

**SENATE***Thursday, June 21, 2018*

The Senate met at 2.00 p.m.

**PRAYERS**[MR. VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Mr. Vice-President:** Hon. Senators, I wish to advise that the President of the Senate, Sen. The Hon. Christine Kangaloo, is currently out of the country. Hon. Senators, leave of absence has been granted to Sen. Ronald Huggins, Sen. Anita Haynes, Sen. Stephen Creese and Sen. Melissa Ramkissoon, all of whom are out of the country; and to Sen. Taurel Shrikissoon, who is ill.

**SENATORS' APPOINTMENT**

**Mr. Vice-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. NDALE YOUNG

WHEREAS Senator Christine Kangaloo is incapable of performing her duties as the President of the Senate by reason of her absence from Trinidad and Tobago

**UNREVISED**

and the Vice-President of the Senate is required to perform the duties of the President of the Senate. As a result, a vacancy has arisen in the Senate:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NDALE YOUNG, to be temporarily a member of the Senate, with effect from 21<sup>st</sup> June, 2018 and continuing during the absence from Trinidad and Tobago of Senator the Honourable Christine Kangaloo.

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 20<sup>th</sup> day of June, 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. GARVIN SIMONETTE

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

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the 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 21<sup>st</sup>

June, 2018 and continuing during the absence out of the country of Senator Ronald Huggins.

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 21<sup>st</sup> day of June, 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. HASINE SHAIKH

WHEREAS Senator ANITA HAYNES is incapable of performing her duties as a Senator by reason of her 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)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, HASINE SHAIKH, to be temporarily a member of the Senate, with effect from 21<sup>st</sup> June, 2018 and continuing during the absence from Trinidad and Tobago of the said Senator Anita Haynes.

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 21<sup>st</sup> day of June, 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. JOHN HEATH

WHEREAS Senator MELISSA V. RAMKISSOON is incapable of performing her duties as a Senator by reason of her 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, MR. JOHN HEATH, to be temporarily a member of the Senate with effect from 21<sup>st</sup> June, 2018 and continuing during the absence from Trinidad and Tobago of the said Senator Melissa V. Ramkissoon.

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 18<sup>th</sup> day of June, 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 STEPHEN CREESE 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 21<sup>st</sup> June, 2018 and continuing during the absence from Trinidad and Tobago of the said Senator Stephen Creese.

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 18<sup>th</sup> day of June, 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. ZOLA L. PHILLIPS

WHEREAS Senator TAUREL SHRIKISSOON is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1) (b) and section 44(4) (c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ZOLA L. PHILLIPS, to be temporarily a member of the Senate with effect from 21<sup>st</sup> June, 2018 and continuing during the absence of Senator Taurel Shrikissoon from 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 21<sup>st</sup> day of June, 2018.”

### **AFFIRMATION OF ALLEGIANCE**

*Senator Ndale Young took and subscribed the Affirmation of Allegiance as required by law.*

### **OATH OF ALLEGIANCE**

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

Garvin Simonette, Hasine Shaikh, John Heath, Ronald Gaheris Duke and Zola L. Phillips.

### **PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Tobago Regional Health Authority for the year ended September 30, 2011. [*The Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Tobago Regional Health Authority for the year ended September 30, 2012. [*Sen. The Hon. A. West*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Princes Town Regional Corporation for the year ended September 30, 2015. [*Sen. The Hon. A. West*]
4. Annual Parent and Consolidated Audited Financial Statements of the Point Lisas Industrial Port Development Corporation Limited (PLIPDECO) for the financial year ended December 31, 2017. [*Sen. The Hon. A. West*]

**URGENT QUESTIONS****Court Protection Orders  
(Review of)**

**Sen. Wade Mark:** Thank you, Mr. Vice-President. To the Minister of National Security: In light of the recent murder of a woman who was a victim of domestic abuse and had been granted a protection order by the Courts, are the authorities reviewing the mechanisms available for victims of abuse to obtain the protection of the State?

**The Minister of National Security (Hon. Maj. Gen. Edmund Dillon):** Thank you, Mr. Vice-President. Mr. Vice-President, mechanisms are always subject to review. With respect to persons who are granted protection under the court, the Trinidad and Tobago Police Service continues to monitor and liaise with the individuals at random times, also instruct them in case there is a breach of that order to notify the police as quickly and as soon as possible so that the police can take the necessary action.

But also, Mr. Vice-President, I want to add that with respect to persons who have protection under the court, there is also a need for us within the community, within the society, to be able to support those people and to be a sort of a support to them in the various areas and community because the police cannot do it alone, but we expect that the community will also give them the necessary support with respect to those types of situations. [*Desk thumping*]

**Sen. Mark:** Thank you, Mr. Vice-President. Mr. Vice-President, can the Minister indicate whether the Government intends to introduce legislation to protect women, 50 of whom have been murdered in the last year?

**Hon. Maj. Gen. E. Dillon:** Mr. Vice-President, the Government is in fact working on amendments to the Domestic Violence Act, which in fact have never been done before, but this Government is doing that as we stand right now.

**Sen. Mark:** Mr. Vice-President, in light of the situation facing women in this country, can the hon. Minister provide some time frame when legislation amending the Domestic Violence Act will arrive in this honourable House?

**Hon. Maj. Gen. E. Dillon:** Mr. Vice-President, we hope by September we should have some advancement in that regard, but we are working in tandem with the Family and Children Division Act. In fact, we have amended the Family and Children Division Act.

### **Leakage of Gang Members on Social Media (Investigation Launch)**

**Sen. Wade Mark:** Thank you. To the Minister of National Security: In light of reports that a list of names, photos and addresses of gang members have been leaked onto social media by members of the police service, has the Trinidad and Tobago Police Service launched an investigation into said reports?

**The Minister of National Security (Hon. Maj. Gen. Edmund Dillon):** Mr. Vice-President, yes.

**Sen. Mark:** Could the hon. Minister indicate when this report will find its way in the public domain, given the seriousness of the matter before us?

**Hon. Maj. Gen. E. Dillon:** Mr. Vice-President, I cannot say that that report will find its way to the public. Depending on the nature of the report and the findings of the report, it may take a different route, i.e., the Commissioner of Police and the DPP, so I cannot say it would make it to the public.

**Sen. Mark:** What action, Mr. Vice-President, does the Minister, through the Commissioner of Police, intend to take with these rogue police officers who misuse their office, abuse their office to do such things as we are discussing at this time? Could you advise this honourable House what action you intend to take as the Minister of National Security to root out these elements?

**Mr. Vice-President:** I will not allow that question. Next question, Sen. Mark.

**Children's Authority  
(Care and Counselling Arrangements)**

**Sen. Wade Mark:** To the Prime Minister: Having regard to reports that the body of the murdered 33-year-old mother of Dundonald Hill, Dibe, was discovered by her two young children—no pun intended here—has the Children's Authority arranged for the care and counselling of said children?

**The Minister of Communications, Minister in the Office of the Attorney General and Legal Affairs and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Mr. Vice-President. Mr. Vice-President, on behalf of the Government of Trinidad and Tobago, we extend our greatest condolences and sympathy to the family that has had to go through this very traumatic incident and, in fact, we are quite disturbed that an attempt is being made to politicize it. Nevertheless, and nevertheless of the poor jokes from the other side, the Government says that the victim and witness support are the first responders. They did immediately remove the children and provided counselling support.

The Children's Authority is now involved and is assessing the children's long-term care. The children, thankfully, are safe with their grandmother and the Government will continue to provide as much support as is needed and as is possible, and the Children's Authority is following up. Again, we extend our sincerest condolences and sympathy.

**Sen. Mark:** This is not a political matter, Mr. Vice-President. I want you to advise the young man that this is not a political matter. [*Desk thumping*]

**Mr. Vice-President:** Sen. Mark, question. What is the question?

**Sen. Mark:** My question to the hon. Minister is simply this: Could you advise this honourable Senate what specific measures have been effected by the Children's Authority to deal with the trauma that these young children have experienced as a

result of this development? Could you share with us?

**Hon. S. Young:** Thank you very much. Once again, we are dealing with young children who have just gone through a very traumatic experience, and we do not encourage that what they are going through become the national conversation as is being attempted to be done here. As is with all of these types of help and assistance that they get, it is confidential. We feel confident that the Children's Authority is doing all that they can with the experts that are available and we cannot provide any specificity as to what is taking place, but we know that they are providing counselling. They are the experts and we will continue to support them despite what is happening on the other side. [*Desk thumping*]

**Sen. Mark:** Mr. Vice-President, could the Minister indicate whether these children will be exposed to psychological, emotional counselling as it relates to that very unfortunate experience that they have gone through; whether this Children's Authority will be addressing those elements of needs of those children at this particular time—the psychological care, the emotional care, that is required at this time which is part of the arrangement?

**Mr. Vice-President:** Sen. Mark, that question has been answered by the Minister of Communications. So next question, please.

**Sen. Mark:** I do not think he answered it, you know, Sir.

**Mr. Vice-President:** Next question, Sen. Mark.

**Issued TTPS Uniforms  
(Systems for Accountability)**

**Sen. Wade Mark:** Okay, Mr. Vice-President, I shall be guided. To the Minister of National Security: In light of recent reports that persons dressed in police uniform attempted to carry out a robbery in central Trinidad, what systems exist in the Trinidad and Tobago Police Service for officers to account for uniforms issued to them?

**The Minister of National Security (Hon. Maj. Gen. Edmund Dillon):** Thank you, Mr. Vice-President. Mr. Vice-President, in keeping with the Trinidad and Tobago Police Service Standing Orders, there is a system in place with respect to verifying the uniform worn by members of the Trinidad and Tobago Police Service. There is in fact periodic kit inspection. The uniforms themselves are marked and registered to the officers. They are marked with indelible ink, there are also random checks taken by supervising officers.

**Sen. Mark:** Well, could you explain this situation to this honourable House, how did this these bandits arrive at having these uniforms, purportedly police uniforms, can you explain that and could you indicate whether you are going to launch an enquiry into this matter?

**Mr. Vice-President:** I would not allow that question, and this is the end of Urgent Questions. We have come to the end of the 10-minute period.

### ORAL ANSWERS TO QUESTIONS

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Mr. Vice-President, the Government is pleased to announce that it will be answering questions No. 137, 150, 151, 174 and 175. We ask for a two-week deferral of question No. 152.

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

#### **Chronic Shortage of Health Care Professionals (Steps Taken)**

**152.** In light of reports concerning the chronic shortage of nurses and other health care professionals in the public health sector, can the hon. Minister of Health indicate what steps are being taken to address this shortage?

*Question, by leave, deferred.*

**Arrival of *Galleons Passage*  
(Details of)**

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

In view of the latest date change for the arrival of the *Galleons Passage* to Trinidad and Tobago, can the Minister advise on the following:

- i. a definite date by which this vessel will arrive in Port of Spain; and
- ii. the date by which this vessel will begin to operate on the inter-island sea bridge?

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

Thank you, Mr. Vice-President, and thank you for the question Sen. Mark. The vessel arrived in Cuba on May 26, 2018. Prior to its arrival in Cuba, a team of persons representing both the buyer and the seller arrived in Cuba on May 15, 2018, in order to expedite the shipyard work. However, the seller experienced difficulties transporting some of the required materials and equipment from Australia to Cuba. As a consequence, the Government of Trinidad and Tobago has taken a decision to bring the vessel to Trinidad from Cuba at the earliest practical opportunity and to have the work done here in Trinidad.

Upon its arrival in Trinidad, time must be allowed for the reflagging of the vessel, familiarization of the crew with the vessel and the type-rating of the crew, after which it will be put into service. The proposed enhancement will be done on a phased basis while the vessel is in service. I thank you, Mr. Vice-President.

**Sen. Mark:** Mr. Vice-President, could the hon. Minister of Works and Transport tell the population when will the so-called *Galleons Passage* arrive on the shores of the Republic of Trinidad and Tobago? Can you give us a specific date because it is right here in Cuba so you need to tell us when that ship is going to arrive here?

**Sen. The Hon. R. Sinanan:** Mr. Vice-President, if I could predict the exact date of things that I do not have control over, I would not have been here today. [*Desk*

*thumping*] Mr. Vice-President, I just want to repeat my answer. As a consequence, the Government of Trinidad and Tobago has taken a decision to bring the vessel to Trinidad from Cuba at the earliest practical opportunity, and to have the work done here. I thank you.

**Sen. Mark:** Mr. Vice-President, can the hon. Minister indicate to this Senate whether the Government of Trinidad and Tobago, when they entered into that arrangement to purchase that vessel, was not aware that Cuba was under a full and total embargo; was the Government not aware of that embargo before they took that decision to agree with the seller to go to the Damen shipyard, could you explain to this honourable House?

**Mr. Vice-President:** I will not allow that question. Next question, Sen. Mark.

**Sen. Mark:** Mr. Vice-President, could the hon. Minister indicate to this Parliament, seeing that this boat is not going to be here for a long while, can he indicate to us what was the cost to the taxpayers of this country whilst that boat was located in the Damen shipyard for 31 days? Did the sellers absorb that price or cost, or was it absorbed by the taxpayers of the Republic of Trinidad and Tobago? Could you explain to us, Sir?

**Mr. Vice-President:** I will not allow that question. Next question, Sen. Mark.

**Sen. Mark:** Well, I do not know which one you will allow, because I have—  
[*Crosstalk*]

**Mr. Vice-President:** Sen. Mark, next question please.

**Sen. Mark:** Okay. Listen, this is a democracy, you know. This is not a PNM party group, you know. [*Crosstalk*]

**Mr. Vice-President:** Sen. Mark, take your seat.

**Sen. Mark:** Sorry, sorry.

**Mr. Vice-President:** Take your seat. When I call on you to ask the next question,

just do so.

**Sen. Mark:** And do not allow—

**Mr. Vice-President:** No comments, just—

**Sen. Mark:** I seek your protection, Sir.

**Mr. Vice-President:** When I call on you to ask the next question, just do so.

**2.30p.m.**

**Sen. Mark:** I will but I seek your protection.

**Mr. Vice-President:** Just do so. You will always have my protection.

**Sen. Mark:** But “yuh pointing at me. Yuh threatening me.”

**Mr. Vice-President:** Just ask—[*Crosstalk*] Sen. Mark.

**Sen. Mark:** All right, I will be guided, Sir. Can I ask my question?

**Mr. Vice-President:** You are reminded that there is a specific time period for these questions, as it relates to the Order Paper. Every time I have to rise to my feet to guide individuals, that time is running. Next question.

**Sen. Mark:** Can the hon. Minister indicate what would have been the practical difficulties experienced by the shipyard owners in bringing the *Galleons Passage* up to speed after 31 days? Could you explain to us?

**Sen. The Hon. R. Sinanan:** Thank you, Mr. Vice-President. Mr. Vice-President, it was said on several occasions in this House and the other House that the agreement for the purchase of the *Galleons Passage* was done where the seller had certain responsibilities to fulfil and also the buyer had certain responsibilities. The seller had an arrangement with the Damen Shipyard in Cuba and the seller chose the Damen Shipyard to have their part of the sale completed. The seller found difficulties. The Government of Trinidad and Tobago can wait no longer for the boat to reach here and the Government of Trinidad and Tobago has taken a decision to bring the boat to Trinidad and we will have the retrofitting done here.

The cost that the seller has to incur will be incurred by the seller and the retrofitting that the Government of Trinidad and Tobago had planned to have done at the same time will be done here and that cost will be borne by the Government of Trinidad and Tobago. I thank you. [*Desk thumping*]

**Sen. Mark:** Mr. Vice-President, may I?

**Mr. Vice-President:** Supplementals have ended on this particular question. Next question, Sen. Mark.

**T&T Coast Guard  
(Reduction in Fuel Supply)**

**150. Sen. Wade Mark** asked the hon. Minister of National Security:

In light of recent reports that the T&T Coast Guard has been experiencing a reduction in the supply of fuel to eight of its large patrol vessels, can the Minister indicate what is being done to immediately rectify this problem?

**The Minister of National Security (Hon. Maj. Gen. Edmund Dillon):** Thank you, Mr. Vice-President. There has been no reduction in the supply of fuel to the Trinidad and Tobago Defence Force, Coast Guard in particular. Similar to other public agencies, Trinidad and Tobago Defence Force will sometimes be impacted during the processing and management of scarce financial resources, in which case they will prioritize their missions and their operations accordingly, Mr. Vice-President.

**Sen. Mark:** Mr. Vice-President, through you, can the Minister indicate when this news or information is issued by the media, can I ask the Minister through you, Mr. Vice-President, why could the Ministry not issue some clarification on this matter? Because we were told that the—

**Mr. Vice-President:** Sen. Mark, just the question. Minister of National Security.

**Hon. Maj. Gen. E. Dillon:** Mr. Vice-President, there is no need for that response to the media because the media prints a number of things. I cannot respond to

everything that the media prints. As far as I am aware, from the Government's standpoint, the Government is prepared to provide all the necessary resources for the agencies of national security to do their job effectively and efficiently and will so do, Mr. Vice-President.

**Sen. Mark:** Mr. Vice-President, can the hon. Minister indicate whether during the last few months the Coast Guard experienced challenges in fuel supply for their vessels? Can you clear the air for this honourable Senate on this matter?

**Mr. Vice-President:** Minister of National Security.

**Hon. Maj. Gen. E. Dillon:** Mr. Vice-President, I ask the Senator, what do you mean by challenges? I just said to you that there has not been any reduction in the supply of fuel to the Trinidad and Tobago Defence Force, Coast Guard in particular. What do you mean by challenges?

**Sen. Mark:** What is the next question?

**Mr. Vice-President:** Question 151.

**Community Policing Unit of the TTPS  
(School Violence)**

**151. Sen. Wade Mark** asked the hon. Minister of Education:

In light of the Government's decision to engage the Community Policing Unit of the Trinidad and Tobago Police Service to assist in addressing the issue of school violence, can the Minister indicate whether this initiative is temporary or permanent?

**The Minister of Education (Hon. Anthony Garcia):** Thank you very much, Mr. Vice-President. The very easy response to this question is that this initiative is ongoing and therefore it is permanent. Thank you.

**Sen. Mark:** Mr. Vice-President, can the hon. Minister indicate whether the effect of having the Community Police Unit assist in this particular project—can the Minister indicate whether the results are positive, in terms of reductions in this

regard?

**Mr. Vice-President:** I will not allow that question. Next question, Sen. Mark. Next supplemental, if you have one.

**Sen. Mark:** What impact, if any, is the engagement, Mr. Vice-President, the Community Police Unit, having on school violence in the various schools?

**Hon. A. Garcia:** Thank you very much, Mr. Vice-President. I am pleased to report that the police community unit has been having very positive impacts where these schools are concerned, because they are engaged, not only with the students and the teachers but also with the community. And as a result, we have seen a marked reduction in the incidents of indiscipline and violence in our schools. Thank you.

**Sen. Mark:** Mr. Vice-President, can the hon. Minister share with the Senate, which schools are really benefiting from this particular project? Can you share with us the schools that are benefiting from this project?

**Mr. Vice-President:** Sen. Mark, I will not allow that question. Next question, Sen. Mark.

**Sen. Mark:** Do I have another one, Sir?

**Sen. Ameen:** That one is deferred.

**Mr. Vice-President:** Sorry. Sen. Ameen, question 174.

**Wrightson Road Traffic Pile-ups  
(Steps by Government to Address)**

**174. Sen. Khadijah Ameen** asked the hon. Minister of Works and Transport:

Can the Minister state what steps, if any, the Government intends to take to address the frequent traffic pile-ups on Wrightson Road caused by the queue of trucks bound for Tobago and waiting to enter the port compound?

**The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):** Thank you, Mr. Vice-President. Along the Dock Road area, the port police

officers are dispatched to assist with traffic management. These officers have no jurisdiction along Wrightson Road and liaise with the TTPS which renders assistance.

Dredging of the harbour is expected to begin in late September for a duration of approximately two months. Once this dredging of the harbour is completed, the GSS Jetty becomes accessible and operational, which will cease the operations at berth three, where they are carried out at present. All cargo operations will return to the GSS Jetty. This will eliminate the traffic pile-up caused by the queue of trucks bound for Tobago. I thank you.

**Sen. Ameen:** Mr. Vice-President, I thank the Minister for his response. But I want to ask, in the interim between now and September when the new facility would be available, what arrangements are in place to manage the traffic pile-up that understandably happens?

**Sen. The Hon. R. Sinanan:** Thank you. Mr. Vice-President, this has been happening since 2013. What the port has put in place, with the assistance of the TTPS, is to have regular police patrols and seek assistance from the TTPS for the Wrightson Road area. Thank you.

**Sen. Ameen:** Mr. Vice-President, is the Minister willing to guide the port to have any sort of consultation or talks with the operators or truck drivers with the view of improving the system? Will they be open to that?

**Sen. The Hon. R. Sinanan:** Mr. Vice-President, the challenge at the port is the trucks bounded for Tobago are loaded at berth three. The Port of Port of Spain does not have the capacity to have all these trucks parked on the compound and then to be loaded on the vessel. So there is not much that can happen between now and the completion of the dredging to have the vessels loaded back at the GSS Jetty. However, what can be put in place is more consultations with the TTPS to

have some more patrols on the road. But there is not much that can be done at this point in time because the vessel has a time to leave to arrive in Tobago at a certain time and the vessels have to be loaded and you can only load in a certain format. Thank you.

**Solomon Hochoy Highway Safety Cable Barriers  
(Rationale for Replacement)**

**175. Sen. Khadijah Ameen** asked the hon. Minister of Works and Transport:

Can the Minister advise of Government's rationale for the planned replacement of safety cable barriers with concrete barriers along the Solomon Hochoy Highway?

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

Thank you, Mr. Vice-President. The Ministry of Works and Transport, under the PURE unit, has a number of projects planned which include the widening of the Uriah Butler Highway in a phase from Chaguanas, all the way down to Golconda to three lanes. As such, the median which occupies the space between the north and southbound lane of the highway will be needed for the road widening.

When this road widening occurs, the cable barrier system will not be the most suitable option since there will be no room in the median. Therefore, a rigid barrier system such as the slipform New Jersey barrier system will be the best suited and needed to divide the highway network. I thank you.

**Sen. Ameen:** Mr. Vice-President, can the Minister indicate—I know you called some part of the highway—if it is the entire length or which parts of the highway we are going to have these, the widening? You indicated that with the widening, you are not going to replace the cable barriers, you are going to put New Jersey barriers. But there are other parts of the highway where the cable has been damaged and would take repair or replacement, since not the entire length of the highway would be widened—

**Mr. Vice-President:** Senator, Senator, ask him the question please.

**Sen. Ameen:** Which parts are going to be widened and if the other areas, the cable barrier is going to be repaired?

**Sen. The Hon. R. Sinanan:** Mr. Vice-President, the question kind of varies from the original question. However, just to bring some clarity, what I said is that we have a lot of planned projects and this will be done on a phased basis. If you want to know what we are doing immediately with the cable barriers, the immediate plan is to have the cable barriers repaired. The long-term plan is to have them replaced in areas where they will no longer be needed. Thanks.

**CRIMINAL DIVISION AND DISTRICT CRIMINAL  
AND TRAFFIC COURTS BILL, 2018**

[Second Day]

*Order for resuming adjourned debate on question* [June 14, 2018]:

That the Bill be now read a second time.

*Question again proposed.*

**Mr. Vice-President:** The list of those who spoke last Thursday, June 14<sup>th</sup>, is the Hon. Faris Al-Rawi, MP, Attorney General, mover of the Motion; Sen. Anita Haynes; and Sen. H. R. Ian Roach.

**The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus):** Thank you very much, Mr. Vice-President, for the opportunity to participate in this debate on the Criminal Division and District Criminal and Traffic Courts Bill, 2018. This is a Bill:“...to make jurisdiction for criminal matters exercisable in a division of the High Court to be known as the ‘Criminal Division’ to make jurisdiction for criminal and traffic matters exercisable in a division of Summary Courts to be known as ‘the District Criminal and Traffic Courts’ and to make provision for matters connected therewith”

Mr. Vice-President, the pervasiveness of crime in our beloved nation undoubtedly causes great distress, not only to me on a personal level, but I am

quite sure to all my colleagues here in this Chamber and the rest of Trinidad and Tobago.

Mr. Vice-President, how can one not be distressed by the increasing frequency of the crime, the incomprehensible ruthlessness that we see being displayed through various forms of criminal acts, the increasing “boldfaceness” of the criminals in this country, the cries of the parents, in particular the mothers like myself, who have become victims of crime?

As a mother myself, Mr. Vice-President, I am really tortured by the realities in which we live. The merciless public beating of a woman recently in a car park in a mall in Marabella sometime ago, closely followed by-the-way killing of teenager Eric Ganesh in Princes Town a few Saturdays ago, continue to haunt this country, Mr. Vice-President.

Undoubtedly this House would agree that many precious lives have been lost to crime. And today, as I stand in this honourable House, I am certain that all of us, citizens of this country, will support the passage of this critical piece of legislation, the Criminal Division and District Criminal and Traffic Courts Bill, 2018.

Mr. Vice-President, the Trinidad and Tobago Police Service 2017 crime statistics shows a 5.5 per cent increase in overall criminal activity as compared to 2016. In 2017, Mr. Vice-President, 1,064 firearms were seized and there were 496 murders. And there was also a detection rate for murder of 17.95 per cent, an increase from 15.2 per cent in 2016.

Mr. Vice-President, the United States Department of State Overseas Advisory Security Council in its Trinidad and Tobago 2018 Crime and Safety Report states, and I quote:

“In Trinidad, the majority of violent crimes (homicides, kidnappings, assaults, robberies, sexual assaults) are gang/drug-related or domestic in nature...

A significant, growing portion is attributed to the influence of gangs, illegal narcotics and firearms.”

Mr. Vice-President, the Government has been entrusted by the people of our beloved country to lead, and we have been doing so. We have been working hard, taking concrete measures to address the serious crime situation that we all face in Trinidad and Tobago; a crime situation which, may I remind, did not start yesterday or the day before that, but long before this Government came into power. I have, time and again, Mr. Vice-President, highlighted that this Government does not shirk its responsibility or its duty. It acts even when the mountains before us seem quite insurmountable.

I want to look briefly, Mr. Vice-President, at the criminal justice system. I am certain that this House is mindful of the hard work which the hon. Attorney General has put into bringing a suite of legislation to improve the criminal justice system in this country. I myself have contributed to the debate on the Anti-Gang Bill, 2018, and the DNA Regulations, 2018. And once again, I must commend him for his efforts and note, Mr. Vice-President, that we are here today because of the Attorney General's determined efforts to make meaningful and effective changes to our criminal justice system for the benefit of all of us.

Mr. Vice-President, the Judiciary is a fundamental part of our criminal justice system. As outlined in the House of Representatives by the hon. Attorney General, the criminal justice system requires the following elements to be in place. We need a judge. We need a court. We need evidence. We need a prosecutor.

We need a defendant. We need the police who provide the ancillary services to be there. We need the prison service, Mr. Vice-President, who also provide ancillary services. We need the Forensic Science Centre, which provides ancillary services, to cooperate. We need the rules of the court. We need the financing arrangements, and we also need the laws.

Mr. Vice-President, within Trinidad and Tobago, criminal matters before the High Court start with the preliminary enquiry, where you go before the Magistracy, you present your arguments and your evidence before the magistrate who would then determine whether there is a prima face case or a case which is good enough to go for trial to the High Court in the Assizes. You begin the trial in the High Court in the Assizes. From the Assizes you go to the Court of Appeal and from the Court of Appeal, as we have seen often time and again, you go to the Privy Council.

Mr. Vice-President, the criminal justice system is filled with complexities and nuances that may not always be easily clarified, but it is pellucidly clear to all of us, criminal law expert or not, that the pace of justice in this country needs significant improvement. Mr. Vice-President, we need to improve judicial capacity. We need more courts. We need rules to govern those courts. We need to improve our prosecutorial system and we need more lawyers at the Criminal Bar.

Mr. Vice-President, I wish to remind this House of the contribution. Once again I quote the hon. Attorney General on the debate of this Bill in House of Representatives on April 13, 2018, just over two months ago, where the Attorney General identified, and I quote:

“...the Constitution is the supreme law of Trinidad and Tobago, section 2 of the Constitution. Under the Constitution, we have the establishment of the Judiciary and the Court of Appeal. The Supreme Court of Judicature is, of course, set out under Chapter 7. Under section 99 straight on to 109, we have the structures of the court in the Constitution. We established the Supreme Court; we established the Court of Appeal; we deal with the manner or the appointment of judges, and we redefine and reconfirm that there may be an appeal to the Privy Council of course.”

I will close my quotation of the full statement made by the hon. Attorney General.

Mr. Vice-President, the Attorney General has already done an excellent job at putting the information forward. My duty is merely to remind this House of his contribution in that context. Let us look at some of the key clauses of the Bill, Mr. Vice-President. This Bill provides, at clause 4, for the establishment of a Criminal Division of the High Court, which shall comprise the Criminal Court, which would enable the court to treat with matters in a more expedient manner.

Mr. Vice-President, additionally the matters at clause 5 and clause 6, and I would want to quote briefly from clause 6 for emphasis. Clause 6(1) states:

“Sittings of the Criminal Court shall be held at such locations and at such times as the Chief Justice, in consultation with a Judge assigned to that Court, may appoint in accordance with the Supreme Court of Judicature Act.”

Clause 6(2):

“Notwithstanding subsection (1), the Criminal Court may, when required and appropriate, sit at any time, and may conduct hearings by telephone, video conference or any other appropriate electronic means.”

Mr. Vice-President, as such, this piece of legislation enables the court to sit at any time when it is required and appropriate to do so. But more importantly, it gives the court more flexibility, conducting hearings by allowing the court to be conducted either by telephone, videoconferencing, et cetera, which is very, very important in this day and age of technological advancement and entrenchment in all of our lives.

This provision also has the potential to assist with preventing undue and unnecessary delay in disposing of matters that are before the court as the court will be granted a broader discretion in treating with matters.

Mr. Vice-President, furthermore, clause 7 of the Bill provides for the assignment of judges and masters of the criminal court and these assigned judges and masters would deal specifically with matters in the criminal court.

The Bill does not simply provide for the establishment of a criminal court, Mr. Vice-President. But in clause 18, it provides for the necessary support structures to be put in place; that is, an administration department to be known as the criminal and traffic court administration department. The establishment of such a department ensures that the Criminal Division is effectively managed and treated as a priority. That department has a number of units that specifically assist with the management of different areas and duties of the court.

So that, Mr. Vice-President, this Bill also provides for rules of the court to be made at clause 24, for the purpose of establishing a special procedure for the management of certain types of cases. I cannot underscore the importance of such a provision, Mr. Vice-President, as having a special procedure for the management of cases can help streamline more important cases that would ordinarily have to be dealt with at some later date.

Mr. Vice-President, I want to dwell briefly on the benefits of a criminal court. I would have outlined certain statistics, in relation to the state of our criminal justice system. And it is obvious that the volume of work to be completed greatly exceeds the staff available to do so. It is also clear that in looking at criminal matters alone, we are speaking of tens of thousands of cases, which have to be dealt with in addition to the various other cases dealt with by magistrates, masters and judges.

Mr. Vice-President, by having a specialized court which deals specifically with criminal cases, it would decrease the burden and workload on the judicial officers. With a decreased workload and more efficient case management, the backlog of cases can be resolved, ensuring that justice is delivered in a timely manner. Mr. Vice-President, we often hear citizens of this country complain bitterly about cases and the lengthy backlog of cases that face the Judiciary in 2018. As a consequence, Mr. Vice-President, this country would have one less occasion to sigh: justice delayed is justice denied.

Mr. Vice-President, a 2013 paper published by the World Bank entitled *Developing Specialized Court Services: International Experiences and Lessons Learned*, the authors noted that the court specialization was commonly considered to be an important reform initiative to advance the development of a successful judicial system. This World Bank paper emphasized that specialization could be helpful in improving the processing of court cases that are more complex or require special expertise beyond the law.

Mr. Vice-President, three of the main benefits associated with court specialization identified by the authors are as follows: firstly, there is greater efficiency, specialized procedures and staff and judges who are well versed in

these cases lead to streamlined operations and more efficient processing of cases. By diverting a class of cases to specialized courts, the burden of growing caseloads in the regular courts will be reduced, also positively impacting on the operations of that court.

**3.00 p.m.**

Secondly, Mr. Vice-President, a Judiciary of specialists leads to higher quality decisions especially in complex areas of the law. Their greater expertise and experience will lead to better decisions, better outcomes for the litigants, and greater user satisfaction. And thirdly, Mr. Vice-President, the creation of specialized courts with exclusive jurisdiction over particular areas of the law would enhance uniformity of decisions in those areas, thereby contributing to greater predictability and confidence in the courts and possibly reduce appeal rates.

Mr. Vice-President, I would just like to cite a few international examples of specialized courts. The authors of that paper, Mr. Vice-President, the experience of the Land and Environment Court of New South Wales based in Sydney, Australia, supported the claim of greater efficiency and higher quality decisions.

Also, Mr. Vice-President, specialized courts that were set up to process different case types according to complexity, and to ensure speedy processing such as the first expedited drug courts in the United States are another example supporting the assumption that specialization can lead to greater efficiency, particularly if that is one of the aims of specialization and the design is focused on this aspect.

Mr. Vice-President, in Singapore there exists a criminal justice division of the Singapore subordinate courts to improve efficiency in Singapore's criminal division, which handled almost 59,000 criminal charges, over 60,000 traffic cases

and over 128,000 statutory charges and summons in 2012. Seven specialized groups of courts were created. Three of these groups focus on concentrated processes such as the centralized pretrial conference court and four groups focused on specific crimes.

Mr. Vice-President, on speaking on criminal matters and the need for specialized criminal courts, the authors noted that major crime cases, such as organized crime or high level corruption cases tended to require special witness or victim protection and handling. These cases also tended to demand special expertise from judges, and prosecutors, and more effort in preparation, which often meant that judges needed to have the relevant expertise to ensure that witnesses and victim services were in place and procedural timelines were adequate.

The authors quoted several examples of specialized criminal courts around the world including the Sandiganbayan of the Philippines, Mr. Vice-President, which was a specialized anti-corruption tribunal. The authors noted that the minor crime cases, such as traffic infringement, or the possession of small amounts of illegal drugs could be handled more effectively, more efficiently and quickly using highly streamlined low cost processes, an approach adopted in many jurisdictions in the United States and other countries.

Mr. Vice-President, traffic courts in particular are often established as independent tribunals, sometimes distinct from the general courts for processing very large volumes, for example, parking fines and other kinds of lower level motor vehicle and road offences.

Mr. Vice-President, right here in the Caribbean, in Jamaica, there already exists a system of specialized courts, particularly at the magisterial level. There is also a traffic court, a gun court, a coroner's court, a drug court, a night court, a tax

court, a family court, a juvenile court and a small claims court. And in this regard, Mr. Vice-President, Jamaica has been well advanced for some time, with many of these specialized courts being established decades ago. For example, the gun court in particular was introduced in Jamaica in 1974, many, many years ago. The drug court in Jamaica is well regarded and has been the subject of very positive reviews.

Mr. Vice-President, we need only to look to the recent examples of the establishment of the Children Court through the juvenile court project right here in Trinidad and Tobago. Previously, Mr. Vice-President, there were no dedicated courts with the appropriate mechanisms and supporting social services in place to ensure speedy and efficient resolution of cases and access to intervention programmes for children and families in our beloved Trinidad and Tobago.

Mr. Vice-President, the Children Court is a subdivision of the Family and Children Division of the High Court of Trinidad and Tobago, which is now designed to handle all children's matters involving persons under the age of 18 years. The true purpose of the court will be to support the rehabilitation of children who come into conflict with the law and in seeking the rehabilitation of children, this court also applies principles of restorative justice. This specialized court, Mr. Vice-President, aims to treat the needs of this particularly vulnerable group and aims at achieving the best solution for the child and all others involved.

And, Mr. Vice-President, in closing my contribution to this debate, I would like to remind that this Government remains resolute in its commitment to effectively and efficiently reform the criminal justice system in this country. The first parliamentary stage in the legislative process has been completed, and we anticipate the concurrence in this House in the passage of this Bill to move beyond the parliamentary stage and towards assent and proclamation so that we together

can make or take another determined step in the fight against crime.

Mr. Vice-President, all of us seated here in this Chamber, Members of this honourable House, we have a grave responsibility to carry out our solemn duty to this nation by passing—by supporting and passing various pieces of legislation that would address criminal activity in Trinidad and Tobago. In this context, Mr. Vice-President, I thank you. [*Desk thumping*]

**Sen. Gerald Ramdeen:** Good afternoon, Mr. Vice-President, and thank you for the opportunity to contribute on this debate on a Bill:

“to make jurisdiction for criminal matters exercisable in a division of the High Court to be known as ‘the Criminal Division’ and to make jurisdiction for criminal and traffic matters exercisable in a division of Summary Courts to be known as ‘the District Criminal and Traffic Courts’ and to make provision for matters connected therewith”

I am indeed privileged, Mr. Vice-President to be able to contribute on this Bill, and the Attorney General in piloting this Bill gave us his view and the Government’s view of what I would term the jurisprudential tapestry of where we are in terms of our courts and the administration of justice. And while the Attorney General was very upbeat in his contribution about the hope that we should have that the system will improve, I wish in my contribution to bring us a little bit back to reality as to where we are with respect to our court system because I am in that system and part of that system on a daily basis. So forgive me, if I am not as optimistic as the Government, but I think I am a little bit more in touch with reality. [*Desk thumping*]

Mr. Vice-President, I do not think that anybody here who understands where we are with respect to the administration of justice would disagree with the fact

that, perhaps for the first time in our history, as a country, and it is not something that anyone of us should be proud of, is that we are the lowest point with respect to the administration of justice in our country; the lowest point.

And let me start off my contribution by saying that we have a Bill here that seeks to create a Criminal Division of the High Court, and I am—I, Gerald Ramdeen, want to put on the *Hansard* as of today that I want to be able to say, so when it is read five years down the road that this Act—this Bill that we are debating here is going to cause absolutely no improvement to the criminal justice system. [*Desk thumping*] Absolutely none.

But before I get to why it will cause none, I want to answer the Attorney General with respect to where we are. Yesterday, I was in the Court of Appeal, before the three most senior judges of the Court of Appeal: Acting Chief Justice Mendonça, Justice of Appeal Jamadar and Justice of Appeal Rajkumar. We operate at the High Court at the Hall of Justice and have been operating at the High Court in the Hall of Justice without air-condition for the last six months; for the last six months.

So when you go to do an appeal or you go to do a trial we are in the embarrassing position of the judge having to tell you “You can take off your robes” and then you have the embarrassing position of two ushers walking in with two Lasko fans and putting it at the side of the courtroom. That is the legacy that we have of a judiciary putting on the Lasko fans so that they could cool the courtroom.

But, before going further about that, I made a physical inventory, if you want to call it that, of the High Court this morning. And let me precede that by saying this. I had the privilege three weeks ago to be a guest of Chief Justice

Roberts at the US Supreme Court in Washington. And I have had the privilege also of being at the Judicial Committee of the Privy Council as well. And when you have those experiences you understand that in developed countries your court, the place where justice is dispensed, is something that you should be proud of. So when people go to Middlesex Guildhall and see where the Privy Council sits and the United Kingdom Supreme Court sits, they are proud of that when you go to the US Supreme Court in Washington they are proud of that what it represents.

So let me tell you how proud we should be of the place that dispenses justice in Trinidad and Tobago, which is supposed to be the Hall of Justice on Knox Street. Let me paint a different picture. On the first floor of the Hall of Justice at Port of Spain; while we want to create a new criminal division and we are hooraying about how we have just created a Children and Family Division, when the public—because people must understand what justice is, you know?

Justice is something—a service—that is dispensed to the people. So when the people enter the Hall of Justice and go to the Criminal Courts and the Civil Court, they do not have a public toilet that is working at the Hall of Justice; not one. Well I cannot go to the female, so I went to the male public bathroom this morning. They do not have a urinal that is working there. So if you want to urinate when you go to the Hall of Justice, you have to find somewhere to do it. That is on the first floor. When you go to the second floor the toilet is not working there either, and when you go on the third floor which is where the Court of Appeal sits, there is a big sign “public toilet out of order”.

But what we should do is create more courts right? We should have a toilet unit, so perhaps the toilets will be working just like how we have all these units here. So then I went to the library in the Hall of Justice on the third floor and I

wanted to photocopy the Judicial and Legal Service Act which I was preparing for the debate today. But I was surprised that when you go to the law library at the Hall of Justice there is no photocopier that works either. So “it have” two photocopiers there; none working. But let us create a new court, call it the Criminal Division and let us boast about the courts that we have created. But we cannot fix what we have now to dispense justice in the High Court. [*Desk thumping*]

So, you know, I heard the last speaker talk about all these different units. We must create all these different units. There is a unit at the High Court at the Hall of Justice called the CAT Reporting Department and the Attorney General referred to the fact that we have CAT Reporters that will give you real-time transcription. The only problem with that is that the real time transcription cannot find itself on a CD because the Hall of Justice has no CDs in the CAT Reporting Department.

So—I am sorry that the Minister of Works and Transport, Sen. The Hon. Rohan Sinanan, is not here, because you know there are very few times that we compliment the initiative of the Government. And I want to compliment the initiative of the Minister of Works and Transport because when the boat was not working we heard in the other place the Minister of Works and Transport had the initiative that when he was abroad he bought a satellite and brought it back to the country to fix the boat—

**Hon. Senator:** Radar.

**Sen. G. Ramdeen:** A radar. But, you know, what I find very disturbing is that there is no shortage of how many trips the people who are in charge of the Judiciary make, and nobody has the initiative to buy the part for the air-condition

to fix it for the last six months. And this Government is telling us justice is a priority. Justice is a priority to this Government where today, as I speak, the judges of the High Court that sit in the Hall of Justice are adjourning all their trials. You know why? Because there is no air-condition. So one would have thought that if justice was a priority to the Government, the Attorney General and the Chief Justice could not get together and as a matter of priority whatever needs to be done—I understand it is \$1.5million. We cannot get \$1.5 million to fix the air-condition at the Hall of Justice—

**Hon. Senator:** It is much more than that.

**Sen. G. Ramdeen:** So, well, what I am sure about is that it is less than what we are doing to create the Criminal Division and [*Desk thumping*] and it could be a lot more than \$1.5 million. I do not care how much it cost—

**Sen. Obika:** That is for paintings.

**Sen. G. Ramdeen:**—because what we are losing every day by every judge of the High Court deciding to adjourn their trials because they do not have the basic necessity of air-condition in the High Court is costing this country and the people of this country more than any air-condition. [*Desk thumping*]

And that is unsatisfactory. You cannot be coming here and telling us to create another court when the court that is supposed to be delivering justice on a daily basis; civil trials, criminal trials are being delayed—not being delayed, being adjourned because the air-condition not working. “We really serious here?” Wait. I will get to what is going on with the San Fernando court in a short while. Of course, have no fear.

The Internet is a very amazing thing, I must say, because I was doing some research. The Attorney General in his contribution—it is on *Hansard*—paid tribute

to two people who are responsible for the hard work that brought us here at the creation of this division and the creation of the Children and Family Court Division. There are two people, the Attorney General named them, I am just going to carry it a little further.

The first one was the Court Executive Administrator, who is a critical part of what we are doing here. I am going to get to that. The person who holds the office of Court Executive Administrator at the High Court—the Attorney General named her—is one by the name of Christie-Anne Morris Alleyne. I do not need to tell you who our Chief Justice is. That is the hon. Mr. Justice Ivor Archie.

But I want to ask a few questions of the Attorney General with respect to this Court Executive Administrator, because you know, Ms. Christie-Anne Morris Alleyne is not somebody unknown to Trinidad and Tobago. She shot into the highlight in 2000 when there was a big hoorah about this position that we are dealing with here today, the Court Executive Administrator. And why? Because as we speak today we do not know the division of labour between the Court Executive Administrator and the Registrar of the Supreme Court. What caused litigation in 2000 in this country between Ms. Evelyn-Ann Peterson, a very dedicated public servant who gave her life to the Judiciary of Trinidad and Tobago, and this woman called Christie-Anne Morris Alleyne? From the Judiciary when Chief Justice De la Bastide was here, Ms. Christie-Ann Morris Alleyne was also in charge of the Family Court. What they call the pilot project, the great success of the Judiciary is the Family Court. Everything at the Family Court is collapsing today as we speak but we boast about this pilot project called the Family Court.

This woman, Christie-Anne Morris Alleyne was in charge—

**Mr. Vice-President:** Just, just. I am kind of waiting for you to tie it in a little bit

better to the Bill—

**Sen. G. Ramdeen:** I will.

**Mr. Vice-President:**—but just in your references to the individual, because remember there is a Standing Order that deals specifically with the Judiciary, and the fact that we do not really bring in the Judiciary. And that is why I am allowing you, because the Bill deals with the organizational structure of the Judiciary. So you are walking a thin line. Your reference to “this woman”, you could put it across a lot better in relation to that. You called the person by name already, you are speaking to it because that particular position does also appear in the Bill before us. But if you are tying it in, tie it relatively quickly and just have a little bit more respect in terms of calling the name.

**Sen. G. Ramdeen:** I am obliged, Mr. Vice-President. At clause 3(1) this Bill defines that the:

“Court Executive Administrator’ means the person who, subject to the Chief Justice, is charged with responsibility for the administration of the Judiciary and heads the Department of Court Administration;”

That is by virtue of the definition section.

By virtue of clause 19, this person called the Court Executive Administrator is going to be given the power to employ on contract for a term of five years but be eligible for reengagement. That is pursuant to the terms of the contract, on terms and conditions equal to those of a Deputy Permanent Secretary. Those are the powers that are being exercised by Madam Christie-Anne Morris Alleyne.

I would like to ask the Attorney General, because these powers ought to be exercised in an environment of legality as I understand it. So I would like to know and I would like the Attorney General to answer these questions: Was Ms.

Christie-Anne Morris Alleyne appointed by this Cabinet? And was Ms. Christie-Anne Morris Alleyne's position of Court Executive Administrator defined by clauses 3 and 19 of this particular piece of legislation? Was it subject to any advertisement before she was hired as the Court Executive Administrator?

This is a post that is defined under the Judicial and Legal Service Act by Schedule II. It is required that that person be appointed by the Judicial and Legal Service Commission. So, I would like to know that if I am legislating and being asked to make laws to give powers to a person that holds that position, I want to know how they were appointed, because Ms. Christie-Anne Morris Alleyne is over the age of 60—

**Mr. Vice-President:** Right. Now that I understand where it is you are going, I am going to ask you to move forward from that point. If you are dealing with the title as it appears in the Bill, right then I can understand that. But you are dealing with a particular person who is holding that particular title right now and I am going to rule that that is not relevant. Deal with the title as it is in the Bill specifically and leave the person out of it.

**Sen. G. Ramdeen:** I am very much obliged.

I want to go back to the air-conditioning at the Hall of Justice, which I think is quite relevant to this debate, because I have in my possession an email that was sent out to all judges of the Appeal Court and the High Court by the Registrar of the Supreme Court. And I want to read into the *Hansard* the contents of that email:

Dear hon. Judges and Masters,

This is in the circumstances. This is going out to every single judge of the High Court, the criminal, the people who are going to act in the Criminal Division

too. Dear hon. Judges and Masters,

The situation with the air-condition at the Hall of Justice is still being addressed. The Acting Chief Justice has agreed to stagger the working hours for staff at the Hall so that no one is required—

And listen to this. Let Trinidad and Tobago listen to this:

—so that no one is required to be in the building for more than two hours.

**Sen. Obika:** My gosh!

**Sen. G. Ramdeen:** The rostering of staff is at the discretion of the respective supervisors.

So while we creating a new Children and Family Division and while we creating a new criminal division by virtue of the legislation that we are asked to pass here today, the people at the High Court must go to work and cannot stay in the building for more than two hours by virtue of the direction of the Acting Chief Justice and we do not think that, as a country, it is a priority that we fix that. No, we must establish this.

**Hon. Al-Rawi:** Who said it is not being fixed?

**Sen. G. Ramdeen:** So, that is the priority of the Government. It still—just like a lot of things they tell us “it coming; it fixing”. So we must wait until it fix for the last six months. [*Desk thumping*]

**Sen. Obika:** It like the *Galleons Passage*. It “ent” coming.

**Sen. G. Ramdeen:** But I have hope. I have hope. Like the Attorney General I have hope because the people who are in charge of that building there called the Hall of Justice—I did a little bit of research and there is an institute called the International Institute for Justice Excellence. Just like how my friend was referring to the Australian courts and the Singapore courts, there is also a court—sorry that

is also an institute called the International Institute for Justice Excellence. Its headquarters are the Hague Business Centre, the Hague in the Netherlands. So I wanted to be able to compare what we have here and what we are being asked to pass as this Criminal Division.

I want to see what par excellence there is around the world with these specialized courts. So I went to the International Institute for Justice Excellence in the Hague and I started to read about them and amazingly, I started to look at who are the executive board members. And they have an advisory council—which I want to propose we should have an advisory council too in this Bill—but in the International Institute for Justice Excellency the advisory council is headed by one Ms. Christie-Anne Morris Alleyne and—

**Mr. Vice-President:** Senator, honestly. I am trying to allow you enough leeway to see when you are going to tie it in to what is before us. There is a Standing Order that deals specifically with the Judiciary. I am going to ask you now leave the members of the Judiciary specifically out of it. We are dealing with a Bill that speaks to reorganization of the organizational structure by creating a particular court in the High Court and in the Summary Courts. Deal with that, leave the members of the Judiciary and anything to do with the Judiciary by way of reading out memos or anything like that, leave it out of the debate completely. Deal with what is here in front of us. Thank you.

**Hon. Al-Rawi:** I thank my learned colleague for giving way. If I may just clarify please. Not to run afoul of your direction or ruling, Mr. Vice-President, but because I intend to answer some of the matters put on, would my learned colleague please just identify the very last thing he said, which is apparent conflict of interest? A position elsewhere? Is that what I understood? Could you please

clarify?

**Sen. G. Ramdeen:** No, the point I want to answer the Attorney General—just let me make the point. I am just trying to make the point. We are devoting public funds to setting up a new court. This is not gratis we are doing here, you know. This is not generosity here, you know. This is not charity, you know. Public funds are going to be pumped into this institution. When I looked at the budget debate there is no line item that caters for this. We have not been told what is the cost that is going to be associated with the setting up of this court.

There are specific provisions in this Bill that the last Member referred to and it is clear in the legislation. People are going to be given—and I am not going to call the name, Mr. Vice-President, but under clause 19 of this piece of legislation, the Court Executive Administrator is given the power—we as a Parliament are being asked to give that person the power to hire people on contract. That is usually done by the JLSC under the Constitution and the Judicial and Service Act. [*Desk thumping*]

We have been told by virtue of the legislation that this person is going to enjoy the same terms and conditions as a Deputy Permanent Secretary and should report to the Court Executive Administrator. The point I was making that the Attorney General asked me to clarify is not one of conflict. It is one that where we are being told by the Government that we must get more from less because the resources we have are not as what we had before, then as taxpayers and as lawmakers we have a responsibility to ensure that the people of Trinidad and Tobago get what they pay for. [*Desk thumping*]

And I—the point I was making that the Attorney General asked me to explain and I want to complete in one sentence, is that the two people who are in

charge of the Judiciary of Trinidad and Tobago, the Court Executive Administrator—I am not calling any names—and the Chief Justice are sitting in the Hague on the International Institution for Justice of Excellency when we cannot get that going on here. [*Desk thumping*]

What they are doing—just now, Attorney General—what they are doing there [*Desk thumping*] we want them to do it here. Mr. Vice-President, nobody doubts the fact the specialization is something that is good. But at the end of the day it is not about what is good, it is about what is right. That is what this is about. Can you imagine—I mean, this is shocking that we have a Judicial and Legal Service Commission that is vested with the appointment powers and promotion powers of people that belong to the judicial and legal service, and we are being asked by clause 19 of this legislation to allow the Court Executive Administrator to appoint a Deputy Court Executive Administrator, who is not part of the Judicial and Legal Service under the Judicial and Legal Service Act.

**3.30 p.m.**

When you do that, when we give them that power by virtue of this, they have the power to appoint somebody for 10 years, five years, to be eligible for reengagement for another five years. I mean, where is the check and balance in this? The Judicial and Legal Service Commission—so if it is that the Court Executive Administrator is a member of the Judicial and Legal Service Commission that conforms to certain regulations under the Constitution—under section 141 and section 111, right?—what is the difficulty or what is the purpose behind having a deputy court executive administrator, but they are not part of the Judicial and Legal Service Commission and they are not subject to the same terms and conditions as someone in the Judicial and Legal Service Commission, but you

want to give them the same powers or almost the same powers as the Court Executive Administrator. It makes absolutely no sense.

Now, these people who are going to be appointed on contract, who is going to vet these appointments? Cabinet. The terms and conditions, who is going to appoint these people? [*Crosstalk*] You see, Mr. Vice President, the information that I have is that when the Children and Family Division was set up, it was really like a Family Court. It was everybody's family getting jobs down there. That is what was going on. [*Desk thumping*] They take it literally, everybody—for friend and family, children, everybody. That was what was going on, because I would like the Attorney General to tell us in his reply, when they set up the Family Division, how are those people who are sitting there today appointed? And these people who are going to be put into these units that we have here—well, I have never seen, in my limited experience, a piece of legislation that—things that are supposed to be administrative have now become part of primary legislation.

So, we have a deputy court administrator that is supposed to be in charge of the administration of this Criminal Division, but I do not know what they are going to do, because I understand their job is supposed to be in charge of administration, but we as a Parliament are being asked to set up a human resource management unit. I mean, how can you have this in primary legislation? How?

**Hon. Al-Rawi:** It is in the Family and Children Division.

**Sen. G. Ramdeen:** I know. That is why it is wrong. That is why I was not here when they debated that. That is why it got through. [*Crosstalk*] Finance and accounts—well, you know what? I want to propose something. When I was looking at that, I want to propose something too. The Attorney General said it is in the Children and Family Division, so we should have it. Let me propose

something.

You know in the High Court they have something called the marshal section, let us amend the Supreme Court of Judicature Act and let us put in a marshal unit, let us put in an accounts section, a CAT reporting section and an investment unit. Every time this Government brings a piece of legislation—and I do not lay the blame totally at the feet of the Attorney General—but the drafting gets worse every single time.

I mean, when you look at this piece of legislation, you know, there is one particular Senior Counsel—not Ms. Chote—who is very familiar with Government work that, you know what?—looked at this and asked me in the High Court and said, “What is this you all are really doing with this family and criminal division thing? It makes absolutely no sense. It is going to make no difference to anything.” That is really the truth. Because at the end of the day, the Court Executive Administrator is going to hire all these people. You know what this Bill is going to do? This is not going to cause—this Bill is not going to create a Criminal Division of the High Court, you know. You know what it is going to create? It is going to create a parallel special purpose enterprise like what we have in UDeCOTT and e TecK [*Desk thumping*] and it is going to be part of the Judiciary, because what this is designed to do is to bypass the Judicial and Legal Service Commission, is to bypass the Public Service Commission.

And you know the worst part of all of this—whoever is designing the policy behind all of this, is this: There are hard-working people who leave Point Fortin to come to the High Court, who leave Sangre Grande and their children at four and five o'clock in the morning to come to the High Court, to do what? To work as ushers, JSOs, to make the administration of justice work in this country. They sit

there as Assistant JSOs, as Clerk Typists as part of the public service, and they work for years to get their way up the ladder, and you know what this Bill is going to do? It is going to create positions that those people in the public service should be entitled to fill, but they are going to fill that by contract positions. [*Desk thumping*]

So when you start with five O Levels as a Clerk Typist and work your way up to a Steno IV, you know what you are going find yourself? The Steno IV position or the judge's secretary position is taken by somebody on contract, and think about the disincentive that that is going to have on the people in the public service, who have given their lives to the administration of justice. That is what we are doing here, and whoever is behind this policy has absolutely no idea how the administration of justice works in this country. We should understand what is going on in the High Court, what is going on in San Fernando at the Magistrates' Court. Look—Mr. Vice-President, when do I finish?

**Mr. Vice-President:** You finish at 3.48 p.m.

**Sen. G. Ramdeen:** 3.48 p.m.? Right. Mr. Vice-President, I have three notices here, dating back to the 1<sup>st</sup> of September, 2017. You know what the lawyers in San Fernando were told on the 1<sup>st</sup> of September, 2017? They said:

“The Law Association wishes to notify its members that due to the need to conduct urgent repairs to the roof of the San Fernando Magistrates' Court building, the five criminal courts will be relocated to the San Fernando Supreme Court building from early next week, and after the 16th September 2017 will be housed at the Madinah Building...on a shift basis until the works are completed.”

So it is justice by shift. That was on the 1<sup>st</sup> of September. On the 9<sup>th</sup> of September

they sent out another memo, from the Judiciary this time:

“The public is advised that the building known as the San Fernando Magistrates’ Court (Old Court), located at the Corner of Knox and Harris Streets...will...be temporarily located at the Supreme Court Building, San Fernando located at Harris Promenade, San Fernando...”

From Monday, September 11, to Sunday—listen to this. It is being relocated from Monday September 11 to Sunday October 08, 2017. We are in June 2018. This is September 2017. They are still operating justice by shift down in San Fernando, and instead of we devote the resources that are going to be put into this to fix the problems that we have now that are affecting the administration of justice now, that are affecting the users of the court system now, no. The Government says no, we must establish a Criminal Division.

So let us establish the Criminal Division that will sit in the Madinah Building in San Fernando and leave the San Fernando Old Magistrates’ Court without a roof, and let us share up the courts in the San Fernando High Court so that the magistrates could work from 9.00 to 12.00 and from 2.00 to 5.00, like if it is a “junior sec” they are running. But that is justice. That is justice. That is the priority of the Government.

So, Mr. Vice-President, you see this thing called the Criminal Division of the High Court—and I understand that they are bringing a Probate Division too. All of this is going to cause the system of the administration of justice in this country to crash. That is what it is going to cause. Jump high or low, I was the one—because you know, the Minister in the Office of the Prime Minister, whenever I hold a press conference at the Hyatt, he always wants to know how I pay for it. I was the one who in April of last year, who—out of my pocket, held a

press conference at the Hyatt, to warn this country that the people who were being appointed to the Judiciary are going to bring the administration of justice in this country down, and from April of last year to June of this year, we saw it unravel, unravel before our eyes, and you want to bring a Criminal Division of the High Court.

The Attorney General has not for one minute—not one minute this Government, this Cabinet—have they told us who is going to provide judicial training and education for the people who are going to staff this court. You know why? Because judicial education and training is not a priority for the Government. Let us set up more courts. We have a registry at the High Court. We had masters that were appointed for that Children Division of the High Court. You know that they were appointed since September of last year and being paid a judge's salary to do absolutely nothing for more than six months? And if we had taken that money that was wasted on those masters—eight of them being paid \$50,000 a month—we could have fixed the air condition at the High Court [*Desk thumping*] and not a single word. You want to set up a court, set up a court.

Let me tell you something. I was in the Supreme Court of the United States. I tell you, you know what the priority of the Supreme Court in the United States and the Judiciary is? Further judicial education and training. That is why our Chief Justice is at the Federal Judicial Centre now, where they train all the judges; every single one—federal and supreme—in the United States, because they understand that the delivery of justice is a commodity to the citizens of the country, and they understand that the quality and the administration of justice can only withstand public scrutiny when your judges, your magistrates and your masters are trained. [*Desk thumping*]

This is not something that you pick up overnight. You do not take somebody who has two years' experience and make them a master the next day, and expect that the administration of justice will improve because you have more masters, you know. It does not operate like that. Judging is a science. It is something that you are trained to do. Because you become a lawyer, and you are a lawyer for eight or 10 years, it does not mean that you can become a judge, you know.

**Hon. Member:** Or a parliamentarian. [*Laughter*]

**Sen. G. Ramdeen:** "He he he". That is what we will be doing, six months down the road, and that is what you all will be doing, three years down the road when the system crashes because you see, this is all a joke.

You know what this is? This is a PR exercise, so that the Government will tell us they set up a Family Court, they set up a Criminal Division and they set up a Probate Division, but ask the man on the street, who is the person who is accessing the administration of justice, what he thinks about the administration of justice, and all of us would be here just like the PNM, "he he he". It is a joke. That is what it is. It is us who are involved in the administration of justice, understand the suffering that people are going through when their cases are adjourned. [*Desk thumping*] When they sit for eight years in the remand and they come to court and when they reach on a cause list, they tell them, we will just adjourn for another six months; when they are sitting on a capital matter for eight years, and they cannot get a date. That is how it works.

And let us not worry about that, because they could continue to sit there, because you know why? We are bringing toilets to the remand section, so we could keep them there for 20 years now. Do not worry to move them out of there.

Do not worry about the fact that the DPP's Office, the average time to file an indictment is for five years on a capital matter, when the same district judge—so we change the name from the magistrate. They are going to be called a district judge—it is going to make so much of a difference to the man who is sitting on the Remand Yard, who is sitting there for 10 years waiting on the district judge to finish the PI, so that the notes will then be compiled and sent to the DPP—who does not have a properly staffed department—so he will wait another five years without bail. That is the administration of justice, and while we are doing that, let us set up another court.

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

**Sen. G. Ramdeen:** I am obliged, Mr. Vice-President. Mr. Vice-President, there is one particular clause in this particular piece of legislation, this is clause 24 where:

“The Rules Committee established under section 77 of the Supreme Court of Judicature Act may make Rules of Court—

- (a) establishing a special criminal court procedure for the management of case types and offences referred to in subsection (2); and
- (b) generally for carrying this Act into effect.”

There is something very peculiar about this clause, because the Chief Justice, by virtue of subclause (2), it says:

“(2) The Chief Justice may, by Practice Direction, determine the case types and offences which are appropriate for the special criminal court procedure provided for in Rules of Court made under subsection (1)(a).”

But when you go to section 77 of the Supreme Court of Judicature Act, the person who heads the Rules Committee is the Chief Justice. So it might be very

interesting for Trinidad and Tobago to understand—and the Attorney General could explain to us—that the Chief Justice who is in charge of the Rules Committee, by this simple piece of clause 24, is going to be able to establish a special criminal court procedure, and the Chief Justice is going to be in charge of determining who is going to be subject to that procedure. I leave that there, because I do not want to infringe the Standing Orders by telling you what that could lead to.

Mr. Vice-President, 41 years ago in case that was referred to in the speech that was written for the hon. Minister of Labour and Small Enterprise Development to read out, the Privy Council in *Hinds v the Queen*, gave a warning to all Commonwealth countries that were established under a Westminster-model type like what we operate under as to the way in which laws are passed, and let me just read into the *Hansard* what they said.

“[a] breach of a constitutional restriction is not excused by good intentions with which the legislative power has been exceeded by the particular law.”

So it does not matter whether we think we are setting up something good here, you know. It does not matter how good our intentions are in setting up a Criminal Division, you know. If it is unlawful and it is wrong, it is wrong. You cannot correct it [*Desk thumping*] and I would tell you why it is so, because the Privy Council said:

If consistently with the Constitution it is permissible for Parliament to confer the discretion in that case to determine the length of a custodial sentence on a particular board, it would be equally permissible to a less well-intentioned Parliament to confer the same discretion upon any other person or body of persons not qualified to exercise judicial power.

We are not here, on this side, concerned with expediency. The Government could be as backward as they want with their legislative agenda and could come in May, June and July of every year and try to rush legislation through the Parliament so they could go on a political platform and say they passed 20 Bills and 20 Acts. This is another Bill that has a proclamation clause in it that we have not been told as yet, what is the readiness to put this into effect, but they want to come during this parliamentary session to be able to say we passed 20 laws.

The test in all of this, the unfortunate thing with all of this, is that there is only one group of people that are going to suffer as a result of this. It is the people of Trinidad and Tobago who seek to access the justice system on a daily basis. [*Desk thumping*] And if at the end of the day we think that this is good enough for the people of Trinidad and Tobago, and we do not think that it is a priority to fix the problems that we have that plague the administration of justice, that mandates the hard-working judges to work in conditions like what they have at the Hall of Justice today, something is wrong with all of us. I thank you very much, Mr. Vice-President. [*Desk thumping*]

**Sen. Sophia Chote SC:** Thank you, Mr. Vice-President, for the opportunity to contribute to this debate this afternoon. I wish to go straight to the piece of legislation or proposed legislation, which is before us, and I do that because having read it over and over again, I see that it quite frankly does not make sense in parts and, in other parts, it seems to be incomplete. Now, as an Independent Senator, I have supported good proposals brought by the administration when I could. On other occasions, when I see that there are flaws in the proposed legislation, I think it is my responsibility to say so, and I intend to do so today.

Now, this piece of legislation does not take into account or does not appear to take

into account other pieces of legislation upon which it has an impact. It does not take into account the Constitution under which judges are appointed. It does not take into account the Supreme Court of Judicature Act, which governs the roles and jurisdiction of the judges. It does not take into account the Criminal Procedure Act which talks about what a judge may do in a criminal case, and there are other pieces of legislation which are impacted, but I think those are the most significant ones.

Now, if I may just go on to say why I see this as a problem, if we look at clause 5 which says:

“On the commencement of this Act, authority and jurisdiction in all criminal matters exercisable by the High Court or a Court of summary jurisdiction shall be exercisable by the Criminal Court.”

Well, on the face of it, it looks pretty harmless, but when we look at clause 4, we see that:

“...Criminal Division of the High Court which shall comprise a court known as ‘the Criminal Court’.”

So, is it now that the High Court has the power to exercise an additional jurisdiction or is it that the court of summary jurisdiction, because it is called a Criminal Court, has the power to exercise that of the Criminal Court as it is set out?

Now, it may be that there is a perfectly legitimate reason for wanting to have this here but, quite frankly, when you read the words, they are not as clear as they should be. So, I am respectfully suggesting that this needs to be explained, because as it is worded it makes no sense, and when it comes to jurisdiction of different levels of courts, it is significant for us to remember that the Supreme

Court of Judicature makes it clear who are High Court judges and who may sit in inferior courts.

We also have to understand that there are different levels of training and experience for persons who sit as judges, for persons who sit as masters and for persons who sits as magistrates of the court. So we have to be careful that we do not lump all of these people together without clearly setting out what their jurisdictions are, because otherwise jurisdictions may be fudged and that can have a serious constitutional impact because persons not authorized to make certain decisions may take it upon themselves to deal with issues such as the right to the liberty and so on when they do not have that power.

Now, I pause here to say that previous speakers have made much of the fact that, you know, other jurisdictions have so many different divisions of courts and it is streamlining and whatnot. Please, let us recognize what we do have. We already have a criminal sessions; we already have the Criminal Assize. The Criminal Assize is made up of judges who essentially sit only in the Criminal Courts [*Desk thumping*] and almost all of them have come from the Office of the Director of Public Prosecutions or they have been the Director of Public Prosecutions in other jurisdictions.

So the question of specialists and criminal expertise needed and so on, sort of gives the impression that our judges do not have the knowledge and we need to set up a criminal division to make sure that cases are heard and heard quickly. I defend our judges. [*Desk thumping*] I know, Mr. Vice-President, you indicated that we should not speak about the Judiciary, but I will ask you to grant me the indulgence, because I am not speaking about them pejoratively. I am simply saying that let us recognize that we already have the specialists who are hired and

who are functioning in the system.

I respectfully suggest that instead of hiving off to form a new division, what ought to be done—and you know, since the 2003 report of the Judiciary on delay in the system and how to deal with it and Remand Court and all of that—since 2003, 15 years ago—the suggestion has been that there must be an increase in the number of High Court judges. So you can hire more specialists. So, you do not need legislation. That is not rocket science. That is simply a case of amending the Supreme Court of Judicature Act to permit for more judges to sit and for you to hire more specialists.

Now, I also want to—let us not think that we do not have other specialist courts. We have the Family Courts, we have the Children Courts, we have the Petty Civil Courts, which is like the small claims courts in Jamaica and we have the Coroners Courts. So let us not premise our support or our opposition to this piece of legislation on anything which is inaccurate or stated inaccurately.

Now, the other thing that got me a little worried was the apparent disconnect between this piece of legislation and the Criminal Procedure Rules of 2016, which this legislation will have to operate under or use. So this here creates positions of masters to deal with certain matters in the Criminal Courts. Now, remember a master is someone who may only have seven years' experience, two years more than a magistrate. A High Court judge has considerably more qualifications to acquire—qualifications and experience to acquire. This piece of legislation, in some instances, is giving the same jurisdiction to the master as to the High Court judge. To me, that is a recipe for disaster.

Secondly, the only thing that the Criminal Procedure Rules of 2016 permit a master to do, is to vet juries, jury selections. So we are setting up a Criminal

Division of the High Court to allow masters to vet juries? Mr. Vice-President, quite frankly, this makes less and less sense the more I read.

Now, I suspect what happened here is that the initial draft of this legislation may have been tied to the 2013 Criminal Procedure Rules, and I say that because I sat on the both committees which assisted the rules committee in interpreting and creating the Criminal Procedure Rules, and those rules had dealt with a more powerful role for masters in the criminal justice system—after you went to the magistrate, you would go to the master for the initial hearing, and the master would then have certain procedural functions. So there was a large role and jurisdiction for masters under those rules, but those rules were repealed by the 2016 rules. So they are no longer in effect.

**4.00 p.m.**

I mean, the resonance of this piece of legislation, quite frankly, reminded me immediately of what was contained in the earlier set of rules, and I feel that may have directed some of the provisions which have been included here.

**Hon. Al-Rawi:** Senator, can you give way?

**Sen. S. Chote SC:** Sure.

**Hon. Al-Rawi:** Thank you for your submission. May I just ask you, in your thought, if you could address as well how the Criminal Division aspect as under the Family and Children Division intersects with the argument that you have just put forward? Insofar as masters in the Family and Children Division, in treating with child matters that are criminal in nature function right now under the same rules, are you saying that those rules are now ultra vires? The 2016 rules?—because it is going on right now?

**Sen. S. Chote SC:** No. No. I think, hon. Attorney General, you have missed my

point.

**Hon. Al-Rawi:** Could you clarify?

**Sen. S. Chote SC:** What I am saying is this. This piece of legislation, it seems to me, was crafted at a time when we thought, when everyone thought that the way forward in the criminal justice system would be guided by what was contained in the Criminal Procedure Rules of 2013 because those rules changed the system radically. There was a provision for matters to go before a magistrate, then a master and then a High Court judge, and the case management was going to be done by the master, primarily. And I think perhaps this is why this legislation affords so many powers to a master, because I cannot believe that we would be creating the position of a Criminal Court Master only to do jury vetting, because that is all that can be done under the Criminal Procedure Rules.

**Hon. Al-Rawi:** Unless you want to accommodate it.

**Sen. S. Chote SC:** Yes. Well, sure. It took us how many years to have the 2013 rules; the 2013 rules were never implemented. They were gazetted, never implemented. We came to the 2016 rules which are sort of operationalized. Some courts are using it, people are getting used to it, and this kind of thing. What are we saying? Simply for the sake of creating a new division and to allow masters to have more powers we are going to change back the rules again right after people have been educated? And I am talking about judges, magistrates, practitioners, members of the public, in how to understand and work with the new Criminal Procedure Rules. I mean, this will lead to considerable confusion in the minds of the public. Now, of course, I am just a lawyer, so I am sure I know very little, and there will be those who will say so afterwards, but in my own bumbling way, let me try to make the points which I think I can manage.

If we look at clause 10, this is where we see the difficulty or the reason for the difficulty that I have. It says:

“A Criminal Court Master shall exercise all the authority and jurisdiction of a Judge which are conferred on Masters under the Supreme Court of Judicature Act.”

Now, the thing is, masters cannot take decisions which affect the liberty of a subject under the Supreme Court of Judicature Act. Criminal law affects the liberty of the subject. So I cannot understand the relevance. I am sure it is my shortcoming. I cannot understand the relevance of the inclusion of this clause in this piece of legislation.

Now, if I just jump back a bit, clause 9 says:

“A Criminal Court Judge or a Criminal Court Master shall, in addition to the powers conferred under the Supreme Court of Judicature Act, have all the powers exercisable by a Magistrate in criminal matters under—

(b) any other written law.”

I think there is a dangerous ambiguity alive in this clause, and what it basically says is that the judge has all the powers of a magistrate. So let us put that to work. It means that from now on a judge will have all the powers of a magistrate hearing a matter in a preliminary enquiry.

Let us say this preliminary enquiry is one which has exercised the justice system for a considerable period of time. Does this allow the judge to now say that the judge is pulling that matter before him? Now, it seems to grant the jurisdiction. If the drafting had been with a little more clarity, perhaps I would not be asking these questions and using words like “seems”. But it seems to create that jurisdiction, but it seems to leave the Director of Public Prosecutions out of the

equation entirely. And at the end of the day, the Director of Public Prosecutions and his office, they together play a fundamental role in the system of justice between the inferior courts and the High Court, and there is nothing in this piece of legislation which refers to that role, even remotely.

So, you know, everybody wants to fight crime in this country. I do too. I have been the victim of crime, many times, but I really do object to anyone suggesting that this piece of legislation is a crime fighting piece of legislation. I think, certainly, that is wishful thinking, and let us see things for what they are. If this was going to help the administration of justice, by all means I would have supported it, because, believe me, the criminal justice system needs all the help it can. It certainly does not need the ambiguity, the lack of conciseness, the fracturing of this legislation from other pieces of legislation; the inconsistency, within my view, the judges' function under the Constitution to add to that pool that we are already struggling with.

Now, if I may go to clause 13, it says:

“A Magistrate when sitting in a District Criminal and Traffic Court, shall be known as ‘a District Court Judge’.”

Now, please, I think it is simply wrong to call a magistrate a district court judge, not that they are not excellent magistrates. There are very many excellent magistrates, but let us not do things the way the Americans do it, you know. If you work as a janitor you are called a maintenance engineer. Let us keep our description of the positions separate and clear so that members of the public will understand, when I go before a magistrate this is what I can expect; when I go before a judge this is what I can expect. The judicial system rests on protocols which are important, not only for those of us who work within it, but they are

important for the Members of the community who come before the courts every day.

**Sen. Richards:** Who are served by it.

**Sen. S. Chote SC:** Who are served by it, as Sen. Richards has pointed out to me.

Now, I also do think—I agree with Sen. Ramdeen, and I hope the hon. Attorney General does not take this in the way that a former Attorney General had once suggested to me when I had objected to a piece of legislation by telling me, if you are not for us, you are against us. In this case, unfortunately, I cannot support you on this legislation because it seems to be just a renaming. There shall be in the judicial and legal service a senior magistracy registrar and Clerk of the Court. We already have a Magistracy Registrar, so we are adding the word “Senior”. Clerk of the Court, Clerk of the Peace, and what they are allowed to do is basically just an itemizing of what the Clerk of the Peace and what the Magistracy Registrar already do.

So, you know, I do not know that we are going to be able to fight crime by changing the names of public officers. I do not see that happening, with all due respect. I also found it a little strange that the traffic cases are now essentially taken out of the system because they are dealt with as tickets unless you want to contest it. Okay, so that means the magistrate’s caseload has been lightened by almost half. Why then do we want to increase the judges’ caseload by placing greater responsibilities on the judges? The judges are never going to be able to deal with a backlog if the system continues to push cases up at a speed that they cannot address. There are currently not enough judges to address the numbers of cases coming up from the inferior courts. So, making it faster at the bottom is not going to make it faster at the top.

I also noticed that this does not deal with the entire court structure, because is it contemplated that we would then have a Criminal Division of the High Court? I do not know that that would be necessarily a good thing, because informally that exists, but you also have the benefit in important criminal matters of a Chief Justice sitting on a criminal appeal of importance. And unless provision is made for the Chief Justice to be able to sit in on any such appellate matter then you would lose that benefit, but the Court of Appeal is not even mentioned there.

Now, the other thing is this, we are creating all these units to collect money. The Auditor General has said that since 2014 there have been no accounts produced by the Judiciary, and this is alarming because the Judiciary was given—and I had applauded that at a time by this administration—the Judiciary had been given power and control over its moneys. But at the end of the day if you are given power and control over these moneys and we the practitioners are seeing that there is no money for this, and there is no money for that, and there is no money for the other, in fact no money to pay people's travelling allowances, no money to reimburse judges when they fall ill, no money for paper to photocopy, no money for photocopying; there is no money for anything in the Judiciary. Well, should we not pause before legislating and say, listen, before we create this division which will allow a whole set of people to deal with Judiciary money, should we not see how the Judiciary has accounted for its moneys before [*Desk thumping*] we take the next step? That is what accountability is for. I do not know, maybe I am asking too much.

Now, I would like us to remember that the Court Administrator is already a member of—well, is an officer under the Judicial and Legal Service Act, and is protected as such; so is the Administrative Secretary to the Chief Justice. There

are certain things which we have to accept are problems for us. Before a Joint Select Committee looking into case management—and the report of that Committee was laid in Parliament, and I can speak about it because I am the Chairman of that Committee—the Court Executive Administrator, who was not the person who now holds the position, refused to appear before a parliamentary Joint Select Committee, refused to answer to parliamentary correspondence, refused to provide any of the material requested by Parliament.

So when you create public positions and you give people this kind of power, and protect them and do not make them accountable, then we as a Parliament are to blame, [*Desk thumping*] because that is exactly what happened there. To date, to date, and despite numerous efforts after the enquiry was concluded to still get the statistics which we sought, we did not have the courtesy of a response. Now, I make the point that the relationship between the Judiciary and the Government is different from the relationship between the Judiciary and the Parliament, and if we can have persons flouting parliamentary rules in that manner, I certainly think we would not want to create more positions for that kind of thing to happen.

Clause 24:

“The Rules Committee established under the section 77 of the Supreme Court of Judicature Act may make Rules of Court—”

Fine, they already do. In fact, I think the clause says that when the Chief Justice makes those rules—when we see that the Chief Justice is to make rules under that clause, what we really mean to say is that the Rules Committee must make the rules, or something to that effect. I am sure that Sen. Simonette will correct me if I refer to it incorrectly. But what exactly is a special criminal court, because this is what this clause says?

“The Rules Committee established under section 77...may make Rules of Court —

establishing a special criminal court procedure for the management of case types and offences referred to in subsection (2);”

It goes on to say:

“The Chief Justice may, by Practice Direction, determine the case types and offences which are appropriate for the special criminal court procedure...”

Well, what is this? We are legislating in the dark here, because what is a special criminal court? Where does that exist in our criminal justice system? Is that a new creation and what makes it special, or who will be the special ones, I ask myself? But those are just questions which perhaps the hon. Attorney General can answer.

Now, the other thing that worries me about this is, you are creating a special criminal court procedure and you are saying the Practice Direction by the Chief Justice would determine what case types and offences are appropriate for this special court procedure. But, surely, we need to be able to know what kinds of cases are being contemplated here. There is absolutely no indication of what is likely to fall under this category. So I do not know how we can support legislation which lacks those specifics, and what would be the criteria used for these special procedure rules to apply, and for this Practice Direction to apply to these special procedure cases.

Now, I see the Attorney General looking at me, would you like me to give way, hon. Attorney General?

**Hon. Al-Rawi:** Yes, please. Thank you, hon. Senator. It is clear that I will have to do a more fulsome reply, and I do not mean to cut into your time. I am trying to understand the reference to special criminal court procedure, simpliciter. Is it that

you are saying that you wish to have a prescription for a special criminal court as opposed to procedure, and that there should be scheduling of the types of the matters now that could perhaps populate the consideration of that procedure which the rules may prescribe? I just want to get some clarification on that.

**Sen. S. Chote SC:** Absolutely. I think this is entirely insufficient. I do not know of any special criminal court.

**Hon. Al-Rawi:** Well, that is not what the law says—the Bill.

**Sen. S. Chote SC:** This is creating a Criminal Division of the High Court.

**Hon. Al-Rawi:** Yes, but we are talking about a procedure.

**Sen. S. Chote SC:** Yes. Well, what makes it special is really my question?

**Hon. Al-Rawi:** The rules and the Chief Justice.

**Sen. S. Chote SC:** No. No. No. Well, then we are talking about handing out discretions to public officials in breach of the Constitution. You are saying that, listen, the Criminal Procedure Act—

**Hon. Al-Rawi:** How?

**Sen. S. Chote SC:** Well, I am answering you, if I may, through you, Mr. Vice-President. The Criminal Procedure Act governs how cases are dealt with in criminal courts; that is one thing. So you have primary legislation. Then you have secondary legislation via the Criminal Procedure Rules made under the Criminal Procedure Act, and those rules are of 2016. Now, that legislation and those rules conform with constitutional requirements and due process requirements, and that kind of thing.

Now, we are simply saying here that there is going to be a special criminal court procedure and cases are going to be pulled, and, you know, forced into that procedure. Well, tell us what it is. Why should it not be set out? With all due

respect, Mr. Vice-President, it is very difficult to speak when there is a chatter in the background, regardless of where I am speaking. And I am simply saying that there is nothing here to tell us what that means, or how that is going to operate in the context of the Criminal Procedure Act—

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

**Sen. S. Chote SC:**—and the Criminal Procedure Rules which govern criminal procedure in relation to criminal cases. It is as basic as that. But then again, I probably know very little about these things, and I am sure I will be enlightened by later contributions. Thank you for the opportunity to speak. [*Desk thumping*]

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

**Sen. Gavin Simonette:** Thank you, Mr. Vice-President, for the opportunity to contribute on this important Bill. I have listened to my learned friends on the other side, and whilst Sen. Chote has raised one or two items of some concern which I will address, I think it is important to place into context the framework of the legislation being proposed by the hon. Attorney General. We all are aware of the slow pace of criminal justice in Trinidad and Tobago, and it is not a question of simply accelerating cases, speeding up the process, or as trite as notching off another Bill transformed into an Act of Parliament to inform someone or other platform around the country.

We are, in this country, in the grip of wanton criminality from top to bottom. It is very clear to even the most junior of our citizens that there is no or little regard for implementation of the law, whether it be traffic laws simply about the regulation of parking, or the speeds at which cars drive, or the lack of traffic signals given to regulate traffic on the road to avoid vehicular accidents to the complexities of the criminal acts of burglary and assaults, and so on. What this Bill seeks to do is to

channel the administrative treatment of the implementation of the criminal law so that the force of the law is once again respected. So that it is a very different exercise to that that involves the fixing of air-conditioning or the repair of rotting roofs, which incidentally did not start rotting on the 15<sup>th</sup> or the 9<sup>th</sup> of September, 2015. These are problems that have been ongoing for quite some time.

So to distract the population with notions of mere incompetence of the Government, or the Attorney General in dealing with such matters, drawn against the exercise of streamlining the management of criminal cases so that they are dealt with, disposed of, and generate some degree of respect for the law is, in my view, the importance of this piece of legislation. It should not be confused with the similarly important, but not as important, regulation of the airflows and humidity in the High Court. So that the Bill being advanced by the hon. Attorney General and the Government is for the creation and establishment of a Criminal Division of the High Court on the one hand, and a Criminal Division, District Criminal and Traffic Court on the other. In the first instance, it clearly provides for a criminal court management system that would allow for the judges of that court to treat with and deal with preliminary enquiries, as well as summary offences, and to streamline those in a manner that increases the rate at which criminal justice is dispensed.

**4.30 p.m.**

And nothing could be with wrong that, Mr. Vice-President. If we are serious about addressing the issue of crime and serious about the issue of lifting the citizens' respect for the law, compliance with the law and overall well-being of the society, we will all join in supporting the legislation.

So that, I take a different approach entirely to that of Sen. Ramdeen, my

friend, who seems to be committed to building administration issues as opposed to looking at the guts of the criminal justice administrative arrangements aimed at transforming them for the greater good of society.

No doubt, those who are in charge of the day-to-day maintenance and the day-to-day administration and the workings of the court will heed Sen. Ramdeen's discomfort and seek to ensure that when next he is at the High Court he feels cool, calm and collected so that his contribution on the next item of legislation aimed at improving the administration of justice will, in fact, benefit from his considerable, though admitted, limited view of the matters.

I think it important as well, Mr. Vice-President, to indicate that the exercise contemplated by fixing the administrative arrangements, including special rules, is not a new embarkation. I myself was at the forefront of the arguments which sought to test and to weigh the negative effects of the then advanced new Civil Proceeding Rules. We were able back then to obtain important concessions, but we were also aware back then that much needed to be done to have improved the rules governing civil proceedings.

In relation to what the Attorney General is proposing in this legislation, there is no suggestion that the existing structure of the rules be dismantled in toto. What clause 24 seeks to do is to give to the Rules Committee, which is chaired by the hon. Chief Justice, the power to make rules that assist in the better administrative arrangements contemplated by the special divisions of the Criminal Division, as well as the District Criminal and Traffic Courts Division. I do not agree with my learned friend Sen. Chote, that that clause, that is 24, or resort to the Rules Committee, has an automatic effect of transgressing the Constitution or denying any citizen the enshrined rights of being heard or to representation before a court

of law in this country.

The rules contemplated are clearly rules that are aimed at administrative procedure, not at substantive access to justice, I believe that such a concern is, with respect, a little misplaced.

In relation to the issue of financial controls, I can agree with Sen. Chote that without doubt the Judiciary has an obligation to render proper accounts and to comply with directions of the Auditor General. I cannot however, see how arrangements made in this Bill for the creation of the Criminal Division can impact upon, as it were, a licence to the Judiciary or to the members of the special division to engage in financial mismanagement and noncompliance with proper record-keeping and accounting. That is a separate—it is an important issue, but it is an issue that obviously needs to be treated with in its discrete area of oversight. It does not affect, in my respectful view, the liberation given to the system as created by the provisions at clause 4 and clause 12 of this Bill.

It goes without saying, Mr. Vice-President, that we have tinkered with the systems for many, many years, we have sat on the sidelines and criticized both at the Magistracy, the laws that are intended to deliver a regulation of a certain behaviour that guarantees the protection of the wider citizenry, but we have done little to intervene with effect to improve the criminal justice system. I think that this Bill seeks to achieve just that objective, and that it does achieve that objective.

The engagement of further administrative staff under the Bill and under the direction of the Court Executive Administrator, does not derogate from the structure being advanced of liberating the Magistracy of the endemic and chronic paralysis that it is in.

My learned friend Mr. Ramdeen has made the submission that the

arrangements have the likelihood of depressing existing public servants in the system, and I could not disagree more, in that those existing officeholders continue in their function. What is being created here are additional positions for an additional and expanded service to be offered in the criminal justice arena. So that the chances or the opportunities for those currently employed to either be promoted or to advance themselves by further education, cannot be impaired by the creation of these positions. They are not intended to displace anyone, nor are they intended to operate as a disincentive to those who seek to do better for themselves. I think that those—that concern, is informed more by a predilection to alarm than a predilection for structuring and advancement.

My learned friend, Sen. Chote, also indicated that she found that the rules and jurisdictions of the judges and magistrates were being blurred and, again, I with respect must disagree with that position. A criminal court judge or a criminal court master would obviously be engaged under the standard qualifications that are required at this point in time, so that experience and qualifications of such persons are not being in any way interfered with by this Bill.

The blurring or apparent blurring of the jurisdiction of the master and the judge as indicated by Sen. Chote in her reference to clause 10 is, again, in my respectful view, not entirely correct. As we well know, in the civil arena the master exercising the jurisdiction of a judge does so competently in the area of assessment of damages of deliberations on cost and so on.

What clause 10 of the Bill achieves is a greater facility for there to be the management of cases by masters and therefore, the ability of the court to deal with more matters and the unburdening of the judges who at this point, or who otherwise would have had to have dealt with all matters. So that it is a freeing up

of the caseload and a more judicious, if I could use that word, distribution of the load as between the criminal court judge and the criminal court master.

I do not think that we need to be concerned that someone will be unaware of what powers the master has to exercise as to what the judge has to exercise, it is merely permitting for a more equitable caseload distribution in my respectful view.

I was once told by a Literature teacher at high school, that “a rose is a rose by any other name”. And so, again, if the magistrate sitting in the District Criminal and Traffic Court is called a “district court judge”, I could not see why after some passage of time, [*Device rings*] possibly a month or two, citizens—

**Mr. Vice-President:** I think the offending Senator has already left. By now every Member knows what happens when devices go off. So, I just give a reminder at this point to, please, check your devices as the Member is making his contribution and just make sure that they are on silent.

**Sen. G. Simonette:** We like to hearken to our colonial vestiges, and accordingly in the English tradition, we are not inclined to sugar-coat the descriptions or the manner in which we identify an officeholder.

So whilst I join Sen. Chote in not engaging in sophistry by calling the “house-keeping engineer”—a “house-keeping engineer” and the likes of that, I can see no good reason why a magistrate sitting in the District Criminal and Traffic Court, cannot be called a “district court judge”. I do not see that that blurs or interferes with any “commonsensical” understanding of who one appears before, in that court. We need to move forward and to concentrate on the more fundamental elements of the Bill that seek to get our criminal justice system moving, and with respect, whether we call the district court judge a “district court magistrate” or a “district court judge”, a “district court ombudsman”, it is neither here nor there. It

is a question of the function being performed by that officeholder.

The other criticism made by my learned friend Sen. Chote, which is going back to the rules, one has to recall that the Family and Children Division Rules are no different, they were voted on and approved by the Opposition, and it is the same structure being proposed here without any deviation, so that it has worked in that context, it can work here, with respect.

Sen. Ramdeen referred to the collapse of the Family Court, and I heard no specifics given as to what information supported that statement, but from my recollection of events, the Family Court and Children Court have not collapsed. I think that is alarmist, and it is untenable to make such statements without any supporting statistics or information.

Mr. Vice-President, the Bill at clause 18 indicates that certain administrative departments of the Criminal and Traffic Court are to be established, and those administrative departments of the Criminal and Traffic Court are logically set out here and are intended, yet again, to aid the efficient management of that court. And as many of us know, we attend from time to time, the Magistrates' Court on St. Vincent Street, and when you go to the First Court—I believe it is the First and Second Courts that deal with traffic matters, there are hundreds of cases on a daily basis just being adjourned as the records are not—either the records are not to hand or the police officers are not to hand.

So that, where you have an administrative arrangement that is seeking to treat with these offences efficiently, and you are creating units of the court to treat with them, it is not a question of creating unnecessary departments, it is a focused and definitive intervention to ensure that the Magistracy, as it exists today, is unbundled of these hundreds of cases that can be dealt with more efficiently

otherwise.

And that takes me to the issue of permitting for video conferencing and treating with attendances by other electronic means. I think that is at clause—it says that provision allows for telephone conferencing and video conferencing, Mr. Vice-President. I think that that has proven to be of tremendous assistance in the civil arena where cases in Tobago have been able to be dealt with in Trinidad, cases in San Fernando have been able to be dealt with in Port of Spain, and vice versa, as the judges move around the different courts.

So that what you have is a body of arrangements intended to dramatically impact on the delivery of criminal justice on the one hand, lifting of the respect for the law on the other, and in relation to minor offences—traffic offences and the like, fines and so on—a procedure whereby these penalties can be administered, and by that, moneys collected and offences dealt with in a manner that creates a space for judicial time to be better used on more serious matters.

And the Attorney General, with respect, can be only complimented for that intervention. It ought not to be reduced to a comparison of what building arrangements and building management arrangements are made for the Judiciary. Those no doubt will be attended to, but we must treat with the fundamental core of backlog, the fundamental impediments to criminal matters moving forward with expedition which will only lift the respect for the law, and lift the rate at which criminal activity is reduced in this country.

Mr. Vice-President, I thank you, again, for the opportunity to make a short, but—

**Hon. Senator:** Meaningful.

**Sen. G. Simonette:**—intervention on this Bill. I thank you. [*Desk thumping*]

**Mr. Vice-President:** Sen. Shaikh.

**Sen. Hasine Shaikh:** [*Desk thumping*] Thank you for recognizing me, Mr. Vice-President. Firstly, I would like to thank the Leader of the Opposition for giving me the opportunity to serve [*Desk thumping*] and I am very grateful for the warm welcome that I have received here today in this honourable House.

It is my privilege to contribute to the debate on this Bill, the Criminal Division and District Criminal and Traffic Courts Bill, 2018. I was called to the bar in 2008 and I have practised almost exclusively in the criminal jurisdiction. It has given me a working knowledge of the problems that plague the criminal justice system, and allows me to apply that in particular to this Bill.

The hon. Attorney General indicates that the intention of this Bill is to, one, treat with the formulizing of the structure of the court; two, to model a criminal division after the Family and Children Court Division; three, the flattening of judicial administration; four, merging jurisdiction between High Court and Summary Courts; five, to quicken justice; and, six, to allow for the operation of specialist courts.

Mr. Vice-President, I agree with the hon. Attorney General's position in his presentation that the criminal justice system has come to a grinding halt. I agree with other Members who have spoken today, that the pace of justice needs to be quickened, there is need for significant improvement. What I do not agree with however, is that this Bill deals with any of that. [*Desk thumping*]

Mr. Vice-President, the overall hope that this will assist in fighting crime, is misguided. The reality is the criminal justice system is a small part of a much bigger problem. We have had statistics put forward today, Mr. Vice-President, 17.95 per cent crime detection in 2017. Between January 01, 2013, and December 31, 2017, 2,190 persons were murdered. Two thousand, one hundred and ninety

persons. Of that number the statistics say 391 have been solved. That shows a very real problem that exists with crime detection. Why are we not bringing Bills to deal with that?

Time permitting, I propose to deal with the intentions that this Bill is supposed to treat with. The first area that I want to deal with is to quicken the pace of justice, which is perhaps the most important area, because at the end of the day everything that we are trying to do with any piece of legislation is to improve the working of the criminal justice system.

We need the criminal justice system to work faster so that it will be an active deterrent to crime. We need persons who are contemplating criminal activity to know that they will be met with consequences swiftly and with certainty. We need the accused to go from charged to trial quickly so that should they be vindicated, they have not been schooled in crime during their incarceration, [*Desk thumping*] but should they be convicted, that they would move from Remand Yard to convicted parts of the prison where they can avail themselves of rehabilitation programmes, so that if and when they come back out into society they can actively contribute. This reduces the rate of reoffending. That is why we need it to move faster.

The reality is the criminal justice system is overwhelmed due to delays in a multitude of areas that are not dealt with in this Bill. This Bill, Mr. Vice-President, is no more than an administrative fix for a non-administrative problem. [*Desk thumping*]

Mr. Vice-President, this Bill is taking what we already have and calling it a different name. It is making distinctions without a difference. Sen. Chote did go through some of these and I will go through it very quickly.

Clause 4 provides for the establishment of a criminal division; we already have that. Clause 6 provides for the prescription of sittings for the Criminal Court; again, we already have that. Clause 6(2) proposes the means to conduct hearings by video conference; this already exists. Clause 12 provides for the Summary Court to be known as the “District and Criminal Traffic Court”; we are already renaming courts, we already have a traffic court, we already have magisterial courts that deal with criminal matters.

**5.00 p.m.**

Clause 18(2) proposes the creation of a number of units nearly all of which exist in some form already. The one unit that does not exist though, Mr. Vice-President, is the witness support unit. There is a reason for that. The court is supposed to be an impartial body. The court ought not to be involved in any way in dealing with witnesses that are in matters before that court. The police service has a witness support unit. Those are the areas—that is the proper place to deal with this. [*Desk thumping*]

It does absolutely—this Bill does absolutely nothing to decrease the time that it takes from charge to trial, or to decrease the time when the actual trial starts. The length of the trial is not affected by this Bill. And I should use the example of a murder charge in this case. When a person is brought before the court on a murder charge, their first port of call is the Magistrates’ Court. The delays that occur in the Magistrates’ Court are substantial, but they are not addressed in this Bill. The first step at the Magistrates’ Court is the commencement of the preliminary enquiry. For the benefit of the listening public this is where it is determined if there is a case to be tried at the High Court. The preliminary enquiries currently take—which is in the form of paper committals—six to eight

years, from start to finish. No clause in this Bill addressed that. The paper committal was brought about to reduce the time of committal proceedings before the court. Prior to paper committals what we had was viva voce evidence, persons would go into the box, they would give their evidence, and that they would be cross-examined. That used to take on average a year.

Now, the paper committals were supposed to reduce that there, instead it has done the opposite. What happens now is that we are dependent on the police service to file, to collate, prepare and get to the DPP's department statements to be filed. This takes years. There are matters in the Magistrates' Court that come every 28 days, and not a single witness statement has been filed. This Bill does not deal with that. Even with the introduction of the Criminal Procedure Rules that is meant to help with the expediency of justice, there is no effective method of sanctions, so the reality is, all of this goes unchecked. The delays continue. The police officers are either overworked or unconcerned, and the DPP's office is understaffed. The director has said that publicly. What was just actually raised, and I had also made reference to it here, there are continuous adjournments in the Magistrates' Court.

In the Eighth Court in Port of Spain Magistrates' Court, which deals primarily with murder charges, half of the morning is to adjourn matters. That is precious judicial time being wasted. Even with the Criminal Procedure Rules, again, you cannot force police complainants to appear. You cannot make them speak to witnesses and ensure that they are available before the court, and you cannot do more than one trial at a time. None of that is addressed in this Bill. [*Desk thumping*] Once the committal proceedings are complete, the next step is to file the indictment. This was raised by hon. Sen. Chote. It takes a long time. It

takes a long time because the DPP's department simply does not have the resources.

Clause 18(2) proposes the creation of a Criminal Court Information Communications Technology Unit—it is quite a mouthful—to provide transcriptionists as one of its solutions. This already exists in the current system, but more transcriptionists would not hurt. But is that going to solve the DPP's problems? Is that going to make indictments come any faster? No. When the indictment is finally filed, we go before the High Court. The matter is put on what is known as the cause list, and it is the first stepping stone in the case management process. The hon. Attorney General, through this Bill, proposes that the master would help with case management and so speed up this justice system. Case management alone will not solve that problem. The administrative provisions in this Bill do not address the prisoner transport system that is always late. Court is supposed to start at 9.00 a.m.; 10.30 a.m. we are still waiting, twiddling our thumbs, because they are not there.

Mr. Vice-President, this Bill does not address the fact that delays occur in trials due to the fact that accused are either unrepresented, or simply that their attorneys are in other trials. And I raise this because it is important. Persons in the criminal justice system, the vast majority of them are poor. They do not have money to afford attorneys. They depend on the legal aid system. Do you know how many people want to do legal aid? Not very many. Attorneys are not willing to do it, for a number of reasons: You start a matter that is supposed to last a week; it takes months; you are paid a fixed sum. You end up working for less than minimum wage. It has been often said that legal aid is not supposed to be a means of income for attorneys. We agree. No attorney wants to live off of legal aid, but

when the accused person has this as their only option, they should be given the opportunity to be able to have attorneys, which brings me to the next point.

With the introduction of the Criminal Procedure Rules, all the work is front loaded. All the applications are front loaded. You do all of the work upfront. You are not compensated for that. Should you not continue on with the matter if you are fired by the accused, or if your appointment is revoked for some reason or the other? For example, you are doing a trial in another place and the court is ready to start? You have completed all the work, not to be reimbursed. The reason why this happens is because the Act that governs legal aid does not contemplate the Criminal Procedural Rules. It does not contemplate the fact that all of these things are being done prior to a trial actually being started.

So, most persons, most attorneys say, you know what?—"I gonna work elsewhere"; "I gonna go in the Family Court"; "I gonna go in the civil jurisdiction". The persons suffering from that is the accused. Why do we not bring legislation to deal with this? [*Desk thumping*] We have heard about the public defender's office—that is a better use of the resources that are going to be allocated towards this Bill. [*Desk thumping*]

Mr. Vice-President, the Bill contemplates masters conducting CMC, the case managements, to speed up the case management system. But let us be real. You have about 20-odd attorneys that have been thrown out that are actually doing legal aid, actually doing criminal matters. Criminal matters go from day to day, all day. How are they going to run from their matters to another court to be able to do the case management before the masters? A certain amount of practicality has to be applied when one is considering provisions. Because it sounds good on paper does not mean it could work. [*Desk thumping*]

The current system that we have where CMCs are allocated for one day per court actually works for the dynamics of how the court is working. That is what it works right now. The Bill does not deal with delays caused by the State. Not being ready, not having the police complainants available to actually speed up the matter so that they know that they are ready.

**Sen. Ramdeen:** State counsel not being appointed.

**Sen. H. Shaikh:** Yes, state counsel not being appointed, state counsels being overworked. I believe the last figure were something at about 115 matters being assigned per state counsel.

That is an enormous amount of matters for one person to handle. They cannot possibly do all of that and make this justice system work well. Even with the active case management you reach to court only to find out a witness is not available. This Act does not deal with that. It does not provide any kind of mechanism to actually deal with plea bargaining in any real way. Yes, you have the piece of plea bargaining legislation. How often is it used? We have persons who sit before the courts time and time again, sitting in jail for 12-odd years. They have not had a first trial yet. These are murder matters. There is no bail. They are sitting waiting. And then on top of that, some of them are only now being told, you know what, well consider a plea. This Bill does not deal with that. Instead, what is happening is that these prisoners who could have pleaded guilty, go into rehabilitative programme, come back out if necessary, or go and deal with their sentences, they are being forced to choose to look at maximum sentence indication. Maximum sentence indication is when you ask the court, "If I plead guilty how much you going to give me?" You will get a discount for pleading guilty, and then they consider the facts.

The justice system is not supposed to work in a way where persons feel forced to plead guilty to get out of the system. [*Desk thumping*] What is going to happen? You have the real perpetrators walking outside. That cannot be right. Those persons who plead guilty have a criminal conviction attached to them for the rest of their life. That is a serious, serious thing. As I said before, this Bill does not deal with the fact that the court could only hear one matter at a time. There are six criminal courts in Port of Spain, three in San Fernando, one in Tobago. Matters that take a week take a month—should take a week, my apologies, it takes a month. No amount of case management speeds that process up. We need legislation to speed up the trial process. Not to deal with administration on the outside. We have had even a number of pieces of legislation that have been put forward that deal with bad character applications, for example, or applications that you can put in place if you cannot find your witness. But the reality is, those things do not happen until you reach trial.

So, when one looks at what it takes from charge to trial, the reality is that this Bill is an administrative Bill, and it does not do anything for the real delays. It will do exactly what the long title of this Bill suggests. It changes what things are known as. What the Bill will do, however, is add an additional burden on the taxpayer. Our present infrastructure in the court system does not allow for housing of all these additional units and staff. We will need new court buildings, or additional buildings to house them. New court buildings and outfitting of these buildings take time and money. If they are housed elsewhere you are defeating the purpose of streamlining, of having everything in one place. Instead, the same resources that are being used for these administrative units and administrative staff should be used and refocused on the creation of more courts so that we can have—

to clear the backlog, to actually do something. When we live in times as these when resources are finite, you need to choose to use it wisely. [*Desk thumping*] It should be allocated where it is needed the most.

Mr. Vice-President, the proposed Part IV, clause 18 establishes the criminal and traffic administration department. It is meant to be linked. That is a certain level of complexity that is required. You have 13 Magisterial Districts operating within Trinidad and Tobago. They are not all located in Port of Spain, or San Fernando, or the capital in Tobago. How exactly? The Bill does not speak to how it is going to work. If you are collating everything and putting everything together, how in reality is it going to work? Even provisions in this Bill, Mr. Vice-President, which at face value are intended to improve the efficiency of justice do not do that.

Let us look at clause 6(2). The conduct of hearings via telephone. That is contrary to the rights of the accused. This clause does not preclude *ex parte* hearings. It does not speak to it. An accused has the right to be present for every matter concerning him. I am highly doubtful if he is sitting down in Remand Yard, that he is on that telephone conversation. The only things that are done *ex parte* with criminal matters usually happen in the investigative stage; wiretapping, search warrants. Or afterwards when they are discharged for a judge's warrant; not during. It even brings challenges to the attorneys. How are they going to protect themselves when you are on a telephone conversation and the accused was not there? Conduct of attorneys is a real ground of appeal. There is even more to look at. There is a reason why fitness to plead is so important. It is not that the accused person should know what they are pleading to. It is that they should understand everything surrounding the matter, that they are able to give instructions. When a

man's life and liberty are at stake, he has every right to be part of the proceedings.

*[Desk thumping]*

Which brings me to the next area. The merging of jurisdictions. Mr. Vice-President, there has always been a reason why they are separate. The matters that lie in the High Court deal with serious matters that lead to a loss of liberty as its punishment. Some of them do not allow for bail, such as murder, or they can be denied bail due to the seriousness of the offence. Summary Court matters on the other hand deal with less serious matters where bail is usually granted, and where options like reprimand and discharge exist. That does not exist in the High Court. The merging of these two distinct jurisdictions is contrary to the intention of what was put in place when they separated it to start with. The hon. Attorney General stated that one of the reasons why they are looking at the merging of the jurisdictions is the intention to abolish the preliminary enquiries. It would allow for the matters to be moved from the Magistrates' Court to the High Courts, where it is proposed that the master should be able to deal with it.

Based on the figures that were provided to us, we are talking something in the range of over 30,000 matters. Right now the figure before the criminal court, as provided to us in this debate, stands at approximately 2,000 as of March 31, 2018. Two thousand matters in our criminal courts currently, and we have people waiting for trial for 12 years. How are 30,000 matters going to be transferred for them to deal with? It would not come to a grinding halt. The criminal justice system would not stop altogether. Even with the proposed increase of judges and the use of masters, they cannot deal with that type of numbers. You are adding more problems to a burdened system. One of other things that is proposed with the use of the master at the Criminal Division is in clause 9, that they can deal with

indictable matters. Are they going to be offered the option to have a judge with a jury? It does not say in this Bill. How is this Bill meshing with other pieces of legislation that protect the accused rights? One of the things under the Supreme Court of Judicature Act, section 65C (1), a master can be appealed. Are we not adding an extra layer here where we can have more delay due to appeals? This is not speeding up the criminal justice system. Which brings me to the belief that it is to model after the Family and Children Division. The Family and Children Division working court, they too are overloaded with matters. When they first started, it took a month maybe to get a matter. Now it takes many, many months to get a matter listed. Because you create courts does not mean that you remove the numbers. It does not necessarily make it speedier. [*Desk thumping*]

Not to mention that there are several differences, key differences between the Family Courts Division and the Criminal Courts. I could even lump family and civil together. The Family Court deals with private litigants, whereas litigants are brought by the police before the criminal courts. The Family Court system, they really suffer situations where they are going to be incarcerated, whereas in the criminal courts, murder clients, automatic incarceration until your matter is heard. The criminal courts depend on security systems to bring the accused to court. The Family Division does not have the sheer number of police and civilian witnesses. They do not have voluminous matters that take months and years to complete. The litigants in the Family Court file all of their paperwork up front. They can go to mediation. They can settle key matters so that it is very narrow issues of law if and when you go to trial. You cannot mediate in the criminal courts, and you certainly cannot give any mutual undertakings. The trials in the Family Court last on average three hours, very rarely more than a day. Criminal courts go day to day,

and months.

So, to expect that the Family Children Court Division can be used in the criminal courts is simply wanting the impossible to happen. You cannot compare apples and oranges, and say because it works in one place it will work in another. It does not work that way. One of the other areas that was dealt with is the formalization of the structures of the court. Why exactly are we formalizing the structure of the courts? The way that the court is working right now bears very little difference from what is proposed in this Bill. The proposed Bill at clauses 10, 13 and 15 establishes new positions. It does not set out any terms and conditions. But for the most part of it, this Bill deals with name changes. What this Bill needs to do is set out exactly what these new positions are going to be doing. How is it going to apply? Because there are very real concerns in the criminal courts. You are dealing with deprivation of liberty. That is not anything to be arbitrary about. You cannot have vague clauses and expect that it is going to work well. Which brings to the operation and the concept of the specialist courts.

Clause 24 allows for the Rules Committee to make rules to establish special criminal court procedure. It is meant to provide for the operation of the specialist courts. This whole area is very vague as to how these courts are going to apply. What are they going to apply too? And really and truly, if rules were going to be made to govern procedure in any of the criminal courts, you did not need the legislation for that. But even so, specialist courts are not going to be the solution for the delays. Specialist courts would not make the forensic work any faster. The reality is there are matters before the Magistrates' Court right now where you are waiting for the forensic to tell you that is a gun. Years. Why are we not spending our resources on adding more staff to the forensics, if that is what is needed. [*Desk*

*thumping]*

Specialist courts are not going to help the police detect any crimes any faster, it is not going to make them do it any better. They need help. Where is the technology? Where is the training? We can spend resources towards that. Instead of creating all of these administrative posts that we are going to be looking for places to house them, giving them salaries. All of that is money that could be better used. Let us improve what we already have. We can make what we already have more efficient, we can invest in more courtrooms, we can invest in actual tangible items. Much was made about the air condition. But that is a real problem. All of the parties concerned in the courts need to be able to function. So, we are sending people, the prisoners, back down to Remand Yard, because it is too hot to deal with their matter. Is that fair to them? These people are being deprived of their liberty. None of us would like that for ourselves. So, do not say that the air condition has no effect. It does. Every day with your liberty denied is a day too much. [*Desk thumping*]

One of the things that was raised today as well was that we have situations of domestic violence. We have protection orders being granted that do not actually protect. We have persons, unfortunately, becoming victims because this does nothing for them. Let us train our police officers how to deal with it. [*Desk thumping*] Let us put some active mechanisms in place. Let us use our resources wisely. As I wrap up, I for one as an interested party in the court would love to have any piece of legislation that could assist us. But the reality is, this one does not. So, I hope that my comments would be taken, and that we would actually be in a position to bring legislation before this House that would help to speed up the criminal justice system. I thank you, Mr. Vice-President. [*Desk thumping*]

**Mr. Vice-President:** Hon. Senators, permit at this time to congratulate Sen. Shaikh on her maiden contribution. [*Desk thumping*]

At this time we would take the tea break. So, this House would now stand suspended until 6.00 p.m. for the tea break.

**5.26 p.m.:** *Sitting suspended.*

**6.00 p.m.:** *Sitting resumed.*

**Sen. John Heath:** [*Desk thumping*] Mr. Vice-President, thank you for this opportunity to join this debate on a Bill:

“to make jurisdiction for criminal matters exercisable in a division of the High Court to be known as ‘the Criminal Division’ and to make jurisdiction for criminal and traffic matters exercisable in a division of Summary Courts to be known as ‘the District Criminal and Traffic Courts’ and to make provision for matters connected therewith”

Mr. Vice-President, let me start by saying that specialized courts can work and they can certainly make an impact on the administration of justice. Perhaps I can bring to bear my recent experience, as limited as it is, to show certainly in that instance where it seemed to have worked. So I recently did a matter for the first time in the Children Court.

Now, prior to the advent of the Children Court, children and young persons were being tried in the Magistrates’ Court, same place as adult persons, under the same system that exists in those courts. There was therefore a need to separate these young persons, these children from adults and that is what the Children Court has done. But in addition to simply setting up a court there had to be a cultural revolution in the way that matters are done, because if you simply set up a court but you maintain the same system that exists, then that does not help anyone.

So I represented a young man at the age of 14 who was charged for a very serious

crime: murder. He was charged in February or January of this year and by early June he was discharged; the matter had come to an end. Now, the matter did not go to a full hearing, but what had happened was, because there was a cultural revolution in the way that the master of that court dealt with the matter, when the prosecution failed on several occasions to commence the matter, they were discharged and he used the record of what had transpired from the time they came to court, up until that time, to justify the action that he was taking.

Now, that is revolutionary because, as a criminal practitioner, I have never seen that happen, where a matter is dealt with within a six-month period. It simply does not take that time. If that was to happen in the old system, it would take years to get the same result, because the prosecution would be given years and years and years to get their act together. So you would have heard Sen. Shaikh speak about the paper committal system, and how, even though its intent was to speed up the process, the contrary has happened.

But it did not stop there. Upon discharging them, the master then turned to myself and said, "Mr. Heath, there are now certain services which can be provided to these young men, because they would have experienced incarceration". And I was taken aback, because it is a sort of after service. So I was pleasantly surprised. So certainly, specialized courts in the right circumstance can add value to our system as we know it. I have been told that the specialization of the Family Division Court has done so by practitioners who practise in the Family Court before it was specialized.

I heard the hon. Sen. Ramdeen say that it is collapsing, or it has collapsed. I do not know that even though I have limited practice in the Family Court. But notwithstanding, by and large, in a general way I think the Family Division was a

next area in which it worked, by and large.

Now, with respect to the proposed Bill, and I must admit at first, I did not quite comprehend how it is this piece of legislation was meant to impact on the criminal justice system. Because with the greatest respect, if a piece of legislation does not itself impact in a real way, the ability for persons to get through the court system more expediently or more efficiently, then really there is no impact on the criminal justice system as it now exists.

I want to bring two examples which had been harkened to by, certainly, Sen. Ramdeen, Sen. Shaikh—I am not sure if learned Senior Sen. Chote also—that we have already a system which by and large is a specialized one. In that, we have Criminal Assizes, and the Magistracy for the most part deals with criminal matters, save and except petty civil, liquor licence and inquests. It is largely a criminal court, yet you have two issues which I will point to, which have the effect of crippling an existing system, which it seems would not have been saved by the advent of specialized courts.

Firstly, you have the problem which has existed in the San Fernando Magistrates' Court, and I must say that San Fernando, as a born and bred southerner, San Fernando has a special place in my heart, and ever since I came into practice, the San Fernando Magistrates' Court was a cause for great consternation on my part. That court is under repairs and what had happened is that they had to have a shift system with the Madinah Court. So, you are sitting from 9.00 to 12.00 for the Madinah court and then you had to pick up from 12.00 to whatever time for the old San Fernando court.

What then happened after that, that stopped and they moved the old San Fernando Magistrates' Court to the Supreme Court and you had the egregious

position and untenable that sitting judges had to rise early to give way to facilitate a Magistrates' Court. So in a system which is already somewhat broken where prisoners do not arrive on time and you have short sitting days, that is compounded by the fact that the judges had to rise early and give way to a Magistrates' Court.

Now, I bring to bear this with respect to this legislation certainly could not have saved, even if it were to pass—save that position—in that, where you have something like that happening, which affects the administration of justice over a prolonged period, cannot be excused. So, Sen. Ramdeen would have said about the situation in Port of Spain Hall of Justice with the air condition. It is unimaginable the heat that is generated in those courts and it is only because I do not have a matter which has been called for trial, but I would not, under any circumstances where a jury has to go through that prolonged heat, start a trial. I would be very much against doing that because you cannot concentrate in that type of heat; that that has gone on for so long, again, is a very untenable situation.

So I premise all that, Mr. Vice-President, to hone in on this Bill which seeks to make a specialized division of criminal courts. Now, when I look at the Bill I was certainly looking for areas which would address my two major concerns of expediency and efficiency—of course, not compromising justice at all—because of the serious backlog that exists in these courts. I must say, as alluded to by both Sen. Chote and Sen. Shaikh, that a large part of this Bill really is a renaming exercise.

So when you look at clause 3, subclause (2), (e), (f) and (g), I do not think it is necessary to change names. But more than that, Mr. Vice-President, there is going to be a cost attached to that because you can bet your last dollar if my designation is changed from magistrate to district court judge somebody has to pay

to change the sign on my door and in the parking lot. And I suppose all over the court, because I am going to want to get my correct designation. So there is going to be a cost attached to that which probably they are not going to pick up now, but there is going to be a real cost. And I am saying that it is perhaps not necessary.

Clause 5 states:

“On the commencement of this Act, authority and jurisdiction in all criminal matters exercisable by the High Court or a Court of summary jurisdiction shall be exercisable by the Criminal Court.”

—which suggests to me that the High Court judge can now deal with summary matters.

Now, that would be okay if it is that the High Court judges, by and large, lack for work. So that the excess work at the Magistrates' Court level dealing with summary matters could be fed across. But that is not the case and the backlog in the High Court, well I am not sure which is worse. It is probably running neck and neck. And, of course, a useful analogy would be that if you were to increase the lanes on the highway so that there are four lanes on the Uriah and four lanes on the Solomon Hochoy but there is still one lane to get into Port of Spain, you are going to reach up to town faster, but you are going to take the same amount of time to get into town because there is going to be a bottleneck.

So I am not sure that that particular clause giving the High Court judges the ability to do summary matters, by and large, I could well imagine that there is going to be an uproar with respect to that and it is not going to impact in any way, in any real way, anyhow, the backlog that is endemic in our criminal justice system. Now, at clause 6(1), it says:

“Sittings of the Criminal Court shall be held at such locations and at such

times as the Chief Justice, in consultation with a Judge assigned to that Court, may appoint in accordance with the Supreme Court of Judicature Act.”

And subclause (2) says:

“Notwithstanding subsection (1), the Criminal Court may, when required and appropriate, sit at any time, and may conduct hearings by telephone, video conference or any other appropriate electronic means.”

First, it seems to render otiose, the Chief Justice sitting in consultation with the judge appointed, if they can just sit at any time. And secondly, as has been alluded to by Sen. Shaikh, I am not sure how appropriate a hearing by telephone is going to be. I certainly have had the experience of conducting a High Court hearing via videoconference from the prisons at Golden Grove and the court sat in Tobago with the Assizes Court and it was interesting that the learned judge asked the accused to state all the names of the persons that were in the court and to indicate to her if anybody entered the room. And I could see that that was made because it was transparent, so persons must know at all times and see and hear. But if there is a hearing by telephone, I certainly do not know how that is to work and, save and except for a judicial officer informing an attorney that the matter is adjourned of some nature, I cannot see beyond that how any hearing can be had.

Now, clause 9 states:

“A Criminal Court Judge or a Criminal Court Master shall, in addition to the powers conferred under the Supreme Court of Judicature Act, have all the powers exercisable by a Magistrate in criminal matters under—

- (a) the Summary Courts Act, including the power to hear indictable offences summarily; and.

(b) any other written law.”

Again, because really and truly the High Court is burdened with matters which the statistics will show it cannot now handle, conferring on them powers which a magistrate has, I am not sure that will assist, but in addition to that, one of the most salient differences between a High Court judge and a magistrate is that a magistrate is a creature of statute and there are inherent powers in a High Court judge which give them overarching powers beyond what a magistrate can do.

So I am not saying that—I am saying that it is more of a regressive step to say that a judge shall have powers exercisable by a judicial officer who, for all intents and purposes, is inferior.

Clause 10, I also had basically the same point as learned Senior Counsel Sen. Chote. Clause 10 says:

“A Criminal Court Master shall exercise all the authority and jurisdiction of a Judge which are conferred on Masters under the Supreme Court of Judicature Act.”

So, prior to this we were familiar with masters in civil court matters but not a master in a criminal matter in that sense of the word. So that I am not sure that by conferring that this piece of legislation confers on them—the master that is—powers of a High Court judge where there are other pieces of legislation which may not be in conformity with this proposed Bill. And that certainly is something that has to be looked at.

Clause 14, again, I had alluded to that with respect to hearings by appropriate means. And I am saying a telephone is perhaps in my view not an appropriate means, save and except the scope of the hearing is set out in limited parameters. The major concern as pointed out by Sen. Shaikh would be that the

accused person is not likely to be anywhere around. And even if he is, I suppose he would have to be with his attorney at a designated location, if he is incarcerated. That designated location really could only be the prison.

I find it is a good idea to have a specific court administration department as seemed to be suggested in Part IV. The practicalities and workability of it would be left to be seen because there are some problems with court administration, and the one that most comes to mind is the processing of bail where persons have been granted bail. And because the processes, for want for a better phrase, are left wanting, the persons cannot access the bail in a timely manner so that they can be taken out of custody. A classic example would be, for instance, if a person is given approval bail, to be approved by the Clerk of the Peace, the process is one in which the Clerk of the Peace gets on the phone and calls every single court in Trinidad and Tobago, every other Magistrates' Court in Trinidad and Tobago, to find out if the deed for which it is proposed to take the bail is in any of those court systems.

Now, that is a problem with respect to—it is clearly not computerized so that one can simply punch it in and within five minutes they can get the answer. All it takes really is for one of the calls not to go through because some phone is not working and the person cannot access the bail, they cannot leave from the court a free person and they are taken to join the general population on remand. That simply is a real problem—I am perhaps underplaying it a bit—but sometimes it takes days for that to happen. There is also not a consistent policy with respect to the administration of bail documents. So, for instance, there is one Clerk of the Peace who simply does not take a deed of lease, it has to be fee simple. So you can have a deed of lease for 999 years and because it is a deed of lease that Clerk of the Peace would not take it, accept it as bail.

So what there has to be is a streamlining of the policies across the board because there are other Clerks of the Peace who know that is good as gold and they would accept that, right? So I am saying in the round it is not generally a bad thing to have a specific court administration department to streamline; the practicality and the workability of it, of course, is that where would that be when you have courts in outlining districts. How is that—but I suppose those are things that the hon. Attorney General will have to address. So how can you bring to bear what might seem like a very good idea to be, for all intents and purposes, practical with what now presently obtains.

Now, apart from the fact that I am not seeing where the Bill really addresses or seeks to address these instances of backlog, this Bill cannot address some of the real concerns which facilitate the backlog and which have facilitated this backlog over the years and which continue to facilitate the backlog, because the real problem, Mr Vice-President, is matters are entering the court system on a daily basis and they are not being determined at a commensurate speed. So you have hundreds and hundreds of matters coming into the court systems, both the Magistrates' level and the High Court level, but the way—the length of time it takes for matters to be determined is not commensurate with that. So you are having more matters into the system and less matters going out with less speed.

So, in those circumstances one has to look at, and I know the hon. Attorney General was bringing a suite of legislation to deal with some of them, but they consist of the following. There is a lack of criminal practitioners so that—

**Mr. Vice-President:** Senator, at this point I just want to guide you. A lot of the arguments that you are putting forward have been put forward by Senators that have gone before you in relation to the number of practitioners, the ratio of cases to

the number of judges. All of these things, even the issues with the system as it is right now in relation to the Bill itself, we have heard these things so far for the day by almost all of the speakers that would have gone before. So I would invite you now if you have anything else to bring forward that has not come forward before, you are now so invited to bring it forward.

**Sen. J. Heath:** I will be guided. And, Mr. Vice-President, that is the problem when I go after two seasoned criminal practitioners. [*Laughter*] But, Mr. Vice-President, essentially to avoid certain repetition and just to wrap it up and round it off, the idea of specialized courts can work in an ideal circumstance. I have cited the Children Court and how I think from my limited experience there, how it is a good move and it should work. I am just not sure with what presently obtains if this legislation, this proposed Bill, can add anything to the current system and more importantly address the endemic problems which are stifling our criminal justice system. I thank you, Mr. Vice-President. [*Desk thumping*]

**Sen. Taharqa Obika:** [*Desk thumping*] Thank you very much, Mr. Vice-President. [*Laughter*]

**Sen. Ramdeen:** “Put some lash on them.”

**Sen. T. Obika:** I will never miss the welcome I get when I rise. [*Desk thumping*]

**Sen. Ramdeen:** Because “dey like yuh, dey like yuh”.

**Sen. T. Obika:** So, Mr. Vice-President, what I want to do today is add my perspective to the matters that we are debating today, because at the end of the day the criminal justice system is not the property of attorneys at large. It is the business of the entire citizenry of the Republic of Trinidad and Tobago and of the world and I would like to make some contribution regarding Part IV, specifically, and Part III of the proposed legislation, regarding certain core issues, consultation,

of course, alternative to detention and the findings of a joint select committee if I be permitted to so do. And I will be guided, of course, by your good self, Mr. Vice-President.

Now, what we have before us may appear to be a seemingly simple matter regarding the establishment of a Criminal Division of the High Court and delineating the District Criminal and Traffic Courts. Now, I want to ask some questions. Number one, in the consultations or if there were consultations, did the hon. Attorney General seek and solicit and therefore receive information from the Magistracy; feedback from the Clerks of the Peace, the Criminal Bar Association, the Law Association; and as we look to alternatives to custodial sentencing, victims of crime, as well as practitioners and alternative dispute resolution? That question would be for the Attorney General to answer in his winding-up.

Now, the Criminal Bar, Mr. Vice-President, has always been an outspoken arm in this country. And one example is clearly when they were not afraid to let the truth bear out, when the acting Attorney General at that time made some disparaging remarks about attorneys assisting gang members in criminal activity. So, I am sure if they were consulted on this particular matter by the substantive Attorney General, the hon. Attorney General would have been able to solicit some meaningful responses so that today when we are debating the legislation before us it would be sound.

**6.30 p.m.**

Now, I wish to turn to Part IV of the Bill regarding Administration, and there are two particular areas I want to bring out here, regarding clause 18, the HR management reference. So in the Bill, if you permit me, it makes reference that there shall be established an administration department. And it references HR

management among other units.

But I want to make a suggestion here, Mr. Vice-President, given the concerns on training and the importance for training and a training unit, that a training unit be decoupled from HR, notwithstanding the comment that such prescriptions should not be in the parent legislation. But wherever we contemplate the units of such an eventual administrative body, that training be decoupled from HR specifically, and there is a reason for this.

I do not need go to into that reason because that, basically, was hammered by many persons prior. But the reason, in essence, is that without a focus on training and continuous development we may find ourselves having to legislate for inefficiencies and clogs in the system, when, really and truly, it could have been addressed. For example, hon. Sen. Heath before me mentioned a revolutionary approach of a particular master in a particular court. Now, training also includes best practice and, as well, subject matter experts and pilot projects, and for example, such an example could be brought to bear on a training unit who can take it on board and test it across the criminal justice system, regarding the expediting of cases for persons.

So I want to turn to clause 18. Now, in clause 18, I want to add a particular part which will form the essence of my contribution today, which speaks to restorative justice. Now, we find ourselves in an adversarial justice system where in the criminal justice system little room is given for alternatives to custodial sentencing and, really and truly, I want to bring some force to bear on the role of alternative dispute resolution. And I would like to quote from a document because I could not commit three short paragraphs to memory.

The title of the document, if I may read into the record, is:

“The Role of ADR Processes in the Criminal Justice System: A View from Australia by Melissa Lewis and Les Mc Crimmon, 4-8 September, 2005”— regarding a conference at Uganda.

Now, on page 4 of said document titled:

“Criminal Justice Reform: ADR in the criminal justice context.”

I wish to read, Mr. Vice-President, if you allow it:

“Most of the literature dealing with ADR contains little or no reference to its use in the criminal justice context, and as a corollary, most criminal law texts dealing with processes such as conferencing do not utilise ADR terminology.”

Which is also true for the Bill before us today. And I return to quoting:

“This is because ADR is usually described as a method of resolving disputes between parties without resorting to formal court-based adjudication. Traditional theories of criminal justice, on the other hand, view criminal offending as largely a matter between the offender and the state.

The use of ADR processes in criminal matters is a relatively new phenomenon in Western countries. In part, the increased interest in the application of ADR processes to the criminal justice system was borne from a general dissatisfaction with traditional adversarial methods of dispute resolution.”

Which we have today in Trinidad and Tobago regarding the criminal justice system:

“However, the criminal justice system has attracted a particular set of criticisms: it is seen as unsuccessful in reducing rates of recidivism...”

And the hon. Attorney General has borne that to be a fact in our current

jurisdiction:

“... (and even may increase the likelihood of reoffending for particular groups, such as juveniles and Indigenous persons); it ignores the victims of crime and fails to recognise crime as a form of social conflict.”

The last part of this quotation I want to bring about really speaks to some way forward:

“One important proponent of the application of ADR techniques to criminal ‘disputes’ was Nils Christie, a Professor of Criminology from Norway, who asserted that ‘conflicts become the property of lawyers’ and that formal legal processes rob individuals of the right to full participation in the dispute resolution process. The proliferation of the idea that a criminal offence represents not just a violation of state but also a community conflict which requires resolution between individuals has led to increased support for the use of non-traditional criminal justice methods.”

So, Mr. Vice-President, if I were to summarize that passage that I read there: recidivism and reoffenders. A main aspect of the criminal justice system which it seeks to reduce—reoffending—is failing with the adversarial system that we have. Whilst one may argue that there are categories of serious crimes—but, surely, petty theft, “fowl thief” for example, I think we could look at sending that to some form of alternative dispute resolution or alternatives to incarceration for the custodial sentencing.

Now, another point is the ignorance of crime as a form of social conflict. Now, clearly, in Trinidad and Tobago there are persons—and I bring this example. This is a grievous example, but, really and truly, the reason why I want to bring it is because of what the victim said. The gruesome case of the man who beat the

lady in the car park in the mall in Marabella. After the beating with the gun, the victim—she said she forgives the person. Now, this is a very serious case where, even though the person may forgive, the State may deem that that person to be a danger to society and deserves custodial sentencing.

However, there may be some minor case where persons may suffer physical assault and they decide that, “You know what? I do not want this person to be punished further than merely coming to some kind of agreement, probably community service where they may actually be restored and become a productive member of society.”

So that goes against the adversarial method of the justice system that we are faced with in Trinidad and Tobago because of our colonial heritage. And I think we would benefit from looking at countries such as Rwanda, South Africa, where persons in Rwanda were killed; members of their family were killed, and those persons were able to still say, “I forgive”—you know? And society in Rwanda, as you see today, has progressed. Whether it progressed directly as a result of that is an argument for another time, but I am saying that we can use this method going forward.

And I am being reminded by Sen. Ramdeen about the child who chopped his mom. I mean, there was even an example of a man whose son killed another son, I believe, and the father said, “You know what? I have lost one son. I do not want the other son to be in prison.” But murder, to me, is a different case. But I believe at the lower levels of the criminal justice system, for the softer crimes, I think we should look at that.

And the last point that was raised is conflicts becoming the property of lawyers. Now, Mr. Vice-President, we respect the work that lawyers do, and

myself, not being a legal practitioner, having spent my entire life in finance and government policy and teaching, I really respect the work that attorneys do. However, I believe that we should not run afoul of this prescription regarding lawyers and attorneys taking ownership when, really and truly, society can provide some form of solution.

Now, I want to move on to Part III. But before I move on to Part III, I want to make one comment regarding this very clause, and it comes from a different document. And if I were to quote—this is a much shorter prescription here. And it is from the United Nations Economic and Social Council, and it is titled:

“Reform of the criminal justice system: achieving effectiveness and equity  
Use and application of United Nations standards and norms, especially  
concerning juvenile justice and penal reform.  
Report of the Secretary-General.”

And this was for the Eleventh session, the 16--25 April, 2002.

In that document on page 13, Section B, titled:

“The Vienna Declaration on Crime and Justice: plan of action on prison  
overcrowding and alternatives to incarceration”

Which I said will be the essence of my contribution today. It states, and I read, with your permission again.

“To implement and follow up on the commitments undertaken in paragraph  
26 of the Vienna Declaration, section X of the plans of action recommends  
that States should endeavour to develop specific actions and time-bound  
targets at the national level to address prison overcrowding...”

Which we are faced with in Trinidad and Tobago.

“...including measures to reduce pre-trial detention, the introduction of

alternatives to imprisonment, and the use of customary practice mediation or the payment of civil reparations or compensation when dealing with minor offences.”

So I am particularly speaking to minor offences here:

“At the international level, the action plan calls for the inclusion of measures to reduce prison overcrowding into technical cooperation programmes and the promotion of actions on prison overcrowding and alternatives to incarceration that take also into account any disparate impact on women and men.”

So, Mr. Vice-President, I should not take us any longer. I really just have two points to conclude, but I want us to really remember here that what we are trying to do is not necessarily sentence persons, but to really bring justice—true justice. So, yes, someone may be guilty, but in certain categories of crime we can find other ways to solve the problems.

So I want to move to Part III, the Functions and Duties, and briefly just state priorities. Many Members prior spoke on all the infrastructural issues. I would not go into that. But I want to say that we should fix those problems first and I add my voice to that entire issue. Now, as I wrap up, I want to ask this question as I reference the Joint Select Committee Report of the Finance and Legal Affairs on an Inquiry into Criminal Case Flow Management in the Judicial System. And I will be guided if I can make comments regarding the recommendations of that JSC. All right? So if I start and I am going in the wrong direction I will be glad for any assistance, Mr. Vice-President.

So I want to ask the question: Why focus on traffic at this time versus serious crime? Because the Government, in the recommendations to the

submissions before the JSC, made mention of different types of courts, for example, a remand court, guns court. You know? And they also referenced other types of arrangements regarding murder and drugs, in particular. But I want to make reference to some aspects regarding the Executive Summary, in that the disparity between the small number of criminal practitioners and the volume of criminal cases in the Assizes is something that could be addressed. The overload—they made a comparison with Jamaica being about one to 26, I believe, but in Trinidad and Tobago during the course of the law term it was one to over 100 in some courts in Trinidad.

The challenges faced by the Office of the DPP in the recruitment and retention of State personnel—

**Mr. Vice-President:** Okay, Senator. So as much as you are reading from the report, a lot of what is in that report as well, has also been stated by other Senators: challenges with the DPP's office; again, the ratio of cases to attorney or even judges. So, likewise, I also invite you, if you have other new points that have not been raised thus far, to bring them forward at this point.

**Sen. T. Obika:** Thank you very much. I am happy for your guidance, Mr. Vice-President. Actually, I would like to say that I have come to the end of my contribution and I thank you for allowing me the opportunity.

**Hon. Senator:** What!

**Mr. Vice-President:** Minister of Agriculture, Land and Fisheries. [*Desk thumping*]

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Mr. Vice-President, thank you very much for allowing me to join this debate. And quite frankly, for once I could say that there is not much that I

could disagree with in terms of what has been said on the last occasion and on this occasion. In the same breath I want to say there is not much that has been said that deals with this Bill that is before us.

**Hon. Senator:** That is right. [*Desk thumping*]

**Sen. The Hon. C. Rambharat:** And I am not surprised, Mr. Vice-President. The recourse has been had to the report that you just blocked access to, in a sense, the First Report on an Inquiry into Criminal Case Flow Management, a Report of the Joint Select Committee on Finance and Legal Affairs, a report of a committee that I was very pleased to serve on under the astute stewardship of Senior Counsel, Chairman Sophia Chote. And, of course, at that time we had my very good friend, Mr. Wayne Sturge, experienced criminal practitioner. And it is not surprising that this report has been referred to so many times because it is essentially a compendium of what needs to be done, a wish list of what needs to be done in relation to criminal case flow management.

Mr. Vice-President, this may be another element of it, because I remember distinctly—it is not mentioned anywhere in the report but I remember distinctly during the deliberations and during the hearings, we did hear this issue of a criminal court division being created. But it never made it into the final report. But there was one moment when it was raised, and I believe it was raised by the AG's office, but it did not make it into the final report. And I place no reliance on the report but the report does, in fact, provide a compendium of what needs to be done.

And I listened to my friends on the Opposition, and the word I use is “angst”. The Opposition seems very anxious about supporting this Bill, and I am not surprised because I, myself, when I first got wind of the work the AG's office

was doing on this Bill, I, myself, looked for a local precedent for it. The idea must have been rooted—because a lot of what we—we accept that. A lot of what we do here is rooted in something that has been attempted or suggested in the past. And I went as far back as I could go in the archives, and the truth is that we are on very, very new ground in relation to the idea behind this Bill.

And I accept that the Opposition would be uncomfortable with it. I understand their position, Mr. Vice-President, because in relation to the report on criminal case flow management, this seeks to do just that, to establish a flow, the current context from the Magistracy through to the High Court in a defined manner, through the use of a specialized courts, a word that has been used throughout. And I could understand the angst, because the idea belongs on this side. But that is fine. We will lay it today and you will pass it with us, and perhaps one day you will have the opportunity to improve on it. So let us go beyond the newness of it.

Because, Mr. Vice-President, this idea of specialized court and select court, and whatever you want to call it, is nothing new to the Opposition. I find it very amusing when I reflect on some of the things that I have heard them say. In fact, my friend, Sen. Shaikh, talked about the change of name. Well, perhaps, this is the name that they will prefer, Mr. Vice-President: “Dole Chadee-type court”. That might be far more preferable to the Criminal Division. Because it was former Attorney General Anand Ramlogan—and this is a *Guardian* report of Monday, December 26, 2011. And this is the then Attorney General Ramlogan talking about the now famous or infamous matters involving Ish Galbaransingh and Steve Ferguson. And AG Ramlogan is quoted as telling the reporters:

“What is required is a Dole Chadee-type court to prosecute them instead of

continuing with lengthy delays.”

So perhaps the Attorney General should have styled this as: “An Act to create the Dole Chadee-type Court.” And my friends on the other side would have understood that language. [*Desk thumping*]

And the newspaper goes on to talk about and to quote the then Attorney General as saying:

“it is my hope that the Chief Justice and those stakeholders from the criminal justice system will convene on ‘Dole Chadee-type court’ on an ad hoc basis, having regard to the long meandering in this matter, and let the defendants have their day before judge and jury.”

If ever there was a kangaroo court, Mr. Vice-President, that was it. My friend, the Attorney General, I thought he invented a word when he said ad hocism. What could be more ad hoc and contrary to justice than the idea of a Dole Chadee—which litigant, knowing the fate Mr. Chadee and his colleagues ended up facing—but that is what the then Attorney General advocated, Dole Chadee-like court on an ad hoc basis.

And that is what make my friends on the other side so uncomfortable. And that is not the only element. That is not the only thing about the crime plan and the fighting crime that they have come here to talk to us about. I do not know which one to go to next. I listened to all the speakers so far on the Opposition talk about infrastructure and instead of spending it here, spend it there, and instead of hiring here, spend the money there. And I went back, I said, but I know for a fact that the cornerstone of tackling the issues in the criminal justice system was the Volney plan to build more courts.

**Hon. Senator:** Nah, surely not.

**Sen. The Hon. C. Rambharat:** In 2010, when the *Guardian* in this Geisha Kowlessar article published on Wednesday, December 29, 2010, then Justice Minister Volney, a man whose mere entrance into political life, his mere entrance should have left my friends on that side there, never talking about the Judiciary in this country. To screen a sitting judge and announce him as a candidate and to come here today to lecture to us on the Judiciary, and to put the name—

**Sen. Ameen:** 46(1).

**Sen. Mark:** Deal with the Bill, “nah man”.

**Mr. Vice-President:** Minister, as much as you responding, make the point and move forward.

**Sen. The Hon. C. Rambharat:** Thank you, Mr. Vice-President. To put the name of Mrs. Christie Alleyne on the *Hansard* in that manner, to try to smear somebody’s character, to draw somebody into some sort of foolishness because the person serves on an advisory council in the Hague, populated by jurists from all over the world, from China, from all over, Canada, the United Kingdom—serving judges, academics and those involved in court administration, something that we should be standing here and being extremely proud of, to place that [*Desk thumping*], to place her name—I cannot fix it, Mr. Vice-President. I cannot fix it tonight. The newspaper tomorrow will report what they report, but I am saying in the context of Mr. Volney’s entry into politics—and this is the point I am making.

At the heart of the justice system, it was not putting more resources to the DPP. It was nothing that Sen. Shaikh spoke about. It was building five courts in St. Joseph, Sangre Grande, Arima, Trincity and Valencia. And tonight I have to hear, “Why don’t you fix what you have?” What were you doing then, building new courts? You should have been doing what we do now. You should have been

dealing with the electronic monitoring system. You should have been dealing with DNA, all the things that you come today and talk about because you “doh” have to go far. We know the plan. We know the criminal justice plan of the UNC. It was articulated since September 08, 2011, in this Gale Alexander article, where she is again referring to a Dole Chadee-like court statement, in this simple two-page article. The then Attorney General—

**Mr. Vice-President:** What newspaper?

**Sen. The Hon. C. Rambharat:** *Guardian*, September 08, 2011. In the wake of the infamous state of emergency, something the taxpayers of this country are still carrying on their backs, while Sen. Ramdeen comes and talks to us about justice? It was the 12-point plan of the UNC, which was:

1. to partner with communities;
2. to start social programmes;
3. to use special buildings for courts as was done in the Dole Chadee trial;
4. to use video conferencing;
5. to establish a gun court and a night court;
6. to cause people to work double shifts to tackle the backlog;
7. to use the retired judges to clear the backlog in order to widen the pool;
8. to remove preliminary enquiry—

Something that will eventually take us to section 34. Infamous, Volney again:

9. to propose amnesty for minor cases;
10. to deal with traffics offences in the criminal justice system;
11. to introduce electronic GPS tracking ankle bracelets; and
12. to tighten the DNA law.

2011, the 12-point plan. How much was achieved by September 2015? And how

much of the 12 we have brought to this Parliament and we have dealt with? [*Desk thumping*]

Mr. Vice-President, this piece of legislation is not about fixing everything in the criminal justice system. It is not about fixing everything. What, simply, the Attorney General sets out to do is to create a distinct jurisdiction, first and foremost. And, Mr. Vice-President, we “doh” have to go very far. Every speaker, because, as I have said, there is no precedent for the creation of a specialized criminal adjudication. Because there is no precedent, every speaker has had recourse to the Family Court.

And I went back, Mr. Vice-President, to 2016 when we dealt with that piece of legislation to create the Children and Family Court Division. I went back and I read the contributions of every Opposition speaker, and I was not surprised. Many of the contributions opened with praise for the now Opposition leader, Kamla Persad-Bissessar, taking—

**Hon. Senator:** Authorship.

**Sen. The Hon. C. Rambharat:** Paternity, authorship, whatever you want; taking ownership of it. And what did we do in that piece of legislation? We created a distinct division. That is what we did. And other speakers, including practitioners—I listened to Sen. Heath—understood that we could not have—there were so many complications involved in having the family and the children matters dealt with alongside the civil and the criminal matters in the same physical space, the same administrative space, the same procedural space, that there was merit in creating, first, through legislation, a distinct jurisdiction, distinct administrative arrangements and ultimately distinct physical arrangements.

**7.00 p.m.**

We did not get it right the first time on that Bill, you know. We did not get it right. There have been changes, there have been amendments. There will be amendments, as the Attorney General and all of us in this House, seek to refine the process. I listened to my friend, Sen. Ramdeen, yesterday at his press conference, and I felt it was me speaking because he was talking about the Anti-Gang Bill and echoing what I stood in this spot and said, that we could pass the best piece of legislation, we could pass the best laws in this place, but when it goes outside very few—if any of us—have control over the implementation of it; very few of us, and I agree with him. I agree with him because I, like the rest of this country, I am awaiting for an arrest under the Anti-Gang Act to say, “I had a part in that”. And likewise, Mr. Vice-President, let us go beyond the Family Court.

Mr. Vice-President, I have said it before, one of the most frustrating things as a young lawyer, was going to the civil court and knowing 15 years down the road your matter will come up to trial. That is what we faced, and I said in a previous contribution that some of the younger practitioners take it for granted that their matters will move from beginning to end in a year or two, and not 15 and 20 years. And if we have to also find a model to work with, it is the reform of the civil jurisdiction, most importantly, through the introduction of robust Civil Proceeding Rules and also a determination by the judicial officers to make sure that deadlines are met and penalties are imposed by those who seek to waste the time of the Judiciary.

Mr. Vice-President, when you read the newspaper, the criminal cases, and you see the time has passed between the date of the offence and the date of the trial, and you see a 10-year gap—and look, for example, around the country yesterday, this Facebook judgment, the second for this year, was making the

rounds. The Facebook judgment, the 39-page judgment delivered yesterday by Justice Margaret Mohammed—and when you think that the offensive posts in that Facebook decision rendered yesterday, the offensive posts were from two years ago. So it means that the litigant, the person who was clearly affected by the defamatory posts, had two years through the process to get a favourable judgment yesterday.

In February, Justice Seepersad rendered a similar judgment relating to Facebook posts, and those posts were made on February 06, 2016, and Justice Seepersad's judgment was in February 2018, two years. Mr. Vice-President, if this Bill, and all the other things that we seek to do as a House and as a Parliament, could get us to the point where we could dispose of criminal matters in two years and eventually in a year, then this country will be a better place [*Desk thumping*] because it is frustrating and it is dangerous across the board. It is frustrating. We have talked and in this report of the Joint Select Committee we dealt with the issue of Remand Yard, we dealt with the frustrations of the DPP in terms of resources and in terms of being able to get a working ratio between prosecutors and number of files being handled. We dealt with all those issues and we understand that what we are trying to do— we are trying to do two things, and I think we have been consistent in saying that. We are trying to create a jurisdiction as we have done with the Family Court, and even though it is not comparable in some instances, we are trying to get to where we have gotten in the civil court and reduce the time, but it will take a lot to get us there.

Mr. Vice-President, this Bill has four key elements to it and I do not want you to rule me repetitive on anything, so I will just quickly say that it creates the Criminal Division of the High Court. I listened to Sen. Chote on the issue of the

proposed clause 5 and I think, Sen. Chote, that the Attorney General, I am sure will respond to it, but I myself found some difficulty in understanding because it seems to me that it did not strike a difference between the Criminal Division of the High Court and the Criminal Division of the Summary Court used, because it was framed as Criminal Division only. I agree with you that it creates some ambiguity and I am sure it is something that the Attorney General will look at. So it creates, firstly, the Criminal Division of the High Court.

Secondly, Mr. Vice-President, I heard my friend, Mr. Obika, talk about you know, why are we dealing with traffic and not putting emphasis on more serious offences, and I am not sure Senator if you were here at the time when we were dealing with the fixed penalty system for motor vehicles, but the fact is that every year the report from the Judiciary tells us, every year on average we have 50,000 new traffic matters added to the workload of the Magistracy. But the more important issue is that we are adding more cases than we are removing because some of the more important and the busiest Magistrates' Courts, those in Port of Spain, Chaguanas, Couva, Princes Town, some of the busiest courts are disposing of matters slower than the matters are adding. So what we are doing is that the backlog is going to increase, and that is why we have first, brought legislation to do with the fixed penalty, which means that only those people who wish to contest the ticket will go to the Magistrates' Court, and then this Bill seeks to create a distinct division of criminal and traffic division.

The third element, of course, is the administration of the court, and again, Mr. Vice-President, I say that when we look at administration it is not staffing. There is merit in creating a distinct criminal administration division or function, and again, I expect that in the creation of it in particular, the IT platform that is

used for the administration, that there will be connectivity between the summary jurisdiction and the Criminal Division so that we could flow files electronically from one court to another. But, of course, having said that, I look forward to the day when we bring preliminary enquiry legislation back to this Parliament and we remove the need to have preliminary enquiries.

I know my friends on the other side are expressing confusion and disagreement, but I have seen it work in other jurisdictions. You do not have to go very far. You just have to go to the Canadian jurisdiction. It provides for provincial courts which have original and final jurisdiction in criminal matters, and which have like our jurisdiction, original, and the final jurisdiction rests somewhere else, and you have the free flow of electronic files from one court to another, and that is something that we should be aspiring to.

Mr. Vice-President, as I close, I want to say this. I listened to all the speakers and some of them mentioned it and so on, but I want to share an experience because I am in the Cabinet. When having passed the legislation dealing with the Family and Children Court, when the Attorney General brought to us the Note with the resourcing required, it was a very heavy note, very thick in terms of the positions and the cost, and all of that. It was not a small sum and I accept that. The point I want to make is that while we deal with the current problem, which is the current crime situation and the slowness of the criminal justice system, as legislators I want us to always remember that dealing with crime in this country comes at a significant price, and it is a price that continues to increase.

At this time we have reduced resources, and as a country we have to pay attention to this because as we do with this Bill, when we create this jurisdiction

the idea may be to shift resources from where they are now into this Division, but it will also come as a cost. I make a quick note to just simply say, we have additional staff, we have additional skills that would be required in these courts, additional resources. When we talk about the prisons—I did not until yesterday even think about the prison in Tobago, but I heard the head of the Prison Officers' Association talk at Labour Day about the need now to effect repairs to the prison in Tobago. It is about to slip into the sea, as he said it. Those things come at a cost, whether it is physical conditions, staffing resources. He talked about Carrera and the absence of a transport link between the mainland and Carrera. Those things come at a price.

My friend, Sen. Obika, talked about rehabilitation, and when we sat in the select committee on the Miscellaneous Provisions (Trial by Judge Alone) Bill and we interviewed the eminent psychologist—

**Hon. Al-Rawi:** Hutchinson.

**Sen. The Hon. C. Rambharat:**—Hutchinson, whose services we had, he talked about placing some of these support services close to the prison or in the same compound as the prison. Those things, not only the physical accommodation, but the resources required to be part of a modern prison system, come at a price to the taxpayers and, of course, the ongoing infrastructure costs: more police stations, more police vehicles for the police service to park down by the Barracks, facilities management, the air-condition unit, the courts and all of that—to keep them up and running—the technology, the staffing.

Mr. Vice-President, these things are costing this country significant sums of money, and as Sen. Chote said once—and I believe in her budget contribution—we are spending here and somewhere else is suffering on account of having to support

this \$10 billion national security budget. And like every other Trinidadian and Tobagonian, I want these things to work, but I also want that we reach to a point where we reduce how much we spend on these things because the need to deal with more and more criminals is reduced overtime. I support this Bill. I know my colleagues are in support of it. I know they wish that it was their idea, but that is all right. That is all right. As we say in the People's National Movement, let us do this together. Thank you very much. [*Desk thumping*]

**Sen. Saddam Hosein:** Thank you very much, Mr. Vice-President, and I thank you for the opportunity for allowing me to rise to contribute to this debate on:

“An Act to make jurisdiction for criminal matters exercisable in a division of the High Court to be known as ‘the Criminal Division’ and to make jurisdiction for criminal and traffic matters exercisable in a division of Summary Courts to be known as ‘the District Criminal and

Traffic Courts’ and to make provision for matters connected therewith” I read the entire long title of the Bill because my contribution will be going into exploring both the Summary and the High Court jurisdictions of the Criminal Division.

Mr. Vice-President, I rise for one important fact, and that is to correct the record on Sen. Rambharat's last statement that we on this side support this Bill. Time and time again we said on this side, that if you bring good law we will support good law, but if you bring bad law we will not support it. [*Desk thumping*] So, Sen. Rambharat, I believe you will be doing this one alone and not together. I always look forward to hearing from Sen. the hon. Clarence Rambharat because he has very interesting contributions. They tend to make the *Newsday* every so often. I am not saying anything further on that. But, Mr. Vice-President, I was very

disappointed when he made a big “song and dance”, and berated the Dole Chadee-type court, and I say this because this court, this Dole Chadee-type court was responsible for convicting murderers.

This court found that these persons were guilty and these persons were hanged, and for him to come at this stage to say that, it takes away from the credibility of those proceedings that went before that court, and you cannot in any democratic society describe a court like that as a kangaroo court. He can call it what he wants or what he likes, but this court was set up legally and I would like to point my friend to section 3(5) of the Criminal Procedure Act, 12:02, and I would provide a copy for him also.

**Sen. Rambharat:** I have it.

**Sen. S. Hosein:** I would like to read that:

“...the Director of Public Prosecutions, whenever he considers that the ends of justice so require, or...having regard to all the circumstances it is desirable to do so in the interests of securing the more expeditious hearing and determination of cases, may in any case—

(c) transfer the trial of any case...”—either from when it was filed in San Fernando to Port of Spain, to Chaguaramas.

So that is a legal court.

**Sen. Rambharat:** Yes, it is a legal court.

**Sen. S. Hosein:** Well, you could correct yourself now. It is the Chaguaramas court. Do not say, “the Dole Chadee court”.

**Sen. Rambharat:** I was quoting.

**Sen. S. Hosein:** And, Mr. Vice-President, he also made another point that this Bill before us—

**Sen. Ramdeen:** The Minister.

**Sen. S. Hosein:** The Minister, sorry—sets up a separate jurisdiction of the High Court with respect to criminal matters. But, I believe while I was at the Hugh Wooding Law School, there was this one course I did, “Criminal Practice and Procedure”, and I always imagined that the both jurisdictions are separate in Trinidad and Tobago. There is the civil jurisdiction and there is the criminal jurisdiction. They are the Assizes Courts that criminal matters are heard in. So I am not sure whether or not this Bill does that because it already exists. Because within the High Court there is the criminal jurisdiction and it is managed by also a separate registry, which is the criminal registry. So I just want to put that on the record also.

The third point I would like to respond to is that he made some comments on the anti-gang legislation, and if you remember while we were here on that debate, the Government made it seem as though—that the Opposition was preventing the Government from their fight against crime and they made the country believe that the anti-gang legislation is the cure-all, and now they come with the exact same narrative that this Bill will fix the criminal justice system. Mr. Vice-President, I am saying that that is not the case. The members of the public must be aware that this Bill does not do that.

What this Bill does in whole, it is actually renaming courts—it is a “window dressing” Bill—and the second thing it does is establishes some new positions that the powers of firing, hiring and disciplining are now being given to a person who there are no checks and balances for, when that person exercises their powers. [*Desk thumping*] I would like to just guide you through some of the clauses of the Bill, Mr. Vice-President, that I had some issues with. I would not want to venture

too much into the report which most of my colleagues would quoted already, which would have identified some of the systematic reasons for the backlog.

Mr. Vice-President, I went through the recommendations in this First Report of the JSC, the First Report on an Inquiry into Criminal Case Flow Management, and not in one single recommendation was there a recommendation to establish a Criminal Division. Not one! Not one recommendation made that, but what the recommendations were is that, you need to fix the DPP's Office.

The recommendations are that you need to train the police officers; the recommendations are that you need to fix the prison system, but not to create a Criminal Division. The recommendation is to create more courts and hire more judges, hire more magistrates. What is before us does not do any of that. And when we look at clause 7 of the Bill which deals with the "Assignment of Judges and Masters to the Criminal Court", this clause allows:

"The Chief Justice"—to—"assign to the Criminal Court...Puisne Judges and Masters as he thinks fit."

And if:

"(2) A...Judge or a Master assigned to the...Court under subsection (1)"—he—"may apply to the Chief Justice for reassignment to any other Court within the High Court."

Now, if this judge is still dissatisfied with his—he is dissatisfied with the reassignment, he writes the Chief Justice and the Chief Justice says no, then what recourse does this judge have? This reminds me of a very famous case in this country, the case of *Rees v Crane*, where it went all the way to the Privy Council, but for other reasons. But the facts of that case were that the Chief Justice at the time, he did not roster the judge, and it was a form of disciplinary action against

the judge for certain allegations that were made against him on grounds of misconduct, and those are the issues that this Bill will now create.

So instead of addressing certain issues, it actually creates more mischief. So, I go again and I looked at clause 9, and clause 9 what it does is that in the Criminal Court the judge or the master, shall in addition to the High Court powers, exercise powers under the Summary Courts Act. So, in effect, the judge sits as a High Court judge, but also sits as a magistrate and, Mr. Vice-President, that will create more issues. I know Sen. Chote would have alluded to some of those issues with regard to giving the judge the power to exercise both jurisdictions, and also Sen. Heath, but my issue with this is when a judge exercises powers of a High Court, he is not bound strictly by statute as compared to a magistrate, and the magistrate is a creature of statute so they are bound by that.

Now, a judge has a discretion known as the “inherent jurisdiction” of the court. So magistrates are bound by the Summary Courts Act and any other legislation, and the point I am making is that now, if a judge determines a Summary Court matter, the judge is not bound by the four corners of the Act. He still has the discretion under the “inherent jurisdiction” of the court. So, Mr. Vice-President, this now sets some sort of inconsistency with regard to matters being adjudicated before a judge and then before a magistrate. Because whereas the judge can actually do certain things under the Act, the magistrate may not be able to so, and this raises certain issues. One other issue that this raised is that under the Summary Courts Act where a person is charged in various districts, the Summary Courts Act divided Trinidad and Tobago into various magisterial districts. So where an offence occurs in a particular district, the police officer will have to lay the charge, lay the complaint or the information to the Magistrates’ Court in that

district. Now, if the judge or the master is being given powers to hear a summary matter, there are three High Courts. There is a High Court in Port of Spain, there is one in San Fernando, and one Tobago.

Now, if a summary offence takes place, for example, in Cunupia, then where will that charge be laid? Is there a registry in the High Court to lay summary charges, or does the police officer go back the Magistrates' Court? So that is one thing that is very unclear. Is it that there is going to be a system to transfer the matter from the Magistrates' Court to the High Court? So those are issues that have not been addressed properly within the proposed Bill before the Senate. Then there is the other issue that I was asking my colleague, Sen. Ramdeen, about, is that when a matter is completed in the Magistrates' Court a person has the right to appeal that decision, and once it is a magisterial appeal it goes straight to the Court of Appeal. Now, on the completion of a PI you do not have the right of appeal, but you can certainly have redress through an application for judicial review. Now, if a magistrate has the power—sorry, if a judge has the power to conduct a preliminary enquiry because he now has the power of a magistrate, if a person finds that the judge did not follow certain procedures in the PI, you cannot judicially review a judge. So what recourse will a person have if a judge conducts a PI? And those are issues that I would have found are glaring within the Bill.

Now, when we look at section 2—I am moving on to another issue that would have had my attention and this deals with the hearings via telephone, video conferencing and electronic means, and this is to be found at clause 6 and clause 14. If I may quote from the Constitution, at section 5(2) (f)(ii) of the Constitution, it says that:

“5 (2) Without prejudice to subsection (1), but subject to this Chapter and to

section 54, Parliament may not—

- (f) deprive a person charged with a criminal offence of the right—
  - (ii) to a fair and public hearing by an independent and impartial tribunal;”

Now, when you have criminal matters being heard over the telephone, through video conferencing, or any of the electronic means, Mr. Vice-President, with all due respect I do not believe that will be a public hearing, and I say this because “electronic means” is very wide. It can mean communication through email, through text messaging. There is no limit on which a hearing can be heard with regard to this Bill.

**Sen. Ramdeen:** You could do “jury trial by email”.

**Sen. S. Hosein:** We can do “jury trial by email” also, and WhatsApp. So we can WhatsApp the jurors and tell them, “Well, listen, this is the case of the prosecution”. But respectfully, Attorney General, that was contemplated as being hearing by electronic means, and there are certain exceptions in which criminal matters would not be heard in public and one would be, for example, sexual offences. With respect to minors, they would be heard in camera. So those are things that we need to really address with respect to how we deal with this legislation going forward.

Now, under the Supreme Court of Judicature Act which creates the offices of masters, these masters do not sit in open court. Masters sit in Chambers. They deal with in-chamber applications that a judge will make. So then how are we going to vest these masters with the power to have public hearings? There is a glaring inconsistency with regard to giving the masters these powers. I know a lot has been said with respect to the role of the court administrator, but there are some

issues that I have to raise with regard to that and I will go straight to the special recommendation of the JSC Report and, Mr. Vice-President, no one touched this recommendation. I listened attentively to the debate to see if anyone would have raised it and no one would have raised this one. I go straight to page 32 of the JSC Report, and it is the interaction between the Judiciary and parliamentary oversight committees.

Now, Sen. Ramdeen would have indicated that the Court Executive Administrator, she will have powers to hire, fire—in terms of hiring people through contract—sole discretion, but what check and balance do we have over this person? It seems that the Bill does not give any check and balance over the powers being exercised by this person, and the special recommendation out of the JSC Report is that they would have written to the Court Executive Administrator and she indicated that her office was open to working with Parliament. Now, it is very strange for the Judiciary to be brought before the Parliament, but the report quoted that in the United Kingdom some judicial officers actually appear before parliamentary committees. I want to suggest that if you are giving the Court Executive Administrator all of these powers, I think that person should be brought before the Parliament to account to the people of Trinidad and Tobago, where the money is being spent in the Judiciary. [*Desk thumping*] So, I would like to make that recommendation to this Bill.

**7.30 p.m.**

Do you know what we will be creating, Mr. Vice-President? We will be creating a monster. We will be creating a person who is untouchable, and we cannot simply allow that, with a simple majority.

**Mr. Vice-President:** You indicated you were listening. That comment, or that

particular point has been made before, in relation to accountability to the Parliament. So again, I am going to ask you if you have any new points, you are invited to bring them forward at this point.

**Sen. S. Hosein:** What is strange, Mr. Vice-President, is that I wonder when the Law Association was written to for this matter, because on my way to Parliament I received an email on my phone, June 21<sup>st</sup> at 12.45 p.m. and the email reads as follows, from the Law Association:

Dear Members,

Please see link below to Bills for your kind attention and comments. It should be noted the Bills have been passed in the House of Representatives and are presently before the Senate.

Kindly submit your comments on or before 31<sup>st</sup> June, 2018.

And when I clicked the link, Mr. Vice-President, do you know what I got? I got a Bill to make jurisdiction for criminal matters exercisable in a criminal division, this Bill that is before the Senate. So the Law Association is now sending for comments on the Bill that is currently being debated and the deadline is when? The 31<sup>st</sup> of June. By then the Bill would be passed. [*Interruption*] Sorry. But the 31<sup>st</sup>—sorry. The 30<sup>th</sup> of June, sorry. But they have 31<sup>st</sup> of June. [*Crosstalk*] For the record, they have 31<sup>st</sup> of June, eh. For the record, the Law Association has 31<sup>st</sup> of June.

**Sen. Obika:** Because they rushed them so much.

**Sen. Hosein:** Yes. That is how expedient the Law Association is. They need more days, Mr. Vice-President, so they had to include that. [*Desk thumping*] They had to make up their own days. Mr. Vice-President, I am saddened that the Law Association has not been able to properly contribute to this Bill before us to make

any suggestions here. [*Interruption*] Exactly, but no, Sen. Ramdeen.

Mr. Vice-President, let me address you. Sen. Ramdeen raised an important point. I want to remind this Senate that we will be in power in about two years [*Desk thumping*] and we will take the Law Association's comments into consideration. We will do that.

Let me not stray, Mr. Vice-President, let me not stray. There is a clause that deals with the setting-up of the special criminal court, and I know you are anxious to stop me, Mr. Vice-President, because I come so late in the debate. And I know that I am a favourite of yours. [*Laughter*] But there is a point with respect to this that I would like to make, in terms of the certainty of prosecution.

Now, if I am charged with a certain offence before the court, and then the Chief Justice, under clause 24, which will be section 24, decides to prescribe some special rules and set up a special criminal court for the offence that I am charged with, to be heard before that court, where is the certainty in that? Is it that the Government is going to use this clause to set up all of these ad hoc courts to prosecute certain individuals very expeditiously, Mr. Vice-President? I hope that this is not being placed in here for potential abuse, so that if any person who troubles, or is against this Government, would be prosecuted and persecuted under this legislation. [*Desk thumping*]

[*Mr. Vice-President rises*]

**Sen. S. Hosein:** And I say that for every government.

**Mr. Vice-President:** It is not when I rise that you would switch the comment. The Standing Order of imputing improper motives still applies. Just on the other comment before, in relation to my favouring you, be very careful as to how you comment on Presiding Officers' rulings or how they conduct their business. There

is also a Standing Order against that. Continue.

**Sen. S. Hosein:** I did not say you are favouring me. I said I am your favourite. So, these are the issues that I would like to raise, with respect to this.

What this Bill attempts to do is just be a cure for symptoms, and we are not dealing with the root causes of criminality in Trinidad and Tobago. Because this Bill should go further, and the Government's legislative agenda should not be to come and just try to cure symptoms, but they should try to cure the root of the disease.

And if there is a breakdown in society and there are no more family values, with respect to discipline in this country, we will see more criminals entering the criminal justice system and what that will lead to, Mr. Vice-President, is an overpopulation of the prisons, and an overpopulation of the cause list, case list, in every single court of the country. So, unless we address that, then we can properly address the backlog in the criminal justice system.

And I want to implore the Attorney General, do not bring legislation like this only. Do not come to the Parliament, but put on the boots, get your shovel and build courts. Build courts, Mr. Vice-President, that is what we need to do. We need to build courts. We need to hire more judges. What we also need to do is start treating the Office of the DPP with respect in this country.

**Mr. Vice-President:** Senator. Senator, again, treating with the Office of the DPP, building courts, hiring more judges, we have heard all of these comments and recommendations coming out before.

**Sen. Mark:** Mr. Vice-President, before you just—

**Mr. Vice-President:** Sen. Mark! Again, Sen. Hosein, we have heard these points before. It is a late stage of the debate and I am indicating that it is becoming

tedious repetition. If you have novel points at this juncture, you are invited to bring them forward, but there is no need to repeat the comments that have gone before by numerous Senators. Continue.

**Sen. S. Hosein:** Well, Mr. Vice-President, most of the points have been covered by my colleagues, and if this is the manner in which we will conduct the debate, then I can say that, well, I have nothing further to add to this debate. Thank you.  
[*Desk thumping*]

**Sen. Wade Mark:** Yes, thank you very much, Mr. Vice-President. I rise to make my contribution on this Bill to make jurisdictions for criminal matters exercisable in a Division of the High Court to be known as the “Criminal Division” and to make jurisdiction for criminal and traffic matters exercisable in a division of the Summary Courts to be known as the District Criminal and Traffic Courts.

Mr. Vice-President, I think it is important, as I begin my contribution, for the Attorney General to come very, very clean in this debate. We want the Attorney General to tell this Parliament what is the real objective of this legislation, because we have not been told so far what is the real purpose of this legislation. And we want to ask him whether this legislation is in any way connected with the Piarco matter. We would like, when he is summarizing, when he is addressing this honourable House, to let us know if there is a link between this piece of legislation that is before us this evening and the resignation of a magistrate. [*Crosstalk*]

No, you cannot take us for granted here. Do not take us for granted. [*Desk thumping*] Do not feel that you can come here and introduce legislation and not— We are drilling down. We are drilling down into the legislation to fund out— [*Crosstalk*]

**Hon. Al-Rawi:** Mr. Vice-President, Standing Order 46(4), 46(6), 46(10), Mr. Vice-President.

**Sen. W. Mark:** What is the purpose—[*Crosstalk*]

[*Mr. Vice-President rises*]

**Sen. W. Mark:** Well, “yuh famous fuh dat”.

**Hon. Al-Rawi:** And sub judice. “Nah, nah, nah.” Standing Order 46(4), again 46(6). I am not taking that from you. [*Crosstalk*]

**Mr. Vice-President:** Sen. Mark, please. I am on my feet. Attorney General, I am on my feet as well. Sen. Mark, just be mindful that you have just started your contribution and I am listening to see exactly where you are going, but just be mindful of the point of orders raised as you continue. Leader of Government Business, Procedural Motion.

### PROCEDURAL MOTION

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Mr. Vice-President, thank you very much. In accordance with Standing Order 14(5), I beg to move that this Senate continues to sit until the completion of the business at hand. For clarity, this means the completion of this Bill through all its stages and the two Motions on the Adjournment.

*Question put and agreed to.*

### CRIMINAL DIVISION AND DISTRICT CRIMINAL AND TRAFFIC COURTS BILL, 2018

**Sen. W. Mark:** Yes, Mr. Vice-President. So, Mr. Vice-President, as I said, you know the Chinese have a saying: those who can see before others are brilliant and those who can know before others constitute geniuses. Let me tell you here this evening, hon. Mr. Vice-President, we have drilled down and we have seen beyond

the ordinary and we know exactly what this is about. So, Mr. Vice-President, may I invite you to join me.

When we deal with Part IV of this legislation, Mr. Vice-President, we want to determine what is the role of the Public Service Commission in Part IV of this legislation. Because, Mr. Vice-President, I want you to join me to appreciate and understand the dangerous waters that we are treading because of what the Attorney General has brought to this Parliament. The Attorney General is seeking to institute layers after layers of bureaucracy within the administration of justice. But do you know what is most significant, Mr. Vice-President, in this journey of the Attorney General, through you? It is that there is a clear effort in clause 19(1) to undermine and to erode the independence of the Public Service Commission. [*Desk thumping*] That is what the Attorney General is attempting. The moment the Attorney General introduced in this Bill or, Mr. Vice-President, we saw it with the DNA. It is the same approach the Attorney General took, and before we knew it a custodian was employed on contract by the Attorney General.

So the independence of that office that was supposed to be established in accordance with the policy and the need for impartiality was undermined completely and here it is, Mr. Vice-President, [*Desk thumping*] here it is again in this piece of legislation. You had a provision that says, Mr. Vice-President, that the deputy court executive administrator may either be a public officer. He may either be a public officer—but you know what?—or he could be employed on contract.

So what is happening, Mr. Vice-President, the Government of the Republic of Trinidad and Tobago is circling and trampling and influencing at the same time. Mr. Vice-President, you might not be aware, but I told you a short while ago, those

of us who have eyes and who can see before others are brilliant, you know. And I am saying to this honourable House this evening that what the Government is attempting to do is to infiltrate and undermine, in a very subtle way, if you cannot see clearly, institutions of the State. So you have the Public Service Commission being undermined in this piece of legislation. You have the Judicial and Legal Service Commission being undermined in this piece of legislation. And, Mr. Vice-President, if you are not aware, the Government has already infiltrated the Elections and Boundaries Commission, if you are not aware of it. [*Crosstalk*] No, I am talking. I am dealing with my contribution.

**Mr. Vice-President:** Your contribution, Sen. Mark, is taking on a very particular twist, in relation to imputation, and the suggestion that there is infiltration in various institutions.

**Sen. W. Mark:** Yes, I have the right to say that.

**Mr. Vice-President:** Just try—

**Sen. W. Mark:** That is my freedom.

**Hon. Senator:** You are challenging him or what?

**Sen. W. Mark:** Of course. I have freedom of speech.

**Hon. Senator:** You are disrespectful to the Chair.

**Sen. W. Mark:** No, I am not disrespecting.

**Sen. Gopee-Scoon:** You are. You have. You are.

**Sen. W. Mark:** I withdraw it. No disrespect meant, Sir.

**Mr. Vice-President:** When I have to stand on my legs and wait for silence in the Chamber, every time you respond to a ruling and I have to wait, it is not my time that is running, it is yours. You do not get injury time. Be mindful of that. I am making a ruling, and I have indicated that the comments are taking on a spin of

imputation. Move forward in your contribution at this point.

**Sen. W. Mark:** I want to indicate I am moving forward. I am making no implications or imputations. I am saying that—

**Mr. Vice-President:** Sen. Mark. Sen. Mark, take a seat. Take a seat. Take a seat. I have already indicated that every time I have to raise to my feet to re-respond on a ruling, it is your time that is running, not mine. So it is your choice. You could continue to respond and we could engage in a debate, but your contribution would end very shortly.

**Sen. W. Mark:** Well, I think I have—

**Mr. Vice-President:** Sit down now! [*Sen. Mark continues to stand*] Sit! Sit! Sit! Sit! Sen. Mark, your contribution has ended. Next speaker. [*Desk thumping*] Attorney General.

**The Attorney General (Hon. Faris Al-Rawi):** Thank you, Mr. Deputy Speaker. I rise to hopefully respond to the contributions raised by my learned colleagues. It is imperative, I think, that we answer issues from multiple levels. Firstly, from a philosophical level and then secondly from a granular level.

I wish to recognize and congratulate Sen. Shaikh on her maiden contribution. It is very refreshing to see young blood in the Senate, and I offer her a hearty congratulation at her maiden contribution.

Mr. Vice-President, we have asked ourselves repeatedly—[*Crosstalk*]

**Mr. Vice-President:** Hold on, Attorney General. Sen. Hosein, please leave the Chamber, now.

**Sen. S. Hosein:** Mr. Vice-President.

**Mr. Vice-President:** I heard your comment. Leave the Chamber now.

**Sen. S. Hosein:** Mr. Vice-President, may I ask what Standing Order?

**Mr. Vice-President:** Until I tell you to return, Sen. Hosein, exit this Chamber!

**Sen. Mark:** Which Standing Order, Sir?

**Mr. Vice-President:** Sen. Hosein, exit this Chamber until I ask you to return. You can return in approximately 15 minutes. Do so now, please?

**Sen. Mark:** This is a dictatorship?

**Mr. Vice-President:** Sen. Mark, you can also exit this Chamber. Do so. You can return in 15 minutes. Thank you, please.

**Sen. Mark:** This is a dictatorship?

**Mr. Vice-President:** Sen. Mark, exit the Chamber. You can return in 15 minutes.

**Sen. Mark:** You are a new dictator here. We will move a vote of no confidence in you.

**Mr. Vice-President:** Attorney General, continue.

**Hon. F. Al-Rawi:** Thank you, Mr. Vice-President. [*Desk thumping*] Mr. Vice-President, the Criminal Division and District Criminal and Traffic Courts Bill, 2018 is not the panacea for crime. It is not the answer to all the ills in society. It was never trumpeted that that should be the case. [*Crosstalk*]

**Mr. Vice-President:** Attorney General. Sen. Obika, you can also exit the Chamber too and it will continue like this for the rest of the evening. I will not tolerate these comments. I can hear them at this Chair. As a matter of fact, as it is right now, I am invoking Standing Order 53 in relation to silence in this Chamber. When the Attorney General is making his contribution, no one will speak. Attorney General, continue.

**Hon. F. Al-Rawi:** Thank you, Mr. Vice-President. In piloting this Bill, it was specifically posited that the Criminal Division was set to achieve a few specific goals. I thank Sen. Rambharat for so clearly identifying what the objectives are. And they are, of course, to flatten the administrative structure. They are to model

and continue the precedent of the Family and Children Division Bill. They are to cause a smoother operation of the administration inside of the structures that prevail in the Judiciary, and they are very importantly to quicken the pace of justice.

This Bill is squarely rooted in addressing the administration of the court structure, the administration of the court structure. It is also intended to treat with the rubric of jurisdiction between the High Court and the Magistracy. It is also intended to treat with the formalization of something which has worked well.

This Bill is not very long. It has five Parts, 25 clauses. But there has been a great deal of misunderstanding on the record. Permit me to start most importantly with the very excellent contribution of my learned colleague, Sen. Chote. Today is a day that I disagree with some of the parts of Sen. Chote's contribution. I hope to be able to clarify some of the very sharp positions put forward by my learned colleague. Certainly, Sen. Chote did not put words in her mouth when speaking with this. She referred to, specifically, that we certainly do not need ambiguity or the lack of conscientiousness, the fracturing of this legislation from other pieces of legislation, the inconsistency within her view, the judges' function under the Constitution, to add to that pool we are already struggling with.

I do not take Senator's words to be any criticism of me, I never do. Sen. Chote always brings very excellent contributions. But I value her contribution and I am compelled to answer it as best as I can, because I respect the function that she brings to this Parliament with her experience, long experience and very well renowned experience in the criminal arena. So I have not taken it in any negative position but there are some very strong points raised by my learned colleague.

Sen. Chote raised the issue that we were somehow going to model the

constitutionality or fringe the operation between the various laws that are articulating around this Bill. Specifically my learned colleague raised the Constitution. Specifically my learned colleague raised the Supreme Court of Judicature Act. And my learned colleague raised as well the Criminal Procedure Act, as is also equally important to be factored inside of here.

But my learned colleague, in addressing the Constitution, did not speak to what specifically in the Constitution was offensive. In looking at Chapter 7 of the Constitution and beginning at section 99 of the Constitution, the Constitution being the supreme law of Trinidad, of course, we note that we have the establishment of the Supreme Court. Section 99 says:

“There shall be a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice (hereinafter referred to as ‘the High Court’) and a Court of Appeal with such jurisdiction and powers as are conferred on those Courts respectively by this Constitution or any other law.”

That is section 99.

When we look next to the very important articulating laws, which are the Supreme Court of Judicature Act, as well as the Criminal Procedure Act, it is important to note it as follows: the Supreme Court of Judicature Act is very clear in its operation. That is Chap. 4:01. It is an Act No. 12 of 1962, the year in which we sought our independence. That Act treats with, in its many sections, the very important positions of jurisdiction and law; jurisdiction of the High Court, the Constitution of the Supreme Court, qualifications of judges, jurisdiction of the Court of Appeal, criminal matters of appeal from the High Court, civil appeals from the High Court; very importantly under Part IIIA, masters of the High Court,

appeals by the Director of Public Prosecutions under Part IIIB, general provisions. We then treat with sittings of the Supreme Court in sections 73 to 76. And then we deal with the rules of court, importantly in sections 77, 78 and 79 of the Supreme Court of Judicature Act.

Now, I raise that in answer to the clause that Sen. Chote pointed out and that is, of course, clauses 4 and 5, sorry, and Sen. Rambharat referenced them as well. Clause 4 of the Bill says:

“There shall be a Criminal Division of the High Court which shall comprise a court known as ‘the Criminal Court’.

(5) On the commencement of this Act, authority and jurisdiction in all criminal matters exercisable by the High Court or a Court of summary jurisdiction shall be exercisable by the Criminal Court.”

I myself see no ambiguity here and I would say why. First of all, constitutionally in section 99 of the Constitution, there is no traversing of any boundaries by establishing a division of the court in this fashion. What clause 5 does is to say jurisdiction in all criminal matters exercisable by the High Court or the Summary Court shall be exercisable by the Criminal Court. In other words, clauses 4 and 5 are read together. Clause 4 says the Division of the High Court is to be known as the Criminal Court and that that High Court in clause 5 can treat with both summary and High Court matters, and there is no confusion from that perspective for me.

But when I look to the Supreme Court of Judicature Act, and I look in particular to the jurisdiction issues, because we then went on to look at what the jurisdiction of the master is. And several speakers referred to this. I want to point out specifically the provisions of jurisdiction, as is defined in Chap. 4:01, the

Supreme Court of Judicature Act, with respect to masters of the High Court. Section 65A of the Supreme Court of Judicature Act says:

- “(1) There shall be attached to the High Court not less than two Masters who shall respectively exercise such authority and jurisdiction of a Judge in Chambers as may from time to time be assigned to a Master by Rules of Court.
- (2) The Masters shall, save as this Act or Rules of Court may otherwise expressly provide, have in all respects equal power, authority and jurisdiction...”

—et cetera. Then it goes on to qualifications. There are to be seven years at least. Clause 65B:

- “(1) Where under this Act a Master has jurisdiction in relation to any matter, then, subject to this Act,”—and, of course, that is to be read as including the rules—“he shall have and may exercise in relation to that matter all the powers of the Court or of a Judge of the High Court sitting in Chambers...”

So that is the Supreme Court of Judicature Act. So I have looked at the Constitution. I cannot see the interference. I have looked at the Supreme Court of Judicature Act. I cannot see the interference.

I turn now to the Criminal Procedure Act. So let us look at the Criminal Procedure Act. The Criminal Procedure Act is Chap. 12:02. And in particular, I note that the criminal procedure sets out in detail in Chap. 12:02 place and time and mode of trial, proceedings, preliminary trial, indictments, attendances of witnesses, expenses of witnesses, proceedings at trial, procedure on committal, sentence to be passed on expectant mothers, trial and verdict, arraignment, pardon,

evidence, miscellaneous.

**8.00 p.m.**

And it does specifically articulate with this law, and it does also provide for the role and functionality of the DPP, as does the supreme law under section 90 of the Constitution as well. But very importantly, the section 77 of the Criminal Procedure Act must be factored. It says this:

“(1) The Rules Committee of the Supreme Court established by the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make Rules as they see fit for the better carrying into effect the objects of this Act and in particular to make Rules varying or annulling the Rules contained in the First Schedule and to make further Rules...”—et cetera.

So, the Supreme Court of Judicature Act and the Criminal Procedure Act both allow for Rules of Court to be made. What does the Supreme Court of Judicature Act say with respect to rules? The Supreme Court of Judicature Act says with respect to rules, again similarly numbered section 77:

“Rules of Court may be made by the Chief Justice”—and so it proceeds. What am I getting at—Sen. Chote said something which was rather startling to me, and which I had cause to go and double check, because I do not take what my learned colleague says likely at all.

Sen. Chote specifically said:

“The only thing that the Criminal Procedure Rules of 2016 permits a master to do is to vet juries, jury selection. So are we setting up a Criminal Division of the High Court to allow masters to vet juries?”

That is what my learned colleague said.

I then went immediately, Mr. Vice-President, to the Rules of Court, and I want to point out, and I will come to this in moment because Sen. Shaikh, I think, misunderstood some of what this Bill is doing, and I will come to that in a moment in her reflections of the Family and Children Division as it relates to this Bill. But let me specifically point to the Rules of Court.

Sen. Chote asked and reflected upon whether these rules had their—whether this Bill had its genesis in the rules, the Criminal Proceedings Rules of 2013, and I want to say, no. That is not the case. This Bill came about on the back of the 2016 Rules, and the 2016 Criminal Procedure Rules were brought into law, signed by all the relevant persons on the 6<sup>th</sup> of April, 2016. And Sen. Chote was correct that the 2016 Rules did not provide with the functionality of masters. But very importantly and contrary to what my learned colleague has said, the Criminal Procedure Rules were amended and there is the Criminal Procedure Amendment Rules, 2018, which was brought into law on the 27<sup>th</sup> of February, 2018. And here is what it says:

“(2) These rules are amended by inserting after rule 2, the following rule; ‘Powers, authority and jurisdiction of Masters’.

2A Subject to the provisions of this rule, a Master of the High Court shall have power to transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a judge except in respect of the following:”—  
one—

- (a) “proceedings for the grant of an injunction...
- (b) applications for judicial review or an application for ...*habeas corpus*;
- (c) application for order of committal in civil proceedings;

- (d) appeals from Registrars;
- (e) applications under section 34 of the Supreme Court of Judicature Act...for leave to institute legal proceedings;
- (f) such business, authority and jurisdiction of the Chief Justice may from time to time direct or be transacted or exercised by a Judge.”

So it is in not that a master of the court is limited only to—yes please.

**Sen. Chote SC:** Thank you for allowing me to ask: This is a gazetted amendment?

**Hon. F. Al-Rawi:** Yes.

**Sen. Chote SC:** I do not recall you referring to the gazetted number.

**Hon. F. Al-Rawi:** Sure, I will give it to you now.

**Sen. Chote SC:** Thank you.

**Hon. F. Al-Rawi:** So the gazetted number is—and permit me to just pull it up for you.

*[Hon. Al-Rawi checks his phone]*

It is Legal Notice No. 20 of 2018, published as per the date I give. So that is since February. We are now in June. It is not correct to say, and I am sure my learned colleague just was not aware of it, but I wanted to clarify the position. It is not that a master only treats with dealing with juries. That is not the case. That is not the current law. Sometimes *gazettes* slip us. Sometimes we are not aware it. I often find it odd that the *Gazette* makes it law. I understand originally the *Gazettes* were widely read but they are no longer read. So it is easy for it to have been missed.

But, let us come to the Family and Children Division. My learned colleague

Sen. Shaikh—and I congratulated you in your absence on your maiden speech; I welcome you back—was making a very important contribution in saying we were comparing apples with oranges. And my learned colleague was drawing the difference between the Family Court and the Criminal Division, the Criminal Courts and my learned colleague was very correct to say that the Family Court does not treat with deprivation of liberty, or other matters. Family Court can be dealt with in two or three hours, never more than a day, criminal trials, et cetera.

But my learned colleague probably was not aware, and this is again probably because of the fact that the law is so recent. It is 2016, and the official versions are not out in the republished versions of the Laws of Trinidad and Tobago, and there are a lots of consequential amendments. So I do not make any criticism of my learned colleague for not knowing this. But we were not comparing apples and oranges. We are comparing apples and apples, mangoes and mangoes, watermelons and watermelons; and let me say why.

In the Family and Children Division, which is the law that we are replicating today, something which all of the Opposition Bench say they will not support this Bill, because Sen. Ramdeen was very forthright in his usual powerful advocacy to say I can find no example where we are legislating administrative functions. Well the example is right here, Act No. 6 of 2016, the Family and Children Division Act of Parliament by which we amended 19 laws, and which we intend to do a further 13 amendments, in respect of work which we have standing on this Order Paper. But let me put this into context. The Family and Children Courts are two separate courts.

The Family Court was a pilot project started in 2001, and yes, championed by an excellent lady named Master Christie-Anne Morris Alleyne, and I will come

to that in a moment [*Desk thumping*] because I am not taking that one lying down. But the Family Court is total different from the Children Court, and Sen. Shaikh, for your benefit, the Children Court treats with crime. It treats with children charge matters. A children charge matter means any matter in which a child is charged with an offence. Children charge matters include a whole list of matters. But children charge matters also include, for the benefit of my learned colleagues, murder for which there is no bail. Yes please.

**Sen. Chote SC:** Hon. Attorney General, thank you for your indulgence again. But let me see if I can get this clear. Are you saying that the Legal Notice No. 20 means that a master now has the same power which is given to a judge under the Constitution of Trinidad and Tobago?

**Hon. F. Al-Rawi:** I am saying that a master does not deal only with jury matters which was your submission. I am saying that the functions of the master are specified in Legal Notice No. 20, published in February of this year. And therefore your submission, the hon. Senator's submission, sorry Mr. Vice-President, was: Are we legislating only to go back to give masters the functionality there? But in any event, even if that was the case, the point is that we could easily have amended the rules and I am going to show you how it was done.

I am dealing with right now with the Family and Children Division being not the Family Court. The Children Court is totally different, and for the record as at June 08, 2018, the Family Court—the Children Court north has had 185 criminal indictable matters filed there. The Criminal Summary Division of that north court: 125 matters; the Children south court: 58 in the criminal indictable and 18 in the Summary Courts. And on the very first day that they were opened we had children brought there for murder.

So why am I raising that? It is not only to tell Sen. Shaikh that there is a Criminal Court which is not the Family Court. There are apples and oranges there. What I am saying here is that the jurisdiction created in Act No. 6 of 2016, which is the Family and Children Court has the exact formula which is being deprecated today. And let me put it on the record. We are putting into place the same master system. We are putting into court—in place, the same merger of jurisdiction of Magistracy and High Court.

When we look to the provisions of the section 4 of that Act:

“There shall be a Division of the High Court”—et cetera.

“...Division shall comprise”—et cetera.

“The Children Court shall exercise jurisdiction”—listen to this—“in—

(a) all children matters”—

Meaning crime, deprivation of offences, deprivation of liberty, offences, which Sen. Shaikh said did not exist.

So here it is, in the Family and Children Division Act, the court—the Children Court is dealing with crime.

When we get down to section 27:

“When sitting in the Children Court, a Judge or Master shall, in addition to the powers conferred under the Supreme Court of Judicature Act have all the powers exercisable by a Magistrate in children matters”—meaning crime—“under—

(a) ...Summary Courts Act; and

(b) any other written law...”

What does our Bill say? Our Bill says if we look to clause 9:

“A Criminal Court Judge or Criminal Court Master shall, in addition to the

powers conferred under the Supreme Court of Judicature Act, have all the powers exercisable by a Magistrate in criminal matters under—

- (a) the Summary Courts Act, including the power to hear indictable offences summarily; and
- (b) any other written law.”

So what is the difference? What is the difference? We are saying it will not work. I have just pointed out to hundreds of matters existing in the Children Court which are working. They are complaining—Members of the Opposition—that the merger of jurisdiction has never—the possibility of working Sen. Ramdeen staked his career on it to say, “Five years from now I guarantee you nothing will be working”. Well, I guarantee you it is working already. [*Desk thumping*] Hundreds of matters are working already.

**Sen. Ramdeen:** “Allyuh doh know what working means.”

**Hon. R. Al-Rawi:** We do not know what working means. I can tell you. Working means daring to do something different.

On the last occasion, I went through the financial side of this equation. I demonstrated that as a country we had spent billions of dollars on the Administration of Justice. Not hundreds of millions “eh”, billions of dollars on the Administration of Justice. And every year we come to Parliament and we increase the fines, and we raise the jail term, and we apply more pressure. And what has happened in the criminal justice system? How much faster has that made the system work? But yet a government comes now and a government says, you know what, the definition of insanity is doing the same thing over and over and getting a result and then expecting it to be different. So we have come here now, systematically saying let us address the system. Let us deal with plea bargaining.

Let us deal with judge only. One of the Senators, Sen. Obika—I think it was said—or Sen. Shaikh, all of the things that are not in the Bill. You need to treat with the DPP. And you need to treat with the defence attorneys. And you need more judges. Were you paying attention?

In the Family and Children Division Bill, we took the judges up from 36 to 49. In the Bill on the Order Paper, without offending the rule of anticipation, we racked it up again. We have taken masters from four to 16. The DPP's office has received 80 per cent of the budget of the Attorney General. We have increased the staff complement. We have opened one office in Tobago about to be launched—two; one in San Fernando, one in Port of Spain. We have introduced Criminal Procedure Rules. We are about to introduce the public defender system which is the reform of the legal aid authority.

We have opened the Family and Children Division—two courts, 13,000 people interviewed and all of a sudden today Sen. Ramdeen submits, well let me not go to clause 24 of the Bill—the Chief Justice. I will say no more. What does that mean? Since 1962, the Chief Justice has had the power of regulating the courts in this country. But all of a sudden, in 2018, if Sen. Ramdeen says I not going by the Chief Justice, I must be afraid? We must legislate under a veil of ignorance, and the Chief Justice of the Republic of Trinidad and Tobago has the constitutional and lawful authority to manage his courts or her courts.

**Sen. Ramdeen:** That is why he before the Privy Council.

**Hon. F. Al-Rawi:** I do not care where he is. The point is the office holder has that authority, and there are mechanisms in the Constitution to treat with errant matters if that happens. So what am I to do today? Listen to Sen. Ramdeen? Spend money on this, fix that—air-conditioning. Permit me to segue—what time do I end

precisely, Mr. Vice-President?

**Mr. Vice-President:** 8.33 p.m.

**Hon. F. Al-Rawi:** Let me deal with a few matters. Let us not do the criminal division today, because the air-conditioner not working, and the roof in San Fernando—and it sounds good, you know, nice and sensational. Shift system justice and we legislating to shift system this and shift system that. So just so, in Trinidad and Tobago, the roof on the Hall of Justice Magistracy, sorry, in San Fernando, just so in 2018, the roof fell off; “voops!” Just so in 2018, the air-conditioner at the Hall of Justice fall off; “bap!” Stop working. PNM in power! Nothing working! No money for photocopying! No money for this! No money for that! Well you know what, there was no money. Why was there no money? The UNC made a decision to take away 96 per cent of our revenue by a ridiculous decision—[*Desk thumping*]*—on deferred taxation liability from our oil and gas revenue and we had no money. [Crosstalk] But let me get a little bit deeper into this.*

We run three Supreme Courts, 13 Magistrates’ Courts, four out courts, one Family Court, two Children Courts, ten court administrations, two court facilities. That is what we run. In 2011, March 31, 2011, Cabinet Minute No. 1393 of June 22, 2011. Another one Cabinet Minute 3255, and again in November, the UNC wrote to the Judiciary and said “Listen, we building ‘yuh’ Sangre Grande court, Arima court, Trincity court, Chaguanas and Siparia. Doh do any more repairs. We building the courts. We have money.” What we know happened out of that for sure is that they breach the Central Tenders Rules and judicial complexes failed and never launched.

The Judiciary, therefore, never had the opportunity to engage in this plant

and machinery and repair. But it gets worse than that. In the period 2013 to 2015, the Ministry of Public Administration and Communications, Public Management Consultancy Division, applied principles such as job standardization in the areas of facility management, et cetera, in the Judiciary. Let me translate that. Under the UNC Minister they said Public Administration was to change the system of administration for the Judiciary for its plant and machinery.

In accordance with Cabinet Minute, under Mrs. Persad-Bissessar SC, Minute No. 462 of March 05, 2015, despite the Judiciary's disagreement, 207 existing contract positions in the Judiciary, including 12 positions for building maintenance, et cetera, were re-designated. You know what happened? Everybody went home! Let me repeat that—

**Sen. Mark:** “Yuh shouting boy.” [*Crosstalk*]

**Hon. F. Al-Rawi:** Everybody went home. On March 5<sup>th</sup>, the UNC made sure to drive the nail in the coffin by re-designating positions and not allowing for staff retention. So let me translate Sen. Ramdeen's air-conditioning issues and Sen. Ramdeen's roof issues into the following. “Yuh crash the system. Yuh fire the people. Yuh gave them no money. Yuh gave them an instruction not to spend money because you were building complexes, and today blame the PNM!” Because all of that happened in the last six months. All of that rot and decay happened in the last six months according to Sen. Ramdeen. And I have to sit here today and listen to that from my learned colleague, who is better than that. He is capable of a better contribution than that I have seen it of him.

And I take offence, and let me tell you what I take great offence to, Mr. Vice-President. I want to calm myself for this one. I have had the pleasure in the short time that I have occupied this office with the privilege of being able to

assist, in my small way, to the contribution to Trinidad and Tobago to better our society. I have had the pleasure of working with a few people that have blown my mind; people who refuse to go home on a public holiday, people who worked throughout the night, people who slave at the opening on building sites, scaffolding, elevator, positions, et cetera.

Sen. Ramdeen called the name of a lady that I have the greatest respect for, Master Morris Alleyne—you want to say something?

**Sen. Ramdeen:** She “blow” the CCJ too—

**Hon. F. Al-Rawi:** Go ahead say it.

**Sen. Ramdeen:** I am telling you.

**Hon. F. Al-Rawi:** Okay say it. Say it on the record.

**Sen. Ramdeen:** I have no problem saying it. She “blow” the CCJ.

**Hon. F. Al-Rawi:** Right good. So he has deepened the hole now. Let me tell you about this lady, and I am compelled, Mr. Vice-President, and hopefully you will give me the latitude to address defending someone who is not a Member of this House in the manner that I do now.

Master Morris Alleyne participated in multiple functions throughout her career and is a distinguished daughter of this country having served in the Judiciary as a master, having assisted in the reformation under the Civil Proceeding Rules when it came in, having dealt with Mr. Justice de la Bastide as Chief Justice, having dealt with him at the CCJ while he was there as well. But she is, if I can say so, the personification of bringing to life the Children Division, the Family and Children Division, the Children Court, the Family Court, the 19 laws that we have done, the ultimate protocols, the Rules of Court, et cetera.

**Sen. Ramdeen:** But she working for the AG?

**Hon. F. Al-Rawi:** And the point is this, I will not be lacking in generosity to good people in this country. The same way I have the courage to compliment my friends opposite when they make a good contribution, I am bound to defend this lady's reputation. [*Desk thumping*]

And I take umbrage! I am offended at my learned colleague, Sen. Ramdeen's contribution tonight. And you know I have a good relationship with my learned colleague. He is an intelligent man. But tonight I have to draw a line on this issue. Because the hard work that goes into these divisions are there. And for the record the position of Court Executive Administrator was advertised. She applied. She was interviewed. She was selected and she is properly in that position; for the record. So let us not go there.

In relation to this work, we have seen contributions come to tell us— Sen. Chote raised a very important point. What is this criminal procedure about? In terms of special procedure, special procedure courts, she raised clause 24 of the Bill. Permit me to treat with that.

This is what clause 24 says:

- “(1) The Rules Committee established under section 77 of the Supreme Court of Judicature Act may make Rules of Court—
- (a) establishing a special criminal court procedure for the management of case types and offences referred to in subsection (2); and
  - (b) generally for carrying...”—into effect the Act.
- “(2) The Chief Justice...by Practice Direction,”—may—“determine the case types and offences which are appropriate for the special criminal court procedure provided for in Rules of Court made under subsection

(1)(a).”

Most respectfully I do not consider that confusing. Is there precedent for that? Most certainly there is; most certainly there is.

When we look to section 75 of the Supreme Court of Judicature Act there is a special criminal sitting which is permitted. When we look to section 3 of the Supreme Court of Judicature Act, the DPP may exercise certain procedures, as well in the interest of justice. Do I have to say that there is a specialist court? No. Can it be interpreted by the ordinary and plain English language which is the rule of thumb and the rule of procedure by which legislation is interpreted? Yes.

But Sen. Hosein, raised a number of issues. Where is this and where is that and I am not seeing the details of this and I am not seeing the details of that. You do not need to see the details of overriding objective beyond that, starting a prosecution, and bail, and case management, and intake, and preparation, and summary matters. You know why? Because they come in the subsidiary legislation; the rules. Am I talking out of a hat? No. Is there a precedent? Yes.

Children Court Rules 2018 published part of the laws of Trinidad and Tobago, made by the Rules Committee the 27<sup>th</sup> day of February, 2018. Listen to what the Children Court Rules provide; not the Family Court. Citation and commencement and powers; overriding objective; disclosure; case management; trial management; court power to order investigation and appoint children’s probation officers; starting a prosecution; bail; steps in the flow of cases; the intake and case preparation management phases; summary matters: hearing phase; initial hearing; indictable matters: initial hearing–preliminary enquiry phase; indictable matters: trial, hearing phase; maximum sentence indication hearing; the sentencing phase: all matters; the monitoring phase: all matters; evidence and special matters;

applications under the Children Act; applications for all other matters; proceedings under section 57 of the Children Act; Practice Directions and guidelines; forms and documents; term and vacation, transitional.

Over 100 pages of rules. Did the Family and Children Division Act have any of this? No! It did not! I am shouting Sen. Mark to answer you. [*Crosstalk*] Let us deal with the masters under the Children Court. The Masters under the Children Court were dealt with by way of an amendment to the family proceedings rules, and we specifically provided for powers, authority and jurisdiction of matters, just as we did in the criminal proceedings rules. Is it in operation hon. Senators? Yes. Are there hundreds of matters in this case flow system? Yes. Is it inside of the Family and Children Division? No.

Sen. Chote SC asked the question a little earlier, are we going to redo the practice after having trained people, et cetera. I understand the hon. Senator's point. If we need to, so what? So what? Was the Family and Children Division Act passed in 2016? Yes. Did the rules come about in 2018? Yes. Is that the first time we have had a court established, two courts opened, 13,000 people interviewed, nine protocols done, Rules of Court published and amended inside of a two-year period? Yes.

We have made history. It is the first time in the history of this country that has been done in quick succession. [*Desk thumping*] Do I want to apologize for that? No. Do I want to celebrate it? Yes. Is it good enough? No. Is it ever good enough? No. But this Family and Children Division Bill is replicated in structure here. And I want to say why in the couple of minutes I have left. I did not understand until I came into Government the realities of how a government works. Why do we need to have a legislated administrative structure—?

**Sen. Obika:** Mr. Vice-President, I seek your protection. The AG is molesting my ears with his shouting. [*Crosstalk*]

**Hon. F. Al-Rawi:** May I continue?

**Mr. Vice-President:** Sen. Obika, that is not a point of order nor do I think that is in the Standing Orders. Continue, Attorney General.

**Sen. Obika:** That is why I can shout.

**Mr. Vice-President:** Sen. Obika. Sen. Obika. I just got through an instance where I asked Members, once I give a ruling it is not for response. No. That will not be tolerated. Attorney General, continue.

**Hon. F. Al-Rawi:** Thank you. I was saying it was not until I came into Government that I understood how the system which supports a government can frustrate the intention of society. Not just a government. Let me explain what I mean. I just gave the actual example of how the UNC—

**Hon. Senator:** No, no, no.

**Hon. F. Al-Rawi:**—perhaps with good intention. I do not ascribe a bad intention for what they did in 2013, 2014, 2015 or 2011. What they did was they put into effect certain administrative changes in public administration which collapsed the entire judicial management system. Surely nobody could have possibly wanted to do that. Surely the UNC could not have designed itself to frustrate the entire system of justice. I cannot ascribe that to them. It is what happened, however, and it happened because of a reclassification of systems, terms and designations. Why does that happen? Because the Judiciary is a different entity from a Ministry. A judicial support officer who sits next to a judge is very different from a secretary to a Minister. That is just a fact. A building maintenance person is not your average janitor.

**8.30 p.m.**

And when you mess with specialized systems by innocent little changes—

**Mr. Vice-President:** Attorney General, you have five more minutes.

**Hon. F. Al-Rawi:** Thank you, Mr. Vice-President—what happens is you crash the system. The re-designation on an administrative level found first precedent in the Family and Children Division Bill. It finds second precedent in this Bill. It now is brought to life to take care of the risk and the reality that happens in the public service where public administration will decimate unwittingly—sometimes intentionally, I do not know—but will decimate the structures by putting square pegs in round holes.

I can tell you, I intend to invite the Cabinet to approve legislating the positions of the Executive Court Administrator. We are doing the deputy court administrator today, as a DPS, but we are coming to Parliament to do the Executive Court Administrator, because when you leave these systems at risk, somebody with a bright idea, with a stroke of a pen, with a Cabinet that does not factor what it does—I mean, look at it. Can a Cabinet do something which perhaps it did not intend? Section 34 is the perfect example.

Section 34, the entire Parliament sat and said it is good idea to have a break in the system and a reset. The undertaking was given, we will not proclaim the law unless we build all the courts, we put the rules of court, we hire the masters. That was the undertaking on the record. “Voops” one morning, the UNC Cabinet gets up and proclaims section 34, in breach of its obligations. Did it have a consequence? Yes. [*Interruption*] Sen. Hosein, it did not happen? Are you saying it did not happen? Mr. Vice-President, I know my learned colleague, young as he is, does not mean that. The country knows it happened. [*Crosstalk*] I am

raising it not to rub salt in the wounds, I am raising it to demonstrate a point that unless you anchor something down into structures and systems, you are going to have consequences.

In summary, is this Bill with precedent? Yes. Is the jurisdiction with precedent? Yes. Are the positions with precedent? Yes. What is the precedent? The Family and the Children Division Act, the Family Court, the Children Court. Is it the panacea to crime, the answer to everything that is wrong this country? No. It is one of the moving parts in the puzzle, certainly it is. Should we just continue to throw more money at a problem—raise offences, raise fines, raise jail terms and expect a different result? I say not. Will it coincide with another piece of work and packages of work which we have? Yes.

We are treating with the criminal justice system, we are building courts. And for your information, we will be building an entire court at Golden Grove to save \$80 million in transportation costs. We will be opening the Video Remand Centre at Golden Grove which is near completion. We will be operationalizing the electronic monitor system. We have already operationalized the DNA system. And Sen. Mark's ridiculous submission—not "he ridiculous", the submission is ridiculous—that this Government has some subterfuge in hiring by way of contract, a deputy court executive administration officer.

Sen. Mark, the UNC DNA Bill, Administration of Justice Deoxyribonucleic Acid Act, 2011, in section 9 has the same clause, the same section which allows for a contract position. So "it good enough" for the UNC, "it good enough" for then Speaker Mark, but "it not good enough" for this Bill. "It just not good enough." I can take nothing that Sen. Mark says seriously ever. I just cannot. Blow hot, blow cold, approbate, reprobate, it makes no sense.

I ask the hon. Members of this Senate to support this legislation. It is good law in the right direction, time to try something new, and I beg to move. [*Desk thumping*]

*Question put and agreed to. Bill accordingly read a second time.*

**Mr. Vice-President:** Hon. Senators, before I call on the Attorney General to move the procedural for the committal, I would now take a brief break and suspend this House for 10 minutes. This House now stands suspended for 10 minutes. We will return at 8.45 p.m.

**8.35 p.m.:** *Sitting suspended.*

**8.45 p.m.:** *Sitting resumed.*

**Mr. Vice-President:** Attorney General.

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Mr. Chairman:** Hon. Senators, the Bill before us has 25 clauses. The Attorney General has put forward some amendments which I assume have not been circulated just yet. So what we would do is to have this circulated to all Members so that they will have view of it. I will suspend the committee stage for just another 10 minutes to allow that procedure to happen. So this committee will now be suspended for 10 minutes to allow for circulation of the amendments by the hon. Attorney General.

**8.49 p.m.:** *Committee suspended.*

**8.59 p.m.:** *Committee resumed.*

**Mr. Chairman:** Hon. Senators, I take it that the proposed amendments by the hon. Attorney General have been circulated at this point?

**Mr. Al-Rawi:** Yes, Sir.

**Mr. Chairman:** And everybody has a copy, yes?

**Mr. Al-Rawi:** Yes, Sir.

**Mr. Chairman:** So, as indicated, this Bill before us has 25 clauses and one Schedule, so we will begin going through clause by clause.

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

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

**Sen. Mark:** Mr. Chair, we do not understand the need for the proposed changes in the names.

**Mr. Chairman:** Sen. Mark, I have not actually put the question on the amendment put forward by the Attorney General. So what I would now is that the Attorney General has actually put forward amendments to clause 3, so let me just put the question on those amendments, have the pause, and then comments can be taken on that. So the question is that the proposed amendments put forward by the Attorney General on clause 3 now stand part of the Bill. Attorney General, you want to?

**Mr. Al-Rawi:** Mr. Chairman, clause 3 is amended as follows:

- A. Delete the definition of “child”.
- B. Delete the definition of “Children Court”.

Yes Sir, if I may explain. We, in clause 3, have defined “child” and we have also defined “Children Court”. These terms are, in fact, not used in the rest of the Bill. So the only place you would find these is here at clause 3(1), and in those circumstances it is proper to delete them because they are not used elsewhere in the Bill.

**Mr. Chairman:** Sen. Mark, you had comments on the amendments?

**Sen. Mark:** Mr. Chairman—oh, you are dealing with the amendments. Okay. No. It is okay.

**Mr. Chairman:** No comments? Sen. Ramdeen.

**Sen. Ramdeen:** Mr. Chair, I think he is just dealing with the ones put forward by the Attorney General as of now, so no.

**Mr. Chairman:** So, no? Okay. The question is that clause 3 be amended—

**Sen. Mark:** Mr. Chair, that is why we asked for clarification as to whether we were just dealing with those changes that the Attorney General has proposed, because whilst we have not had the chance to circulate any amendments, we would like to suggest the removal, and we think that there is no need for this definition on page 3 of “District Court Judge”. We see no need for that and the Magistracy Registrar and Clerk of the Court. We do not understand what is the rationale for these changes that the Attorney General is proposing.

**Mr. Al-Rawi:** Thank you.

**Mr. Chairman:** Attorney General, you want to take all together?

**Mr. Al-Rawi:** Should it please you? If there are more, should we take them in the round, Mr. Vice-President?

**Mr. Chairman:** Yes, if there are more comments.

**Sen. Ramdeen:** Mr. Vice-President, on the definition section where the legislation proposes to define the “Court Executive Administrator”, I would want to suggest that we move from the comma in the second line, after the words “person who” to the comma after the words “Chief Justice”, because I do not see that there is the need for the Court Executive Administrator which is a post that is defined under the Judicial and Legal Service Act, to have the exercise of those powers that are statutory under that Act to be subject to the Chief Justice and, therefore, I am proposing that in the definition of “Court Executive Administrator”, we take off the words that I have outlined.

**Mr. Chairman:** You have it there, Attorney General?

**Mr. Al-Rawi:** Yes.

**Mr. Chairman:** Is that all the comments? Sen. Hosein.

**Sen. S. Hosein:** Thank you very much, Mr. Chair. AG, I noticed that you would have deleted “child” and “Children Court” but I saw “children matter” remained as a definition. Can you just explain why we retained that also?

**Mr. Al-Rawi:** Sure.

**Mr. Chairman:** Any more comments? Attorney General, do you have any responses?

**Mr. Al-Rawi:** Yes Sir. I thank my learned colleague for the questions. Just to clarify, the first one was by Sen. Mark to remove “District Court Judge” as we have it used by way of terminology into clause 13. We respectfully do not agree that it should be removed. It is a matter of policy. We have created this post in migrating the management plan as we intend to do at the Magistracy to the Judiciary. In this division, we intend to keep the District Court Judge for the purposes of this division.

The Magistracy Registrar and Clerk of the Court is something which is defined by the Judicial and Legal Service Commission itself. It is in the Sixth Schedule and this is the exact terminology in the Sixth Schedule. That was done since 2004. We have that just for reference, in the Supreme Court of Judicature Act. If we look to, if I recall, the Second Schedule. So we have kept the terminology consistent with the Judicial and Legal Service Commission legislation, Chap. 6:01.

The request by Sen. Ramdeen that we look at the proposed amendment, deleting the words “Subject to Chief Justice” in the definition of “Court Executive Administrator”, I would just like to assure my colleagues that Act No. 6 of 2016 which is the Family and Children Division Act, we have exactly the same

definition:

“‘Court Executive Administrator’ means the person who, subject to the Chief Justice, is charged with responsibility for the administration of the Judiciary and heads the Department of Court Administration;”

The term itself is not defined in the Supreme Court of Judicature Act. So the definition is in the Family and Children Division Act, 2016; No. 6 of 2016 and we have replicated the definition here in the proposed Bill.

**Mr. Chairman:** So Members, we have three proposed amendments: amendments by Sen. Mark, amendments by Sen. Ramdeen and amendments by—

**Mr. Al-Rawi:** Sorry, I forgot to answer Sen. Hosein, he asked about “children matter”. It is still used in the context of the Bill. It is in the definition of “traffic violation” which should be—yes, traffic violation includes a children matter.

**Sen. S. Hosein:** Thank you.

**Sen. Mark:** AG, may I ask, even though that is in the other Act, that is Court Executive Administrator being subject to the Chief Justice, does it make it right for us to have it repeat here?

**Mr. Al-Rawi:** Yes.

**Sen. Mark:** What is the justification?

**Mr. Al-Rawi:** We have already agreed, in fact, unanimously. You yourself participating in that definition in the Family and Children Division.

**Sen. Mark:** I know that it is in there, but I am talking about, why place it here?

**Mr. Al-Rawi:** Because for consistency of legislative interpretation.

**Mr. Chairman:** So, hon. Members as I indicated prior, we have three amendments, one moved by the hon. Attorney General, one moved by Sen. Mark and one moved by Sen. Ramdeen. Just for clarification, Sen. Mark, you still want to put that amendment to the question or you want it withdrawn?

**Sen. Mark:** Mr. Chair, I would probably go with the district judge because the other one is in the Judicial—

**Mr. Chairman:** And, Sen. Ramdeen, you will have the question put to your proposed amendment?

**Sen. Ramdeen:** I will Chair, with your leave.

**Mr. Chairman:** So we will start with Sen Mark's proposed amendments.

*Question, on amendment [Sen. W. Mark] put and negatived.*

*Question, on amendment [Sen. G. Ramdeen] put and negatived.*

*Clause 3, as amended, ordered to stand part of the Bill.*

*Clauses 4 and 5 ordered to stand part of the Bill.*

**Mr. Al-Rawi:** Mr. Chair, before we proceed, if you will permit me. I have not seen any amendments circulated other than that which I propose to clause 24. May I enquire if there are any particular clauses so that perhaps we can agree to adopt a few more of the clauses in batches, subject to what my learned colleagues have to contribute?

**Sen. Mark:** Mr. Chairman?

**Mr. Chairman:** Sure, Sen. Mark.

**Sen. Mark:** Even though we have not circulated amendments, we do have some concerns as we go along, so I think how you are going is good. We could do it one by one.

**Mr. Chairman:** So you do have concerns and you would like to take it clause by clause?

**Sen. Mark:** Yes, yes.

**Mr. Chairman:** Hon. Attorney General, he has indicated as such, and I think we will continue doing it clause by clause so that all Members have the opportunity to raise concerns as the clauses come up. So we have just completed clause 5, so we

are on clause 6.

**9.15 p.m.**

*Clause 6.*

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

**Mr. Chairman:** Sen. Hosein.

**Sen. S. Hosein:** Thank you very much, Chair. AG, I looked at 6(1) which deals with the sittings of the Criminal Court, locations and time, giving the Chief Justice the power to determine same. And I also looked at the Criminal Procedure Act, in particular section 3, and I am seeing that it is a duplication of powers or duties of the Chief Justice. Is it necessary that we need to put this here if we have the Criminal Procedure Act?

**Mr. Al-Rawi:** I thank my learned colleague. It is a very sensible enquiry. There are a number of answers to that because you can also look to the Supreme Court of Judicature Act in section 75 where there is another prescription, albeit by the President at this time, and then you can look to the Family and Children Division Act, No. 6 of 2016, which also has a similar provision. Then we could look to the Criminal Procedure Rules and we could look to the Civil Proceedings Rules, which is by way of comparison, not that they apply in the civil route here. The rationale for stating it here is to express the power. The general rule of statutory interpretation is that Acts which come subsequently would, in any event, impliedly repeal or affect Acts which come previously, and in this circumstance, because it is a division set, there is a need to actually state it in express terms.

**Sen. S. Hosein:** Well, AG, now, if we do the implied repeal, would it affect the districts in which the Magistrates' Courts are being placed in now, because that also deals with where the Magistrates' Courts will be—the districts that they will be set up? So if you are saying that we are impliedly repealing the Criminal

Procedure Act, then that can—

**Mr. Al-Rawi:** What I am saying is that given the general rules as to how they go, the fact is that the commonality of all of this, subject to section 3 of the Criminal Procedure Act which allows the DPP, in the interest of justice to do certain things, the commonality is that the Chief Justice is the one that assigns these divisions. So, if one is asking the question as to whether this changes something which is existing law, it does not because it is still the Chief Justice in any body of law that assigns the functionality and sittings of these courts. And section 77 of the Supreme Court of Judicature Act is quite clear that the rules may be promulgated for that purpose.

**Sen. S. Hosein:** Thank you.

**Mr. Chairman:** Any other comments by any other Senators? Sen. Shaikh.

**Sen. Shaikh:** I am looking at clause 6(2), and with regard to telephone specifically, would the hon. Attorney General be willing to delete that part; just telephone? My apologies, through the Chair.

**Mr. Al-Rawi:** No. No. Not at all. Respectfully, Mr. Chairman, again we have lifted from a number of laws, and they are primary and subsidiary which have the very same position. So in the Family and Children Division we have used the same formula. There was a very interesting point raised by one of my colleagues opposite that perhaps, while I recall it, it was said in jest that it would be—to Sen. Hosein—that there would be trial by WhatsApp. That certainly could never be the case because of the Rules of Court and how evidence is treated, et cetera. But the hearings include now case management hearings, and case management hearings, as contemplated by the Criminal Procedure Rules, can be done by vid link and by telephones. In fact—

**Sen. Shaikh:** I have no problems with the video link, it is just the telephone, the

right of the accused to be present.

**Mr. Al-Rawi:** But I was just about to say that in *quia timet* matters telephones can work. But sometimes when the vid link works video but not audio, we use telephone. So if you have been to POS 19 or SF 6, whichever one of the POS 25—POS 26, sorry, where the vid link courts are, sometimes the video works but the phone is the method of communication. So we wanted to include it as it is practised right now. It is the same in the Civil Proceedings Rules in any event, and the Criminal Procedure rules would no doubt be married.

**Sen. Shaikh:** My only concern with that is that it may not be used in the way that you are contemplating.

**Mr. Al-Rawi:** So what is the mischief we are driving at then?

**Sen. Shaikh:** That the right of the accused to be present for his hearing. So that it is not a situation where just attorneys and just other parties—the DPP's office or any other—are there and not the accused.

**Mr. Al-Rawi:** Respectfully, I do not think that an event which is transpiring by telephone would negate the right for an accused to be present. That would always trump the method. So I do not think that the judge would run afoul of that because the rules would, in any event of the law, would, in any event, come to stop that.

**Sen. S. Hosein:** But then—Chair, through you—AG, in what circumstances will we contemplate a judicial officer exercising the powers to use the telephone service?

**Mr. Al-Rawi:** I do not want to sound churlish in this response, but, in such circumstances that it arises. A case management hearing, another position, there are infinite number of circumstances that this can arise.

**Sen. Ramdeen:** The different with the explanation, AG, is that in POS 25 and POS 19 and SF10, those are cases where, under the CPR, the parties in civil

proceedings do not have to be present. Under the criminal procedure, it is a fundamental tenant of criminal law that where you have a criminal trial or any part of a criminal trial the accused has to be present. So the fact that it works for civil proceedings is because under Part 26 of the Civil Proceedings Rules the judge has a discretion to proceed with the matter in the absence of any of the parties there. The rules are different when it comes to criminal proceedings.

**Mr. Al-Rawi:** I cannot see that that truth that you have just put onto the record would ever disturb this. We just simply cannot, by this clause, hold up to the established common law and to our jurisprudence that, well, the law permitted you to have a trial by telephone and that you were not present. I cannot see it as a fundamental right.

**Sen. Ramdeen:** No, it is a fundamental principle of statutory interpretation that where you legislate by legislation over the common law, the common law is eclipsed. That is *Attorney-General v De Keyser's Royal Hotel*. So that it cannot be that you can revert to the common law position if you legislate outside of the common law position.

**Mr. Al-Rawi:** But this is so fundamental a position of the right to be present that I cannot see that any court would say that this would trump that, notwithstanding what you have just said, which is true.

**Mr. Chairman:** If there is no further comments, Sen. Shaikh, are you going to continue on with your proposed amendment on the floor? You going to continue? Put it to the vote?

**Sen. Shaikh:** Yes, please.

**Mr. Chairman:** Okay then. So, hon. Senators, there is a proposed amendment on the floor by Sen. Shaikh. So I will now put the question as it relates to proposed amendment.

*Question, on amendment, [Sen. H. Shaikh] put and negatived.*

*Question put and agreed to.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7.*

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

**Sen. Ramdeen:** Mr. Chair.

**Mr. Chairman:** Sen. Ramdeen.

**Sen. Ramdeen:** Thank you, Mr. Chair. Mr. Chair, I am not privy to what is the position in the High Court now, or the position in the Court of Appeal—the High Court—sorry—but if you are legislating that:

“A Puisne Judge or Master assigned to the Criminal Court under subsection (1) may apply to the Chief Justice for reassignment to any other Court within the High Court.”

I think one of the Senators had raised the point.

First of all, if the Chief Justice is in charge of his court then there ought to be some kind of relationship between him as the chief person in charge of the court and his judges. So I think I can say on the record that the senior judge in the Court of Appeal does the roster and the senior criminal judge does the roster in the High Court. But what is the purpose of legislating that a judge may apply to the Chief Justice for reassignment to any other court within the High Court? Now, if the judge applies to the Chief Justice and he is not reassigned what happens? What is his remedy? Sit down in the court and be dissatisfied with what he is doing? Because this is the High Court we are talking about. So you cannot judicially review the decision of the Chief Justice because it is a superior court of record. It is either the Chief Justice has this power or he does not have the power. I do not understand what is the purpose for giving a puisne judge or a master the power to

ask the Chief Justice to reassign him to any other court within the High Court.

**Mr. Chairman:** Any other comments? Attorney General.

**Mr. Al-Rawi:** Section 10, section 26 of the Family and Children Division Act, No. 6 of 2016, has the exact terminology, both in respect of the Family Court and the Children Court. For consistency we are keeping the divisioning with the same formula and approach. In any event, it is to allow for the expressivity for a judge to have the liberty to do as is prescribed there. So we prefer to keep with the formula as approved unanimously by the entire Parliament, the Senate and the House, in the Family and Children Division.

**Sen. S. Hosein:** Chair, based on the Attorney General's response—so, AG, you propose to leave it, so if the judge then applies for reassignment and he is not reassigned then what recourse does the judge have?

**Mr. Al-Rawi:** Mr. Chair, I am sort of concerned about the esoteric questioning. I mean nothing pejorative by that statement to my learned colleague, Sen. Hosein, whom I have great respect for, but, really and truly, these are matters which we have precedent for, which we have unanimously decided in other laws. It is clear. I mean, we have had a debate on this Bill already. There are no circulated amendments other than that for clause 24. It is unusual for us in these circumstances. We have had weeks and months to prepare for this debate to have no amendments. So, as generous as I would like to be in my reflections on any bit of legislation, I am not quite sure that going into debates on policy decisions are part of the parameters of the Senate at this point.

**Sen. Ramdeen:** Mr. Chair, I take great umbrage at what the Attorney General says, and I have great respect for the Attorney General as well, but I was not part of the Family Division Bill, and nobody, nobody in this Senate in the Opposition or the Government, or the Independent Bench is going to influence my view on

what is lawful or unlawful if I think, because of my professional training as a lawyer, it is not right. I do not care how many precedents it have. That is my job that I go to court every day to do. Something might be a precedent for 100 years. That does not make it right. And the fact that we have done it before, the purpose of having us here is to try and get it right. The fact that we have done it in the Family Division Bill does not make it right at all to any extent, and it is not right to take that attitude towards it. If it is that the Government does not appreciate the input of the Opposition, I have no difficulty with that. They are in Government, let them pass the Bill. Let them pass all 25 one time.

**Mr. Al-Rawi:** That is not the case, Mr. Chair. My friend, Mr. Ramdeen and I, know and respect each other well enough to know that that could never be the case. I am just setting out for the manner in which we treat with it. I would not disagree with the right of any Senator to have a point of view. No one is slave to any previous point of view. The manner in which I addressed that submission a short while ago was driven on the back of, usually we discuss these things when we have a circulated version of an amendment. I do not mean to disrespect my learned colleague, he knows that. If I have, I have cause to retreat from that quickly. But my point is that I think that we are going into a bit of policy consideration again which we have decided already at a different stage there. But I will not hold my learned friends to anything more than that.

**Mr. Chairman:** All right. Well, I think at this point, just to ensure that everyone has an opportunity at this particular stage, going through clause by clause to make any comments, again, not entering into any debate, just keeping the comments relatively short, or any clarification they may seek on a particular clause that is before them. And if they are moving amendments on the floor, then those amendments are put moving forward. So, Attorney General, it is in that context

that I am reluctant to move it in batches of clauses just to allow Members the opportunity to really look at the clauses. And if at this point in time, subject to the fact that there has not been any circulation, if they want to move an amendment, as Sen. Shaikh has just done on the floor, as they are looking at it, at this clause by clause stage, they have an opportunity to do so. So we are on clause 7, and are all comments in relation to clause 7 ended? Right. Okay. So then I will now put the question to clause 7.

*Question put and agreed to.*

*Clause 7 ordered to stand part of the Bill.*

*Clause 8 ordered to stand part of the Bill.*

*Clause 9.*

*Question proposed:* That clause 9 stand part of the Bill.

**Mr. Chairman:** Sen. Mark.

**Sen. Mark:** Mr. Chairman, this power that is being given to the Master, equivalent and exercisable by a magistrate in criminal matters, we find that offensive and we would call for the complete—the removal of this clause, or its complete deletion. We do not support that provision, Mr. Chairman.

**Sen. Ramdeen:** Mr. Chair, I will like to add and support Sen. Mark's proposal of deleting clause 9 for the purposes of the policy that the Government has indicated. And the explanation that has been given by the Attorney General is that we are trying to administratively flatten the administration of justice. And I cannot see how giving a criminal court judge or a criminal court master the power to treat with Summary Court matters—I do not know what is encompassed under part (b), but the power to treat with summary matters, including the power to hear indictable offences summarily, which I assume are offences that are triable either way is going to achieve that purpose.

**Mr. Chairman:** Hon. Attorney General.

**Mr. Al-Rawi:** Again, we have traversed this in the debate quite thoroughly. The Government's policy is as stated in the debate. I remind that section 27 of the Family and Children Division which was supported unanimously and became law as Act No. 6 of 2016 has the exact formula. It is in operation in the Children Court at present for the several hundred matters that are in effect, and we stand by the policy as expressed.

*Question put and agreed to.*

*Clause 9 ordered to stand part of the Bill.*

*Clause 10 ordered to stand part of the Bill.*

*Clause 11.*

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

**Sen. Ramdeen:** Mr. Chair, the fact that we are creating a Criminal Division of the High Court by virtue of clause 4, which encompasses both the master and the judge, as well as the District Court Judge—is that correct, Attorney General?

**Mr. Al-Rawi:** Yes.

**Sen. Ramdeen:** Yeah. Why—

**Mr. Al-Rawi:** Why only the master?

**Sen. Ramdeen:** Yeah.

**Mr. Al-Rawi:** Because the immunity exists under the Supreme Court of Judicature Act.

**Sen. Ramdeen:** For the judge?

**Mr. Al-Rawi:** For the judge, but not for the master.

**Sen. Ramdeen:** But not for the magistrate?

**Mr. Al-Rawi:** Yes. Well, immunity exists for both. Quite oddly, the only person who had no immunity was the master.

**Sen. Ramdeen:** No. The Magistrates Protection Act will give the magistrate a certain degree of protection, but it does not give you the same protection that is afforded to a master and a judge. So if you are going to give the immunity and protection, and you are going to have—first of all, if you are going to have one division of the High Court that is saying this is a Criminal Court Division of the High Court, and then you are going to extend the immunities and privileges to the master who is not covered now, then if the District Court Judge is going to also be part of the Criminal Division it should be that we should cover the magistrate as well as for the simple reason that if you look at the terms of the Magistrates Protection Act, it does not give you the same kind of inherent protection that a High Court judge would have that comes out from the Ramesh Lawrence Maharaj principle.

**Mr. Al-Rawi:** You are correct. There are two things that have caused us not to look at this. There is actually a matter before the courts right now on this very point and I am awaiting that particular decision, and, in any event, we intend very shortly to come back with another piece to shore up the provisions between this. Because that particular challenge concerns a magistrate, and in fact the magistrate, without going into the details of the matter—

**Sen. Ramdeen:** No, I do not expect you to.

**Mr. Al-Rawi:** So we are awaiting that on the first round, and, secondly, we will back-fill as we go ahead. So what we have done is we have just simply maintained the status quo with the Family and Children Division. You are correct that the protection offered to magistrates is not as full as a judge. We have the same situation in the Family and Children Division. It is under litigation right now, but the one creature—

**Mr. Chairman:** Minister, we are hearing you when you are yawning and it is a

little bit distracting.

**Sen. Baptiste-Primus:** I am so sorry, Mr. Chairman.

**Mr. Chairman:** Thank you. Continue, Attorney General.

**Mr. Al-Rawi:** But the one creature who was completely left out was the master for now, but I take your point.

**Sen. Ramdeen:** Can I just ask one question, if it is under litigation now and we have changed it now, would it affect the litigation?

**Mr. Al-Rawi:** Potentially, I do not know if they are going to take that view.

**Sen. Ramdeen:** I did not think that. That is why I am asking.

**Mr. Al-Rawi:** Yeah. But it is under watch right now.

**Mr. Chairman:** That is it?

**Mr. Al-Rawi:** Yes, Sir.

*Question put and agreed to.*

*Clause 11 ordered to stand part of the Bill.*

*Clause 12 ordered to stand part of the Bill.*

*Clause 13.*

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

**Sen. Mark:** We object to this, Sir. We are consistent—

**Mr. Chairman:** Sen. Mark.

**Sen. Mark:** Yes. We believe that this should be removed completely.

**Mr. Chairman:** So are you proposing that clause—

**Sen. Mark:**—a deletion, Sir.

**Mr. Chairman:** Clause 13 be deleted. Okay. Any other comments on this clause? Okay, so I will put the question to the proposed amendment.

*Question, on amendment, [Sen. W. Mark] put and negatived.*

*Question put and agreed to.*

*Clause 13 ordered to stand part of the Bill.*

*Clause 14.*

*Question proposed:* That clause 14 stand part of the Bill.

**Mr. Chairman:** Sen. Mark.

**Sen. Mark:** Mr. Chairman, consistent with our earlier position we called for the removal of the telephone, that particular provision.

**Mr. Chairman:** Again, you are proposing the removal of the word “telephone” on clause 14.

**Sen. Mark:** Yeah.

**Mr. Chairman:** Sen. Shaikh, same thing?

**Sen. Shaikh:** Yes, please.

**Mr. Chairman:** Okay. So I shall put the question to the proposed amendment.

*Question, on amendment, [Sen. W. Mark] put and negatived.*

*Question put and agreed to.*

*Clause 14 ordered to stand part of the Bill.*

*Clause 15.*

*Question proposed:* That clause 15 stand part of the Bill.

**Mr. Chairman:** Sen. Ramdeen.

**Sen. Ramdeen:** Attorney General, I just want to, on an issue of clarification, when you piloted this legislation originally I recall you saying that in addition to substituting the names for the name change that the JP, the Justice of the Peace, as we know it now, and the Clerk of the Court, as we know it now, will now be required to have legal qualifications as being under 111 of the Constitution. They are going to be part of the Judicial and Legal Service. That is applied only to the position of Senior Magistracy Registrar and Clerk of the Court, or to the Magistracy Registrar throughout all of the different districts, and as well as the

Clerk of the Court? I am just asking, I just wanted to be clear on it, because if most of these people who are performing these functions now would not have the legal qualifications to fall within the constitutional requirement of—I think it is 111 or 141, one out of those two, they will have to be removed from that position and persons who meet those requirements will now have to fill those positions?

**Mr. Al-Rawi:** Yes, you are correct. So it is the latter of the first limb. It is that right throughout the registrar functionality will be a JLSC legal qualification position, and the persons who are in post will more than likely be put into the structure there without loss of terms and conditions or benefits, or otherwise.

**Sen. Ramdeen:** I thank you very much.

**Mr. Chairman:** That is it? No more comments on this clause?

*Question put and agreed to.*

*Clause 15 ordered to stand part of the Bill.*

*Clause 16 ordered to stand part of the Bill.*

*Clause 17.*

*Question proposed:* That clause 17 stand part of the Bill.

**Sen. Mark:** Mr. Chairman.

**Mr. Chairman:** Sen. Mark.

**Sen. Mark:** Attorney General, this should not be in the job description of this person rather than being legislation? That sounds to us like a job description and to have that in primary legislation is unheard of.

**Mr. Chairman:** Attorney General.

**Sen. Mark:** So I am wondering why are we putting this here?

**Mr. Al-Rawi:** Again, we borrow precedent from the Family and Children Division. The intention here is specifically because we will be having a migration from the unqualified Clerk of the Peace position into a qualified position. It is to

specify what the “Registrar” is going to be doing. For instance, it is necessary to speak to being the keeper of records in the district because we would want to vest responsibility for things like being the Record Manager specifically into the law so that there is positive obligation. It is no different from prescribing what a custodian of a DNA bank ought to be doing. So it is not uncommon in legislation of a primary type to prescribe in the manner that we have.

**Sen. Mark:** So, Mr. Chairman, again, these people would be given a job description at some point in time when they fill the post, and I find this totally unnecessary in primary legislation to have the duties and responsibilities of an officer of the Judiciary being outlined. It is unheard of. As a former Minister of Public Administration, that is a no-no. I have never seen that in my life.

*Question put and agreed to.*

*Clause 17 ordered to stand part of the Bill.*

*Clause 18.*

*Question proposed:* That clause 18 stand part of the Bill.

**Mr. Chairman:** Sen. Shaikh.

**Sen. Shaikh:** Thank you. Mr. Chair, 18(2) (i). I propose that the “Witness Support Unit” be deleted.

**Mr. Chairman:** Yes. Could just repeat a little louder so the *Hansard* recorders could—

**Sen. Shaikh:** Yes, please. I propose, clause 18(2) (i), that “Witness Support Unit” be deleted. As indicated before, Mr. Chair, the Witness Support Unit is not something that is contemplated to be dealt with in the court because witnesses are supposed to be kept apart from the runnings of the court, please.

**9.45 p.m.**

**Mr. Chairman:** Attorney General, any response?

**Sen. Mark:** Mr. Chairman—

**Mr. Chairman:** You have something to add, Sen. Mark?

**Sen. Mark:** Yes, Mr. Chair. How are these positions going to be filled and by whom?—these various units. Who is going to fill—?

**Mr. Chairman:** Your question?

**Sen. Mark:** Yeah. I am asking the Attorney General for clarification. Are these posts or units going to be part of the public service? I am not too clear, so I am asking the Attorney General through your good self.

**Mr. Chairman:** Attorney General.

**Mr. Al-Rawi:** Do you want me to deal with Sen. Shaikh's submission first?

**Mr. Chairman:** Yes, please.

**Mr. Al-Rawi:** Thank you, Sir. We do not propose that the inclusion of a witness support unit means that one is going to interfere with the business of witnesses. The court, the judicial mind is not involved in the administration of that aspect; that is an ancillary service. It is not uncommon in the treatment of children, in the treatment of any other aspect that that would be the case. Could it not be said that bail management may at some point interact with somebody who is a participant in the Judiciary system?

So for clarification, we are not intending that any judicial mind be involved in witness support in that fashion. To have the unit is to lend itself to the management for a particularly sensitive area with the prescriptions of caution and judicial propriety.

With respect to how these persons should be hired, that is the standard practice of the institution. If it is on the JLSC side, it will be done by the JLSC. If it is on the public admin side, it will be done on the public admin side, and that is the standing practice of the public service and the administration of justice and has

been since 1962. So the answer to my learned colleague Sen. Mark, it is the same as from 1962 until today's date.

**Mr. Chairman:** Any further comments? Sen. Shaikh.

**Sen. Shaikh:** Yes, please. Just for a point of clarification. The witness support unit is meant to do what exactly, to support what in general? How is that going to be—you are saying that the judicial mind is going to be separate and apart, but exactly how do you, how is it envisioned to be run, to deal with what?

**Mr. Al-Rawi:** Sure. Well, first of all it is certainly not going to be the justice protection programme which stands alone under the Justice Protection Act, so there is no confluence of the two.

**Sen. Shaikh:** Right.

**Mr. Al-Rawi:** Secondly, it is intended to manage one of the real problems that we have which is the presence and finding and turning up of witnesses. A lot of trials collapse because witnesses cannot be found, there is no registry of who they are, of how they are managed, et cetera. That is one of the complaints inside of the judicial system.

The intention behind this was borrowed by the Judiciary's management structure which went to the North American court experience, in particular I forget the name of the entity right now, but it is the North Carolina court system that managed this sort of system, and it came through the auspices of the JEI, the Judicial Education Institute, and the work which we have been doing with the North American court structure which recommended that we have these particular divisions. The drug treatment court unit, as you know is something which we introduced. We have peer resolution if you look to the Family and Children Division aspects, so we have created a number of supporting structures, so that in court we are not met with the statement, "Well, X cannot be found or we do not

have the records for this”, et cetera. So it is meant to administer the things which can cause a trial to just run off track.

**Sen. Shaikh:** While I appreciate that, the reality is that there are provisions and applications that could be made before the court right now if a witness cannot be found. If a witness cannot be found, it is for the police to show what they have done. You are not going to call a court administrator to come and say what they were doing because they are not the persons to have contact with those witnesses. So in putting this in, you are adding something completely different that the Act has not contemplated.

**Mr. Al-Rawi:** So, if I can put it this way—and forgive me for putting it this way.

**Sen. Shaikh:** Sure.

**Mr. Al-Rawi:** I will put it the way my kids often put it to me: And how is that working out?

**Sen. Shaikh:** It is not a matter of how it is working out.

**Mr. Al-Rawi:** No. I started off with that. The thing is that the system as it is currently organized, yes, you are perfectly correct, Sen. Shaikh, that there are applications that can be made, et cetera, but there has not been a repository and management system inside of the criminal justice end. We have not had a computerized system, we do not have record-keeping in order, we do not have a unified registry, we have not had on-time or capable transcription services, so there has been a lot of systemic failure.

Borrowing from the North American advice that came as best in practice, the intention was to create these special units. You are correct that one ought to be careful in how we manage the interaction with witnesses, and obviously that would have to be managed in keeping with best practice.

For instance, I can tell you that this type of unit in the children’s arena as it

is functioning right now does not use actual names, there are codes that are used. So, you will not find the name “Faris Al-Rawi”, you will find code “XYZ43PR” which has a unique code identifier which then blocks any access to the position. So it is very carefully managed, and we borrowed that from the United Nations, we borrowed it from the United States, we borrowed it from the North American system where they have actually made sure that the access to information is very carefully managed in these circumstances. So there are protocols that we put in place to treat with this in the Family and Children Division side, and then there were IT solutions that we put in place for this, and then support structures. So, it is actually in full operation on the Children Court side of the equation right now.

**Sen. Shaikh:** One last thing.

**Mr. Al-Rawi:** Sure.

**Sen. Shaikh:** If it is this is put in and it is contemplated to work as you have just put it, is it now going to be—let me put it this way: What is going to prevent an attorney from subpoenaing any of these persons who are dealing with the witnesses?

**Mr. Al-Rawi:** Nothing, I would imagine—the same way you could subpoena the registrar into court.

**Sen. Shaikh:** But that court is a whole other layer of problems.

**Mr. Al-Rawi:** It happens.

**Sen. Shaikh:** No. I agree, it happens, but that is what I am trying to point out, that this could be avoided because they are not the persons who should interact with the witnesses, because now you are going to have two layers. Did the court do what they were supposed to do which they are doing separate and apart, and are the police doing what they are supposed to do? So that is my concern with this.

**Mr. Al-Rawi:** I do understand your concern, and I deeply appreciate you taking

the time to express it, but we have been recommended from a policy and prescription level to adopt this structure, and we have actually put it into operation already in another division, but I take your caution.

**Mr. Chairman:** Just for clarification, before I invite anyone else, Sen. Shaikh, are you going to continue with your proposed amendment?

**Sen. Shaikh:** Yes, please.

**Mr. Chairman:** Thank you. So, I shall now put the proposed amendment by Sen. Shaikh to the question.

*Question, on amendment, [Sen. H. Shaikh] put and negatived.*

**Mr. Chairman:** I shall now pose the question on the original clause.

*Question put and agreed to.*

*Clause 18 ordered to stand part of the Bill.*

*Clause 19.*

*Question proposed: Than clause 19 stand part of the Bill.*

**Sen. Mark:** Mr. Chairman—

**Mr. Chairman:** Sen. Mark.

**Sen. Mark:**—can I? Mr. Chairman, I do not understand what is being attempted in clause 19. We have, Mr. Chairman, where the court administrator is appointed by the JLSC, and yet still, the Deputy Court Executive Director is being appointed not by the JLSC, but on contract. Now, this person is carrying out public functions, where is the protection for this person? What kind of disciplinary action if that person were to engage—and you have to take disciplinary actions against that person? Who will take disciplinary action against the person? The person is not employed, Mr. Chair, neither by the JLSC nor the Public Service Commission. So this is clearly a breach, there is no protection.

**Mr. Chairman:** Well, Sen. Mark, are you asking something for clarification or

are you making a statement?

**Sen. Mark:** Well, I am making a statement, but I am seeking clarification at the same time.

**Mr. Chairman:** Okay. Attorney General, do you have any comments on clarification being sought?

**Sen. Mark:** Yeah. So, Mr. Chairman, we are saying that this particular person must be appointed, that is the Deputy Court Executive Administrator, by the JLSC and not by the court administrator, maybe that is out.

**Mr. Chairman:** Okay. Attorney General.

**Mr. Al-Rawi:** If you will allow me a moment just to look at something. I want to look at another piece of law just to find the comparator.

So, Mr. Chairman, I took the opportunity to pull up the DNA legislation, Chap. 5:34, section 9 in particular which has the very same position of allowing for contract employment. Off the top of my head I am also aware that a number of other entities, for instance, all of the RHAs, the SASC, all of these entities have a similar position.

We also have inside of the public service if I look to the Attorney General's office or any one of the positions, we have contract officers right across the position. If I look to the Solicitor General's Department I have the same situation, officers who are appointed JLSC end, and then contract officers.

Let us look to the DPP's Office; we have JLSC appointees, we have contract appointees. So, this is something that has been a feature of the laws and structures of Trinidad and Tobago for a very long time. In fact, Sen. Mark reminded us a little while ago that he was a past Minister of Public Administration, so he would have spent five years administering the same system, so this is not something that is new, and it certainly does have precedent, both structurally, factually and

legislatively.

**Sen. Mark:** Mr. Chairman, may I just indulge you? Mr. Chairman, I respectfully disagree with my colleague. The Chief Executive Administrator of the court or the court administrator is appointed by the JLSC, so that person's position is protected. But here it is you have a deputy—

**Mr. Al-Rawi:** On contract.

**Sen. Mark:**—being appointed on contract. That person is supposed to be appointed by the JLSC and it is totally wrong for us. This is a situation, Mr. Chairman, where you are talking about the administration of justice. This is not what the Attorney General is talking about, something happening at NHA or whatever, this is justice.

**Mr. Al-Rawi:** So what about the DPP's office, and what about the SG's office and the Chief State Solicitor's office?—all of which are involved in the administration of justice.

**Sen. Mark:** Mr. Chairman, I find the Attorney General's argument very weak in the context, that is why I am wondering if there is some other agenda?

**Mr. Al-Rawi:** Mr. Chair—

**Mr. Chairman:** Okay. Senator, hold on, hold on, one second.

**Mr. Al-Rawi:**—I will not be accepting that kind of commentary from Sen. Mark. I do not, I will not accept it.

**Mr. Chairman:** That is why I am going to end the commentary at this point, I think Senator [*Interruption*]*—one second, Sen. Ramdeen. I think Sen. Mark has made his point, the Attorney General has answered. Sen. Ramdeen, do you have anything new to add?*

**Sen. Ramdeen:** I just want to ask a question.

**Mr. Chairman:** Sure.

**Sen. Ramdeen:** In relation to the example of the DPP, is it—I do not know, that is why I am asking. Is it that the Deputy DPP is appointed on contract?

**Mr. Al-Rawi:** So let us ask Sen. Hosein there. Were you on contract or JLSC?

**Sen. Ramdeen:** No. No. No.

**Mr. Al-Rawi:** No, just as an example.

**Sen. S. Hosein:** I am JLSC appointed.

**Mr. Al-Rawi:** Right. So he was an example of a JLSC backed by the commission, et cetera, and I understand the mischief that Sen. Mark is pointing to. So the way that this clause is structured, your deputy is a public officer or employed on contract for a term up to five years, so there is a limited term. Is there a need to put an alternative? Yes, because the JLSC sometimes takes a very long time to fill a position. Do we need to put in something otherwise? Well, yes. Is it correct for this person to appoint? Yes, because this is the person charged with the administration of the system inside of there. But the law is always going to be read as preferred—well, the option ought to always be preferred that it is a JLSC appointment. Can I prescribe for it? The mischief that Sen. Mark is pointing to is, what backs the complaint side? If this person is dismissed, what is the protection to this officer being there? And what I answered Sen. Mark, by way of the examples that I pointed to, was that this is the same argument that exists right across the public service in Trinidad and Tobago where we do not have a Public Service Commission or a Judicial and Legal Service Commission affecting nearly three-quarter of the public service of Trinidad and Tobago.

**Sen. Ramdeen:** Well, it is a bit different because—

**Mr. Al-Rawi:** But it is true.

**Sen. Ramdeen:** No. But it is a bit different because the way our public service is set up, the reason why you have a Civil Service Act is because you go through a

particular stream. The public service operates on a stream.

**Mr. Al-Rawi:** May I also point out that the Deputy Executive Court Administrator is not necessarily a lawyer, and the JLSC can only appoint lawyers.

**Sen. Ramdeen:** So this person is not going to be a lawyer?

**Mr. Al-Rawi:** It may be, there is no prescription that the Deputy Court Executive Administrator which is an entity who is managing human resource or other aspects, has to be a lawyer.

**Sen. Ramdeen:** But that makes it even more dangerous.

**Mr. Al-Rawi:** No. It does not.

**Sen. Ramdeen:** Maybe this could be a farmer. The deputy court administrator could be a farmer.

**Mr. Al-Rawi:** And what if the farmer has—like, for instance, the Prime Minister of this country is a farmer, a licenced one and a geologist [*Laughter*] but what is the difference?

**Sen. Obika:** He is a politician.

**Sen. Ramdeen:** Well, I totally—

**Mr. Al-Rawi:** But it is a fact, I am giving you an example of a fact.

**Sen. Ramdeen:** If this represents the policy of the Government that a farmer could be the deputy CEA, so be it. I am—

**Mr. Al-Rawi:** Mr. Chair, let me answer in summary. Number one, the Deputy Court Executive Administrator performs no judicial functions. One can be an attorney as the Executive Court Administrator can be and must be, pursuant to the prescriptions of the JLSC. The JLSC only appoints appointments which are related to the law, the DPP's office, the Chief State Solicitor, Solicitor General, et cetera; public side equations.

In this instance here, the Deputy Court Executive Administrator may well be

someone with an HR background, obviously there are going to be job descriptions that attach to it. To reduce it to the bare level to say, well, the person could be a farmer, i.e., implying that somebody with no qualifications can walk into the job, is just ludicrous. That is not going to be what the job description will look like for a deputy court administrator, and we cannot just reduce it to that.

**Sen. Mark:** Mr. Chair, I just want to ask through you to the Attorney General: Does the court administrator perform any judicial functions or is it pure administration? I just need clarification.

**Mr. Al-Rawi:** Sen. Mark just said that he was a Minister of Public Administration for five years in Trinidad and Tobago, he must know the answer to that.

**Sen. Mark:** No. Yeah—

**Mr. Al-Rawi:** For five years he was a Minister of Public Administration.

**Sen. Mark:** Anyway, you are a stranger on the compound, you know.

**Mr. Chairman:** No, let us not—no. Sen. Mark, Sen. Mark, Sen. Mark [*Crosstalk*] you know what? Okay. I think there has been enough discussion on this particular clause. The concerns have been put forward both by Sen. Ramdeen and Sen. Mark. I think the hon. Attorney General has summarized his responses in relation to that, so I shall now put the question.

*Question put and agreed to.*

*Clause 19 ordered to stand part of the Bill.*

*Clause 20 ordered to stand part of the Bill.*

*Clause 21.*

*Question proposed:* That clause 21 stand part of the Bill.

**Sen. Mark:** Mr. Chair—

**Mr. Chairman:** Sen. Mark.

**Sen. Mark:**—could you, again, I am seeking clarification. Here it is, again, Mr. Chair, we have the office of—we have “suitably qualified” people. What does that mean? Who are these people? Everything is loose here, and in again, Mr. Chairman, you have either “public officers” or “an appropriate number of other persons engaged on contract”. Where are we going with this, Mr. Chairman? This is an embarrassment.

**Hon. Senator:** This is a CEPEP judiciary, you know.

**Mr. Chairman:** Okay. No, Sen. Mark, that is not needed. If it is you are raising a particular concern, keep it contrite, keep it succinct, state your concern. Attorney General, do you have a response? Before I invite you, Attorney General, does anybody else have concerns on this particular—? Sen. Hosein.

**Sen. S. Hosein:** AG, I am looking at subclause (b) and it talks about the contract being for a term of five years. Now, out of just clarification, is it not that the normal contracts are a three-year period?

**Mr. Al-Rawi:** A contract could be seven years—

**Sen. S. Hosein:** I know, but—

**Mr. Al-Rawi:** It could be five years, it could be three years.

**Sen. S. Hosein:** Is it the practice that you engage persons in the public sector through the three-year contract?

**Mr. Al-Rawi:** It could be any one of them.

**Sen. Mark:** No. No. No. What is the practice?

**Mr. Al-Rawi:** It could be any one of them.

**Sen. Mark:** But what has been the practice?

**Mr. Chairman:** Okay. Okay. All right. So he has asked the question, Attorney General has answered. Again, we are not getting into a debate at this particular stage. If you are raising concerns, the Attorney General will answer them as best as

he can.

**Mr. Al-Rawi:** Well, let me put it this way. Mr. Chairman, the language is pellucidly clear, "...who shall hold office for a term not exceeding five years..." It does not say "five years", that is why I answered the way I did because at this point I feel as if it is being nitpicked without sense.

**Sen. Mark:** Well, could we say, "not exceeding three years"?

**Mr. Al-Rawi:** It says—and I say that to Sen. Mark, nobody else.

**Sen. Mark:** Can we say, "not exceeding three years"?

**Mr. Al-Rawi:** It says, "not exceeding five years". It could two, it could be three. Is there precedent for this?—Industrial Court Act, Equal Opportunity Tribunal, et cetera, et cetera, et cetera. This is not new to Trinidad and Tobago.

I heard a little while ago that this is a "CEPEP court", anybody could come in. The criminal and traffic—you can have public officers, you can have an appropriate number of contract officers. Why do we need that? Let me spell it out. Public officers are preferred when you are bringing—this Government's stated intention is to bring contract officers into public officer status, but to do that you have to have the pension backing to do it, to move away from the gratuity terms into pensionable aspects and therefore, you have to have the money to transfer the public service into the form that it should be. It is appropriate in those circumstances to use the existing formulae that we have had for umpteenth years in this country.

**Sen. Mark:** That is when you reach 60, you know, AG, not before.

**Mr. Al-Rawi:** I think Sen. Mark is a little tired tonight, I understand.

**Sen. Mark:** And they are paid gratuity as well.

**Mr. Al-Rawi:** I understand. There is a gratuity at the end of contract, Sen. Mark.

**Sen. Mark:** Every three years.

**Mr. Al-Rawi:** So now you are contradicting yourself.

**Sen. Mark:** I am not contradicting, I am clarifying things for you.

**Mr. Al-Rawi:** You are not clarifying anything.

**Sen. Mark:** You seem to be sleepy.

**Mr. Al-Rawi:** You should have gone to work for the five years you were the Minister.

**Mr. Chairman:** Listen. All right. Okay. All right.

**Sen. Mark:** You see, if I were to respond to the AG—

**Mr. Chairman:** No. No. No. No. Stop. Stop.

**Sen. Mark:** You see, if I were to respond to him—

**Mr. Chairman:** Stop. Stop. Stop. Stop. Stop. It is not a debate, this is committee stage.

**Sen. Mark:** As I said, that is the man who had his children at the Cumuto—

**Mr. Chairman:** Sen. Mark, Sen. Mark, I have asked you to stop. Stop. Stop. Stop. Stop. [*Crosstalk*] Okay. Attorney General. Just let it quiet for a—  
[*Crosstalk*]

**Sen. Obika:** You must expect him to respond.

**Mr. Chairman:** I will now suspend this committee stage for 10 minutes.

**10.07 p.m.:** *Committee suspended.*

**10.17 p.m.:** *Committee resumed.*

**Mr. Chairman:** Hon. Senators, before we resume these proceedings at committee stage, let me just say that for the entire day in dealing with the matters before this honourable House I have had cause to rule time and time again in relation to the behaviour that I see permeating into this Chamber. I just take this opportunity to remind Senators of where you are, that we are live, and that the citizens of this country are looking at what we are doing.

It is 10.18 in the night, and I have had cause to suspend this House again. We cannot continue like this. We must maintain our dignity of the titles we all hold, and the decorum of this Chamber. In moving forward with the clauses, any concerns raised will be concise and succinct. The Attorney General will respond to the concerns raised, and the question will be put. There will be no more inferences or opinions in relation to what any individual in this Chamber thinks of the particular clause. I am now going to put the question on clause 21.

*Question put and agreed to.*

*Clause 21 ordered to stand part of the Bill.*

*Clauses 22 and 23 ordered to stand part of the Bill.*

*Clause 24.*

*Question proposed:* That clause 24 stand part of the Bill.

**Mr. Chairman:** Attorney General, I think you have circulated amendments to clause 24?

**Mr. Al-Rawi:** Yes, Sir. If I may? Mr. Chairman, we propose that we insert a new subparagraph (b), whereas (1) (b), and then we renumber (1) (b) as (1)(c). So, the rationale for this is that the Rules Committee is being asked under section 77, the Supreme Court of Judicature Act, to make rules:

“(a) establishing the special criminal court procedure...”—as would come out—“in subsection (2);”

But what we have also asked now is for them to make rules concerning the hearing of traffic violations. This is out of an abundance of caution. It is a request coming out of the Ministry of Works and Transport, as we intend to operationalize the amendments to the Motor Vehicles and Road Traffic Act, spot-speed camera and other amendments that we have done, and back-fill them. So, it is with that rationale in mind that we simply ask for the insertion of this further provision.

**Mr. Chairman:** Any comments? I shall now put the question.

*Question put and agreed.*

*Clause 24, as amended, ordered to stand part of the Bill.*

*Clause 25 ordered to stand part of the Bill.*

*Schedule ordered to stand part of the Bill.*

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

*Senate resumed.*

**Mr. Vice-President:** Attorney General.

**Hon. F. Al-Rawi:** Thank you. Mr. Vice-President, I wish to report that a Bill entitled an Act to make jurisdiction for criminal matters exercisable in the division of the High Court, to be known as the Criminal Division and to make jurisdiction for criminal and traffic matters exercisable in the division of the Summary Courts to be known as the District Criminal and Traffic Courts, and to make provision for matters connected therewith, was considered in committee of the whole and approved with amendments. I now beg to move that the Senate agree with the committee's report.

*Question put.*

**Sen. Mark:** Division.

*The Senate divided:*                      Ayes              18              Noes              6

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Lester, Dr. H.

Cummings, F.

Dookie, D.

Lewis, Ms. A.

Young, N.

Simonette, G.

Small, D.

Duke, R.

Phillips, Ms. Z.

NOES

Mark, W.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

Shaikh, Ms. H.

*The following Senators abstained:* Ms. S. Chote SC, Ms. J. Raffoul, P. Richards, and J. Heath.

**Mr. Vice-President:** The Motion moved that the Senate agree with the committee's report has been passed.

*Question agreed to.*

*Question put,* That the Bill be read a third time and passed.

Criminal Division and District Criminal  
and Traffic Courts Bill, 2018

2018.06.21

**Sen. Mark:** Division.

*The Senate voted:*            Ayes            18            Noes            6

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Lester, Dr. H.

Cummings, F.

Dookie, D.

Lewis, Ms. A.

Young, N.

Simonette, G.

Small, D.

Duke, R.

Phillips, Ms. Z.

NOES

Mark, W.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

Shaikh, Ms. H.

*The following Senators abstained:* Ms. S. Chote SC, Ms. J. Raffoul, P. Richards, and J. Heath.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**Mr. Vice-President:** Leader of Government Business.

### **ADJOURNMENT**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Mr. Vice-President. I beg to move that this Senate do now adjourn to Tuesday 26<sup>th</sup> of June, 2018, at 1.30 p.m. That Tuesday on the 26<sup>th</sup> of June would be Private Members' Day, and on the advice of the Leader of Opposition Business in the Senate we will be doing Private Motion No. 3, the one that deals with the *Galleons Passage*.

**Mr. Vice-President:** Hon. Senators, before I put the question on the adjournment, there are two matters on the adjournment. Sen. Mark.

### **Environmental Management Authority (Investigation of Chemical Release)**

**Sen. Wade Mark:** Thank you, Mr. Vice-President. [*Desk thumping*] Mr. Vice-President, the first matter deals with the need for the Environmental Management Authority to investigate the release of a chemical believed to be ammonia from a plant in Mount Lambert, and the negative impact the chemical emanating has been having on the health of residents of that community.

Mr. Vice-President, it was on Saturday the 12<sup>th</sup> of May, 2018, between the hours of 7.00 p.m. and 8.30 p.m., an ammonia leak spread throughout the community of Mount Lambert. The fumes covered from First to Eighth Streets in

this community. Residents had to evacuate or lock themselves in their homes. Emergency services were called, but none came to enquire of the welfare of the residents. Not even a bullhorn was sounded. Several citizens collapsed as they sought to seek shelter in their homes. Many of them were at church when the fumes emanated from this plant in the Mount Lambert community. So serious was the release, that seven employees of that plant had to seek private medical attention.

Mr. Vice-President, what is even more alarming is that the Government of this country and the Environmental Management Authority, since that event took place on May the 12<sup>th</sup>, have not issued a public statement. Not even the Member of Parliament for St. Joseph, Mr. Terrence Deyalsingh, has issued a statement on this matter. The company is even worse. Not even a statement has been issued by the company in question. But, Mr. Vice-President, what has happened is that several weeks later, people are still experiencing a nauseating kind of feeling. The Government has failed to even send a team of medical personnel to that community. Why has the Government neglected the people of Mount Lambert on this issue? [*Desk thumping*] Why has there been an almost, like a secret, like a cover-up has taken place? Human lives were at risk and nothing has been done.

You know, Mr. Vice-President, the EMA eventually came. They did some work and they have not issued a statement to the people. Those residents have not been compensated by Carib Brewery Limited. That is the company that is responsible for the ammonia leak, and they have not issued a statement to the effect that that leak took place on Monday, or on Saturday the 12<sup>th</sup> of May. Why must ordinary people be treated in this way? Mr. Vice-President, I ask the following question, and I call on the Government to investigate this matter, and to

report to this Parliament and to the people of Mount Lambert who have suffered, and who are still suffering as a result of this matter. I ask the question: What caused the leak at this particular plant? Was there a pressure release valve that blew, that caused that ammonia to leak? Mr. Vice-President, I ask the question: What were the levels of ammonia that people were exposed to? How many PPM were they exposed to? Because seven employees, as I said, Mr. Vice-President, were hospitalized for two nights due to the high level of exposure of ammonia on May the 12<sup>th</sup>.

Mr. Vice-President, I ask the question: Is this the first time there was an ammonia leak at this particular plant? Are there any effects if you have a certain amount of PPM in the atmosphere? Is the Government aware of this incident that took place on that evening of May the 12<sup>th</sup>, 2018? The people of Mount Lambert are asking questions because their eyes are still burning, they still have problems with their nose, their throat, their chest and they have intense irritation as a result of this exposure to ammonia. And therefore it is important—Mr. Vice-President, when this thing hit the environment, a thick cloud of smoke enveloped over the village and that community.

We do not know what impact that would have on the farmers who are agriculturalists in that area. Because the ammonia could have fallen to the earth eventually, because people experienced difficulty in breathing in a serious way. Elderly people, as I said, collapsed, and they had to find their way into their homes, they had to lock their doors, shut their windows in order to avoid this invasion of ammonia. And you know what is even sad, Mr. Vice-President, could you imagine this thing took place on Saturday the 12<sup>th</sup> of May. Mr. Vice-President, today is the 21<sup>st</sup> of June, several weeks later, almost 40 days later, and not a statement from

OSHA, not a statement from the EMA, not a statement from the MP, not a statement from Carib Brewery Limited, not a statement from the Government of the Republic. People could have died in that exposure of ammonia. And I am accusing the Government of a massive cover-up in this matter. [*Desk thumping*]  
Because, Mr. Vice-President, why would the Government—

**Mr. Vice-President:** Senator, you have two minutes.

**Sen. W. Mark:** Yeah—of Trinidad and Tobago not expose this matter, not bring it to the attention of the population. Is the Government in collusion with the plant, with the owners of that plant that resulted in the leak of this ammonia? Mr. Vice-President, this is serious, and I am representing the voice of the voiceless, and those powerless people of Mount Lambert who have nobody to speak to them.

They do not have their MP to speak for them, so I am assuming the role of the MP for St. Joseph today [*Desk thumping*] and I am speaking on behalf of those citizens who are being exposed to this ammonia leak, and I call on the Government to conduct an immediate investigation into this matter, that the Government speak, have a meeting with Carib Brewery on this matter, that they meet with the residents of Mount Lambert, and compensate those people, make sure they get proper medical checks, and make sure that they are in a proper healthy state, not only of mind, but of body.

It is inexcusable, indefensible, unpardonable for a government of this country to know of a leak of ammonia in a village that they respect in terms of the St. Joseph constituency, and the MP cannot tell us he was not aware and he is not aware. And therefore, I am calling on the Government to level with the population tonight, let us know what you know, and if you do not know, please have a proper independent investigation into the leak of ammonia in that village. I thank you,

Environmental Management Authority  
(Investigation of Chemical Release)  
Sen. Mark (cont'd)

2018.06.21

Mr. Vice-President. [*Desk thumping*]

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Mr. Vice-President. [*Desk thumping*] Mr. Vice-President, the Environmental Management Authority, the EMA, received a report from a Mount Lambert resident at approximately 7.30 p.m. on Saturday the 12<sup>th</sup> of May 2018—and Sen. Mark is right—in connection with a possible ammonia leak from Carib Brewery Limited warehouse facility. It is no secret.

In accordance with the EMA protocols for the emergency response and investigation of any chemical leak or spill, the EMA immediately reported this information to the Office of Disaster Preparedness and Management, the ODPM, and contacted a senior HSE officer on duty at Carib Brewery Limited at 9.30 p.m. for further information. The senior HSE officer on duty at Carib Brewery Limited informed the EMA that there was an ammonia leak, and that the line was immediately isolated and the plant evacuated. Approximately two hours after the initial report from the resident, at 7.30 p.m., the leak was repaired and staff was given the all-clear to return to work.

That is our information coming out of the EMA. The situation was reported to have immediately improved, upon the isolation and repair of the leak. The official at Carib Brewery Limited did not have an estimate of the amount of ammonia spilled at the time. The EMA provided the ODPM with an update on the situation. A site visit to the area in question was conducted by an EMA officer that night to verify Carib's information.

It must be noted that no further reports were received from any Mount Lambert resident since, with the exception of one received by our hotline on the following Monday, that is Monday the 14<sup>th</sup> of May, 2018, which reported the

incident that occurred on the Saturday night, that is the 12<sup>th</sup> of May, 2018. Carib Brewery Limited provided an incident-notification report to the EMA on the 15<sup>th</sup> of May, 2018, which is in line with the EMA's protocols.

Further to this initial report, the EMA has requested a further report from Carib Brewery Limited for a review and approvals regarding any following-up action to be taken with the Mount Lambert residents, inclusive of any corrective measures to be implemented, to prevent future incidents. Feedback from Carib Brewery Limited on the 20<sup>th</sup> of June, 2018, indicated that this report can be expected by the end of June 2018. That is next week.

**10.45 p.m.**

Based on the information received from Carib Brewery Limited to date, the Brewery has been unable to quantify the amount of ammonia that escaped during the leak. I hope for the sake of this country that that figure or estimate is included in the report of next week, because there are ways of determining the quantum of the leak. However, for the records, Mr. Vice-President, my information, coming out of the EMA is that there has been no negative impact on the health of residents in that community. I thank you. [*Desk thumping*]

**Board of Inland Revenue  
(Measures for Audit Reports)**

**Sen. Wade Mark:** Yes, thank you, Mr. Vice-President. Mr. Vice-President, the other matter that I would like to draw to your attention is the need for the Government to take appropriate measures to ensure that the Board of Inland Revenue presents its books and accounts for auditing by the Auditor General.

Mr. Vice-President, in the Auditor General's Report dated the 30<sup>th</sup> of April, 2018, on page 15, the Auditor General reports to the nation and I quote:

“Despite the Auditor General’s Constitutional and legal right of access quoted”—of—“access to certain data at the”—Board of—“Inland Revenue Division”—the Auditor General has been—“denied by”—the—“invocation of the official secrecy provisions of section 4 of the Income Tax Act, Chapter 75:01.

The interpretation...”

It goes on to say: [*Crosstalk*]

“The interpretation and application”—I am getting a constant noise—“the interpretation and application by the Board of Inland Revenue of the secrecy provisions of section 4 of the Income Tax Act, have posed a challenge to the audit of revenue at the Inland Revenue Division...”

Mr. Vice-President, we are informed by the Auditor General that:

“A legal opinion on this matter was prepared by the Legal Officer at the Auditor General’s Department and”—this was—“forwarded to the Attorney General on 18<sup>th</sup> September, 2013 for consideration and final approval.

The Attorney General in 2015”—he did not give a date or a month rather—“assured the Auditor General that the necessary steps were being taken to ensure that the Auditor General’s access to the information is facilitated.”

Mr. Vice-President, it goes on and this is the final area:

“Apart from the information covered by section 4 of the Income Tax Act, the weaknesses in internal control and lack of access to information highlighted”—the need to erect—“red flags”—and they—“emphasize the need for a more intensive investigation into the operations of this major revenue collector.”

The Auditor General is asking the Parliament and the Government that they need:

“Unfettered access as laid out in paragraphs”—1.19 and 1.20 of their position as it relates to the Income Tax Act.

Mr. Vice-President, I raise this matter and I bring it to the attention of this House because we are told that since 2013 the Auditor General has been trying to gain access so that the Board of Inland Revenue, even though they have a secret provision—and I applaud the Government at the time—the legislation at the time to have that provision. I have no problem with that. But if we have an Auditor General that is supposed to be conducting enquiries into the financial operations of that body they need access to the information. They need access to the books. But if they are being denied, Mr. Vice-President, since 2013, this is causing Trinidad and Tobago not to have a proper appreciation of the accounts of this very important body called the Inland Revenue Department.

So I have raised this matter this evening to call on the Minister of Finance to indicate to the country what is the Government doing or is about to do to allow the Auditor General to have access to the Board of Inland Revenue so they can properly audit the financials of that very important institution. Mr. Vice-President, you would know that the Board of Inland Revenue and the Customs and Excise Department, they constitute in terms of collection over 90 per cent of Government revenues in terms of collection. So you need to have the Auditor General not providing us, Mr. Vice-President, every year with a report and the report is not complete, insofar as its auditing function of the books of the Board of Inland Revenue.

So I call on the Government this evening to indicate what action, what measures, what steps are being taken to facilitate—Mr. Vice-President, remember the Auditor General reports to us. He is an officer of the Parliament and therefore

presents his report to the Speaker of this House, of the Parliament that is, and it is really disappointing that he has been calling repeatedly for an amendment to the relevant legislation to allow that organization that is given constitutional and legal authority to have unfettered access to the financials of the Board of Inland Revenue.

I would like to ask the Government to declare its position on this matter. Is the Government going to assist the Auditor General in accessing the Board of Inland Revenue so that they can provide us with proper accounts and a proper understanding of the accounts of that organization? Or is it going to be doing business as usual for the coming years? So I call on the Government to clear the air on this proposal—

**Mr. Vice-President:** Senator, you have two minutes.

**Sen. W. Mark:** Yes, thank you, Mr. Vice-President. I ask the Government to clear the air on this very important matter.

Mr. Vice-President, we know the Auditor General does a lot of good work even though the Auditor General's Department has limitations. They have challenges. They have resource concerns: human, financial and technical. But they are doing their work and they produce on time every year their annual report which we receive in this Parliament on time. So they are doing their work but they are asking for our help. They want the Parliament to help them. They want the Government through the Parliament to help them to do a better job at auditing the books of the Board of Inland Revenue and they are being denied access to those books by the Board of Inland Revenue because they are invoking certain provisions of the secrecy laws of this country.

So I hope that the Government can provide some clarity on this matter and

Board of Inland Revenue  
(Measures for Audit Reports)  
Sen. Mark (cont'd)

2018.06.21

let us see to what extent we can get proper audited accounts from here on in from the Auditor General on this matter. I thank you, Mr. Vice-President. [*Desk thumping*]

**The Minister in the Ministry of Finance (Sen. The Hon. Allyson West):** [*Desk thumping*] Thank you, Mr. Vice-President. Mr. Vice-President, to the extent permissible by the current legislation under which it operates, the Board of Inland Revenue does in fact provide books and records to the Auditor General for audit. The books and records that they provide, include the Vote book, receipts and disbursements, return of arrears of income and other relevant information. In fact, as recently as April of this year, the Board of Inland Revenue presented these records in respect of income year 2017 and the Auditor General's audit of those books and records was completed in April of 2018.

To Sen. Mark's point, the Auditor General has from time to time been requesting access to the Board of Inland Revenue's GenTax System, but that system includes detailed information of the records of each taxpayer of Trinidad and Tobago. And the Board of Inland Revenue operates under legislation that prevents it from making those records available. Section 4 of the Income Tax Act says:

- “(1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists, and copies of such lists relating to the income or items of the income of any person, as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a Magistrate.
- (2) Any person having possession of or control over any document,

information, returns, or assessment lists or copies of such lists relating to the income or items of income of any person who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

- (a) other than a person to whom he is authorised by the President to communicate it; or
- (b) otherwise than for the purposes of this Act or any other written law administered by the Board is guilty of an offence.”

So, Sen. Mark, the legislation under which the Board of the Inland Revenue operates does not allow it to share information with the Auditor General or anybody else. The opinion of which you spoke was presented to the Attorney General in 2013 which was under the—

**Hon. Senator:** UNC.

**Sen. A. West:** Operation of the UNC Government and two years later when they came out of power nothing was done to address that despite the fact that you had the numbers to deal with it. This current Government is bringing before the Parliament, very shortly, legislation seeking to deal with giving access to the Auditor General and other bodies involved in administration of justice and so on, and I would like to receive your commitment Sen. Mark that your Government would support that. [*Crosstalk*] Your party will support that amendment.

**Sen. Mark:** What is the name of the legislation?

**Sen. A. West:** It would be an amendment to the income tax legislation that provides the secrecy provision.

Board of Inland Revenue  
(Measures for Audit Reports)  
Sen. The Hon. A. West (cont'd)

**Sen. Mark:** Is that the one before a Committee?

**Sen. A. West:** So, the one—

**Sen. Mark:** Is that the TTRA?

**Sen. A. West:** No. The legislation to amend the Income Tax Act to deal with the secrecy, Mr. Vice-President, to deal with the secrecy provision, that legislation would be coming before the Parliament shortly and we would like your commitment as you seek to give the Auditor General the authority to conduct proper audits, that you will support and the rest of your party will support that provision.

So, Mr. Vice-President, in summary, the Board of Inland Revenue provides to the Auditor General at the moment such records of books as it can provide and the only way we can go beyond that is to change the legislation. I thank you, Mr. Vice-President. [*Desk thumping*]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 10.59 p.m.*