happen, but what are the assurances?

How are checks and balances to be put in place that we will meet these seven days, because this is very sensitive information, and the seven days are a

requirement for a scientific reason, and we need to be able to say, not just that reference samples should be transported or that the person transporting the material should ensure that the reference sample is transported under the established guidelines, but we need to know or someone needs to give us the guidelines in terms of—the Government needs to indicate, is it the TTPS, is it anybody that collected the sample, prison service? How are we going to do this? How are we going to operationalize this? Would a private sector company receive some kind of contract for the transportation of DNA samples?

Again, think it through and tell us when the Government speaker, when you are on your legs and you are looking at the regulation on transport—we have all read this—tell us how it will work on a day-to-day basis? Because I think that is what we are looking to you to tell us: Who will be responsible for the procurement of the thermally insulated receptacles as outlined by subregulation (3)? Will it be the Ministry of National Security purchasing for all agencies? Would authorized agencies have to source funding to purchase these things, to purchase these transportation receptacles? Will it be a company?

These are the details that you have to flesh out, because those are the assurances or the kinds of details that will then add weight to your quest for us to join with you in approving these Regulations, because then we can say, right, well I am comfortable now that I know that a reference sample or crime scene material collected will be transported here by these persons under these conditions, because the Ministry of National Security or the implementing agencies, because Sen. Rambharat rightfully noted, once we are done here today, this is out of our hands.

And so, whatever powers we confer, and whatever agency, whatever Custodian to the police service, to whoever, it is now out of our hands, and we

have to just believe that it will be implemented in the manner or in the spirit that we intend it for it to be implemented. The Government can add to that assurance if they gave us the details.

And I will turn now to sample collection which is regulations 7 to 12, and again here, my concern is that if you look at the sample collection it is the police or a qualified—taking samples. Right? So you are looking at a qualified person or a police officer. And two things I have concerns here with. In reality what is our police service response time? Right? When are members of the police service getting to crime scenes, and how does this affect the integrity of your DNA and your sample collection? So, if you want to, if you are saying, yes, DNA has a 99 per cent accuracy and it can help in solving crime, Well, a big part of that is if it is not contaminated. And one of the ways to ensure that is if we can say that we will improve police service response time getting to the crime scene.

And on that note, the Ministry of National Security website states that there are over 6,000 police officers in varying ranks and Special Reserve Police that support the mandate of the service. The TTPS is organized in nine divisions, which cover Trinidad and Tobago, as well as 18 branches, squads and units. One of the units listed is the Crime Scene Investigation Unit, and I would like the Minister to tell us: What is the composition of this Crime Scene Investigation Unit? And what is their role in this DNA legislation?—because you see, again, this is when you are doing things for “doing them sake” without any real plan or any real flesh around the bones that you are presenting to us.

There is a Crime Scene Investigation Unit. We are talking about collecting crime scene material as part of the samples under Part III of the Regulations, but no mention thus far has been made as to what is the specific role of the Crime

Scene Investigation Unit. And I know a number of other speakers have said—that they have discussed, that all police officers regardless of rank will be now tasked with collecting samples. But my question now is: What additional training has been embarked upon? Is it that—

Madam President: Sen. Haynes, I am sorry that I have to interrupt you, but I think you are doing the same thing in cycles, your contribution, you know. I do not want to go into what your contribution is, but you need to raise some new issues in your contribution. You really are, one, repeating what others have said, and two, repeating what you have said in cycles. Okay?

Sen. A. Haynes: Madam President, I do not know that anyone has raised the Crime Scene Investigation Unit and what their role is, and in particular, right, I wanted to quote an article which referenced how the police service, I believe, can—even with DNA. So it is from the pathologist Dr. Alexandrov who noted that in homicide cases there are oftentimes, and I am quoting here [*Interruption*] from a *Guardian* article—

Madam President: Members, please. Members, please. I am trying to pay attention to the contribution. Continue, Sen. Haynes.

Sen. A. Haynes: Thank you, Madam President—that they can be—

“...‘screwed up from the very beginning’ due to sloppy work on the part of the police.”

Madam President: Sen. Haynes, we are dealing with—you are the eighth speaker on this issue, and I just need you, I do not want to go into it. I just need you to bring some more focus to the Regulations and to something that perhaps has not been repeatedly said by the previous speakers. [*Crosstalk*]

7.15 p.m.

Sen. A. Haynes: I know, but I have—*[Interruption]*—yeah. So that, I—*[Crosstalk]*—yeah, yeah. No problem, Madam President. I think, where—the area that I am coming from, with respect to the samples on the crime scene, is to say that the Minister of National Security that sits in the Senate has not yet spoken and perhaps can answer some of the questions that I have raised, because, like I said, no one has spoken about the unit within the police service and where they will fall under these Regulations. And I have been very careful to, I think, list where in the Regulations, well, one, the police service is all over the Regulations. And it is important for us to be very clear in terms of how their role would be rolled out, because once we pass them, like I said—but now let us look at some financial implications.

I am not going to go into this in any detail because some of the speakers who will come after me will look at it. But if you look at the allocation of recurrent expenditure which falls under Head 22 of the Ministry of National Security and when you look at them, what I would like to ask is, where in this would we accommodate, in the allocation to the Ministry, are we accommodating the transportation? And if you look at storage, Madam President, under Part VII, “Storage of Reference Samples and Crime Scene Materials”. It says:

“24(1) In every place where a reference sample is likely to be taken or crime scene material is likely to be routinely retrieved...

(a) there shall be assigned a secure room or receptacle for the storage of the reference sample...”

Now, Madam President, there is a big difference between a room or a receptacle. And is it that in some police stations, for example, where you will have reference material—is it up to the discretion of the senior officer to allocate what in their opinion is

sufficient space to host reference samples? Is it that in Tableland Police Station, for example, it will be okay for them to have a section in a refrigerator, whereas in Besson Street, for example, they have to have an entire room?

So, again, these things could be fleshed out, we can get more details. If you do look at the—if the Government is serious about implementing these things in a short period of time then, where in the expenditure, under materials and supplies, is it that—are we going to stick to 15,000 DNA kits? How often are we going to be ordering them? Is it this one or 15,000 order and then what, when they are used up, we place a next order for a next 15,000? You see, there are a lot of details that I think are, have been quite absent in the duration of the debate that would fulfil answering some of these questions that we have.

When you look, again, like I said before, Madam President, when you look at from the storage of reference materials and samples, these are all, the transportation, the privacy standards, they all also raise very important procurement questions that I think need to be answered. Who will be purchasing these things to operationalize the DNA Regulations? And as we think about these things and as the Government will field more speakers, I hope, we do need more detail as to how they intend to really operationalize these DNA Regulations more than what we have been hearing.

And I have said from the onset that we are willing to support with the amendments made by our Bench, and amendments that I am sure to come, because there are gaps in the Regulations and I hope that as we go forward that there is a real attempt to answer the questions that we have raised as they are important and they will assuage some of the fears some of the citizens have surrounding DNA Regulations, and I thank you, Madam President. [*Desk thumping*]

Sen. Sophia Chote SC: [*Desk thumping*] Thank you, Madam President. Madam President, to put my contribution in context I will begin by reference to an article published

by the International Association of Law and Forensic Sciences (IALFS) and it became available online on the 7th of June, 2014. It is called, “Forensic DNA Databases—Ethical and legal standards: A global review”. It is written by Wallace Jackson, Gruber and Thibedeau.

If I may address one point that had been raised in Sen. Ramkissoon’s contribution and that is to say, how large is our database going to be? I think this article is a cautionary tale. It recounts what happened in the United Kingdom, which was the first jurisdiction to start to store DNA samples:

“In 2006”,—then Prime Minister—“Tony Blair”—had—“proposed a universal DNA database”—which included—“every citizen and”—every—“visitor to Britain...”

What their experience showed was:

“That building a universal DNA database”—was—“a poor use of resources, since DNA was collected from only 1 per cent of recorded crimes”—scenes—“and included innocent people on the criminal DNA database”—which—“had not helped to solve more crimes”—

This consequently led to the:

“...loss of public trust...”

It led to:

“Potential misuse by the police and the State or anyone who”—could—
“infiltrate the system”; and it
“Increased risk of errors and false matches with crime scene DNA as the database expands”.

In fact, in that jurisdiction:

“In...2008, 61 per cent of their police chiefs voted against”—the—
“universal DNA database...”

And in 2008, when the United Kingdom was still part of Europe, that is pre-Brexit, there was a case from the European Court of Human Rights called Marper which said that this:

“...constitutes a disproportionate interference”—this kind of collection constituted a disproportionate interference—“with the applicants’ right to respect for private life and”—could not—“be regarded as necessary in a democratic society.”

Now, the only reason I refer to that is to say that, in order to make sure that our regulations create a system which can be used efficiently within our small island state, we must consider our own unique circumstances in determining how we are going to have this database set up, how it is going to be regulated and by whom.

So while it might sound very nice to say, well, I do not care if you have nothing to hide, well you should not worry about your DNA being on a system. You might actually be preventing crimes from being solved by taking that kind of approach, simply because you may have a database that is too large for our society to manage.

So, that is just a cautionary recommendation. I do not know if it will find favour with the hon. Attorney General or not. I want to say that I think, hon. Sen. Sobers and I looked at some of the same research material, because from his contribution I could see that his research had taken him to South Africa. And there were a lot of changes in the legislation and guidelines in South Africa, around the same time as that rapist had been held, as the hon. Minister had referred to in her contribution. And what the South Africans did is that they went to different

countries with developed systems or regulations to determine what was best for them.

And the research shows that what they decided to do was not only to create a database and to make sure that it was regulated and this kind of thing, but they created an oversight board which was called a Forensic Oversight and Ethics Board which basically said, that this Board will not have control of the day-to-day running of the laboratory or the laboratory is doing these kinds of testing, but this board will ensure that ethical guidelines are followed when you are dealing with this species of material or this species of evidence.

And I recommend that very strongly and I honestly hope that the hon. Attorney General will look at the South African position and take into account the possibility of the creation of an oversight ethics board or a forensic oversight board, which in the South African case is made up of three people: a medical person, a legal person and a regular citizen. I am not going to go into too much detail about that board, because I think it is a question of policy and whether the Government thinks that it is a useful suggestion or not.

So, I would respectfully suggest in regulation 2 that there should be included the word “board” and this should say that, “board” means the forensic oversight board. And then further down in the Regulations, how that Board should be constituted and so on, should be dealt with.

In regulation 2, if I may just point out one thing that we need to correct, databank is used in the Act and this definition given here is not the same as that used in the Act. The Act says databank means:

“...the National Forensic DNA Databank of Trinidad and Tobago...”

And it is referred to in section 7 of the Act. So, I think we just need to have some

sort of consistency there.

With respect to regulation 3. Now, this is no criticism of the hon. Attorney General, but when I read through these Regulations I think there were some—there is a certain amount of repetition in some of the things said, in some of the ideas expressed and there is a certain amount of patchiness in terms of how the Regulations are dealt with. Now, ideally if you are dealing with Regulations for DNA you may want to start with circumstances in which you can collect. Who can collect? What happens to it when you collect? Where it goes? How is it stored? And who can have access to the database? Essentially in that form.

Now, the Regulations here do not necessarily follow that same format. This is not a complaint, I am just saying that perhaps it could have been done otherwise. So, I will work with what we have. I am thinking that regulation 3, I am going to suggest an entire amendment for this. I am thinking that 3(1) should say: The Custodian shall ensure that the Forensic Science Centre complies with the relevant international standard, that is to say, ISO 17025, and in this case, it is of 2017.

This way, you really do not leave much to chance. This is an ISO which governs the database of many countries, jurisdictions. It will lead to transparency, because your citizens can go up on the Internet and look it up and see what is governing them when it comes to the standards that will protect intimate material taken from their body. So, I see no harm in us identifying the ISO, the quality arrangement. If I may respectfully suggest, 3(2) should say: The Custodian shall ensure that all data should be loaded and stored in compliance with data integrity controls.

Now, I note that data integrity controls are referred to further down in the Regulations. But I think we need to say that up front when we talk about what the

Custodian is required to do. So, I am respectfully suggesting:

A Custodian shall ensure that all data should be loaded and stored in compliance with data integrity controls such as:

- (i) use of a reliable professional database programme;
- (ii) logging of all action in compliance with set protocols;
- (iii) access to the databank only with the authorization of the Custodian;

And I pause to say that I know that authorization is dealt with lower down, but I think that it ought to be dealt with at the very start so we know what the rules are.

- (iv) back-up must be made of all information input into the databank to ensure not only that if data is lost—the guilty can benefit from that—but also to ensure that if there is DNA which can free someone or to show that they are not guilty of an offence, then certainly that would also benefit them.
- (v) the database programme shall be compatible with other regulatory software which may be used for the storage of data contained in the Data Protection Act.

The reason I say this is because there is a legislative link between the DNA Act and the Data Protection Act.

So we must have—I must say I do not speak the language of IT, and I am not a medical practitioner so I find myself trying to have to address these issues using a language with which I am not familiar, because this is specialist technical language, but I am trying to do my best. It seems to me that we must have some sort of, I do not know, parity between the systems used for the collection of data under the Data Protection Act and under the DNA Act. Regulation 3(3), if I may recommend: The Custodian may, subject to these Regulations accept DNA

profiles generated from an accredited laboratory. Now, there are four accrediting agencies described in the Schedule and I think we may want to look at those to see if perhaps we could broaden them.

I think what we ought to add as well, in 3(2), is something to state that the data has been collected by an approved evidence collection kit. Now, in my reading it struck me that apparently you have data collection kits which used to be used when people first started looking at DNA as possible evidential material in cases and so on. And those kits are now outdated and I do not want us now to be stuck here in Trinidad and Tobago with a set of outdated kits that we are trying to make magic with. If we are to start a database which is useful and which can be used, and will not waste our time and money because lawyers will easily tear apart any sort of outdated evidence, I think we have to ensure that the evidence collection kit meets the standards.

I also do think we should include, after regulation 3, something to do with the staff who will be working under the Custodian. And I found some useful material from the FBI's Quality Assurance Standards where they require continuing education of laboratory staff, proficiency tests of analysts, performance validation of methods which change, use of traceable measurement standards and technical review of the results.

Now, I think this is absolutely crucial because we have seen what has occurred in labs in the United Kingdom which did DNA testing. You know, we hold up the English to very high standards but even they have had serious difficulties with their DNA testing and it has affected the quality of the cases before the courts and that has also happened in the case of different states of the United States. If I may continue. If I may get to regulation 4. If I may

respectfully suggest, 4(1) should read:

“The Custodian shall, from time to time”—determine the criteria for minimum validation requirements and these—“shall be published in the *Gazette*”.

Because from my understanding of it, what the Custodian has to do is to say, it is almost like a fingerprint, you will say, okay, if you find five matches, five lines which are identical, this would not be sufficient for you to say that this fingerprint came from this person. But, if you found eight, for example, that would be acceptable evidence to say that this fingerprint came from that person.

My understanding is they do something of that kind, they set a standard between the minimum and the maximum. They set a standard for what is acceptable. So, we need to know what was used to set that standard and that should be published in the *Gazette*. I totally agree with what is contained here, it should be published in the *Gazette* so that citizens will know what the criteria are for this standard.

Now, I am not going to go through each one of these Regulations to say, well I have dealt with this already or this ought to now be taken out and put somewhere else. If it is dealt with already, well then, it is entirely up to the hon. Attorney General to remove it or keep it as he sees fit.

Regulation 6. I think 6(a) does not belong there because it talks about developing or causing to develop:

“...to be developed the”—IT—“systems necessary for the administration of the Databank”.

To me, there are systems already in existence. I mean there are some countries which have created their own systems but I see that many of the countries, many

other jurisdictions use the American system—which is, I think, “Codix” or “Codex” or something like that—and if there is in existence software which is used for this purpose then perhaps we can, instead of wasting time to create our own software, perhaps we can borrow from what is already in existence.

Regulation 7. Now, I just want to make a point here that we need to go back to the Act and remind ourselves of who is a qualified person for the taking of samples. Because, according to the Act, that is a registered medical practitioner or a nurse, I believe. And I say that because it has an impact in some of the other regulations which follow.

If I may go to regulation 8. It talks about a police officer or a qualified person taking a reference sample from a citizen. And this is sent to the Forensic Science Centre together with a copy of the entry in the register of crime scene material. When you look at the Act, the register of entries for crime scene material seems to be something like a station diary or a property keepers’ book or something like that, where it is kept in this station, it is a log, it is an official log kept in this station and it is kept by the police. So, I am not quite clear how a copy of this entry is going to be sent. Is it expected that it will just be written over or photocopied or something? I am not clear. I am just asking.

Hon. Al-Rawi: Thank you hon. Senator. It is in duplicate and it is found at the end of the Regulations, at 29, where you receive the forms 2, 4, 6, et cetera, are in duplicate. So, a counterpart is delivered.

Sen. S. Chote SC: Thank you very much. So, if I may move to regulations 9(2) and 9(3). We have provision for a reference sample being taken of persons in private hospitals or health care facilities and so on, and these are taken in the presence of a witness. Now, who is this witness going to be? When we speak the

language of the criminal law and you require the presence of a witness usually it is a witness who has the faculties to understand the process and to understand the implications of the taking of the sample. So, I do not know if perhaps we need to look at this, perhaps, and elucidate upon it or expand upon it a little more so that we would know, is this person to be—

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand.

Question put and agreed to.

ADMINISTRATION OF JUSTICE (DEOXYRIBONUCLEIC ACID) REGULATIONS, 2018

Madam President: Sen. Chote, you may continue.

Sen. S. Chote SC: Thank you, Madam President. Now, I ought to say that while it is dealt with further down in the Regulations, you find that this kind of thing, a witness is required to be present when these samples are taken in these circumstances. But, when you talk about samples being taken from children in the juvenile facilities there is no such provision for a witness. And if you are protecting vulnerable persons, for example, I will come to it further down, where you are talking about taking samples from mentally impaired persons and so on, you talk about the protections which are available to them, but I think that those protections should also be available to juveniles or children.

Hon. Al-Rawi: I am just asking whether the assistance is to be found in section 18 of the parent Act where there is a mandatory provision for juveniles in the circumstances set out there.

Sen. S. Chote SC: Thank you. Madam President, I am sure that the hon. Attorney General can correct me on any number of things, but I will try to press on so that my flow of thought is not interrupted. If I may jump ahead to regulation 12 which is, what I was talking about. I think we have a correction to make here, because we are talking about a qualified person at the child rehabilitation centre, but the Act speaks about a juvenile residential facility and it identifies certain places. Now, since the DNA legislation had been enacted we now have different kinds of facilities which house children and I am just wondering whether we are only going to refer to the juvenile residential facilities referred to and defined in the parent Act or, are we also going to encompass other facilities.

If I may just go back a little bit. If I may go to regulation 10(3). I am respectfully suggesting that this should read:

“The qualified person who takes a reference sample at a prison shall forward the reference sample to the Forensic Science Centre together with a copy of the entry in the DNA Record”—either in text or electronic form, such as is kept in every place or institution which collects DNA samples and which shall require to keep a record of such samples taken or something along those lines.

So, I just thought that we ought to expand upon it a bit so that any form, if a police officer keeps a record on his cell phone, for example, we can have that record made available.

So, I am jumping ahead because I went to regulation 12 already and if I may go to 15(2) which is at page 8. If I may respectfully suggest that we include here the Police Complaints Authority because they do investigations and possibly, I ask your consideration of possibly including the Director of Public Prosecutions,

because sometimes things may not appear obvious to an investigating officer, but when it comes to a prosecutor who is taking a case to court, the prosecutor may think to himself or herself that access to the databank might be useful.

7.45 p.m.

We do not want to have a multiplicity of stages where the prosecutor now has to go and ask the investigator to write a letter to take to the Custodian. It might be easier for the prosecutor to have direct access to the Custodian to request this kind of information.

There is another area which causes me a little bit of concern here, because sometimes I have found that—particularly where you have sexual offences committed, or crimes committed against children, a report may be made at a police station and absolutely nothing is done, and the parent of the child or the victim, herself or himself, may wish to have a private prosecution brought. Now, is there going to be a mechanism by which a private citizen can make an application to the Custodian for this kind of material? Because one would not want to think that an offender of this kind is going to avoid prosecution and possible conviction simply because a police officer has decided not to prosecute. So I simply put that forward for your consideration, hon. Attorney General, through the President.

Now, regulation 15(3) does not really make sense to me and I could not see the point of it. It says:

“Notwithstanding the fact that a DNA profile does not meet the minimum standards for loading onto the Databank, the Custodian may, at the request of—

(a) the Commissioner of Police:
conduct a search”—or other agencies conduct a search—“against the DNA

profile.”

Now, if it does not meet the standard of what you have collected, I cannot see what is the point of it. If it does not meet the standard, it is not going to corroborate what you have, and what you have ought not to be used to lend strength to what did not have the quality to meet your standard in the first place. So I think there is something quite wrong with this and I respectfully ask for your consideration for its removal.

If I may rush on to Part VI, which is at page 11, regulation 24, where we talk about:

“...where a reference sample is likely to be taken or crime scene material is likely to be routinely retrieved or carried”

I think perhaps we need to use the language of what the forensic scientists use. I do not know what that is, but I am fairly sure that it would not be a secure room, a receptacle for the storage of the reference sample. Receptacle for the storage of this reference sample may be treated in the same way as receptacle for the storage of potential exhibits under our Standing Orders, and that can mean a room; it could mean a fridge or it could mean a box. So I think, perhaps, we ought to have some kind of scientific input into this to say that the sample shall be stored in whatever is appropriate to ensure that it does not deteriorate; it does not become contaminated, or something along those lines. That is my respectful suggestion.

Regulation 25. Now we have here the timeline for delivery to the Forensic Science Centre, and so on:

“A person transporting”—shall ensure the reference...“is transported or delivered under conditions in conformity with guidelines issued by the Minister and published in the *Gazette*.”

I do not think we need this. Why not say what they need to do now, because we have the Regulations here. Now, I pause here to say, let us not imagine that we are reinventing the wheel here, because DNA samples have been taken from persons, citizens, over the past—I do not know—10 years or so, in this country. They have been used in investigations and prosecutions. So what has happened in the past—because we did not have our own lab—was the people at SERU would keep the sample and they would send it by Fedex to whatever lab they were using in the United Kingdom.

Now, that obviously allowed lawyers to have a field day, chain of custody, because all you had with respect to chain of custody were names on a Fedex envelope. So I think it would make sense if we looked, perhaps, at the ISO in question, it may give us some guidance as to what are the controls that are required, or protocols required for this kind of thing.

Now, I come back to where I started and that is to say, I strongly recommend that we consider the use of a board and this would deal with the kind of situation where you may have samples which were taken which ought not to have been taken, or where you have samples improperly taken, and never used in a courtroom. And there is provision in the South African jurisdiction for the board addressing that kind of wrong which has afflicted the citizen and they provide for alternative dispute resolution, and all those kinds of things.

We do not necessarily have to go there, but I think it will lend confidence to the citizenry to know that if somebody takes a sample when they are not supposed to, or they took it for the wrong reasons, that they do not have to find the resources to go to a court and fight a case; that perhaps there is a board there, a responsible group of people, who can address their problem and bring some resolution to the

matter. I think, certainly, that is something that we should look at.

So, Madam President, as I say, I am not going to go through each regulation and suggest the rewording for each one. I think what I have tried to do is sum up, in the earlier part of my contribution, by reference to the earlier Regulations, what my concerns are, and I think that we need to be very careful to make sure that we use the appropriate language. If you will permit me this little indulgence, I can say that the first time I had to do a case which involved the use of DNA evidence, I had to study the material for six months before I thought that I understood what I was about and I understood how to view the evidence and how to challenge it. Now, it is not an easy language to understand and that is why I think, perhaps, we are struggling with it in the Senate and why, perhaps, we need to have the input of some sort of forensic expert or scientific expert, because this after all—

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

Sen. S. Chote SC: Yes, thank you very much. After all, we must remember this is not a magic bullet. If somebody says there is a DNA match, this does not mean that that is so. It means that you have a human being called an expert witness who is saying that they conducted certain tests in regulated conditions and they are of the view that the tests show X, Y, Z. So let us not, for one minute, imagine that this is an immediate crime solver, an immediate way that we are going to put people into prison or get them out of prison, this kind of thing.

I think we have to be very careful about using the right approach in the language in the Regulations.

Thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Simonette. [*Desk thumping*]

Sen. Garvin Simonette: Madam President, thank you for permitting me to

contribute to the very important discussion of these Regulations. I use the word “discussion”, because I do not think that given the history of the legislation, nor the existence of many, many victims of crime, certainly in the sexual offence area, both women, men, as well as children, that those charged with the responsibility of implementing laws to assist in good governance and in keeping our citizens safe, ought to be engaged in a debate over Regulations such as these, as put before this honourable House by the hon. Attorney General. Certainly, there is need for careful reading of the Regulations and for mature and balanced comment. But engaging in what is deemed a debate, which is normally deployed with cut and thrust of who wins and who loses, in my respectful view, is a dereliction of the solemn duty with which we are charged as Members of this honourable House.

Having said that, Madam President, I wish to be succinct in ventilating what I consider to be an important appreciation of what the hon. Attorney General has put before us and the framework in which it is intended to operate. So, for example, one must address the notion advanced by the hon. Sen. Wade Mark, that the Custodian has been appointed in some capricious manner by the Executive, almost akin to a self-interested appointment devoid of any balance or sobriety. Now, that view has to be drawn against the existence of provisions, I believe, at section 9 of the Act, and I would not go into them, which empower the Executive on the first appointment, to make an appointment in compliance with the rules and dictates and guidance of the CPO.

So that, in bringing into being the DNA law and in having attended to an Act that has been long in existence, long in development, in my respectful view, it was entirely reasonable to provide that on the first appointment, if there was some delay, that the Executive could intervene in the appointment of, obviously, via

compliance with the CPO's regulations, on contract, a person to the office of Custodian. So that there was no, in my view, irregularity, if I could put it that way, and I do not indicate that my learned friend is irregular, but, certainly, the view he espoused appeared to convey the impression that there was some degree of maladministration in the appointment of the Custodian.

The other point I wish to make is that mention has been made of the laboratories that are permitted to receive and permitted to be accessed by the Custodian and those working under him. And much comment was made on the opposite Bench of the need for the Custodian to inspect and visit such laboratories, et cetera. I am not entirely averse to the contribution made by my learned friend, Sen. Sophia Chote SC, but, certainly, I wish the general public to appreciate that the Act provides for laboratories to be accredited and the accreditation is in no measure light. And I point to the accreditation, or the bodies that are permitted to accredit laboratories that Trinidad and Tobago would use or seek to refer to in the administration of this Act.

Those appear, I believe, at the First Schedule of the Act, and I read for clarity:

“International Accrediting Bodies

1. The American Society of Crime Laboratory Directors/Laboratory Accreditation Board
2. Forensic Quality Services—International...
3. The Standards Council of Canada...
4. The United Kingdom Accreditation Service...”

So that any notion that the Custodian should attend and inspect these laboratories, in my respectful view, is to engage in sophistry that could cost the taxpayer quite a

sum of money in the Custodian having to travel to such far-flung destinations in the world to inspect laboratories that have been accredited by reputable international bodies.

Madam President, the other issue that one wishes to make is that on the question of collaboration, one has to look at the operation of what one refers to, or what is known in the legal environment as mutual assistance in criminal matters. And so, when one appreciates that we are providing for operationalizing in these Regulations the DNA Act, it is not an exercise executed in “vaps”, but by reference to settled international standards and settled Regulations that govern the mutual assistance in criminal matters that countries of the free world are engaged in. So that the spirit of the law, as well as the letter of the law must be appreciated when drawing an assessment of how the Act is operationalized in these Regulations and the roles and functions of the Custodian, the Deputy Custodian and those other law enforcement officers intended to operationalize this Act.

Clearly, there are requirements for rules, for practices, for methodologies to be developed by responsible divisional heads, if I could call them that, and this House will have an opportunity to review the annual report that must be produced by the Custodian following a year's work and laid in Parliament so that there is every opportunity, as we move forward, to assess the progress being made and, indeed, to identify with particularity, any slippage along the way.

But, certainly what we cannot afford to do is to sit in, as I indicated, a debate, that trawls through the newly developed countries, that draws references to the studies of very many learned academics who are entitled to comment and to review, and, as it were—I believe it would be correct to indicate, albeit harshly, to fiddle while Rome burns. And that just cannot be acceptable, not in a mature

environment where we are seeing, on a daily basis, crime escalating out of control; on a daily basis, nationals exposed to and suffering at the hands of persons who believe that conduct can continue to go unpunished because of a laxity in the legal provisioning to ensure accountability for one's transgressions.

So, Madam President, I would move on to also indicate that there can be no attack, in my view, legitimate attack, on the exercise as being wedded to a doctrine of vagueness. I thought that that was an extremely irresponsible reference to what the Attorney General has put before this House in the form of the Regulations that we have been reviewing. Indeed, there was a degree of—if I would call it, with respect—fictional representation of there being a culture of people being deprived of their liberty without recourse to law. I simply was alarmed to hear that contribution being made. Much could be learnt by my friend leading the opposite Bench from his young Member and my learned friend, Sen. Sobers, who made no such charge, nor did he identify with it.

The concern expressed for power being vested in too large quantities in the Custodian, I think, Madam President, is answered by us reviewing the Custodian's performance in his first annual report and thereafter so that there is provision for vigilance of the Custodian's deployment and use of his legislative power. And that power, dare I say, is not by its grant, unlimited. It is powers that are confined to a sensible and reasonable administration of this important area of evidence gathering.

The contributions that are concerned about the standards of storage, namely of the police and at the police facilities, are well raised, and I am confident that the hon. Attorney General will ensure that consultation with his Cabinet colleague, the Minister of National Security, will attend to and will ensure that those concerns are

addressed. But they are not qualifying concerns for derailment of affirmation of these Regulations. I repeat. They are properly raised. They ought to be kept in mind. Those who raise them must be thanked, sincerely, for raising them, but they are not concerns that would cause us to decline affirmation of these Regulations.

Madam President, the other point made with regard to standards refers to the persons who administer, or who are to take the samples of persons giving samples and persons who are treated within the Regulations, and I am grateful for Sen. Chote SC and I would not repeat it, but qualified persons are defined and, in summary, such persons are either medical practitioners, I believe, registered nurses or senior medical officers. And, again, there can be no credibility in the view conveyed that any and everybody would be taking samples of citizens of the country.

Of course, the other concern expressed with some degree of alarm is that these Regulations, in some way, will be affecting the human rights of our nationals. Well, we have passed that stage and we have passed that stage with a legitimate respect for the Constitution, and that is, the Act that brings into being the Regulations, or that causes the Regulations to be pursued today, was passed with a three-fifths majority in another place. So that it simply is puerile to convey the impression to the national community that these Regulations, in some way, promote an attack on human rights, civil liberties and so forth. And that must be rejected, root and branch.

Madam President, the Regulations are always open to amendment, to review, to being updated, and the concerns expressed by my learned colleagues on the other side, I am certain, have been taken cognizance of by the hon. Attorney General. It is not, however, sufficient in any way to derail our support for these

Regulations which will bring into operational mode this very important area of the administration of justice and the detection and pursuit of wrongdoing in the criminal arena, especially in the arena of sexual offences which, as we appreciated, approach nearly 14,000 offences from the year 2000 to date.

Madam President, I do not think that there is anything more I could say other than to support the Regulations being advanced by the hon. Attorney General and to call on all those assembled here to do likewise. And I thank you for the opportunity of contributing to this debate. [*Desk thumping*]

8.15 p.m.

Sen. Khadijah Ameen: Thank you, Madam President. Madam President, I thank you for this opportunity to contribute to this debate on these DNA Regulations. In my time in this Parliament, it is the first time that we have such an extensive debate on a matter that is not a regular Motion, that is, those in favour say “Aye” and those against say “No”, or a Bill where we go clause by clause. In this instance, it is clear that the Regulations before us have serious implications and I think should be taken just as seriously as a Bill being debated because it is the first time that these Regulations are coming to the Parliament.

So, Madam President, I look on with interest as to how the Attorney General—I know he stepped out of the Chamber—will treat with the suggestions being offered. There were a lot of constructive suggestions in terms of amendments to this Motion, and it not being a Bill, that we do not do the committee stage where we go clause by clause to make amendments, but I trust that the Attorney General would, in the interest of having good law and good Regulations, and in the interest of ensuring the effectiveness of these Regulations in that they would not be easily challenged by, I do not want to say accused

persons, but challenged in the courts, or for whatever purpose the Regulations will be used for, that you want to ensure that you have good, solid Regulations. And so, I think it is important for the Attorney General to take the suggestions made into consideration.

That being said, Madam President, I am of the firm belief that we must—all of us as citizens and particularly those of us in Parliament—seek the interest of returning peace and tranquillity to Trinidad and Tobago, and peace with a sense of justice that the rule of law will be upheld, and the safety and security for all citizens, both their life and property will be a very real thing. I believe that all of us in this Chamber, we have a desire to see—I mean “if you do the crime, you do the time”, and in numerous debates here we would have mentioned issues that contribute to a sense, a very real feeling many citizens have that justice cannot be done in Trinidad and Tobago, and a part of law enforcement and a part of reinstating that sense of justice is to ensure the modernization of our criminal justice system as we know it. We must be able to provide those in the criminal justice system from the very beginning to the very end in terms of judgment, the ammunition to wage that war on the criminal elements in our society. I really feel the general sentiment in our country at this time, with the alarming rate of violent crime, particularly murder, that this sense of security is something that the present Government has failed to bring with their style of governance. [*Desk thumping*]

So, Madam President, while I participate in this debate, the critical thing—and I think that it has been touched on by others—is how effectively these measures will be implemented, and how well-resourced those who are given responsibilities in the Act as well as in these Regulations, how well-resourced they are to do the job. So, while I do not want to presume that, you know, this is

another one of the Government's opportunities to add to their list of claims of achievements that have really been only talked in some instances, I do not want to presume that upon these Regulations. But the fact is, that we have had a number of achievements listed in terms of crime-fighting that are really only on paper and "only talk" from this Government.

Madam President, I very quickly want to go into a few issues particularly pertaining to women and girls, pertaining to missing persons. Some of them have to do with violent crime, but there are other social issues involved. The provisions of the DNA Act—the purpose of the Act when we brought it, when the UNC was in Government in the last said Government, was not to infringe on the rights of any individual, and I heard the Attorney General in his presentation express very different sentiments to what was expressed in that debate.

Sen. Mark also outlined the fact that the present Government voted against the DNA Act back then, and I think that it is very clear that the Attorney General has seen the wisdom in taking this matter forward. [*Desk thumping*] Many times we complain that governments do not continue work started by previous governments and I think this is one instance where the good work of the Partnership is taking us forward, and I think the Attorney General's wisdom in bringing these Regulations to further the use of DNA—because DNA was already in use in our criminal justice system.

But, Madam President, the purpose of this Act was to bring the perpetrators of heinous crime to justice and that includes serial rapists, murderers. We have instances of suspected serial murderers particularly sexual offences, and I am also very concerned about crime involving children. So the purpose, as I say, is to bring these persons to justice to ensure that they are prosecuted because arrest is

one thing. I am sure our police officers are sometimes frustrated when they do hard work, they bring matters to court but the evidence is not sufficient to secure a judgment against the criminals and they walk free, and very often this happens after years of trial.

I trust, Madam President, the fact that DNA is now going to be used, will see cases being resolved more quickly, in that it increases the likelihood that defendants would plead guilty because they know that they will be confronted with evidence that is almost impossible to dispute in terms of their DNA being at a crime scene, and they know that it would be difficult to bamboozle the court with different issues that you could use. This might fall in the garden of some criminal attorneys, but sometimes—I mean attorneys do their jobs and it means that our protective services, the people in our criminal justice system must also be given the tools to do their jobs. I feel that increasing guilty pleas by defendants would work in the interest of victims, it would work in the interest of justice and it would give some relief to our already overburdened judicial system, and I think that is why it is very important for us to get these Regulations correct.

In the Regulations there is mention of the role of the immigration—the role of the detention centre for persons who are in the country illegally. Madam President, when people are detained at the immigration centre—in fact, not only in Trinidad but in any country where they are trying to live under the radar, they do everything in their power to throw away or erase all sense of their identity and that would allow them to stay in Trinidad, but because the State cannot legally allow them to just stay without permission they would be considered criminals, and criminals in flight.

So while the Act and the Regulations allow the State to obtain their DNA,

the sharing of that information with international agencies to identify these persons, I really hoped to hear from Minister Moses—he is not here?—but I am sure he is listening. [*Interruption*] Well he is often sleeping when he is here, so I do not know if he is—[*Laughter*]

Madam President: You know, really, we are speaking about a Member of the Chamber, and it is not the first time that I have heard a reference to the particular Minister. So, I will ask you all to desist at this stage.

Sen. K. Ameen: Thank you very much. Madam President, I hope that the hon. Minister of National Security with the responsibility for foreign affairs, the hon. Dennis Moses, would pay some attention to this matter and hopefully contribute to this debate on the issue of illegal immigrants, and persons at the Immigration Detention Centre, and how these Regulations would affect the information gathering, the sample gathering of persons detained, because it is not only about persons who are trying to escape the law on their own by living here illegally.

In the beginning of this month I read an article in the *Newsday* and it quoted an Interpol report where Trinidad and Tobago was named, and they said that 350 persons were rescued from a human trafficking ring and Trinidad and Tobago was one of 13 countries involved. Interpol coordinated the operation. It was an international human trafficking ring, and these 350 persons were potential victims of sexual exploitation and forced labour and it included men, women and minors. The operation was a culmination of a two and a half year project that was funded by the Canadian Government, which also provided—and I like this element—the training of investigators and training of immigration officers to enhance the operational expertise and regional coordination to combat human trafficking.

I did not see mentioned the idea of training persons with regard to the role of

persons who are situated at the detention centre. I know that the prison was mentioned, so I would really hope that the Minister could shed some light particularly because the Director of the Counter Trafficking Unit of the National Security with Interpol indicated that one of the biggest problems with human trafficking is that there are 100 and—sorry. This was the former Minister of National Security, Gary Griffith, who indicated that the biggest problem in dealing with human trafficking is the fact that there are an estimated 120,000 illegal immigrants in this country. It meant one in every seven adults is an illegal immigrant. That is a huge number. It certainly has an impact on the state of criminal activities in Trinidad and Tobago now, but we also see that we are vulnerable as a country to the whole human trafficking—

Madam President: Senator, I have to ask you where you are going with this. You started by talking about the Regulations, and the ports, and the immigration centre, but now you are going off. So, I need you to tie back what you are saying to the Regulations, please.

Sen. K. Ameen: Thank you, Madam President. Madam President, I was highlighting that article because I want to move to the US Department of State, 2017 Trafficking in Persons Report where some of the recommendations—

Sen. The Hon. Khan: Madam President, 46(1).

Sen. K. Ameen:—include—

Sen. The Hon. Khan: On a point of order, 46(1). I do not normally do that, but I have to do it now.

Sen. K. Ameen: Well, if you wait you will see the relevance.

Madam President: Sen. Ameen, I am waiting and I am asking you to get quickly to the point. You have now been speaking for quite some time, for about 15

minutes. [*Crosstalk*] Sen. Ameen! So just come to the point, please.

Sen. K. Ameen: Thank you, Madam President. Madam President, what I want to come to has to do with the fact that we have been named in terms of one of our shortcomings by the 2017 Trafficking in Persons Report from the US Department of State. One of our weaknesses has to do with producing evidence including DNA evidence, and if you would allow me to develop the point a little bit without—I want to mention because I think it would be incomplete if I just say that. It was indicated in that report that Trinidad and Tobago does not fully meet the minimum standards for elimination of trafficking. One of the recommendations was that we should increase efforts to investigate, prosecute and convict traffickers, and to train law enforcement in proactively identifying, obtaining, preserving and collaborating evidence including DNA evidence.

I heard other persons earlier talk—somebody mentioned conviction using DNA, but this report also indicated that although there are laws that no conviction was made at all. It also mentioned, Madam President, that the police corruption is an issue in the past, is associated with facilitating prostitution and sex trafficking, considering—

Madam President: Sen. Ameen, listen. I know—it is not because every newspaper report or report makes a reference to DNA that it can be introduced in the debate and expanded upon. I need for you—yes, I have given you leeway you know, but I need for you to be a little more direct on the Regulations. You being the 11th speaker today, so a lot has been said before. Okay?

Sen. K. Ameen: Thank you very much, Madam President. Madam President, the fact that the Trinidad and Tobago Police Service plays a role in obtaining and in securing DNA samples, and the fact that the police corruption has been mentioned

as an issue in different reports, it is something that I think we have to guard against and I want with that, I want to move on to another matter.

Madam President, I do not know if the Attorney General in his wind-up could indicate in terms of the purpose for which you obtain the DNA samples. I do not think I have to read out the Regulation with regard to this, right? So, if I could just indicate. Very often the police would obtain DNA samples when a crime is committed, for instance, a murder, a rape, robbery, and the purpose for the collection of the evidence would be in a criminal matter, in a prosecution, to help the prosecution.

There are a number of instances outside of Trinidad and Tobago where a controversy would have come up with regard to the use of information in the database, and if the Attorney General could provide some clarification. For example if a person's information is in the database because they were involved in some crime, it could be some years ago, and then they are involved in a paternity dispute for example, can the other party apply to the Custodian to have that information released to prove that that is the criminal's child or is not the child of the criminal? Because that is not the purpose for which the sample, which is in the database, was obtained for, and there are a number of cases internationally. It appears that people are tired so I would not refer too much to the judgments, but it is a very valuable—[*Crosstalk*] It is a very valuable—[*Crosstalk*]

Madam President: Sen. Mark, I am not tired. I am listening, but you are preventing me from hearing Sen. Ameen, okay? Sen. Ameen, please continue.

Sen. K. Ameen: Thank you, Madam President. And just to clarify, I was not making any reference to you, Madam President, because it is the Members of the Government who seem to be complaining and from the looks on their faces they

are ready to go home. In fact, this is how they run the country. This is how they have been running the country. [*Desk thumping*]

Madam President, I want to ask with regard to the provisions made, I want to move on now to missing persons. In Trinidad and Tobago, there are always different figures. The figures fluctuate. In 2015, I remember there was a release saying that there were 750 missing persons reported to the Trinidad and Tobago police. Of course, some of those people are genuinely missing and some of them would have left home without properly informing relatives where they went, but the issue of the use of DNA in identifying missing persons, I think it is something that will be very useful to us. I think it is well-established how DNA can be used to identify bodies of missing persons and give the relatives closure and give them rest.

I always remember Oman Nanan because I was a young child. In 1991 she went missing and to this day the family has had no closure, and I want to ask if the provisions here would allow for relatives of missing persons to utilize the Forensic Science Centre, to utilize the database to help identify any body that might be found, that might be a missing person? At present, I know the police would do their best because they have a suspicion or something that would point them into the direction of relatives when they find a body that is unidentified, but certainly there are more scientific ways to allow for closure for the families and so on. So, that is with regard to missing persons.

I will just mention in item 17—

Sen. Mark: Section.

Sen. K. Ameen: In section 17—this is in the parent Act—there are provisions for police officers to collect samples for DNA analysis and I know that they kind of

practise that now. I am worried too, Madam President, about the capacity of the Forensic Science Centre. At present, we know the issues surrounding them in terms of being understaffed, but you are placing tremendous burden on this existing system. I know the Attorney General often would take the opportunity to indicate what is being done, and I hope that he will in fact do that because I know that a number of persons would have mentioned it.

Madam President, to me the issue of collection of DNA evidence and its impact on resolving or solving any matter involving sexual violence raises the question of the sex offenders registry and how, of course, that would tie into the national database because many sex offences—in fact, we cannot limit it to women and girls only, but there are many children who are at risk because with the present situation we cannot identify those perpetrators.

Another matter was for the use with regard to collecting—another part of the Regulations—samples from members of the protective services, and while many persons would be in support of that so that in case of a death of a police officer, or in cases where we send members of our protective services to other countries and they perish, you can identify the remains by using DNA samples.

However, Madam President, I must just mention in countries that are stricken with civil unrest or in fact are in war, in countries where you have disasters and the protective services go in as part of relief efforts, we have had a number of cases all around the world—and I am sure it happens here to an extent—where members of the protective services and people who are involved in those rescue missions are often involved in sexual offences against women. Many women in disaster stricken areas, and so on, end up pregnant because of the situations, and this could actually help identify the perpetrator by determining the

paternity of the child.

So, I just wanted to share that with others because the idea, of course, is to identify these protective officers if something bad happens, but I also want to put them on alert that if they commit any crime, whether it is here or in any other part of the world, it means they can be very easily identified.

Madam President, one of the things I was not clear on, when the Attorney General made his presentation, is in terms of the matters presently before the court involving—well, I do not want to say rape alone, but involving any matter where new evidence that could be obtained when these Regulations are accepted, in terms of what impact he feels it will have on the present case load. Because, if the case started before these things became law can the DPP, for example, now introduce new evidence having obtained it with these Regulations; and if the Attorney General, that is, the hon. Attorney General would foresee any dent in the present cases before the court?

Madam President, I think in most of my points I would have indicated that there is a support for the use of DNA, I have a concern that in terms of how the Custodian is appointed that was mentioned by Sen. Mark, and in my view the appointment is solely with the Executive, so this person is a creature of the politics.

8.45 p.m.

And so one would question that person's impartiality and also the continuity, in terms of how will that issue be treated if a government changes, for example, and another Government comes in and they want to appoint someone else. Continuity is very important I feel in this function, in terms of the Custodian. And that is a matter that I feel we must be very cautious about.

Also, Madam President, the lack of checks and balances. The person who

collects the samples, who is responsible—

“Preservation of integrity of Databank”

Regulation 5(2): The Custodian is charged with keeping the log up to date, making any decisions with regard to any profiles being deleted if you ask for it to be removed, and so on. And this same person who is responsible for entering data is responsible for deleting the data, is responsible for maintaining the database and I feel that we should have a little more in terms of checks and balances especially considering that the appointment is political one.

I do not believe, Madam President, that this function should be given to a political creature. And so I trust that the Attorney General will be willing to take the suggested amendments and not only by the letter but by the spirit in which we are giving it. And I trust that this will further reduce or—I cannot say further reduce because the rate of crime is not being reduced at present—but I trust that this will be a tool that those in authority can use to get a handle on crime.

At present, we have this DNA matter. We have the anti-gang legislation that was recently debated and proclaimed and we have a steady increase in the number of murders, the number of violent crimes and a shrinking confidence in our protective services. I really want to see Trinidad and Tobago return to being a safer place. I want to see our policemen and women equipped to fight crime. I want to see our judicial system give fair and speedy justice.

So in that regard, I look forward to the cooperation of the Government to accepting suggestions for amendments. Thank you, Madam President. [*Desk thumping*]

Sen. Stephen Creese: Thank you, Madam President. The thing that struck me most about these Regulations and it is, of course, the standard criticism with regard

to Regulations, is that there is always a need to focus on the objectives. What are these Regulations designed to achieve and how are we, over time, to measure their success or failure? So that we need to have, you know, objectively verifiable indices so that we can assess the Regulations as currently posited. But to do that, you know, the objectives must be clear.

And I would start off by saying that they must be futuristic. There must not be the need to come back to this House or the other place for any slight change in the sector or industry, generally. So that the need for a futuristic approach, for instance the reference to the Forensic Science Centre, as opposed to state forensic facilities or state-approved facilities, no more generic terms in the language. So I have a problem with that. So that we do not have to be coming back here every time there is a new facility. And that is borne out by the fact that when I am coming up the highway I used to be seeing a police jeep escorting a pickup with a long tray and, you know, the siren and blue lights flashing. And when I enquired what that was all about, I understood that that was a corpse being escorted to the centre. So I would assume over time we would try to desist from that practice by not having every last corpse from the deep south being transported royally to Port of Spain. Good? And, therefore, the language of the Regulations should accommodate the decentralization of such a facility without recourse to coming back here.

The other thing that struck me was with regard to the whole question of standards and best practices and reference to the standards that need to be observed, and the facilitation of these standards. Part III, subregulation (2), which speaks to the conduct of inspections of the centre of at least one a year, I feel that that could possibly be better worded, with reference to saying something like “shall

conduct audits of the state forensic facilities”.

And in proposing that, what struck me was the question of when you see similar cases being tried abroad and the most famous of course being with regard to OJ Simpson, the question comes up of defence attorneys utilizing competing authorities from the various colleges and laboratories in the United States to question the veracity of the State's evidence.

And therefore, the question of the registration and the processes involved in the registration of competing facilities, especially private facilities, as opposed to the state forensic facilities crossed my mind, and whether these Regulations are really catering for the development of that. Because once you have DNA laws on your books, then, of course, it opens up an entire new industry that was not there before. And with no intention of criticizing my fellow Senators who are in the legal field, but once there is DNA legislation, there is going to be a need and a search for competing authorities so that you can question state evidence. And therefore, all this ties in to the Regulations being sufficiently robust to cater for that new emerging sector of private facilities.

The other thing that caught my attention had to do with the whole question, partly of having a process that allows for the adoption of new and revised standards, which takes me to Part II, No. 4, the question of what would be the authority for such reporting. Because from a management perspective, I think it was raised initially by Sen. Taurel Shrikissoon, the question of the Custodian not being a law unto himself. My position, when he raised that was that, perhaps, this is where the medical aspect of this whole thing, as opposed to the IT aspect, came out and whether the Chief Medical Officer might be the authority to whom he should report on the question of standards because is this so much an IT standard

as it is a medical standard?

I think that is what—but I think with due credit to Sen. Chote, who indicated that the creation of a board may be the resolution of this matter, and positing that she indicated that it should contain a medical person, which was the idea I was leaning towards, as well as a legal person and possibly an IT person, because the encryption and all that aspect of it has to deal with IT in a sort of non-legal framework.

So it is that question that we cannot resolve these issues pertaining to the Regulations operating in silos. So it has to be an interministerial approach, which recognizes that, yes, there is an extent to which this is all about crime and the management and the investigation and prosecution of criminals and so on, but it is also a medical issue and it is also a technology issue in terms of encryption and storage of the information.

Because one of the things we tend to do, we lose sight of here, is that this is also about people's personal information, good? And at the end of the day, the extent to which we are going to recognize or pay some heed to, how we treat publicly with people's private information, you know, from the perspective of DNA records and DNA information.

Because, although we are drafting these Regulations pursuant to the DNA Act, there is a tendency to keep on seeing it as purely about the pursuit or resolution of crime, you know, and bringing to heel criminal elements. But DNA is not just about that. It is wider than that. And therefore, it involves the consideration of issues beyond crime scene detection, much more personal to the individual's rights and freedoms.

But, to close on that section, I think that Sen. Chote's point about having a

board to be the basis for review of what is taking place and ensuring the maintenance of standards across the various disciplines that merge with regard to Regulations for the DNA Act.

And this is grounded in my understanding of our history and the tendency towards authoritarianism in management, the need to not create another tin god who is not answerable to anyone is critical. We have had far too many tin gods in our management, especially our—and it happens in the private sector. But we have to be concerned here, because we have oversight over the government sector. So we should not be part of a process that creates another tin god. So there is need for a line of accountability that is reviewable.

So that, at the end of the day, we have to understand that yes we have a duty to solve crime, to bring some relief from the criminal sector, criminal scenario, but there are about, as they say, 50 shades of grey between national security and crime and medicine and medical practice and medical standards, which brings in the forensic research aspect of it.

I think there is need to reiterate the whole question of objectives. What is it we are trying to achieve here? And one of the things that stands out is, of course, the facilitation of a court process. And if we are to do that, then we need to get into the heads of lawyers. We have had quite a nice display of that here tonight. How do lawyers attack what may appear to the rest of us to be formidable DNA evidence? And in pursuing that line of thinking, it allows us to discern what we need to do to ensure that a robust system, that these Regulations lead to the creation of a robust system. So that—what is it lawyers tend to do? Of course, they question the standards. What is a match? What is the DNA match, and if what we have before the court, in this particular instance, meets the standard of

being an acceptable DNA match?

So therefore, again, Sen. Chote's point about international standards. We need to zero in on that and have that properly codified otherwise we are creating tracks, as they say, for the defence lawyers to run. I want to put the phrase nicely. I would not use the colloquialism standing next to one of Senior Counsel.

But what do lawyers do? Of course they question the evidence. How the evidence is extracted from the crime scene, how it is transported, how it is stored. And I think we got a nice insight on that from Sen. Sobers, so I would not go over that ground.

9.00 p.m.

What else do lawyers do? They question the professionalism of the police, the police testimony, the deposition taken from the police. The professionalism, or I should say, the lack thereof—and we are all familiar with the OJ case and the detective and how that derailed the prosecution's case. So again we have to make sure these Regulations, as best as they can, preserve against that.

What else do lawyers do? Well the thing is—I think Sen. Sobers gave the game away when he spoke about the facilities in the station. They look for points at which they could attack the quality of the evidence. So that whether there are adequate facilities in the police station, where you need to have cold storage before the evidence taken—is taken to the forensic centre. So whether the forensic centre is centralized—whether the police stations have adequate interim intervening facilities—becomes critical to how the case that is being developed for presentation in the court would stand up to our best defence lawyers.

So therefore, there is an assumption in these Regulations that either our facilities at the forensic centre are sufficiently decentralized, or police stations have

what is needed to hold evidence till it gets to its final destination. And the whole question of transport becomes critical, given the present state of our facilities.

So yes, these Regulations are necessary. But are they sufficient to achieve the objective, and that is why I am insisting on an objective-based analysis. Because that will allow us to determine whether we are merely placing Regulations on the books or we are really on the road to facilitation of a court process.

And in that regard, I think what would be helpful would be a kind of process, a flowchart approach to the whole system. And I am sure the Minister in the Ministry of Finance will be able to recommend to the Government some very good management consultants, in the field of process flow analysis and management. Because I think that is what these Regulations require from the managerial perspective; a process flow analytical approach.

And finally, what will be my shortest contribution, I think that the intentions of the Attorney General are well met. But I am fearful that we are setting the stage for a field day by the criminal defence attorneys, and we are virtually handing them these cases on a platter. I thank you, Madam President. [*Desk thumping*]

Sen. Nigel De Freitas: Thank you, Madam President, for the opportunity at this late hour, and at this late stage to enter this debate on the Motion that is before us in relation to the Administration of Justice (Deoxyribonucleic Acid) Regulations, 2018. I remember the first day I learnt that word, it was in university and one of the first things you learn in science class or biology class is how to spell that word and to pronounce it properly. But, I, like my senatorial colleagues at this point will indicate that I am going to shorten the word as well and just use the DNA Regulations. It can be a mouthful when you are trying to repeat that word in your

contribution over and over again.

So, Madam President, at this hour I have had the benefit of listening to all of the speakers that have gone before me. And I think most of the points in relation to the Motion that is before us have been said, and at the risk of breaching the Standing Orders in relation to tedious repetition I intend to just summarize what occurred so far, and then make my contribution in relation to that summary by responding to some of the sentiments brought forward before. So in listening what I have found and have been able to summarize is that there are three major points in relation to the Motion that is before us. And that is, individuals are worried about the chain of custody, as it relates to prosecution. And that is, this process being able to hold up in court. And I just want to say that, in relation to what is before us, there is an end point to all of this. I do not think that there is any situation where you would go through the process that I am about to lay out that is not going to end up in a court of law, in relation to some case or matter. And I am saying that, because the ultimate check and balance in relation to the process and the Regulations before us would be the ability to hold up in that court. And what you would find with these Regulations is that as time passes, and as these cases come up in court, and you are able to use this DNA evidence in court, you would find loopholes in any regulation that you put forward. Because as the Attorney General would have indicated, it cannot be perfect. It is a work in progress and over the years you would be able to make it better.

So as you go through the court system, those loopholes will show up and by order of the Minister and affirmative resolution as put into section 34(2) of the parent Act, you would be able to come back here and close those loopholes. So as time passes, these Regulations will be strengthened. But I do agree with the

Attorney General, in the moving of his Motion, that you must start at some point. And I think that the Regulations put forward before us are pretty robust, and as I go through the logistics of what is before us you would see where there are a lot of checks and balances put in place.

So, Madam President, as I indicated, there are three main issues that I have seen so far in this debate that have come up, and that is chain of custody, the second is security of DNA information in relation to the individuals, and the process by which this information is moved along that logistical pathway, and then the human rights issue in terms of retention of the DNA or the taking of these samples by the number of individuals. And I think it was in Sen. Haynes' contribution that she was responding to the idea of all of the people of Trinidad and Tobago eventually having their DNA on some sort of a databank.

So, Madam President, I start by going through the logistical process. And I think everybody, so far, has gone through the Regulations that have been put before us, section by section and clause by clause. And one of the things that I have noticed is that, if you have done that, you might get a little bit confused, because the process by which they are laid out here is not the exact same logistical process by which it would follow. So I would start with the first part, which is the sample being taken and that corresponds to Part VI of the Regulations that are before us. And one of the issues that would have come up with that is in relation to the training of the police officers and their ability to take these samples.

Now, as far as I understand it, it is two types of samples. The non-intimate sample and the intimate sample. And the intimate sample is more bodily fluids, for example, blood. And I honestly do not think—and it is probably in the parent Act—that police officers will be taking, walking around with needles to be taking

blood samples from anybody to get a reference sample, which is the known sample. So we are talking about intimate samples—non-intimate samples here, which is really the buccal swabs.

And the Joint Select Committee report has been brought forward into the debate, and in that, I am a member of that National Security Joint Select Committee, and I can tell you that one of the things that we looked at was the readiness of the TTPS to engage in this particular stage of the process. And what we noticed, and Sen. Ramkissoon pointed it out, was that prior to 2016, which is the enquiry of the Joint Select Committee on national security, the TTPS was not following the Act of 2012, in relation to taking these non-intimate samples.

And I can tell you, because of that enquiry the Commissioner of Police has put out his orders to the TTPS, and actually appointed an individual to be responsible for overseeing the taking of those samples. So, in relation to the training, and the ability of the TTPS to take those samples, I can tell you as a Member of the Joint Select Committee on National Security, where this report has been publicized and laid in Parliament that that is being dealt with at this point in time.

But in terms of security of info, I just want to say that in these Regulations the checks and balances have been put in place. So that when those samples are taken and they are being taken back to the police station, and it is laid out in the Regulations, as to the various places where you can have DNA storage, you have logging taking place. So that when you take the sample, there is a log that is going to be a part of that sample taking. And then when you get to the station, there is a DNA record as laid out in the Regulations that must be filled out, and you can find that in the Schedule of the Regulations before us.

But the other check and balance, in relation to that, if you read the Regulations properly, under Part VI is that every seven days, that log must be sent up the line to the Commissioner of Police. So even if the officer who took the sample comes back and there is something wrong there, the Commissioner of Police has sight of that record every seven days. So that is the first check and balance that you have in relation to the entire process that these Regulations have set out.

And so, Madam President, we are moving on to the storage of the sample. So the sample has been collected, the record has been created, the Commissioner of Police has sight of that record every single seven days, and therefore the first check and balance is operating there. So now you have the storage of the sample, and one of the issues that was raised in relation to this, in terms of chain of custody and prosecution is: Where is this sample going to be stored? And we heard from Sen. Sobers, where he spoke to the situation now, where these samples are put into a fridge in the police station.

Well, if you look at the Regulations before us at Part VII, 24(b), it speaks to guidelines being put forward by the Minister, in relation to the storage of these samples. And I do not think that any Minister of National Security is going to put in his guidelines that the simple storage would be a fridge in a police station. I assume, based on the fact that throughout the Regulations we speak to international standards, that when the Minister by order, sets up his guidelines as to how this sample should be stored that it would meet international standards, and if it is not, it also goes on to say that these guidelines must be gazetted. So anyone can check the *Gazette* to make sure that these guidelines meet international standards. And again, like I said, the end result of all of this is that it must hold up in a court of law.

So you will have that feedback coming back from the prosecution to say: Where are these samples being stored, what are the guidelines that the Minister has put forward, and are they being met? And does it meet international standards. So you have that process taking place, whereby you do not have samples going into a fridge in a police station because the Minister can set guidelines they can be gazetted and made public and they can meet international standards there.

Madam President, at that point there is a log. So it is not to say that you are coming, taking a sample, you come back to the police station, you are tired, you leave it on the countertop, and you go home. And the next morning you come, and you try to put it in the fridge or something, or whatever storage unit that is outlined by the Minister. What is happening here is that there is a storage log, meaning that you must enter into a log this sample that you have taken, that you are going to put into storage.

So there is a check and balance there to say that when this sample comes in it is logged, when it comes out, it is logged. And therefore, there is a check and balance to say, who put in this sample and who removed the sample to go to the next stage of the logistical process. And again in terms of prosecution, and the chain of custody, that to me seems very secure. In the sense that nobody can tamper with it at that point because you know who is responsible for the sample from the time it was taken, to the time it gets to the station, to the time it is entered into the log, and to the time it is retrieved from the log, to now be moved on to the Forensic Science Centre or any approved laboratory.

But, Madam President, before you even get to the Forensic Science Centre, you move on to the regulations in Part VIII that speak to transport. And at this point in time, we see another check and balance again. Guidelines by the Minister

that are gazetted, as to exactly how this transport process should take place. It even goes on in that part of the Regulations to say exactly what kind of receptacle, and speaks to the thermal unit that needs to be used. So, in terms of chain of custody here again, you see the checks and balances being put in place by the Minister of National Security, guidelines that are gazetted, made public so that it can be checked against international standards to ensure the integrity of the DNA sample before it gets to the Forensic Science Centre.

So, Madam President, moving on in the logistical process, you have the analysis—*[Interruption]*—go ahead.

Sen. S. Hosein: With respect to regulation 25 and the thermally insulated receptacles, were those also ordered together with the buccal swabs?

Hon. Al-Rawi: No.

Sen. S. Hosein: So they will come afterwards?

Hon. Al-Rawi: They are here already.

Sen. S. Hosein: They are here already. Okay, thank you.

9.15 p.m.

Sen. N. De Freitas: Thank you, Senator. So we are moving on to the analysis phase of things. So one of the issues raised by Senators was the Forensic Science Centre and whether it is credited. Again, being a Member of the Joint Select Committee on National Security, and because this particular report on this enquiry has been publicized, I can tell you that the Forensic Science Centre is actively seeking accreditation as we speak, and that is expected to be completed in this year.

Madam President, another issue that was raised is whether the Forensic Science Centre is ready to accept all of these reference samples and crime scene

material that will be coming to them. But my understanding of the Regulations before us is that you have two entities responsible for analysis, and that is the approved laboratories as well as the Forensic Science Centre. So to say that the Forensic Science Centre is not ready, the fact of the matter is you have two avenues by which you can analyze this data to make sure that the logistical chain or the chain of custody is not broken.

I have heard Senators speak to the approved laboratories and wanting the Custodian, just like the Forensic Science Centre, to be able to go to these approved laboratories and assess them as to whether they are following procedure in relation to the analysis. The fact of the matter is the Regulations do point out that these approved laboratories must be accredited. They even go as far as to say which bodies in which countries are able to accredit these approved laboratories.

The fact of the matter is if you are a scientist or if you have done science, when you speak to accreditation it is a very robust process. You cannot get accredited by a reputable international body just like that. You have to follow certain standards. You have to follow certain procedures. It may even involve individuals from the accredited body attending your lab to make sure everything is in place as it should be. So, therefore, it really—in my mind, there is no need for the Custodian to actually go to these private labs once they are accredited, and the fact is that accreditation, once you have gotten it, it is not for life. It is actually repeated time and time again to make sure that you are keeping up with international best practices and that the lab is actually doing what it is supposed to do.

So, once the Regulations speak to these approved laboratories being accredited by these international agencies, the fact is that this will be continual and, therefore, the Custodian does not need to actually go to these approved laboratories

to see if they are capable of doing what they are saying that they are doing.

So, Madam President, I just want to say at this point that from the contributions that have gone before, I got a little bit confused in the sense that I did not think that people understood the difference or the change in process from the taking of the sample to the actual production of the data profile. And what is happening here is that you have a physical sample in space that is then analyzed by the Forensic Science Centre or approved laboratory to give you a digitized version of information.

So in terms of protection of the data, we saw all the checks and balances from the sample taken to the analysis but, at this point, everything now should be digitized or, at least, put on paper from a printout once the analysis has happened and, therefore, the protection moves forward in the sense that you have to look at the person responsible, at that point in time, for maintaining that information by way of the databank or the transfer of that information from the approved laboratory or the Forensic Science Centre to the databank, and that is why you would see so much emphasis being put on the roles and responsibilities in the Regulations of the Custodian, and I think in these Regulations, you see where a lot has been put into that.

So, it speaks to actually telling the Custodian, who is responsible for initiating a search, how the search must be conducted. It speaks to how that report must be generated. It speaks to every year—three months into the next year—that a report must be generated to the Minister and then to the Parliament. So it really comes down very hard on the Custodian and ensures that certain procedures are followed to protect the data, the digitized data that you will have in relation to people's DNA profile.

So, Madam President that being said, again, I just want to reiterate that these Regulations, I think, are robust. I think the Attorney General has done a very good job. [*Desk thumping*] I think that the Ministry of National Security has done a very good job. [*Desk thumping*] I think that the Joint Select Committee on National Security, all of its Members at that period in time—at that point in time that did the enquiry that helped to spur these DNA Regulations to come forward, because we realize at that point in time that it was not being done. I think Sen. Richards, if he is going to talk, at some point later, would attest to that. And what we really found out is that even though this Act was passed in 2012, it just was not being operationalized and the Attorney General has said that repeatedly.

The fact is, as much as Members opposite, when they were in Government indicated that they cared about crime and they wanted to reduce crime, the fact was they brought the legislation and they did not operationalize it, and the Attorney General did not speak to this. But when you look at it from that standpoint, you may ask yourself, why? Because Sen. Mark, in his contribution asked us why it took two years. The fact of the matter is, Madam President, that two years was the shortest possible time it could have been done, because you had to put in place certain administrative things, certain protocols, to protect the security of the information and the chain of custody.

So in response to Sen. Mark, I can tell him exactly why they were not able to do it between 2012 and 2015, and it was a function of a lack of leadership, even though they indicated to the population [*Desk thumping*] that they cared about crime, and the lack of leadership really came in the fact that if you remember correctly, they had a Ministry of Justice—they had, obviously, a Ministry of National Security and they had an Attorney General's Office—but during that

period 2010 to 2015, they had four Ministers of Justice, six Ministers of National Security and two Attorney Generals. [*Desk thumping*] Where was the leadership? [*Desk thumping*]

So even if the Joint Select Committee on National Security, which had the oversight function to ensure the operationalization that was taking place was working effectively, the fact was half the time there was nobody there to make sure it would happen, and that is where the lack of leadership came in and that is why I could say effectively, Madam President, they did half the amount of work that they were supposed to do in relation to the reduction of crime. It is like trying to make curry with a “half-pick” duck. It just will not work. [*Desk thumping*] I have had curried duck and I have never had curried duck with feathers. [*Laughter*]

So, Madam President, that is why I say you cannot question us in relation to our strategic approach to reducing crime. We are working assiduously to ensure it is being done. These DNA Regulations are just part of the equation. It is not a magic wand as the Minister of Agriculture, Land and Fisheries has said, but in conjunction with all of the other initiatives taking place under the Office of the Attorney General and the Ministry of National Security, I believe that we will see a sustainable reduction in crime in the future. Madam President, with those few words, I thank you. [*Desk thumping*]

Sen. Taharqa Obika: Thank you, Madam President. [*Crosstalk*] And after the contribution of the hon. Senator opposite, I hope he does not duck and run from the fire that he will get from the Opposition. [*Desk thumping*] So now, Madam President, as I rise to contribute to this debate regarding the Administration of Justice (Deoxyribonucleic Acid) Regulations, 2018. You know there are two

words that I want us to remember during my contribution. Those words are “efficacy” and “rights”. Now, the Attorney General is on record as saying that there has been 21 years of talk, but I want to remind the hon. Attorney General—

Hon. Al-Rawi: Nineteen, 19.

Sen. T. Obika: Nineteen years of talk. I want to remind the hon. Attorney General that what he is witnessing today is the Government of the Republic of Trinidad and Tobago standing on the shoulders of the work of successive Governments [*Desk thumping*] and the legislation for which we have brought this debate forward for, these Regulations, was a legislation that was developed and passed under the astute leadership of Kamla Persad-Bissessar, the leader of the United National Congress. [*Desk thumping*]

Now, and the irony is that after having an absent Prime Minister for one month, we have to listen to a Government Senator talking about absence of leadership. Where is the Prime Minister in this country? [*Laughter and crosstalk*] Now, Madam President, I am hearing my good friend from the University of the West Indies, Sen. Lewis, mentioning international relations, but I know that there will be questions to answer when the Parliament is resumed regarding a \$104 million contract.

Madam President: Sen. Obika, the question I will ask you that you must answer is to be relevant please to what is before us. Please do not introduce extraneous matters now. Okay?

Sen. T. Obika: Thank you, Madam President, but I seek your protection because when we have rumblings from across the floor, I must put it to rest, you know. [*Desk thumping*] But anyway, I want to go straight to the estimates of the Development Programme for the financial year 2018 of the Republic of Trinidad

and Tobago. On page 62, after combing it through with a fine-tooth comb, you understand, after someone opposite ran with the “half-pick” duck, we do go to computerization of the Forensic Science Centre, and we are seeing \$500,000.

Now, all the contributions before, it is not lost to me, Madam President, the difficulty with which one coming down the order is faced to bring some new position, but I want the Government to look at that figure, that \$500,000. I did not want to go to the IDF, because the Minister of National Security did not clarify when there were changes or variances to the budget regarding the IDF, how that affected national security—

Hon. Al-Rawi: Standing Order 46(1), Madam President.

Sen. T. Obika:—and how that affected the Forensic Science Centre specifically.

Madam President: A Standing Order is being invoked.

Hon. Al-Rawi: Standing Order 46(1), most reluctantly. [*Laughter*]

Madam President: Sen. Obika, get to your point please. Okay. I know you are trying to—[*Crosstalk*] Members please—build up, but you really are, as you have said, you are coming very late in the batting order, and I would ask you please, just get to the points. Okay?

Sen. T. Obika: Thank you, Madam President. But I find it strange that the Attorney General after hearing me mention a figure specifically—

Madam President: Sen. Obika, also, can I just tell you that I can hear very well. There is no need to raise the volume. Okay? All right. Continue Senator.

Sen. T. Obika: Thank you very much, Madam President. Now, after hearing me state that the line item regarding computerization of the Forensic Science Centre, how on earth could anyone ask about relevance? [*Crosstalk*]

Mr. Al-Rawi: I rise on Standing Order 46(1). We are dealing with the

Regulations. If it was an appropriation Bill, no problems. [*Crosstalk*]

Madam President: Sen. Obika. Attorney General, I am allowing Sen. Obika to just make his point, but I am inviting you, I am pleading with you, Sen. Obika, to come to the point. Okay?

Sen. T. Obika: Madam President, I am simply bringing some clarity, because Members before me pointed to the importance of having a robust system regarding ICT for the recordkeeping of the profiles, and if one has to be guided by government expenditure regarding the fiscal programme, you have no choice but to go to the Development Programme. So, therefore, I was hoping the Attorney General would allow me 30 seconds to crystallize my point. [*Crosstalk*] Now, for half a million TT dollars, all I wanted to say, five minutes prior—it seems the Attorney General does not want me to get through my contribution.

Madam President: Sen. Obika, listen. Let us get on with it please.

Sen. Ameen, you have spoken but while Sen. Obika is speaking, there is a running commentary from you.

Sen. Ameen: My apologies, Madam President.

Madam President: Support him in silence please or whisper. Sen. Obika, get to the point. The Attorney General invoked a Standing Order, I have invited you to make your point without reference to the Attorney General. Okay?

9.30 p.m.

Sen. T. Obika: Delightfully, Madam President. Half a million dollars is wholly insufficient given the two words that I mentioned at the beginning of my contribution, “efficacy” and “rights”. The first word being “efficacy”, really and truly, what can they hope to achieve with half a million TT dollars? Lord alone knows. Now, if one has to go on to another important item, establishment of the

DNA database, and we are seeing \$1 million as the estimate for 2018. Really and truly, the handmaiden of this entire exercise is what system, what rigorous systems regarding infrastructure will be in place, and one cannot take any comfort in what the Government has planned. So even though the hon. Attorney General made a lot of noise, made a lot of noise about action, we are not seeing action in terms of walking the talk by using the state funds. [*Desk thumping*]

I want to move on. Every time I hear rumblings, I do not know if it is a Standing Order coming so I have to listen. So, Madam President, now there are ethical questions raised over DNA tests used to track many aspects of this whole thing, and one issue that I raised at the start, the word called “rights”. Now, once privacy can be perceived to be a human right, and there are many examples when these profiles are taken from DNA samples and testing, and so on, that persons’ rights to a privacy regarding their medical conditions. For example, one may have Parkinson’s disease. One may be prone to other types of medical illnesses which could be gleaned from the DNA testing which they may not even be aware of, or which they may well be aware of but may not want it to be known by anyone whatsoever. And the reason why the Attorney General would realize that any responsible government would take its time to deliberate on bringing forth Regulations is because these matters regarding DNA violates, very easily, one’s right to privacy.

I want to point this honourable House to an article, just one line in an article that crystallizes that point. It is from—okay, I cannot use that article because apparently I did not quote the source correctly, so I will have to send that thereafter. But another issue regarding DNA evidence is the point that persons are listening and many persons are talking about DNA evidence as if it seems to be

infallible. I have heard, maybe, one or two persons really talked about the procedural issues. For example, they may be able to win a case by showing all the things that Sen. Sobers raised, as well as echoed by Senior Counsel Chote. However, that argument seems to point to the view that it is infallible and it is only if the officers made a mistake, or the storage is an issue that you can remove it; it will be inadmissible in court. However, I want to quote from a little article by Linda Geddes, a special report in the *New Scientist* magazine, Madam President, saying that, asking the question:

“Would you trust DNA evidence?”

Where:

“Most people regard it as...infallible...”

And there is a line that they stated:

“In the first of a two-part investigation, *New Scientist* reveals that much of the DNA analysis now conducted in crime labs can suffer from worrying subjectivity and bias.”

I will leave that there and just point to echo the sentiments raised by—I think it would have been Sen. Ameen, regarding the case of our national in—I believe it is New York or Massachusetts where they falsified evidence to maintain their rating.

Now, I want to move on to another point, because I know that the time is short and I do not want to detain us much more [*Desk thumping*] regarding your DNA in a police database. I apologize, Madam President. Now, the reality is you cannot escape your DNA, okay, and I want to quote this article, just one line from this page regarding, “Is your DNA in a police database?”, by Jill Lawless. Now:

“Earlier this year”—that is 2017—“Yaniv Erlich, who runs a lab at MIT’s Whitehead Institute for Biomedical Research, published a paper in the

journal *Science* describing how he was able to identify individuals, and their families, from anonymous DNA data in a research project. All it took was a computer algorithm, a genetic genealogy website and searches of publicly available Internet records.”

So this person did not have to create or go to any primary data source, they had access via the secondary data sources. And the fact that this fact really begs the question: What are the systems to protect our citizens’ profiles when they come on this database given that it is going to be so cheaply procured; half a million dollars? How much comfort can we really have in that? I think the Government owes it to the population, not necessarily to declare the details, because we do not want persons to find it easy to hack, but to declare to the population with some level of certainty that the systems for protecting the data will be very robust.

Now, Madam President, I want to turn to a point, I want to echo a sentiment giving a different aspect to it that was raised by Sen. Ameen. And it is because of this conference that I was party to, jointly hosted by your good self, and I am really thankful for that privilege to be part of that session regarding gender-based budgeting.

Hon. Al-Rawi: Madam President, I am compelled to invoke Standing Order 46(1). [*Crosstalk*] I am compelled. We are now on gender-based budgeting, Madam President.

Madam President: Sen. Obika, continue—but you know what I am going to tell you—continue, but please focus on the Regulations, and you know I have been on my feet to ask you to focus on the Regulations a few times already. Continue, Sen. Obika.

Sen. T. Obika: Thank you, Madam President. I know it will meet some of the

Members opposite with great difficulty that I will be wrapping up soon. But I really wanted to just state that the points raised regarding DNA testing of soldiers in peace-keeping efforts does not only apply to our soldiers in foreign missions, but post disaster in Trinidad and Tobago.

Hon. Al-Rawi: Madam President, 46(1), please.

Sen. Ameen: “Oh God, stop it nah!”

Madam President: Wow, Sen. Ameen, seriously, could you allow me to deal with the invocation of the Standing Order?

Sen. Ameen: My apologies, Madam President.

Madam President: Thank you very much. Attorney General, Sen. Obika is winding up, I will allow him to continue, okay. But, Sen. Obika, please, it is not every reference in life to DNA has to be brought into this debate, okay. Continue, Sen. Obika.

Sen. T. Obika: Thank you, Madam President. I am actually beginning to enjoy the banter; I think I will use more time. So, as a result of that—[*Interruption*]—I heard someone say I am misleading the House, no, I am not, I want the Attorney General to participate.

Madam President: Sen. Obika, come, look, listen. Listen to me, Sen. Obika, please address me, you are not addressing the Attorney General. If you and the Attorney General want to have a tête-à-tête you can do it outside the Chamber. Confine your discussions please to the Regulations. And, Sen. Obika, please, please, let this be the last time that I get up to discuss this with you.

Sen. T. Obika: Okay, thank you, Madam President. So if we were to turn to Part III of the Regulations regarding taking samples, we see the Government has a figure of \$200,000 for training, and regarding taking DNA samples it is important

that all persons who have responsibility for the intake and the storage and disposition of biological evidence should take online, in classroom, and other forms of training on evidence management—that is from another jurisdiction—on retaining biological evidence, but it begs the question, is the \$200,000 in recurrent expenditure and on the amount in the development programme sufficient for that? I will leave that there.

Now, another issue regarding—and this would be more or less a new issue as I have not heard it raised prior, is the communications link between investigators, prosecutors, and the responsible custodial agency to be able to determine charges filed, and, really and truly, to harmonize so they do not operate in silos, more or less in the form of a coordinating team, or something of that sort. Apart from the National Security apparatus, something specific and apart to deal with DNA communication and coordination.

Regarding packages and storing the evidence, you know, if you turn to Part VI, regarding the records, the whole issue of the cleaning area. Yes, we have mentioned the Forensic Science Centre, but the Regulations—not necessarily the Regulations but the procedure going forward for the police stations should require some level of infrastructural upgrade so that the drying rooms for the evidence and the policy for the documentation and cleaning of the drying area should be established. Now, decontamination, an area that could be easily decontaminated is also a key feature of DNA record storing and handling, so that there is no commingling of the items, as well as no contamination of the evidence. So, Madam President, that point is the new aspect that I wanted to raise, and it is something for the police service to bear in mind.

Also, they mentioned different law enforcement agencies. But what about

the courts of law? Because the courts of law would be required to be part of this chain of the evidence, so in terms of handling and the storage and the movement of the evidence. So, really and truly, every single organization along the chain, not just the police, the prisons, the Customs, Immigration and the private security firms, but also the courts of law need to be taken into consideration in the chain of custody and the unique item in the identification for biological evidence.

Madam President, there is another point that I wanted to raise regarding the Occupational Safety and Health Authority, right, because the OSHA standard regarding waste, its regulation and monitoring, is important. And just to put—I think this paragraph would be a little too long to read here, but I want to direct the hon. Attorney General to the Technical Working Group on Biological Evidence Preservation of the United States where they pointed out the whole issue regarding OSH compliance. The hon. Minister of Labour and Small Enterprise Development is not here, but that would be an issue for the hon. Minister of Labour and Small Enterprise Development to monitor the OSH agency which falls under her care.

Another aspect regarding the storage units—I thank Sen. De Freitas for his informed contribution prior; however, I am not sure if—and he can clarify if in case I missed it—if his suggestion about transportation having the required thermal storage units, if that includes police vehicles. If it does not, this article basically said that bacteria can seriously damage or degrade DNA contained in biological material and inhibit the ability to develop a DNA profile. So, really and truly, I, not being a scientist, will prefer not to state if that can be a problem, but I think the Government should look at that as well.

9.45 p.m.

Now, as I am drawing to a close I just want to make one last point on the DNA industry. The DNA industry, as Sen. Creese mentioned, will arise and there would be many companies coming forward. Globally, over the five years to 2022, as at 2017, the industry is expected to continue to benefit from improved technology which should increase productivity and revenue. This comes from the US Market Research Report on DNA and DNA Forensic Laboratories.

Given that the industry really and truly is something that tends to be growing, and here in Trinidad and Tobago as we are looking forward to moving our economy forward, we would want to look from the point of view of the Ministry of Trade and Industry and the Standards Bureau to ensure the regulation of these laboratories that decide to enter into the realm of DNA testing, handling and being part of this entire value chain, that they do so in light of the legislation, notwithstanding that the law and the Regulations more or less speak to the crime and criminal activity, but really and truly it impinges on the other aspects of the industry regarding paternity testing and so on.

So, Madam President, not to detain this House any further, I thank you and I thank the Attorney General for the lively discussion which I always enjoy.

Thank you very much. [*Desk thumping*]

Sen. Paul Richards: Thank you, Madam President, for the opportunity to join the debate at this late stage. I know Sen. Obika is a difficult act to follow, so I will do my best not to have you on your feet at all. [*Laughter*] It is my honour to contribute to the Administration of Justice (Deoxyribonucleic Acid) Regulations 2018, better known as the DNA Regulations.

I just have a couple quick references, particularly in terms of standards. I will be quoting from the *Interpol Handbook on DNA Data Exchange and Practice*

from 2009, in addition to a 2017 report by the Forensic Genetics Policy Initiative, setting human rights standards for DNA databases worldwide, because I think the establishment of best practice is very important, given the invasive nature and the sensitive nature of DNA legislation anywhere in the world.

Referencing the hon. Attorney General's piloting of the Motion, I know he said we cannot be perfect, it is not perfect legislation, but given the sensitivities involved here I think it is important that we get it as right as possible, because there have been several cases that I will cite in my quick contribution that have shown the deleterious effects of getting this wrong where people's rights and their personal information is concerned.

Just as a State must do all in its power to protect citizens, and I think the Attorney General's efforts in this regard are very commendable, because we have to do everything we can in terms of arresting crime. I think it is equally important when people's rights are being abrogated to ensure that the Regulations which will operationalize the DNA Act of 2014 are as robust as possible to protect citizens.

There have been many contributions on—well we have to have confidence in the police service. I know Sen. De Freitas and Sen. Sobers both referenced the police service in their contributions. Sen. De Freitas indicated that yes DNA legislation is being used for 10 years in Trinidad and Tobago, and the Police Commissioner has given the assurance he is going to put someone in charge, but without flogging the police any further in public, because I do not think we need to do that, they are already going through their own stresses. We cannot bury our heads in the sand as to the inadequacies of the police service, when they cannot even seem to proffer a drunk driving charge in a high profile case.

Madam President: Sen. Richards.

Sen. P. Richards: I will not have you on your feet. [*Laughter*] But it is important to get it right nonetheless.

One of the issues that I want to cite is the Declaration of Human Genetic Data which was adopted unanimously at UNESCO's 32nd general conference in 2003, which applies to many of the issues in the Regulations—biological samples, in terms of investigation, detection and prosecution of criminal offences and in the parentage of testing, and that in relation to human rights. I think it is important to understand that one of the quotes in terms of this is:

The major cause of misidentification in this case is contamination of samples before they reach the lab, because a person's DNA can be transferred to a murder victim or a weapon even if they are touched, and properly securing crime scenes is critical.

I know there are references in the parent Act and in these Regulations related to that, but based on the learnings of these research papers that I have cited, in some cases they just do not go far enough, and because of what is at stake, here we really need to make sure that we get it right.

People's major concerns, to add to what Sen. De Freitas indicated, is because of the personal nature of DNA, and people have a tendency to feel when you are talking about voluntary and involuntary samples being taken that there is an automatic presumption on behalf of the citizen that they are a criminal, automatically, and citizens should not be made to feel like criminals in any process in terms of trying to assert law and protect them.

There is also a concern about a Big Brother State, when the State is gathering personal information and keeping it for undisclosed lengths of time. The loss and potential loss of data in terms of data storage and security, and when you

are thinking of international treaties and sharing database information, the reference that Sen. Chote made in terms of maintaining ISO standards is critical, because if we do not maintain those international ISO standards we will not be able to exchange data with international agencies, and that is critical. If we do not make sure that our processes are intact in Trinidad and Tobago, the very intention of going through the Central Authority or that agency using the opportunities will be lost.

So we have to maintain the standards and the procedures in Trinidad and Tobago. We cannot say and bury our heads in the sand and say, well the Acting Police Commissioner and the Police Commissioner will ensure, because we know of the shortcomings in the Trinidad and Tobago Police Service and, without flogging the police publicly anymore, I just want us to be very cognizant of that and ensure that we, in terms of what we do here in the Parliament, in this honourable House, go the extra distance in holding those who will operationalize this through the Regulations, accountable at every step of the way. I think that is very, very important.

There is reference to the regs in terms of the lab requirements, and just to add a little context to what is at stake here, there are three cases which are very well-known cases of DNA legislation and sample-taking gone wrong. In Houston, Texas DNA samples were tampered with or contaminated that resulted in a teenager, Josiah Sutton, convicted and sentenced to 25 years in prison for a rape he did not commit. In New York a student protester was wrongly linked to a killing by DNA collected while she was protesting.

In England, Peter Hamkin was held by police for 20 days in an alleged murder in Italy, before it was discovered that a mistake with the DNA evidence

had been made by Interpol. And these are agencies with a lot of resources. These are States with a lot of resources who are making mistakes and impacting citizens' lives negatively, infringing their rights of freedom.

So we have to be aware of this in Trinidad and Tobago knowing our shortcomings, and again it is not to cast aspersions as to the intention of the Motion by the AG, but the fact that so many people have spoken here today, including almost all of my colleagues on the Independent Bench, shows the concern we have for getting it right, because while it is the State's right, and all our collective responsible right to enact laws that protect citizens, we must also protect citizens' right at any stage, and that that we cannot overlook at any stage.

There is also an issue, in furtherance of what the AG and the Government by extension is trying to do, because in the USA the Urban Institute found that for every 1,000 offender profiles uploaded to the DNA database correctly, eight investigations were aided, whereas every thousand crime scene DNA profiles updated correctly, 407 investigations were aided positively. So if it is done right, there is evidence to show that it can help law enforcement and can bring criminals to justice, but again it has to be done right.

One of the major issues involved again is the failure to analyze DNA collected from rapes and it has led to a significant controversy in many States. I will go through quickly what the Interpol has cited as a DNA testing kit for underground, which I not seen in the Regulations or in the Schedules as outlined in this Motion.

There is also an OECD privacy protection principle that I have not seen included in many of the regulations here, which is, and I quote:

An individual should have a right to obtain from a data controller or

otherwise confirmation as to whether or not they are in possession of data related to him or her—

Because if you are taking my DNA I should have the right to know that you have my DNA and how long you are keeping it for, and if you no longer have use of it, how it has been disposed of.

I have perused the parent Act and in the best practice Interpol handbook there is also reference to specifically how data should be expunged from systems effectively and how samples need to be disposed of in detail and not leaving it to persons to do it in an ineffective way, because there are people's lives at stake here. We have to make sure that if we are doing it at this stage—the first DNA sample was profiled in 1987. We are 39 years after, so we have no excuse for not getting it right. [*Desk thumping*]

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

There is also a particular attention to be paid, and this was one of the controversial guidelines in UN Resolution 4695 in terms of the regulation of computerized personal data files, which is a principle of interested person access which focused on the minimization for the potential of racial bias and profiling in the collection of samples. That is what is considered best practice now because in many States there have been several controversial cases where law enforcement has used DNA to profile particular ethnic groups.

We have a situation in Trinidad and Tobago where it has been suggested that legislation from a couple of years ago rounded up a particular cadre of persons. We have to guard against that when we are going as far as intimate samples and even non-intimate samples in Trinidad and Tobago. So I think that is something worth consideration in terms of inclusion, and a focused principle of non-

discrimination. And it goes:

Subject to cases of exceptions restrictively envisioned under Principle 6 if data gathering or samples are used for arbitrary discrimination, including information of racial or ethnic origin, colour, sex life, political opinions, religion, philosophical and other beliefs, as well as membership or associations in a trade union, should also be focused on and specified or codified.

Because people, again, need to be protected and we have to guard against, Mr. Vice-President, malfeasance and the use of it in any nefarious way.

There is also a suggestion to the hon. AG in terms of the samples being categorized. I did not see reference of that in the parent Act or in the Regulations here where, in best practice, databases are separated in terms of major offences/minor offences, in terms of samples taken from family members for missing persons' references because of their close-knit DNA matching, and that also, I humbly suggest, needs to be taken into consideration in terms of the storage of data and the classification of data types so that we do not bundle all data collected and all samples collected in the same cadre of persons, because that would be also counterproductive.

In closing, I just want to go through some quick observations in terms of particular regulations. I know quite a bit has been said already. In terms of Part I, the databank means forensic DNA databank, and in the best- practice scenario it is actually specified because of the evolution of technology, whether it be cloud-based storage, whether it be on-site storage with back-up outside, and all those nuances that come with the evolution of technology, because you cannot be too careful in terms of the possibility of people having data breaches and hacks, where

large-scale hacks can happen to companies like Google and Apple, and we know we can be vulnerable to that also. This is people's private, personal data that can be used for all sorts of purposes.

10.00 p.m.

So, I think there needs to be some specificity on whether these databanks for the databases have firewalls, there are specifications for the firewalls, because it is not specified in the Regulations whether the sharing of the data between agencies is by hardwire LAN or if it is transferred through some sort of encrypted electronic transfer. All this is not specified here, and all those are nuances that can affect data breaches in these situations.

Well I would not go through the issue, but I also have and I am just going to cite it as a serious concern as some others have indicated with the vagueness of "as soon as practicable". Because in the best practices as outlined by Interpol there must be specificity of time, for example, in terms of taking samples where regulation 7 says:

"(1) Where a reference sample or crime scene material is to taken from a complainant, the investigating officer shall arrange for a qualified person to take the sample, as soon as practicable..."

Because cases have been lost in other jurisdictions because of a lack of reference to specific time frames within which the officer must take a sample and transfer the sample to the safe and authorized storage places. And there are several references to "as soon as practicable" in these Regulations which are not adequate and do not meet international best practice.

There is also a situation in regulation 9 where I heard no one mention it

before and it relates to—many of the regulations seem to relate to situations where law enforcement or authorities are taking samples from one person. And there are several scenarios that may arise where you may have to take what has been classified in the best practice as mass screenings, more than one person, five people at a time, and what protocols should be in place to make sure that they do not cross-contaminate each other, and that to me is a suggestion to be included in the Regulations in terms of best practice, because many of the regulations, the references are to a person and not necessarily painting a picture for a mass screening in a situation where, for example, a gang is concerned and you want to make sure that protocols are intact. So I think that also can be considered.

Also, there is also reference in the best practice to a monitoring of off-site ports of entry, for example, in regulation 11 where there is reference to:

“...the Chief Immigration Officer shall arrange for a qualified person to attend the port of entry or place of detention for the purpose of taking a sample.”

In the best practice that is also allowed for, but there are several instances where references are made to regular checks and unannounced checks to these locations to make sure that they are keeping up the specifications of the agency, of the police force, so that compromises are not—do not become the order of the day and we do not have cases falling apart because as some people have referenced earlier on, any defence attorney who is worth his or her salt can take a trip to any of these agencies and realize that the standards have not been up kept.

I remember Sen. Sobers making a reference to a visit to a police station. I also made a visit to a police station to go on a tour a couple of months ago, and the refrigerator that was referenced had the signage “for evidence only, not for

personal use”, and the officers were going in and out, there was—

Mr. Vice-President: Senator, I just want to caution you at this point, because we have heard that point brought forward before, and because of the late stage of the debate, it is going to be very difficult to not breach the Standing Order on tedious repetition. So because we have heard that point before from, I think from more than one contribution, I would ask you to just sort of move forward to your next point in your contribution.

Sen. P. Richards: I will be guided, Mr. Vice-President, thank you. Moving on to regulation 14:

“Prior to a profile being sent to the Custodian, the Forensic Science Centre or the approved laboratory shall assure that the profile sent to the Custodian does not identify the person to whom the profile relates.”

And I looked at the parent Act and while it prohibits the person from doing this—the Custodian—I did not see a specified sanction if they did not do it. So if you are going to prohibit someone from doing something, there should be a sanction applied to increase the possibility of them not doing it.

There is also referenced quickly, in the end, yes, again, in many instances to specific time frames. And in 24(2)(b), in terms of:

(2) The person in charge of the place where the reference samples and crime scene materials are stored under subregulation (1), shall cause a storage log to be kept and maintained in which the following information shall be recorded.”

And in part (b) it states:

“In the case of a qualified person, name, profession and place of employment of the qualified person entering the reference samples and

crime scene material to be stored;

And in the best practice there is a specific form which has a list of authorized persons so that they can be checked off against a reference number.

In terms of the data collection or so, I am surprised that the forms in the Schedules only have spaces for numbers and signatures signing off on the forms and have not included barcodes which is what is best practice around the world, very much like what we see with TTPost and other transport agencies transporting sensitive material or classified material where they tape off one here and the barcode matches, and you can electronically have a digital fingerprint as opposed to analogue logging where these kind of sensitivities are concerned. I am surprised that was not included in that.

And finally, just to give us a sense of what—because we are taking a lot for granted in terms of readiness to operationalize this. This is just a sample in closing, Mr. Vice-President, of how detailed samples should be kept.

- “Dry samples should be kept at room temperature...out of direct sunlight. Dry samples stored as ambient temperature should not deteriorate/decompose, degrade and remain suitable for future DNA analysis.”

Hon. Senators: Source.

Sen. P. Richards: Sorry. The source is the *Interpol Handbook on DNA Data Exchange and Practice 2009*. Right?

“Breathable bags, cardboard packaging and brown paper bags will allow sample to dry out whilst safely packed away and should be stored... Plastic air-tight containers are not suitable...”

And they go into more detail:

- “▪ If samples are air dried then this must take place in an area free from any contaminant, for example, in a sterile drying cabinet or laboratory fume cabinet.”

It specified:

“If this is not achievable and there is any risk of minor contamination then samples should not be air dried.

- If samples are frozen then they should be kept frozen and never be allowed to thaw or refreeze...”

There should be a temperature gauge attached to make sure temperatures do not go below a certain—that is how specific best practice is in terms of maintaining the integrity of the evidence.

- “▪ Plastic bags can on rare occasions be used to transport very wet items but this should be on instruction of the local forensic science laboratory.”—only.

And finally, in terms of the crime scene checklist for the DNA sample kit, and I have not seen this in the Regulations either, the sample kit should contain, at least, the following items and this is the base level documented checklist, instructions on the use of the sample kit.

- “▪ Breathable tamper-evident bags/containers and/or cardboard packaging, which have a unique number or barcode
- Sterile (self-wetting) swabs (extra swabs available if necessary)
- Sample/vial of sterile water
- Pair of disposal gloves
- 1 x Form/label with relevant information about the sample”—and the “(chain of custody)”—in detail.

- The contents of a scene of crime sampling kit”—also—“to be used for collecting biological stains as previously stated.”

And in closing, one of the major concerns that has led to the breakdown of cases using DNA is crime scene contamination, and I would not go into the detail for time, but there are also equal levels of specificity regarding how a crime scene should be treated. And we have had comments from the Police Complaints Authority and other stakeholders about how crime scenes are contaminated and best practice not adhered to in Trinidad and Tobago.

So while I commend the Attorney General and the Government for this move because it is 31 years behind when DNA started to be used in the world, I think there is quite a bit of work to do in terms of the Regulations to ensure that it achieves the envisioned goal. With those few words, Mr. Vice-President, I thank you.

Mr. Vice-President: Sen. Dottin.

Pastor Sen. Clive Dottin: [*Desk thumping*] Normally I take 15, so I will take 10 tonight realizing I am coming low down in the batting pole. I just want to quickly go into the Regulations under Part II, and I want to compare that with regulation 15(3) and it says:

That the Custodian shall, from time to time, set the minimum standards in accordance with the international best practices for entry onto and removal of data from the Databank, which shall be published in the *Gazette*.

When I got this, well I understood that I had to come here last night, but when I got this and I read it, I was saying one of the comments I had, Mr. Vice-President, to the AG, is that in particular sense it like deifying a person, that is the Custodian, and I wondered if we were not putting too much responsibility on him, and even

putting more responsibility on the one who has to supervise him. And I had the same query as Sen. Chote there in terms of who manages, who controls, who sees about quality, all right?—evaluation, and I was thinking that you needed some task force or she said a board to help in the process of management.

But when I looked and compared IV because, I think, and I have to congratulate the Attorney General, I have to. I believe he is a workaholic and I admire him and sometimes I wonder if he is not part of the endangered species in this country, because to my mind whoever wants to really do something on this crime becomes instantly endangered, you know. And I hope you get support even from your own colleagues in terms of this, because where we have reached, we need to do a lot of stuff, okay?—to advance the process forward. So, I compliment you, and I think you are genuine in this whole process. So, I compliment you.
[*Desk thumping*]

Having complimented him, Mr. Vice-President, I do not think that he possesses people infallibility. Now, I just want to raise this, and I could be wrong, but to my mind 4(1) actually neutralizes 15(3), because in 4(1) you are saying that he sets the minimum standards in accordance with international best practices, and it even goes, I mean it is published in the *Gazette*.

When I look at 15(3) you are asking the same Custodian to ignore the minimum standards. So, I feel that there is a contradiction there in the Regulations. So I would hope he would take a look at that. I do not know if it has to be removed completely or reworded. My preference would be to remove it out completely because to my mind, not only is it contradictory, but it has the potential to compromise the Office of the Custodian, and I am watching that, ladies and gentlemen.

I have two other points to make quickly in my 10 minutes, and that 12(1) right down to 12(3). Now, I have had experience in starting homes for children who are abused, et cetera, et cetera, and I know how parents, the relatives, who are the abusers, —who happen to be the abusers, how they are very tough on the leaders of those homes, and also compromise their safety, and I have had experiences in the court with this.

So, I want to make a recommendation here, 12(1) it says:

“Where a person is detained at a child rehabilitation centre for the first time or a subsequent time, and a sample has not been taken from him, a qualified person at the child rehabilitating centre shall take a non-intimate sample as soon as practicable.

And I am saying here, Mr. Vice-President, to the Attorney General, I see you are looking at regularizing the homes, and I see a relationship here because I believe a lot of homes would not have that kind of person working, a staff member with that kind of qualification. My challenge here with 12(1) and (2) especially (2) and I want to look at it carefully, Mr. Vice-President:

“Where a reference sample is to be taken from person in a child rehabilitation centre and—

(a) there is no qualified person attached to child rehabilitation centre;

(b) or the qualified person attached to the child rehabilitation centre is not available,

the person in charge...”

Now, that is where I have a little problem, Mr. Vice-President, and to the Attorney General, through you:

“...shall arrange for a qualified person to attend the child rehabilitation centre—

- (a) at which a sample is to be taken; or
- (b) where the person is detained,”

I feel in terms of the victim it should not be done at the centre at all. A lot of these centres will have the privacy, and what it will do, it will facilitate those who would do the managers harm. We know where this country is going, we know it is gone, and we have to pull it back. That is why I feel that these Regulations are a step in the right direction.

10.15 p.m.

It is a step in the right direction because of the moral responsibility the AG has assumed, in that he is not just bringing a law but bringing the Regulations being asked for all the time which contributes to the concept of, you know, having a monitoring mechanism. To my mind these Regulations contribute and could act as a catalyst to monitor these places. And coming to monitoring, that is my last point.

So, I am saying it should not be there at the home. I would not—until you have all these Regulations for the management of homes operationalized it should not be there. And secondly, I feel the burden should not be on the leader of the centre. You know, leaders, if we do our research and audit these homes, which I think is what the Government plans to do eventually, you will discover that the leader of the home is like the Police Commissioner or the national security Minister who has to really absorb all the failures of the past, family failures, society failures, community failures, cultural failures and they receive the blame for what is taking place in terms of the crime, et cetera, et cetera.

So, same goes for the Minister of Education. So I would like to suggest that the responsibility, if it has to be initiated by the home, I do not really think it should be initiated by the home at all, but if a child complains to a manager of a home or has been abused or raped or what have you, I think either the police or the board of management that we think we want to see as an oversight body should initiate taking the swab and getting the really intimate evidence there, because most of the time it is sexual abuse, it may be physical abuse in some instances that I have seen.

So, I am recommending that if even you want to have it at the, you want the centre to play a role—the rehab centre to play a role—then I think the board of management of that centre should be given the responsibility. It removes the threats and the danger from one person who is the leader. Oh, I could tell you, leader of the home sacrifices quite a lot. Sometimes they are underpaid and most of the times they are understaffed and to give them this kind of responsibility—introduced that at the venue, the location, is a challenge. So I want to mention that.

In terms of—I do not know if I have it wrong. I was wondering about the punishment for those who breach these very idealistic Regulations you have, and then I look at the parent Act and I saw it was \$100,000 and seven years. So that is taken care of. I believe we have to put a little more teeth in terms of introducing total quality control at the forensic centre and the other labs. I do not want us to take it for granted that the private labs operate at such a high standard in the country. You might evaluate and find that some of the private labs have a lot, you know, may have some challenges also. So do not take it for granted that the Forensic Science Centre is efficient but the private labs are so way ahead. You could be surprised. So I just want us to— think we have to really perform an

evaluation of all the labs we have and that would help us to get a better picture.

In closing, Mr. Vice-President, we need the courage in this society to solve this crime problem and whatever can be done to advance, if even it is 5 per cent, 10 per cent, and in the future if not in the immediate present, we should applaud. So I applaud in principle what is being done here and the issue of listening to the cries of people in both Houses, that we not only want to build but we want the Regulations, and you are willing. But I understand this is not a Bill as such, so that it would take a lot of goodwill on your behalf to listen carefully and incorporate the recommendations you have received and it will be left to your character, which we trust, to really absorb all that is being said throughout this afternoon and tonight to make this—even improve on the Regulations you have here.

It has to evolve, but nothing like experience; and experience will craft and help us even perfect what we have here today. But I want to say, in fairness to all, that we must understand what Nelson Mandela said and I will quote him and then quote Mother Theresa and sit down. He said:

“I learned that courage was not the absence of fear, but the triumph over it. The brave man is not he who does not feel afraid, but he who conquers that fear.”

To my mind, the gang leaders, the aristocrats in the money laundering business, the cocaine importers who do not live behind the bridge, who are protected and untouchable, I think they believe we are scared of them and would not take action and that they will control the criminal “mafiatric” empire for a long time and not being touched. I hope that this Bill advances and knocks that concept out that has plagued us for decades. I have said in other fora that behind every corrupt cop is a businessman, a lawyer and a politician. I have said that and I am

very concerned about that.

I heard Mr. Young make a statement recently. It caused quite a furor. But the point is, gangsterism and what we have right now is a result of prominent people in the society, some of them are campaign financiers, eh, and some of them are the biggest money launders. They are really encouraging this thing and putting the country at risk. [*Desk thumping*]

And, Mr. Vice-President, I do not want to go home at 10 minutes, but I am getting really passionate here and I am saying all of us have a responsibility to make this place better. It does not matter who we voted for, that is not the issue. [*Desk thumping*] The issue is we want a better Trinidad and Tobago. We must have the courage, we must have the will, we must let them know that we are not afraid of them, we are prepared to die, of course. Dietrich Bonhoeffer made a statement:

“When”—God—“calls”—us—“he bids”—us—“come and die”.

He is calling all of us to risk our lives to save this nation—we have to do it now, if we do it now, there will be no tomorrow. God bless you, God bless you. [*Desk thumping*]

Sen. Saddam Hosein: Thank you very much, Mr. Vice-President, or “Brother Vice-President”. Thank you for the warm welcome, colleagues. I was away for 10 days so I think it is my duty, it is my obligation to contribute to this very important debate on the DNA Regulations, 2018. And, Mr. Vice-President, this issue of the DNA Regulations is one of national security and this is an issue in which politics should play no part. We should take a bipartisan approach in terms of fighting crime, because crime is an epidemic in our society. Our murder rate, it is a runaway. It is a horse, it bolted out of the stable and it is now that we saddle this

horse and control it.

So I want to commend the Attorney General that he did not just disregard the Administration of Justice (Deoxyribonucleic Acid) Act, but that he built on it. So you build on something that we brought while we were in Government and now that we are in Opposition we are prepared to now support your initiative in order to strengthen the criminal justice system in Trinidad and Tobago. [*Desk thumping*]

And, Mr. Vice-President, we must understand the reason for DNA in the criminal justice system and I sat here since 1.30 p.m., and for the benefit of those who are listening on television or on the radio, the reason that we have DNA in the court is one of an issue of identification. Because we have very conventional ways in which we can identify an accused in court, such as by voice, by visual when we do an ID parade, fingerprint. But DNA is something ground breaking. It is a method that a prosecutor can actually use in court. They get one of the most safe and secure convictions in any criminal trial.

And when we employ DNA evidence into a criminal trial, what do we do, Mr. Vice-President, we actually limit the amount of witnesses that we bring to the court. We actually now do not have to deal with issues of witness protection, because we only have to bring a person who is in the form of a DNA analyst or the DNA Custodian to give the evidence required for the random occurrence ratio which I will get to later in my contribution with regard to how the DNA evidence is rolled out in a criminal trial.

But I also want to commend my political Leader, because it was in September 2016 where she together with the Prime Minister met and they discussed the low-hanging fruits and DNA and the operationalization of the DNA legislation was one of those low-hanging fruits that I see that the Government has

picked and now has brought to this Parliament.

I also want to respond to my friend Sen. Simonette who would have said that we cannot fiddle while Rome burns. And I want to agree with you Senator, but we must get it right. [*Desk thumping*] Because if we do not get this DNA legislation right what we can do is operate in a very counterproductive manner that when we go to court that a police officer, that a DNA analyst, that the Custodian has more questions to answer rather than answers to give.

So we want to ensure that the DNA evidence that is produced in a court is beyond question. We want to ensure that it is quality evidence of high veracity. And my friend also—Sen. Simonette would have spoken about the oversight that would have been included within the Regulations for the DNA Custodian, where he would have to file the annual report to the Parliament and we can see the work that the Custodian is doing. But I want to respectfully submit that that is not enough, because the DNA Custodian, he is a power unto himself, Mr. Vice-President. So we must include stronger oversight mechanisms to ensure that the DNA Custodian actually operates in the manner within the Regulations and within the Administration of Justice (DNA) Act.

And there was one comment made by the Attorney General that—he can correct if I misquote him—is that, there have been no convictions based on DNA in Trinidad and Tobago.

Hon. Al-Rawi:—2018.

Sen. S. Hosein: 2018. Well my experience, hon. Attorney General, through you, Mr. Vice-President, was, while I was at the DPP's Office for a very short time, there was one rape matter that I was involved in, I was the junior prosecutor on the matter. I can call the name of the matter because it is public knowledge, it is

Akiedo Guerra. And in that case there was DNA evidence with respect to—

Mr. Vice-President: That case is completed?

Sen. S. Hosein: Yes, yes, Mr. Vice-President. And in that case there was DNA evidence. I would not go into the details of that case, Mr. Vice-President, but at the end of the day we secured that conviction and the jury returned in a matter of minutes with a verdict to say that the accused is guilty, because we found the spermatozoa, his DNA, was in the vaginal swab that was taken from the accused, Mr. Vice-President.

Mr. Vice-President: As much as you are giving the particulars of the case, just, language, please. Yes, I understand that it is proper language, but in terms of just keeping relatively parliamentary, because again, as you indicated you have people listening and you do not know the age of the people listening as well. So just try to circumvent what you are saying in terms of the use of, I guess correct terminology.

Sen. S. Hosein: Thank you, Mr. Vice-President. And also when we have strengthened, when we pass these Regulations and we strengthen the veracity of the DNA evidence, what we can see is that we will now have a reduction in criminal trials in the assizes. And let me tell you why. Because when one wants to plea-bargain, if the prosecutor goes to the bargaining table with just five witness statements that were taken 10 years ago, two witnesses died, do you really think a defence—an accused—is going to take a plea based on that evidence? No, Mr. Vice-President. But if you front-load your case and you confront him with DNA evidence he would be more obliged in order to take a guilty plea so that he would get one-third discount for that time spent that he would be sentenced for. He will get a reduction on the time spent on remand and if he is of good character he will get an additional discount, Mr. Vice-President.

So we can see that once we strengthen the DNA evidence we will have a reduction in the amount of criminal trials in the court and we will have a smooth flow of criminal trials in the assizes. So that is why we will support this, being a responsible Opposition, because we also want to see that Trinidad and Tobago come out of this epidemic of this crime surge in our country. [*Desk thumping*] But we must also be cognizant of the realities that we face with respect to the capacity of the Forensic Science Centre and the length of time that it will take to get a certificate of analysis—

Mr. Vice-President: So I have been listening, Sen. Hosein, and again, I just want to remind you that that particular point has been raised by other Senators in the contributions so far. You are number 15 in the line-up, so I understand the difficulty in relation to all the points that have been stated before. Again, I remind you of tedious repetition Standing Order and if you could move on to another point that is different from what has been stated before that would be great at this point. Continue.

10.30 p.m.

Sen. S. Hosein: Mr. Vice-President, if that is the case I will go straight into the amendments that I would like the Attorney General to consider. I already have them drafted and I believe it will be circulated in due course. So what I will do, I will give an explanation of the amendments that I would like to table.

Now, when we look at regulation 3(2), it states that:

“The Custodian shall at least once a year conduct an on-site visit to the Forensic Science Centre to ensure that the Forensic Science Centre has the capability to perform the requisite DNA service”.

Now, I looked through the parent Act and also the Regulations and the term “requisite DNA service” does not arise. So, I would respectfully like to propose an amendment that we change “requisite DNA service” to that of “forensic DNA analysis” for which a definition was actually given in the parent Act, so that we will not have a very vague definition of what the Custodian is empowered to do.

And when I also looked at—and this was raised in the debate already, but I just want to emphasize the point that when you look at the South African DNA Regulations, they set certain standards with regard to their laboratories, and those standards—

Mr. Vice-President: Senator, I am going to have to, at this point, again, that particular jurisdiction and the point that you are going down along, has been made already. So, if there is any other point—even though you are talking about amendments that you are going to move—if it has come up in the debate already, at this point and at this juncture you are going to breach the Standing Order in relation to tedious repetition. So anything new that has not come up before, you are more than welcome to raise at this point, but if it has been raised before, then please ignore that and then go to something new.

Sen. S. Hosein: Mr. President, if you would just allow me two words, just to end the point, is that there is one ISO Standard, it is ISO 17025, that I would like them to look at with respect to the standardization of the operation of the Forensic Science Centre. And I leave that point there.

When I look at regulation 4(1), it actually says that:

“The Custodian shall, from time to time, set the minimum standards, in accordance with...best practices, for entry onto and removal of data from the Databank, which shall be published in the *Gazette*”.

Now, Mr. Vice-President, what this actually says is that we do not know exactly which best practice. It says “international”, but there are several various practices in terms of the minimum standards. When I looked at the Jamaican model, they actually included a specific list of standards which would dictate their quality management service, and I would just read out what the Jamaican legislation has. It firstly has:

- (a) “standards for testing the proficiency of forensic science laboratories and forensic analysts in conducting analysis of DNA;
- (b) criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by the forensic science laboratories;
- (c) a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably,
- (d) confidentiality requirements specified by the Custodian”.

So, I believe that all of these should be included so that we can have some more specificity with regard to which international best practice we are going to be using.

Now, when I look at regulation 6, which deals with information technology, the Custodian has some sort of regulation with regard to the information technology. So, I looked at the Rhode Island model, and the Rhode Island model

has included in their Regulations for their Custodian, which is the person who is equivalent to our Custodian, to manage a very encrypted system. So, if you would allow me to just read that amendment in regulation 6, to insert a new subregulation which reads:

“The information on the Databank shall be accessed only through the use of an encryption code. The encryption code shall be confidential and only those persons authorized by the Custodian charged with responsibilities under the Act shall have access to these records and shall be given the encryption code”.

And this will actually directly impact on the contribution made by Sen. Paul Richards with regard to the protection of the information on the DNA bank.

[MADAM PRESIDENT *in the Chair*]

I looked at the section dealing with—this is Part III dealing with taking of samples, and there are various groups of persons whose samples can be taken from: the complainant, the suspect detainees, accused, persons who attend a crime scene, a child, persons detained in prison for the first time, persons detained at any port of entry. Now, when I looked at the South African Regulations, they stated in their Regulations that there must be a procedure when we take the samples. And when I looked at our regulation 7, it is very limited in terms of how a person is to take the sample. Now, they actually prescribed in the South African Regulations that:

The DNA reference, (buccal) collection kit must be used to collect the

buccal sample.

Now, in our case, it does not actually prescribe that a person who is collecting a sample use the buccal kit. And Sen. Chote, I believe, would have raised an issue that there must be the type of kit stated and we must use up-to-date and not outdated kits again, because it will interfere with the veracity of the evidence.

Then there is, in the South African Regulations, another regulation that deals with, where there is an absence of a buccal sample, or upon a specific request of a person from whom the sample is required, a control blood sample may be taken by a registered medical practitioner or registered nurse.

Now, in our case it actually said that we can take a buccal sample or we can take a blood sample, but it does not state the criteria or when a person will take the blood sample as opposed to a buccal sample.

The other regulation is that—and all of these are included in my amendments—the person who is taking the sample must use personal protective clothing and this is provided in the collection kit and must be worn by any person who is collecting a buccal sample. And the personal protective clothing provided in the DNA reference collection kit must be disposed of by placing these items in the original packaging pouch of the kit which, in turn, must be attached to the evidence sealing bag containing the DNA reference sample.

So what this actually does, Madam President, is that when the person uses the PPE, they do not just discard it in a bin. What they actually do is preserve the PPE so that they will also conduct an analysis on this PPE to see whether or not

there has been any contamination at any part of the crime scene. So, I think that those are checks and balances that we can place within the Regulations to avoid unnecessary cross-examination in court.

Then, there is a next subregulation which says that the evidence collection kit must be packaged in an evidence sealing bag and must clearly indicate the relevant station and case number—I believe that is covered in our legislation—before they are submitted to the Forensic Science Centre, unless compelling reasons, such as the size of the forensic sealing bag that hamper the packaging thereof in the supplied evidence sealing bag.

So again, this talks about where you have a standard sized bag that can fit the evidence as opposed to certain exhibits that may not fit in the bag.

Now, this is a very important regulation that the South African model has, and I think that it might be very relevant to us in Trinidad and Tobago with respect to our limited resources. And it reads that

If an evidence collection kit is not available or there are compelling reasons as, the police officer or qualified person concerned must consult the Forensic Science Centre.

Or we could propose an amendment that they consult the Custodian to ascertain how the sample must be dealt with, so that you actually get authority from the higher body on how we should take this exhibit, or how we should take this sample where there is the absence of a kit. Because I know the Attorney General said that we have 15,000 kids but this may run out. So we must have provisions in place

where we cover, in terms of how we deal with a matter where there is not the resources in order to deal with a matter like this when it arises.

And I know the Attorney General would have made reference to the UK case which deals with temperature, but the South African model, they actually legislated it and they said that reasonable steps must be taken to ensure that the exhibits or samples are not exposed to heat degradation.

These are the extent of my amendments with regard to the DNA Regulations. There is one point that I also wanted to raise. And while that trial I mentioned earlier—we were warned in that trial of a doctrine called something—the prosecutor’s fallacy. Now, yes DNA evidence is very certain, that when you get a conviction it is very secure, but when the analyst comes to the witness box and gives evidence, they do not actually say that, “my DNA matched the sample on the crime scene, or the person”. What it actually gives is a random occurrence ratio. So it actually says that this person is one in a million; that one person in the population of a million, it will match. So that it shows the difference in which you would actually find yourself in that population.

And the good thing for Trinidad and Tobago is that we have a population of approximately 1.3. But this prosecutor’s fallacy doctrine applies to those jurisdictions where there are greater populations, such as the UK, Canada, where you say that this person will match one in a million. Their population is a couple million, so actually about four or five persons could have a similar match with respect to that.

So, that is one warning that the judge will always give in a trial, that although there is a match, it does not mean that this is the person who actually committed the crime, that it is still upon the jury to determine whether or not, having considered all of the evidence, this person is guilty of committing the crime.

Madam President, there is also one regulation, I did not put this as an amendment, but it deals with the disclosure of the DNA data, and this is regulation 28(4) and it reads:

“Where a request is made under subregulation (3), the Custodian shall prepare a report detailing the data requested...”

Now, that report does not say what should form the contents of the report, unlike the Jamaican model. They actually stated the various aspects of what the contents of the report must follow. And I think we need some certainty with regard to what the report will contain, because I can foresee again, vigorous cross-examination when this report is presented in any criminal trial, Madam President. And, I do not want to detain the House any longer. I know that the Attorney General would want to wind up very soon and I know other colleagues would like to contribute with regard to amendments, and this is the extent of my submissions in these Regulations.

Sorry, Madam President, on a procedural note, I would just like to beg to move that the Motion be amended by adding the following words immediately at the end of the resolution:

Subject to the following amendments before coming into operation—and for saving time, if I can just be guided by the amendments that were circulated—that they be amended by the amendments that were circulated. I have to read it out?

Sen. Mark: Yes, for the record.

Sen. S. Hosein: For the record?

Sen. Mark: Yes.

Sen. S. Hosein: I guess I will take my 40 minutes.

“Regulation 3(2):

Insert the words ‘or an accredited laboratory pursuant to section 6 of the Act’ after the words ‘Forensic Science Centre’.

Delete the words ‘requisite DNA service’ and replace with ‘forensic DNA analysis’.

Insert new subregulation as follows:

The Custodian shall, develop recommended standards for quality assurance, including-

- A. Standards for testing the proficiency of forensic science laboratories and forensic analysts in conducting analysis of DNA;
- B. Criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by the forensic science laboratories;
- C. A system for grading proficiency testing performance to determine whether a laboratory is performing acceptably;

D. Confidentiality requirements specified by the Custodian.

Regulation 6.

Insert new subregulation:

D. The information on the Databank shall be accessed only through the use of an encryption code. The encryption code shall be confidential and only those persons authorized by the Custodian charged with responsibilities under the Act shall have access to these records and shall be given the encryption code.

10.45 p.m.

7. Insert new subclauses:

- (3) The DNA reference (buccal) collection kit must be used to collect the buccal sample.
- (4) In the absence of a buccal sample or upon a specific request of a person from whom the sample is required, a control blood sample may be taken by a registered medical practitioner or registered nurse.
- (5) The personnel protective clothing provided in the DNA reference (buccal) collection kit must be worn by the authorized person when a buccal sample is collected from any person. The personnel protective clothing provided in the DNA reference (buccal) collection kit must be disposed of by placing these items in the original packaging (pouch) of the of kit, which if turn must be attached evidence sealing bag containing the DNA sample.

- (6) The evidence collection kit must be packaged in an evidence sealing bag and must clearly indicate the relevant station and case number, before they are submitted to the Forensic Science Centre, unless compelling reason (such as the size of the forensic sealing bag) that hamper the packaging thereof in the supplied evidence sealing bag.
- (7) If an evidence collection kit is not available or there are compelling reasons as, the police officer or qualified person concerned must consult with the Forensic Science Centre to ascertain how the sample must be dealt with.
- (8) Reasonable steps must be taken to ensure that the exhibits or samples are not exposed to heat degradation.

Thank you very much. I beg to move.

Madam President: A Senator needs to second the amendment.

Sen. Haynes: Madam President, I beg to second the proposed amendment.

Question, on amendment, proposed.

Madam President: Any Senator taking part in the debate hereafter may speak on the original Motion and the proposed amendments. Sen. Mahabir.

Sen. Dr. Dhanayshar Mahabir: [*Desk thumping*] Thank you very much, Madam President. Madam President, I am being very honest when I say this evening that I did not intend to speak, but first let me commend the hon. Attorney General for bringing to this honourable House the Regulations to accompany the 2012 DNA Act. [*Desk thumping*]

This is critical law and, Madam President, I think that the Regulations before us have considerable merit. But I have listened to my colleagues on the

Independent Bench, and I have listened to the contributions from the Opposition and I am compelled myself to determine the extent to which I could persuade the hon. Attorney General to consider some changes. I have considered the amendments proposed by Sen. Hosein.

But before I do that, Madam President, I would just like to take the liberty of focusing a bit on the parent Act, where there is a clause in the parent Act which stipulates that any abuse of trust by someone and in particular the Custodian in the Regulations will carry a fine of \$100,000, and we know that DNA data is now going to be digitized and transmittable. We also know that data is very marketable and that we have seen what has happened with respect to Cambridge Analytica. We have seen what has happened in recent times with respect to Facebook, and that we know that DNA data will be very much in demand, especially the data from a sample size of the Trinidad and Tobago prisons will be very much in demand by companies, (a), that are involved in the human genome projects and which produced pharmaceutical drugs.

I see a temptation for the Custodian in whom we have reposed so much trust to maybe sell this data and I will recommend to the hon. Attorney General that any abuse of trust of this nature should carry a fine sometime in the future—and that would be an amendment to the parent Act—much stiffer than \$100,000 because the value of that data would be in the millions of dollars to a company such as Regeneron or Celgene, or any of those large biotech companies.

Madam President, just for some housekeeping, I would like to bring to the attention of the hon. Attorney General the fact that Forms 2 and 3 have in them 2017 and I think we are looking at 2018 Regulations. When I look at Forms 2 and 3—I know that your office should pick that up, but just in case they have not, we

look at Form 2, hon. Attorney General, it says:

“The Administration of Justice Regulations, 2017”—and

“The Administration of Justice Regulations, 2017”—in Form 3.

And I would recommend that in housekeeping that is amended to 2018. I thank my colleagues on the Independent Bench for bringing that to my attention. Thank you, Sen. Ramkissoon, for alerting me to that so I could raise it with the honourable House.

Madam President, there are some concerns with the Regulations themselves, and whereas I agree with the need for the Regulations, and whereas I am hoping that the Regulations will be enforced as soon as possible and that everything will be in order for DNA to be tested in Trinidad and Tobago so that we can replicate crime scenes investigations as we see in some of the TV shows, and so on, and we would be able to solve problems. As the hon. Attorney General mentioned to us, there are some high-profile cases, like the Akiel Chambers case, and all of us know that with DNA in force we would have been able to solve that particular crime. But at this point I would not take much time.

While I support the Motion, I beg to move that the Motion be amended as follows:

In regulation 2:

Include a DNA oversight board.

And hence new regulation 2A:

The board shall comprise an attorney at law, the chief medical officer or his nominee and a third person.

Replace regulation 3(1) by:

The Custodian shall ensure that the Forensic Science Centre complies

with current ISO standards.

New regulation 3A:

The Custodian shall ensure that:

- (i) there is continuing education of laboratory staff;
- (ii) there are continuous proficiency test of analysts.

Delete regulation 6(a).

Regulation 15(2):

Include the Police Complaints Authority and the DPP.

Delete 15(3).

And in regulation 24(1)(a)—amended continues:

and shall be stored under appropriate conditions before they are transported to the Forensic Science Centre or approved laboratory.

Madam President, I beg to move.

Madam President: Hon. Senators, it needs to be seconded.

Sen. Ramkissoon: Madam President, I rise to second the Motion raised by Sen. Mahabir.

Question, on amendment, proposed.

Madam President: I think everyone has spoken. Sen. Mahabir, you are finished? Attorney General.

The Attorney General (Hon. Faris Al-Rawi): [*Desk thumping*] Thank you, Madam President. I am at a slight disadvantage that I do not yet have the circulated version for Sen. Mahabir. So I will attempt to address it on the trot when it eventually arrives.

Madam President: It is coming to you, Attorney General.

Hon. Faris Al-Rawi: I appreciate. I am just saying that I will be on the trot when

I am dealing with it. Nothing will change whether I get it now or then. Much obliged, Ma'am. Madam President, we now stand at 10.54 p.m., having started at 1.30 this afternoon, and I wish to start off by congratulating all hon. Senators for very excellent recommendations and submissions.

I would like to say, and this is quite unusual, but I would like to single out on the Opposition Bench Senators Hosein and Sobers for very, very well researched submissions on their part. They really took their time to make very positive reflections and recommendations, and I genuinely wish to express my gratitude to both hon. Senators on the Opposition Bench. Of course, I do not take away from the submissions of the other Senators on the Opposition Bench, but these two submissions were particularly useful and very well reflected upon and I thank the hon. Senators.

I wish to thank the hon. Members on the Independent Bench for their very fulsome suggestions and for the reflections which were made. Of course, Sen. Chote needs no singling out, but her assistance in the law is always very welcomed as I stand as Attorney General, but law is much broader than just the law. Parliamentarians are called upon to make law and we do not make law for ourselves. We make laws for the peace, order and good governance of our society and, therefore, the collective fulminations of all Senators from the practical, from the ground basis that all Senators speak from is indeed very helpful, be it the children rehabilitation homes or centres, or in the recommendations that come for scientific certification, et cetera, I thank all Members, honestly, for their submissions today, this evening and tonight.

Madam President, permit me to start off with what we are doing, what the rules of engagement are, and how we must conduct ourselves in considering

business. The parent Act in section 34 proposes something which binds us to a process and let me read that for the record. Section 34 of the parent Act is the springboard which causes us to be here today—legislative springboard.

“The Minister”—which means the Minister with responsibility for forensic sciences, in this case having been so gazetted, it is the Minister of National Security:

- “(1) The Minister may make Regulations for the purpose of giving effect to this Act.
- (2) Regulations made under subsection (1) are subject to affirmative resolution of Parliament.”

Let me translate this from a point of law. This section 34 means that it is the Executive’s responsibility, the elected Government’s responsibility, the Minister of National Security’s responsibility to make these Regulations. We are brought here pursuant to the general learning that guides Parliaments of this type, and our own Standing Orders, and our own Parliament’s practice was brought here to consider an affirmative resolution of the Regulations. What does that mean?

We started the process in the House of Representatives. The House of Representatives voted with no voices against for the Regulations to receive affirmative approval. We are now before the Senate and the Senate is asked to consider these Regulations, and now the Motion by which these Regulations are laid causes us to have this debate. In this Motion there is no committee. So we do not go into committee of the whole, we do not go into a select committee, we do not go into a committee which treats with a clause- by-clause analysis, which is why we do not refer to the Regulations as clause 4 or clause 3. We say regulation 1, regulation 2, regulation 3.

So on the 5th of March, 2018, the Minister signed the Regulations, the Motion is laid in the House of Representatives, it is debated in the House of Representatives, there are no voices against the Motion and it is therefore affirmed in the House of Representatives. We come to the Senate, the Motion is laid in the Senate. The method by which we can consider an amendment to this is only by way of an amendment to the Motion. The Motion is proposed to be amended in two ways, firstly, by that raised by Sen. Mahabir and, secondly, by that raised by Sen. Hosein.

11.00 p.m.

And they ask, and if I use the language in Sen. Hosein's version it is:

The Motion be amended by adding the following words immediately at the end of the resolution—

And hear what it says:

—subject to the following amendments before coming into operation...

What that means is that when we consider the amendments to the Motion, which propose amendments to the Regulations, we have to start the process all over again.

The Minister will have to consider the Regulations, make the amendments that the Senate is suggesting ought to be made, lay them in the House of Representatives, debate them by affirmative resolution, bring it to the Senate, debate it by affirmative resolution, and there may or may not be process.

Now, that stands in the face of another set of learning. The other set of learning comes from the English practice, and the English practice is founded upon statutory interpretation. And in England there is a distinction because there is a

Statutory Instruments Act in England. The learning that comes out of Bennion on statutory interpretation suggests that, and I will read from Bennion at page 3:

Not only the drafting but the scrutiny given to it varies according to the type of instruments. Regulations pursuant to an Act of Parliament do not receive the same attention and scrutiny as statutes. And it is important to remember that though they may be annulled, they cannot be amended in either House. So that errors in language, if detected, cannot be corrected. There are, of course, no three readings and no Committee Stage in either House.

And they make reference to the version of the subsection appearing in earlier versions of this work was approved in RB Secretary of State for Social Services *ex parte*, *Swarb* 1997. But I have drawn a distinction saying that that may be distinguished on the basis that there is a Statutory Instruments Act that prevails in the United Kingdom.

But the compelling position before us now is really to be driven by the Government's statement, which I make now. Having accepted that there is no perfect piece of law, one ought to pay attention now to whether there is a genuine mischief of the type which would derail everything that we have already passed in the House of Representatives without a single voice opposite, because there were no voices opposite.

Not only has the Executive done its part, as the Minister does in section 34; it passed through the House of Representatives and the Opposition raised no voices against, when the collection of voices were called. We are now in the Senate and we have to ask ourselves: Is there anything so mischievous in these Regulations now before us, as to cause us to restart the entire process all over again? Bear in mind, we have been at this for 19 years. Forget who started DNA law and who did

not and who not. The point is we, collectively as a Parliament right now, have an opportunity to just start. We have the buccal swabs. We have the laboratory. We have the personnel. We have the parent Act. The parent Act brought us here with two things only, only two things that the Regulations need to have. To satisfy lawful purpose, this Parliament needed only to address section 23 of the parent Act, and section 23A of the parent Act.

And let me remind hon. Members what that provides. Section 23 says, 23 (2)(b):

“A person who receives a package containing the sample at the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis shall—

(b) record such information as may be prescribed by Regulations.”

That is one. In section 23A(2):

“The procedures for the keeping of the DNA Record shall be prescribed by Regulations.”

To meet lawful purpose, to begin doing DNA analysis, we need only have come with those two elements and the law sails smoothly on. But we did not do that. We said: Okay, after 19 years of talking about DNA evidence—19 years hon. Senators, umpteen governments, umpteen billions of dollars—we said, look, let us come with a draft, drafted not by only the Attorney General, only the CPC's Department, but drafted by the experts in forensics who have practised in the field.

And that takes us squarely to the person who occupies the position of the DNA Custodian, and that is Mr. Justin Lewis. Mr. Justin Lewis—yes, he is a Jamaican national—is an expert in this field, who practised in this field, who brought the best-in-class literature forward, the years of practice in the industry

forward, who brought with him the minimum standards coming from the rest of the world, came to our LRC and drafting position and said to us: “Look, you Trinidad and Tobago, are now starting for the first time.”

Let us understand what that means. We are starting a DNA process for the first time in a serious way, with the banking, with the profiling, et cetera. We do not yet have a deep practice in our courts to know how evidence is going to be treated, ripped apart or not. We may persuasively understand what other jurisdictions do. But our own jurisprudence in the area has not really grown up yet. It has not even been conceived in many senses, let alone grown up.

And what we did was to apply in the Regulations a very careful mechanism, which is the utilization of standard operating procedures or practices. Why did we do that? It allowed us the facility where we were treating with how data is managed, with how samples are managed, to have SPOs developed but not developed just like that, developed and published and gazetted. And if we need to tweak, we change and we tweak and we publish and gazette. And how do we know where we need to tweak or change? We know as the practice grows up, as we operationalize the system, as we find road blocks.

So, most respectfully, in speaking to the submissions, and they are very good submissions, Sen. Hosein and Sen. Mahabir. They are good submissions. But do I want to suggest, as the chief advocate for the Government, that we ought to enter into the realm of adopting prescriptions which other jurisdictions have grown up in already and have practised on already? Are we ready to do that now before we start? Specify the temperatures, minus 20 degrees, in a particular type container, pack the kit of the DNA PPE that you are supposed to have in the specific point, use only buccal swab analysis kits, specify it in the legislation.

Before we have even started the practice yet, we are prescribing. And what I am careful to do is to recommend that these things be considered when there is a little bit more room to consider where we are.

Because the Government does certainly agree that we are going to have to come back. But hon. Senators, respectfully, we are not really coming back on the Regulations alone. More importantly, the parent Act must be addressed. Let us look at, for instance, the very excellent submission made by Sen. Sobers, shared by Sen. Chote, shared by Sen. Mahabir, of the ethics oversight or board committees. That should be in the parent Act. That is, respectfully, running into an argument of an ultra vires inclusion if it is subsidiary legislation. Because the legislative springboard must come from the parent Act. What happens if a challenge comes, that the board has objected to something that the Custodian can do and the legislative springboard in the parent Act is not there, and the claim that it is now ultra vires for the board to have acted is now made?

You see, there is that argument as well—is there not so—legitimately and honestly in an intellectual perspective? That is not an uncommon submission to be made in law, that someone is ultra vires the legislation. And we do not call it subsidiary legislation by mistake. It is subsidiary to the primary legislation, and you cannot be outside the parameters of the primary legislation. So whilst the ethics committee is a great idea, it is better located in the parent Act.

Let us look to the other useful recommendations by my learned colleagues. Sen. Hosein has suggested that we also allow the DNA Custodian to go to the accredited laboratory. Respectfully, it is a good idea but the rationale for going to the Forensic Science Centre is that the Forensic Science Centre is not accredited. But the labs are accredited by a process of accreditation. And the accreditation is

set out in the First Schedule to the Act. And accreditations are paid for and earned and monitored to be continuously in accreditation. But the Forensic Science Centre is not. Hence, the need to check.

The Government, I can say right now, has entered into an arrangement with the Government of China as to the construction on an accelerated basis, a turnkey project for a brand-new forensic centre. It is to be located right next to the Mount Hope facility, and the land has been acquired and vested by virtue of Cabinet decision already. Minister Young went to China on two occasions to deal with it and I went to Jamaica and entered into discussions with the University of the West Indies on it. We are guaranteed to do the project. [*Desk thumping*]

However, that does not take care of the accreditation yet. So, the need for the Custodian to visit the Forensic Science Centre is a real one. But we have not taken it that far into going to the accredited laboratories yet. Should he have the opportunity to go there? Perhaps, yes. But is there so great a mischief that we should amend this Motion tonight to restart the process again? That is the question in mind. Is it so grave a mischief now to restart the process now, or will the hon. Senate be satisfied with the fact that the Government is agreeing to look at the position?

I will tell you this, when I stood in Opposition and we debated the parent Act and we made observations, largely spring boarding out of the Marper decision, UK and Marper decision., the hon. Attorney General then made a similar submission now, more particularly the technocrats who still sit here today, the technocratic team that is in attendance here tonight was the same technocratic team in attendance when I was in the Senate in 2012 debating. And I know now, as Attorney General interacting with them, that my submissions resonated with them

and they brought forward amendments, which found themselves in the 2014 amendments to the DNA Act. So, they are here. We have taken note of every single submission that hon. Senators have made tonight.

My learned colleague, Sen. Hosein, proposes in the regulation 3(2) that we have a new subregulation:

The Custodian shall develop recommended standards for quality assurance including...

And they set out standards for proficiency, criteria, system, et cetera, confidentiality by the Custodian. But we have impregnated into the Regulations—again I return to the standard operating procedures—and for the benefit of hon. Members, it is a published document ready already. We are not waiting to do it at another date.

The minimum standards for national forensics DNA Databank NFD, the Custodian Unit Operations comprising 73 pages of publication are ready for dissemination, and they do address these matters that hon. Senators have raised tonight. And it is the articulation of the standard operating procedures, which can morph and manoeuvre on a faster basis than affirmative resolution can, that allows us the opportunity to have a look at whether it can work.

11.15 p.m.

Let us see what it has. We have the flexibility to return to this Parliament at any point in time. We have done it in a period—my learned friend Sen. Mark, if we strip aside the picong and the sharpness of his submission from an Opposition point of view, asked a very good question. What took us, 2016 to now, to come here?

I will tell my learned friend what took us this long. It took us, firstly, the

hiring of 11 people. It took us the location of two physical offices. It took us the acquisition of firmware, hardware, software to manage the process. It took us the acquisition of the buccal swabs. It took us the training of Trinidad and Tobago Police Service, the Ministry of Health and Regional Health Authorities, Trinidad and Tobago Prison Service, the Immigration Division, the Customs and Excise Division, the Forensic Science Centre.

Are hon. Members familiar with what procurement cycles through the Central Tenders Board look like? It does not happen, dear colleagues, with a snap of a finger. There is a process of advertisement, the RFP is done, the sole select may be done, the invitations come back, enough people did not submit, you go back out, there is price point management, there is procurement contracting. Regrettably, the public service does not work, because of its safeguards and perhaps inefficiencies, in the fashion that we expect. But you know what, hon. colleagues? I am very pleased, as a Member of this Government, to have done the hiring, the procurement, the Regulations, the standard operating procedures and move the Motions in Parliament to operationalize laws, which have stood on the books of Trinidad and Tobago for 19 years.

So, I am on the point of whether there is a mischief so grave as to cause us to restart the entire process. Let us go further. My learned colleagues have asked for:

“...information on the Databank shall be accessed only through the use of an encryption code...encryption code shall be confidential, only those persons authorized by the Custodian charged...”

Well, we do know in the parent Act that it is an offence for unlawful disclosure. We do know in the Regulations that we provide for the management of end-to-end encryption. We do know that the parent Act provides—an offence for the breach

of Regulations. So, is there a mischief so large in this submission that we need to restart the process all over again?

Let us go further, insert a new subregulation treating with:

“The DNA reference buccal collection kit must be used to collect the buccal sample”.

Before we start, we are chaining ourselves to the process. What happens if we cannot use that? What happens if we cannot use the facility of only a registered medical practitioner or registered nurse? Because the qualified person in the parent Act is broader than that.

So, we are in the subsidiary legislation, narrowing the parameters when section 4 of the parent Act which gives us the definition of a qualified person, includes persons in a broader category than recommended by my learned colleague Sen. Hosein. His recommendations are good, but they require consideration and thought in a more developed society—sorry, environment with the technocrats that are the experts in the system. Because believe you me, I do not personally personify this law. This law as it is being advocated by me tonight, as that is my task, standing behind me is an entire division of people “chomping at the bit” to just start.

So, where are we? The rest of the prescriptions, as noble as they are, coming from other jurisdictions as they do, are they so persuasively tasked that we need to restart the entire process? Hon. Members, today I have had a great opportunity to represent Trinidad and Tobago. We all have. Started off by intellectual property arrangements, the office of the Attorney General between Chile and Trinidad and Tobago—because IP falls under my portfolio; increasing trade, broadening aspects. The Caribbean Financial Action Task Force is sitting

right now in the Hyatt, right now, contemplating Trinidad and Tobago's second follow-up report—where we are the only country that cannot explain why we cannot pass laws fast enough. This week, I have had to treat with the Global Forum where Trinidad and Tobago is the only country in the entire Global Forum that has not passed its laws. The only country out of 152 countries in the world that cannot explain why it has not passed laws.

We sat in Cybercrime this morning in Joint Select Committee—

Sen. Obika: Regrettably, 46(1). [*Laughter*]

Madam President: Attorney General, continue—but continue—yeah.

Hon. F. Al-Rawi: Yes, Madam President, thank you. I know it is hard for Sen. Obika to follow certain arguments, I will assist my learned colleague. We passed through, several of us, Cybercrime this morning, Joint Select Committee and we are here now. We are now 11 hours after start, and I am asking the question of hon. Senators tonight, and I appreciate the humour, thank you Sen. Obika. I am asking the question tonight in a very sober way, is this Senate convinced that we need to restart the entire process now?

Sen. Mahabir had his mike on first and then Sen. Mark? Through you, Madam President—

Sen. Dr. Mahabir: Thank you very much Madam President. Hon. Attorney General, are you prepared to provide a commitment that with experience gained by the technocrats, in implementing the law with the Regulations as is, that you will return to the Parliament at some time? So that, if there is merit in the recommendations that have been placed before you, they will be placed in new regulations so that at least we will be ISO compliant, and that we will be establishing best practice in DNA Regulations?

Hon. F. Al-Rawi: I am prepared, but not because, and I mean no disrespect to you, hon. Senator, through you, Madam President—not because you have asked me to do it. But, because it is required to be done, and let me explain why. Maybe, it is lost on many people, but by way of example, we brought the Family and Children Division Bill, and this answers a submission made by the hon. Sen. Dottin.

Sen. Dottin raised the issue of the Child Rehabilitation Centres and the burden that is placed upon them, and the recommendation that the regulation should not have the Manager of the Child Rehabilitation Centre treating with this. But, I can tell Sen. Dottin with certainty, that the Manager must. Because the Child Rehabilitation Centre Regulations, and the child rehabilitation homes, the children's homes those regulations are in Parliament right now, and we have prescribed that the licensee has to be the person to do it.

But there is a distinction between a child's home and a child rehabilitation centre. The hard side is the centre, the soft side is the home. Even though a home may receive "under-tenners" as we call them, who are serious offenders of the law, but we had to personify it in the Regulations. But I am giving the example of having amended 19 laws to treat with the children's package under the Family and Children Division Bill, which addresses Sen. Chote's concern, as to the reference to juveniles. The amendment to juveniles was removed in the amendment to—in the Fifth Schedule to the Family and Children Division Bill, which is now an Act of Parliament. But we brought the four regulations, we did the protocols. And we are now on our third Bill to treat with the amendments to that same Family and Children Division Bill.

So, this Government has demonstrated that we not only have the capacity to

follow through, but that we have the resolve and “stick-to-it-iveness” to take on complex tasks for revision of the law. And that is what the family and children amendments demonstrate. So Sen. Dr. Mahabir, yes, we obviously want this law to work. I mean, who would want to be the author and patron, patriarch of a law that is determined to fail in the court? Not me, I do not want that distinction.

So, the Government is listening, I started my contribution in wrapping up tonight to say that we are very anxious to get this right. But I am now faced with two Motions, for amendment, and they are both very good Motions, they both deal with submissions which are worthy of consideration. But I am asking the hon. Senate to hold its hand, let us start—before I give way to Sen. Mark, Madam President, what time am I to end?

Madam President: You have until 11.39.

Hon. F. Al-Rawi: Please, Sen. Mark.

Sen. Mark: Yes, Madam President, through you. We know the state of affairs in our country, particularly with crime. What we would like to have from you, if you can give that undertaking, is a time frame. Because, like you we want to strengthen legislation. Both the DNA, as you mentioned, and the Regulations. So could you provide us with an undertaking as to, when would you be coming back on this compound, to at least advise us, when we are going to amend the DNA legislation as well as the Regulations, so we can have an idea as the way forward.

Hon. F. Al-Rawi: Thank you. Madam President, the Government is going to look at all submissions and what I can say, and I will use a very legal phrase, a clear example of it, is as soon as is reasonably practicable. And let me tell you why, I am not being pejorative, I am not being churlish.

This thing needs to be put into effect. The database needs to be populated,

the management and training from the experts to the TTPS, to the prisons, to the Child Rehabilitation Centres, this is a large exercise that Trinidad and Tobago needs to see. Because I, on behalf of all of us—being the person in this revolving door of government—because you come and you go quickly—I would like to put some fear in the hearts of criminals, as Sen. Hosein can stand here tonight and say that, as one of the junior attorneys in the office of the DPP, performing a function as noble as he did there, that he had the pleasure of watching a conviction on the back of DNA where there was the evidence at the crime scene. Would we not all, in this realm of domestic violence, in this realm of raping, in this realm of sexual offences, want to strike some fear into the hearts of criminals? To know that if you commit a sexual offence that you have to think two, and three, and four times about your DNA being there?

Because do not forget, hon. Members, we are not only suggesting this law, we came to this Parliament, to this Senate, and the first tour of duty we did was the criminal justice system. Why? As I said in my piloting, you could pass all the laws in the world, if the system is not working for the laws to pass through, what is the point?

This law articulates with plea bargaining, this law articulates with judge-only, this law articulates with Good year sentencing, with maximum sentence indicators. This law articulates with the Criminal Division Bill, this law articulates with the prosecutorial management with the public defenders system.

We have not approached the crime situation in Trinidad and Tobago in an ad hoc fashion, you know. Whilst people remain hungry for the food that will satiate them, whilst there is a burning problem with crime in this country, if we have seen the trends in crime climb up every single year for the last 30 years, doing the same

thing, the same way; increasing fines, passing a law, taking some more time, some more analysis, increase the jail term—and we have seen the trend go up—clearly, we are not doing something right.

11.30 p.m.

And our estimation of that problem is back to the data, which you are now so accustomed to from me. Who are we? What are we? What are our case flows? What is our case trajectory? I am able to stand here tonight, on behalf of the Government, and say that we had 13,000-plus sexual offences matters in the period 2000 to 2018, and 300 people saw conviction. I am telling us that as a matter of fact. Is that good enough in the zero-point-something per cent after billions of dollars?

So we have spent our time, as a Government, addressing the issues of the systemic failure. We came to this hon. Parliament, we said, we will increase the number of judges. In case you missed it, that was in the Family and Children Division Bill. We came to this Parliament and we said we will disaggregate the problem of blockages in the Magistrates' Court. In case you missed it, that was in the Motor Vehicles and Road Traffic (Amdt.) Bill—100,000 cases out; made them violations not offences.

In case you have missed it, the Criminal Division Bill proposes that we treat with the magistracy. In case you missed it, we came with the Criminal Proceedings Rules, so that we could case-manage the caseload. In case you missed it, we came with judge-only. In case you missed it, we came with plea bargaining. In case you missed it, we came for the abolition of preliminary enquiries and we will come back to that shortly.

So we are talking about systemic improvement, and the layer that we will

come with next, Madam President, is the “follow the money” [*Desk thumping*] and I say that because if you cannot find a gun, if you cannot find a murder accused, let us follow the money from the crime. [*Crosstalk*]

So, Madam President, most respectfully, we do have an ability to pass this law tonight if we are serious enough. Yes, it does require a degree of trust. That is not uncommon to Trinidad and Tobago and, certainly, not to our political system, because the voters of this country trusted us by giving us their votes for the time being for us to be judged, quite properly, at the electoral poll as to whether we are capable of doing the job or not.

But the Executive has come here via section 34 of the parent Act, fulfilling the responsibility of the Minister of National Security and said, here are the Regulations. We could have come with two regulations only: regulation 1, which is the name of the Bill; regulation 2, we treat with section 23, regulation 3, we treat with 23(a) and done that. We could have done that. There are Regulations in the laws of Trinidad and Tobago which do not cross three lines, but we did not stop there.

Sen. Ameen: AG, very quickly, I just wanted to get in terms of a time frame in terms of when you are coming back.

Hon. F. Al-Rawi: Sure. I answered that, as soon as practicable.

Sen. Ameen: But a specific—

Hon. F. Al-Rawi: I cannot go further than that. I have just explained how. I have just explained over the several minutes that I have just utilized, the fact that it must be operationalized—that it is TTPS, that it is Customs. I went into great detail on that, and I think I have been fair to the submissions, most respectfully.

What I can say is that the amendments, the proposals for amendments for the

Motion, have unfortunately derailed the specific answer to every question that I had in response to hon. Members, because I would let you know, the technocratic team sitting at the back took careful notes of all of the submissions, and we are capable of answering all of them here tonight. The submissions: who is the Custodian, the accreditation, the need for the insertion of time frames, the treatment of the juveniles—

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

Hon. F. Al-Rawi: Thank you, Madam President—the minimum standards in what we are doing with respect to that, how the auditing and management is done. Well, they are all built-in provisions inside of audit and management where we lay reports and we come back to the Parliament. It can be sent to the Joint Select Committee on National Security. It can be sent to the Auditor General. Recommendations as to DNA services can come before other committees. There have been two parliamentary reports on them. A lot of the recommendations coming before the joint select committees were factored in this report.

But, hon. Members, the question—and square question—to hon. Senators tonight is: Where do we draw the line? Are we going to restart the process again? Are we going to take another 19 years? Are we going to take another year? Are we going to allow for the latitude to at least try to see the system in operation with the undertaking that we will take note, not only of the submissions, but of the bugs that we see along the way? Because we are going to have to come back and treat with this.

So, Madam President, I crave—not for me, not for the Government—for the people of Trinidad and Tobago, the support of hon. Senators here tonight. I thank hon. Senators profusely and I mean all of them, including Members of the

Opposition, for their very excellent submissions and very deep research. I thank hon. Senators for their patience tonight, but I ask for the support to just start. I beg to move. [*Desk thumping*]

Madam President: Hon. Senators, we have two sets of proposed amendments. So, I will first put the questions on the proposed amendments. Hon Senators, the question is that the Motion be amended as circulated by Sen. Hosein.

Question, on amendment, [Sen. S. Hosein] put and negatived.

Madam President: The second question is that the Motion be amended as circulated by Sen. Mahabir.

Question, on amendment, [Sen. Dr. D. Mahabir] put and negatived.

Madam President: So, I will now put the question on the original Motion.

Question put and agreed to.

Be it resolved:

That the Administration of Justice (Deoxyribonucleic Acid) Regulations, 2018 be approved. [*Desk thumping*]

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday, the 5th of June, 2018 at 10.00 a.m. in the morning. We plan to deal with the four land Bills, starting with Registration of Titles of Land Bill and to continue to the others and see how far it will take us. That is the agenda for next week Tuesday.

INDIAN ARRIVAL DAY (GREETINGS)

Madam President: Hon. Senators, before I put the question, you will be aware

that we have two public holidays tomorrow and Thursday. I will now invite Senators to bring—and I want you all to listen to this word very carefully—“brief” greetings on the occasion of Indian Arrival Day and then Corpus Christi, but I say “brief”, because I will tell you, I have no intention of being here when Indian Arrival Day starts. Okay? [*Desk thumping and laughter*]. The Minister of Works and Transport.

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you. Thank you, Madam President. Madam President, for those who will have to stay home tomorrow, [*Laughter*] Madam President, I feel truly honoured and humbled to bring greetings on behalf of the Government to the East Indian population as it celebrates and commemorates Indian Arrival Day.

Indentured labourers came to our shore to make better lives for themselves and their children. They came from India accustomed to hardship and sacrifice and struggle. They arrived here and were subjected to harsh working conditions. They must have been disappointed and, at times, frustrated when the experience of an enhanced living condition was not met, yet they remained focus on giving their best and laying a strong foundation for the generations to come. It is important for us to remember that these indentured servants always remained faithful to their religion, culture and tradition. One of their most important traits is the concept of giving back to our fellow men.

Indian Arrival Day celebrations remind us of our ancestors who left their home to build a new life in a foreign land. That foreign land is a place we call home, our Trinidad and Tobago. And what is important for all of us who live in this home called Trinidad and Tobago is to ensure that we work together in the best interest of our beloved nation.

We have been given the opportunity to make our country a better place, very

much like the opportunities given to our forefathers. Today, we as citizens are not considered as new arrivals like our ancestors, but rather as patriots who must be prepared to stay and make our home a better and safer place in which to live and for the generations to come. Our ancestors have shown us that hard work accompanied with faith in God and a sense of purpose provides a blueprint for success. We must use that blueprint to make our contribution and to do our part. There is no excuse for standing by and letting things slide when we know we can make a positive difference. Let us be guided by the principles that promote harmony in our multi-ethnic society and, most importantly, let us show respect and appreciation for all who comprise our unique rainbow country.

May God bless us all as we celebrate this auspicious occasion of Arrival Day with the East Indian community of Trinidad and Tobago. I thank you, Madam President. [*Desk thumping*]

Sen. Wade Mark: Thank you, Madam President. [*Desk thumping*] May I on behalf of the Opposition Bench, join in extending greetings to the Indo Trinidad and Tobago community, in particular, and the national community in general, on the occasion of Indian Arrival Day, which would be celebrated in the next couple of minutes. [*Laughter*]

Madam President, today we also—that is today, as we speak—celebrate the 101 anniversary of the repeal of the indentured law. It was some 173 years ago, Indo Trinidadians and Tobagonians, embarked on an enormous struggle, and today we would like to pay our special tribute to the generations both past and present, who have undergone various trials and tribulations over those years to emerge to be a very strong and resilient people culturally, socially, economically and politically. In spite of all the efforts by various forces to oppress them, they have remained politically strong and resilient in this land. We wish the people of

Trinidad and Tobago celebrating Indian Arrival Day a very happy, safe and peaceful one.

Madam President, we in the UNC are very happy to have been in Government at the time to have declared, as a permanent holiday, May the 30th, not as Arrival Day, as was proposed then, but as Indian Arrival Day. We would like to say to our brothers and sisters of Indian descent that the struggle for peace, equality and justice has been long and hard, but together with our brothers and sisters of African descent, as well as the entire national community, we shall ensure that this society, in spite of efforts to undermine, subvert and compromise its institutions, that this society will remain free, democratic and just, so that all of the people, regardless of their race, colour, creed, religion or status shall live in peace, unity and perpetual harmony.

11.45 p.m.

Madam President, our East Indian forefathers came to this country in their multitude, worked hard to provide for a better future for themselves and their families, and as such their sweat, tears and sometimes their blood have been woven into the fabric of who we are as a nation today. Madam President, having come to seek greater opportunity, our Indian brothers and sisters have performed valuable roles in making Trinidad and Tobago a land of great opportunity and rich diversity. In spite of the many challenges facing our nation, every effort must be made to promote unity, harmony and togetherness of all the people of this great and beautiful country.

Madam President, may I, on behalf of our Bench, extend to you and to your family happy Indian Arrival Day, as well as to all members of staff, inclusive of our police officers, and to all the people who have helped us in this Parliament. I also want to extend, on behalf of our Bench, to all our colleagues here, on the

Indian Arrival Day (Greetings)
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Independent Bench, on the Government Bench, happy Indian Arrival Day. Happy Indian Arrival Day to all. Thank you very much, Madam President. [*Desk thumping*]

Madam President: Sen. Mahabir.

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Madam President. [*Crosstalk*] We are approaching Indian Arrival Day. But, Madam President, we are in Trinidad and Tobago forged from the love of liberty, all of us, and these liberties are enshrined in our Constitution, sections 4 and 5. But there was a time, Madam President, when such liberties were not always available to large sections of our population. Bonded labour meant that there were restrictions, restrictions on labour rights. There was, at the time, no collective bargaining arrangement—things that we take for granted now. There were no OSHA guidelines, rampant discrimination against women on the plantations, no freedom of movement, few opportunities to leave the plantation, restricted mobility and restrictions on freedom of worship. Madam President, these are the rights that we take for granted today that were denied, denied to the section of the population which contributed to the revival of the plantation economy in Trinidad and Tobago at a time when the entire economy could have gotten bankrupt. But there is a legacy in my mind which ought to be celebrated by all Trinidadians, and that legacy is the cultural legacy. Not cultural only in the food and in the music that we know that has been bequeathed to the people of Trinidad and Tobago, but, Madam President, a legacy which has left Trinidad and Tobago with people from across the world having to live together in a relatively small space, and the legacy that the immigrants left for us is that of multiculturalism, that is the opportunity for every single person or every single group in Trinidad and Tobago to conduct his life according to cultural traditions which are accepted by all in the society.

And this experiment in multiculturalism which, Madam President, was forced upon us by the colonial masters, but which now is the characteristic of Trinidad and Tobago's society, provides for people of our generation an opportunity to become a global leader in that it is providing an opportunity for us in Trinidad and Tobago to become a global leader, and an example in the world of how people can live in harmony, and of how can people can live in the neighbourhood of each other without the kinds of strife that we have seen internationally.

Madam President, we celebrate Indian Arrival Day so that we can pay homage to the contributions of those who have preceded us, but we celebrate because of the legacy our generation has which allows us to become a global leader in how people can be accepting to one another. A happy Indian Arrival Day to all the people of Trinidad and Tobago. [*Desk thumping*]

Madam President: Hon. Senators, I too wish to join with those who have spoken before me in bringing greetings on the occasion of Indian Arrival Day. Tomorrow we celebrate the 173rd anniversary of the arrival of the first indentured labourers to our country. In celebrating we remember the hardships endured, the sacrifices made and the successes achieved. We also acknowledge the contributions of those who arrived, and who have so fortunately for all of us remained and who have helped to make Trinidad and Tobago the wonderfully diverse and culturally integrated country it is today.

Happy Indian Arrival Day to all of Trinidad and Tobago. [*Desk thumping*]

CORPUS CHRISTI

Madam President: I now invite the greetings for Corpus Christi. Minister of Trade and Industry. [*Desk thumping*]

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

Thank you, Madam President. It is my distinct pleasure to bring greeting on behalf of my colleagues on the Bench and, of course, on behalf of the Government on the occasion of Corpus Christi. Indeed, it is an extremely important day on the Catholic calendar, and in some Christian churches as well. As we, and I too am a fervent follower of my faith, celebrate the body and blood of Jesus Christ, the son of God in the Eucharist.

What do I mean by the Eucharist? It is the holy communion which we receive, again, representative of the most holy body of Christ. You may recall on Holy Thursday, the day preceding the death of Jesus, Jesus met with his apostles for the Last Supper and he said, this is my body, pointing to the bread, and this is my blood, pointing to the wine. Essentially, Corpus Christi is representative of this.

It is a holy day of obligation so that Catholics are required to participate in the Mass which is our primary form of worship, and there are those who would be in the streets in procession. There are also those who would be planting, signalling the commencement of the rainy season. So, indeed, it is an extremely important day, and, therefore, on behalf of the Government of Trinidad and Tobago, we wish the people of Trinidad and Tobago Corpus Christi greetings, and, of course, remember always the presence of God wherever we are. [*Desk thumping*]

Madam President: Sen. Haynes.

Sen. Anita Haynes: Thank you, Madam President. I am pleased to bring greetings to the Roman Catholic community, and indeed the wider Christian community on the commemoration of Corpus Christi, the body of Christ, on behalf of the Opposition Bench in the Senate. Corpus Christi celebrates the institution of the Holy Eucharist and is marked by special days of devotion to the Blessed

Sacrament, most notably Eucharistic processions. And as we embark on the celebration on May 31st, I would like to invite the Senate, and indeed the nation, to reflect on the words of Pope Francis in his 2016 homily during the Corpus Christi Mass, in which he said:

In breaking bread for his disciples Christ gave an example of what it means to allow oneself to be broken for the good of others and it is the Eucharist which gives us this strength.

As a nation, now is a good time as any for us to think about what it means to be broken for the good of others and to reflect on the message of Christ himself. When he broke bread at the Last Supper, Christ commanded, do this in remembrance of me, and we may think of it as allowing ourselves to make sacrifices and to be broken for the good of others.

We are blessed in Trinidad and Tobago to have people of strong faith, a nation with many religions, ethnicities, cultures, who live together in harmony. Locally, one of our traditions for Corpus Christi is planting seeds, which is considered a good time for this activity. So let us plant seeds of mutual respect and deepen the bonds of friendship amongst all citizens in this country. And just as the belief that the planting of the seeds will bring the best harvest, may we consider the devotion on this day to renew our strong nationhood and unity.

On behalf of the United National Congress, I extend Corpus Christi greetings, again, to everyone in this Senate and to the nation. May God bless our nation. [*Desk thumping*]

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Madam President. Madam President, I am honoured to bring Corpus Christi greetings on behalf of the Independent Bench of the Republic of the Trinidad and Tobago to the Catholic community, to the Christians of Trinidad and Tobago, and indeed to all the people

of Trinidad and Tobago.

It is my understanding, Madam President, that this holiday has been in existence since 1797 under Article 11 of the capitulation between Chacon and Abercromby when there was a guarantee that there would be the freedom of the people of Trinidad and Tobago to practise their religion. Why do we celebrate? What is the meaning? Why do we celebrate the body of Christ? I have given some reflection to this, Madam President. We celebrate the birth at Christmas, but the body of Christ we know, Madam President, he walked with us, he represented human emotion, he wept at the death of his friend, he celebrated at the wedding at Cana, he was tempted when he fasted by having loaves of bread from mountains, he exhibited fear on the cross; so he exhibited human emotion. He sided with those in society who had no stature. He cleansed the leper. He, Madam President, allowed the prostitute to anoint him. He sided with the homeless. He gave us the Sermon on the Mount. He gave us a sermon which said, blessed are the peacemakers for they shall be called the children of God.

He taught us the difference between law and justice. Law is what we pass in this Chamber, justice is how we interpret it with our heart. He, amongst you, who is without sin, you cast the first stone. And, Madam President, he gave us a guide to policy. What was that guide? The guide obtained in the gospel according to Saint Matthew was that what you have done to the least of my brethren that is what you have done to me. That is the foundation of a branch of economics known as welfare economics. That is how we judge when we have made an improvement in the life of the people; Madam President, the life of the Christ for everyone who is a Christian or a non-Christian.

And, incidentally, I was informed that Christ was never a Christian, he was born a Jew and he died Jewish, so that non-Christians can celebrate his life and

learn from him. Madam President, the fact that he walked with us, the fact that he was embodied in human form, the fact that he was able to demonstrate the kinds of emotion that all of us, as mortals can have, gave us a guide that we should follow his teachings. It is going to be difficult, but we should, as far as is practicable, follow the teachings of the Christ, because in that Sermon on the Mount he has taught us how we could be good and just and decent and fair.

And so, Madam President, as we plant on Corpus Christi Day, as we sow our seeds, let us hope that our plants will flourish the way the teachings of the Christ who walked with us in the flesh, who walked with us in the body, has endured. And so we celebrate, Madam President, the fact that God incarnate walked with man. How fortunate we are to have his example 2,000 years later still living with us.

Madam President, to the Catholic community, to Christians, and to all of Trinidad and Tobago, I say celebrate Corpus Christi and reflect on the teachings of the Christ and try to implement some of his teachings, difficult as they are, so that we could be able to make Trinidad and Tobago a better place. I thank you. [*Desk thumping*]

Madam President: Hon. Senators, permit me to join with those who have spoken before in bringing greetings on the occasion of Corpus Christi. As we have heard, Corpus Christi is a day celebrated by Christians the world over to honour the presence of the body of Jesus Christ during Mass in the form of bread and wine. In celebrating Corpus Christi this year may we remember and practise the attributes of faith, prayer, humility and hope which are all embodied in the celebration. I therefore wish each and every one of us a holy and a happy Corpus Christi to all of Trinidad and Tobago as well. [*Desk thumping*]

Question put and agreed to.

Corpus Christi (Greetings)
Madam President (cont'd)

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House adjourned accordingly.

Adjourned at 11.59 p.m.