

**SENATE***Tuesday, February 19, 2019*

The Senate met at 1.30 p.m.

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

**Mr. Vice-President:** Hon. Senators, I have granted leave of absence to Sen. Hazel Thompson-Ahye and to Sen. Taharqa Obika, both of whom are out of the country.

**SENATOR'S APPOINTMENT**

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MS. ZOLA L. PHILLIPS

WHEREAS Senator Hazel Thompson-Ahye 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, ZOLA L. PHILLIPS, to be temporarily a

**UNREVISED**

member of the Senate with effect from 19<sup>th</sup> February, 2019, and continuing during the absence from Trinidad and Tobago of the said Sen. Hazel Thompson-Ahye.

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 15<sup>th</sup> day of February, 2019.''

### **OATH OF ALLEGIANCE**

*Senator Zola L. Phillips took and subscribed the Oath of Allegiance as required by law.*

### **SENATOR'S APPOINTMENT**

**Mr. Vice-President:** Hon. Senators, I am just currently awaiting another instrument to come in, so I crave your indulgence to revert to this item once we receive that instrument.

### **PAPER LAID**

Consolidated Audited Financial Statements of First Citizens Holdings Limited and its Subsidiaries for the financial year ended September 30, 2018. [*The Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]

### **JOINT SELECT COMMITTEE REPORT**

#### **Human Rights, Equality and Diversity**

#### **Treatment of Detainees at Immigration Detention Centre**

#### **(Presentation)**

**The Minister of Foreign and Caricom Affairs and Minister in the Ministry of National Security (Sen. The Hon. Dennis Moses):** Mr. Vice-President, I have the

honour to lay on the table the following report as listed on the Order Paper in the name of Sen. The Hon. Kazim Hosein:

Tenth Report of the Joint Select Committee on Human Rights, Equality and Diversity Fourth Session (2018/2019), Eleventh Parliament on the Treatment of Detainees at the Immigration Detention Centre.

### **URGENT QUESTIONS**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Mr. Vice-President, I crave your indulgence, the Minister of National Security is on his way; he will be here shortly so I request that you stand down this question for a short while and we move on to Question No. 2.

**Mr. Vice-President:** Question No. 1 on Urgent Questions would be stood down until the arrival of the Minister of National Security who, we have been advised, is on his way. So we will move on to Question 2 on Urgent Questions. Sen. Seepersad.

### **Blacklisting of T&T by European Commission (Impact on Banking Transactions)**

**Sen. Charrise Seepersad:** Can the Minister indicate how will the recent blacklisting of Trinidad and Tobago by the European Commission impact day-to-day banking transactions with European banks?

**The Minister of Finance (Hon. Colm Imbert):** Thank you very much, Mr. Vice-President. Mr. Vice-President, just let me indicate that the US Treasury Department has scolded the European Union for including US Territories on a list of tax havens or areas where there is money laundering around the world and has told American banks to ignore EU directives, in a very unusual technocratic spat, that shows continued friction between Washington and Brussels. The Attorney General has issued a statement on February the 15<sup>th</sup>, last week, and I read from that

statement that:

We wholeheartedly agree with the analysis of the United States which laid four compelling reasons for the rejection of the European Commission's publication, namely:

1. The Commission's process did not include a sufficiently in-depth review necessary to conduct an assessment related to such a serious and consequential issue.
2. The Commission provided affected jurisdictions with only a cursory basis for its determination.
3. The Commission notified affected jurisdictions that they would be included on the list only days before issuance.
4. The Commission failed to provide affected jurisdictions with any meaningful opportunity to challenge their inclusion or otherwise address issues identified by the Commission.

Those are the words of the United States Treasury with whom we wholeheartedly agree. The European Union has arbitrarily and unilaterally included us and the United States Territories on this so-called blacklist. We do not agree.

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

**Sen. Mark:** Mr. Vice-President, can the hon. Minister indicate whether those objections, as outlined by him, in sync with the Treasury Department of the United States, have been formally committed in writing to the European Commission?

**Hon. C. Imbert:** Thank you, Mr. Vice-President. I omitted to deal directly with the core of the question asked by Sen. Seepersad. We have no reports of any impact on Trinidad banks in their dealings with European banks at this point in time. We continue to monitor that situation. We do intend to communicate with the European Union and object in the strongest possible terms, just like the US has

done.

**Mr. Vice-President:** Sen. Seepersad—

**Sen. Seepersad:** I am satisfied.

**Mr. Vice-President:** You are done?

**Sen. Seepersad:** Yes.

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

**Sen. Teemal:** Hon. Minister, are there any specific measures that we intend to take to get our name removed off that blacklist?

**Hon. C. Imbert:** This so-called blacklist came out of the blue. We are still studying it. As the United States has said, it is completely arbitrary, and countries were not informed of this. It appears that the European Union is now developing its own criteria. In addition to FATF criteria and in addition to Global Forum criteria, the European Union is now developing its own criteria, so we would need to look at this very carefully and determine how we deal with this. But the first thing we will do is to make representation at the highest level and object in the strongest possible terms to this arbitrary event.

**Mr. Vice-President:** Sen. Mark, Question 1 on the Urgent Questions notice.

### **Immigration Detention Centre**

#### **(Lack of Capacity)**

**Sen. Wade Mark:** Question 1 to the Minister of National Security: In light of statements made by the Chief Immigration Officer that exercises to detain illegal immigrants have been halted due to a lack of capacity at the Immigration Detention Centre (IDC), can the Minister indicate what measures are being taken to address this issue?

**The Minister of National Security, Minister of Communications and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much,

Mr. Vice-President. Mr. Vice-President, as was put out in a statement from the Ministry of National Security on Sunday, we continue to detain illegal immigrants. In fact, up to yesterday, I believe there were 20 illegal immigrants detained, and as I have indicated in that statement from the Ministry of National Security, there is an inter-agency task force set up, which includes the Prison Service of Trinidad and Tobago, and we are looking at utilizing some of the empty prison facilities. For example, that prison facility, the warehouse that was purchased under the former administration for hundreds of millions of dollars that was not sufficient to be a full-scale prison. We are looking at utilizing that now for the detention of illegal immigrants. So there is no crisis, this continued cry for there to be a crisis. There is none; immigration continues to do its work along with the Trinidad and Tobago Police Service and other agencies in National Security.

**Mr. Vice-President:** Sen. Mark, supplemental.

**Sen. Mark:** Could the hon. Minister indicate what would have prompted the Chief Immigration Officer to make such a statement at a JSC meeting in the full view of the public, given the fact that the Minister has indicated there is no such crisis? Why would the Chief Immigration Officer communicate that information in the public on this matter? Can the Minister clear it up for us, Mr. Vice-President?

**Hon. S. Young:** Thank you very much. It would be impossible for me to put myself in the shoes of the Chief Immigration Officer, and the person who is alleged to have made the statement. What I can say is the Immigration Detention Centre is very close to capacity in terms of the number of people that it can hold. So if that is what the Chief Immigration Officer was referring to, that there is a capacity issue; yes, there is a capacity issue. As I have said and as I have indicated, we are currently dealing with that situation by utilizing other facilities. So, for example, right now, illegal immigrants who were picked up yesterday would be

housed at police stations, and these types of things, and there is a process that they have to go through before a final determination.

**Mr. Vice-President:** Sen. Mark, supplemental.

**Sen. Mark:** Can the hon. Minister indicate what time frame does he envision for the facility? This so-called warehouse facility that he mentioned, what time frame does he anticipate for that facility to be up and running so that illegal immigrants can be removed from police stations and placed in this new detention centre that he has outlined?

**Hon. S. Young:** Thank you very much, Mr. Vice-President. Mr. Vice-President, I have asked that it be done in the shortest possible time frame. The warehouse that was purchased by the UNC for hundreds of millions of dollars is in a position that it can house persons. It needs to be declared as a detention centre by me, as Minister of National Security, and I have asked that they put all of the arrangements in place, in the shortest possible time frame, so it can be so utilized to give the taxpayers value for money that was wasted previously.

### **ANSWERS TO QUESTIONS**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Mr. Vice-President. Mr. Vice-President, the Government is pleased to announce that it will be answering all questions on the Order Paper.

### **WRITTEN ANSWER TO QUESTION**

#### **Government Ministries/Departments and Statutory Authorities**

#### **(Contract Employment)**

**49. Sen. Wade Mark** asked the hon. Minister of Public Administration:

Having regard to contract employment in Government Ministries/Departments and Statutory Authorities, can the Minister provide the following information

- a) the names and designations of all persons whose contracts were not renewed during the period September 30, 2015 – September 30, 2017;
- b) the reasons for such non-renewal referred to in (a);
- c) the names and designations of all persons employed/recruited on contract during the period September 30, 2015 – September 30, 2017;
- d) details of the compensation package of each person referred to in (c);
- e) the names and designations of all contract officers who during the period September 30, 2015 and September 30, 2017 were terminated before the original completion date of their contracts; and
- f) the reasons for the termination referred to in (e)?

*Vide end of sitting for written answer.*

## **ORAL ANSWERS TO QUESTIONS**

### **Telecommunications Services of Trinidad and Tobago**

#### **(Separation of Workers)**

**74. Sen. Wade Mark** asked the hon. Minister of Public Utilities:

Can the Minister advise how many workers were recently separated from the Telecommunications Services of Trinidad and Tobago as part of its restructuring exercise?

**The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte):** Mr.

Vice-President, arising out of the restructuring of the Telecommunications Services of Trinidad and Tobago, a total of 631 employees have been separated from the organization as at the 14<sup>th</sup> of December, 2018, inclusive of 77 workers who took voluntary separation.

**Mr. Vice-President:** Sen. Mark, supplemental.

**Sen. Mark:** Mr. Vice-President, can the Minister indicate to the Senate, what were the elements that informed the Telecommunications Services of Trinidad and Tobago in its restructuring exercise that would have resulted in the severing of 631 workers? Can you share with this honourable Senate, through you, Mr. Vice-President, the elements that made up this restructuring exercise?

**Sen. The Hon. R. Le Hunte:** Mr. Vice-President, the Telecommunications—this restructuring exercise is part of a strategic plan that was put forward by the telecommunications company and with a view of trying to save the organization from bankruptcy by 2021. Based on the profitability trends of the organization, the organization needed to be restructured in a manner so that it could save the 1,300 jobs that were remaining in the organization. This is only one aspect of that exercise—the whole digitalization exercise—and the improvement of the services of the telecommunications company to be able to better execute their mandate in and for Trinidad and Tobago is also part of the restructuring exercise of the company.

But I reiterate, this was an attempt to save the company from bankruptcy, based on where it was heading, with a \$300 million—over \$350 million loss, I think—in the first six months of their operations, an earmark based on projections that were also audited by some of our accounting firms that showed that the organization by 2021, if it continued at its present trajectory, in its present form, the organization would have been bankrupt.

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

**Sen. Mark:** Mr. Vice-President, can I ask the hon. Minister whether the recent scandals involving corruption at the TSTT involving hundreds of millions of dollars contributed in any way to the so-called bankruptcy claim that the hon. Minister has made, Mr. Vice-President? Can he share with us whether these activities that were fully exposed in the newspapers contributed in any way to the possible bankruptcy that you have mentioned?

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

**Sen. Mark:** Mr. Vice-President, the hon. Minister mentioned digitalization of the services as part of the whole restructuring exercise, can the hon. Minister share with us what and within what time period he anticipates this element to kick in to make this particular agency and company more efficient in the context of service to the population of T&T?

**Sen. The Hon. R. Le Hunte:** Mr. Vice-President, this, as I said, was part of the strategic plan. It is an ongoing exercise. It has actually already started to kick in with the removal, with the launching of the company's zero copper initiative, which is all part of the restructuring exercise whereby copper, as it presently exists as the main medium, is one that carries the information very slowly and prevents people from being able to get the speed of the information that comes to them via their broadband services is not as efficient. And therefore, that exercise is presently in place, and I expect that the members of the public have already started to benefit from the restructuring exercise by the improved service, both from a quality and the number of people who now have access to broadband services throughout the country, and this will continue up until at least 2020/2021.

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

**Sen. Mark:** Mr. Vice-President, the hon. Minister did indicate that some 77

individuals at the managerial level were severed, can the hon. Minister indicate whether he is satisfied that the top-heavy management structure of this organization needs to be further restructured to make this organization more efficient, more effective in the delivery of services to the people of Trinidad and Tobago?

**Sen. The Hon. R. Le Hunte:** Mr. Vice-President, I did not, just as a point of correction, and I will repeat what I said. I said there were 631 employees that were separated, inclusive of 77 workers who took voluntary separation. I never said that those individuals who took voluntary separation were at the top level. That being said, I think when you look at the percentages at the top, we would recognize that, I think, the new executive management team at the top of TSTT has been reduced from, or it is potentially expected to be reduced from a span of around 18 to a span of around 10.

So therefore, the largest drop in the amount of individuals happened at that particular level of the organization. I am also confident that the steps that the organization is taking in putting themselves, or rightsizing the organization and also improving the technology, is the right step towards making the organization profitable going forward, and, as I said, saving 1,300 jobs in the process.

### **Telecommunications Services of Trinidad and Tobago**

#### **(Details of Employment of Executives)**

**75. Sen. Wade Mark** asked the hon. Minister of Public Utilities:

Can the Minister provide the Senate with the terms and conditions of employment, inclusive of salary, of the following executives of the Telecommunications Services of Trinidad and Tobago:

- i. the Chief Executive Officer; and

- ii. the Vice-President of Human Resources/Industrial Relations and Corporate Support Services?

**The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte):** Mr. Vice-President, the compensation package of TSTT's CEO and Vice-President of Human Resources/Industrial Relations and Corporate Support Services are consistent with current executive remuneration packages for similar scale telecommunications companies operating in Trinidad and Tobago. The CEO of TSTT's services receives the following monthly remuneration package: a salary of \$180,000, housing allowance of \$15,000, entertainment allowance of \$5,000, a company-maintained car, medical coverage consistent with the company's overall medical plan. The Vice-President of Human Resources/Industrial Relations and Corporate Support Services receives the following monthly remuneration package: a salary of \$105,000, housing allowance of \$7,000, entertainment allowance of \$3,000, a company-maintained car, and a medical coverage consistent with the company's overall medial plan.

**Mr. Vice-President:** Sen. Mark, supplemental.

**Sen. Mark:** Yeah. Can I ask the hon. Minister whether these executive high-ranking personnel also receive, on an annual basis, bonuses?

**Sen. The Hon. R. Le Hunte:** I am not in a position to answer that explicitly at this point in time. This is what was presented to me.

**Mr. Vice-President:** Sen. Mark, supplemental.

**Sen. Mark:** But are you aware as the line Minister, who ought to be fully conscious of the operations of this company, that these high-ranking executive personnel also receive, on a yearly basis, very handsome bonuses, even in a loss-making company?

**Mr. Vice-President:** Sen. Mark, you are asking a question?

**Sen. Mark:** I am asking, Mr. Vice-President, through you—

**Mr. Vice-President:** So pose it as a question.

**Sen. Mark:** I am asking him, Mr. Vice-President—

**Sen. Baptiste-Primus:** Him?

**Sen. Mark:** I am asking the hon. Minister, that is, whether he is aware, or he ought to be aware, Mr. Vice-President—if I were line Minister I would be aware that these top-ranking personnel have in fact been receiving very lucrative bonuses in a company that has been loss-making and has retrenched close to 600 workers—

**Mr. Vice-President:** Sen. Mark, the question, you have asked the question but what you are doing now is you are rambling on. So you are asking the question—and I do not want to paraphrase, you have asked your question, so just tighten it up; reiterate the question quickly for the Minister of Public Utilities. There is no need to add on to it, just ask the question.

**Sen. Mark:** Okay. Mr. Vice-President, can the hon. Minister indicate whether he is aware that these top-ranking personnel at TSTT, that he has just outlined, in terms of terms and conditions, are also in receipt of hefty bonuses on an annual basis in a loss-making enterprise like TSTT?

**Mr. Vice-President:** And I would not allow that question. Sen. Mark, next supplemental.

**Sen. Mark:** Mr. Vice-President, can the Minister indicate whether these very lucrative packages were approved by the Cabinet of the Republic of Trinidad and Tobago or the board, or both?

**Sen. The Hon. R. Le Hunte:** Mr. Vice-President, these salaries were definitely approved by the board of TSTT. The Cabinet does not get themselves involved in this particular matter, and these are the salaries that had existed in TSTT for these positions, not only now but in the past. I dare say that the salary that is now being

paid to the CEO represents close to 50 per cent than what was paid previously at another time, between 2010 and 2015, when there were foreigners that were actually manning those particular positions.

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

**Sen. Mark:** Can I ask the hon. Minister, through you, when can we expect further increases in these terms and conditions for these officers in this so-called loss-making company that was on the brink of bankruptcy? Can you advise us, through the hon. Vice-President, as to when or how often these personnel receive increases? Is it annually, biannually, or every three years? Can you share with this honourable House?

**Mr. Vice-President:** I will not allow that question. Sen. Mark, next question on the Order Paper.

**Telecommunications Services of Trinidad and Tobago  
(Settlement of Debt)**

**76. Sen. Wade Mark** asked the hon. Minister of Public Utilities:

Given that over TT\$356 million is owed to the Telecommunications Services of Trinidad and Tobago by the Government for CCTV services, can the Minister indicate when will said debt be settled?

**The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte):** Mr. Vice-President, the quantum of money owed to TSTT for CCTV services provided to the Ministry of National Security is not agreed. The matter is under review and it is currently the subject of negotiations. I expect this matter would be settled as expeditiously as possible.

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

**Sen. Mark:** Mr. Vice-President, can the hon. Minister, as the line Minister with responsibility for TSTT, inform this House how long has this outstanding payment,

that has not been agreed upon, been—how long has this amount been outstanding to the company, that is TSTT, by the Government of the Republic of Trinidad and Tobago, Mr. Vice-President?

**Sen. The Hon. R. Le Hunte:** Mr. Vice-President, at this point in time I could tell you that it is somewhere in the vicinity of over six months that negotiations have been in place between the Ministry of National Security and TSTT on this matter. As for the exact date of the time that it has been outstanding, I would not be able to give an exact answer, but I know that they have been in discussions between both of them to reconcile the service that has been provided for the past six months.

**2.00 p.m.**

**Sen. Mark:** Mr. Vice-President, can the hon. Minister indicate to this honourable Senate, how this close to half a billion dollars, owed to the Telecommunications Authority by the Government of Trinidad and Tobago has impacted on the TSTT decision to retrench, send home, dismiss, fire 631 workers? Can you tell us if there is a connection between this outstanding money owed to TSTT, and the quantum of workers who have been sent home? Can you share with us?

**Sen. The Hon. R. Le Hunte:** Mr. Vice-President, yes I can, and I will say emphatically it has not impacted. This particular money, this company lost over \$450 million in the first six months, of which there was a provision, granted there was a provision of over \$300 million. But the company, even when you normalize the accounts with the provision—normalize the accounts—the company had an operating loss of close to \$100 million.

Mr. Vice-President, you cannot run a company, you cannot continue to invest and make the necessary types of advancement, especially when you are in a competitive environment, when you are losing money of close to \$100 million operating profits. And that was an improvement from the 35—that was actually a

situation that got worse from the \$35 million operating loss that the company showed last year. So last full year it was \$35 million, this six months it deteriorated to an operating loss of over \$100 million in six months. If the company continued at that trend, the company would have been bankrupt in two years' time. Therefore, urgent action was required to save the 1,300 jobs that now exist in TSTT, and to give the company a fighting chance for its survival down the road, and to allow for it to be able to compete and make the necessary types of investments to allow it to be able to compete within the very competitive environment that exists.

**Sen. Mark:** Mr. Vice-President, I would like to ask the hon. Minister whether he is aware that this outstanding amount of money that we are yet to determine—can you share with this honourable Senate whether there is a link between this outstanding amount of money and the decision on the part of the Government to favour a particular English firm over TSTT for the provision of CCTV? [*Desk thumping*] Could you share with this honourable House whether that is in fact a link why the thing has been outstanding, through the hon. Vice-President?

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

**Sen. Mark:** Mr. Vice-President, can the hon. Minister indicate, having regard to the bankruptcy or near bankruptcy that this company faces—can the Minister give this Parliament and this Senate a clear undertaking as to when this outstanding amount of money owed to TSTT by the Government of Trinidad and Tobago will be met, will be satisfied, will be honoured—can the hon. Minister give this Senate an undertaking, as line Minister, through you Mr. Vice-President?

**Sen. The Hon. R. Le Hunte:** Mr. Vice-President, I think I will go back to my statement, where I said that the services provided to the Ministry of National

Security is not agreed, and I further went on to say that it is currently being negotiated. At this point in time there is a dispute between the services and the cost, and therefore these are being negotiated and discussed, all with a view of trying to ensure that the people of Trinidad and Tobago get the best service at the best price, which is the ultimate objective that we are all attempting to achieve. Whether it is TSTT, whether it is a privately-owned company, service and quality of service, and service for money paid is important that it happens, and this is what this Government is ensuring that happens, and that is the process that we are taking.

[MADAM PRESIDENT *in the Chair*]

**Madam President:** Before I call on the Minister, if with your permission we could revert to Item 3 on the Order Paper. I am now in receipt of the Instrument of appointment.

### SENATOR'S APPOINTMENT

**Madam President:**

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. BRIAN NATHANIEL BAIG

WHEREAS Senator Taharqa Obika 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)(b) 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, BRIAN NATHANIEL BAIG to be temporarily a member of the Senate, with effect from 19<sup>th</sup> February, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Taharqa Obika.

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 19<sup>th</sup> day of February, 2019."

### **OATH OF ALLEGIANCE**

*Senator Brian Baig took and subscribed the Oath of Allegiance as required by law.*

### **TRESPASS (AMDT.) BILL, 2019**

*Order for second reading read.*

**The Minister in the Ministry of the Attorney General and Legal Affairs (Hon. Fitzgerald Hinds):** I thank you very warmly, Madam President, as I beg to move:

That a Bill to amend the Trespass Act, Chap. 11:07, be now read a second time.

Madam President, the Government proudly presents this Bill, cognizant of our duty to ensure the safety and well-being of our people in the face of the burgeoning criminal activity facing our country, and to guard against those among us who are intent on inflicting terror on law-abiding citizens. It is well established that the right of the individual to enjoyment of property is one of the most

fundamental human rights and freedoms recognized in the Constitution of the Republic of Trinidad and Tobago. Section 4(a) of this Constitution affirms as follows, and I quote:

“the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;”

Alarming, however, this constitutionally protected right has been consistently undermined by rogue elements in our society who are apparently intent on terrorizing and bullying private homeowners, tenants and other persons in lawful possession of premises, forcing these law-abiding citizens out of their premises through the use of threats, intimidation and sometimes raw violence, including arson. This is a nationwide problem which has affected people in our country from Carenage to Toco, from Chaguanas to Cedros. In fact, in another place we had examples: Santa Cruz, Manzanilla, Couva, in respect of this type of activity.

It is against this backdrop that the Trespass (Amdt.) Bill, 2019, is now before this honourable House. The Bill seeks to address the untenable state of affairs which I have just described, by introducing two new criminal offences, namely, “forcible entry” and “forcible detainer”. The Bill also seeks to revise the existing penalties in the Trespass Act, Chap. 11:07, to ensure that they are brought into line with modern demands and expectations, and that they reflect the seriousness of the offence which may be committed and are dissuasive in nature, a deterrent in fact. Additionally, the Bill will introduce new definitions and a section which will enable the Minister to make regulations in order to give effect to the provisions of the Act.

Madam President, the Trespass Act, which I will refer to in my presentation as the Act, became part of the laws of Trinidad and Tobago way back in 1852, and

was last amended in 1936. In other words, 167 years have elapsed since its enactment, and 83 years have elapsed since the Act was last amended, but that only reflects that the business of trespass, the unlawful activity of trespass is as relevant today as it was in 1852, which would have led to its enactment in the first place, still very, very relevant.

As we are all aware the law is not static, it ought not to be that, and it must constantly evolve and adapt to address changing social and sociological circumstances. It would have been impossible for legislators 167 years ago to envisage every scenario relating to the law of trespass which would require legislative attention in 2019. Therefore, while as I indicated the provisions of the Act remain wholly relevant today, we as a society are faced with a completely and totally unacceptable state of affairs, and a level of criminal behaviour which this Government has demonstrated from its record, and will continue to demonstrate, we intend to address. The Bill is a manifestation of this resolve.

Having regard to the fact that the primary legislative initiative proposed in the Bill is the introduction, as I said earlier, of two new criminal offences to the laws of this jurisdiction, permit me to elaborate on the proposed offences of forcible entry and forcible detainer.

In considering the issues before us and arriving at an acceptable solution, several pieces of legislation, criminal legislation, were examined. Because we did not just run to the Trespass Act. We did not just repeal the entire thing and replace it as some, since this has become a public issue, have proposed. We considered other criminal laws to see how we could address this burgeoning problem.

The Summary Offences Act, Chap. 11:02, was considered; the Offences Against the Persons Act, Chap. 11:08; the Larceny Act, Chap. 11:12. After careful evaluation, however, it was determined that there was no existing provision in any

of those laws which adequately addressed and criminalized the type of conduct that I described earlier.

Madam President, with your leave I will provide some examples which will illustrate the challenges faced in resolving this issue. This Act generally criminalizes wilfull trespass:

- “(a) at night in or about an enclosed yard, garden, ground, cultivated land, plantation, oilfield or refinery;
- (b) on any lands at any time on which there is affixed a notice forbidding persons to trespass; and
- (c) at a private wharf or landing place on which there is affixed a notice forbidding person to trespass.”

At present therefore the Act, meaning the Trespass Act, does not treat with the situation we are seeking to address today, that is, where persons who are in lawful occupation of premises are forcibly, and sometimes violently ejected from those premises with the use of force, and threat of force sometimes, and are kept out of these premises.

The Summary Offences Act was, as I indicated, also considered. Section 41 treats with instances in which a person is found on cultivated lands or found entering or leaving such lands, without lawful cause or permission of the occupier of those lands. Additionally, section 46(d) deals with persons who may be deemed to be rogues and vagabonds. That is, a person convicted of being idle and disorderly who is found, and I quote:

“...in any verandah, gallery, passage, gateway, dwelling house, warehouse, store, stable, outhouse, or other building, or in any yard, garden or other enclosed land, for any unlawful purpose;”

It is also submitted that although these provisions in the Summary Offences Act do

treat with the issue of being on lands or premises without lawful cause or permission, or for any unlawful use, a critical element to the issue to be addressed is lacking, that is, forcible entry onto premises and forcible detainer or keeping or holding or occupation of such premises.

Madam President, just to give an example. The problem I have described does not only afflict private homeowners and rent-paying tenants and what have you. It includes of course rent-paying tenants of state property, HDC properties; we have had a major problem in that regard. And recently when the law enforcers had to treat with this problem in state property, and had to go back a second time to remove persons who were previously removed, having to break locks on the second occasion, all that was available to law enforcement, the police with more specificity, all that was available to them was this charge in the Summary Offences Act, treating them as rogues and vagabonds, but that was not sufficient because they get bail, they come out and they continue to operate. It did not address the problem of forcible entry and forcible detainer or holding on.

Continuing, Madam President, section 30A(1)(a)(iii) of the Offences Against the Persons Act treats with the offence of harassment. By way of veering off just for the record again, this Offences Against the Persons Act was born, if I may put it that way, in 1925, well before our independence. It still exists today, very importantly. It is a major issue in dealing with some of our jurisprudence, and it is still relevant today. Notwithstanding its age, it continues to be on our books, and we have to handle it very gently.

For the purposes of the section I have just quoted which says:

“‘harassment’ of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as—

(iii) entering property or interfering with the property in possession of the

person;”

At first glance, the offence of harassment is perhaps closest to the offence of forcible entry. However, harassment as set out in that section still does not treat with the issue of a person unlawfully retaining possession of premises.

It is submitted, Madam President, that while persons who are at the risk of being forced out of their homes likely endure some form of harassment, it must be something more akin to harassment for the purpose of obtaining and retaining possession unlawfully, not harassment in those very general terms, and therefore that law too has proven to be quite inadequate to deal with the problem as I have described it.

The offence of burglary under section 27 of the Larceny Act, provides that a person who in the night:

“breaks and enters the dwelling house of another with intent to commit an arrestable offence therein; or

(b) breaks out of a dwelling house...”—having committed an arrestable offence—is or could be found guilty of burglary.

Unlike forcible entry and forcible detainer though, this offence appears to refer to acts of entering and leaving premises, committing arrestable offences, but it does not connote any intention on the part of the transgressor to take up occupation and to retain occupation of the dwelling house. Additionally, in order to be guilty of the offence of burglary, the person must have committed the arrestable offence at night. This provision therefore is limited in scope and is ill-suited to address the problem as we find it today.

Madam President, it is clear that these major pieces of criminal legislation do not adequately treat with or provide a solution to the problem we now face. The safety, security and well-being of the citizens of our nation is of paramount

importance, and the Government is taking steps that are necessary, all steps to maintain law and order in the face of those who seek to destabilize and terrorize us.

Madam President, in our quest to address the problem at hand, further examination of regional and international laws revealed that the offences of forcible entry and forcible detainer exist in jurisdictions such as the United Kingdom, Canada, Western Australia, South Australia, Guyana in our region, and of course the Cayman Islands. By way of example, I will provide an overview of the relevant laws of four of these jurisdictions for the benefit of Members of this House, so they would recognize that one, it exists elsewhere, it is not unique and, two, it is put in a way similar to the way in which we are treating with it, well other people would have had to face this problem as well.

In the United Kingdom, the first definition of “forcible entry” in law dates back to the 14<sup>th</sup> Century. The Forcible Entry Act of 1831 now still exists in that regard. This Act, together with its subsequent amendments, have since been repealed and replaced by the current offences in sections 6 and 7 of the Criminal Law Act, 1977.

Section 6 deals with violence for securing entry, and provides that a person is guilty of an offence where he uses or threatens violence for the purpose of securing entry into any premises, and knows that there is someone on the premises who opposes entry.

Section 7 deals with the adverse occupation of residential premises, and provides that any person who is on premises as a trespasser is guilty of an offence, if he fails to leave those premises when so required to do.

In Canada, section 72(1) of the Criminal Code deals with forcible entry and provides, and I quote, that:

“A person commits forcible entry when that person enters real property that

is in the actual and peaceable possession of another in a manner that is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace.”

Section 72(2) deals with forcible detainer and provides, and again I quote:

“A person commits forcible detainer when, being in actual possession of real property without colour of right...”

I like the way that was put, and let me read it again:

“A person commits forcible detainer when, being in actual possession of real property without colour of right, detains it in a manner that is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person who is entitled by law to possession of it.”

In neighbouring Guyana, section 312 of the Criminal Offences Act, Cap. 8:01 deals with forcible entry and provides:

“Everyone who with violence makes an entry into any land or building, whether he is entitled to the possession thereof or not, unless he does so in pursuance of a warrant or other lawful authority to use the violence, shall be guilty of a misdemeanour and liable to imprisonment for two years.”

Section 313 deals with forcible detainer and provides that:

“Everyone who, being unlawfully in or upon any land or building, maintains or attempts to maintain his possession or occupation thereof with violence shall be guilty of a misdemeanour and liable to imprisonment for two years.”

Madam President, in the Cayman Islands the Penal Code at section 84(1) addresses forcible entry and provides that:

“A person who, in order to take possession thereof, enters any lands or tenement in a violent manner, whether such violence consists in actual force applied to any person or in threats or breaking open any house or in

collecting an unusual number of people, commits forcible entry.”

And section 85 dealing with forcible detainer says:

“A person who, being in actual possession of land without colour of right, holds possession of it in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace against a person entitled by law to the possession of the land commits the offence of forcible detainer.”

Madam President, these four examples illustrate that the two new offences of forcible entry and forcible detainer that we propose to insert in our Trespass Act, are not, as I indicated earlier, a novelty, but in our experience it is a necessity, because we know the pain and suffering that citizens of Trinidad and Tobago have suffered as a result of this.

I can tell you, I have had personal dealings with some of these matters. I have seen people leave Trinidad and go for a vacation to the United States or elsewhere, when they come back they meet people in the house and they are told, “Do not stay here.” I have seen cases where a family member like a father dies, the children would not have been living there. When they show up to take control and possession of daddy’s property, they are told by criminal neighbours, “Ride out. Do not come back.” And you have a stark choice: either you come and fight for your property or you die. That is the choice they give you.

I know of a case where a gentleman worked all of his life, used his retirement income, finished off a wonderful edifice, and was chased out of the house by criminals in his neighbourhood. He rented the house out, thinking at least as he adopted space in an annex in his sister’s house in another community, he rented his house out. Within one week they fired-bombed the tenant. The tenant had to flee, and then the house was taken over by such wonderful, but unwelcomed citizens of the Republic.

Might I approach, Madam President, with your kind leave, a bit of a clause by clause. I do not think it is too necessary. This is as simple and straightforward as you can have it, but for purposes of the record I should venture very briefly an analysis of some of the short clauses in this Bill.

Clause 1 therefore would provide for a short title to the Act. Clause 2 would provide for the interpretation of the words “the Act” to mean the Trespass Act, Chap. 11:07. Clause 3 would amend the long title to include the words “and other premises”. “Premises” is the new term that will be introduced in the Bill for which a definition will be provided. Clause 4 of the Bill will amend section 2 of the Act to provide for the interpretation of certain words and phrases used in the legislation.

Some of the new terms used will include “enclosed yard”, which would mean land that:

- “(a) is surrounded by a fence, natural boundary or a combination of a fence and a natural boundary;
- (b) is enclosed in a manner that indicates the occupier’s intention to keep persons off the occupier’s premises or to keep animals on the occupier’s premises;”

“Premises”, which would include, as another definition:

- “(a) any lands;
- (b) any building or structure or part thereof whether permanent or temporary and whether fixed or capable of being moved;”

A very thorough application of the meaning of “premises” I submit, Madam President.

- “(c) a dwelling house;
- (d) any garden, ground, cultivated lands, plantation, oilfield, refinery or

oil tank farm;

- (e) any ship, boat or other vessel;”—because some people do live in those places—“and
- (f) vehicles and aircraft except while in operation.”

Additionally, it is proposed that the definition of “night-time”, which is defined in the existing Act as including:

“any time between seven o’clock in the evening of one day and six o’clock in the morning of the next day;”—be deleted.

We are all aware that trespass, especially as I have described it, or trespass simpliciter could occur at any time. So this terminology is not only archaic, but it limits the scope of the legislation, and certainly does not assist us in what we are trying to achieve in this round of amendment.

### **2.30 p.m.**

Clause 5 of the Bill will make two amendments to section 3 of the Act. First, the words “night-time” are to be deleted to expand the application of the legislation.

Secondly, the existing penalty of a term of imprisonment for three months is to be increased to a fine of \$50,000 and to imprisonment for 10 years; those reflecting the seriousness of the situation as I have described it—at least, I hope I have—and, of course, to have the effect of a deterrent.

Madam President, I mentioned at the start of my short presentation that the Bill will seek to increase the existing penalties in the Act to not only act as a deterrent, but to reflect the seriousness of the offences which may be committed. Having regard to the fact that the offences set out in the Act directly affect an individual’s fundamental right to property and to the enjoyment of that property, and the right not to be deprived thereof except by due process of law, it is

imperative that the penalties which are provided are proportional to the nature and the gravity of the offences created herein. Madam Speaker, it is well known—

**Hon. Senator:** Madam President.

**Hon. F. Hinds:** I am to apologize, Madam President, it is well known that the State can infringe the citizens' constitutional rights, the law books are replete with examples of that, and if the State is to acquire or to take or takes inadvertently even, someone's property, the law and the Constitution insists that it cannot be so done unless by due process of law and in most cases yielding compensation to the person who would have suffered that loss; and that is as against the State. But when the criminals intervene in the way that I have described, there is no constitutional action against them, and as I demonstrated a while ago, the laws of Trinidad and Tobago as they now subsist, do not affect them. So it meant that the police had to charge with some old law under the Summary Offences Act, of rogue and vagabond, "they pay \$200 and they walk out and they gone, but they not giving up de people property"; so it is that serious.

Clause 6 would make two amendments to section 4 of the Act. First, it is proposed that the word "servant" which occurs in that section be replaced by the word "worker". I am sure that will be music to the ear of Sen. Wade Mark, old but abandoned trade union activist as he used to be; he has now abandoned that—and we use the word "servant". There was a criticism in the public domain that the word "servant", it harks back to the old days, antiquated days, so we have changed that with "worker", and I am sure that would meet the taste of Sen. Mark a little more adequately.

Secondly, it is proposed that the existing penalty of \$200 be increased to a fine of \$50,000 and to imprisonment for 10 years, where a person is found on any lands on which or near to which there is a notice forbidding trespass or in the

absence of such notice where a person refuses to leave such lands when requested to do so. A rather unthinking citizen of the Republic when this matter and this point became public, opined convivially and foolishly, in my view, that in this modern time you have to put a stick with a sign saying “trespass”. Of course, it is notice to the whole world, it existed then, it still exists now, in every country in the world you put a notice on the land so persons will be warned “do not trespass”.

You cannot do it by email, not everybody has that. You cannot do it by WhatsApp, you may not have the offender’s phone number; so notice to the whole world. So that is why I described the intervention of the citizen as a bit foolish, but now that they are better enlightened we will hear no such thing, I am almost certain. So, Madam President, may I continue.

Clause 7, would amend section 5 of the Act in order to increase the existing penalty. Section 5 of the Act provides that:

“Any person who fastens any vessel, boat or craft to any private wharf or landing place, or lands...on which...there is...a notice...forbidding persons to trespass...”—will be—“...liable on summary conviction to a fine of two hundred dollars.”

It is proposed in keeping with the modernity that we now seek, it is proposed that this penalty should be increased to a fine of \$50,000 and to imprisonment for 10 years.

Clause 8 would amend the Act by inserting after section 5, two new sections: sections 5A and 5B. Madam President, these two new sections would make provision for the offences of forcible entry and forcible detainer to deal with the problem as I have described it. And the proposed section 5 will provide for forcible entry in essence where a person uses force, threats or intimidation to enter property. And it says and I quote:

“A person who uses force, threats, or intimidation to enter premises which is in the lawful possession of another person in order to expel that person and take possession of the premises and does so otherwise than in pursuance of an order of a court or other lawful authority commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for fifteen years.”

Additionally, section 5B would make provision for forcible detainer and it is presented, and I quote, as follows:

“Any person who, being unlawfully in or upon any premises, maintains or attempts to maintain his possession or occupation thereof and does so by force or in a manner that would render the use of force as the only reasonable or practicable means of recovering lawful possession of the premises, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for fifteen years.”

Now, this is summary conviction and, of course, we know that when you outline in legislation sentences, proposed sentences like these, it is up to the court, in any event, to decide what sentence it would apply, and while it says “and” it does not have to be both. And certainly for magistrates if it is done summarily, would only be able to issue a sentence of 10 years, so it contemplates that possibility and indictment if necessary.

Madam President, the term “premises” was inserted into the proposed sections 5A and 5B in the other place. When we went to the other place, we had “land and building”. We changed that to “premises” in that place, and this was to enable the provision to have the widest application possible.

Hon. Senators will recall that the Bill proposes to define “premises” to include:

- “(a) any lands;
- (b) any building or structure or part thereof whether permanent or temporary and whether fixed or capable of being moved;
- (c) a dwelling house;
- (d) any garden, ground, cultivated lands, plantation, oilfield, refinery or oil tank farm;
- (e) any ship, boat or...vessel; or
- (f) vehicles and aircraft, except while in operation.”

And this brings the question that particularly a layperson would ask: What is meant by lawful possession? “Lawful possession” which is used in proposed sections 5A and 5B, it is intended that the term “lawful possession” means “in accordance with the law”.

Accordingly, lawful possession may include a person who has a proper title in respect of the premises, a person who has a tenancy or licence to occupy premises, and a person who has even a certificate of comfort in respect to premises; all of those demonstrating that the person has lawful possession in respect of those premises.

There are many variables which may affect the issue of lawful possession and, Madam President, it is for this reason it is respectfully submitted that to attempt to attach a fixed meaning to the term of “lawful possession” would be a disservice to the hundreds of thousands of citizens who may have a legitimate interest in respect of premises. Ultimately where a question as to the right or title to any premises or any interest thereon accruing therefrom arises, it is for the court based on the facts and circumstances in each case before it, to determine whether a person is in lawful possession or otherwise.

Madam President, I have mentioned the persons to which legislation may

apply. It may therefore be useful to also mention those categories of persons in respect of which the legislation will not apply. This would include tenants who failed to pay rent, tenants at will and tenants who are holding over. In these situations, Madam President, there are remedies available which are already provided by law.

So if a person entered premises as a rent-paying tenant, so to speak, and ceases to pay rent, that does not make him liable for the offences we are creating here, because it cannot be shown that he entered using force or he was using—well, unless, of course, he does not use force to retain it, there are other remedies against such a person in respect of his landlord, and there are other laws that govern that relationship, but just to put everyone at ease, it will not attack or deal with such a person because, for obvious reasons.

Madam President, it is also worth noting at this juncture that the provisions of the Act would apply to both private lands and lands belonging to the State. I alluded to that when I gave examples of HDC property earlier today. And I draw hon. Members' attention to section 6 of the Interpretation Act which provides, and I quote, in subsection (1):

“(1) No written law binds or affects in any manner the State or the State's rights or prerogatives unless it is expressly stated in the written law or it appears by necessary implication that the State is bound by the written law.”

And:

“(2) Notwithstanding that the rights of the State are not affected by a written law the State may take advantage of its provisions.”

So that is an important point for note.

Clause 9 of the Bill would amend the Act by inserting after section 9, a new section which will enable the Minister to make regulations, something we are all

familiar with, to give effect to the provisions of the Act.

And additionally, in order to circumvent the low monetary limit of \$500 prescribed in section 63(1) of the Interpretation Act, it is proposed that:

“Regulations made under this”—new—“section may provide that the contravention of any Regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of twenty-five thousand dollars and imprisonment for five years.”

So this formulation was done to circumvent the limitation of \$500 that now exists in relation to regulations and their breaches in the Interpretation Act at section 63(1).

Clause 10 of the Bill was inserted in the other place, which would seek to make a minor amendment to sections 6, 7 and 8 of the Act by deleting the word “servant” as I indicated earlier, wherever it occurs and substituting that with the word “worker”. It was felt that this old connotation was not of any great value to us on this round.

Madam President, the benefits to be derived from the measures proposed in this Bill are to our, the Government’s mind, invaluable. They will restore public confidence, at least in part, to the criminal justice system, and serve as a deterrent to persons who may be career criminals or interested in becoming involved in that kind or other kinds of criminal activity.

The Bill sends a strong message to those among us who feel that they could manipulate people and flout the law for their own nefarious gains, and are intent on inflicting terror on law-abiding citizens, and signals to them that this Government is serious and will no longer allow that kind of lawlessness to prevail without lawful restraint.

Madam President, when this matter was presented in the other place, and

since then the public who has had an opportunity to comment on it seemed to have found great favour, because at the end of the day, they have been the victims of some of the issues I have described, and we feel very confident by that and our other anecdotal and studied evidence that these measures are very important, Madam President, and with those few words, I propose these measures for the consideration of this House. I beg to move. [*Desk thumping*]

*Question proposed.*

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

**Sen. Wade Mark:** Thank you, Madam President. Let me welcome the hon. Minister in the Ministry of the Office of the Attorney General who after three and a half years has found himself presenting a Bill. I look forward to him assuming his rightful place as a veteran of the PNM and full-fledged Cabinet Minister.

**Sen. Khan:** He is a member of the Cabinet.

**Sen. W. Mark:** A full-fledged Minister, not a Minister in the Ministry. [*Crosstalk*]  
Madam President, may I continue, please? I just wanted to welcome my colleague.

Madam President, I want to make it very clear from the outset that the United National Congress, the alternative government of the Republic of T&T, is totally opposed to any criminal invasion and occupation of legitimate premises by citizens, or owned or tenanted by citizens, and we will fully support measures to deal with those illegal occupants, so I want to make that very clear from the outset.

But, Madam President, I want to also advise this honourable Senate that “the road to hell”, it has been said, “is paved with good intentions”, and I will demonstrate in my contribution because, Madam President, I sought to get information as it relates to the drivers of this piece of legislation.

We went to the police, we got some minimal inputs; we went to the Judiciary, we got some limited inputs. We went to the Office of the Attorney

General, we got no assistance because the hon. Minister in the other place made reference to the Law Reform Commission and we thought that would have been a useful document for all Members of the Senate to have so we could have understood what was driving this process, what data informed the Government's policy on this matter; I think that is a weakness that we have today.

And I must tell you, Madam President, just as how I miss you at times, I miss the Attorney General [*Desk thumping*] because the Attorney General would have given us statistics and data, but we did not get that today from our honourable colleagues.

But, Madam President, may I indicate to you as a government that is shortly to occupy office—we are in the waiting—I want to indicate that we have looked at some data that was supplied to us from the police. And, Madam President, unfortunately, we did not get for the whole country, we just got for the Port of Spain Division as it relates to threats of forcefully entering people's homes. And we saw for the period 2015—2018, there were 12 reported cases made to the Trinidad and Tobago Police Service in Port of Spain, 12; 2015, four; 2016, one; 2017, four; 2018, three, so that is what we have before us, Madam President.

In terms of trespass between 2010 and 2018, we have 76, and that is trespass by night. And as it relates to trespass of lands, we have just about nine and that is for about 10, I would say, eight years, Madam President. So we do not have much data to go by as it relates to what is driving this particular piece of legislation.

What we got from the Judiciary, Madam President, is that from the period August 01, 2013 to July 31, 2018, the total number of persons charged and prosecuted at the Magistracy was 437. And, Madam President, would you believe that the highest number was not in Port of Spain, you know—Siparia Magistrates' Court, 17.6 per cent and the Princes Town Magistrates' Court followed by 13.9 per

cent for the period under review.

So, Madam President, for the period 2013/2014—2017/2018, the average number of persons who were prosecuted, charged and prosecuted in accordance with the Trespass Act was an average of 87, that is what we are advised by the statistics received by the Judiciary.

So, Madam President, I started off by indicating very early that when this matter of criminal elements invading and occupying citizens' homes in different parts of the island, I had raised a number of questions and sought answers, but I remember reading in the *Newsday* of Sunday, December 10, 2017, an article headlined, "Mitchell: Anti-gang law could stop squatters". At the time, Madam President, we had an invasion of the Clifton Towers by criminal elements in that part of the island and the city, and the hon. Minister of Housing and Urban Development at that time, Randall Mitchell, indicated that the anti-gang law could have been used by police officers to lay more substantial charges against those who had illegally occupied apartments at Clifton Towers in Port of Spain.

**Hon. Senator:** How many got charged?

**Sen. W. Mark:** None. But what I am saying, Madam President, at the material time we were being advised by the Minister that those elements that gained forceful entry could have been charged not only under the Summary Offences Act, as my colleague said, but he made a very strong case for the anti-gang law because these were criminal gangs that were invading people's spaces.

So the question that has to be asked: Why has the Government not utilized the anti-gang law to deal with those elements who are occupying illegally our premises when we are not there? And when we go abroad, as we were told, and we return, our spaces are occupied by criminal elements. Why? But what we are being told is that we need to amend the Trespass Act.

I want to indicate, Madam President, that in 2014 according to the research that we have conducted, there were 92 gangs in this country, and by 2017 under this PNM Government, it mushroomed to 211 gangs. So under the PNM, gangs have been multiplying and manufacturing under the PNM. [*Desk thumping*] So what has happened, Madam President, today we are told when you read the newspapers, we have close to 3,000 members in gangs and when we look—

**Madam President:** Sen. Mark, this Bill that is before us is limited to certain issues, it is not about gangs. Okay? So you can make your comment, but I am not going to allow anyone to start off on something that is not relevant to the core issues of this Bill, so I would ask you to move on, please.

**Sen. W. Mark:** Madam President, you know I am always guided by your wisdom; always. Madam President, I was about to move on but, you know, you anticipated me, but I am moving on.

Madam President, I want to indicate very early based on your advice, that the Trespass (Amdt.) Bill is extremely disturbing, dangerous, far-reaching, as a Christian I would tell you, sinful, and I will demonstrate to this House, Madam President, through you, patently and manifestly unconstitutional and illegal. Madam President, this will end up in the courts of the Republic of Trinidad and Tobago, [*Desk thumping*] I will demonstrate why. And the Government, it is either they believe that the Opposition and the public are not conscious of the reality that surrounds us or the Government of this country is deceptive in what it is attempting today; I do not know which one to attribute to the Government.

We are dealing with two issues here in this piece of legislation; criminal elements that we are saying we are on all fours with the Government on that matter, but we are dealing with something else.

Madam President, may I invite you to go to the colonial Act where the white

planter class—because those were the people who were in charge at the time, labourers were like slaves working for them and “servants” now “workers” were also working for them. So in 1852, 167 years ago we did not have freedom as we have today.

So, Madam President, we in 1852, the framers of the law at that time stated and I quote, the concept and definition of “owner”. “Owner”, Madam President, what did the definition say? It said:

“...includes the tenant, occupier, or other person having the possession...”  
—the possession, Madam President, the possession, and I will tell you what it means, what “possession” means—

“...of any land.”

You know what has happened, Madam President? I am a squatter, I am an occupier of land, I am now in possession of land. You know what “possession” means in the legal dictionary?—the ownership, control or occupancy of a thing most frequently land or personal property by a person. So I am the legal occupier and owner of land right now under the Republic of T&T, but I am a squatter.

You know what this Government is doing, either, as I said, surreptitiously, deceptively or unknowingly? They have now introduced, Madam President, the concept of what?—“lawful possession”; and you heard what the hon. Minister said? Lawful possession means in accordance with the law, and he went on further to say, you must have title, you must have licence, you must have deed in order to be in lawful possession.

Madam President, let me let you know, under our Constitution—I want to quote section 6(1) of our Constitution. I am not a lawyer, but I read widely and I leave it to the lawyers to interpret that, Madam President, including your good self, because I know that you are an excellent lawyer.

Madam President, under 6(2) of the law, I would not spend time regurgitating, you can go to the law and see what it means, I will summarize it for you. When you have a saved law as we had in 1852, amended in 1936, and you are going to re-enact that law with modifications, you cannot derogate fundamental rights.

What the Government has done in this legislation is derogated fundamental rights. So, Madam President, I have a right to property as an occupier, I have a right as a squatter. The Government is now changing that and saying, no longer “possession” which I currently enjoy, and anyone who trespasses on my land as a squatter, I can get rid of you. Do not come on my land, I have a right to that land.

So, Madam President, what the Government is doing, they have now introduced a new concept and they call it “lawful possession”. So, Madam President, what “lawful possession” means is that, if I do not have title, if I do not have a deed of lease, you know what that means, Madam President? You can now take my property, you can now take possession of my land. The State can now eject me from my property because we are dealing with state land here, eh, I am not dealing with private property, because private property is part of it.

**3.00 p.m.**

So, Madam President, I am arguing, and we are arguing here, that if you are derogating fundamental rights that I currently enjoy, you need to look at sections 4 and 5 of the Constitution, because you are abrogating, breaching and violating a right that I currently enjoy as an occupier. Madam President, what did the Government say in this legislation? The Government is saying in this law that someone who is an owner includes the tenant, so it means lawful possession; the occupier, lawful possession; and other persons having the possession of any land. Madam President, so if it means lawful possession of any premises, and we have a

new definition of “premises” in the legislation that includes land, building, dwelling house, garden, ship, vehicles. All of these things are premises. But, Madam President, before the Governmental tampered with this provision and this definition, I had a lawful right. I had an inherent right to occupy property on state land. What does this mean? It might unintended consequences, but the Government may not have thought it through properly because I do not believe that the Government wishes to make unlawful those citizens who are in possession of state land in Trinidad and Tobago.

And may I remind you, Madam President, from my research, there are 23,000 applicants who, before the 1<sup>st</sup> of January, 1988, applied to the LSA for certificates of comfort. My information and research tells me that only about 10,000 would have been successful, so 13,000 would not have successful. Madam President, since 1988, 1<sup>st</sup> of January, closing date for late application was 2000. My research points me to 40 to 50,000 more persons have occupied state lands from then. From 1988, 2000 to 2019. Madam President, when you take 50,000 or 40,000, whichever number you wish to use, and you add another 13,000, we are talking about close to about 53,000 people. Multiply that by four on a conservative basis, husband, wife, two children, and I am being conservative, Madam President, because you know in many families today is five and six children, and husband and wife. That is in the average in many areas today in Trinidad and Tobago, especially in poor areas. Madam President, we are talking roughly, if we are talking about 50,000 people, we are talking about close to 200,000 people, and in some instances close to 240,000 people. So, Madam President, I am asking the question: If you are proceeding—

**Sen. Gopee-Scoon:** Point of order, 46(1).

**Sen. W. Mark:** No, I am dealing with a matter that deals with ownership, Madam

President.

**Sen. Gopee-Scoon:** You are talking about squatters, come on.

**Madam President:** I would allow you to bring your point together, but you need to do that Sen. Mark.

**Sen. W. Mark:** Yeah, all right. Madam President, if you look at the legislation, it is very clear, and I do not know why the Government is jittery on these matters unless there is an ulterior motive.

Madam President, if I take you to clause 8 of the Bill and you look at 5B of the Act, what does 5B tell us? 5B deals with forcible detainer. It does not deal with forcible entry, which is the criminal element. What it deals with is forcible detainer. Hear what the Government is saying here, and I want the hon. Minister to explain to the country, because I want to tell you the United Nation Congress will be going to every nook and cranny of this country to deal with this piece of legislation. Madam President, hear what is being said:

“Any person...”—explain this to the country.

**Madam President:** No need to read it.

**Sen. W. Mark:** I know. I know, but you know it is important, Madam President. When we are speaking here, always remember, Madam President, the public does not know about this Bill, so sometimes you need to share with the public what this thing is about. [*Desk thumping*] And remember we are to educate the people, and it is about transparency.

So I would not deal with the entire thing, Madam President, but the point I am making is that this part is saying that anyone who is unlawfully upon any premises and they maintain or attempt to maintain his possession— So, Madam President, I am on premises; land. I am seeking to maintain my land, I am in occupation, and they are saying I am doing so by force or in a manner that would

render the use of force. So in other words, somebody is going to apply force to me.

“...as the only reasonable or practical means of recovering lawful possession of the premises, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for fifteen years.”

Madam President, what is the Government attempting to do in 5B? You are saying to an occupier that if you are in possession of property, the Government has the power to use force if it is necessary to regain their property because they are saying it is unlawfully being held, and if it is being unlawfully held according to section 5B, it means to say that the person does not have title, and does not have license, and does not have a deed of lease. So, in those circumstances, the Government could use force to get people out of premises. Madam President, I would like to advise this Government that this provision of 5B is very, very dangerous. We are going to propose sweeping amendments to this piece of legislation to ensure that the rights of people are protected under this legislation. [*Desk thumping*] That is the first step. That is the first step. But we know it is simple majority.

**Sen. Ramdeen:** But they could withdraw it.

**Sen. W. Mark:** Yeah, yeah, yeah. This is a simple majority and the Government may want to railroad their way. We would want them to withdraw this Bill, Madam President—

**Madam President:** Sen. Mark, you cannot say that.

**Sen. W. Mark:** All right, sorry, Madam President. I am anticipating and I should not say that. I agree with you.

**Madam President:** So you withdraw it, Sen. Mark?

**Sen. W. Mark:** I withdraw it humbly and graciously, Madam President. Madam

President, I want to indicate to this honourable House that this provision that I have just read along with the definition is going to infringe on the very concept that the hon. Minister spoke to, the right of every citizen to enjoyment of property and the right not to be deprived thereof except by due process of the law. But what the Government is doing with a simple majority that requires a special majority is changing the goal post, shifting it from where I was in terms of enjoyment of property and saying, listen, you now have to have lawful authority and lawful possession, and if you do not have lawful possession, I as the landowner and the landlord, the State has the right to come and eject you. That is what this is attempting.

And, Madam President, if you look at section 4(a), section 4(b), section 4(d), (g), (h), (i) and (j) of our Constitution, rights are being infringed and rights are being violated by this measure, and I call on the Government, Madam President, to withdraw this 5B, which is extremely offensive and oppressive, and is not designed to bring about the kind of justice to those citizens who really deserve that. So, that is another area, Madam President, I would like to bring to your attention.

Madam President, I also want to bring to your attention a measure that I find very disturbing. Here it is the Government is seeking to make regulations to deal with land and invasion of people's property. But under section 9A(1) of the Bill, the Minister is going to be doing that secretly, meaning, Madam President, we are dealing with primary legislation today, and the Minister is going to—the Executive that is—is going to make regulations through a negative resolution, we have to go and look for that in the *Gazette*, and if we want to annul it, come here within 40 days after they issue it in order to file a Motion to annul it. Madam President, since we are the lawmakers of this country, and we have to keep a check on executive power, we have no choice but to call for an affirmative resolution. So we are

calling on the Government to change that from a negative to an affirmative.

Madam President, if you go to 9A(2), I understand in legal language, and my friend Sen. Ramdeen can advise on this, there is something called “Henry VIII Clause”, and I get the impression this is a Henry VIII Clause. I have never seen such in my life. They are asking us in the Parliament to literally buy “cat in bag”. Could you believe that? The Government is so desperate to make regulations to deal with the 300,000 persons in this country who are going to be affected by this legislation, that you know what they are proposing? They are telling the country that they are going to prescribe penalties now, fine including \$25,000 and imprisonment for five years. Madam President, how can you without us as a Parliament, having sight of those regulations, how can we agree as a Parliament to give you prospective power? [*Desk thumping*] This is what I call a Henry VIII Clause. You want to do things behind the back of the Parliament, but you come to the Parliament for approval today. Well, Madam President, we are not in support of this. [*Desk thumping*]

Madam President, I want to also share with you some of the Opposition’s concerns about these fines. I understand my colleague to have said, during his presentation, that these fines, as far as he is concerned, are very proportionate; very, very proportionate. So in the years gone by, in the years gone by, Madam President, the planter class seemed to have been a little more compassionate; \$200 in 1852; in 1936, \$200, Madam President. The parent Act, if you go to the United Kingdom, Madam President, where many of these provisions would have come from, they do not go beyond three months. Do not go beyond three months, in terms of imprisonment, Madam President. Do you know in Trinidad and Tobago—I do not know and the Minister did not explain to us the rationale, all he said it will serve as a deterrent. So it gone from \$200 to \$50,000. You gone from \$500 to

what? \$100,000. You gone from three months to 10 years. Something is disproportionate about this, and the Government has offered no explanation for the rationale for this kind of disproportionality.

So, Madam President, I did some research on this matter and I was able to come up with—now remember, Madam President, there is a concept called “simple trespass” and this is what we are dealing with here, and then there is something called “criminal trespass”. Madam President, do you know that as it relates to summary offences in the courts of Trinidad and Tobago, criminal charges, eh, and offences, Madam President, do you know that if you inflict injuries with a weapon you get five years in this country? But somebody who is in occupation—and Madam President, I am saying over and over, we are not in any way diminishing the importance of criminal conduct in this matter. What we want to do is to be fair and even-handed in what we are doing. And we as a Parliament must have a rationale, and we must be able to justify why we are doing what we are doing.

So, Madam President, robbery I am seeing you have a maximum of six years; larceny, five years; drug possession, five years; firearms, eight years; statutory rape, five years; indecent assault, five years; and I can go on and go on. So, I am trying to get from the hon. Minister, could you share with this honourable Senate what was the rationale for these sentences in terms of the fines? \$50,000 and 10 years. And secondly, \$100,000 and 15 years. Madam President, is that going to be a deterrent? My colleague would have told you somewhere else that to kill somebody in Trinidad and Tobago the sentence is death by hanging. Does that deter people, Madam President? So, we have to be very clear in what we are doing, because at the end of the day what you want to do is to rectify a challenge or a problem that we are dealing with in Trinidad and Tobago, and therefore I am

suggesting to the Government, Madam President, that there are many areas in the current—

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

**Sen. W. Mark:** Yeah. Madam President, in the current legislation that is before this honourable House, we are suggesting to the Government that they revisit certain fundamental areas of the legislation. So the first thing that we are suggesting to the Government is that we look at the whole concept of owner. We are not in support of the new changes that the Government is proposing in terms of owner having regard to the changes that it would bring.

Madam President, I looked at the Jamaican legislation, and they had amendments in 1983, and they looked at both night time crimes and day time crimes, and in Jamaica they actually imposed higher penalties in the night for crimes committed than in the day. Now, my colleagues here would say, look, we would be wasting time if we do so. I believe that it is something that we need to examine and not simply dismiss, you know, whimsically. So I call on the Government to look at the Jamaican legislation as it relates to this matter of fines in the day and fines in the night, Madam President.

Madam President, we believe, and unless the Government can prove otherwise by the recommendations that we are proposing in terms of the amendments, we believe that right now in Trinidad and Tobago there are tens of thousands of citizens who are in the rain and they do not have a shelter. It is the role of this Parliament to ensure that they continue to be protected and not left in the cold, and therefore we have to refine the legislation to ensure that the thousands and hundreds of thousands of people who could be caught inadvertently in this legislation, because of how it is crafted, we need to craft legislation with more precision. Madam President, why are we leaving it up to the court to determine

lawful possession? Why can we not as a Parliament determine that? Why are you leaving that for the courts? Madam President, you know ordinary people who are unable to build their homes and they have to occupy state lands, you know the kind of challenges that they are faced with? Madam President, you would also appreciate that if you have applied for a certificate of comfort, and you are still awaiting that certificate of comfort, what is going to happen to you in the interim if somebody comes and seeks to kick you out or off your land, and you go to the police for protection? Under this law the police will ask the question: “Where is your title? Where is your certificate of comfort?” “I have no evidence to show it Mr. Policeman”. “Well I cyar protect you”.

So, Madam President, I want to also tell my colleague from Tobago, Sen. Nigel De Freitas, the Vice-President, that in Tobago 95 per cent of the people of that island do not have title. [*Desk thumping*] They do not have title. Madam President, it is possession and succession. They have possession and they also have succession. So, at the end of the day—

**Sen. Gopee-Scoon:** This is very irrelevant.

**Sen. W. Mark:** You might call it irrelevant because you have not studied the Bill. [*Desk thumping and laughter*] You have not studied the Bill but we have done our homework. So she is totally out of order.

**Madam President:** Who is she?

**Sen. W. Mark:** The hon. Minister—temporary rather Minister who will be out of office shortly.

**Sen. Gopee-Scoon:** I could tell you, you would not be on this side.

**Sen. W. Mark:** “Yeah, you go nah, you get a little vaps and thing recently.”

**Madam President:** Sen. Mark!

**Sen. W. Mark:** “Vaps” I am talking about.

**Madam President:** Sen. Mark!

**Sen. W. Mark:** Yes.

**Madam President:** Please! You have about 15 seconds, please wrap up your contribution.

**Sen. W. Mark:** Yes, I wrap up, Madam President, by asking you, Madam President, clearly we will not be supporting this legislation in its current form. [*Desk thumping*] We would be putting forward amendments to it, and we are hoping, Madam President, as you have predicted, good sense will prevail so we would not have to end up in the courts of Trinidad and Tobago to defend the rights of the ordinary people of Trinidad and Tobago.

I thank you very much, Madam President.

**Madam President:** Sen. Vieira.

**Sen. Anthony Vieira:** [*Desk thumping*] Thank you, Madam President. Just to say, through you, how happy I am to see Minister Hinds in this Chamber again. I very much enjoyed his presentation, and I wish to compliment him on it. [*Desk thumping*]

Madam President, it pained me when I heard about how people were being forced out of their homes. You know how terrifying it must be for an elderly person or for a single mother with children to be the victim of a home invasion? For the sanctuary of one's home to be invaded by fearsome, dreadful characters, probably wielding knives, cutlasses and guns? Home invasions can be accompanied by robbery, rape and violence. The purpose of this legislation, as we understand from the hon. Minister, is to tackle those rogue elements intent on terrorizing and bullying homeowners, into forcing people out of their homes. Sounds like something out of the movies with the *Walking Dead* series, or *Bird Box*. Yet this has happened in our country.

Sen. Mark has said that between 2015 and 2018 there were 12 reported cases in Port of Spain. Well, I want to say that is 12 cases too many. [*Desk thumping*] This legislation is intended to curtail what I could only describe as acts of barbarism, and to provide victims and law enforcement with a user-friendly, readily accessible remedy. Since Roman times the law has regarded the home as sacred; *quid enim sanctius*. What could be more sacred than one's own home? And in English law the expression, the well-known expression, that a man's home is his castle, recognizes the right for people to feel secure in their homes is fundamental. Home invasion is the unlawful entry of someone's home, usually involving some type of force. Usually the residents of the home are present, but even if they are not at home entry is still unlawful.

This legislation will fill a gap in the much needed protection offered under the current law. As we have heard, the Trespass Act came into effect in 1852 and was last amended in 1936. But, that Act was more concerned about the rights of landowners rather than homeowners. And to be actionable, it required a notice in legible letters forbidding all persons to trespass, or in the absence of such notice, or failure on the part of the offender to leave after being requested to get off the land. Of particular significance is section 9, which pre-empts magistrates from determining any case of trespass in which any question arises as to the right or title to any lands or to any interest in them.

So, where a defendant can raise issues pertaining to disputed rights, title—or he claims to have an interest in the property, the magistrate has no jurisdiction. Additionally, and notwithstanding that the essence of a home invasion or forcible entry is an illegal act, a victim may be unable to get the support from the police if they take the view that the complaint is a civil matter. And even if the police wanted to help, as we have heard, there are gaps in the law treating with forcible

detainer and harassment, and the like.

Now, there is also the matter of self-help, assuming that the victim is physically able to resist and overpower his or her attackers. But again, here is potential for risk and negative blowback if the powers that be take the view that the force used in repelling the home invaders was excessive. Unlike some States in the United States, our courts, like the British courts, have frowned on the use of self-help, and in fact they actively discourage self-help as a remedy.

So then, what about going to the High Court? In terms of civil remedies, trespass is recognized as a tort, a civil wrong. But the problem is, that having to bring proceedings under the Civil Proceedings Rules, including drafting, filing and serving the claim with the necessary evidence and support, then you get your hearing dates, and having to retain lawyers can be expensive and difficult. There are summary procedures available, though to the dispossessed homeowner, the words “summary”, and “summary relief” in terms of process and procedure is relative at best. In any event, in the High Court there are procedural hurdles and potential complications. For example, the fact is that courts generally do not like making final orders against persons who are not parties to an action. So, being able to proceed for an order for possession against unnamed persons can prove problematic. Home invaders tend not to disclose their names or to give out call cards.

So, Madam President, the harsh reality is that the available remedies under the law at present are cumbersome, archaic, and oftentimes beyond the resources of the vulnerable. So, I agree with the hon. Minister, that no existing provisions in the laws that adequately address this burgeoning problem. So I compliment the Government for bringing this legislation. [*Desk thumping*]

It will ensure that trespass to property can be dealt with firmly and swiftly. Rogues

and vagabonds who violate personal privacy and security must suffer the consequences.

**3.30 p.m.**

Now, Sen. Mark raised some concerns about squatters being on the receiving end of this legislation and I understand his concern. But, my reading of the legislation, it seems to me that those concerns might be somewhat misplaced or misconceived. I see this legislation not as a sword but as a shield. Right? So, in fact, a squatter who is in a dwelling house, and “premises” defines dwelling house as being a temporary structure, it is fixed or it is capable of being moved. So a squatter could probably invoke this law under the doctrine of adverse possession, because his rights under adverse possession will not be affected. [*Desk thumping*]

A couple questions and suggestions. Burden of proof. What must a victim show to qualify for police assistance? Should there be a reversible burden of proof on the accused to justify his presence in the premises? Also, at section 5 of the Summary Offences Act, it is provided that:

“When any person is charged...with assault or battery”—on a—  
“...child...or”—on a—“...female, or upon any old, infirm or sickly person,  
the Magistrate, if”—in his opinion—“the assault or battery is of such an  
aggravated nature...”—can increase the sentence.

Well, I like that provision and I would certainly suggest and recommend that perhaps some similar provision can be included in this legislation. For example, if a woman or an elderly person is hurt or beaten up in the home invasion, prison time should be mandatory.

I also wonder if it might be helpful to treat with conversion and trespass to chattels in the legislation. Conversion as we know is the taking of another’s property, such as the crime of theft, but it extends to all exercises of dominion over

property and includes the destruction of that property. The tort known as trespass to chattels would apply to lesser invasions, short of taking the property. And last but not least, I do not think we have really dealt with section 9 in the amendments, but let me just read section 9 of the Trespass Act:

“Nothing contained in this Act shall authorise any Magistrate or Justice to determine any case of trespass in which any question arises as to the right or title to any lands or any interest therein or accruing therefrom.”

I would not like that to become a hurdle in the implementation of these clauses.

Those points aside, Madam President, this is needed legislation and I am pleased to support it. [*Desk thumping*]

**Sen. Garvin Simonette:** [*Desk thumping*] Madam President, I thank you for permitting me to make a contribution in this very important amendment to the Trespass Act. Madam President, after having heard the hon. Minister and my learned friend in the law of quite some time, Sen. Vieira, there really is little that ought to contain and concern us in this debate further. But permit me to indicate why I consider that this Bill is not only an important Bill at this time in our country, but also that it does not offend or portend to any ulterior motive as contended for by Sen. Mark.

The parent Act was passed just four years after the abolition of slavery. Let me repeat. The parent Act was passed four years after the abolition of slavery; subsequently amended in 1936 and remaining on our books untouched until now. But what is also important, and we will look at the ways in which the hon. Minister and the Attorney General and this Government have sought to modernize the law. But what is also of importance is that the civil remedy for trespass, as Sen. Vieira was indicating, is not only likely to be and is unavailable to ordinary people. But if you know the law, the remedy is very restrictive. The civil remedy in trespass is

available solely—and I would urge Sen. Mark to listen carefully—to those who have title and ownership to land. Significant distinction. The persons entitled to the remedies under this Bill do not have to show title to land. They have to be in lawful possession. [*Desk thumping*]

And so, Sen. Vieira's point goes to the nerve of the mischief and the malady that exist today on the current law in relation to trespass. "You cannot hunt with the hares and run with the hounds." If you have legislation that deals with gangs and gang violence and gang membership, that is specific to that issue. When we come to talk of, as Sen. Vieira says, "A man's or woman's home which is their castle", we are talking about modernizing the law to enable ordinary people to have a recourse that is speedy and inexpensive to treat with the rogue elements in our society. That is what we are here about. We are not here about pantomime, about ulterior motive and mauvais langage and old talk, and J'Ouvert morning, about taking away rights and contravening sections 4 and 6 of the Constitution. We are here about delivering to ordinary people the very remedies that are now unavailable in our law. And let us get serious about that, Madam President.

If we look, for example, at the proposed amendments to the definitions clause and we look at the amendment to the dwelling house. Trinidad and Tobago is finally catching up to its sister, its big or little sister as you may deem fit—Barbados.

"'dwelling house' means any structure or part of a structure whether permanent or temporary and whether fixed or capable of being moved which is designed or adapted for use as a dwelling or residence;"

So, Sen. Mark must understand what is true people's law, [*Desk thumping*] as opposed to the sophistry he engages in by trying to create the impression that this Government is in some way against the people. [*Desk thumping*] This

legislation is dealing with and delivers a remedy to owners of chattel homes. For the benefit of the listening public, a chattel house is a house, simple house, capable of being put on the back of a truck, on a few bricks, but that provides shelter to persons who cannot afford better. And are those types of homes open to being vandalized, being entered upon unlawfully? The answer is, yes. Did the 1852/1936 legislation deal with it? No. Has this Government dealt with it? Yes. [*Desk thumping*]

The other provision that brings this legislation into the modern era is the one that Sen. Vieira alluded to and that I mentioned earlier. The traditional remedy is available to an owner. Here we look at a definition to “occupier”. And the definition indicates as follows:

“‘occupier’ includes a person who—

- (a) is lawfully in physical possession of premises; or
- (b) has responsibility for and control of premises or the activities there carried on,”—so that the class—“or control over persons allowed to enter the premises...”

And what does that bring into being? That brings into being persons such as teachers; persons such as managers or agents of public property, who are on public property with authority, et cetera, or on premises available or open to the public, thus expanding the category of persons who are entitled to move for justice to be delivered in this circumstance of forcible entry and remaining in property where you have no right to so remain by deploying violence and force. Again, that is not contained in the anachronistic legislation of 1852/1936.

Madam President, again, as we were indicating, the definition given to premises is expanded. Not only a modest and temporary premises used as residences, included, but the Bill now also provides for security of agricultural

holdings; that is, any gardens, grounds or cultivated lands not in the original legislation, not referred to by Sen. Mark in his spurious, ulterior-motive spiel. So that what this legislation does, what this Bill achieves is providing remedies to the very farmers who are lawfully on their land, cultivating it and who are raided and forcibly put off—[*Desk thumping*]*—*where that remedy did not exist before.

But further, we hear every year, whether it is a UNC Government, whether it is a PNM Government, the maritime industry, the marine industry. And what does the maritime and marine industry mean? We are the southernmost island in the archipelago, least affected by hurricanes. So that we have the possibility of providing safe haven to the yachting industry. What has been the recent experience over the last, say, five years? Piracy. People boarding yachts, whether in the ocean, whether the yachts are berthed in a marina, and stealing and doing harm and so on.

What does the Bill do? It defines premises to include:

“any ship, boat or other vessel...”

The old legislation dealt with that, but how did it deal with it? If you tied up your ship to the planters or the gentleman’s wharf in 1852 or in 1942 without being invited so to do, then you were in trouble. That is how it dealt with yachts and boats or boats and vessels. What we are doing here now is addressing specifically this—not new, but burgeoning industry of piracy on the waters. What does the Bill include in premises?

“vehicles and aircraft, except while in operation.”

I am sure that Sen. Mark has very many of his constituents who may be forced to live in their cars. Well, they now have solid and speedy recourse.

Madam President, I wish to highlight that, and my learned friend, the hon. Minister, has dealt with the two offences that are now new products of this Bill. But what I wish to address is the fact that this Bill in no way infringes upon our

existing laws that protect land tenants or that protect squatters' rights. And may I indicate, Sen. Mark helpfully indicated that since 1998 there were applications for letters of comfort, et cetera. Those letters of comfort, not issued in 1998, are not the be-all and end-all, Madam President, of the protection that such persons enjoy under the law. Our law still recognizes adverse possessory rights and title. And I repeat, adverse possessory title. If those on the other side have deeper experience in the other areas of law, certainly in the area of land law, I urge them to get a little counsel.

Adverse possessory title is required after 16 years of uninterrupted, undisturbed possession and it is referred to also as prescriptive rights. But more importantly we have still on our books the Land Tenants (Security of Tenure) Act. And that Act was specific to provide certain significant property rights to persons who prior to 1981 were in occupation of even private lands. And I need not go into details of that Act, but in summary it entitled such persons to acquire either 30-year statutory lease, at what is a very reasonable rent, or to call for conveyance of such lands at half the market value.

So let us be clear about this issue of ulterior motive. This Bill is not addressing any of those issues which, on our statute books today and which are common law, protect the people that Sen. Mark would like to believe this Government is moving against. No such thing exists. [*Desk thumping*] It is an irresponsible, unmeritorious, lacking-in-content approach to what is a required and necessary intervention to treat with rogue elements at this point in time where, Madam President, if I may say so, if left untouched, left unaddressed, it is the criminals that rule and we that follow. That must stop.

Madam President, the other issue that I wish to address is the issue of the regulations. Now, again, if regulations are subject to negative resolution there is

nothing sinister, nothing underhand about that. That is responsible legislating. We come to deliver the remedy now, to deliver it in time where it is urgently needed and we say, okay, in relation to related matters the Minister will make subsidiary legislation. Subsidiary legislation is always subsidiary. And so there is no “cat in bag” or ghost in the dark or knife in the chest, or in the back that is coming at this. So let us be responsible and serious about the work we have to do in this Chamber and limit the frivolity and the politicking. That is my solemn contribution on that issue.

We have to deal with issues that are national. Let us put country first, as Sen. Vieira has done. Let us put issue first and deal in a mature manner with the work that the people have put us here to do and that they are paying us to do. And with that, Madam President, I thank you and I beg to move. [*Desk thumping*]

**Sen. Khadijah Ameen:** Thank you, Madam President. Madam President, I want to thank you for this opportunity to contribute today in this Trespass (Amdt.) Bill, 2019. And I have heard two speakers from the Government Bench and I also had the opportunity to listen to those in the other place in the Lower House. And it is my firm belief, I am very convinced that this Government is so disconnected with the people and disconnected with the issues and how far-reaching the measures recommended in this Bill could be to ordinary citizens. And I think it would help if they could be a little more receptive to some of the suggestions being put forward.

Madam President, in recent years criminals in Trinidad and Tobago have grown more bold. I think numerous speakers before me mentioned the criminal element, the gang element; and the Government’s lack of ability to really present a firm plan and a clear way to deal with crime, I believe, has a lot to do with that. And there is a perception in Trinidad and Tobago that, whether it is real or not, that there is a bold association with the criminal element to those in authority, and even

to the effect where even Ministers of Government, that there is that perception. And that, Madam President, I feel has a significant contribution to how bold criminals in Trinidad and Tobago are becoming. And in fact this Government's only saving grace with respect to crime might be the appointment of a former People's Partnership Minister of National Security as their Commissioner of Police.

The circumstances described by the mover of the Bill with regard to forcible entry, forcible detainer, his description tells me that he has a good appreciation of how violent these situations can be. But I also want to say for those who may be mistaken that these things can be experienced not only by the poor downtrodden squatter or the person who lives in a chattel home; it can be experienced by rich, poor, squatters. It is not only people who are in NHA apartments, in urbanized areas. It can happen in rural areas, north, south, east, west, Trinidad.

And I want to today share, Madam President, how I believe there are some unintended effects of the measures put out. The situation that we are trying to address is perhaps more prevalent than we think. We have not been presented with any data. I know the Minister did indicate that he is guided by information or data, but we have not been presented with any data to indicate the prevalence of the situation, because—

**Madam President:** Sen. Ameen, I know it is early on in your contribution, but Sen. Mark made that point already and I do not want your contribution to be a repetition of what Sen. Mark has presented, and he began his contribution by making that point. So I would ask you to be very clear about the point that you want to make.

**Sen. K. Ameen:** Thank you, Madam President. Madam President, I wanted to indicate and it is supporting the point made by Sen. Mark, but not repeating, and I

want to add, we may not have data in terms of criminal reports because it is not an offence that could be captured by the TTPS reports on criminal activities, but based on social intervention and social work that is done, I feel that there are areas that we could capture data with regard to this type of activities. So I wanted to put that on record, so that—I do not know what source of information the Minister would have, but that is an option to be explored.

Madam President, because of where I live and because I associate with grass- roots people all over Trinidad and Tobago, I am very familiar with the regularity to which this issue—[*Crosstalk*] to which this issue—“you doh know where I living, breds, so doh tell me bout grass root”.

Madam President, the regularity of which this situation occurs does require the attention of the authorities. I recall that in the lead-up to the 2015 general election, numerous—several PNM candidates indicated on their platform a promise in response to complaints and it was mostly—that I was aware of, in the Port of Spain area, there were some in the Chaguanas area as well, where people were complaining—their potential voters and supporters were complaining of gang activities infringing on their ability to enjoy their home. And I think because they wanted the vote at the time, there was that campaign promise that going on the hustings and making—in all their enthusiasm, making that promise so that the many voters affected by the criminal element taking over their property, whether it was in HDC developments, in squatter settlements and so on, that they would be appeased.

So in essence this Bill is really an attempt to deliver on a campaign promise. And unfortunately this Government is woefully short on achievements. So I think this is one of those fast fixes that they could count as an achievement if they pass this and put it on their platform as an achievement. [*Desk thumping*]

Madam President, there are several categories of persons that will be affected. I know that Sen. Mark spoke of the squatter situation, Sen. Vieira also made reference, and I do not want the debate about this Bill to go into a squatter rights and squatter regularization only. The definition of owner in the Bill, in section 2 goes to:

“...person with lawful possession of any premises;”

And a squatter may be one such person who has difficulty proving lawful possession. But he is not the only category of person who would have that difficulty.

Further, in (e), the definition of “occupier”, which is a person lawfully in possession of premises or (b):

“has responsibility for and control of premises or the activities there carried on or control over persons allowed to enter the premises;”

Madam President, this presents a difficulty that is worsened by the fact that the issue of land tenure regularization is not being addressed by the Government.

I want to deal with the squatter regularization briefly, towards the end, because I know others have touched on it. But, Madam President, I also had some information on the Tobago land situation, but I know Sen. Mark touched on that, so I want to endorse it. But I also want to share with you, Madam President, that in Trinidad the recommendations or the protection that is meant in this Act will not cover many persons.

**4.00 p.m.**

In the Tunapuna area, in the Pasea area—that area that is now known as Pasea, was the Bhadase Sagan Maharaj’s estate many years ago, and it was agricultural plots rented to farmers who, after many years, built homes. When Bhadase’s estate went to the State, they became tenants of the State. At different

points in time they paid rent to the State, they paid taxes, land and building taxes to the Warden's Office. At different points some of the residents would have been given leases by the Government—agricultural leases. However, the area has developed to the point where it is no longer used primarily for agriculture, and I think of persons like the people of Pasea who will have no protection under this Act, because some of them were never given title, although they would have been in occupation for three and four generations.

I also know of situations like in Munroe Road, Chaguanas, where the occupiers of those lands were given state leases many years ago—99-year leases which expired. These people, they are not squatters; it is not poor run-down homes. You are talking about people who—just as the Minister described, a person who invested their savings and built up their homes; good respectable law-abiding citizens whose 99-year lease expired. And they have not been given an extension of the lease, or a renewal of the lease for a reasonable time. They, at present, have no title to the land. Are they in lawful possession? Are they considered a lawful occupier?

**Hon. Hinds:** Yes.

**Sen. K. Ameen:** Because when they go before the magistrate, it is not for the magistrate to determine who has lawful possession if that issue is in controversy. There are other situations like the Phoenix Park area. In Phoenix Park you have lands that belong to Caroni (1975) Limited. And this is not only in Phoenix Park. There are other Caroni lands that Caroni (1975) Limited would have agreed for persons to occupy. They were never given leases. They did not have a proper rent agreement. They had just an agreement with the supervisors and with the company, in general. And, in fact, when I was Chairman of Tunapuna/Piarco Corporation, we encountered a recreation ground in Spring Village where the land had belonged to

Caroni (1975) Limited and my understanding, over the years it has gone to the regional corporation. So there are many parcels of land like that, where persons would not have been given documents to say that they have title. My concern is with those people as well, or people who fall into categories like that as well.

So the situation with squatters is one of the situations with land tenancy that needs to be dealt with. The Tobago situation, I think, Sen. Mark dealt with that and I want to endorse his call with respect to that. And the truth is that the provisions in this Bill may not cause harm to these persons who I am talking about, but it certainly gives them no protection. And the prevalence of, what we commonly call, home invasion, or what is adequately described in the Bill as “forcible entry” and “forcible detainer” is pretty prevalent. And I think that the criminal elements are, as all of Trinidad and Tobago would know—prevalence of information is becoming more informed and they may very well know which properties they could target and which properties they cannot target.

The Squatter Regularization—

**Madam President:** Sen. Ameen, please, you are not heeding my advice. You have spoken on it a little bit. It is not about the Squatter Regularization Act. Okay?

**Sen. K. Ameen:** Thank you, Madam President. I did say that I do not intend to make my contribution about squatter regularization and I do hope that this debate is not about squatter regularization. I wanted to put on the record, Madam President—I also did not intend to repeat what Sen. Mark said. I wanted to put on record that the Squatter Regularization Act of 2000 came into effect under Basdeo Panday as Prime Minister. There was an amendment in 2013 under Kamla Persad-Bissessar where the new date for occupation was, I think, July of 2013. So many people do not know that while initially the protection was up to 1998, protection for squatters occupying land is now up to 2013.

We on this side have always advocated for the empowerment through landownership and through homeownership, and I recall—in fact, part of my entry into politics had to do with the fact that the government at the time, the PNM government—Mr. Manning was the Prime Minister—they were on a serious campaign against squatters. They were demolishing people's homes—

**Hon. Senator:** On a point of order.

**Madam President:** Sen. Ameen, please. This is the last time I am going to caution you. You are way off track. You need to get to the fundamentals of this Bill and you need to raise some points that really have not been raised before. You really need to get to the point of the Bill. Okay?

**Sen. K. Ameen:** All right. Thank you, Madam President. Madam President, I really am not getting the opportunity to get into the point I want to make, and it is not about squatter regularization. Madam President, I want to come to the issue, the underlying social issue, and I wanted to give context to the fact that the UNC has a history of standing on the side of the citizens while the PNM has a history of demolishing people from their homes, [*Desk thumping*] and I am providing that as a background, but I am not talking about that.

**Madam President:** Sen. Ameen, hold on. I have made certain rulings. You seem to be arguing about the rulings. I am going to give you—and this is my last opportunity; the last chance. Raise some points that are relevant to the Bill. You have given context. No more context. Raise points that are relevant to the Bill, please.

**Sen. K. Ameen:** Madam President, I will move on completely from squatter regularization and at the expense of neglecting some serious social issues that I would have liked to put onto the record.

Madam President, though, I want to just address one matter that was

mentioned by Sen. Simonette—

**Madam President:** Minister of Trade— [*Inaudible*]

**Sen. K. Ameen:** Sen. Simonette, I know he made light reference, in passing, to persons who sleep in cars, and they are also a vulnerable group, even though it may be a small group of people. We are seeing more and more situations where persons who have recently lost their jobs who cannot pay their mortgage, and so on, and are sleeping in their cars with their families, and they, too, could become—

**Sen. Simonette:** Madam President, sorry. I do apologize—

**Madam President:** Are you on a point of order, Sen. Simonette? Are you invoking a point of order?

**Sen. Simonette:** I am not invoking a point of order, but—[*Crosstalk*]

**Madam President:** Well then, all right. Listen, please. Sen. Ameen, please? Sen. Simonette, if you are not invoking—

**Hon. Senator:** Sit down. You have to sit down.

**Madam President:** Please, please. If you are not invoking a—

**Hon. Senator:** Sit down.

**Madam President:** If you are not invoking a point of order, then you have to ask the Senator if she will give way.

**Sen. Simonette:** I thought I did, Madam President. Sorry.

**Sen. K. Ameen:** I did not hear you, Senator.

**Sen. Simonette:** Sen. Ameen, would you give way?

**Sen. K. Ameen:** I will, Sen. Simonette.

**Sen. Simonette:** Madam President, through you, Sen. Ameen, I would not misquote you and I think you may not have heard me, but the point I was making is that the Bill, the definition of “premises” gives specific recourse to persons who may be sleeping in cars because it includes vehicles. That is the point I was

making. I was not making light of it at all.

**Sen. K. Ameen:** Thank you, Mr. Simonette. Mr. Simonette—

**Madam President:** Senator.

**Sen. K. Ameen:** Sen. Simonette, if you had let me finish my point, you would not have had the cause to interject to correct. I am actually supporting what you said. You made reference to persons who sleep in cars and I am going further because you made light mention of it. So I am going further, Madam President, to indicate this situation with people sleeping in cars and bringing this legislation and saying that these people will be offered protection because of the provisions in this legislation, it is really a sad thing for this Government to say that “I am offering protection to people who have lost their jobs and are poor and hungry and sleeping in their cars.” In the first place, Madam President, people in this country should not be sleeping in their cars—

**Hon. Senator:** Yes. [*Desk thumping*]

**Sen. K. Ameen:**—and that is an indictment on this Government. So while—I find it so sad that, you know, a Senator on the Government Bench could say, well, “Oh hooray, we are offering protection for people who are sleeping in cars.”

Madam President, I also want to share a bit with regard to the clause that deals with vessels. The definition of “premises” to include several items, but with regard to (e):

“any ship, boat or other vessel;”

Madam President, only this morning while on the way to Parliament, I think many Senators may have encountered the fishermen from various parts of Trinidad and Tobago who are protesting for better fuel prices. But one of the issues that they identify as well is piracy on the seas. Recently we had some fishermen who were kidnapped. They lament that because of, you know, environmental conditions, and

so on, they now have to go further out at sea and they are more at risk. The fact that very often even the vessels responsible for coastguard patrol do not have fuel to do the patrols that are required, means that they get less protection. Because they go out further, six, seven miles out into sea, they also encounter pirates with the illegal Venezuelan trade, and these fishermen are vulnerable.

And while I see here that the premises would now include, “any ship, boat or vessel” that would have an impact on the fishermen. But, certainly, while the present laws still give them some protection, the issue here is the implementation and the Government’s ability to ensure that the coastal patrols are, in fact, in effect. So while the police have a responsibility to deal with the premises, such as land, structures, buildings, gardens and so on, where you have vessels on the sea is an issue. I got the impression, Madam President, that the phrase “except while in operation” applies only to vehicles and aircraft, not to any ship or boat, all right?— in (e) and (f), so which is something that I would have had a concern over. So the protection of our fishermen and those who work offshore is something that I endorse, but I feel that it is not sufficient under this Government.

Madam President, I want to ask the Minister who is responsible for bringing this Bill, and his colleagues, particularly when we go to the committee stage, that we be receptive. We have had some crosstalk, and so on, that seems to be making fun of the issues that we are raising, and I want to say that the experience of one person to another in this House may be different. The experience of the Members of Government, it seems to me, is very detached from the ordinary citizen of Trinidad and Tobago. So even if it is something that you cannot imagine, let us give credit to the issues that are being raised so that we could pass good law.

I am in support of the protection of all our citizens, particularly from the criminal element, but the Government has much, much, more to do in crime

fighting and in addressing the needs of the citizens than what is being proposed here. Thank you, Madam President. [*Desk thumping*]

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

**Sen. Dr. Varma Deyalsingh:** Thank you, Madam President, for giving me the opportunity to present on this Bill to amend the Trespass Act, Chap. 11:07. Offhand, I would like to say it is since 1852 this parent Act was in existence. It is 160 years ago and it goes to show that, you know, since then, there was a problem of trespass, and the problem continues. It continues in society. We still have the elements existing, but we have some new factors coming into place, and not just in Trinidad and Tobago, but globally, because the Trespass Act in different countries was amended to actually give these old Acts some more teeth.

You know, I was surprised by some of the revelations given by Members who spoke about the issue of forcible entry which had happened in our past. We had mentioned certain areas where this occurred, and looking at the fact that it was mentioned that in Duncan Street, there was an issue where, you know, on the *Guardian* newspaper, 2013:

“HDC and police crackdown on criminals”

It was an August 09<sup>th</sup> issue, where Nolan Sandy was forced to flee his apartment after a gang moved in and took over. So this was one of the issues. And when I read this I realized that the plight, you know, that persons face there. They are paying for the apartments and they are forced to leave. They are given this treatment by members of their community sometimes moving in, and actually forcing them out of their property which they are paying for and, quite rightly, worked hard to get and to try to keep. So that Duncan Street issue was just one issue.

And in 2017 at Clifton Towers, it came to light that certain elements actually

forced persons out of their homes, more so, not just persons out of their homes, but also HDC staff were actually forced from their offices. They were actually evicted. They moved. They were told they had to get out of there. So even those hard-working members of the HDC were not even protected in their own working environment. And up to this day I still see one member who still has that trauma and that stress and was even thinking of suing the State for not providing a safe working environment.

So, here we have—you know, it was mentioned by certain Members—11 instances over the past—you know, I think over a short space of time you have 11 instances. We have heard that it is widespread. Different places mentioned: San Fernando, Couva, HDC houses all over in the country, we seem to have this problem occurring. And this Bill seeks to, somehow, look at those persons in the HDC houses which would actually look at the police giving the Government more control to take over, or to—what I am saying, recapture those homes, those apartments that persons moved into; these sometimes abandoned homes; sometimes actually forcing persons out of their homes.

So, in a sense, it is an excellent gesture on the part of the Government to see if this could somehow rescue these persons. But looking at the rescue of those persons in HDC homes, we have to appreciate that ordinary citizens also face the brunt of persons moving into homes. Ordinary citizens will face that. And whilst we would want to help the HDC homeowners, we also have to look in the broader community, persons who look to police officers to help them get out of these situations; persons who are there looking for some sort of relief, and if this can give that relief, I will be in support of it.

And just to mention that there was an incident recently in the community where I live where someone entered a home, trespassed in it. We got the

community security, with some residents, to hold that person. We carried that person to the St. Joseph police station, and in a matter of four hours that person was back in the area walking around, even though he was caught entering this home, even though he was carried to the police station. And, you know, when we looked at that, it was a failure—to me, it was a failure on the part of, “Hey, you know, why did the police not act?” I mean, there is the Larceny Act; there is the breaking and entering, trespassing, all these, you know, we looked at. The police officers could have held that guy and give the community some sort of relief. And this is what we have to look at, the relief that the communities would want to get. So this was one instance where I was totally disappointed in the actions of the police officers. And the guy came back in the area. We held him again, and we carried him again this time, back into the station, but this time, thankfully, he was charged and he is now serving a four-year sentence.

So we have to say: Why did that fail? Is it that he was—in my opinion he was doing an act of trespass. He was there. So why did that fail? And I am thinking, if we can have any sort of laws to help our officers, I would say, let us go after strengthening these laws. But then, we also have to question what happened to the other laws. I mean, there are other laws that deal with trespass: the Larceny Act, section 26, we looked at burglary but again, we have the question that if it is night-time, and which is addressed in this law. Even the Firearms Act speak of if you are going into an individual’s home with a firearm. It also speaks a bit of trespass. So we have the whole idea of trespass entering in different pieces of legislation and even in the Summary Offences Act. We looked at section 46(d) where:

“any person found in any veranda...passage, gateway, dwelling house...stable, outhouse, or other buildings...yard, garden”—an—“enclosed

land for any unlawful purpose;”

We looked at that, and we looked at this law, which is in 46(d), police could act on that. They could act under the Summary Offences Act, 46(d). They can act to, you know, hold that person, because, again, he is trespassing in somebody's property. Again, in section 41 of the same Act, it looked at:

“Any person found on cultivated lands...”

So we are looking at lands and state lands in which there is livestock, farm lands. So, again, it addressed the issue where some of our citizens who, you know—praedial larceny, you find that people are complaining. They are planting their crops, and I am sure the Minister of Agriculture, Land and Fisheries would understand that these are the pieces of legislation which could help the farmers, because they are people working hard there. They have given their sweat, trying to make an honest living, people are now trespassing in their land.

So you have, again, in pieces of legislation there, people who are coming in without permission in those lands there, the cultivated lands. You give them a fine of \$2,000 or a maximum amount of imprisonment; five years. So if this Bill could now add on to this, if this Bill could somehow increase the penalties, I am hoping that that could, somehow, give those farmers a little more relief, or even give these homeowners who, you know, you hold someone; they are in prison, at least if you can give them some more time in prison; if you could look at those persons who are breaching this Bill and give them some sort of punishment. Because you have guys, as I said, in that area—we took that guy to the St. Joseph station, but he came back in the area and he came back into the same home. So, somehow, we would have to be looking at the implementation of laws also.

In terms of the Bill now giving relief, you know, giving more teeth, giving more sort of penalties to the farmers, I support that. But I also want to give an

example again, a practical example. So while this Bill will help the HDC tenants and help other persons, I am thinking that real life examples. I mentioned this case where there is a lady, 80 years old, where she rented her place and the persons who were renting the place stopped paying their rent and brought in other persons into the property. Then we realized there are a lot of illegal activities going on there. This happens in Curepe. It is a real live case that is happening, and I am trying to see if somehow this legislation would be able to help such individuals, because there are individuals all over the place in Trinidad where you see people now use it as a way where they go into houses; they rent houses; they may occupy the homes, and they refuse to come out. And you find that even though this may be taken care of with the tenants and landlords Act and they have redress there in terms of distress, you know, I have seen cases where people complain that you have persons in their homes and you cannot get them out. The police sometimes will come in and refuse to move them out. The police may come in sometimes and their hands are tied. And in this instance I mentioned in Curepe, these people have occupied that home. They are trying—even, you know, when the lady is there trying to get them out, she has no recourse. That is the difficulty she is having.

And Sen. Vieira mentioned the fact that sometimes the police come and they are in a dilemma, because the minute you come to a home, sometimes, you know, you also have the idea of who, really, owns the home, you know, in terms of the ownership. So that is an issue again that we look at. So the issue of looking at people moving into homes, renting homes, not moving out, and we have to create some way forward where we would be able to somehow—I am thinking if we could use this piece of legislation to help the population outside who are suffering in terms of they are not getting—they are too scared to report. So you may have cases there that if you report, those persons are going to come after you and,

somehow, if they are going to come after you, your family is at risk; you yourself is at risk, and it is difficult.

So all of these pieces of legislation, I am thinking, will have to somehow be tied into the Evidence Act or the Bill that we are going to—I think we may be hearing that shortly sometime in the future, where the anonymous reporting, or giving anonymous evidence, may help cases like this and even cases of the Trespass Act where it is difficult sometimes for people to come out and say, “Listen, this person is occupying my land” and they are scared for their life. So this legislation has to tie in, I think, with other pieces of legislation which, I think, could come to fruition shortly.

So the need to protect is something—the need to be able to get the police officers to assist—all these are things we are looking at. I even want to give a case recently where the Member of Parliament for my area, Mr. Prakash Ramadhar, publicly gave an account where he purchased land from the bank, a property next door, which was unoccupied for two years, and suddenly the police came with a previous owner and they actually got entry into his property. They asked him for permission to go into the property with this previous owner who did not occupy the place for two years, and they actually—in front of him; in front of the police, they actually allowed the previous owner, with a gang of men who had guns, to change the locks and took back possession.

So, again, here we have possession of a property which someone bought legally, and in that case the police came and the police allowed it to happen under their watch. And this serves the difficulty that, you know, sometimes the police are faced with a dilemma. Who owns the property? Because someone could come up and say that, “I have this piece of deed.” Somebody could come up and say that “I am the owner.” And this is where, I think that part of this Bill will fail in the sense

that if it is delayed too long—and Sen. Vieira made some sort of comments that, if there is not a way of getting this fast-tracked, you find people may be dispossessed from their property for sometimes 10 years because some court matters, as we see, take a long time.

So imagine if you are dispossessed for your property and it has to go to court and it takes 10 years, to me, that is an injustice there. But then we have a dilemma here. How could we somehow fast-track this? Now, the—

**Madam President:** Sen. Deyalsingh—

**Sen. Dr. V. Deyalsingh:** Sure.

**Madam President:** Hon. Senators, we would suspend the sitting at this stage and we will return at 5.00 p.m.

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

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

**Sen. Dr. V. Deyalsingh:** Thank you, Madam President. Madam President, could you give me an idea how much time do I have left?

**Madam President:** You have used up 16 minutes.

**Sen. Dr. V. Deyalsingh:** Sixteen minutes. Thank you. Madam President, I was looking at the piece of legislation in terms of the relief it will give to persons who occupy HDC homes, and I was looking into the fact that I am hoping that the relief that it may give to homeowners or the persons out in the community if somehow we could cement that a little more. I mentioned the fact of the Member of Parliament who actually had legal possession and he had to actually speak out against the actions of the police in handling that case where he was dispossessed for a period of time and had to go to court. Why I look at this is even though he may be able to afford to go to court, what about the others who may not be able to afford to go to court? Again, that delay would lead to unnecessary delay for poor

persons out there who would not have their rights to their property.

And again, we have to look at—sometimes an abuse that could occur where, for instance, let us say certain individuals enter a home and they do not want to leave, when the police officers come—you know, people may get false deeds—they may show a false deed to the police officers, and then you now have that dilemma of the police officers—how could we act; who would actually have the real title to the land? And sometimes you see, police officers sometimes, when they enter a situation they may look away—instead of going to the trespass laws, they may say let us go under the summary offences—loitering, larceny—rather than using the Trespass Act because the minute it goes, you know, the idea of ownership comes in, the magistrate again, as pointed out by Sen. Vieira, is forced to send it up to the High Court, you see, because section 9 of the Act actually states that:

“Nothing contained in this Act shall authorise any Magistrate or Justice to determine any case of trespass in which any question arises as to the right of title to any lands or any interest therein or accruing therefrom.”

So it seems that the cases that go to the Magistrates' Court might be a keep-back, might be a source of delay, and I am wondering, you know, can we not devise a system in such a way—the magistrate or even the Justice of the Peace who I think soon they will be called Clerks of the Peace and they may be practising attorneys—is there any way that—

**Hon. Senator:** District Registrar.

**Sen. Dr. V. Deyalsingh:** Sorry?

**Hon. Hinds:** District Registrar.

**Sen. Dr. V. Deyalsingh:** District Registrar. Is there any way that somehow we could look into this Act where they have some sort of a power where they can look at the merits of this case in terms of landownership to see, hey, as a fast track this

may be something that we can make a determination on in the Magistrates' Court and if perchance it has to go further then it goes up as a matter of appeal to the Civil Court where it would have gone eventually anyhow? So I am thinking this is some consideration we may have to look where we can stop that delay, but again there is still the aspect of you get a first instance, a first hearing, we can expedite, but then you can still use the opportunity to go to the Civil Court where it would have gone anyhow.

Madam President, another aspect that faces the community, I mentioned a case where we had to actually apprehend someone in our neighbourhood, and we did use, as I am saying, we did have to use a security service to help the neighbours to apprehend this individual. So even in cases where you have this is now becoming a problem, I am thinking that the communities themselves, even though the law may frown on persons taking their rights to hold these individuals, and in terms of if they are trespassing to apprehend them and get out of your land, and I am thinking that somehow society is such that we are depending more and more on these security services and we may have to—I am hoping that the courts even though they may frown on self-help, they may have to realize it is a reality facing our communities where we may have to look out to private security companies, we may have to look at neighbourhood associations holding on to persons and being able to apprehend them, get them out of the land before it reaches a situation where it will have to take years to get them out of your communities.

I would like to mention another problem that I have been seeing occurring is in the cases of abandoned homes. So if there is an abandoned home in a neighbourhood, somebody trespasses, they go into that home—and we have cases where drugs abusers, “sprangers” as we call them, move into that neighbourhood, move into this house. They light fires, a lot of illicit activities occur there because

statistics show even when we spoke about another Bill, the Sexual Offences Act, that even a lot of rapes and—

**Madam President:** Sen. Deyalsingh, while you are giving examples of experiences that you have had, I need you to tie in your contribution to the Bill at hand and to the issues that arise from the Bill.

**Sen. Dr. V. Deyalsingh:** Thank you, Madam President. But I was just trying to follow through that if this is something we are seeing in society, and if this Bill is trying to somehow get to certain instances to try to help the situation in society in terms of persons trespassing, if you have an abandoned house and somebody actually comes into that house but you do not know where the owner of that house is, you cannot find them—because this is something you have in the communities, abandoned homes, people move into the homes—you do not have the owner that you could identify, how could you now stop persons from trespassing in that land? How could you devise a system that the neighbours around now could see, look, these persons are definitely trespassing, you cannot get the owners of the property—

**Madam President:** Sen. Deyalsingh, may I suggest to you that the Bill is covering certain specific situations. Not all situations with trespass may be covered by the Bill. So I want you to just bear that in mind as you make your contribution.

**Sen. Dr. V. Deyalsingh:** Thank you, Madam President. Madam President, when I looked at the original Trespass Act, section 4, it mentioned:

“Any person found at any time in any lands on which, or near to which, there is stuck up in some conspicuous place a notice in legible letters forbidding all persons to trespass, not having some reasonable cause or excuse for being in the place where he is found...”

So again we look at signage, and persons mentioned you have to have signage, but

in our country now there are a lot of immigrants coming from South America, do we put the signs now in Spanish? This is a question we would have to ask.

[*Laughter*] There is a signage, but they may not understand English.

What about if it is somebody illiterate or someone who—[*Interruption*] Yes, so even a mentally ill person. So we have to look for signage. Yes it is important, but again the parent Act did say:

“...or, in the absence of such notice, any person found in any lands, who refuses to quit the same upon request by the owner of the lands, or his servant”—and that word will be changed to “workers” I noticed in one of the clauses—“is liable on summary conviction...”

Now, what I am hoping I can probably appeal to the mover of the Bill is that somehow within that “upon request by the owner” or the worker, I am thinking if we could get something like a designated person also, meaning some designated person that would be able to act on behalf of the owner, not necessarily a worker in that piece of legislation.

Similarly, somebody in a neighbourhood will see something, the owner designated, and if there is no owner I am thinking the regional corporation should be able to act on behalf of the community if you cannot find an owner to bring in trespass laws. I think we have to look at that relief there because there are persons who moved in to houses and we do not have the owners. We have no way of getting them out, they are doing an act of trespass, I am thinking we have to give some consideration where the regional corporation—just as how they have the authority to come in and cut the grass, and if they find the owners they would be able to charge them, they may have to have that sort of—you know, given that sort of power—where they can take this matter up on behalf of the community just to help us get back our communities.

Madam President, as I looked at the Act again I realized that according to our Constitution, section 4, we have the right to life, liberty, enjoyment of property, and the right not to be deprived thereof except by due process of the law. So therefore, when I looked at the clauses that were suggested, I looked at the clause 3 which actually served to expand like dwelling house and premises, and I think this is something that given wider areas that we can cover to see that this Bill, you have a greater amount of properties or you can get that vehicle as somebody mentioned—so if somebody is living in a vehicle, that could be part of it—and this wider sense, I think, it is commendable. And even in other jurisdictions like New Zealand, the Crimes Act, section 17(a), they actually expanded their definition of the premises.

In terms of clause 4, which is deleting the “night-time”—I mean, that is obviously—I am in full agreement of that because deleting that “night-time” in clause 4 would definitely look at the fact that burglary was something we looked at before, and burglary according to that law you had to have that element of night-time. So this expand this because the criminals now, the people who move in to neighbourhood, they commit crime, they do their acts boldface, they do not care, you have the bold “bad johns” moving into the areas, moving into homes, and night or day it does not matter. To me, they do crime at any time. So it seems that this “night-time” again is something that we needed to correct.

Looking at clauses 5, 6 and 7 which actually served to see if we could modernize the penalties, much needed to see if we could modernize penalties, but I noted what Sen. Mark mentioned and I was thinking along the same lines that assault and battery, larceny, you have a lesser penalty, yet still you are now increasing the time now. So you have it going to 15 years, a fine of \$100,000; and I was looking at, you know, would that be a bit draconian to increase it to that

amount? But then I looked at—probably this legislation could also serve to give some teeth to—Sen. Mark mentioned gangs, because a gang could move into an area and this is a fact. We are seeing people moving into areas, moving out from hot spots, moving like little metastatic cancers all over the country, moving into homes, not paying rent, also starting their little selves there, influencing the communities, sometimes using these properties, trespassing, having stolen cars there, having property there. This is a fact that occurs all over the country. So we have to put an end to it.

So when I looked at what is actually occurring in society where these persons are spreading like a cancer all over, little spots all over, and carrying on their activities, I think probably that 15 years and \$100,000 is something that I am now in agreement with. Because even if you may have the gang legislation but you may not be able to get all the pieces of evidence to hold that gang, you could probably use a trespassing Bill to do your job and this could give the police a greater amount of ammunition to deal with what we are seeing in society. So in terms of sections 3, 4 and 5 which actually looked at the penalties, I think those penalties are well needed.

When you are looking at clause 8, sections 5A and 5B, forcible entry, forcible detention—

**Hon. Hinds:** Detainer.

**Sen. Dr. V. Deyalsingh:**—detainer, which are really—I welcome the passage of any new criminal Acts which could help our community. So I totally welcome these Acts, and I would like to conclude by just saying that we have to somehow look at the social concerns of our population. We look at any assistance we can render to the police officers to maintain that law and order to stop what has been happening in these areas. People are just moving into areas not taking any sort of a

caution and they are just big, bold, bad, moving into people's home, and this law I think would certainly help. It will help the officers in their duty, it will help the community to get a little bit of comfort, and it will help the distressed persons who are trying to see if they can get some sort of relief from these persons who take over their homes.

So I think this Bill will give a multipronged attack to assist the citizens against these predators, and also not only to the HDC homes, but to the weak, vulnerable and the old. So, I give my support to this Bill. Thank you. [*Desk thumping*]

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

**Sen. Mark:** The General Secretary!

**Sen. Foster Cummings:** [*Desk thumping*] Madam President, I thank you for the opportunity to contribute to this Bill, the Trespass (Amdt.) Bill, 2019, and I am pleased to hear the excitement coming from the other side to listen to the talent of the PNM. [*Desk thumping*] I will save my response to them for a meeting soon to come.

Madam President, I want to congratulate the mover of the Motion. I think that he did justice to—

**Sen. S. Hosein:** The mover of the Bill.

**Sen. F. Cummings:**—the Bill that is before us—sorry, mover of the Bill—and it was a pleasure listening to his contribution. He was very thorough, and I think that those who are listening to this debate would have had a full understanding of what this legislation is intended to achieve. I must also congratulate Sen. Simonette and Sen. Vieira [*Desk thumping*] because I think their contributions really assisted those who were listening, and what I can say, Madam President, is that it is clear that some on the opposite side did not understand the intent of the Bill. [*Desk*

*thumping]*

The Bill is not gang legislation, it is not about squatter regularization. Those are things that the Bill is not about and, therefore, we need to understand that your home is your sanctuary. The home is somewhere where you must feel safe, where you must be able to afford protection to your family, and not only from the elements of the weather but also from criminal elements, and we have a real situation in Trinidad and Tobago where certain elements, criminally minded elements, have taken it upon themselves to become the sheriff in town. Some of them could simply be referred to as bullies who operate in a manner to cause great distress to persons' enjoyment of their property, and that is what we are here to see about today. [*Desk thumping*]

It is the modernization of a piece of legislation that required improvements on the penalties to allow this piece of legislation to serve as a deterrent to would-be criminals who want to oppress citizens [*Desk thumping*] who seek to intrude, encroach, invade, infringe, and impinge on the rights of law-abiding citizens who have worked hard to secure their property, and who require the protection of the State. Because prior to many persons who have approached law enforcement agencies in situations like these would be told by the police that, "Look, this is a civil matter and we cannot get involved", causing great frustration, anxiety and pain to many families— victims of home invasion, unlawful eviction, forceful occupation, enduring violence and force, threats to life and limb, and vulnerable persons unable to deal with and protect themselves and their family.

Madam President, the Bill, in addition to modernizing the fines and the penalties, introduces two sections: one, that makes it an offence for a person to use force and threats or intimidation to enter land or a dwelling house, et cetera; and, two, under section 5B that makes it unlawful for a person to maintain or attempt to

maintain their possession or illegal occupation of any land or building. I am aware, Madam President, that there are citizens facing situations that require the passage of this piece of legislation.

There is one matter that I am familiar with where two elderly persons, husband and wife, had a special child, both died and this special child remained in occupation of this home. Following the death of the parents, tenants came into the property at two levels. Because this young man, as I said before was a special child, they took advantage of the situation, probably paid a month or two rent, and continued living in that house for years; evicted the young man from the house, he ended up living on the streets and here you had these thugs occupying premises where this young man should be living.

In another matter, part of a street, the main bully on the street evicted the rightful owners to at least five or six of the properties on that street because he is involved in certain activities that the police will have an interest in, and then proceeded to rent out these homes as though these properties belong to him. The rightful owners could no longer get possession of their property; and this legislation, therefore, I am certain once becomes law gives the police the teeth to deal with matters like these. [*Desk thumping*] But, of course, my friends who like to engage in panic and fearmongering would introduce into the debate the question of squatter rights as though this Bill is somehow intended to be used to evict squatters from property; and that is not what this is about.

Madam President, we have this situation also of some persons operating apart from the persons who are involved in gang activity, but we also have this situation of rogue bailiffs who operate outside of the law using thuggery, using threats—and some of them are well known—using fear to force rightful owners, to force persons who have legal occupation of property out of their premises, and the

citizens must continue to enjoy their right of property. It brings also to our attention that when we introduce legislation, whatever penalties are associated with the offence, as I said earlier, must act as a deterrent.

As we travel through the country you would notice signs being posted at various locations on private lands, “Do Not Trespass”, et cetera, et cetera, and it is quoted which Act and so forth. And when you get down to it, really, if the offender knows that they are going to be charged \$200 if they break the law, I do not know how much of a deterrent that would be to someone who intends to break the law. And, therefore, this legislation is intended to be modernized to address that issue. I would not spend much time on it because a previous speaker mentioned it, but I had it as a note here, but we have the question of praedial larceny where persons who would have their lawful right to their property and move on to crops and so on it would be victims of persons trespassing, Senator, on their premises and relieving them of their produce, and I am certain that this piece of legislation will be able to capture that group as well.

Madam President, the legislation went on to provide us with some definitions in terms of the “occupier” at section 2, and when we speak about “includes a person who is lawfully or in physical possession of the premises”, I wonder why a couple speakers before spent so much time trying to dance around this issue and turn it into something else that it is not, because it is clear in “lawful or physical possession of the premises”. That is clear and I am not a lawyer. As I always say, I am not a lawyer at all, but we need to just stick to what the facts are. We just stick to what the facts are. All right?

We have another vulnerable group who fall victim to this illegal act, and that is elderly persons who are citizens and enjoy the right just as everyone else, but they are unable to put up a fight and fall victim to abuse by criminals, and in some

case even relatives who force them out of their homes and take possession of these homes, and that is another matter in which the police before would claim that it is a civil matter and they cannot get involved. But this piece of legislation will provide the teeth required so that the police can deal with lawbreakers who seek to rob persons of their property in this manner.

**5.30 p.m.**

And, Madam President, the removal of the word “night-time” or placing that fixed time on when it can be consider an offence is very welcome because we know that in today’s world, one does not wait until nightfall—well at least the criminals I would say, the criminally-minded, no longer wait on nightfall to commit crimes, they commit crimes at will and therefore, this Government is serious about making sure that this strong message sent to the criminals throughout Trinidad and Tobago. [*Desk thumping*]

So it is clear what the intention of this Bill is. It is not to deal with the matters that Opposition seeks to try to introduce into the debate, it is a very effective piece of legislation once passed. It is to deal—and the name says it all:

“An Act for the prevention of wilful trespass on lands”—and other premises. Very clear. To treat with the safety and security of our citizens; for those who want to engage in illegal behaviour; for the rogue bailiffs; for those who wish to take possession by force; for those who wish to deny citizens enjoyment of their property; for those who wish to deny those persons who wish to farm their lands, the right to their property; for those elderly persons who require the protection of the State; for those vulnerable in our society who have been held victim by criminals in several areas, both urban and rural areas, this piece of legislation is intended to deal with just that. [*Desk thumping*]

And so, Madam President, in my short contribution, I wish to commend this

piece of legislation. I wish to ask all Senators, both on the Independent and the Opposition Benches, to support good legislation intended for the protection of citizens of Trinidad and Tobago. [*Desk thumping*] And Trinidad and Tobago would be proud of you if for one sitting, the politics would take a back seat and you would support the things that are right for the citizens of this country. I thank you, Madam President. [*Desk thumping*]

**Sen. Saddam Hosein:** Thank you very much, Madam President. On the point that Sen. Cummings ended on, I would like to begin on and that point is that we should support good legislation and, Madam President, we have always said it, if you bring good legislation, we will support it, but this Bill before us is not good legislation. [*Desk thumping*]

Madam President, we understand the policy of the Government, we understand the intention of the Bill, but the Bill in its current form and its current draft, does not and it will never achieve its intention, if it is passed, in this current format. This Bill requires significant amendments because there is a lack in terms of clarity and the thought process behind this Bill was not clearly set out before us. And I say that because this piece of legislation that was passed or introduced in Trinidad and Tobago in year of 1852. Coming to 2019, this 2019 amendment Bill is what I would term as “patch-up legislation”. It is patch-up law, it is the lazy way out.

You have an Act of Parliament, which is the Trespass Act, Chap. 11:07, and this Act has nine sections, just nine and this Government, about the sixth month now of their fourth year, will come with this Bill just amending two or three sections, one would have thought that there would be a comprehensive review of the Trespass Act had the Government felt so strongly about this issue having made several campaign promises during the 2015 election. So we would have thought

that we would have had a comprehensive piece of legislation where we could have engaged this Government in a more intellectual and intelligent debate.

But what they sought to do, if you would allow me, Madam President, is that when you look at clause 6 of the Bill, they are just changing the word “servant” to “worker”. No legal ramifications whatsoever. Then they take some of the wording present at section 3 of the present Bill which are words such as “enclosed”, “garden”, “ground”, “cultivated lands”, “plantation”, “oilfield”, “refinery” or “oil tank farm” and just include it in the definition section under the definition of “premises”. No big amendment. No rocket science. Lazy patchwork, Madam President, lazy patchwork.

But I know many speakers have given a lot of context into this debate. I know that you have been on your feet quite often during this debate, Madam President, and I do hope that I would not cause you such hardship during my contribution to have you on your feet, so I would just go directly into the clauses of the Bill. I will deal with some of the effects that these amendments will have with regard to enforcement and also at the level of court.

So when I looked at the Bill, the Bill is going to create two new offences because these offences are not common law offences which are “forcible entry” and “forcible detainer”. So when I looked at the first offence of “forcible entry”, the elements of the offence is that there must be some level of force, threat or intimidation and that must be exerted on someone who is in lawful possession of the property. But it goes one step further, Madam President, which is that the threat, the intimidation or the force must expel the person. Now that takes it one step further. Now, if someone just enters the property, then the element of the offence is not made out, there must be some forceful expulsion out of the property. So that is one element that I would ask the Minister to look at also if we are going

to offer protection to those persons. Let us just say, for one example, that the criminals, be it gang leaders, be it someone who does not have any entitlement to the property, just runs into the property, intimidate someone and then leaves without forcing the occupiers out, then they will not fall under this new section 5A that this Bill intends to create.

Now there is one other point which is that I examined other trespass legislation which I would say two in particular, Madam President, which is in Barbados and in Ontario. And when you look at the Barbados experience, there is—let me start in this light, whenever there is a criminal offence, the prosecution or the complainant always has the legal burden to prove the offence beyond a reasonable doubt. That is understood. DPP against Woolmington, it is the golden thread that runs through our criminal system. But, Madam President, through society and modernization, you would see that there has been some shifting of the evidential burden. Notwithstanding the legal burden rests with the prosecution, there is a shift of the evidential burden towards the defence and this happens in those offences where it may be difficult for the prosecution to make out certain elements of the offence.

When you look at the Barbados experience and Ontario, you would see that there is a shifting of the evidential burden of the offence to the defendant so that he proves that he has reasonable cause or excuse to be present on the property and it is expressly stated in the various sections. And if you would allow me, I will just quote from section 6 of the Barbados legislation. So that:

“In proceedings under the section...”—which is “Trespass with violence”, it must be—“a defence for the person charged to prove...”

—certain things which is that they were displaced as a residential occupier from part of the property or from the whole of the property. When you look at Ontario,

at section 2 of the Trespass to Property Act, Chap. T.21, you would see at section 2(1):

“Every person who is not acting under a right or authority conferred by law and who,

- (a) without the express permission of the occupier, the proof of which rests on the defendant,
  - (i) enters on premises when entry is prohibited under this Act, or
  - (ii) engages in an activity on premises when the activity is prohibited under this Act...”

So, Madam President, you see that it makes it more easy for a complainant, you make it easier for the prosecution in terms of proving the entire offence and leaving the 100 per cent burden on the prosecution or the complainant, that you shift some of the evidential burden onto the defendant which would make it more convenient and easier for a proper and quicker prosecution of these matters. Because you will well appreciate it will be easier if a defendant had any legal authority or reasonable excuse to be on that property, it will be much easier for him to prove.

Then I looked at another element of the Bill and that element has to do with what is the difference between possession as a legal concept and what is the difference between occupation as a legal concept, because those two words are present at the new section 5B which creates the offence of forcible detainer. Now, Madam President, it is my understanding that when you speak of possession, possession can actually be actual possession coupled together with some sort of beneficial interest in the property, be it a legal interest or an equitable interest. So there are two limbs to what possession constitutes whereas occupation only deals with the physical presence or occupation of that person on the land. That is my

understanding. So when you look at the definition of lawful possession, the Minister, when he piloted this Bill, he gave some examples of what would be lawful possession.

So, Madam President, I know the issue of squatters has been dealt with but just permit me one chance to give one example. Now, the law, as it stands, is that someone to be an adverse possessor would mean that they would have been in continuous occupation with the intent to possess for a period of 16 years on private lands or a period of 30 years when you deal with state lands. Now, what about the situation where a person is on state lands for 29 years or on private lands for 15 years? Now, would that person be captured under the definition as proposed by the Government under lawful possession? Because it would seem to me that they have no beneficial interest in the property be it a legal interest or an equitable interest. The legal interest would be encapsulated into some deed or certificate of title whereas the equitable interest will devolve, for example—I am giving just general examples—if there is a mortgage and the equity goes towards that person or there is some sort of inheritance or a right of inheritance. So there is a lacuna that I have identified there.

Because the thing is these are the persons who the Bill is intended to protect and the Minister said so, that we must encapsulate all of these persons. So I wonder if the mischief that the legislation is trying to address, if by one simple amendment, we can just delete the word “lawful” so it becomes possession or we change it to residential occupier. If you look at Barbados experience, through the hon. Minister, you would see that in Barbados, there is no qualification for any person to be a lawful possessor. It all stems from the person who trespasses to prove that they had some reasonable excuse to be on the land. All that has to be proven in Barbados is that the person, before being expelled from the land, was in residential occupation

of the land. So maybe we can look at that model if we are going to amend the legislation. Because what it will do, it would just increase the burden upon the person who you try to protect and it may be that it will not be that the information or the evidence that they have will not be sufficient, because this has to be read together with section 9 of the Trespass Act which disables a magistrate from making any determination in terms of the title of land when it is regarding the Trespass Act.

I want to look—and I say this on the heels, Madam President, because you will remember that there were several days of debate in this honourable House last year when we passed four pieces of legislation which were the Registration of Titles Act, we passed the Land Tribunal Act, the Land Adjudication Act and the State Suits Limitation Act, and we were promised at that time by this Government that they would have started to deal with regularization of land tenure in Trinidad and Tobago. If we have the proper land adjudication system set up, it will be much easier for a person who falls under the legislation that they propose to amend in the Bill, they will fall easier there to make out an offence once they can prove hard title. It is much easier for them to just produce to the court: a deed, a certificate of ownership, a certificate of comfort, rather than they now have to try to somehow convince a magistrate or a justice to prove that they have been on the lands for over 16 years because they will have to bring witnesses because—[*Interruption*] you want me to give way? Because it will be difficult for them to prove, Madam President, because of that 16-year limitation.

Because you have to understand that you will only get that certificate of title after the 16 years elapse when you make an application to the Registrar General to prove your title, and that is a very fundamental point. Because a lot of speakers spoke on tenanted lands but we must fully appreciate that currently in Trinidad and

Tobago, and I can speak as a matter of fact. The Minister of Agriculture may know this fact, that in Monroe Road, there are several residential properties where all of the leases have expired and now those persons are actually holding over. So I ask the Government to also give us some indication with regards to those persons.

Now, I want to look at section 3 of the Act and section 3 of the Act is amended by clause 4 and it is amended by clause 5 of the Bill. When you look at the definition of “premises”, as I mentioned earlier, on section 3, you would see that it has “garden, ground, cultivated lands, plantations, oilfield refinery or oil tank”. Now, this definition is encapsulated in the definition of “premises” in the Bill. It seems very redundant and repetitive to have it in the definition section, only mention it in the new 5A and 5B we are creating. But why not just delete all of what the definition says at section 3 and replace it by the word “premises”? That is very simple. [*Desk thumping*] I think that is one of the amendments that the Government can be amenable to because the definition of “premises” is much wider than that which is in this section 3 of the Act.

Then I looked at section 4 of the Bill. [*Crosstalk*] The point is, Minister, when you look at section 3 of the Act, you would see “ground, cultivated lands, plantation, oilfield refinery or oil tank farm”. Those items are encapsulated in the Bill under the definition of “premises”. The point is that you can delete all of the listed items at section 3 and just replace it by the word “premises”, so it will be encapsulated.

**Hon. Hinds:** Can you give way?

**Sen. S. Hosein:** Sure.

**Hon. Hinds:** Are you aware that we made that amendment in the other place?

**Sen. S. Hosein:** No. Minister, if you could just point me to the clause of the Bill, I will be grateful.

**Hon. Hinds:** Proceed, I will come back to it.

**Sen. S. Hosein:** Sure. If you can point me to it, I will be grateful. Then, when I looked at section 4 of the Act, section 4 of the Act has the word “house”.

“...every labourer or...servant...”—which will now be worker—“having or occupying any house...”

Madam President, when you look at clause 4 of the Bill, there is a definition of “dwelling house”. Maybe you would want to insert before the word “house” dwelling, so it reads “any dwelling house”, so that that will also be encapsulated under the definition as proposed by this Bill so that you will have some consistency with respect to the entire Trespass Act.

Then I want to also make this point with regard to some suggestions that I have with regard to the entire creation of these new sections. Madam President, again, when you look at Canada and Barbados, there is an explicit provision where you give the police powers of arrest without warrant. The Minister may stand up and say that it is encapsulated under the Police Service Act. I will understand that but maybe it can be expressed here just for that sense of clarity in terms of malicious prosecution issues.

At section 5A, it says that:

“A person...enter...”—under—“an order...”—for—“court...”

Maybe you may consider giving a definition of court as is done in many other pieces of legislation, whether it be a summary court or a High Court. There are issues that Sen. Deyalsingh raised with regards to persons and their means in order for them to enter the court for them to have some sort of justice because we are looking at those who are vulnerable in society.

And, Madam President, when you look at modern pieces of Trespass Act, do you know what it includes? It includes things like the court having the power to

award damages and that is a very easy assessment because damages can be assessed on the rental value of the property. Then you have the courts at the Magistrates' Courts level that can award cost, which is the legal cost which, for those who may be listening, is that some sort of compensation for the legal fees that you would have paid your attorney-at-law and then there are also provisions for the enforcement of these costs and damages order. So if you really want to introduce, as my friend Sen. Cummings said, modern legislation, well let us introduce and place in the Bill modern provisions, Madam President. [*Desk thumping*]

And the thing with this Government, it is very hypocritical, Madam President, and you know I do not like to use these words in this honourable Parliament. I do not like to accuse the Government of this, but, Madam President, allow me to give this example. I had to go back last night to see what this Government defined an "owner" as under the property tax legislation and do you know it includes an owner or occupier of any land? Nothing with lawful possession. So you want to tax the people who have no lawful possession for the land but when people invade their houses, they do not have that similar protection. [*Desk thumping*] And that is the hypocrisy of this PNM Government and sooner or later, you may have to pay the price for that, because this Government, as I said, it tries to offer the protection, well go all the way. Just like the Magistrates Protection Act, we asked you to go all the way, well in this present Bill, let us go all the way to offer these persons protection. [*Desk thumping*] Let us go, we will go with you. Let us go all the way.

Then when you look at the Barbados legislation, Madam President, one important issue in Trinidad and Tobago—and Sen. Vieira and Sen. Ramdeen can also bear me out on this—is that there are several cases in the High Court, in the

civil courts, that deal with easement. Several cases, persons fighting over a right of way. And, Madam President, there is a Court of Appeal case that I have in my possession, I will quote it later on, but the Bill should also address those issues of easements and those persons who consider an easement as a trespass. That is a significant issue that should be dealt with.

**Madam President:** Sen. Hosein, you are starting to spend a lot of time in your contribution on what is not in the Bill and what is not in the Bill is therefore not relevant to the Bill. So you can make a passing comment but you cannot spend as much time as you are in dealing with what is not in the Bill. Okay?

**Sen. S. Hosein:** Madam President, I also apologize for breaking my promise. [*Laughter*] But I am going to conclude very, very soon. I would just like to respectfully respond to one point by Sen. Vieira in terms of—I hope I do not quote you incorrectly, Sen. Vieira, but you were talking about you do not need evidential documents to prove lawful possession in these circumstances—am I right?—for a person to trespass on the land. Sorry, sorry. I can give way. Well, the point is, Madam President, that—I am trying to be very cordial. So the point is that I am making is I have looked at the Court of Appeal decision and that Court of Appeal decision dealt with an easement as I mentioned before and it is Magisterial Appeal No. P062.

**Madam President:** But you know that I just talked to you about—

**Sen. S. Hosein:** Yeah.

**Madam President:** So why are you going into judgment?

**Sen. S. Hosein:** No problem. Madam President, if you give me an opportunity to explain is that I am going into the principle of the case that dealt with a matter in the Trespass Act directly to section 4 of the Act and you will well appreciate that although the facts of the case may be different, the principle can still be applicable

to the present circumstances. And in that case, the Court of Appeal, Justice Mohammed, Justice of Appeal, and Justice Narine, Justice of Appeal also, they made several comments with regard to persons under the Trespass Act and that there must be some level of evidential proof by the plaintiff or the complainant or the prosecution in these matters and that evidential proof, Madam President, in that case, what was able to satisfy the burden of proof in this particular case, if I would just quote the name for the record, Magisterial Appeal No. P062 of 2016, *Wayne Figieroux v Obioma Bankole* and the crux of that case was that what was able to prove the title was for the complainant to just produce a grant of letters of administration to show that they had some beneficial entitlement or interest in the land to bring them within the definition of “owner” in the circumstances of the Trespass Act.

And I can pass a copy of the judgment to my friend, the Minister in the Ministry of the Attorney General and Legal Affairs to show that maybe you can give some consideration, Minister, to that definition of lawful possession in terms of deleting the word “lawful” so that we offer that sense of protection. And I feel very strongly of it because these persons need our help. And I know that you are making light of it that we want to delete the word “lawful” and you may think that sounds absurd but, Madam President, when you look at those persons who really need the protection, they do not have the resources, they do not have the money. And I am going to end on this note and that note is that we on this side, Madam President, whilst the People’s Partnership was in Government for that period 2010 to 2015, the—[*Interruption*]

**Hon. Hinds:** Give way, Senator. Be kind enough. Thank you very much. I appreciate that. Now, you see the workings of the human mind is what it is. You are suggesting that we remove the word “lawful” from in front of possession. How

do you treat with a situation where someone unlawfully, forcibly entered last month, took possession and before any action is taken against him, he now uses the fact that someone else comes a second time to remove him but he is in possession. How do you account for that?

**Sen. S. Hosein:** I can account for that, Madam President, through you, if I can respond to the Minister. When you look at Barbados—and I am sorry that the Minister did not contemplate this while this Bill was before the committee—that it dealt with all of that and I will pass you a copy. Because the Bill dealt with those persons who unlawfully evict somebody and remain there and then they are being evicted. Madam President, it is quite simple. Let us get around all of this legal ramification and obstacles. [*Crosstalk*] I am raising legal issues based on the Bill that you have presented to us and I am entitled to do so. [*Desk thumping*] If the Bill is poorly drafted, it is my right to point out those flaws in the legislation and I am suggesting a way in which we can better the legislation.

Look at Barbados, there is nothing about lawful possession, all you have to show is that you are a residential dweller in the property. If you are evicted from that property, Madam President, and someone occupies, the police can use force to get out that person which is contemplated at section 6 of the Trespass to Property (Reform) Act, CAP. 155B of the Barbados legislation.

**Hon. Hinds:** Would you kindly like to give way?

**Sen. S. Hosein:** I will not give way, you will have the opportunity to respond. I do not know how much time I have again. But I will certainly pass you a copy of the Barbados legislation because it seems that this lazy manner in which this Government continues to bring legislation to this House, this lazy patchwork, Madam President, we will not accept it. [*Desk thumping*] And you only had nine—after three and a half years, the Minister comes here with this Bill, you had nine

sections in the Trespass Act, you are telling me you did not have time, after three and a half years, to review this piece of legislation? Imagine you want to modernize this current Act but you have definitions such as cottage, you still have timber, sugar cane. You all closed down Caroni, revolutionize the entire piece of legislation. You could raise whatever Standing Order you would like.

But I will like to conclude, Madam President, because I am addressing you.

**6.00 p.m.**

And it is because of my passion for this matter and the protection of persons, because a person's home is regarded as their castle. It is regarded as their castle. [*Desk thumping*] And I want to say on the point before the Minister interjected, is that on this side of the Parliament, while we were in power, our political leader, the hon. Kamla Persad-Bissessar, always instilled in every single one of us even up to today, that the UNC is all about a home owning democracy. [*Desk thumping*] And if you really want to protect these persons, we humbly suggest, that while we are at the committee stage that we can seriously deal with this Bill to give the full protection for all of these persons. And I thank you very much, Madam President, for. [*Desk thumping*]

**Sen. Zola Phillips:** [*Desk thumping*] Thank you, Madam President. I rise to say my piece on the Trespass (Amdt.) Bill, 2019, which seeks to make changes to the existing Trespass Act. I have listened to some folks in my community expressing alarm at the dramatic increase in the proposed penalties for different forms of trespassing. I have been at pains to remind them of the dramatic deviation from the acceptable pattern of conduct which was the norm in our parents' time. Proper discipline and respect for the welfare and property of others seems to be a thing of the past. When I chat with my parents and hear about the conduct that prevailed in their time, I am appalled that things could have changed, and that things were

allowed to change so dramatically over the years. I am sure that even the staunchest opponents of this Bill are in sympathy with victims of the dastardly act which the Bill seeks to redress. Trespassing is not only illegal, it is unconscionable, distressing and wrong.

Let us take a look at clause 3 of the Bill. Madam President, I have read and heard media reports of people being displaced from their homes and threatened with injury and even death if they return to what is legally their property. As many of the Senators mentioned, a man's home should be his castle to occupy and defend. Any attempts to displace him may naturally lead to resistance, to possible violence, and definitely to unacceptable criminal conduct in our land. One can therefore understand the extra burden being placed on our law enforcement personnel when criminals seek to perpetrate such injustice on otherwise law-abiding people.

Then, there is the case of farmers earning their livelihood through back breaking tasks, sometimes in the sun, sometimes in the rain. Imagine those farmers having their lands invaded by wicked intruders who seek to harvest commodities that they never produced. They sit idly by, engage in wasteful and unproductive activities, and trespass on lands to engage in praedial larceny. Not only is this an illegal act, but it promises to create a level of friction that poses a challenge to our law enforcement agencies.

I am from a farming family in Tobago, and therefore I know the pain associated with the loss of 30 head of prized sheep in one night. I also know about crops stolen with such regularity that farmers are forced out of their chosen vocation. Apart from farming, there is a sad situation where families are at war over properties left by forebearers. It is a common occurrence that property owners may bequeath property to specific individuals. Descendants then determine that the

new owners do not deserve such gifts, and set out to challenge them for property that was not willed to them.

The examples I have highlighted here demonstrate strong support for clause 3 of the Bill which widens the areas of trespass far beyond lands. Madam President, recently there were two interesting photos or pictures in the print media. With the first one, vehicles were practically touching a “No Parking” sign and then in the second, a pile of garbage was covering a “No Dumping” sign. This legislation therefore is very relevant, as some people tend to disregard signs and notices. They go with gay abandon beyond ‘No entry and trespassing’ signs. The proposed penalty of \$50,000 and 10 years imprisonment, should serve as an appropriate deterrent to all would-be trespassers.

What needs to be understood is that there is a legal system in place to settle disputes, and there are penalties for illegal behaviour. By invading the privacy of a legal tenant, one is guilty of trespassing. Whether the penalty is a stiff fine or a jail term, it is deserving punishment for such action. Madam President, I recommend, very strongly, that an intensive education programme be launched, in the media, in schools, in churches and in community centres to educate the population of the consequences of trespassing.

As I mentioned before, I am from Tobago, where, climbing your neighbour’s fence for a few mangoes is the norm, it is almost a culture, and therefore education is important. Those who cannot read signs or notices, and those who have over time, developed a habit of trespassing, should be warned of what is now in store for them. Therefore, with this, I am pleased to offer my support to the hon. Minister, and to the proposed amendments of the Bill. Thank you.

**Hon. Senator:** “Geh them Baig, geh them.”

**Sen. Brian Baig:** Thank you very much, Madam President. I am extremely

honoured to have been afforded the privilege to sit in this honourable Senate once again. I would like to extend my appreciation once again to colleagues for their warm welcome, and I would like to thank the Leader of the Opposition for once again having the confidence in appointing me again to the Senate.

Madam President, even though I am happy to be here, there are many things that have me sad, and we are in 2019, Madam President, we still have a very high murder rate in this country. We have a lot of people in this country who still cannot afford basic amenities in this country. When I come to speak here, I do not really speak here as a young attorney or as a young professional, I speak on behalf of the people of this country that are of the northeast area of Trinidad, [*Desk thumping*] that being from St. Joseph all the way to Toco/Sangre Grande.

Madam President, I rise to offer some comments on the matter before us, a Bill which is to amend the Trespass Act, Chap. 11:07. We have a government as was stated by my colleagues, they are in their fourth year, and they are bringing legislation again in a way that can be seen as a piecemeal, patch-up work, as was stated by my colleague, Sen. Hosein.

Madam President, when the People's Partnership came into office the problem of land grabbing had to be dealt with where there were persons in Sangre Grande, Point Fortin area, central Trinidad and so on, went on state lands. Madam President, they sought to occupy those lands and it was a major crisis, because I would just say very briefly, I do not want to spend much, but before 2010 the Government of then had a difficulty with dealing with that as well where actually there were cases in the court which were inspired by the Member of Parliament for Siparia, the hon. Kamla Persad-Bissessar, to stop a government from looking to remove persons who had the right to occupy. As was quoted, they had what was called "certificate of comforts" and they were making them to become "certificate

of discomfort”, and that was being done. Madam President, the reason why I can talk about that, that was in the year 2008/2009. I had just qualified with a law degree and I actually helped the Member for Siparia in dealing with these matters.

**Madam President:** Sen. Baig, I know you have now started your contribution, but because I want you to start it on the right footing, I want to ask you to be relevant to the Bill at hand, please. Okay, so whatever context you are giving, tie it in immediately to the Bill that is before us.

**Sen. B. Baig:** Of course, Madam President, I will keep my promise to you as was my colleague before. Madam President, I will get straight into it. The passage of this Bill, Madam President, really and truly will do absolutely nothing or little at all to stop the issue of trespass on properties. It will do nothing.

As you know, the hon. Minister talked about the issue of putting up a sign and people made light of it. But, Madam President, we are in 2019 and the issue of putting up a sign still really and truly is archaic in itself, because, Madam President, you put up a sign and it says, “Do not trespass or you are liable of a fine of \$20,000”. Madam President, people see that and they are still going to go in.

**Hon. Senator:** “They will tie de sign.”

**Sen. B. Baig:** They might even go with the sign, they might say, “Oh, the sign look nice”. In fact, Madam President, there is a sign that says, “Do not walk on the grass”, well guess what? Right outside on the Hyatt there is a sign that says, “Do not walk on the grass”, people will still walk on the grass, so there is nothing to stop that.

**Madam President:** It is just like how I say, Sen. Baig, to try and confine your comments to the Bill, and you see what happens at times. I am going to ask you, please, please quickly tie in your comments to the Bill at hand, please.

**Sen. Khan:** Do not walk on the grass.

**Sen. B. Baig:** I am guided, Ma'am. I understand. So, Madam President, we see with this approach that is coming, it is really and truly the Government—they should have done some more work with dealing with this Bill.

Madam President, for my part if they wanted to deal with an issue of trespass, what should have been done was the total repealing of the Trespass Act and bringing a new legislation to deal with trespass.

Madam President, in keeping forward I will not go forward in certain things that were said out of repetition. So, Madam President, I will move forward and I will move on, because I know you were saying, “Do not go there”, so I will not go there. But, Madam President, when we look at section 4 of the Trespass Act, the parent legislation where it says:

“Any person found at any time in any lands on which, or near to which, there is stuck up in some conspicuous...”—area.

So that is the sign I am talking about, Madam President, so it has been retained. So, Madam President, I am saying here this should not be here. Madam President, something modern could be looked at, and I am asking the Government, let us look at something else. Some other form of designation, could we use that?

Madam, President, I will move forward further. We saw the definition of “owner”. I know my colleagues went into ad nauseam about it, but, Madam President, the issue here is that when you are looking at the issue of owner and title, you are talking about people who have deeds, who have certificates but, Madam President, we must look also at the people who do not have these things. People such as in Farm Road in St. Joseph, people of Bamboo No. 1, and people in Valencia. They are watching this debate today, you know, because they are watching to see how this is going to affect me. Because, Madam President, you are saying here that the only issue to be dealt with is if a person trespass onto your

land, uses some form of force, but the only people that could come and look for some form of redress, according to the hon. Minister, are those who have true and lawful title?

So, Madam President, and I keep hearing the notion that is being said. I practise in the courts, so when I hear people saying, well the police are saying, “That is a private issue”. No, no, no, Madam President, because I will tell you why. Because when it comes to lawyers like us, we go into the police station, and we will tell the officers that is not a private issue, because there is lawful legislation that will protect the people. Not only the Trespass Act—and I am going into that further, Madam President, to show that there are also laws on the books, Madam President.

So in other words the Government here today, instead of looking to amend this Act they could have looked at other laws to help with dealing with trespass. But, Madam President, there is something called “legislative laziness” and this Government is very much guilty of legislative laziness. [*Desk thumping*]

Madam President, I move forward again. So I looked at the issue of that. So, how is it you are coming to talk about that issue of—there is a fine, there is an issue of some form of force. But, Madam President, there is legislation already on the books that deals with that.

**Hon. Senator:** “Tell dem, tell dem.”

**Sen. B. Baig:** Madam President, I am sure the Government here knows about the Firearms Act. The Firearms Act, Madam President, if a person comes in your property with a gun to use, “I eh talking about a caps gun”, you know, Madam President. “I eh talking about a slingshot”, I am talking about a gun to use, Madam President, the Trespass Act does not come in there, the Firearms Act is going to come into there. And that is where you come and you bring the people to justice,

not trespass. So, why is it they did not deal with that? But no, again it is because whoever—I am sorry the Minister has left, and I am sorry the AG is not here today, because I miss him because he always “does” ask, “he doh know what I do”. But, I will tell him, here today he will hear it. This is a part of the work I would have done, if he still kept me at the AG’s office, to tell him this is what is needed in the legislation.

**Sen. Hosein:** “He fire yuh, but the man say he did not fire nobody.”

**Sen. B. Baig:**—I see he has returned. I see he has returned.

**Madam President:** Sen. Baig, please.

**Sen. B. Baig:** Yes, Madam President.

**Madam President:** No, no, no, no, no. There is a certain courtesy that is extended to Members of this Chamber, and to Members of the other place. So, please, you do not refer to somebody as I see “he” has come back. Okay.

**Sen. B. Baig:** I apologize, I see the Minister has returned. I do apologize, I do apologize. Madam President, “stealing”, Madam President, stealing is under the Larceny Act. But do you know, Madam President, that stealing is simple larceny and is punishable with five years. So simple larceny, you take property from someone and not going and put your foot in the other. So somebody else property is now being penalized so what you come with? You come with “a 15 years” penalization on somebody, when there is already something to put on them.

So when you do that, Madam President, and you bring harsh legislation like that at the end of the day, Madam President, when a government is bringing laws you also have to look at how the people see it. You cannot come with laws like that. You cannot be harsh, you cannot be onerous to the people like that.

**Hon. Senator:** Proportional.

**Sen. B. Baig:** Exactly, you must be proportional in how you deal with the people.

Madam President, we have other offences such as assault and battery and occasioning bodily harm. You do not put the penalties are—but they are much less. We agree but they are on the law books. So why does the Minister not realize that there is legislation to deal with such things instead of looking to recreate the wheel? Why are you recreating the wheel? “Doh do that”, it is already there. There is another carriage you could use instead of trying to fix a broken one.

Madam, President, when you look at the scale of it. When you are trying, somehow, to find some—they thinking it is a lacuna in the law, but if you are trying to fix the lacuna in the law, you do not only do it like that by going and put something in the Act. You try to see where there is other legislation and you could amend that legislation, or and I will repeat it, you repeal the existing legislation and bring new legislation and that just shows where a government that really and truly knows what they are doing and truly cares about “a people” of Trinidad and Tobago. But sadly we are here.

Madam President, when you are coming now, and you are bringing these types of penalization on persons, these harsh ways of penalization, what are you trying to show? “Well I is boss, we is boss, so we going and do this.” But, “what happen”? Is the poor people that you want to affect? The poor man who has to now look at whether or not I have some piece of property here in Farm Road—I think the Minister asked about if somebody is there and somebody come and take his property, and if somebody comes again and take his property. Well, Madam President, there are laws in the land of the Republic of Trinidad and Tobago which would help those persons.

**Hon. Senator:** They do it already.

**Sen. B. Baig:** Right. But, I know my learned senior will here will contribute as well. So, Madam President, I want to go further. They introduce section 5A and

section 5B, where they talk about \$100,000 fine, 15 years in jail, the penalty for new forcibility entering—and detainer. Madam President, really and truly, that is a play on words. That is what you call legislative fluff. You come back again and you bring legislate fluff into the Parliament. No, you do not do that. Why are you doing that? For what? Cheap politics, cheap tricks? No, no, no, no, no, “I am” for one, will support with my colleagues here, I am not going to support anything of that nature, Madam President.

So, Madam President, we move forward. So you are putting now penalties. So you use—and the issue how you say, “people using force” now. What is “force”, Madam President? You say a man come with a gun. I just used the example of the Firearms Act that could be brought into play. So, Madam President, and yes the Firearms Act; there is section 13A of the Firearms Act and let me tell you what it says. It says:

“A person who while he has a firearm with him, enters or is in any building or part of a building or any land as a trespasser without reasonable excuse, commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for five years.”

So, I will stress on the point again, hon. Minister, we do have laws on the books. So, why not use that?

**Madam President:** Senator, please. I have given you some time to develop your points, but you are starting now to repeat your points; different words same point. So, I need you to tighten your contribution and not be repeating yourself, okay. And repeating what other Members have already said.

**Sen. B. Baig:** I move on. Madam President, there are also other offences that can be looked at. Madam President, again you have the Summary Offences Act. It has it there as well to use. It is made there for people to have some form of justice. It is

not just the Trespass Act.

Madam President, but I want to ask something. Madam President, there are foreign jurisdictions that could be looked at. I did not hear much of it from the Minister, I am open to be corrected. But, I would like to ask the Minister: Which foreign jurisdiction did you look at to see in what way it could help you with forming this legislation better? I mean you have Australia, you have New Zealand, where—did you go there? Did you say anything there? Did you check anything from there? If I missed it, I am open to hear it after. But, I did not see anything, or hear anything from that. I mean, we have to look at that.

**Hon. Senator:** Big town.

**Sen. B. Baig:** You did not check big town. “Yuh might like there, you know, yuh might like there. Yuh might learn something.” But, Madam President, when we look at that and we see to it. Madam President, in New Zealand there is the New Zealand, Crimes Act, section 17(a) also dealt with this matter of home invasion where they went into more detail, unlike this Bill, to define “dwelling house” and they have about 20 elements of what constitutes a dwelling house, Madam President. So, because again they were matching into problems, they were facing in that jurisdiction, Madam President. So, Madam President, if New Zealand could do that by bringing legislation to deal with that then why, Mr. Minister, why not look at that? Why not create the new legislation instead of trying to find something in the Trespass Act? That is what you should have done. But, “I doh know”.

So, Madam President, it is painful sometimes that when we as lawyers, we have to now see this. And I am telling you, Mr. Minister, this is a matter, and I do agree with my colleagues before is the issue of rights is coming into play. But I would not go further because I am sure, Madam President, would tell me that I am going into what was said before. But I would say this, that any person in this

country whose rights have been trampled upon, I will be there to stand up for them and make sure and see that no one's rights in this country is going to be trampled upon because that is what we are about.

So, and I also, Madam President, I know it was discussed, but I think it right I just make mention of it if you would allow me a little leeway with it. That the issue of "adverse possession" has been talked about, and I agree adverse possession still is relevant in this matter. Adverse possession can still come into play, adverse possession "can be come into the courts". I will agree yes to a point, it will take some time at the courts. But at the end of the day it is a civil remedy, out of civil action, a criminal action can be taken. And if that criminal action falls under the Summary Offences Act then it can be done. The same thing applies if a criminal action is taken and a civil remedy can be gotten, it can be done. So to hear people saying that "well the issue of that does not apply". No, I disagree. The law of adverse possession is still alive and relevant in this matter.

Madam President, I will say to this that I am calling upon the Government of the Republic of Trinidad and Tobago, use your energies wisely, wisely for of bringing good legislation to the Parliament. Also, use your energies wisely in fighting crime in its true and proper means. If you are seeing this as a way of fighting crime, well I am sorry, I am not seeing this as fighting any crime because at the end of the day, like I said—just to sum up, Madam President, I am summing up and concluding at the same time—that you say, "It have a sign", well guess what? No one takes on that. You look at the issue, you are saying it is—how much stronger the fines will be. I do agree, there is the crime murder, but murders are still happening in this country.

At the end of the day, the Government of the Republic of Trinidad and Tobago, you need to get your act together, you need to bring better legislation to

this Parliament where you will get the support, and if you cannot do it, well guess what? I strongly recommend call a general election and let the people put a proper government and that government being the United National Congress led by Kamla Persad-Bissessar. I thank you, Madam President. [*Desk thumping*]

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** [*Desk thumping*] Madam President, thank you very much for allowing me to speak on this Bill. I am always heartened that my friend, Sen. Baig comes into the Senate—

**Sen. Khan:** They will stay in Charles Street. [*Crosstalk*]

**Sen. The Hon. C. Rambharat:**—Madam President, I really anticipated a very short contribution, but there are matters that I have to address including matters raised by the last speaker. And, Sen. Baig, took me straight back to first-year university, because I wanted to make sure, Madam President, that life had not passed me by and the concept of larceny of land had not been introduced into law. And when I reflected upon it, there is a very simple reason, Madam President, why this piece of legislation, the Trespass Act, is being amended.

The Trespass Act, this piece of legislation that is being amended deals with real property. Throughout the Summary Offences Act, you will find personal property and the Larceny Act, where ever in the world it is, deals with personal property. In fact, Madam President, in first-year law, they taught us the element of the crime which is the requirement to have the intent to personally deprive the person of some form of personal property. And I—[*Interruption*]— Thank you very much—[*Laughter*]—and I went straight back to the debate on the Property Tax when Sen. Baig, again, evolved the concept of being able to steal land, physically steal land, and I had to point out to him that I considered that to be an impossibility that you would be able to take up a piece of land and move with it.

**Hon. Senator:** That is right.

**Sen. The Hon. C. Rambharat:** So that there is no—you can argue, and I do not want to torture my friends this evening. But, I want to make another point, Madam President. You see, when you say that this Government is legislatively lazy, as I have said before, you are really putting very little weight on the work that the people at the CPC and the office of the Attorney General, some of the best public servants that we have. [*Desk thumping*]

I wear a hat, Madam President, another one that requires me to work with them almost on a daily basis. And nobody could say that this Government, as governments before, has not been bringing legislation. In fact, we have been complaining that it is too much. So the product has been here, and I will not accept a description that this Government has been lazy on its legislative agenda.

We cannot use the Firearms legislation to do what we want to do. I mean, that is simple. So that, I enjoyed listening to my friend, but at no point in his contribution I felt that was going to be something of substance to which I might respond. And I listened to the home-owning democracy, and the desires of my friends to deal with this issue of land and so on, and the PNM not doing—we not doing that. And again I did not want—I had no plans to prolong this discussion. But I deal with this matter of land several hours a day every day. And I encounter all types of things, but this is one, Madam President, in the context of what my friends have said so far that I must share in relation to trespass, I must share with the country.

**6.30 p.m.**

I recently, Madam President, had to go to the Cabinet to rescind a decision made in March 2015, and let me tell you the elements of that decision. It involved a parcel of state land that was occupied without authorization. We talk about

trespassers, squatters and adverse possession—a parcel of state land occupied without authorization. The land formed part of the Ministry's property, the Ministry of Agriculture, Land and Fisheries' compound. The land formed part of that. The land was required for the purposes of the Ministry.

The public servants in the Ministry expressed strong objections to the taking of that land. There was no Town and Country approval for the excision of that land and for the development of that land, and notwithstanding what the public servants described in the Note to rescind as irregularities and objections, on the 29<sup>th</sup> of March, 2015, a Cabinet made a decision to lease that land to the occupant, occupying without authorization, a parcel of land being used by a Ministry in the face of strong objections by the public servants—no Town and Country approval—and a Cabinet approved that and I had the task, a week ago, of going back to Cabinet to rescind that decision. And I must answer sometimes for the public servants taking a decision to excise a parcel or a section of land in Curepe—a Cabinet taking a decision to vest that into HDC—and, consequent, upon public consultations, a decision being made to put houses on that land.

I have to justify that all over this country, and nobody will ever be called upon to justify something like this, and I had to bring it into this debate, I had to bring it into this debate, because all those remedies you speak about are equitable remedies. And you well know, if you were well taught, he who comes to equity must come with clean hands. Come with clean hands.

Madam President, my friend, Sen. Saddam Hosein, made this point. He says that in relation to the newly introduced 5A, he felt that it was deficient, because his reading of 5A was that you needed to expel the person or the lawful occupant should be expelled for the offence to be committed, and I disagree with that. My reading of that is that 5A says:

“A person who uses force, threats or intimidation to enter premises which is in the lawful possession of another person in order to expel that person and take possession...commits an offence...”

So the “in order to expel that person” is the mental element. There is no requirement in the offence that you actually expel the person. The intention must be there, and there is no need, and I think that if that is your objection to it, actual expulsion is not required.

I want to caution Sen. Hosein, he has made a lot of use of Barbados. And, again, Madam President, for those of us who are familiar with Barbados, there is a reason why Barbados uses the expression “residential occupier”, because the history of landownership in Barbados is a sad history, and it is because landownership is not pervasive in Barbados, that West Indian law gave the world something called a chattel house. The reason why the houses are not affixed to the land is because there was no ownership of the land. These were estates. And for those of you who do not know, 90 per cent of land in Barbados is owned by a small percentage of the population, and the law in Barbados cannot refer to anything that signifies title, a deed or a license or anything like that. The occupation has been a historic occupation, and that is why the law would refer to a “residential occupier” as opposed to somebody who has something closer to a legal title.

And then, the third point made by Sen. Hosein, relates to the Property Tax Act where Sen. Hosein says we should have used “owner” as defined in the Property Tax Act, but the use of that definition in the Property Tax Act was not a miscalculation, error or anything. In fact, that was a matter that was debated—it was part of the debate—and that was specific to the inclusion of “squatters” in the definition of “owner”. It was not accidental. And when we dealt with it, there was a discussion in the public domain that the Government was taxing squatters. There

was an ancillary discussion that by taxing squatters we were now recognizing their title or their legal interest in the land, and I had to make the point that we have been taxing squatters in this country. In fact, I brought to the debate some land and building taxes receipts to demonstrate that squatters have, in fact, been paying taxes in this country and the inclusion of “squatter” in the definition of “owner” in the Property Tax Act, was a deliberate policy decision of the Government to continue the taxation of squatters.

In relation to Sen. Deyalsingh, Madam President, I want to—other speakers have referenced it, and Sen. Hosein referred to the four pieces of legislation in a way, I cannot recall it as graphically as he did, but I will say that in relation to your recommendation that the Magistracy as part of dealing with these amendments, we also tasked to deal with title issues at the same time, I think that would be a grave error.

The combination of the four pieces of legislation which were passed in June last year, the intention was that those pieces of legislation: the land adjudication, the creation of the tribunal, the registration of titles Act and the changes we made, were meant to address this title issue, and it is not going to be a simple matter to implement, to resource and to administer, but that system as opposed to the Magistracy, is better configured to deal with this matter of title, and I would suggest that that is the way, we should continue along that path.

Sen. Mark, Madam President, is there, and I was surprised by one statement, which is Sen. Mark’s statement that he has an inherent right to occupy state land, and I disagree. I do not see the inherent right, and Sen. Mark did not expand on it. Sen. Mark recommended the Jamaican model and the Jamaican legislation, and the Jamaican way of dealing with this, but I will tell you this Sen. Mark, when the Jamaican legislation was being sold and explained in Jamaica, at the top of the list

was that the legislation was meant to deal with the issue of squatting in Jamaica. That was the public policy behind that legislation that you now recommend to us. It was meant to deal with squatting, and this amendment does not in any way wish to address the issue of squatting.

As a matter of fact, I have heard a lot of statements being made about—and I will come to Sen. Ameen's contribution—squatters and which Government and who does not like squatters. But you know what? I will tell you and I have said it before, all administrations have tried to deal with the matter of squatting in a very humane way. In fact, the whole arrangement with the Land Settlement Agency, the only thing that works against those involved in the Land Settlement Agency, is the fact that there was a cut-off date that passed a long time. And even for those who are properly in the Land Settlement Agency system, those who met the requirement and are entitled to a COC, which will eventually convert into a statutory lease and then a long-term title, it is the sheer numbers, and all administrations have been faced with it—the sheer numbers involved, the cost of developing the infrastructure and the time that it takes to deal with this matter. And what has been happening is the fact that, as the LSA, under every administration, has been dealing with those who properly qualify for the COC, the numbers have been increasing and in a previous debate I only dealt with north-east Trinidad.

My friend, Sen. Baig, says to me he knows north-east well, and I should give—you want work, I should give you the responsibility of dealing with Valencia long stretch and the Kangalee lands and Mora settlement and all those places in that area where we have 2,606 acres of forest reserves squatted upon; 3,606 residential structures and a total of 5,438 structures. That is a job you should ask the hon. Attorney General to give you. But every administration, Madam President, and our administration remains committed to dealing with squatters, and

there is nothing in here that disenfranchises squatters, interferes with their rights, and this amendment really does not deal with squatters.

Sen. Ameen made the statement, land tenure regularization is not being dealt with by the Government; I have addressed that. Sen. Ameen talked about the Bhadase lands. I will tell you this, because when we talk about land, land affects the individual in Trinidad and Tobago in such a personal manner that it is difficult to politicize it. It is difficult. Successive administrations have had to deal with the same issue, but I will tell you this. To lay blame at the feet of the PNM is a different story, and I will tell you this, Madam President.

When you talk about the Bhadase lands over the highway, when you talk about those lands in St. Augustine, dating back to the time when St. Augustine was farm land and the distribution of the land was in one-acre plots, it is a 1961 decision of a PNM Government, a 1961 Cabinet decision of a PNM Government, which led to the opportunity of agricultural land lessees in St. Augustine being able to subdivide their land for residential purposes. And I am saying this in response to Sen. Ameen, because perhaps she does not know that it was a PNM Government that made that decision and not only a decision to subdivide, but a decision to subdivide and lease for 99 years at an annual rent of one dollar, and those multi-million dollar apartment buildings and those things which have gone up in St. Augustine, those things have gone up on residential parcels which were created out of a 1961 PNM policy. I will tell you this. Unfortunately, a lot of that development went ahead without appropriate Town and Country approvals and so on, and last year December, the Government took certain policy decisions which will make it easier for those property owners in St. Augustine, on former state agricultural lands, to be able to get the Town and Country approvals which will help them clear up their title issues. [*Desk thumping*]

In relation to Monroe Road, I will tell you this. I had the opportunity on June 17, 2016, to respond to a Motion on the adjournment by Ganga Singh, the Member of Parliament for Chaguanas West, and this is what I said, Madam President, in the other place on that day. I said that this Monroe Road issue—at that time was 70 years old, it is now 74 years—it was a decision in 1945—and I have heard people say in the House today, that those leases were expired and this, and it is expired leases, I want to correct them. Yet again, that is agricultural land. Monroe Road and all that commercial development has taken place on agricultural land. A decision was taken in 1945 to convert those lands to commercial and residential parcels; 1945. And, Madam President, 58 years passed since that 1945 decision, 58 years passed, and it was a PNM Government, in 2003, that made the decision to implement that decision, and from 2003 the surveying of that area has been ongoing.

And in the other place, in response to the Motion, I pointed out, specifically, that my friends in Government made significant progress in dealing with Monroe Road, but I have been left with a major part of it, and Monroe Road, that area has been lotified into 283 one-acre parcels. We are dealing with the sub-division of those parcels, because many of those one-acre parcels have been occupied by multiple families and it is commercial/residential, and that is work that is ongoing.

So, Madam President, I think I have answered my friends except to say—and Sen. Ameen is not here. I wanted to make this point to her because when Sen. Ameen referred to Bhadase lands and Monroe Road and those places, she omitted one place that ought to be very significant to her, the said St. Augustine Nurseries land. That, Madam President, as I have been at pains to point out, is a 200-acre parcel of land. The St. Augustine Nurseries occupy a very small part of it but in there, there are 65 residential structures in there going back to about six decades;

about 65 structures. So it is not just Bhadase land and Monroe Road. It is the contentious place that has been said that we took prime agricultural land to put into housing, six decades now we have had housing there. And, Madam President, this Government has taken the decision, once and for all, to regularize those families there and give them their leases.

Madam President, what does this Bill do? In dealing with the Bill, you must look at the parent Act, and you must see that this parent Act comes in a particular historical context. Madam President, when I first looked at the imprisonment and the fines and so on, I thought that this was really going to be a burden, and then I looked at the historical context and I found the legislation of the day included the Trespass Act, the Vagrancy Act, the Pounds Act, some elements of the Summary Offences Act, because a common law law ought to be a product of the current environment. That is what law should be.

And when you look, for example, Madam President, in 1925, the Malicious Damage Act—and somebody in drafting this legislation was obsessed with fire, because this legislation in our world in 2019, you will think malicious damage might be damage to property by “mashing it up, by bouncing it down” or something like that—almost all of this legislation deals with fire, fire, and you will be surprised at the penalties. So you have:

**“INJURIES BY FIRE TO BUILDINGS AND  
GOODS THEREIN**

Any person who unlawfully and maliciously sets fire to any dwelling house, any person being therein, is liable to imprisonment for life.”

Could you imagine in 2019, wanting to imprison somebody for life for setting fire to a dwelling house? But I could imagine, in the context of what was happening then, how savage such an act might have been, given the materials used

in the construction, given the close proximity of the houses, given the multi-family nature of some of these structure, particularly, in the city and the suburbs when you go further west out of this city, and for maliciously setting a fire, you could be imprisoned for life, for maliciously setting fire to a:

“...house, stable, coach-house, outhouse, warehouse, office, store, shop mill, boiling-house...”—imprisonment for life.

Setting fire to:

“any building...borough, town, ward, parish...”—imprisonment for life.

In 1925, they were locking up people for life for setting fires. So, I came back to this amendment and I told myself, I think we are doing good with this amendment. [*Desk thumping*] I think we are doing all right. I think we are doing okay, because the severity, the significance and the potential of the matter we are addressing, it is not simple. If we allow this, this thing of taking people out of their homes, if we allow this to spread to beach houses in Mayaro, if we allow this to get to homes—there are many citizens of this country who divide their time between Trinidad and North America and they leave their homes here sometimes for six months at a time. You have many—in many families, particularly in rural areas, you have situations where children have either moved to another part of the country or have moved out of the country and elderly parents are living on their own, and the potential of this getting out of hand and spreading to suburban and eventually, rural communities, is something that ought to be addressed. [*Desk thumping*]

And, Madam President, all we are saying is let us broaden this legislation in keeping with the times, let us broaden it. Land is what was addressed in the Trespass Act, the 1852 Act. Land was addressed. There was not even a definition

of “land”. The modern legislation, as you say you want, “land” goes beyond the natural meaning of “land”, and what we are saying is that it is “land and premises” and “premises” is a more broad definition.

We are inserting the word “lawful”. There is so much debate about “lawful” and all I can tell you, when I was growing up in Rio Claro, I learned an expression very early in life, “thief from thief does make God laugh”. So, if you do not have the word “lawful” there, you are not differentiating amongst possessors. [*Desk thumping*] You are saying that a possessor can deprive a possessor and “thief from thief will make God laugh”.

**Hon. Hinds:** But the UNC knows that.

**Sen. The Hon. C. Rambharat:** Having said that, Madam President, I recognize, I accept it, because as I say, I deal with land on a daily basis. This issue of lawful possession, there is no exact science. I heard somebody say, we could draft from now until the end of my term and your term, and we will not be able to capture all the facts and all the circumstances and scenarios which may amount to lawful possession. So, let the arbiters of facts and law determine that. We know what “lawful” means and you cannot say remove “lawful” to make it easy because “one thief go be fighting the other thief”. It will be like one of those cartoons. And I agree with my colleague, Minister Hinds, that the word, as simple as it, is an absolute necessity in that legislation. [*Desk thumping*]

Madam President, when you look at that part of the existing section 4 and the amendments to that section—the amendments in clause 6 of the Bill to section 4—there is a lot of history there, and I could identify with this, Madam President. I can identify with the existing section 4 and the proposed amendment in a personal way, because when I was growing up, there were three signs that used to attract my attention all the time. When I passed by the cinema, the “Stick no Bills” sign. I did

not know what that meant. When I passed certain areas, the “No Thoroughfare” sign. That was a big word and then when you go, especially on agricultural land, you see a smoothened piece of galvanize with this long piece of law about “No Trespassers”. All I thought of was the “will be prosecuted”, that is all, and that, “I mash brakes”. [*Laughter*]

And, in later years, Madam President, later years I will discover that those three signs were actually rooted in the law. [*Desk thumping*] And, in fact, if you read your current section 4 of the Trespass Act, you will see that the presence of the sign is an element of one of the offences. You go onto the land with notice of the sign. And then the second part where we are removing the word “servant” and putting “worker”, well, I can tell you, because when I saw this and I saw the proposed change, I thought about Las Cuevas Estate and those people who worked on the estate and lived on the estate, and even up to now are still trying to get some title on account of their long occupation of those lands; I think about Rincon Estate, Manzanilla and the coconut; I think about Gran Couva. You still see some of the estate houses occupied by the descendants of the original workers, and the infamous St. Augustine Nursery and those 65 families who set root there six decades ago for the purpose of employment, and section 4 and the amendment to section 4 targets people in those factual circumstances.

Madam President, section 5 and the proposed changes, well, we do not have to worry about boats and jetties and criminal behaviour, you know. I recently, Madam President, in collaboration with the Chaguaramas Development Authority, we had to deal with an issue relating to a pier and somebody who insists on having command and control of that, and we know why they would like to have command and control of a facility out in the ocean that gives you access in and out. We know that, and this is an important change, an important development in the law.

Of course, Madam President, we could draft a brand new Bill dealing with access to piers and putting in all the bells and whistles, but you know what? Instead of waiting five years and three months for the perfection you never achieved, [*Desk thumping*] we are quite prepared, Madam President, to draft the simple words with the help of all those technocrats who labour in the Offices of the AG and the CPC. We are prepared, Madam President, to string the most appropriate words to change the circumstances of the people who suffer at the hands of criminals who enter their homes with the intention of removing them permanently. I thank you. [*Desk thumping*]

**7.00 p.m.**

**Madam President:** Sen. Haynes.

**Sen. Anita Haynes:** Thank you, Madam President, for recognizing me as I join on this Trespass Bill. I would like to firstly start on the urgings of the Minister of Agriculture, Land and Fisheries who took issue with my colleague's statement that the current administration is legislatively lazy, I will do you a favour and I will drop the "legislatively", Minister, and we could leave it at "lazy", because that is what we are seeing here. That is what we are seeing here today. [*Desk thumping*] So you cannot say we do not compromise, right? We compromise all the time. So my intervention here today actually comes from the contribution by Sen. Cummings, who is unfortunately not in the room today, right now. Sen. Cummings grounded—and the Minister in the Office of the Attorney General, in piloting the Bill, said that we were dealing with the issue of criminality, speaking about people being threatened and intimidated by violence, you know, and forced out of their homes, and now a sensitive topic in terms of crime and criminality in Trinidad and Tobago and land issues, and landownership, and your home being your castle and the place that you—your sanctuary, all of these things I can agree with.

A lot of Senators spoke about some of the provisions in the Bill, so I just want to ground my response in clause 8, which the Act is amended by inserting after section 5, and we have it here. You see, because Sen. Cummings, and I believe Sen. Simonette, gave a point that this law is for the people of Trinidad and Tobago and we are doing this, this is the people's legislation, and I had to pause because I was not quite sure who were the people that they were talking about or speaking to. You see, Madam President, I have not spoken to a single citizen that said, "What we need to do as a population is draft more laws and that is what will protect us", because you are saying that this is meant to protect our landowners and our homeowners but we have heard this story before. We heard it with the anti-gang, we heard it with different things, and saying that this piece of legislation would bring you the protection that you desire. It has not worked, Madam President. This kind of paper-based politicking where you bring papers upon papers and legislation upon legislation, and then you do not have any enabling factors. You are not giving any real teeth to the legislation. And this is why I said my intervention here was forced by Sen. Cummings' contribution today, because Sen. Cummings said—he gave us a story; he gave us a story about a man who was known to the police for committing criminal acts who forced some people out of their homes, and he was very passionate and he said, this law would stop that. You see, that is a logical fallacy to me, Madam President, simply because if the man is a known criminal, how in heaven's name is this law stopping him from any further criminal activity?

You are telling me this is the solution, but really, one does not follow from the other, and I am convinced now, Madam President, that no one on the Government Bench speaks to a single police officer. They may not know anybody in the police service because they keep telling us, time and time again, that what is needed to solve our crime problem is more and more legislation. I do not think

they are asking for that. I do not think they are asking for more legislation. The question you ought to be asking is how to be more effective in your policing. How are you going to enforce the legislation, one that we already have on the books? And even if you are bringing things like these, tell us how you are going to enforce it properly, Madam President. I would like to go to clause 5, which amends section 3 of the legislation, on the issue of “night-time”, because I know the Government would, time and time again, say we raised issues about enforcement and, you know, you have to start somewhere, you have to do something, and I just wanted to use this opportunity to highlight something that we would have done, or things that can be done.

I know a number of persons spoke about praedial larceny and how this legislation would help, et cetera. During the People’s Partnership administration, in recognizing that this was a problem, the Government took a policy position and used a hybrid structure to form a Praedial Larceny Squad where officers were supported by both the Ministry of Food Production, as it was then, and the Ministry of National Security, and the programme was showing some successes, and this to me, when we look at it they were provided with resources, specially trained officers in the PLS who, along strategic placement of officers to ensure that farmers could get a good night’s rest. So, you see, when we are talking about legislation and how it impacts the lives of people, as a Government you do have a legislative arm, but you also have a space for enforcement and actually doing things. And so coming here, there was a lot of patting themselves on the back about this piece of legislation, the success, you can tell that they felt that they had accomplished something. I am saying, if you do not actually and effectively impact the lives of people, you have in effect done absolutely nothing.

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

Mr. Vice-President, as I move on to—I am still on the issue of persons, so my question here is, when you look at the Trespass (Amdt.) Bill before us, in the newspaper, in the press recently you saw a lot of things about materials being stolen from Petrotrin, et cetera. You see, if you are not consistent with what you are saying that you are doing, if you are recognizing the problem, but you are not bringing any real solutions towards us, Mr. Vice-President, we as an Opposition say we really cannot come here and participate in a mamaguy of the population. So, as I looked at the legislation, the principle I think is good. The desire to protect citizens might be good, but the general laziness of the Government to actually go one step further and do something in the interest of the population is where we are falling short, Mr. Vice-President. With those few short words, I thank you. [*Desk thumping*]

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

**Sen. Gerald Ramdeen:** Mr. Vice-President, thank you very much and good night to you. I thank you for the opportunity, Mr. Vice-President, to contribute in this debate on a Bill to amend the Trespass Act, Chap. 11:07, and coming at number 11 in the batting order, Mr. Vice-President, I will try my best to abide by the Standing Orders. Mr. Vice-President, this is a very important debate and it is a very important debate because the amendments that are sought to be made in the Bill that is before you are amendments that carry criminal consequences in their commission, and the reason why it is important that you get it right, Mr. Vice-President, or that the Government gets it right, is because criminal legislation is designed to tailor the behaviour of citizens, and the most important aspect of that, and one of the most important elements of that type of legislation is that it must be certain. The citizen must not be in doubt as to what type of action will lead to a criminal consequence. It is one of the fundamental pillars of due process. And

very early on, in my career as a lawyer, we were taught that in the very famous decision of *Lassalle v Attorney General*, arising out of the 1970 activities, one of our most famous judges, Clement Phillips, Justice of Appeal, had indicated that certainty in the criminal law was one of the elements of due process. And all of the arguments that we are hearing—it was a very telling piece of judgment in that Lassalle case, Mr. Vice-President, because later, almost 20 years later that judgment in Lassalle was a judgment that was referred to by the Judicial Committee of the Privy Council when they were doing *Thomas v Baptiste* death penalty appeal, and it was complimented by the Law Lords as to the way in which Justice of Appeal Clement Phillips dealt with the elements of due process.

Now, one of the things that we have as a complaint, and, Mr. Vice-President, we must understand in this debate, nobody is complaining that the Government has brought legislation that is designed and targeted to a particular ill that faces our society today, but what one has to be very careful about is that in trying to solve a problem, you do not open a door that causes more harm than good, and that is what we are about in trying to put forward the right way in which this piece of legislation and these amendments are to be done. Now, I want to get to a particular issue, and I am very, very sorry that Sen. Simonette is not here, because in this contribution, Sen. Simonette, like the Minister of Agriculture, Land and Fisheries who when he started his debate said he was taken back to when he was a law student; I too was taken back as to when I was a law student. You know, Mr. Vice-President, for us who are lawyers, and I am sure the hon. Minister of Agriculture, Land and Fisheries will recall the first worksheet that you get when you are a law student in the first year when you enter in UWI, you are excited and you get the first worksheet and you want to read all the cases, one of the first topics that you get is this thing called tort, and one of the first things that they deal with is

trespass to land. One of the first things that they teach you in trespass to land is that in order to bring an action for trespass to land, you do not have to have an interest in land.

Now, I have heard over and over, here this afternoon, that more than one Senator has said, “Well, you know, one of the problems with the remedies that exist in the current law is that, well, you have to have an interest in land in order to bring an action”. “So all these people who occupying land and they have no title, they cannot bring an action.” So I had to leave the Chamber, while I was going to my office I was listening to Sen. Simonette when he started, after he said that I did not really listen much more after that because I wanted to deal with this particular point. So, when you are a law student, Mr. Vice-President, one of the first books that they give you to read as a law student is this thing called *Winfield & Jolowicz*. It is by Prof. Winfield. I want to refer and put it on the *Hansard*, because you know why I am being like this about this, Mr. Vice-President? I will tell you why. You know, when we sit here as a Senate we have a responsibility, we have a very serious responsibility because there are people out there, hundreds of thousands of them who are watching us. What we say here for generations to come will be read by people as part of the *Hansard* records of the Parliament of Trinidad and Tobago. And each and every one of us, whether we sit on the Government side, the Opposition side or the Independent Bench, we have a responsibility to bring accurate information to the Parliament. When you speak on a topic, do your research, read, and come and bring accurate information to the Parliament. [*Desk thumping*] Do not just come and speak and speak, and because you use words like “sophistry” that people feel that, you know, you are intelligent because you use “sophistry”. You know, sophistry was made famous in the Matrix Churchill case. Lord Hutton, he was one of the first people to use that term, sophistry. So when

Sen. Simonette comes here this afternoon and talks about sophistry, like if that adds any substance to the debate that we have here.

So let me get down to *Winfield & Jolowicz*. Hear it, eh, 17<sup>th</sup> Edition, Trespass to Land—this is the leading student text, student, first year; student, first semester:

It is not necessary that the claimant should have some lawful estate or interest in land so that there is no doubt, for example, that a squatter occupying the land without any claim of right may have sufficient possession to bring trespass.

First year. The first case you are reading. First textbook. [*Desk thumping*] Sen. Simonette has more calls than me, so I said, you know what, let me get down to the practitioners text. So I said if he missed it, first year, he must get it as a practitioner. The leading text on tort, *Clerk & Lindsell on Torts*, 20<sup>th</sup> Edition, page 1227, chapter 19, paragraph 10:

Who may sue for trespass...

We are listening to this debate this evening and I am hearing over and over, I am sitting and hearing people talk about remedies not available because you have to have an interest in land:

Who may sue for trespass.

Trespass is actionable at the suit of the person in possession of land—

You know what possession means?—you are just occupying:

—who can claim damages or an injunction or both. Similarly, a person in possession can sue although he is neither—

Let me read it again:

Similarly, a person in possession can sue although he is neither the owner or derives title from the owner, and indeed may be in possession adverse to the

owner.

So let me just correct the record in relation to that. So, finally, you do not need to have an interest in land to sue for possession, and if you do not understand the difference between trespass and nuisance, I cannot be blamed for that, but when you come to the Parliament of Trinidad and Tobago, do your work so that you bring accurate information to the Parliament. [*Desk thumping*] So that is that.

Sen. Mark dealt with some issues about statistics, and I too missed the hon. Attorney General here today, but you know, what is interesting about these statistics is that the court that has the second highest prosecutions for these offences under the old law, unamended, is the court in Princes Town, and I find that very interesting. Because, you know, it is all nice to come and talk here about all these things about people's houses getting invaded, and, you know, we must put an end to that, and gangs going in people's houses and they are dispossessing families, and you hear all of a sudden about section 4 and the right to property, and now that is a very sacred right—I am getting to that just now—but if we pass the legislation today, we amend the Trespass Act, all hunky-dory, all the sections are amended, legislation passed; somebody goes into somebody's house to throw them out, to dispossess them, they bring a charge. So in between the years 2013—2018 you had 61 prosecutions in Princes Town, so it is the second highest; the first highest is Siparia. When the police are prosecuting this person for breaking into the person's house, throwing out the family, dispossessing them, according to them, all of this we must do, you know the Princes Town court does not have a court today, right?

**Hon. Senator:** It is in Rio Claro.

**Sen. G. Ramdeen:** So I went up there last week Friday to represent 17—just like how the Minister of Agriculture, Land and Fisheries could talk about who is

representing who, I went up there to represent 69 cane farmers up in the Rio Claro court, who the Government decided they are not going to pay them, after they promised them when they were in Opposition that they would pay them, and the UNC must now represent 2,223 of them. But when we go up there, the magistrate tells me, “Mr. Ramdeen”—and I do not want to call his name—“Mr. Ramdeen, yuh kno wha really goin on up here, it have more crack in the Magistrates’ Court that we sitting in, than the Magistrates’ Court that we were sitting in before the earthquake”. The people who must get—all of us are talking about the relief, we must give these people relief. Well, where are the people from Princes Town, which is the area that has the second most amount of prosecutions for trespass? Where are they going to get this relief from when they do not have a court that they could go to? Where?

I was told that—we heard Sen. Mark asked on two occasions about when this new court—when is the Princes Town court going to be reopened, because people from Princes Town, and when I say Princes Town, Mr. Vice-President, this geographical area, this jurisdictional area that we talk about in 61 prosecutions in Princes Town, moved from Palmyra to Barrackpore, to Moruga to Tableland. That is the extent of the geography of that area. So it is not a small area. So why I am telling you that, it is the people who have to get relief, everybody is concerned about the relief we are going to give them when the legislation is passed. It has people whose houses will be invaded and they do not have passage to pay from Palmyra or Rio Claro to go to a court to actually get their matter prosecuted. [*Desk thumping*] It has people who cannot go from Moruga and Tableland to a court to get their matter prosecuted. So all this idea that, we are passing this legislation and everything would be good after that, like if when the legislation is passed all of a sudden everything is going to fall in place. Many people have said, and I think

many people have understood, in almost every rural area in this country where you have a land dispute, when you call the police—about a few people, Sen. Cummings has said so as well. When you call the police, you know what they tell you? “Da ah land matter, we eh hah nothing to do with dat.”

Who has trained the police? Where is the training of the Trinidad and Tobago Police Service to implement this piece of legislation that they will understand what is lawful possession, what are the elements of the offence when this is passed in order to bring this welcomed relief that all these people who are subject to this kind of barbaric behaviour? Who trained the police officers? “We ain’t hear nothing about that.” So when the legislation is passed, in all the different areas, you hear about somebody comes to the police station and says, “Mr. X gone in meh house”, or “Mr. X do this”, or “Mr. Y do that”, and the police still are telling you in 2019; they are either telling you two things, “Dais ah land matter yuh know boss, yuh hadda go by a lawyer and deal with dat”, or they will tell you, “Yuh know, we hah no diesel from we vehicle to come by yuh house in order to check that out”. That is the new thing.

“Long time” you used to hear they have no car, between 2010 and 2015 they got 500 cars and 12,000 fixed, but now they have no diesel to go to your house to bring this relief that the legislation is going to bring. So, Mr. Vice-President, many people have made heavy weather of the fact that this is good legislation and the public servants work very hard, and, you know, this is the best we could do and we do not want to string along anybody, so let us get down to the real nitty-gritty of this thing, the kindergarten stuff to start off with. Let us start with the first clause; that is always a good place to start. Clause 4:

“Section 2 of the Act is amended—

(a) by deleting the definition of night-time;”

So, we delete the definition of “night-time” and we go down, section 3. So listen to this, with all the hard work and all the hours that are being put in and all the dedication by the staff, hear this, because the one thing I do before I get up to speak in the Parliament, I actually read, at the least, at the very least I would just read to try and understand what we are doing. So hear this—

**Hon. Senator:** Read the Bill.

**Sen. G. Ramdeen:** Yeah, read the Bill. Section 3, so let me just read the first line of section 3 for you, Mr. Vice-President:

“Any person found in the night-time in any enclosed yard,…”

That is just one line, so hear what they say:

“Section 3 is amended by—

(a) deleting the words ‘night-time’;”

So let me read the new section 3 for you:

Any person found in the in any enclosed yard,...

Real good work, eh? [*Interruption*]

**Sen. Simonette:** That is no big point.

**Sen. G. Ramdeen:** But, you see, you were absent for the big point. If you were here you would have heard the big point.

**Sen. Simonette:** Send it to me by email.

**Sen. G. Ramdeen:** “Nah”, I am not here to teach anybody, and “nobody eh here to teach me either”.

“Any person found in the...in any enclosed yard,…”

Now, you see, to some people that is no big point, because you know what, that is a joke. So the legislation that belongs—Mr. Vice-President, the legislation that governs the conduct of the citizens of Trinidad and Tobago, all 1.3 million of them, it is no big thing for it to read:

“Any person found in the...in any enclosed yard,...”

You know, by saying it is a typo, you know what it means, it makes it actually worse because it means you did not pay attention to what you were doing. [*Desk thumping*] So if you are making mistakes with the typo, imagine what you will do with the more important things. So it is no big thing, it is just a typo.

**Hon. Senator:** Well, that is what it is.

**Sen. G. Ramdeen:** I know, that is what we expect from you all too, we cannot expect anything better.

**Hon. Hinds:** “Is you gih we clause 34.” [*Crosstalk*]

**Sen. G. Ramdeen:** I know.

**Mr. Vice-President:** Senators, Senators, Senators—[*Crosstalk*] “Don’t, don’t, don’t, don’t”, I am on my feet so there should be silence in this Chamber from all quarters. [*Interruption*] Sen. Ramdeen—

**Sen. G. Ramdeen:** Sorry, Mr. Vice-President, I apologize.

**Mr. Vice-President:** Please allow the Member that is on his feet to make his contribution. Let us not have the crosstalk. Continue, Sen. Ramdeen. [*Desk thumping*]

**Sen. G. Ramdeen:** Thank you very much for your protection, Mr. Vice-President. But I expected this to be this way, so I came really, to deal with this. You see, what I found strange about this whole debate is this, I should not have to come here and talk about this issue about trespass and this kind of thing, because like Sen. Mark said, when we prepare—in the Opposition—for a debate, we do not just sit down and read the books, we go out there and talk to the citizens of the country who are affected by this particular piece of legislation, and everybody in this Senate this afternoon has been allowed to give their real life examples of every way in which they understand the position in. So I will tell you, Mr. Vice-President, I had a

conversation with someone who provided me with some information, as they always do, and it really concerns this piece of legislation. Let me tell you which clause it deals with, it deals with the clause of the legislation—section 4, where we want to raise the penalty by virtue of clause 6 of the Bill. We want to do two things in clause 6, which is that section 4 is amended, and let me just read the marginal note for that:

“Trespass on lands where notice is placed, or refusing to quit.”

And then you have trespass with respect to section 7 of the principal legislation, and what we are doing in those things, we are increasing the penalties. It is important because it is a deterrent, we are told. It is going to be a deterrent. So there is a guy who I spoke to, called Marlon McPherson, and he provided me with a court order in a matter that was completed in 2010, and I really thought that after I got this piece of information that we would come here today and have a real short debate because, you know, I understand that the Minister would have understood the law of trespass very well. I mean, in this matter I thought the Minister would have understood, and I will get to that answer that he asked Sen. Hosein about. In this matter the court ordered that the defendant—let me read it carefully into the *Hansard*—completed, no res judicata, no breach of Standing Order, that the defendant—

**Hon. Senator:** Could you identify the matter?

**Sen. G. Ramdeen:** Let me just read out the Order and I will identify it right after, CV 2010, 02895, a decision of the hon. Madam Justice Jones:

It is hereby ordered the defendant to purchase the said portion of the claimant's land...

—And hear the important part:

...encroach on by him in accordance with the survey plan of Brian Moses,

dated the 9<sup>th</sup> of January, 2011, and comprising 163.2 square metres at and for the price of \$84,393.

I do not need to provide a copy of it, Mr. Vice-President, to the hon. Minister because the matter is *Marlon McPherson v Fitzgerald Hinds*.

**Hon. Hinds:** What! A big thing. I did not represent a dead man though.

**Sen. G. Ramdeen:** I expect that from you. I expect that from you. “You eh know better”. I expect that from you. [*Continuous Crosstalk*]

**Mr. Vice-President:** Senators, Senators, Senators—

**Hon. Hinds:** I will tell you who is looking for you.

**Sen. G. Ramdeen:** Looking for me? Wait, I will tell you who is looking for you.

**Mr. Vice-President:** Senators—[*Crosstalk*]

**Sen. Mark:** “Hinds, yuh misbehaving.”

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

**Sen. Mark:** Sorry, Sir.

**Mr. Vice-President:** Can we have some order in this Chamber? First and foremost, Minister Hinds, I would like you to retract that statement.

**Hon. Hinds:** Mr. Vice-President, I retract the statement that I never represented any dead client and that the police are not looking for me. [*Crosstalk*]

**Mr. Vice-President:** Senators, please, allow me to return decorum to this Chamber and rule. Minister Hinds, or Minister in the Ministry of the Attorney General, you do not need to repeat the statement, just retract the statement for the *Hansard* record.

**Hon. Hinds:** I so withdraw with great humility to you, Mr. Vice-President.

**Mr. Vice-President:** Thank you. Sen. Ramdeen, could you please retract your statement without repeating the statement, just retract it for the *Hansard* record.

**Sen. G. Ramdeen:** I retract the statement.

**Mr. Vice-President:** You may now continue.

**Sen. G. Ramdeen:** Obligated. [*Desk thumping and crosstalk*]

[MADAM PRESIDENT *in the Chair*]

[*Interruption*] But they could pronounce proper words. Section 5, we are amending:

“Any person who fastens any vessel, boat, or craft to any private wharf or landing place, or lands, places or puts any matter or thing whatsoever upon any such wharf or landing place, on which, or near to which, there is stuck up a notice in legible letters forbidding all persons to trespass, . . .”

—and what we are doing now is imposing a penalty of \$50,000 or 10 years.

**7.30 p.m.**

Madam President, have we actually thought out the consequence of what this particular section is going to do, with respect to the application of this to the common man in Trinidad and Tobago? So most of the places where persons land with their private vessel or pirogue, whether it be—the Minister in Ministry of Energy and Energy Industries will understand—in Mayaro and Guayaguayare, the Bovell Estates up there. In Icacos, it is the Boysie Singh, Constance. Right? When you travel through these areas there are these signs that say, “Do not trespass”, “Trespassers will be prosecuted”. The same signs that operationalize and trigger off these sections.

When these fishermen come in with their pirogues, for those of us who do not know, it is on private lands they are landing. They are bringing up their fishing boats on private people’s estates. Do you know why that is so? Because there are no ports there for them to land, no jetty for them to land. So the police, under this piece of legislation now, will pick up somebody who comes up and lands with their fishing pirogue, and would be subject to a fine of \$50,000 and 10 years. While we

talk—

**Hon. Senator:** Nonsense.

**Sen. Mark:** “Listen nuh man, yuh cyar be talking.”

**Sen. G. Ramdeen:** Madam President, I would like to make my contribution without being disturbed, because I sat quietly and listened to everybody.

**Sen. Mark:** We are not tolerating that.

**Madam President:** Hon. Members, I will remind you of the relevant Standing Orders. Please allow Sen. Ramdeen to make his contribution.

**Sen. G. Ramdeen:** So I have another quote here, Madam President, that I want to refer to. When the hon. Minister was piloting the Bill—I have it quoted here, I wrote it down, because I found it to be incredible that the hon. Minister in the Ministry of the Attorney General said, and I quote, the *Hansard* will back me up, that you could be convicted summarily or on indictment where necessary. And I found that quite interesting because, I do not know, I may have had the wrong Bill, but the one that I read that was provided to me by the Parliament of Trinidad and Tobago says that in section 3 of the principal Act with the amendments is a summary conviction; 4, is a summary conviction; 5, is a summary conviction; 6, summary; 7, summary, 5A, summary; 5B, summary.

So I was wondering that there is this new concept that when you have a law that prescribes summary conviction by some means, some new concept that the Minister would probably inform us about, is that these laws you can be convicted on indictment when they provide summarily for conviction. So, a new concept, that maybe I just do not know about it. But Trinidad and Tobago should know, because the 1.3 million people who are subject to this legislation should understand that when this Government provides for summary conviction in laws, that you could be convicted on indictment as well. This is the fight against crime, and the way in

which the criminal justice system works under the very hard-working Government that we have. Those are very, very novel and new concepts that defy the present criminal law, and the criminal justice system as we know it in Trinidad and Tobago. But be that as it may, I mean, I do not doubt that the Minister is able to do that. He is very talented.

Madam President, many people have spoken about this application of 5A and 5B—this new 5A and this new 5B. So over and over again the hon. Minister has said across the floor to my hon. friend Sen. Saddam Hosein, “Well answer de question. What is the case? How this could do this?” Let me just do that very quickly.

There is a case called *Ocean Estates Limited v Pinder*. The citation for it is *Ocean Estates Limited v Pinder* 1969. This is the law since 1969, you know, seven years after we got independence. Two appeal cases at page 19. I do not want to read the case. I will just tell you, the ratio of the case is this, that case is a decision of the Privy Council that establishes that a trespasser can get relief against another trespasser. So if you have two trespassers vying for the title to a particular piece of land—and I say “title” because they have no title. One trespasser can bring an action against another trespasser, as established by the Privy Council in 1969. So I am surprised—well, I do not know. They should not be asking for the answer then.

Anyway, Madam President, there is a particular provision that I want to deal with, which is 5B, which in my very respectful view is a very dangerous provision that we are being asked to implement because of the consequences of that particular amendment. That amendment says:

“Any person who being unlawfully in or upon any premises, maintains or attempts to maintain his possession or occupation thereof and”—conjunctive—“does so by force...”

And this is where I want to focus in—by force. So you must be unlawfully in possession, and you must maintain your possession by force.

So *Toolsie Persaud Limited v Andrew James Investments Limited* and others, 72 WIR, a decision of the Caribbean Court of Justice. The decision was given by then President de la Bastide and Hayton. Let me just go to paragraph 30 of that judgment, a judgment of the CCJ. Let me just tell you what that says:

“Although the Court of Appeal in these proceedings stated, ‘It is also clear law that possession for the purpose of the acquisition of prescriptive title must be possession *nec vi, nec clam, nec precario*’ (not by physical violence, nor by stealth, nor by permission), in our exposition of the law we have deliberately eschewed this Latin phrase.”

This is the important part, Madam President, in application of 5B:

“The reason is that s 3 of the Limitation Act focuses upon ‘sole and undisturbed possession’ that was not taken or enjoyed by fraud or by some consent or agreement expressly made or given for that purpose.’ While it remains true that prescriptive possession must be openly enjoyed so that the true landowner can know that he must take action to recover his land, and must not be pursuant to the landowner’s”—knowledge or—“permission, it can...”

—and I want to focus on the word “can”—

“be based upon a forcible taking and retention of the land, so that the ‘*nec vi*’ portion of the phrase has become an anachronism.”

You know what that means, Madam President? It means that as the current law presently stands someone can exercise their right to possession by force, be caught in the four corners of the statute that we are asked to amend as 5B, in defending their possession as a trespasser entitled to adverse possession. [*Desk thumping*]

And that could never be the policy of the Government. I will be shocked if that is the policy of the Government because one of the most common ways in which someone who has gone into possession of land, adverse to the legal title owner, defends their possession in order to get prescriptive rights, is by using force.

So let us take a real-life example. A person goes into possession of land. They are living there for 14 years. They lived there for 15 years. They lived there for 16 years, it is private lands. When the legal title owner comes to eject that person, any person, the person is unlawfully there, he could only be unlawfully there, he could only get adverse possession if he is unlawfully there with rights that are adverse to the owner. So he is being unlawfully or upon any premises, maintains or attempts to maintain his possession or occupation thereof, and does so by force or in a manner that would render the use of force as the only reasonable or practicable means of recovering lawful possession of the premises, commits an offence. How anybody who understands the law of adverse possession can come to the Parliament and tell the Parliament that someone who has been in occupation of private lands as an adverse possessor for more than 16 years, who is faced with ejectment by the legal title owner, is not caught by this provision?

The only thing that I could say to that is that you just do not understand the law, and that is not my fault. [*Desk thumping*] But I can tell you that under a proper application of the principles of land law that apply in Trinidad and Tobago, as we speak today, as is represented by all of the decisions from the Privy Council, *Goomti Ramnarace v Lutchman*, all of them will tell you that 5B is a provision that will cause an adverse possessor to be caught by a criminal consequence, and that cannot be the intention of the Legislature. It cannot be. So that deals with that.

### **PROCEDURAL MOTION**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin**

**Khan):** Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand, inclusive of the matters on the adjournment.

Thank you, Sen. Mark.

*Question put and agreed to.*

### **TRESPASS (AMDT.) BILL, 2019**

**Sen. G. Ramdeen:** Madam President, can I enquire when would I finish?

**Madam President:** You have six more minutes.

**Sen. G. Ramdeen:** I am obliged. So, Madam President, when one looks at the provisions of the Trespass Act—

**Sen. Simonette:** Will my colleague give way for one minute?

**Sen. G. Ramdeen:** No, no, I have six minutes to go.

**Sen. Simonette:** I wonder if he could read the word “unlawful”?

**Sen. G. Ramdeen:** I am obliged. Just to satisfy Sen. Simonette, the position is this, section 5B says:

“Any person who being unlawfully in or upon any...”—premises.

I read it the first time and I read it again, because somebody who is in adverse possession can only be in adverse possession if they are unlawfully in possession. That is what brings you within the four corners of the statute. That is what causes you to be adverse to the paper title owner; you have to be there unlawfully.

**Sen. Simonette:** How do you acquire the prescriptive right then?

**Sen. G. Ramdeen:** “It have a book call Megarry, yuh must read it.”

The owner of any lands or his servant—so that takes care of 5B. Now, let me tell you why it does not—forget about adverse possession now, forget about adverse possession totally now and deal with unlawful possession. We have an Act in Trinidad and Tobago called the Cohabital Relationships Act that causes

women who are unmarried who live with a spouse for a particular period of time, when that spouse dies, to acquire a right to their estate. So that spouse who is living in that house for that period of time does not acquire that interest unless they make an application to the court to deem them a cohabitant. When the spouse dies and this person, which is not an uncommon feature in Trinidad and Tobago, this person has not yet made an application, but they continue to live in the house that they were living in. During the intervening period of time, between when the application is made or granted, and when their spouse dies, they are occupying those premises without any interest at all, unlawfully. And this piece of legislation is going to allow someone to deem them within the four corners of that statute, to come in there and throw them out of the house.

Madam President, what we are saying is we have to think out carefully when you prescribe criminal consequences in a particular piece of legislation, because no one doubts that the rogue elements who go into dwelling houses will be caught by the terms of the legislation. That is not what is in issue here. But what is in issue here is when you try your best and you make a mess, there are people who suffer serious criminal consequences as a result of this. This is \$50,000 and 10 years jail. What people do not understand, that very few of us unfortunately understand, is that all it takes is a rogue police officer to take a piece of legislation like this and cause more terror to a citizen of this country, [*Desk thumping*] than a citizen who is lawfully exercising their rights in their dwelling house, and is thrown out by a gang member.

So what is this about? This is about telling the Government that if you come with legislation, at least study what you are doing and understand what the consequences are. Take the legislation and work it in all the different permutations that it can be worked in, and ensure that only those who deserve to be put before

the court and subjected to criminal sanction will be caught by the four corners of the legislation. What we are saying is that from where we sit, when you have a proper understanding of how these provisions can apply, you can have serious criminal sanction being visited upon innocent citizens of this country, and that is not what we are here to support. We cannot support that. [*Desk thumping*]

We are prepared to support a piece of legislation that provides the citizen who is thrown out of their house, dispossessed of their property, however that property is defined under the legislation, to have a remedy, but it must be limited to the consequences that only arise out of those situations, Madam President. And as it stands, this piece of legislation will not achieve that only. It may achieve that, but it will not achieve that only. Therefore, we have some grave concerns about it and, unfortunately, when the legislation is passed and those criminal sanctions are visited upon innocent citizens, no matter what relief they go to court for, after that it will not be able to put them back in the position that they would have been in, had this legislation been properly passed.

I thank you, Madam President.

**The Minister in the Ministry of the Attorney General and Legal Affairs (Hon. Fitzgerald Hinds):** Thank you very much. Madam President, I laid this Bill in the other place just about a month or two ago. I issued a ministerial statement upon so doing. This was widely published in all the newspapers and on all the televisions, from the feedback I got. Since we published these measures, either in the statement or in the actual presentation of the Bill in the other place, I have had the opportunity to listen to the public on the talk shows and so on, particularly the few days after, and found that there was widespread support across the country for the measures that we offer this Parliament today.

Property owners, landlords, HDC operatives who manage state-owned

property, the police—because as someone said here today, this—I think it was Minister Rambharat and certainly Sen. Simonette—gives the police some teeth in dealing with the issue—citizens across the country. Even the Members of the Opposition in the other place supported this. The only people who I have heard objection from so far are the six Senators in this House; only them, nobody else, everybody else in the country. And therefore we must ask ourselves—my old grandmother used to say, “Half a dozen, six ah one, half a dozen of de next”.

Sen. Ramdeen got up a while ago and said a number of things, very confidently and very loudly; let me address a couple of them. He spoke about some basic principle in tort, and who could sue, but that is not the point. That is not the point. What we are dealing here with is the question of lawful possession. We are talking here about forcible entry and forcible detainer, criminal offences. When we legislate, whatever the common law, whatever the dicta or the ratio in cases, the law takes precedence over it. So whatever was said in the Toolsie case, and I do not know which legislation they were interpreting, which one of the islands, but even assuming it was Trinidad, when we pass law in this Parliament, it is that law that will take precedence over whatever the judge would have said in his deliberation. So I am not impressed. He will fool others, if that was his intention, but certainly he will not fool me. He spoke outside—

**Sen. S. Hosein:** On a point of order, 46(6), imputation of improper motives. Nobody here to fool anybody.

**Hon. F. Hinds:** I withdraw that. Madam President, he spoke about cracks in the Princes Town Magistrates' Court. Wholly, I think he was trying to make the point we pass law and the courts have to be there to sit to adjudicate on matters and so on. That must be fine. I just want to ask him whether he did a survey to find that those cracks appeared all after September 2015. That is all I want to ask him,

because it is a nonsense point.

We established the Family Division of the High Court. We established the Children Community Residences. He was a part of the Opposition and close friend to the former AG who passed that Children Authority law, proclaimed the law when we did not have the physical places to put the children, and as soon as they leave government, went out there and sued the State. That is not about principle. We would not do that. They are capable of that, those lawyers, led by a former Attorney General who passed the law, proclaimed the law, did not put the plan, whether it is courthouse, whether it is children homes, assessment centres, did none of that. And one week after leaving the Government and in Opposition and back in private practice, sued the very State. That is what they are capable of, and that is why I cannot hear them peacefully. That is why I have to put on “meh PNM war paint every time”. Yes, and deal with the wicked in this country, because we have to protect ourselves against them. [*Crosstalk*]

Madam President, let me proceed. I do not want to be distracted. Splitting hairs over a typo. The thing say, “in any, in any”, oh my God. When we pass law, we spend thousands of dollars to get proofreaders from the Law Review Commission, and the law books, in all of that, there is human error, a typographical error. But I use that to demonstrate when they have nothing substantial to say, they talk loudly, they talk confidently, and talk nonsense about “any”, a typographical error. Splitting hairs over things, foolishness.

Then of course he told us about when people land their fishing boats on jetties, because the State did not provide any, they are actually landing on private lands. And tried to tell us, and those who would listen to him, that in those circumstances, the persons are guilty of the offences of which we speak here. The answer to that is no, because there is an important and essential ingredient in terms

of forcible entry, and the hypothesis you put does not have that. It does not have that. From the evidence you gave there is no suggestion of forcible entry.

Then he tells us about the Toolsie case. My friend Sen. Simonette tried to get his attention as a matter of courtesy, and he rejected that, did not give way, but he talks about the question of prescriptive title or adverse possession in that matter. Again, the court would have emphasized, as courts always would, interpreting that kind of law, that area of law, that if the person, the occupier is there undisturbed, unchallenged for 16 years as against private landowner, and 30 years against the State, then of course he can claim title to it upon proofs and “evidences”, if I may use the old English construction. But in any event, as I said, you would have to demonstrate forcible entry or the elements of forcible detainer. So that we had made it very clear. The squatter who is accumulating 16 years in order to claim adverse or prescriptive title, he is not afflicted or affected by this. He is not. And it will be disingenuous, as the Senator is quite capable of being, in order to tell us that. And when I say so, I know what I am talking about. If I call you disingenuous, I could defend that here every time.

**Sen. S. Hosein:** 46(6), Madam President.

**Madam President:** Minister, please. It is to me not an appropriate word, okay? So can you withdraw it, please.

**Hon. F. Hinds:** I am obliged. I withdraw that. I withdraw that.

Madam President, let me treat with one or two of the issues that were raised. First of all, let me remain in focus. Let me congratulate all the Members who made useful contributions to this important debate here today. I had particular good taste and good fun listening, and learnt a lot. It was really impressive. I got to like this place. I am from a rougher place, but when I sat and listened to Sen. Vieira and I listened to my friend Sen. Simonette, and I listened to Sen. Rambharat, I got to like

this place. The only thing displeasing about it is some of the ambience, but I like it. I would not want to stay with this kind of ambience right in front of me, but I “kinda” like it. [*Laughter*]

**Hon. Senator:** From the lagoon general.

**Hon. F. Hinds:** Yes, I am now being told I am from the lagoon, but I could take that because you see some people claim the lagoon—

**Hon. Senator:** But you have a mansion!

**Hon. F. Hinds:** But no, no, some people claim that, and I have used that word once in this country and a lot of people called it all “kinda ting” including racist, you know, but I knew that was nonsense, so I am now being told I am from the lagoon, and I do not mind.

**Madam President:** Minister, please if I may, could I ask you please to confine your comments to the matter at hand.

**Hon. F. Hinds:** Indeed. I heard my friend Sen. Ramdeen. The question was asked by some of our friends, the six objectors on the other side, why not use the anti-gang law, and the answer to that to my mind is very simple. The anti-gang law is a stand-alone piece of law. Here we are creating some criminal offences in another stand-alone piece of law. Why superimpose the standards and the burdens of the anti-gang law? When you are in forcible occupation, you take forcible occupation and you forcibly detain him. We do not have to do that, that just does not make sense. That would only come from someone who is trying to set up obstacles to the working of the legislation, and therefore we promptly reject that. To commingle this with anti-gang law, of course. The anti-gang law in typicality says:

Where two or more persons come together to commit a schedule of criminal offences, conspiracy, murder, drug trafficking, firearms dealing, all those things could be of evidence to establish gang-related activity. If a government, for

example, comes together and produces a clause for a certain purpose, or together they interfere with national finances over a period of five years and three months, they could be called a gang too in those circumstances.

The other issue that was raised was the question of section 6, the grandfather or the savings section in the Constitution. I notice that Sen. Mark was on his own. Now, he is not a lawyer by profession. I am not sure what he is, but he is not a lawyer for sure. And the lawyers on the other side spoke to this matter, among the six objectors, but not one of them supported Sen. Mark on the question of any constitutionality, not one. Therefore on that basis I will not waste a moment of my time on it. It is to be rejected; it does not arise.

What we are doing here, Madam President, is amending the Trespass Act. I want to refer my friends on the other side to the authority of *Johnson v the AG* on the issue of the interpretation of that section. Simply to say to them that this Bill does not contradict or infringe in any way the section 6 of the Constitution, because section 6(2) refers to a law being repealed and re-enacted. We are not repealing any law here. We are not re-enacting any law here, and therefore we are well within what is expected of that section, and we have no trouble with that. That too has to be rejected.

I have already in passing tried to explain when we came and presented this Bill here today, that this does not take into account ordinary squatters, because you are not demonstrating that they use force to enter. If they do, and if they forcibly detain, then this criminal law that we are introducing here in 5A and 5B in particular will come to bear with full effect.

**8.00 p.m.**

So, again, for the benefit of the citizens of the country, ordinary squatters, all of the alarm raised by Sen. Mark about all of these people. I heard Sen. Vieira put

it most poignantly, most poignantly when he said, what we are doing here today is not sword it is a shield, it is to protect the victims of the abuse and bullying and criminality of some in the society. But Sen. Mark in his typical UNC objector's way, six of them, he saw it now as a sword against people who were ordinary squatters, and talked about people with certificates of comfort.

Well everybody knows by now, a certificate of comfort does not give any title to land, it is a personal commitment on the part of the State. It only affects state lands anyway, it does not affect private lands, but it is the State saying, "we will not eject you from the land". It is not title, it is a commitment from the State, but even those people, they are not going to be affected by the provisions that we try to create here today, Madam President, and made that abundantly clear.

And insofar as the other objection about regulations, and Sen. Mark if anybody heard him for the first time today they may have been impressed, I was not. We have been passing legislation in this House since before Independence and many pieces of law have regulations in it, and many pieces of law are expected to have regulations like the oil which will grease the wheel of the very legislation to make it work effectively.

And the Interpretation Act which was passed since in, I think, 1962 has a provision in there saying, if you breach regulations the fine is \$500. We said in respect of this particular Act, when we issue regulations which we will bring to this Parliament to be supported by negative resolution, when we do that we will impose a fine of up to \$25,000 for breach of regulations because of the seriousness of the problem that we are attacking here today.

And when they raised issues about how tall the fines are, and I heard—I do not know, the first time I am seeing Sen. Baig, so I am entitled to call him a "newcomer". I do not know how long he has been here, it does not seem as though

he has been here long, because I heard him making a song and dance about, I mean, I just could not understand him. Talking about Firearms Act and mixing it with trespassing, I just could not understand the Senator, he had me lost. [*Crosstalk*] It is just—let me do not bother with it. Let me “doh” bother with that, but I want to say, Firearms Act, Offences Against the Person, robbery, kidnapping, rape, all of these are stand-alone criminal offences that have their own regime, and if you are involved in home invasion and you commit any of those, you will be prosecuted accordingly.

What we are dealing with here is forcible entry, a stand-alone criminal offence we are creating here, and forcible detainer, another stand-alone criminal offence, that is what we are dealing with. So, Sen. Baig, I beg to be excused. [*Crosstalk*] I Baig to be excused. [*Laughter*]

As for Sen. Saddam Hosein, young, a beautiful young man, he too repeated the stale comment that this is patch-up law and tells us we should have repealed the whole thing and we should have replaced it with something new coming out of Australia or Ontario and he gave us all kinds of explanations.

The last amendment to this trespass law was 1936, Madam President. Today, we are in 2019 and we are amending it. You would never believe that they were in government between 1995 and 2001, Sen. Mark was part of that; they “aint” touch it. You will never believe that they were government, again, between 2010 and 2015 and three months, they never touched it and they have the temerity, the gall, the gumption, the barefacedness to tell us today what we should do and what we should not do. It is just preposterous.

When they were in government between 1995 and 2001, just en passant, Madam President, and I hope this is not an unparliamentary, they fell on the anvil, they had their heads crushed on the anvil of corruption—that is a metaphor—

spectacularly between 1995 and 2001, and more spectacularly between 2010 and 2015.

**Sen. Mark:** “You talking ’bout corruption, boy?”

**Hon. F. Hinds:** No. I am saying that your head was crushed on the anvil of corruption.

**Sen. Mark:** “You trespass on people land, boy.”

**Madam President:** Sen. Mark.

**Sen. Mark:** You shameless?

**Madam President:** Minister. Minister.

**Hon. F. Hinds:** Thank you very much.

**Madam President:** Sen. Mark, I would ask you to withdraw that comment.

**Sen. Mark:** Yeah. But control him, nah.

**Madam President:** Sen. Mark.

**Sen. Mark:** Yeah. I withdraw it, but control him. [*Senator points*]

**Madam President:** First of all, Sen. Mark, you see the finger pointing—

**Sen. Mark:** Yeah. Yeah. Yeah. I withdraw it, Madam, and—

**Madam President:** No.

**Sen. Mark:**—I withdraw it and I ask you to control him.

**Madam President:** Sen. Mark, [*Crosstalk*] first of all, do not brandish your arm at me.

**Sen. Mark:** I am not brandish—

**Madam President:** Second of all, do not point at me.

**Sen. Mark:** I am not pointing at you.

**Madam President:** Sen. Mark, if I have to say it one more time, I am going to have to ask you to leave this Chamber.

**Sen. Mark:** I am not pointing at you.

**Madam President:** Sen. Mark, I am not asking you to talk back to me either.

**Sen. Mark:** Well, I am not pointing.

**Madam President:** Sen. Mark, please, at the stage, please leave the Chamber. Please leave the Chamber. [*Desk thumping*] Minister, continue.

[*Sen. Mark exits the Chamber*]

**Hon. F. Hinds:** Thank you very warmly, [*Desk thumping*] Madam President. I thank you for your courtesy, Madam President.

Sen. Ramdeen, close to the end of his contribution, warned us and warned the people of this country from his seat next door that all it takes is a rogue police officer to charge someone under this legislation and “all hell will break loose”, my words.

It is as if Sen. Ramdeen does not know that when you—and he is a practising attorney-at-law, when the police, rogue as they could be, “lock up” someone and there are a few, they have to be taken to court, that person will have their day in court, and the law books are replete with cases where the courts have found that the police acted improperly. And when they are sued by the likes of Sen. Ramdeen in his private existence, the State is made to pay.

In other words, in this modern political constitutional democracy, we have systems in place to check and balance rogue behaviour. I just felt I must let the public know that, but “it doh only have rogue police, it have rogue lawyer” too, and all it takes is a lawyer to cut and paste things to look for—that is all it takes; I call no name; [*Crosstalk*] I call no name. And all it takes is for a rogue lawyer to defend a dead man, dead long time. Madam President, I call no names.

**Madam President:** I know, Minister, I know you are not calling names. I will ask you, Minister, to please confine your closing comments to the Bill at hand, please.

**Hon. F. Hinds:** Thank you very much. Sen. Saddam Hosein, he told us in respect

of 5A that what he criticized our new proposed section 5A which says:

“A person who uses force, threats, intimidation to enter premises...which is in the lawful possession of another person in order to expel that person and take possession...”

And I want to focus on the words “in order to expel”, and this is where the dichotomy between what we are dealing with here and home invasion comes in.

In a home invasion, hon. Senators, the offending individuals go into the home, and this is limited to “home”. They go into the home, the premises and they commit all manners of arrestable offences, criminal offences, but they manifest no intention to stay in that home, and that is the difference between “home invasion” and the offence that we are creating here now with “forcible entry”. Because in the case that we are dealing with here, and forcible detainer, the offender manifests an intention to expel, “in order to expel” the occupant or the person in lawful possession, and to retain the property. That is the difference. And I hope that Sen. Saddam Hosein easily appreciates that; that is the difference.

And, again, he was one of those who has an issue, and he wanted to know whether “lawful possession” meant “occupation”, and he described the “occupation” as “physical presence”. Well, I say to that, no, and any lawyer here will understand. Occupation does not necessarily mean physical presence. If you are just cleaning a piece of land, that is tantamount, in law, to be occupation of it. If you have an old shack which you go to occasionally, it does not have to be your physical presence on the land. What about the situation where “yuh gone out” for a day. So because you “gone out”, you are not in occupation?—or if you go to America for three months. So, Sen. Saddam Hosein got that wholly wrong, round like an O. *[Interruption]* Thank you very warmly, Senator, just pointing out to you, you got that wrong.

**Madam President:** Minister, please address me.

**Hon. F. Hinds:** I am indeed, Madam President. And we go further as Sen. Simonette points out, we are not just dealing with residential which he pointed us to in Barbados. Barbados based on their social circumstances, based on their experiences they dealt with residential buildings. We have gone far further than that and we say:

“‘premises’ includes—

any lands;

any building or structure or part thereof whether permanent or temporary and whether fixed or capable of being moved;”

We include in (c):

“a dwelling house;”

Barbados confined themselves to a dwelling house. We have gone beyond that. We say lands, buildings or part thereof, structure or part thereof,

“(c) a dwelling house;

(d) any garden, ground, cultivated lands, plantation, oilfield, refinery and oil tank farm;

(e) any ship, boat or other vessel; or

(f) vehicles and aircraft, except while in operation.”

So we have gone a lot further in terms of the reach of this law and to accord protection to people in all of those circumstances, that is what we have done; that is what we have done.

And this question that arose several times today about resolving the question of “title”, that is a separate matter from the issue of “forcible entry”. All that is required here in that you be in lawful occupation.

And if, just to give an example, and I think Sen. Ramdeen towards the end

of this contribution, I was out for the Chamber for a while, I think I overheard him talking about a common law spouse or some spouse that might have died, and the surviving spouse will be remaining in the property that they shared unlawfully. It is trite law that upon the death of the common spouse, the surviving spouse is entitled to share in the estate of the deceased.

And that case that, and this is a case *Antoine v Hillocks*, and that case that he told us about the Toolsie case, that was a case where the CCJ according to him, I have not read the case, but that was a case based on his own submission today, where the CCJ was resolving the question of who had rights in the property, and it took the evidence of letters of administration to show that one party had an interest in those lands.

But if you do not have paper evidence or you do not have a letter signed by the previous owner or any such hard evidence, to use their term, then as we all know as lawyers, the court uses affidavit evidence where a neighbour could say, “for the last 25 years I saw him there toiling, tilling the soil, he built up that structure from 1978, I saw him when he put on the roof, he painted it”; it is the evidence. So typically they get about four affidavits from people living in the neighbourhood to give support to fact that you had been there in lawful occupation for a period of time. So that is not too difficult for the court, the court has dealt with this kind of matter many years.

And then I heard a submission about which court and it has to go to the High Court. Well yes, it is the case of *Hinds v the Queen*, and you see my name being called all the time this evening; another Hinds, no relative of mine and certainly not me. In which case the court said that when it comes to title to land issues, of course, this must be resolved by a superior court of record, meaning the High Court, not by the Magistracy.

So, Madam President, I think I just addressed some of the issues that they would have raised and in particular they want us to remove the term “lawful” as a descriptor of the word “possession”. Well, again, I must repeat that “lawful” in this context simply means “not unlawful”; not unlawful. [*Device goes off*] And let me—

**Madam President:** Will the Senator with the offending device please leave the Chamber. You can come back in five minutes.

**Hon. F. Hinds:** Thank you very much. It simply means, if I may be tautologous, it means not—

**Hon. Senator:** Excuse me?

**Hon. F. Hinds:** Tautologous, it means—if I may apply a tautology it means not unlawful. And when they propose that we remove the word “unlawful”, “unlawful” from in front of it, as Sen. Rambharat so beautifully pointed out, what that does is to remove the distinction between what is right and what is wrong and what the court will eventually or might have to uphold, as opposed to what the court will not. And certainly when it comes with the passage of this law to unlawful or forcible entry and forcible detainer, then the court will not support that. And the question of “title” is separate, this is a criminal regime, the police could deal with it. If a matter comes up as to “title” as distinct from the concept of “forcible entry” or “forcible detainer” then that will be resolved otherwise, but we are creating criminal offences here and this is what this is all about.

Sen. Ramdeen raised a point which touched my mind a little bit because it is something that we all in the Government must contemplate and we work on. We have a Trinidad and Tobago Police Service that has demonstrated great potential, great capacity, but at times, levels of inefficiency, and we took a look at it as the Government, we had a manpower audit and we had a look at it. The experts, all the

police, all the stakeholders gave evidence there, and we understand.

And Sen. Ramdeen touched on something a while ago, when you pass a law, and I think it was Sen. Phillips who made the very, very important point that a programme of education should ensue, and I like that and we should be doing that with very many more laws, because sometimes we pass laws and the very police service is not as schooled in that law as they should be. Evidence, the anti-gang law, we passed the law and within weeks of passing the law, the very police service went out there and they picked up about 245 persons in this country who they knew to be gang members, but they had not studied the law sufficiently, they had not accumulated the evidence to satisfy the court sufficiently and therefore, all the matters fell by the wayside.

So sometimes we have seen from that and other examples, and what one would want to propose is that, when new law is passed including one like this, in keeping with the suggestion of the hon. Sen. Phillips and, of course, mentioned en passant by someone else, then you know there should be a programme of education not only for the citizenry, but for the police. The lawyers inside the police service should churn through this, understand the ingredients well, make sure that information is disseminated through the service, have moot trials and all of those things that a modern police organization should do so that they will be well-prepared to hit the road and to convict people on these offences. That is the way a modern society does it. So I have great respect for the point made by Independent Sen. Phillips, and that is the sort of thing.

And, of course, over time with arresting and charging, some you win, some you lose. A body of case law develops, the police become more refined at it and, of course, eventually you have more prosecutions or alternatively the deterrent factor works and criminals realize that the society has responded to them in this way, and

that the police are implementing it in the way that they should, and eventually they back off and it becomes less and less of a problem in Trinidad and Tobago.

I have a note in my hand here, just a little note from when Sen. Simonette was speaking. Recently, I was having a conversation with Sen. Sinanan, Madam President, just to mention, and he was telling us that, there is some place in India that produces finest silk. When I listened to Sen. Simonette today it reminded me of the finest silk, and he said if you want to test the finery of the silk, you had to pass it through a ring, and if it could pass through the ring, then you know you had the real thing. You see Sen. Simonette—

**Sen. Baptiste-Primus:** He pass through the ring?

**Hon. F. Hinds:** He pass through the ring here today.

**Hon. Senator:** And Sen. Vieira too.

**Hon. F. Hinds:** And Sen. Vieira. “Dem fellas pass de ring test”; sweet, sweet, sweet, sweet. I like it. But again, we are not talking about silk here tonight. Well I think I have said enough, you know, I think I have said enough. I think I have dealt with it. I think I have said enough, Madam President.

Just let me, yes—reference was made in terms of the fines we have implemented, and we indicated early that these fines have to do with property, they have to do with property, taking over people’s homes. Sen. Vieira told us, reminded us, a man’s home is his castle, however humble, however elaborate, there is great psychological impact, there is great sociological impact on all of us in the village, in the neighbourhood.

And as Sen. Khadijah Ameen told us, it affects people at all levels. It affects the elderly, the young, everyone, children of the family and therefore, we put serious fines. The law always had criminal trespass you know, because the law as it now states or affords, the fine is \$200. Trespass on lands where notice is placed

and refusing to quit, that brought a fine of \$200. So criminal trespass is not new, it has been here since 1852, it remained through an amendment in 1836, and it is still here tonight. All we are doing is modernizing it, increasing the sentence for it to be more relevant in today's world and, of course, adding two new criminal offences.

I think there is enough to be said about that, and the same thing exists in relation to clause 5 which we are amending to make the fine \$50,000 and 10 years imprisonment, except that the criminal trespass in respect of clause 5 has to do with the vessel, the boat or the craft, as distinct from the other aspects of the premises that we are protecting here, so nothing else should be usefully added in that regard.

So, Madam President, unless if I could be of some further value to Senators in this House, I would like to commend the measures to all Members of this House for our consideration and I dare say support. I am very, very pleased of the contributions for the most part that had been made by hon. Senators here today. I would like to thank all Senators for the courtesy of your attention. I would like in particular to thank Sen. Gerald Ramdeen for stirring the natural element in me just a little bit in this wonderful Chamber, and to have him know that I will be very, very, very happy to carry the conversation anytime, anywhere. So, Madam President, with these few words, I would like to beg to move. I thank you. [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

**Madam President:** Hon. Senators, before I call on the Minister in the Ministry of the Attorney General and Legal Affairs, I will suspend the sitting for five minutes. And I am directing the Marshal to advise Sen. Mark that he may return to the Chamber. This sitting is suspended for five minutes.

**8.23 p.m.:** *Sitting suspended.*

**8.28 p.m.:** *Sitting resumed.*

**Madam President:** Minister in the Ministry of the Attorney General.

**Hon. F. Hinds:** Thank you very much, Madam Speaker. Madam President, I am so sorry. Madam President, in accordance with Standing Order 66(1), I beg to move that a Bill entitled an Act to amend the Trespass Act, Chap. 11:07, be committed to a committee of the whole Senate forthwith to be considered clause by clause.

*Question put and agreed to.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Madam Chairman:** Minister, are you ready?

**Mr. Hinds:** Thank you, Madam.

*Clauses 1 to 3 ordered to stand part of the Bill.*

*Clause 4.*

*Question proposed:* That clause 4 stand part of the Bill.

**Madam Chairman:** There is an amendment circulated on behalf of Sen. Hosein. So Sen. Hosein I will ask you to speak on the amendment.

**Sen. S. Hosein:** Thank you very much, Madam Chair. Madam Chair, the amendment is very simple. We are asking that there be a deletion of the word “lawful” at subparagraph (b) on clause 4. The rationale for this amendment is due to the fact of the issues ventilated throughout the debate with respect that we feel that the qualification of the possession of an occupier by using the word “lawful” would in fact disenfranchise a lot of persons who may be seeking relief under this legislation, simply because they may not have a beneficial right of ownerships, such as a legal interest or an equitable interest in the property. So we suggested that we revert to the old law which is possession of any premises, and it would

seem from the Court of Appeal decision also, that this can be proven very easily, if we retain the old definition of possession of any premises.

**Madam Chairman:** Before I call on the Minister to respond, is there any other Senator who wishes to say something on the proposed amendment? Sen. Mark?

**Sen. Mark:** Yeah. Thank you, Madam Chair. Madam Chair, one of the concerns that we have with the amendment deals with protecting the rights of the innocent, and we believe that how it is constructed, people who are innocent may get caught up by being ejected from their property, and I will give you an example, Madam Chair. There are many citizens who are now awaiting certificates of comfort, and you may have a situation where those persons could be kicked off, kicked out their lands, and if they were to approach the authorities, the police, for support, or assistance, in regaining their property, from my perspective, and the police would ask them for ownership of title or a certificate of comfort, or some kind of documentation, because they would not have had at that material point in time any kind of documentation, they could possibly face ejection from the property. And that is why we were saying, Madam Chair, that it would be useful for us to think it through properly and carefully, because innocent people can be affected by the current structure of the particular provision, and that is why, Madam Chair, we are proposing that the Government, through the Minister, give consideration to that particular provision that we are asking to be deleted.

**Madam Chairman:** Any further question or comment on the proposed amendment? Minister.

**Mr. Hinds:** Madam Chair, this matter has been well ventilated in the course of the debate, and we are here about protecting the innocent, if I may use Sen. Mark's description. That is what we are here about. And the way this provision is structured, we do not accept that removing the word "lawful" would have any

effect of disadvantaging the innocent, if I may use his descriptor. So, we maintain that the word “lawful”, for the reasons we have stated ad nauseum in the course of the debate to be useful and we propose to maintain it.

**Madam Chairman:** Sen. Hosein, I would give you one last opportunity.

**Sen. S. Hosein:** Sure. Just for clarification, Minister, in my debate I raised a question, whether or not someone who is on a piece of property, let us just assume it is private lands, and therefore let us just say the 15 months, 15 years, sorry, they did not make the full 16, very close to the 16-year limitation period, would that person be protected under the current construct of your amendment?

**Mr. Hinds:** By the operation of law, dealing with prescriptive title, that person is there lawfully and therefore, they are in lawful possession. Of course, they have not yet accumulated 16 years as against the paper owner, but the fact that they are in possession, lawfully, that stands against the person who is trying to forcibly eject them, so they enjoy the protection of which we speak.

**Sen. S. Hosein:** But they are possessing adverse to the owner, and without the owner’s permission, so I do not know if they would reach the lawful element that is being proposed.

**Mr. Hinds:** They certainly will. The law does not require that the paper owner know that they are there, what the law requires is that they are there, unperturbed, undisturbed. If the homeowner knew that they were there, but did not disturb them or left them unperturbed, the operation of law continues to work. And if the owner did not know, the effect is the same, and therefore they are there in lawful occupation as against the other person, the owner of the law, he under another stream of the law can debar him at 15 years from applying for and successfully gaining adverse or prescriptive title. But as against an intruder who wants to forcibly expel him, this law as we now create it, will protect him against that. In

the absence of this law, you have the problem that Sen. Mark speaks about, or spoke ad nauseum about, that is, the police will treat it as a civil matter and the problem persists. With this criminal offence, the police is satisfied that he is being forcibly expelled, and on the basis of this new law, they can treat with the matter far more adequately.

**Sen. Mark:** Madam Chair, if I may.

**Madam Chairman:** Yes.

**Sen. Mark:** Minister? Minister.

**Mr. Hinds:** Yes.

**Sen. Mark:** Through the Chair, hon. Minister, those persons who, after the 1<sup>st</sup> of January, 1998, and after 2000, let us say they did not qualify, but they have been in possession for 10, 15, 20 years, so I am talking about, let us say 20,000 families, would you indicate to this honourable Senate what would be their position in the absence of not having any kind of legal title or any letters of comfort? What could possibly happen to them? Would you indicate to us that these people are protected and therefore cannot be disposed of in any whimsical fashion by the authority, let us say the Government?

**Mr. Hinds:** You are talking about state land?

**Sen. Mark:** Yes, state lands.

**Mr. Hinds:** Right, the State Lands Act governs that sort of thing, and in 1998/99, the state introduced legislation essentially providing for the issuance of a certificate of comfort. Some people say “deed of comfort”, that is quite incorrect, it is not a deed. It does not repose in the occupier, the squatter on the state lands, any interest in the land. It is a personal interest he gets in this letter of comfort which says to him and gives him an assurance by the State, we will not move to expel you or eject you. So it is protection that he enjoys. That was extended for those who were

in occupation up to 2013, and that regime is what will protect them. That is quite different from the person who is now to be found guilty of forcible entry, so those persons are not going to be running afoul of this provision. And in any case when you talk about ejection, by whom? The State will not be doing that. The State will not be doing that. So it is protect them against the marauder.

**Madam Chairman:** So, hon. Senators—

**Mr. Hinds:** Senator.

**Madam Chairman:** Sen. Vieira.

**Sen. Vieira:** Thank you. Just to put this as I see it, because I understand the concern about lawful, but I think that the word is necessary, and I think that Sen. Mark and Sen. Hosein may be attaching a little too much of a restrictive view on the word, because lawful does not just mean having title documents. It could also include custom, it could include a wide variety of things. So, that is the first point.

The second point is, it has to be read in a context of 5B and 5B says a person who being unlawfully in or upon any premises. So yes, there is a possibility that a squatter who has not acquired all the adverse possessory title or rights is there unlawfully, but the question is whether that person will be subject to a prosecution under this section. And, the short answer is no, because it is not just being unlawfully on the premises, but you must also be there by force, or in a manner that would render the use of force as the only reasonable or practicable means of recovery.

**Mr. Hinds:** As against, just to continue, as against someone who was in lawful possession or occupation.

**Madam Chairman:** So hon. Senators, the question is that clause 4 be amended as circulated on behalf of Sen. Hosein.

*Question, on amendment, [Sen. S. Hosein] put and negatived.*

*Question put and agreed to.*

*Clause 4 ordered to stand part of the Bill.*

*Clause 5.*

*Question proposed:* That clause 5 stand part of the Bill.

**Mr. Hinds:** Madam Chairman, we have a proposed amendment to clause 5.

**Madam Chairman:** Okay, is it in written? Do you have it written out?

**Mr. Hinds:** No, no, no, I can dictate the terms of it for you.

**Madam Chairman:** Sure. Clause 5?

**Mr. Hinds:** Yes, indeed.

**Madam Chairman:** And there is an amendment proposed by Sen. Hosein as well. May I hear your amendment?

**Mr. Hinds:** Would you like us to treat with his one first?

**Madam Chairman:** Could I just, so I will write it down one time?

**Mr. Hinds:** Yes, indeed. We would like to propose in clause 5 that we delete paragraph (g)—

**Madam Chairman:** (a).

**Mr. Hinds:** Paragraph (a) sorry, and substitute the following:

“(a) deleting the words ‘in the night time’;”

That is extent of our amendment as proposed, Madam.

**Hon. Senator:** Any on (b)?

**Mr. Hinds:** There is a (b).

**Madam Chairman:** So you are deleting paragraph (a) and substituting (a), deleting “in the night time”.

**Mr. Hinds:** Yes, we want to delete the words, “in the night time”. [*Interruption*]  
Yes, to sort out the typo.

**Sen. Ramdeen:** No, we are listening to you all.

**Madam Chairman:** So, may I just—let me just see if I have it correctly.

**Mr. Hinds:** Yes indeed, Madam.

**Madam Chairman:** You are proposing to amend clause 5 by deleting paragraph (a) and inserting a new paragraph (a) deleting the words, “in the night time”.

**Mr. Hinds:** Indeed.

**Madam Chairman:** Okay, so let me now ask Sen. Hosein; we will treat with the amendment as proposed by Sen. Hosein first. Sen. Hosein.

**Sen. S. Hosein:** Madam Chairman, it is to deal with the fine or the punishment that the section imposes where we delete the words, “ten years” and substitute with “five years”. And this was a point that was raised by Sen. Mark during his contribution with regard to the severity of the punishment, and we looked at a harmonization of this particular provision at the Firearms Act at section 13(a) where a trespasser who enters with a fireman faces a penalty of five years imprisonment, so it was just a harmonization of the legislation.

And if you would indulge, Madam Chairman, there is one amendment I would like to propose on the floor, and I do not know if you would be so kind enough to allow me.

**Madam Chairman:** May I hear the amendment.

**Sen. S. Hosein:** It is a very simple amendment which deletes from the words “garden” to “farm” at section 3 of the Act and just substitute the words “or premises”.

**Madam Chairman:** No, but you are dealing with something that is not the subject of the amendment Bill.

**Sen. S. Hosein:** Okay, so I have to insert a new clause?

**Madam Chairman:** Well, you may have to try and insert a new clause, but it also may—remember that my previous rulings, if it is not something contained in the

amendment Bill then it is not relevant to the amendment Bill.

**Sen. S. Hosein:** Sure.

**Madam Chairman:** Okay?

**Sen. S. Hosein:** Sure.

**Madam Chairman:** All right. Minister, in response to Sen. Hosein proposed amendment.

**Mr. Hinds:** Madam Chair, the first point is that the sentences as drafted in legislation do not obviate the courts' discretionary power in terms of applying a sentence. So while it may say up to 10 years, may say 10 years, it is the court that will decide without exceeding that, what the sentence will be. In addition to that, where the laws, I indicated earlier, say, a term of imprisonment and a fine, that does not necessarily mean that the court has to impose a sentence and a fine. It is all within the purview, the jurisdiction of the court, and that is well-known to lawyers, particularly criminal lawyers, and that therefore should not trouble us. But most poignantly, Madam Chair, this is the Government's policy reflecting the serious view that we take on the offences that we are creating here today, and the social circumstances that prompted it, and we would like to maintain that position. We see no reason based on the submission made by the Senator to move from that. No compelling reason.

**Madam Chairman:** So that I shall put the amendment as proposed by Sen. Hosein. The question is clause 5 be amended as circulated by Sen. Hosein.

*Question, on amendment, [Sen. S. Hosein] put and negatived.*

**Madam Chairman:** I will now put the amendment as proposed by the Minister, and I shall read it out. The question is clause 5 be amended as follows:

Delete paragraph (a) and replace with paragraph "(a) deleting the words 'in the night time';"

*Question put and agreed to.*

*Clause 5, as amended, ordered to stand part of the Bill.*

*Clause 6.*

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

**Madam Chairman:** Sen. Hosein.

**Sen. S. Hosein:** Madam Chairman, in light of the hour and the expediency of the sitting, I just rely on my submissions from the previous amendment, because it is the identical amendment to clause 6.

**Madam Chairman:** Minister.

**Mr. Hinds:** I rely on my response. [*Laughter*]

*Question, on amendment, [Sen. S. Hosein] put and negatived.*

*Question put and agreed to.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7 ordered to stand part of the Bill.*

*Clause 8.*

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

**Madam Chairman:** Sen. Hosein, there is an amendment.

**Sen. S. Hosein:** Yes, please, Madam Chairman, and it is the same rationale again from the previous two amendments with respect to reducing of the years in terms of the fine of the imprisonment.

**Madam Chairman:** Minister.

**Mr. Hinds:** And in the spirit of equanimity, the response is the same.

**Madam Chairman:** Sen. Mark.

**Sen. Mark:** Yes. Madam Chair, we have suggested to the typist who may have inadvertently left it out, we had suggested that we delete paragraph 5B, but it is not in the system so I do not know given the fact it has not been circulated. I do not

know what would be your guidance on this matter.

**Madam Chairman:** Well, is it that you wish to proceed with the amendment? You wish the delete 5B?

**Sen. Mark:** Yes.

**Madam Chairman:** And you wish to proceed with the amendment?

**Sen. Mark:** Yes.

**Madam Chairman:** So, Sen. Hosein, I am assuming the amendment is under your hand as well? Can you explain the reason for your proposed amendment to delete 5B?

**Sen. S. Hosein:** Madam Chairman, my colleague Sen. Mark will elaborate on the proposed amendment with the deletion of section 5—new proposed section 5B please.

**Madam Chairman:** Yes.

**Sen. Mark:** Madam Chair, how this clause is structured, again, it puts citizens who are in occupation and in possession of land, even though they may not possess the necessary documentation at a disadvantage, and I am looking at who would be exercising or utilizing force to remove someone who it is alleged has been there unlawfully. Now, unlawfully in the context of what, Madam Chair? Is it that the person is unable to produce documentation? A certificate of comfort or a license and on that basis the person is there unlawfully, according to the authorities? Or is that the State is now seeking to recover land that they perceive to be “unlawfully” occupied by an occupier or a squatter, and in those circumstances would the State then be using force to eject that person from the property? It is against that background that we felt that how this 5B is structured could be again to the disadvantage of an individual who is in occupation of land for a number of years, but deemed to be unlawfully in possession and the State using heavy-handed

tactics to remove such an individual. And that is why we are suggesting that this be removed.

**Madam Chairman:** Minister.

**Mr. Hinds:** Madam Chairman, I am grateful to Sen. Mark for his elucidation on that matter as it relates to 5B. He has just revealed what the difficulty he is having really is. He has a skewed view, obviously, on the entire purport of this legislation. He sees the State as this big bad beast, and the State is the one who will be trying to remove someone who is unlawfully in possession, and who maintains or attempts to maintain and does so by force. Sen. Mark is seeing the State as the actor in this. That is not the case. It is indeed as against someone who is acting unlawfully, who having forcibly entered is now using force to retain or to detain the property, to keep it, to hold it. And therefore, this element, and I quote the words:

“...and does so by force or in a manner to render the use of force as the only reasonable and practicable means...”

So, it does not mean that the lawful owner who has been expelled will use force. It means that it is deemed to be the only reasonable way he could, and this provision is for him to avoid it, so that the police comes in and deals with the offender, and that is where the issue is. Sen. Mark, I would like to thank you. It is a pity I did not identify your peak earlier. Sen. Vieira wishes to speak. [*Laughter*]

**Madam Chairman:** Thank you, Minister.

**Mr. Hinds:** I am so sorry. I am so sorry.

**Madam Chairman:** Sen. Vieira.

**Sen. Vieira:** Thank you, Chair. Yes, I think what this is talking about is the intruder who is holding on to the premises by force. Now that is relatively clear. What is ambiguous is:

“...or in a manner that would render the use of force as the only reasonable or practical means of recovering lawful possession of the premises.”

Now, why put that in? I saw that as the Legislature’s way of trying to discourage self-help, because the only way out other than the police or the court is you have to go in there and forcible evict him. So once you could show that that is the only way then the offence has been committed.

**Mr. Hinds:** So two options are available to you to avoid physical conflagration. One, the police or the State acting on your behalf, lawfully entitled so to do under law and the Constitution, or two, you go to the court and you get an order and then you cause the remedy to be applied in which circumstance, Madam Chair, the submission made by Sen. Mark must be flatly rejected.

**Madam Chairman:** So, hon. Senators, the question is that clause 8 be amended as circulated, and as proposed by Sen. Hosein as follows:

“By deleting 5B beginning with the words ‘any person’ and ending with the words ‘fifteen years’.”

*Question, on amendment, [Sen. S. Hosein] put and negatived.*

*Question put and agreed to.*

*Clause 8 ordered to stand part of the Bill.*

*Clause 9.*

*Question proposed:* That clause 9 stand part of the Bill.

**Madam Chairman:** Sen. Hosein.

**Sen. S. Hosein:** Thank you very much, Madam Chair. With respect to this amendment that was proposed I will deal with it in two parts, which is first paragraph (a) that deletes the word ‘negative’ and includes the word ‘affirmative’. It is because we will be giving the Minister a degree of power which I think must have some sort of parliamentary oversight, hence we on this side propose that such

regulations that are going to be made pursuant to the Trespass Act be done by affirmative resolution of the Parliament simply because you are dealing here with a very fundamental constitutional right which is the deprivation of property which must only be done by due process of law. So, Madam Chairman, this is our respectful submission in terms of the amendment that there must be a degree of supervision of what the ministerial power is to make regulations.

**Madam Chairman:** And with respect to—yes, the second limb.

**Sen. S. Hosein:** In respect of paragraph (b), it was a deletion of the ceiling with respect to the 25,000 and five years' imprisonment, because we thought that we could have come with some sort of negotiation with the Government in terms of probably reducing that ceiling in terms of the excess of the power that the Minister will in fact be exercising. I would also ask if, with your permission, that Sen. Mark also elaborate.

**Madam Chairman:** Sen. Mark.

**9.00 p.m.**

**Sen. Mark:** Madam Chair, I think that the Legislature is granting powers to the Executive through primary legislation as we are dealing with now. And the Legislature is being asked to give the Executive the power to make regulations outside a debate in this honourable House and in the other place on a matter that is of critical importance as what we are dealing with. And I believe and we believe that it is incumbent upon the Legislature to have direct supervision over the activities of the Executive and that is why we support the affirmative as opposed to the negative.

Now, in terms of the part two, we do not know what these regulations are going to contain, but these regulations are going to be made and are going to be promulgated and then brought via a negative resolution for possible annulment.

But the Government would have already instituted by law these regulations and they would have already taken effect and it would be almost law. So we would now have to come from behind, that is the Legislature, to stop the Government, depending on the nature of the regulations and the assignment of penalties even though we have decided to cap the penalty to a maximum as defined in subsection (2).

So I think it is only fair for the Legislature and the Parliament to have that kind of scrutiny and supervision directly over the Executive by advancing it be of an affirmative nature and ensuring that the Government does not go on a frolic of its own as it relates to offences. So these are the points I would like to add, Madam Chair.

**Sen. S. Hosein:** Madam Chair, I just have one suggestion. I do not know if you want to take all and let the Minister respond after.

**Madam Chairman:** That is what I normally do. Yes.

**Sen. S. Hosein:** Madam Chairman, there is one deficiency I am seeing with respect to the proposed amendment, where the Minister may, subject to negative resolution, make regulations. Now there is nowhere, I just checked the Act, who is the Minister responsible for making these regulations? I did not see that there is a Minister in charge with respect to—that is actually stated in the Act or the Bill, Madam Chairman.

**Sen. Mark:** It is not the Attorney General?

**Sen. S. Hosein:** They did not say that.

**Sen. Mark:** That is true.

**Madam Chairman:** Minister.

**Mr. Hinds:** Well, as we all know, “Minister” really means the Minister to whom the—I would say the Cabinet, the President. Because ultimately a Minister is

appointed by the President, assigned to a particular portfolio. So what is the Senator saying, that we should say inside of here, whether it is the Minister, the Office of the Attorney General or whether it is the Minister of National Security?

**Sen. S. Hosein:** Yes.

**Sen. Mark:** Yeah. We must do that because it could be any Minister and the law must be clear.

**Sen. S. Hosein:** Because in other particular pieces of legislation that we passed, it says the Minister—

**Mr. Hinds:** Section 79 of the Constitution speaks to the question of allocation of portfolios to Ministers, right. And it says:

“(1) The President, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or...other Minister responsibility for any business of the government of Trinidad and Tobago, including the administration of any department or government.”

So there is where it is at. I do not know what is the Senator wanting us to do, assign a portfolio this evening?

**Sen. Mark:** Madam Chairman, what I am trying to ask the hon. Minister, which line Minister is currently responsible as far as you are aware for this Act called the Trespass Act?

**Mr. Hinds:** Well, I would think in the absence of a named Minister by the President on the advice of the Prime Minister, it would be the Prime Minister.

**Sen. Mark:** Responsible?

**Mr. Hinds:** In the absence of a named one. But some Minister is responsible. But the allocation of portfolios is done by the President on the advice of the Prime Minister. We cannot do that here this evening. That will be completely usurping

the power of the President and the Prime Minister. So there is nothing we can do about that this evening.

**Sen. Baig:** Madam Chair, if I may ask. Minister, are you saying that the current legislation as it stands, under the Trespass Act, that there is no current Minister in the Cabinet right now that does not have this—in their portfolio. Who is the current Minister? Minister of Health, Minister of land, Minister of Agriculture, Land and Fisheries, Minister of National Security—who is the Minister that deals with this? [*Crosstalk*] If he does not know he could say.

**Mr. Hinds:** Right. So I am advised and I submit on the basis of that advice that now that we are creating these two new criminal offences as dictated in section 80 of the Interpretation Act, the Prime Minister advising the President will now declare or advise who should be the Minister with the responsibility. Because as section 80 tells us, let me just run it for you. Section 80(1) says:

“In any written law or in any public document—

- (a) a reference to “the President” (however expressed) shall be construed as a reference to the President of Trinidad and Tobago for the time being;
- (b) a reference to “the Minister” in connection with any function shall be construed as a reference to the Minister to whom is assigned responsibilities for the subject matter of that function;”

**Sen. S. Hosein:** Madam Chair—

**Mr. Hinds:** And when this is dealt with, then such an assignment I expect will be done.

**Sen. S. Hosein:** You see the thing, Madam Chair, several pieces of legislation have passed through this House and I just want to use one example. When you look at the DNA Act, in the interpretation section of the DNA Act, Minister is defined as:

“‘Minister’ means the Minister to whom responsibility for”—national security—“is assigned;”

And throughout the legislation you will see then that that Minister has responsibility to make regulations.

Now, this particular amendment, there is no nature of the office on which the Minister holds. It just says Minister. So is it that when the Prime Minister is allocating portfolios, now he will have to explicitly state the Minister will have responsibility for the Trespass Act?

**Mr. Hinds:** That is what is done. That is what is done.

**Sen. S. Hosein:** To the Trespass Act? I do not know if I ever saw an assignment of a portfolio with respect to a particular piece of legislation. It has an assignment with respect to the nature of the Ministry, which is different. So I think in order to clear this up—[*Crosstalk*]

**Madam Chairman:** Sen. Vieira.

**Sen. Vieira:** I understand Sen. Hosein’s concern that in other legislation you would see a named Minister; a line Minister having responsibility. But the answer I think that will cure the defect that you anticipate is at 80(2) of the Interpretation Act. Because what that says is that:

“Where a written law requires or authorizes a person to do an act in relation to ‘the Minister’, such person shall be deemed to have complied with the law if he does the act in relation to the Minister who reasonably, even if wrongly, appeared to him to be the Minister within the meaning of subsection (1)(b).”

So by that I understand, look, you may not have a designated line Minister, but if you passed the regulation in the name of the Minister I think this kicks in. And then do not forget too, it comes back to the context of subject to negative

resolution of Parliament. [*Crosstalk*] No, no, no, because negative works as well. Because what it means, again in the Interpretation Act:

“75(7) The expression ‘subject to negative resolution of Parliament’, when used in relation to any statutory instruments or statutory documents means that those instruments or documents shall, as soon as may be after they are made, but within the prescribed period, be laid before each House of Parliament. Where either House within the prescribed period resolves that any of those instruments or documents shall be annulled, that instrument or document is void as from the date of the resolution, but without prejudice to the validity of anything done thereunder or to the making of a new instrument or document.”

So affirmative resolution is your best position but it could take longer. When you are talking with crime and trying to deal with things expeditiously and you need to have regulations speedily done, I tend to favour “subject to negative resolution”. But at the end of the day it does come back to Parliament.

**Mr. Hinds:** That is the point.

**Sen. Vieira:** And there is the possibility of curing or annulling.

**Sen. Mark:** Madam Chair, if I may, it might have been an oversight.

**Mr. Hinds:** No.

**Sen. Mark:** Because just as how we have, Madam Chair, definitions in clause 4, there ought to have been, once we are using the Minister to make regulations we should have been able to identify in the law, Minister refers to the Attorney General, the Minister of National Security, the Minister of Housing. So, it is a very untidy situation that we are getting ourselves involved in here.

**Madam Chairman:** So, Sen. Mark—Sen. Vieira, you wanted to say something again? Your mike is on.

**Sen. Vieira:** Oh, sorry.

**Madam Chairman:** May I just point out that I have allowed the discussion on the issue of “the Minister”, but there is no specific amendment proposed in respect of that wording. So I am now going to, I think Minister have you responded to the proposed amendment?

**Mr. Hinds:** Well yes, I was just following up on the comment made by Sen. Mark and I just advised him, which he ought to know given his previous dispensations, that there are many pieces of legislation that do not specifically say which Minister. When the regulations are brought, the Prime Minister, based on the subject matter will allocate the responsibility. But there are indeed many pieces of legislation that do not specifically say which Minister. In fact, some bits of legislation say, Minister will mean the Minister to whom the subject matter or the portfolio is scheduled by the Prime Minister.

So I agree entirely with the submissions of Sen. Vieira and I also want to say for the benefit of Sen. Mark that regulations are typically administrative in nature. Sen. Vieira was right, we all know it is going to come here, it is not behind the curtain, it is going to come to the Parliament and, therefore, we will have parliamentary oversight as we have been having since independence and even before in that regard and it remains a matter of our Government’s policy to maintain the descriptor of negative resolution.

**Madam Chairman:** Minister, did you speak to part (b) in the proposed amendment?

**Mr. Hinds:** In respect of part (b), well I think I had earlier indicated when another issue around sentencing had arrived, it really falls to the court’s discretion, these are maximum sentences and that is not strange according to the Interpretation Act of 1962, many years old. It stands, we say, not exceeding \$25,000 and it will be up

to the court to decide which level of fine it would apply and whether it would apply imprisonment for up to five years. So we would maintain that in response.

*Question, on amendment, [Sen. S. Hosein] put and negatived.*

*Question put and agreed to.*

*Clause 9 ordered to stand part of the Bill.*

*Clause 10 ordered to stand part of the Bill.*

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

*Senate resumed.*

*Bill reported, with amendment, read the third time and passed.*

### **ADJOURNMENT**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, I now beg to move that this Senate do now adjourn to a date to be fixed.

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

### **Cedros Fishermen**

#### **(Safety and Security of)**

**Sen. Wade Mark:** Thank you very much. Madam President, I address the issue of the need for the State to ensure the safety and security of Cedros fishermen whilst fishing in Trinidad and Tobago's waters.

Madam President, the crisis in Venezuela has affected to some extent the livelihood of fishermen who ply their operations in the gulf and in waters within the territorial seas of Trinidad and Tobago. Fishermen in the areas of Icacos, Chatham, Bonasse and Granville have experienced a lot of challenges in

Cedros Fishermen  
(Safety and Security of)  
Sen. Mark (cont'd)

conducting their trade, and their livelihood has been affected and many of them now live in fear for their safety and their security.

Madam President, you would be aware that some time ago a number of our fishermen were abducted, kidnapped by pirates on the high seas, between Trinidad and Venezuela. Initially they were asked to produce some US \$200,000 or face the severing of their limbs, according to newspaper reports. Thankfully all of these fishermen have returned to safety but they had to provide in return for their safety money and other goods to their captors who are criminals plying and running between Trinidad and Tobago and Venezuela waters. Fishermen had to protest outside of the Parliament today, this afternoon, Madam President, when we arrived and they were protesting over, not only lack of safety but the whole question about supply of regular gasoline and what they have to use right now, super, which is highly expensive.

So I am raising this matter today to get answers from the Government as it relates to the security and safety of our fisherfolks. The coast guard, we are told, at times are unable to patrol the waters of our country because of challenges that they face. It is not only food and the quality of the food that they consume that affect the coast guard operations, but sometimes, Madam President, we are advised that they do not have fuel to take their boats or crafts or vessels out into the seas. So the coast guard men and women who are there to provide protection against, not only the drug trade, but also protecting fishermen and fisherfolk generally find themselves in a very, very, challenging position because of, as I said, financial and other difficulties.

So, Madam President, it is very, very dangerous to be a fisherman at this time in Trinidad and Tobago and particularly as I said, those who are from the

Cedros and south-western peninsula. And therefore, Madam President, I am calling on the Government to explain to this country and to this Parliament why it is that the Government has not taken an interest in ensuring that our fishermen are protected whilst conducting their trade in the waters of Trinidad and Tobago.

Now, we are not too certain because we do not have all the facts before us as to whether our fishermen at times enter the waters of Venezuela; we are not too certain. But from what we know, it is that once the coast guard is out there providing guidance to our fishermen they would hardly find themselves drifting into Venezuelan waters and maybe exposing themselves to dangers.

Madam President, those six fishermen who were abducted and kidnapped recently, one gets the impression from reports that they had to fend for themselves. The question that must be asked is: What was the role of the Government through its agencies like the Trinidad and Tobago Coast Guard? Did the Government abandon the fishermen and had it not been for their parents and their family raising money by “the hook and/or crook” and to provide the kind of ransom that was being demanded of these kidnapped fishermen, we do not know what may or could have happened to these fishermen.

So it raises the question, really, on the role of the Government in protecting the livelihoods of our fisherfolk. It raises the question of the role of our coast guard men and women in protecting our borders from pirates who would traverse the high seas, because as you know, Madam President, as I said, because of the crisis in Venezuela there is a brisk trade between Trinidad and Venezuela, particularly in the south-western peninsula; guns and drugs are being traded in exchange for food.

**Madam President:** Sen. Mark, you have one more minute.

**Sen. W. Mark:** And it is really creating a lot of uncertainty in that part of the

Cedros Fishermen  
(Safety and Security of)  
Sen. Mark (cont'd)

country and other areas of Trinidad and Tobago where fisherfolk earn or seek to earn a living.

So I am calling on the Government to tell the Parliament today what steps they have taken to protect and to safeguard the interest, the welfare, the security and safety of our fisherfolk and to indicate, Madam President, how they are going to bring about that reduction in fear by these fisherfolk when they have to traverse the high seas in order to live and earn a reasonable and decent livelihood. That is my submission to the Government and I hope I get some clarification this evening, Madam President. [*Desk thumping*]

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Thank you, Madam President, for the opportunity to respond to this Motion on behalf of the Government. Madam President, we cannot dispute—in response to the Motion—we cannot dispute the need for the State to deal with issues of public safety and security. We cannot dispute that. We could in fact, Madam President, dispute Sen. Mark's theory that the Government has not taken an interest. There is absolutely nothing out there to suggest that the Government has not taken an interest. But I would say this to Sen. Mark, I do not believe it is the job of the coast guard, and in fact, it is highly impractical to have the coast guard out there providing guidance to the fishermen about the territorial waters. I think the bona fide fishermen working between Trinidad and Tobago and Venezuela are familiar with the territorial waters and the coast guard have a role, but it is surely not to provide guidance on an ongoing basis to the fisherfolk on the territorial waters.

The Government of Trinidad and Tobago, Madam President, is committed to ensuring the safety and security of its citizens, both on land and on sea. To this

Cedros Fishermen  
(Safety and Security of)  
Sen. The Hon. C. Rambharat (cont'd)

end, the arms of national security under the policy and strategic guidance of the Minister of National Security continue to employ resources in manners aimed at yielding positive and effective results to ensure a safer environment. One of the perennial issues faced are the attacks on the nation's fishermen while at sea; Madam President, this issue is not new. It is a consequence of the proximity of our respective territories.

Madam President, let me also say that when we speak about fishermen or fisherfolk, we are referring to legitimate fishermen and not those who may be engaged in illegal activities, such as the illegal importation of narcotics, firearms, animals and even human trafficking. Because, Madam President, there are those who, under the guise of being fishermen, are really engaged in illegal activity and they by choice put themselves in harm's way, exposing themselves willingly to the dangers associated with this illegal activity.

**9.30 p.m.**

Madam President, the arms of national security have undertaken several measures to ensure the safety and security of local and other fishermen who fish within the waters in the jurisdiction of Trinidad and Tobago, and I will go through seven of those things which the Ministry of National Security and its agencies have undertaken.

1. The coastguard has undertaken a maritime operational strategy that would result in an increased maritime presence around Trinidad and Tobago with particular emphasis around the south-west peninsula.
2. On 11 July, 2017, the coastguard began Operation Fortress with the intent of dominating the maritime space in the south-west area of the Gulf of Paria.

3. On 07 May, 2018, Operation Fortress was launched giving an additional focus on vessels that traverse the route from Tucupita to Pedernales in Venezuela, on the south-western coastline. As part of Fortress too, a joint operation between the police and the coastguard saw the surveillance of a high traffic area on the south-western tip of Trinidad.
4. Within the past few months the Minister of National Security has prioritized border security using inter-agency principles. The coastguard, defence force and police service have tightened up on the borders which has heightened protection for our nationals.
5. The maritime presence is maintained in the south-west region of Trinidad, inclusive of the Cedros area, and sea-based and on-land-based patrols have been conducted in the region.
6. The coastguard continues to work closely with the fisheries division of the Ministry of Agriculture, Land and Fisheries and the Caribbean Fisheries, Training and Development Institute. The coastguard holds a position on the executive board of the institute which allows them to keep abreast of developments and issues in the fishing industry.
7. The coastguard also conducts special surveillance patrols, utilizing both surface and aerial assets and engages in a number of special focused operations to ensure safety in fishing tournaments and other activities.

Madam President, in order to secure this country's porous borders, the Government is in the process of repairing 14 long-suffering interceptors for the coastguard to increase the sea-based assets. This will accompany the upgraded 360-degree radar system which is already in place. Madam President, improved relations between the coastguard and the Venezuelan navy and other law

Cedros Fishermen  
(Safety and Security of)  
Sen. The Hon. C. Rambharat (cont'd)

2019.02.19

enforcement authorities have also assisted in reducing fishing-related incidents in close-border areas and have reduced the necessity for the use of force, while enforcing the provisions of the fisheries legislation and other related legislation.

Madam President, a vital part of improving the legislative framework for fishermen is the new fisheries legislation which is currently in the final drafting stages. Finally, Madam President, the Government has cooperated with its regional partners and the relevant agencies in the US and the UK, developing intelligence-sharing protocols to respond to, and prevent maritime criminal activity.

In closing, Madam President, the Government recognizes the role of the State in ensuring the safety and security of Cedros and all fishermen while in Trinidad and Tobago waters and I am confident that I have demonstrated that, contrary to what Sen. Mark has said in his Motion, the Government has taken a very keen interest in ensuring that those bona fide fisherfolk are safe while in territorial waters.

Thank you. [*Desk thumping*]

### **Carnival Safety Wishes**

**Madam President:** Hon. Senators, I just want to wish everyone a happy and safe Carnival.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 9.34 p.m.*