

**SENATE***Tuesday, June 11, 2019*

The Senate met at 10.00 a.m.

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

**Mr. Vice-President:** Hon. Senators, I have granted leave of absence to Sen. Daniel Dookie, Sen. Deeroop Teemal and Sen. Dr. Maria Dillon-Remy, all of whom are out of the country.

**SENATORS' APPOINTMENT**

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

“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. JOHN HEATH

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

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, MR. JOHN HEATH, to be temporarily a

**UNREVISED**

member of the Senate, with effect from 11<sup>th</sup> June, 2019 and continuing during the absence out of Trinidad and Tobago of said Senator Deeroop Teemal.

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 10<sup>th</sup> day of June, 2019."

"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. SHERVON IFILL

WHEREAS Senator Dr. Maria Dillon-Remy 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, MS. SHERVON IFILL to be temporarily a member of the Senate with effect from 11<sup>th</sup> June, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Maria Dillon-Remy.

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 10<sup>th</sup> day of June, 2019."

### **OATH OF ALLEGIANCE**

*Senators John Heath and Shervon Ifill took and subscribed the Oath of Allegiance as required by law.*

### **ARRANGEMENT OF BUSINESS**

**Mr. Vice-President:** Hon. Senators, I am currently awaiting a further instrument. So I would crave your indulgence to return to this item on the Order Paper once that instrument is received.

### **JOINT SELECT COMMITTEE**

#### **(APPOINTMENT OF)**

**Mr. Vice-President:** Hon. Senators, I have received the following correspondence from the Speaker of the House of Representatives:

#### **“Establishment of a Joint Select Committee**

At a sitting held on Friday June 07, 2019 the House of Representatives agreed to following resolutions:

1) **‘Resolved:**

That, in accordance with Standing Order 68(1), the Private Security Industry Bill, 2019 be referred to a Joint Select Committee hereby established; and

That this Committee be empowered to consider and report on the general merits and principles of the Bill and report by September 27, 2019.’

**‘Resolved:** That, subject to the concurrence of the Senate on the

establishment of the Joint Select Committee on the Private Security Industry Bill, 2019, the following six (6) Members be appointed to serve on the Committee:

Mr. Fitzgerald Hinds, MP

Mr. Stuart Young, MP

Mrs. Glenda Jennings-Smith, MP

Brig. Gen. (Ret.) Ancil Antoine, MP

Mr. David Lee, MP

Dr. Roodal Moonilal, MP

I respectfully request that the Senate be informed of these decisions at the earliest convenience please.

Respectfully

Bridgid Mary Annisette-George,

Speaker of the House”

[MADAM PRESIDENT *in the Chair*]

**MISCELLANEOUS PROVISIONS (PETROLEUM AND PETROLEUM  
PRODUCTION LEVY AND SUBSIDY) BILL, 2019**

Bill to amend the Petroleum Act, Chap. 62:01 and the Petroleum Production Levy and Subsidy Act, Chap. 62:02 [*The Minister of Finance*]; read the first time.

**MISCELLANEOUS PROVISIONS (FINANCIAL INSTITUTIONS,  
SECURITIES AND INSURANCE) BILL, 2019**

Bill to amend the Financial Institutions Act, Chap 79:09, the Securities Act, Chap. 83:02 and the Insurance Act, No. 4 of 2018 [*The Attorney General*]; read the first time.

*Motion made:* That the next stage be taken on Wednesday, June 12, 2019.  
[*Hon. F. Khan*]

*Question put and agreed to.*

### **PAPERS LAID**

1. Report of the Teaching Service Commission for the years 2014 to 2017.  
[*The Vice-President (Sen. Nigel De Freitas)*]
2. Delegation Report on the 47<sup>th</sup> Meeting of the Board of Directors of ParlAmericas and the 4<sup>th</sup> Gathering of the ParlAmericas Open Parliament Network, Quito, Ecuador from March 12 to 14, 2019. [*Sen. Foster Cummings*]

### **JOINT SELECT COMMITTEE REPORT**

#### **(Presentation)**

#### **Local Authorities, Service Commissions and Statutory Authorities (including the THA)**

#### **Public Service Occupational Safety and Health Compliance**

**Sen. Nigel De Freitas:** Thank you, Madam President. I have the honour to present the following report as listed on the Order Paper in my name:

Twelfth Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on an Inquiry into Occupational Safety and Health Compliance within the Public Service.

### **URGENT QUESTIONS**

#### **St. Augustine Private Hospital**

#### **(Treatment for Dialysis Patients)**

**Sen. Wade Mark:** Thank you, Madam President. [*Desk thumping*] To the Minister of Health: In light of the outstanding debt of \$2.3 million to the St Augustine Private Hospital for dialysis services, can the Minister advise what will be done to avoid a discontinuation of treatment to dialysis patients?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you. Thank you

very much, Madam President, and thank you Sen. Mark for the question. I will not say what will be done. I will say what has been done. When this issue came to my attention Sunday afternoon, I immediately issued instructions that all 37 patients be reassigned to dialysis centres. That was done yesterday, and I must compliment the other dialysis centres whose philosophies are more aligned with the Ministry of Health when it comes to patient care. They gleefully and willingly accepted these 37 patients both in private dialysis centres and also in full public health care system. So no dialysis will be discontinued, they are already receiving their dialysis.

I wish to also state that in September 2018, St. Augustine Private Hospital received cheques in the followings sums as follows: \$243,200, \$304,950, \$304,000, \$274,500 and \$290,700. From October 1<sup>st</sup> to 6<sup>th</sup> June, which is last week, St. Augustine Private Hospital also received cheques in the following sums: \$309,700, \$312,550, \$348,650 and \$295,450 up to the 6<sup>th</sup> of June. The outstanding amounts will be paid at the shortest possible time. Thank you very much, Madam President.

**Sen. Mark:** Thank you, Madam President. Could the hon. Minister indicate what is the sum of the—or the total sum outstanding in payments to this particular private institution?

**Hon. T. Deyalsingh:** So, Madam President, the sums paid in September 2018, totaled \$1.4 million. The sums paid up to 6<sup>th</sup> June, last week, totaled \$1.2 million. The outstanding amount of \$2 million will be paid at the shortest possible time. But, Madam President, let me say, this Government took decisions two years ago to beef up and ramp our delivery within the RHA system and we have done that because the philosophy has to be patient care first. And the Couva Medical Facility which will be opened from next month for radiological services, I have indicated

that facility will have a massive dialysis centre so that we would rely less and less on the private sector for the provision of dialysis services.

The other four RHAs, South-West, Eastern, North Central and North West have also ramped up their capabilities. So more and more we are depending less and less on the private sector for the delivery of dialysis services. But Couva is going to be a flagship facility for the delivery of massive dialysis services. As a matter of fact, I was supposed to be there at 10 o'clock this morning to do just that, but the team is there because I had to come to answer this question. Finding the location, doing the estimates. And that is what this Government is doing to rely less and less on the private sector and have things done in-house rather than outsource. Thank you very much, Madam President. [*Desk thumping*]

**Sen. Mark:** Madam President, the Minister did indicate that a number of private centres will be taking up the slack in the interim. Could the Minister identify for this Senate the centres, the private centres that will be taking up the slack during this interim period to satisfy those patients who he said would be redeployed accordingly?

**Hon. T. Deyalsingh:** Madam President, I do not have the exact names, but they range from centres from San Fernando to central Trinidad to north Trinidad. So they will be sent—as a matter of fact, some patients even were thankful that they would now be placed in dialysis centres closer to their homes, especially those in south, who did not want to come up to St. Augustine. So there is a silver lining to all of this.

But what is more important to note is that of the 1,100 patients on dialysis in Trinidad and Tobago it costs the State \$78 million, \$78 million to the private sector to pay for dialysis and that is why we took a decision two years ago to decrease that reliance, and Couva is going to be a flagship when it comes to renal care very

soon. [*Desk thumping*] Because the State cannot go on paying \$78 million to the private sector and when you have a cash flow problem the first thing that you want to do is deny service. That is not what this Government is about. That action in my view was callous and had no regard for patient care. Thank you very much, Madam President. [*Desk thumping*]

### **ORAL ANSWERS TO QUESTIONS**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. The Government is pleased to announce that it will be answering questions 158, 159, 260 and we ask for a deferral of two weeks for question Nos. 259, 261 and 273.

*The following questions stood on the Order Paper:*

#### **Venezuelan Nationals**

##### **(Number of Incarcerated/Detained)**

**259.** Can the hon. Minister of National Security advise as to the number of Venezuelan nationals who are incarcerated/detained in our nation's prisons as at April 15<sup>th</sup> 2019? [*Sen. T. Obika*]

#### **Manta Lodge and Sanctuary Villa, Tobago**

##### **(Details of Property)**

**261.** As regard the Manta Lodge and Sanctuary Villa properties in Tobago, can the hon. Minister of Finance indicate the following:

- (i) the dates of the acquisition of each property; and
- (ii) the total money spent to acquire and outfit each property? [*Sen. T. Obika*]

#### **Immigration Detention Centre**

##### **(Details of Detainees)**

**273.** As regard persons detained at the Immigration Detention Centre, as at April 30, 2019, can the hon. Minister of National Security provide the following:

- (i) the number of detainees at the facility;
- (ii) the nationalities of the detainees referred to in (i); and  
a breakdown by percentage of the nationalities referred to in (ii)?

[*Sen. P. Richards*] *Questions, by leave, deferred.*

### **Intimidation of Female MTS Security Officers**

#### **(Measures to Address)**

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

In light of reports that criminal elements have been intimidating female MTS Security Officers assigned to Primary Schools in the Maracas/St. Joseph district, can the Minister indicate what is being done to address this issue?

**The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte):** [*Desk thumping*] Madam President, the National Training and Security Company Limited (MTS) has received no reports, and I quote again, no reports that criminal elements have been intimidating female MTS security officers who have been assigned at any school in the Maracas/St. Joseph location. MTS is committed to ensuring a safe and secure environment for all its stakeholders including female security officers in all the communities which it serves.

MTS recognizes the risks that are associated with security arrangements and has protocols in place to allow any officer to get more immediate support in effectively dealing with any security threats which may occur. In this regard there is close collaboration with the other arms of the protective service.

Madam President, for security purposes the details of these protocols, of course, cannot be divulged.

**Sen. Mark:** Is the Minister aware, through you, of recent instances of attacks

which occurred in this community, directed at female MTS security officers? Is the Minister aware of recent instances of—?

**Madam President:** Sen. Mark, that question is just a restatement of the question that the Minister has answered. So can you ask another supplement?

**Sen. Mark:** No, I will go on to the next one.

**Madam President:** Okay. Next Question, Sen. Mark.

### **Steel Bands Financial Challenges**

#### **(Steps Taken to Ensure Sponsorship)**

**159. Sen. Wade Mark** asked the hon. Minister of Community Development, Culture and the Arts:

In light of the financial challenges and lack of sponsorship being experienced by steel bands within recent times, can the Minister indicate what steps are being taken to ensure future sponsorship of these bands?

**The Minister of Community Development, Culture and the Arts (Hon. Dr. Nyan Gadsby-Dolly):** [*Desk thumping*] Thank you, Madam President. Steel bands are private organizations which seek sponsorship without the involvement of Government. Notwithstanding that, the Government has contributed in excess of \$80million in the annual Panorama competitions over the last three and a half years and the Ministry of Community Development, Culture and the Arts continues to provide assistance to bands for this event. Grant funding is also provided to bands for specific projects.

**Sen. Mark:** Madam President. Given the importance of our national instrument, the steelpan and the situation that confronts many steel bands in Trinidad and Tobago, can the Minister indicate whether any discussions will be taking place between Pan Trinbago and the Ministry with a view to trying to resolve the sponsorship question affecting many steel band organizations?

**Hon. Dr. N. Gadsby-Dolly:** Thank you, Madam President. Madam President, discussions between the Ministry and Pan Trinbago take place on a regular basis and some of the very important challenges facing the steel band movement are discussed, and certainly the issue of sponsorship, and the issue of bands being able to become more self-sufficient has played a foremost role in our discusses and will continue to do so as the time goes by.

**Sen. Mark:** Madam President, can the Ministry indicate based on those discussions between Pan Trinbago and the Ministry—can the Minister identify any initiatives that would have been agreed upon with a view to addressing this challenge faced by the steel band movement in terms of lack of sponsorship?

**Hon. Dr. N. Gadsby-Dolly:** Madam President, thank you. Madam President, the issue of sponsorship is but one of the issues that face the steel band movement. Other very pressing issues are ensuring that the steel band movement really is robust and that steel bands that perform at Panorama do contribute to their communities outside of the Carnival season. And so this issue of sponsorship and self-sustainability which is the fundamental issue here is not something that is just tied to sponsorship. And so our discussions with Pan Trinbago are quite more fulsome than that and they really deal with the essence of the contribution of the steel band industry to the communities.

So, yes, sponsorship is a part of our discussions, but really the discussions has gone much deeper than that and deals with how steel bands contribute to their community and how they sustain themselves in the light of decreased sponsorship that many of them are facing. And also in light of the fact that we expect the steel bands to contribute not only at Carnival time when assistance is provided by the Government for them to be a steel band.

So the discussions, yes, are continuing with Pan Trinbago and are centred

about their sustainability not simply their sponsorship.

**Sen. Mark:** Could the Minister indicate whether she has seen evidence of progress as it relates to their contributions, that is, the steel bands to their communities, as well as through that process the development of self-sustainability? Can you share with this Senate, whether you are satisfied that positive efforts are being made by the steel band movement to realize those two objectives that you have outlined?

**Hon. Dr. N. Gadsby-Dolly:** Thank you, Madam President. Though I do not see this question falling under this particular—I do not see the supplemental relating that much. However, I will take the opportunity to indicate that the Ministry of Community Development, Culture and the Arts has a flagship programme called “Music Schools in the Communities”, where we partner during the long holiday with steel bands in different areas and that aim is to ensure that they register their children and the children, the young people most certainly in the community and in the steel bands learn to read music. And that the steel bands themselves get the parents more involved and look for ways to raise money.

And I would indicate to the Senate, this honourable House that that has been working wonders in the communities that have been taking part in this programme, and we have seen steel bands move from being totally dependent on grant funding to taking upon themselves the responsibility of raising their funds, having different events to do that and also ensuring that their young members are now becoming literate with music. And so that they are not just playing pan, but they are reading music and, of course, all of the attributes that come with that are accorded unto them. So, yes, progress is being made and we expect more progress to be made as these discussions bear fruit.

**National Cancer Registry**  
**(Data Gathering and Policy Making)**

**160. Sen. Wade Mark** asked the hon. Minister of Health:

Can the Minister indicate what measures are needed to improve the National Cancer Registry which is essential to data gathering and policy making?

**The Minister of Health (Hon. Terrence Deyalsingh):** [*Desk thumping*] Thank you very much, Madam President. Prior to September 2015 the National Cancer Registry had a time of seven years, seven years of data. This was primarily due to absence of a registrar to validate the data. Post September 2015 under this Government, the Ministry of Health has implemented several initiatives in improving the National Cancer Registry, including:

1. The employment of a registrar to access and validate data;
2. Started training with international partners including the International Agency for Research and Cancer, the National Cancer Institute in the United States and the North American Association of central cancer registries.
3. Restarted data collection in Tobago; was not done.
4. Validation and confirmation on the data from 2008 to 2014.

See how far back we have to go?

The key measures required to improve the National Cancer Registry which is essential to data gathering and policy making include:

1. The upgrade of software equipment;
2. To provide adequate staffing with the required skill-set and competencies;
3. Formalize the National Cancer Registry as a national entity within the Ministry of Health with the authority to manage and coordinate cancer data for the country; and
4. To standardize the data collection and report tools.

The above measures should be implemented through the health services support programme. In the first instance, there will be an upgrade of the National Cancer Registry by the end of fiscal 2019. And thereafter the development of other national health registries including and not limited to: diabetes, stroke and heart disease during the fiscal year 2020. Thank you very much, Madam President.

[*Desk thumping*]

**Sen. Mark:** Madam President, through you. Could the Minister indicate whether he is aware of a statement attributed to the Chairman of the Cancer Society in a *Guardian* story dated the 3<sup>rd</sup> of February of this year in which, Madam President, it was stated that the National Cancer Registry is defunct. Is the Minister aware of after and having—well is the Minister aware of this statement?

**Hon. T. Deyalsingh:** Madam Speaker, I just said what we are doing, because it was defunct prior to September 2015. Sen. Mark is correct. Dr. Laquis said that, because under your tenure you did absolutely nothing, and I have outlined everything that we are doing. But more importantly we have started collecting data for the first time in this country. We had the great pap-smear initiative two instalments, three instalments in North-Central RHA. We screened 335 women, we got nine at stage one or pre-cancerous, never before done.

**10.30 a.m.**

The second installation, we screened 500 women, we got 25 precancerous, never before done. Saturday gone, I was there, we screened 800 women. The results will come in soon. We had a prostate screening for 1,000 men—never before attempted in this country—and we got 115 men with elevated PSA levels. That is what this Government is doing. [*Desk thumping*] Never ever, ever by any government has an attempt been made to do this type of national screening, because in Trinidad and Tobago we tend to catch people at stages 2,

3 and 4 where the treatment is not only more expensive, but the outcome for the patient is not as good, but by doing this type of screening, we can catch more men and women at the precancerous stage, or stage 1, where the treatment is less of a burden for them and the State. But, more importantly, the patient leads a more productive life and morbidity rates and mortality rates will drop. That is what this Government is doing. Thank you again, Madam President. [*Desk thumping*]

**Sen. Mark:** After four years, I am happy to hear that you are doing these things. But may I ask, through the hon. President, for the Minister to share with this Senate, what is the level of staffing required to formalize the National Cancer Registry? What is the level of staffing required?

**Hon. T. Deyalsingh:** So it is more than the zero that was there prior to September 2015, and I said clearly in my answer, the employment of a registrar. The first thing you have to do is to get a registrar to validate data. Without a registrar, no data can be validated or trusted, and I said that clearly in the body of my answer. I also said clearly, we started data collection. You will need staff for data collection. I said clearly, validation and confirmation of data from 2008—2014, that will require staffing. I also said in the body of my answer, provide adequate staffing with the required skill sets and competencies—those will require staffing. I do not have the actual numbers, but they will require staffing. But the most important person is the registrar, and when I say this, let me repeat the first paragraph:

Prior to September 2015 the National Cancer Registry had a time lag of seven years, which was primarily due to the absence of a registrar.

No one filled that post. We have filled it and, therefore, everything else will flow from that very important appointment. Again, Madam President, I thank you.

[*Desk thumping*]

**Sen. Mark:** Madam President, can the Minister indicate when the post of registrar was filled?

**Hon. T. Deyalsingh:** The post of registrar was filled under this administration. I do not have those details here, but it was filled after we came into office. [*Desk thumping*]

**Hon. Senator:** We are working, we are producing.

**Hon. T. Deyalsingh:** Before September—let me repeat, Madam President. Prior to September 2015, the National Cancer Registry had a time lag of seven years for data. This was primarily due to the absence of a registrar—

**Hon. Senator:** Or a desire to do it.

**Hon. T. Deyalsingh:** Post-September 2015, under this Government, the Minister of Health implemented several initiatives, and the first thing we did after September '15, under this Government, was the employment of a registrar. I do not have the exact date, but it was done under this administration when this administration assumed the reins of authority in Trinidad and Tobago. Again, thank you very much, Madam President.

**Sen. Mark:** Madam President, in light of this outgoing administration, may I ask the distinguished Minister of Health, whether he can share with the Senate when will the formalization of the National Cancer Registry materialize? When can we expect the formalization of this important institution called the National Cancer Registry to be formalized, Madam President?

**Hon. T. Deyalsingh:** Madam President, I admire Sen. Mark's capacity for self-flagellation. Madam President, I said clearly in the last paragraph of my answer—so we could prevent self-flagellation—the above measures should be implemented to the health services support programme. In the first instance, there will be an upgrade of the National Cancer Registry by the end of fiscal 2019, which is just

about three or four months away. I said that clearly. And, thereafter, then the development of other national health registries including diabetes, stroke and heart disease during fiscal year 2020. It is only this administration has placed these registries as a front burner issue.

But, Madam President, you cannot separate the registries from the work that my colleague, Hon. Camille Robinson-Regis is doing with an independent national institute statistics of Trinidad and Tobago, because we have to have robust data collection to drive policy, and part of that recommendation is to have a proper CSO—it will be renamed I suppose, under a national institute of statistics. That is what we are doing. That is what this Government is doing, a holistic whole of Government, whole of society approach, on the whole issue of data collection so that the nine women we caught in precancerous stages, plus the 25, plus the 115 men with elevated PSA levels, will go into that database now. And, as I said, the National Cancer Registry, before the end of fiscal 2019 and, thereafter, the other registries before the end of fiscal 2020. Again, Madam President, I want to thank you.

### **Draft Trade Policy**

#### **(Finalization of)**

**260. Sen. Taharqa Obika** asked the hon. Minister of Trade and Industry: Can the Minister indicate why the draft Trade Policy remains to be finalized as at March 31, 2019?

**The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon):**

Thank you, Madam President. The Draft National Trade Policy of Trinidad and Tobago 2019 to 2023 has been completed and is before the Cabinet for consideration, and given its importance to the country's trade and industrial environment, appropriate time and care were given to its development. Thank

you.

**Sen. Obika:** Thank you very much, Madam President. Can the hon. Minister indicate when would the National Trade Policy be expected to be in operation?

**Sen. The Hon. P. Gopee-Scoon:** It should be in operation within the month, within one month.

**Sen. Obika:** Thank you very much, Madam President. Regarding a main outcome of our trade policies is measurement and setting standards for utilization of trade agreements, can the Minister give an indication as to where is this featured in the trade policy?

**Madam President:** That question does not arise.

**Sen. Obika:** Then can the hon. Minister indicate, based on the trade policy, which markets are going to be focused on for the public benefit?

**Madam President:** That question also does not arise. Any further question?

### **ARRANGEMENT OF BUSINESS**

**Madam President:** Hon. Senators, I would like to revert to item 2 on the Order Paper, which is the swearing in of the temporary Senator.

### **SENATOR'S APPOINTMENT**

**Madam President:** So, hon. Senators, I am in receipt of the correspondence from Her Excellency the President, Paula-Mae Weekes, ORTT.

“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.

**UNREVISED**

/s/ Paula-Mae Weekes

President.

TO: MR. NDALE YOUNG

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

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NDALE YOUNG, to be temporarily a member of the Senate, with effect from 11<sup>th</sup> June, 2019 and continuing during the absence from Trinidad and Tobago of Senator Daniel Dookie.

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 11<sup>th</sup> day of June, 2019."

**AFFIRMATION OF ALLEGIANCE**

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

**JOINT SELECT COMMITTEE**

**Private Security Industry Bill, 2019**

**(Appointment of)**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, having regard to the correspondence from the Speaker of the House in relation to the establishment of a joint

select committee to consider and report by September 27, 2019 on the Private Security Industry Bill, 2019, I beg to move that the Senate concur with the House of Representatives in the establishment of the committee and that the following six Senators be appointed to serve:

Mr. Clarence Rambharat

Mr. Nigel De Freitas

Mr. Foster Cummings

Mr. Saddam Hosein

Mr. Paul Richards; and

Dr. Varma Deyalsingh

*Question put and agreed to.*

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

*Order for second reading read.*

**The Attorney General (Hon. Faris Al-Rawi):** Thank you, Madam President. Again, I thank my learned colleagues for that very warm welcome to this honourable Chamber [*Desk thumping*] becoming habitual almost. Perhaps I am so frequent a visitor here that it is lost upon my colleagues. [*Crosstalk*] Madam President, I beg to move:

That a Bill to amend the Bail Act, Chap. 4:60, be now read a second time. I am hearing the good humour coming from my learned colleague, Sen. Saddam Hosein about San Fernando West, and I note that we appear to have a migrant problem in San Fernando. So many people were trucked in for last night's meeting that the traffic flow out of San Fernando to north was so heavy. So, Madam Speaker, perhaps the Ministry will look at providing amnesty in San Fernando for imported persons. [*Laughter and crosstalk*] As we register all of the people that come to our shores in San Fernando West, we will simply say, "wheel and come

again good friends”. [*Desk thumping*]

Madam President, it gives me great pleasure to bring a very serious issue to this House. I will confess, Madam President, that this is no easy Bill. This Bill grips a very central issue of how we as a society intend to manage a phenomenon which I propose to address from a statistical point of view, of how crime has gripped our society. There are many moving parts to this equation. Today, we are considering an amendment to the Bail Act. I will go through the history in a short moment. I will take the honourable Senate through the underpinnings which birthed the 1994 legislation, the amendments which took us to 2015; those which happened in 2016, 2017, 2018 and then we will come back to this Bill.

But, Madam President, if I can say squarely to everyone here, there is a constitutional test, obviously, inside of this legislation. The fact is that we do come with this legislation, properly touching and treating with section 4 and 5 rights in the Constitution, entrenched rights. There is specific mention of the provisions of bail, the right of due process, the concepts in the deeper constitutional arrangements of separation of powers as it relates to the Legislature and the Judiciary, all of that is properly accepted.

The question is, in considering a section 13 application to pass this law—that is a law in respect of which section 4 and 5 rights are touched, that is the right to bail, the issue of separation of powers—section 4 and 5 rights being touched, are we simply safe with saying it is passed by three-fifths majority? That is, three-fifths of the Members present in this House said yes. Is it just the numerical equation of three-fifths or must we consider the deeper dynamic of what is proportionate in a society such as Trinidad and Tobago that has a regard for democracy such as we have?

Now, I am obliged to be fairly legal today, and I will try my best as well to

be as pointed to the observer who may be listening to these proceedings who are not lawyers, and the reason why I need to be fairly complex on the law, is that this law touches and concerns something which we are confident will go to the courts. There will be a test on this law. In any circumstance, one can reasonably expect that. So, let us get to the Bill before us.

The Bill before us proposes in seven clauses, an amendment to the Bail Act. The Bail Act which was birthed in 1994, under the hand of then Attorney General, Keith Sobion, particularly in the House of Representatives, on Monday, August 12, 1994, Attorney General Sobion recognized that the bail laws were in a state of common law, sub-judicial direction, some degree of statutory guidance, and Attorney General Sobion went through the history of the bail law, starting with the 1983 Law Commission Paper, the Bail Bill in 1985, the drafts in 1986, the 1988 Bills published for public comment—the heavy criticism on the 1988 legislation, the fact that those Bills were never laid in Parliament, then the Hyatali Commission, then the 1994 Bills trying to achieve a regulatory form of balance as the 1994 law was birthed.

The 1994 legislation—and I am going to do this as I centred upon the amendments last night—I am going to ask my team to circulate a marked-up version of the Bail Act, 1994, as it is proposed to be amended. On that marked-up version, hon. Members will see what the law currently stands at. I have used three highlighted areas. Those in green will show you the amendments we made in the Family and Children Division Act, No. 6 of 2016; those in yellow will deal with the 2017 amendments which we put into effect as a Senate ourselves, being Act No. 11 of 2017; those in red will be the amendments we made by the Miscellaneous Provisions (Supreme Court of Judicature and Children) Act, No. 15 of 2018, and the blue bolded clear text will be what we propose.

Now, I am saying this because if hon. Members go on to the Laws of Trinidad and Tobago which are in the course of being revised right now, quite frankly, what you will see there is a mess. Why are the published laws a mess? It is frankly that position because there were so many amendments to the Bail Act in the historical perspective post-1994 that one can easily be confused. So permit me a couple of moments to address these issues.

We are today proposing the 16<sup>th</sup> amendment to the bail laws. We had Act No. 19 of 2005; 32, 2005; 30, 2006. Listen to these now: 10 of 2007, 15 of 2007, 25 of 2007—three in that year alone—17 of 2008, 9 of 2011, 11 of 2011, 12 of 2012, 1 of 2014, 7 of 2015. We as a Government dealt with Act No. 6 of 2016, No. 11 of 2017 and No. 15 of 2018. So we have had 15 amendments, but in 2016 when we came to the Senate, when we came to the House of Representatives, the UNC specifically denied an extension of the law as it stood in 2016. That 2016 package of bail laws had incorporated all of the amendments, in particular, those from 2005 straight up to 2015, and it was in those laws, in that package, in that period of time that we saw multiple amendments to the Bail Act.

Of course, as history will demonstrate when the UNC is not in power, when they do not comprise the Government, they vote against bail legislation. When they are in government, they receive the PNM's support and three-fifths majority laws are birthed. And, in particular in 2016, what happened was the law that stood then collapsed entirely, and we went back to the 1994 law—the original 1994 law—as was slightly amended in 2005. What that meant was, the laws as they were amended over the period 1994—2015, saw a move, no bail absolutely for the first part of the First Schedule.

In the Bail Act, one will definitely notice that there is no bail provided for Part I:

- “(a) murder;
- (b) treason;
- (c) piracy or hijacking;
- (d) any offence for which death is the penalty fixed by law.”

No bail at all. That was saved, that was never challenged.

In the period 2005—2011, Trinidad and Tobago saw itself gripped with the phenomenon of increasing statistics on crime and, in particular, kidnapping for ransom, grievous assault. The UNC Opposition and the PNM Government went at it—the PNM proposing restrictions on the right to bail; the UNC saying, effectively—and I am putting it quite simply—you will not get restrictions beyond sunset periods, take a three months, another three months, take a one year. That short chain disappeared when the UNC came into office as a Government in 2010. They immediately received the support of the PNM in saying, take a five-year sunset period, increase the limitation against bail from 60 days where you cannot get bail, if your trial has started or not started—let me put it that way—they jumped to 120. They received full support. Why? The then PNM Opposition said you need support from a constitutional majority perspective to achieve these laws.

So what happened in 2015 was that all the laws collapsed down and, in particular, the progression of the severity of lack of bail which existed up to 2015 was, effectively, three strikes and you are out—that is the 1994 law; two strikes, you are out, those are the periods under Anand Ramlogan as Attorney General; one strike, you are out, for certain offences being grievous offences, specified offences as they were called in the second part of the Second Schedule. All of those severities which allowed law enforcement and allowed for the incarceration of the most severe criminals, all of that collapsed, and the law went back to three strikes, you are out, and let us explain what the “three strikes, you are out” involves. The

three strikes, you are out—so under the Bail Act—Madam President, what time do I end in full time?

**Madam President:** 11:20.

**Hon F. Al-Rawi:** Thank you. It is hard to do justice to this legislation in the time permitted, so I will have to use a generous amount of constitutional addressing in my wrap-up. So let us deal with stats, let us deal with what the law is and why we want to change it. In the Bail Act, you can apply for bail. You have a prescription against bail under section 5 of the Bail Act which says:

“A Court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule and has been convicted on three occasions arising out of separate transactions—

- (a) of any offence; or
- (b) of any combination of offences...”

In calculating that time, only those convictions recorded in the last 10 years shall be taken into account. Now that, quite frankly, to stand as existing law is an absolute nonsense. Let me explain why. If you are in jail for five years or seven years or 10 years, how are you getting convicted for a second or third offence? In other words then, it is nearly logically impossible for you to be denied bail because you have had three strikes whilst you are incarcerated. How are you going to get that? Unless, of course, you were incarcerated and there were other trials against you and you were convicted whilst you were incarcerated for those other matters, serving an existing sentence.

So that law was, quite frankly, nonsensical. So nonsensical was it, that the UNC agreed to amend that law, and the PNM, in their successive tenures, 2005—2010 and then 2010—2015, and we moved from three strikes to two strikes. We discounted the period for which you spent in incarceration. In other words then,

they took the 15 years or 10-year calculation periods for the time that you were actually on the outside, not whilst you were serving time. But what happens next? In the schedule of offences that currently exists—and that is to be found at the offences set out as “Specified Offences” at Part II of the Schedule—we had trafficking in narcotics—sorry, we have:

- “(a) trafficking in narcotics...
- (b) possessing and use of firearms...
- (c) possession of imitation firearms...
- (d) rape;
- (e) sexual intercourse...
- (f) buggery;
- (g) shooting or wounding...
- (h) robbery...
- (i) larceny of a motor vehicle;
- (j) burglary and housebreaking;
- (l) arson;
- (m) an attempt to commit any”—of these and:
- “(n) receiving stolen goods.”

So that is what serious offences look like. Quite respectfully, the Government does not believe that receiving stolen goods, burglary and housebreaking or larceny of a motor vehicle ought to have place in a Schedule as a serious offence. We do not. We consider that only the most bloody crimes for which we can demonstrate statistics ought to be in that basket of offences.

So, the Bill, Madam President, proposes that we, first of all, amend section 5. We are proposing that we repeal subsections (2) and (3) and that we insert a new subsection (2). If we look to the parent Act at section 5, we are removing,

effectively, that three-strike rule in subsection (2). We are removing the calculation which was a nonsensical one, to say, only convictions in the last 10 years will be calculated, because I have just reminded how insane that formula is, and we are inserting now a new subsection (2) which is admittedly stark and is the one that is going to challenge constitutional consideration. It is, subsection (2) as we proposed, the new one says:

“A Court shall not grant bail to a person who on or after the commencement of this Act is charged with an offence listed in Part II of the First Schedule and has been previously convicted of an offence which is punishable by imprisonment for a term of ten years or more.”

That says, if you have been convicted for a new formula of very serious offences, if you have an actual conviction and you come before the court on a charge for the same type of matter, no bail for you. Question? Is this clause in need of some amendment? Should we provide some filter to it? I look forward to the fulminations of the Senate here today, because I will tell you, the Government is anchoring a milestone for itself. This is not the law itself until we settle upon the law.

New subsection (3) is where we treat with an introduction of something referred to, as I would put it, quite simply, charge-charge. Subsection (3) says:

“Subject to subsections (2)...”

—which is what I have just addressed, that is where you have a conviction and a charge—

“Subject to...(4)...”

—which is where you can deal with it if you have 120-day start of your trial or not and—

“...(5)...”

—where the 60-day trial for matters concerning effectively children under the Anti-Gang Act—

**11.00 a.m.**

Subsection (3) says if you find yourself before a court, a court should not grant you bail if you are charged with an offence—firstly, something under the Firearms Act, that is section 6 of the Firearms Act, if you have a pending charge for possession. So first limb, if you appear before the court and you are charged with an offence under the Firearms Act under section 6, and you have a pending charge for possession of a firearm you ought not to get bail. So it is targeting firearms matters. Second charge-charge arrangement, we say if you have something in Second Schedule, you have a charge for the bloody crimes in the second part of the Schedule and you come with a charge for another one of those, in other words then you are charged for serious matters in the Schedule, there ought not to be bail.

And the last thing is we say, if you have a charge for, again a Part II offence, except under section 6 where the prosecution informs the court and the person or any person involved in the commission of the offence had in his possession a firearm or imitation firearm; in other words then, again centring upon the use of firearms.

So, that section is qualified by saying, you should only not have bail for a period of up to 120 days—I remind that that 120 days came from the UNC amendments in 2011 go forward—you should only have that position subject to a safeguard, which is in subsection (4), and it says:

“...where a person is charged with an offence mentioned in...(2) or (3) and brought before the Court but no evidence has been taken within one hundred and twenty days...”—you can apply for bail.

We take a further caution in subsection (5) where we speak specifically now about a person charged under the Anti-Gang Act who is harbouring a child and that that person is in loco parentis, meaning you are acting almost as a parent to that child; you are a guardian or a person with responsibility, we reduce that period down to 60 days. There is a further safeguard that says, in subsection (7):

“...for the purposes of this...”—that where—“the evidence...”—was—“taken within one hundred and twenty...days but the trial is not completed within one year...”—you can apply for bail.

Let me translate this very simply right now, we are proposing conviction under the serious bloody crime Schedule and a charge, no bail. Charge for the bloody crime set out in Part II of the Schedule and a charge for that, no bail. If you have a charge with a firearms matter and a further firearms matter, or you are using a firearm in the course or commission of a serious crime in the Schedule, no bail. Safeguard: if you did not start the matter within 120 days you can apply for bail. Safeguard number two: if you did not complete the matter within one year, apply for bail. What is the rationale for this particular clause? The rationale is the statistical information available to Trinidad and Tobago, which I will go into now and which I will circulate to Members now. I will ask my team to prepare the CAPA, TTPS statistics for circulation.

And also the historical information which appears in relation to when Trinidad was gripped with kidnapping for ransom, that information shows that a cooling off period brings results, because effectively what we are saying is, your worse-case scenario is, after one year if your trial is not completed you can apply for bail in the circumstances of subsection (3). What do the statistics tell us, why do we want this? Let us start with the anti-kidnapping days; the legislation which drove the amendments 2006, 2007, 2008, and which were doubled by the UNC in

2011, go forward. What happened? In that period of time, kidnapping for ransom was a scourge in this country. Then Attorney General, firstly John Jeremie; secondly, Bridgid Annisette-George came to the Parliament and said to the Parliament, “Look, we need a cooling off period”. Now, I am putting it very simply, “Give us this period of formulation and let us see what we can do with kidnapping for ransom.” Kidnapping for ransom went to zero in that period of time. It went to zero in that period of time.

We then went into the sobriety of reformulating the Schedule. It went from that wider Schedule, including larceny of a motor car and household breaking, et cetera, those were removed and the more violent crimes came in: intercourse with a child, kidnapping, the bloody crimes, all of which failed and fell in 2016 when the UNC refused to support the law. All of that was in the progression of sobering up the Schedule of offences, called specified offences. But what do the current statistics tell us? The TTPS says, as at 07 May, 2019, from their Crime and Problem Analysis Branch, that is CAPA Branch, firearms found and seized for the period—I am taking a 10-year period—2009 to 2019, in gross 6,387; and we disaggregate them from revolver, pistol, shotgun, home-made shotgun, rifle, trap gun, flare gun, machine gun, submachine gun, other air rifle. And I am going to take submachine gun alone, 43 submachine guns. We went from zero submachines guns in the entire period, 2009 to 2015, not a single submachine gun; 2016, zero; 2017, 23; 2018, 14; 2019, six; 43 in total. One submachine, as we have seen as a matter of fact in Trinidad and Tobago, sprayed into a crowd indiscriminately killing children, killing fathers holding their babies’ hands—we now have them in this country, hon. Senators.

Let us look to rifle, when we look to the statistics of rifle, in 2009 there were two; 2010, two; 2013, seven; 2016, four; 2017, 34; 2018, 15; 93 in total. Let us

look at shotguns: 2012, 51; 2015, 62; 2017, 83; 2018, 70; 629 in total. Pistol, well, the numbers have always been fairly high for pistols, but let us look at 2009: 163 pistols; 2010, 161; 2011, 150; 2012, 185; 2018, 508. So we are seeing statistically a significant jump in firearms found and seized. Let us turn a little further, report of firearm-related offences—listen to this one—in the period 2009 to 2019: 17,271 matters. In the following consequences: murder, 3,472; wounding and shootings, that is murder gone wrong, 2,631; robberies, 11,168; but when we look to the numbers, look at 2012; 2009, 2,500; 2010, 2,300—I am talking the totals—2012, 2,100; 2013, 1,482; 2014, 1,399. Notice the numbers going down, down to 2018, 1,552, why did we go down in particular in the period whilst the UNC was in power?—because you had a law to deny bail in these circumstances.

We had a law to deny bail and you had a Minister of National Security, who is now a Commissioner of Police; quite incidentally, that Minister of National Security was fired by the last Government for telling the truth in an allegation and we now have this situation. I see Sen. Chote expressed some concern, but I am entitled to say it the way I see it. Arrest for persons with firearms 2009 to 2019, if we look at the arrests we have 5,391 arrests. In 2009, 360; 2010, 412; 2013, 410; 2014, 568; 2016, 673; 2017, 765; 2018, 804; numbers going up, we are arresting more people for possession of firearms. The aggregate number for that 10-year period, 5,391. Arrests under the Anti-Gang Act: in 2011, 177; 2013, three; 2014, nine; 2015, 16; 2016, two; 2018, one; 2019, five, 213 in all.

We look at arrests under the Larceny Act, we have a total for serious crimes, 20,182. Minor crimes, 2,486 in that 10-year period. Arrests under the Dangerous Drugs Act, we have a total of 31,958 arrests, again for the 10-year period, 2009 to 2019. We have arrests under the Anti-Terrorism Act. There has only been one in 2018; that is in the period 2009 to 2019. So under the Anti-Terrorism Act we

actually have an arrest. One anti-terrorism matter is one too many because you are talking about a very severe class of offences. Arrests under Trafficking in Persons Act for the period 2011 to 2019, there have been nine. And as you know, there are ongoing investigations with respect to a whole lot more. Arrests under the Kidnapping Act, 2009 to 2019; now, this Kidnapping Act is more than just kidnapping for ransom, it is kidnapping in general. For the period 2009 to 2019 there were a total of 840, but when you see the peaks at 2012 of 141 they begin to cascade down, 55, 66, 77; a peak up, 2016, 48; 2017, 76; 2018, 119. We are seeing that number and needle move.

We have also provided arrests under the Forgery Act. We have also provided serious crime detection. In the period 2009 to 2019 the reported cases in 2009 were 22,000-odd, detected 3,854, a 17 per cent detection rate. We get up to 2018, we are looking at 13,445 with a detection of 4,558. We see the detection rate going up from 17—let us go—2009 straight through to 2019, the detection figures are as a percentage: 17, 16, 19, 17, 18, 23, 23, 24, 31, 34, and that is for the period 2015, 23; '16, 24; '17, 31; 2018, 34; 2019, where we stand right now, 28 currently. So what I am saying is detection is actually going upwards.

We have also aggregated arrest for sexual offences and we have sexual offences disaggregated by offenders who are 17 and under; for that 10-year period, there are 294 minors who have committed, or allegedly committed sexual offences. For those 18 and over, there are 3,356 for a total of 3,829. And we have also done arrests for offences against the person; there are some 18,000-odd offences, but I would circulate these figures so that Members can have their own view of these statistics.

The point is that those statistics are grounded in what we propose in the Schedule to the reformulated amendments as we propose now. We are asking, in

reference to the amendments to section 5, which we propose in this Bill by clause 5, we are asking for this situation of conviction charge, charge-charge, firearm and scheduled offences or firearm offences in a charge-charge relationship. We are putting that in relation to a Schedule and that Schedule is comprised of offences under the Anti-Gang Act all over 10 years, offences under the Offences Against the Person Act, again with reference to an offence of being over 10 years, except for two small exceptions; offences against the Dangerous Drugs Act, the Kidnapping Act; where there is a sexual offence in which the alleged victim is a child under the Sexual Offences Act or the Children Act; an offence against the Sexual Offences Act, Anti-Terrorism Act, Trafficking in Persons Act, firearms and any attempts to commit those. So the Schedule which we labelled as Part II, Specified Offences, is a very serious Schedule.

What we are asking hon. Senators to consider is that, yes, we are proposing a fetter in the constitutional arrangement, but we are asking for it to be safeguarded by making sure that we do this only in relation to the most heinous and grievous of offences as they are set out in the Schedule. The data which I have just read out shows us, as it relates to firearms in particular, the phenomenon of submachine guns alone. The murder rate which is happening, when we look to these statistics the country needs a bit of a fighting chance.

Now, obviously the argument is going to come out, “Well, why not just allow the Bail Act to go the way it does, surely section 6 of the Bail Act, when you read it tells a judge what factors ought to be considered. Surely, the consideration of the judge in coming up in the exercise of judicial discretion is well set out in the legislation, why not rely on that?” And one can properly say, “Yes, technically speaking, that law looks good”, but what are we seeing now in a democracy such as ours based upon the statistics? We are seeing that wherever we utilized the

restrictions against bail and allowed for what I will call, “the cooling off period”, we saw a dip in the most serious crimes. So in our society we have seen that the judicial exercise has not been as effective as it ought to be when it is left on its entire discretionary purview.

Now, let us get to some basic constitutional principles. The supreme law is the Constitution so declared by section 2. It is a fact that one must presume constitutionality. It is a fact that there have been dicta, and I will acknowledge it in the United Kingdom, in Canada in particular, even in Trinidad and Tobago where we have had considerations as to what constitutionality in restrictions upon the Judiciary ought to look like. Yes, I am aware. I am sure my learned colleagues would have done their research of the cases of St. Omer and Justin Stewart Charles in the court of appeal, in particular the dicta coming from Mr. Justice Gregory Smith, Justice of Appeal. Yes, we have *The Attorney General of Trinidad and Tobago v Ryan Reno Mahabir* matter which is currently on appeal. And, yes, we also have the classic statements—I am sure Sen. Chote would be well aware of these, I believe she appeared in these matters of *Steve Ferguson v The Attorney General of Trinidad and Tobago*, those matters which set out the clear parameters of constitutionality, the interruption of the tripartite arrangements between the Judiciary, the Legislature and the Executive, the separation of powers argument. But quite simply put, when we come to test this law the question is going to be, where do we strike a balance based upon the data?

Now, we can go at this, tit for tat, Opposition saying one thing, Government saying one thing, I can stand up here, I have come prepared to read out all of the excerpts from all of the Members, Mrs. Persad-Bissessar, Anand Ramlogan, Dr. Moonilal as they appeared in the iterations of office that they held in the period 2010 to 2015, and they will show exactly the same arguments being offered today

as to factual ground basis. What we will see different is that a PNM Opposition agreed with the Government, and that is what is going to be challenged today.

What we have, statistically, and I am going to the section 13 argument of the Constitution, beyond the three-fifths numerical factor, do we demonstrate that a society such as ours, the idiosyncrasies of our society, the good, the bad and the ugly of our society, do they demonstrate a need, based upon statistical information, for us to cause this kind of law to be developed? And my simple submission in relation to that is, yes, and I propose to do a very fulsome constitutional answer in the wrap-up to this debate because that is a whole argument by itself, and I am confident that that is what I would be met with in the course of this debate. So let me reserve my position to answer those positions because I think that we have ground to do that.

Do I think, do we think that the law may be in need, as proposed, may be in need of some amendment? Can we come up with a formula here today in the Senate? Perhaps we can—perhaps we can, but the question for our country, for those looking on is, where do we strike the balance? When do we give the fighting chance back to the country? Where in the circumstance of having submachine guns in Trinidad and Tobago do we get that now?

Let me just segue for a moment, we are grappling with an economic migration issue for our neighbour which is closest to us where there are circumstances that the Government is attempting to manage. It is a fact, having spoken with the Commissioner of Police today, that we have had a serious uptick in certain of the crimes as a result of some of the immigrant issues. And the Commissioner can speak to that for himself, but suffice to say, the numbers of murders have been noticed to have risen as a result of some of our migration issues. I am not talking only about Venezuela, I am talking about other positions.

So our state and condition of Trinidad and Tobago must be factored by the porosity of our borders. We do not have offshore patrol vessels patrolling our waters. That boat, or rather, those three boats sailed to Brazil and are now in the Brazilian Navy labelled as “Trinidad class vessels”.

**Hon. Senator:** Whose decision was that?

**Hon. F. Al-Rawi:** That was a decision of the last Government. In any event it is a fait accompli, the fact is we do not have them.

So we are dealing with being an island, two islands comprising a state where our borders are under-challenged. We are dealing with arms and ammunition coming in from outside of our jurisdiction. We are dealing with the prevalence of submachine guns, shotguns and rifles where we had none in the period prior to this tenure right now. We are dealing with the indices of success in kidnapping for ransom and in dealing with the cooling off mechanisms that no bail conditions gave this country in the period 2006, go forward. So that is clause 5 which is the heart and soul of this legislation. I will accept that the Canadian jurisdiction has what I would call the “show cause” position where there is some degree of balance as to simple blanket restriction or not.

But let us turn quickly to the other amendments. There are simple ones, we must now factor the intended abolition of preliminary enquiries, and therefore the fact that a Master can also consider issues of bail as we have dealt with the jurisdictional blending for those positions. It may be that we need a small amendment to return the Justice of the Peace, because Justices of the Peace can operate under the Magistracy. So that may be a small tweak that we will be required to do here. We are harmonizing the fact that we no longer have children being persons under 14 years of age, minors or older minors, so we are just referring to children as children, of course, in the legislation. But clause 6 is where

we simply do the amendment to Part II, substituting the Schedule. And, very importantly, we have put—

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

**Hon. F. Al-Rawi:** Thank you, Madam President. Very importantly, clause 7 is the one that gives a very important constitutional measure. What is clause 7? It is all of one-and-a-half lines long; it says:

“This Act shall continue in force for a period of five years from the date of its commencement.”

This sunset clause is an important redress because it means that the law will not be in perpetuity, it will have the ability of being reviewed. If there is no consensus for review we can have another go at it, and there are circumstances proven only by the UNC where you could give no support for something, which you have done on four occasions yourself, a UNC Government, give no support for that which you offered into prosperity and let it collapse, as happened when the bail amendments collapsed in 2016.

So, Madam President, we have a serious issue before us today. Quite simply put, are we prepared to say, no bail, in certain circumstances? Do we want to qualify that right? I welcome the views of the Senate. Are we prepared to go to one strike? You have a charge on top of a conviction for the same category of bloody offences set out in the Schedule: raping children, kidnapping people, attempted murder, trafficking in persons, dangerous drugs, conviction and charge, charge-charge. You are in a situation where there are serious charges against you, yes, of course there are the dynamics as to whether one could be put upon an unfair charge. That has been a risk since policing and the constabulary was established in the United Kingdom and imported here. Do we want to consider the central focus upon firearms? Do we ignore the porosity of our borders? Do we look to the

migrant issues that we are managing? Do we look to the uptick in crimes? Do we look to the actual confirmed existence of submachine gun and machine gun killings in this country and ignore it?

Do we as a Senate today send a message as to what the Legislature is prepared to do in its role and function in defending Trinidad and Tobago? We have become immune to killings in this country. People flip past the news, who died, who did not die, who got shot at. You look at a child holding a father's hand who has been murdered in machine gun spray fire while they try to get somebody else, and some people for a moment say a prayer, shed a tear, but they turn the page, because it is not me, it is not my family, not my child. Well, today, hon. Senators, we are on test. Today we decide where our constitutional, moral, legal parameters and methodologies lie. We can make the law. The Government does not propose in the amendments before the honourable Senate something which is cast in stone. This is a hard issue to grapple with, constitutionality.

I understand, as the advisor to this Government, what the parameters are and how it will be tested. I genuinely understand it. To the Opposition, I say in anticipation, try something other than the "same ole, same ole". "Doh hit meh" the constitutionality because, you know what, I will read all your words back to you from 2010 to 2015. "Doh hit me" the "Cyah trust this Government", because we could have said it about you. Let us today put aside partisan politics. Let us today understand we have an opportunity in this Senate to send a message, because, you know what, if this Senate says that it is prepared to pass, the House may perhaps take notice.

So, Madam President, this law attempts to be proportional. This law can perhaps be better managed depending upon submissions coming where we cast the balance. The issue is really narrow. What is the qualification to the fettering of

judicial power? That is the issue. Where do we find that balance? How do we send the message to the Judiciary? Do we want a cooling off period? We are attempting proportionality. Proportionality is on the back of statistics, our statistics are terrible. I urge the Senate today to give fulsome measure, and I beg to move.

*[Desk thumping]*

*Question proposed.*

**11.30 a.m.**

**Sen. Saddam Hosein:** Thank you very much, Madam President, for giving me the opportunity to join this debate on an Act to amend the Bail Act, Chap. 4:60. Madam President, this Bail Act is not very unfamiliar to this Parliament, neither is it unfamiliar to the courts of Trinidad and Tobago, because on a daily basis this Act is being applied throughout the length and breadth of Trinidad and Tobago with respect to granting persons their constitutional right to bail.

I saw that the Attorney General has left the Chamber, but he started off on a very light note that there may been a migrant problem in the constituency of San Fernando West last night. But the persons at San Fernando West are also complaining of that migrant problem, because their Member of Parliament for San Fernando West has migrated out of San Fernando West since September 2015.

*[Desk thumping]*

The Attorney General had a lot of issues when he raised this Bill, and he admitted that there will be constitutional challenge to this Bill because the certificate to this Bill requires a three-fifths majority, meaning the support of the Opposition and/or the Independent Senators, and then when it reaches the other place it definitely requires the support of the Opposition.

Madam President, the Attorney General said that when the UNC was in Government the Bail Bill that we passed at that time helped reduce crime. But he

also gave another example that when kidnapping for ransom was high, certain amendments were made to the Bail Act. This was anecdotal evidence the Attorney General was giving, because it was not based on any study, it was not based on any analysis of the data. So I had to look at the “Crime and Violence in Trinidad and Tobago, IDB Series on Crime and Violence in the Caribbean” by Dr. Randy Seepersad, who is a criminologist. And they would have said that there would have been a decrease in kidnapping around 2005, but this was as a result of preventative approaches taken to stop crime, whereas suppressive measures, aside from their potential deterrent function, come into effect only after crimes have occurred.

The criminologist, Dr. Seepersad, went on to say that there has been a progressive approach to criminal control in recent years. An example of this is the adoption of the restorative justice approach by the Ministry of Justice. Do you know who implemented the Ministry of Justice, Madam President? It was the United National Congress Government that introduced the Ministry of Justice. *[Desk thumping]*

So they are saying in this report that it was preventative approaches. It was resources being given to the police, resources given to the DPP’s office, resources given to the Judiciary that accounted for the decrease in crime at the time of the UNC Government. It was not law alone, because they said that it is evident that much of the legislation that has been developed or is in development is suppressive in nature, and focuses on increasing penalties and criminalizing a wider range of behaviour. It went on to say, Madam President, that the legislation was not the end all of the matter. There must be other things to accompany the legislation for it to become effective in Trinidad and Tobago.

The Attorney General also sought to justify the denial of a constitutional right of bail, based on the statistics. But I was listening to the Attorney General

when he said that the anti-gang arrests in 2011 had about 200, and then it reduced to about 205 now. Then what is the rationale? If there is a reduction in the amount of arrests for anti-gang offences, how can you come to this House and say, well you need this Bail Bill to deny bail to those offences?

Madam President, when you are passing legislation with a special majority there must be proportionality. You are denying a right, but you must a legislative aim to reduce something. If it is already reduced, what is the rationale for the introduction of no bail for those offences? Anti-terrorism again, one arrest.

Madam President, the Attorney General would say he accused us that we are not going to support this, and from the outset I am going to say we are not going to support this arbitrary, capricious, dangerous matter that is in violation of our Constitution. [*Desk thumping*] No support to this.

Madam President, at a time when at a time when we were in government, the United National Congress was in government, the legislation was well intended to reap certain rewards. It was tested, a sunset clause was introduced. If you get no results from something that you amended, that you introduced, why are you going to re-implement this with no result? [*Desk thumping*] They clearly cannot be no sense to this approach. It is a nonsensical approach. And the Attorney General when he winds up, he will belittle us. He will say that we are the cause of crime; that, "Give the police a fighting chance".

It is simple, you know. If the Attorney General wants to pass this Bill and they need a special majority, let us go to the polls, let the PNM try to get a special majority. Let us go the polls. If you want that special majority let us go to the polls. But it is playing politics with crime.

And I would say this, Madam President, because the Attorney General knows that we are not going to support this, because this was a measure that they

attempted to introduce sometime in 2016, and we from the outset indicated that we were not giving any support to the suppression of the constitutional rights of the citizens of Trinidad and Tobago.

But I want to quote, Madam President, because that Bill in 2016 is very similar to what we are doing here. The *Hansard* is the 1<sup>st</sup> of July, 2016, where the hon. Leader of the Opposition quoted from the Prime Minister, and this is what the Prime Minister had to say:

“So who is the bright brain who drafted this?”

He is talking about the Bail Bill:

“It has to be somebody who knows absolutely nothing about what the existing law has in it, who would have drafted this and get the Government to come back to Parliament to waste Parliament time...”

Madam President, something is happening. The same thing is repeating itself:

“...trying to make unbailable what is already unbailable.”

This is the Opposition Leader.

**Madam President:** Sen. Hosein, you need to be a little more specific about the times, the dates that you are making all these quotations from, all right. You need to specify when these statements were made for the record, please.

**Sen. S. Hosein:** Madam President, I am reading the *Hansard* of the 1<sup>st</sup> of July 2016, please, and it was the Opposition Leader quoting from the hon. Prime Minister here. [*Interruption*] This is page 52 please, Attorney General. And the then Leader of the Opposition, the hon. Keith Rowley was saying that:

“I am putting you on notice now, that you are walking that same road, because I do not know who would have drafted this and cause you to be coming here to support it...”

And we have said, “‘You all could not be serious’. You not be serious, because for

a start, most of it does not make any sense.

Secondly, we told you we are not supporting it, but you want to hammer us home.”

**Madam President:** Sen. Hosein, please. You are quoting from the Leader of the Opposition in 2016 who is apparently quoting from a previous statement. Is that correct?

**Sen. S. Hosein:** Yes, please.

**Madam President:** All right. So you have made the quotation, but it is confusing, and therefore I would ask you now, you cannot be quoting at length in your contribution. So can you move on now, please.

**Sen. S. Hosein:** Yes, please, Madam President. And, Madam President, the point is at time the Opposition Leader said he was not going to support the legislation, you are wasting time, and I am going to say the same thing, that this Government, this PNM Government, has come to the Parliament to waste the people's time. [*Desk thumping*]

Because when this Bill does not pass, you know what they are going to do? They are going on a public campaign to bad talk the UNC, blame the UNC and blame Kamla as always. That is their mantra. That is what they hope to achieve in order to go back into government, but the people, their eyes are opened. The wool has been removed over the people's eyes, Madam President. [*Desk thumping*]

I want to ask firstly; this is a very important Bill that touches constitutional rights, the right to liberty and the right to bail. Who was consulted with this Bill again? I would like to know. The Attorney General normally when he pilots a Bill, he would give us the list of stakeholders who his office reached out to. Madam President, I would like to know who was consulted on this particular Bill that is before this Senate.

You are repeating the same thing over and over and over again. Now in the

last incarnation of this Bill, which is very similar to this Bill, with the denial of bail for 120 days, I would like have to have known how many cases were filed and persons denied bail for that period. I would also like to know how many of those cases were started within the 120 days. I would like to know what are the reasons that those cases did not start. I would like to also know if the police have been trained with respect to the application of this law, because this law is very arbitrary. As long as the police says, it is a say so. As long as the police says that you have committed an offence with the use of a firearm, all he has to do is inform the magistrate. Madam President, you know that you are denied bail for that period of 120 days; very, very arbitrary.

I would have thought that since 2014 that this PNM, then Opposition now Government, would have come in 2019 with something new, but it seems as though they are just re-enacting everything that the UNC does. Where is the creativity? Where is the holistic plan to deal with crime and criminality in Trinidad and Tobago?

The Attorney General did say that I would have mentioned the case of *Danielle St. Omer v The Attorney General*, and also the case of *Justice Stuart Charles v The AG*, and that is CV 3475 of 2015. Justice Gobin, she examined the legislation and she found that it had been unconstitutional.

**Hon. Al-Rawi:** She was overruled in the Court of Appeal.

**Sen. S. Hosein:** I am saying that; the Attorney General is anticipating me, that the Court of Appeal did overrule Justice Gobin. But, Madam President, I believe that the matter is now before—

**Madam President:** Could you put it a different way? Could you just say the Court of Appeal has overruled the decision? Let us not personalize it with the judges. Could we just leave it like that?

**Sen. S. Hosein:** I am guided. That the decision was overruled, and I believe that the matter is before the Privy Council now. I stand to be corrected. So I do not know why that we are rushing this without a final decision on this matter. Because let us just say the Privy Council comes back and says that the legislation is unconstitutional, what happens? It is the public's purse that is going to be damaged. What is the haste? Await the decision of the final court of this land, because we have seen many decisions in the past where the High Court would have ruled, the Court of Appeal would have ruled another way, and then the Privy Council would have agreed with probably the first instant judge in the circumstances. [*Interruption*]

**Hon. Al-Rawi:** Thank you for giving way. It is very gracious of you. You do accept that the St. Omer case is now in respect of law which fell, right? So it is academic. So the law that is going to the Privy Council is on an academic issue for law that lapsed in 2016. So there is nothing to come from the Privy Council because that law does not exist.

**Sen. S. Hosein:** I understand that, but at the same time the Privy Council is going to examine the exact same constitutional points that touches and concerns this Bill. Academic or not it will assist in whether or not—it will help us in drafting proper legislation with proper guidance from the Privy Council.

Justice Gobin in that judgment did acknowledge the fact that there is so much legislation already. Why is it that we are passing more legislation? And if you would allow me to quote, this is what Justice Gobin had to say:

“As the bail law stands, S (6) allows for judicial considerations to refuse bail in the case of repeat offenders or persons likely to commit another offence,…”—similar to what we have here—“if they are gang members or suspected to be because of their associations and social ties, if they are persons who are likely to tamper with

witnesses and interfere with the administration of justice...”—regular factors in which the court will consider in granting bail.

This is what she says. She says:

“There is enough law on the statute books.”

A judge is saying this.

“What may be required for this to actually work to protect the public and the administration of justice in the way it was intended is a serious shift in the way objections to bail are dealt with on the part of the police or prosecution.”

So here we are saying that the court is giving guidance, that there may be some more training with respect to the objections being made by the prosecution.

“The implementation requires the police and prosecution to do the work that is required of them. This contemplates full and fair investigations into the background of accused persons and more importantly proper reports on the strength of the evidence of the accused having committed the offence.”

Madam President, that goes back to the provision in the Bail Bill that deals with that an offence is committed, alleged to be committed, a person is charged, appears before the magistrate, police informs that this person committed an offence of larceny, but while they were in the commission of the offence, all the prosecution has to say is that a firearm was used. You are denied bail. No firearm has to be produced, no ballistic report has to be produced, no other forensic report has to be produced, there need not be any evidence of a firearm in the commission of the offence, and this person is going to be denied their constitutional right to bail and their constitutional right to freedom, based on what? The say so of a prosecutor?

We all know that there have been questions raised with regard to the quality of evidence given in this country with regard to the prosecution of criminal

matters. I think at this time, especially from recent events, it is very dangerous, extremely dangerous to give the police this power at this time. It is very dangerous, because we must not make law in a vacuum. We must make law having regard to our circumstances. [*Desk thumping*] We must have regard to our circumstances.

There must be some sort of holistic approach when we deal with crime and criminality. This Bail Bill is not the be all and end all of the matter, and the Attorney General did quote from the statistics of the detection rate. And yes the detection rate may have increased. In 2012 it was 17 per cent, 2013 it was 17 per cent, 2014 it went up to 22 per cent, 2015, 22.8 per cent, 2016, 23.6 per cent, 2017, 29.8 per cent. This is from the police service, a press release by the Commissioner of Police, Gary Griffith. This detection rate is still unacceptable, totally unacceptable. Why is it we are accepting complacency? Why is it we are giving the police all of these powers when crimes are not being detected in this country in the way it should be? Having regard to the resources and the moneys already allocated to the Ministry of National Security, we should have had a detection rate of 80 per cent and excess. This figure of about 20 to 34 per cent is totally unacceptable—totally unacceptable. The murder toll today I am told is about 220 murders already for the year.

Then also the Attorney General spoke about securing the borders, because this Bill seeks to deal with the influx of firearms. It seeks to deal with firearm related offences. But, Madam President, you would appreciate that if warm bodies are being trafficked into this country, imagine how easy it is to traffic firearms and ammunition into this country. This Government, this incompetent Government, has allowed the borders of this country to be porous. They boast that they have won 11 or 12 elections, but the borders are still porous. Four years and all of the

vessels—most of the coast guard vessels are not in operation—and then comes to this population to come and bring reactive pieces of legislation, arbitrary pieces of legislation, capricious legislation, push it down the throat of the Parliament, push it down the throat of the Opposition, try to bully us and then expect us to support this. Madam President, we will not support this legislation. We will not support it.  
[*Desk thumping*]

I will say that on the back bone of statistics also, because I want to have the opportunity to quote the statistics. You know who will be implementing this legislation? It is the police and the court. I will get to the prison afterwards.

Let us look, Madam President, at the criminal indictments file. But before I go there I will just refer you to the clause of the Bill that I want to deal with. The clause of the Bill that talks about this here with regard to when a person is charged, this is subsection (7) of clause 5. It reads:

“For the purpose of this section, except subsection (3)(a), where a person is charged with an offence listed in Part II of the First Schedule and evidence has been taken within one hundred and twenty days of the reading of the charge but the trial is not completed within one year from the date of the reading of the charge, that person is entitled to make an application to a Judge for bail.”

So what does that mean? That means a person is charged, they deny the bail for 120 days, evidence has subsequently been led, but the trial has not been completed within the one year. They are allowed to apply for bail after one year. And I take it, I will seek clarification from the Attorney General at his wind-up that this trial would mean a High Court trial, because a preliminary enquiry, a sufficiency hearing, is not a trial. So that means that I have to wait for the completion of my matter at the High Court, you know.

Let us look at how the High Court disposes of matters in this country. That

section I read is related to no bail for persons who have been charged with possession of firearms or ammunition. Let us look at how they deal with matters in the Judiciary at the High Court level, firearms matters.

**Madam President:** Sen. Hosein, what are you reading from?

**Sen. S. Hosein:** I am reading from the Judiciary Annual Report 2017/2018 at page 28, Madam President. When you look at the type of matter—I am looking at firearms—the time of disposition. Do you know how many matters that were disposed that were of antipathy less than one year?—four; one to two years, zero; two to three years, two; three to four years, zero; four to five years, zero; five to six years, one; six plus years, five matters—five. So you are telling me that a person can be denied bail up to a time of almost over six years if they are charged with possession of firearms and ammunitions in this country, and they have no right to bail? That is absolutely ridiculous. The time that they spent on remand may very well be the period of sentence that the court would have given to them. That is reality of what is happening in this country.

So how can we support legislation like this, when we are effectively denying a person their right, their constitutional right, for a period of how much? Over six years. That is absolutely—absolutely—unacceptable. [*Desk thumping*] These persons who are in remand, the conditions of remand, Madam President. The courts have said it. We have the case of Colin Edghill, Antonio Sobers, Scott against the Attorney General, Sean Wallace, all of those cases dealt with conditions of remand. You had in Colin Edgill, Madam Justice Gobin. She described the Remand Yard as a hell hole. We are putting people in hell hole.

**Madam President:** I take it, Sen. Hosein, that you are completely ignoring my guidance that I offered to you a little while ago. I take it you are ignoring it.

**Sen. S. Hosein:** Sorry, Madam President, I am guided. That judgment

would have described the Remand Yard as a hell hole, but we had the solution. You would remember in 2012, in order to try to alleviate the overcrowding of the prisons—because the prison system is bursting at the seams. You would have had recently a prison break where prisoners would have been roaming this country. Helicopters crashing in this country. We discovered subsequently that the Air Guard is not in the best shape, but we attempted in 2012 to address the situation.

We passed the Electronic Monitoring Act, 2012. Seven years have gone—seven years, and we do not up to now in this country have electronic monitoring bracelets. What is going to happen with the prison officers in the prison when there is overcrowding? There is already so much violence in the prison. Prison officers are crying out for better working conditions. And what you are going to do? Just encourage more, a higher prison population, overcrowding, breaching persons' rights. We are completely ignoring our international obligations, and that is the effect of this Bill. It is effectively—because I cannot deal with the situation, the court system in a mess, the police are trying, but you know what, we will just lock up “all ah allyuh and put allyuh in a jail”. That could never, never, in any democratic society be the solution or sensible decision of any government.

Then we look at the Forensic Science Centre, because this centre has a critical role to play with regard to the implementation of this legislation. When you look at the Forensic Science Centre, if a person has been charged with a firearm, you would realize that the charge would be read that it is something resembling a firearm, until a forensic report certifies that the device is actually that of a firearm. In this country of Trinidad and Tobago, after millions of dollars have been thrown to the Ministry of National Security, would you believe that a ballistic report takes almost two to three years, Madam President, to be presented in a court in Trinidad and Tobago? That is absolutely unacceptable. Persons who are caught

under the new legislation at clause 5 subsection (3)(a) which says that persons who are charged with possession of a firearm or ammunition or prohibited weapon, no bail. Even if your trial starts, even if evidence is led, you are denied bail. Then you will have to sit there waiting for two to three years to say, well we now are going to collect the ballistic report from the Forensic Science Centre. That is what this Bill is doing.

You would also have heard in a previous debate, Madam President, I believe it was last week, I think this is a very important issue that we need to raise, that the Attorney General would have said how much it cost this country to house a prisoner. I took this document from the Ministry of the Attorney General and Legal Affairs. It was a slide show presentation given on the reform of the prison service. So this is a document that was presented by the Attorney General. It says the estimated annual cost of running the prisons—the prisons only—is \$596 million. That is 2015, and these include:

“manpower at the prisons, electricity, water, food, transportation...

There are additional monetary factors in the maintenance of an inmate such as the expenses related to the costs of the administering of the criminal justice system with judicial, prosecutorial and policing services and witness protection.

As at December 2015 there were 3,667 inmates in the prisons with 2,235 on remand.”

Now I would ask the Attorney General if he could give us some updated figures with respect to what the 2019 prison population is.

It says:

“It is estimated that with the inclusion of additional expenses, it may be extrapolated that the average monthly maintenance cost for an inmate could be \$20,000 - \$25,000.”

Madam President, \$20,000 to \$25,000. And we look at the:

“Average length of time a person spends on remand...” This is at December 2015. Length of time, more than 10 years, percentage of inmates on remand, 11 per cent; estimated cost of maintaining one inmate over the length of time, which is more than 10 years, \$2.6 million. Estimated cost of maintaining inmates over the length of time extrapolated \$649 million, that is for 246 inmates over 11 years. More than five years, 19 per cent of the prison population. Estimated cost for six years per inmate \$1.4 million. Five years or less, 70 per cent of the remand population, five years, it cost the taxpayers \$1.2 million. So are we really dealing with the situation? Having regard to our economy, this is an extremely bad decision.

All of this money that we are using maintaining inmates at the prisons, could be used towards the police service. It could be used towards building courtrooms. It could be used towards outfitting additional courtrooms. It could be used to hire additional prosecutors, hire defence counsel through the legal aid system. These are the solutions to the problem. It could also go an attribute towards the maintenance, the restructuring, the reform of the Forensic Science Centre, because that is a very important institution in the implementation of this legislation.

But the Government, and I am quoting from a 17 August 2017 article where LoopTT, where it says that “Gov’t approves \$53.6 million for Remand Prison Upgrades”. This was in 2017, we are in 2019. Where are the reforms? Where is the reform to the remand system? Where is the reform? This is a government of announcements; they are always doing, doing, doing and do nothing. [*Desk thumping*] They always do nothing, Madam President. They always do nothing.

**12.00 noon**

But I want to just—I know my time is limited and I want to get specific into

certain issues I have with regard to certain clauses of the Bill, and let me start with clause 5 which amends section 5 of the Act.

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

And at subclause (b), it says that:

“A Court shall not grant bail to a person who on or after the commencement of this Act is charged with an offence listed in Part II of the First Schedule and has been previously convicted of an offence which is punishable by imprisonment for a term of ten years or more.”

So, a person who is convicted of an offence that carries a penalty of 10 years or more and is now charged with a scheduled offence in the Bill; so conviction and charge.

Mr. Vice-President, under the Dangerous Drugs Act there is an offence called “trafficking”, and if a person has in his possession one gram of marijuana/cannabis, but he is found near a certain radius within an educational institution, that one gram of cannabis/marijuana will be regarded as “trafficking”; so you have one gram.

Then if a person is in possession, not close to a school, but he is in possession of less than one kilogram of cannabis he will be charged for possession, but possession carries—it does not carry a sentence or a conviction of 10 years, trafficking does; so let me make it clear. The offence of trafficking, 10 years; possession is less than 10 years. So the person who is charged with trafficking will be captured under this particular clause.

Mr. Vice-President, where is the justice in this? A person with one gram of marijuana as compared to a person with one kilogram. This clause needs some rethinking, Mr. Vice-President, with regard to how it is drafted because it can lead to certain injustices with regard to the system.

I know the Attorney General is on a campaign with regard to whether or not the Government's policy will be that of the decriminalization of marijuana, but this clause, Attorney General, I think you should have another look at it with regard to the offences that carry a term of imprisonment for more 10 years. There may be some qualification that can be placed with regard to that particular clause, if you accept.

Then, when you look at subsection (3) of clause 5, and I am looking at particularly (b), where:

“(3) Subject to subsections (2), (4) and (5), a Court shall not grant bail to a person who on or after the commencement of the Bail (Amendment) Act, 2019, is charged with an offence—

(b) listed in Part II of the First Schedule and has a pending charge for an offence specified in the...”—same schedule.

So, this is a person who has been on bail, he allegedly reoffends, he has a pending matter plus the current charge. Mr. Vice-President, you would—

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

**Sen. S. Hosein:** Okay. Thank you. You would see, Mr. Vice-President, that with regard to the seriousness of the offences here, we look at anti-gang legislation, Offences Against the Person Act, Dangerous Drugs Act, kidnapping, sexual offences, anti-terrorism again, trafficking, firearms and any attempts to commit those offences, Mr. Vice-President, you would see that some of the offences listed in the Second Schedule may be less serious—sorry, may be more serious than offences that are listed with regard to the tenure. So there may be some engineering that has to be done with regard to that particular section because it can also lead to some injustice with regard to how that section is applied, Mr. Vice-President. But I want to say absolutely that subsection (4) of the Bill, I

cannot, cannot support at all with regard to the denial of bail for the 120 days because we have tried this in the past and it did not work.

With regard to subsection (7) of the Bill, again, this was tried with regard to the evidence being taken and effectively denying a person bail for possession of firearms until a trial is completed. Again, that is not something that can be supported unless the Judiciary has a way in which these matters can be disposed of in a very expeditious manner.

With regard to the sunset clause, for a period of five years, absolutely not, Mr. Vice-President, we cannot agree to persons' rights being infringed for such a long period of time. Again, we admit, Mr. Vice-President, we have tried this legislation as a government with good intention, but we did not reap the rewards that were expected with regard to the implementation of this legislation.

And I ask the Government to take heed, I ask the Government not to repeat an error that was probably made in the past. I ask the Government to come here with good sense because we have seen in this Parliament as of recently, a trend, something that is very sacred to all of us which is the Constitution. At section 1 it speaks of Trinidad and Tobago being a sovereign democratic state. At section 2, it speaks of the Constitution being "the Supreme Law", but as of recently in this Parliament, Mr. Vice-President, we have seen legislation being introduced that effectively curtails the rights, the freedoms, and the privileges of ordinary citizens of [*Desk thumping*] Trinidad and Tobago.

There is a trend, Mr. Vice-President, it is a growing autocratic dictatorship. It is the PNM, this is their final leg of their legislative agenda, it is the death of democracy in Trinidad and Tobago. [*Desk thumping*] It is the death of democracy, and we on this side are not going to stand for the rights of the citizens being curtailed or taken away. We want to have the right to access information from this

Government, we want to ensure that the right of bail is preserved to the people of this country. We want to ensure that persons are given the liberty and the freedom afforded to them under this Constitution. Mr. Vice-President, we will stand for no less.

And I plead with this Government and we demand on this side, Mr. Vice-President, that this bail Bill that is before the Senate be withdrawn forthwith, Mr. Vice-President, and I thank you. [*Desk thumping*]

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

**Sen. Anthony Vieira:** Mr. Vice-President, I remember a time when we did not have burglar bars in our homes and in our businesses. I remember a time when you could leave your car with the windows down and not feel intimidated or unsafe.

I was away last week, and how refreshing it was to just be able to walk about at any time in any place and not feel threatened. We have lost so much. This country has suffered and it no longer feels safe. It is incumbent on us to change it and to reclaim civil society.

This is a short Bill, but it may have dramatic and profound effect in that it will get alleged shooters off the street. We have a scourge of illegal arms. As we know, because of what has been happening in Venezuela, arms are often used as the bartering tool to get access to all kinds of things. Arms have been used hand in glove with the drug trafficking trade. Arms have filtered into our society and they are, in fact, a scourge.

When I reflect over the past year looking at the television, how many times have I seen weeping mothers? A young man learning to drive, shot by a stray bullet; a young girl walking about, killed by a random act of violence; enough is enough. The innocent lives lost cannot be brought back, but we can definitely do

something to stem the tide.

There is no right to bear arms in Trinidad and Tobago, and it is true that citizens have a constitutional right to be presumed innocent and to be granted reasonable bail when charged with a criminal offence, and those fundamental rights, those constitutionally guaranteed rights may only be curtailed or taken away by Parliament for just cause; so is there just cause? I think the carnage on our streets, the illegal gun trade, the gang wars, the weeping mothers; that constitutes just cause.

And while Sen. Hosein made some very good points, I think he missed an important point. If there is no firearm involved, no issue arises. The short answer is, we should make it clear to all the bad boys out there on the streets, lay down your arms, civil society, this Parliament will not allow you to carry guns, to carry illegal arms, to be engaged in these armed offences; if you do there will be dire consequences, we must be serious about this. Singapore is a democratic society, but they do not tolerate criminality. We have to draw the line, there have been too many weeping mothers, too many senseless deaths.

The Bill is tempered. There is a sunset clause of five years, you are not denied bail indefinitely. After 120 days you can go back to a judge in chambers and seek to have bail granted. The accused has to be charged with a serious offence. We as a Parliament can abrogate the right to reasonable bail where it is for the peace, order and good government of Trinidad and Tobago. [*Desk thumping*]

Now, I recognize that there is a palpable tension between the needs of society and legal ethics, there are competing needs and ethical principles involved. On the one hand, there is the need to save lives and maintain peace and order in society, the principle of utilitarianism places the welfare of the many over the few.

And on the other hand, we recognize that such reasoning can sometimes be morally dubious where it undervalues the rights of the individual in the process.

So I am not being glib here, in legislation of this nature we need to be mindful of the conflict between the rights of the individual and the needs of the wider society, group interest. No one wants to undervalue the individual's rights so careful reasoning is necessary and we do have to do some work on this legislation. To assume that everyone accused of unlawful possession of guns or ammunition is a criminal or a menace to society would be a fallacy. Among other things, it ignores the possibility of people being framed or otherwise wrongfully accused. There is a danger inherent in tarring everybody with the same brush where fundamental—and that is further compromised when fundamental human rights are curtailed, in this instance, protection of the law, presumption of innocence, right to reasonable bail.

This legislation is really about detention without trial, it is internment, and as much as I see the need for it, and as much as I want to support it, I am torn because I am also aware of just how easy it is to frame someone, and how difficult it is for an innocently accused person in such a position, and I am not speaking now from theory.

In February 1987, I successfully defended someone who had had a gun planted in and around his premises, and a tipoff informed the police exactly where to go. And not so long ago another client of mine was a victim of a similar tipoff and this time involving drugs. If you want to destroy someone's life and reputation or just get them out of the way, framing them is a relatively easy thing to do, and the effect of this legislation is that we are taking away the court's discretion. So it is incumbent on us to provide some sort of offset, some antidote, some way to redress the balance when that type of evil occurs.

As it stands, the current laws do not really do much to help, relief is tangential at best. Malicious prosecution, making false police reports, entrapment; not enough. We need to up the ante so that anyone who is a victim of a framing-up will face dire consequences.

So, Mr. Vice-President, I have circulated an amendment, I am bringing an amendment to deal with that, but let me say upfront, I do not want my amendment which will be to introduce an offence for framing, to derail or torpedo this Bill. I am quite prepared to allow that—what I would ask is that you consider the amendment, and it may be that it is better brought in the Evidence (Amdt.) Act, but I do think we need to have that looked at seriously because, as you know, I do not want to say elections and politics, but all kinds of frame-ups occur for all kinds of reasons, from embattled spouses to law enforcement taking shortcuts, to people saying it is politically expedient. I think it is an offence that we need to consider, and the effects of a frame-up are dire. You do not only lose your job, you lose your reputation, you have to go and fight contentious criminal proceedings, there is the risk of fine, imprisonment and also a conviction on your record.

So, you know, it is not enough to say that the *Bible* commands that “Thou shalt not bear false witness against your neighbour”, and that is a breach of the Ten Commandments. Evildoers do not take on the *Bible* and so we need to do more, hence my proposed amendment. But I agree with the Attorney General, our bail legislation has gone around in a very circuitous way, in a very convoluted route. This legislation is a step towards clarifying and making the law easier.

I also agree with the Attorney General and I accept that when dangerous criminals are off the streets, crime goes down. The statistics relating to firearms found and seized, and firearm related offences, murder, shootings, woundings, robberies, these are alarming. We cannot ignore what is in front of us, we must do

something about it.

The accused persons under this Bill are not going to be denied bail indefinitely, the law has a sunset clause, and as I like to say, laws are not cast in stone, it is not the Ten Commandments; laws are like clay to be moulded. We must mould our laws to suit the circumstances of our times, and we are in dangerous times.

The right to bail is not absolute, the Constitution allows us to define circumstances and to designate reasons where a person ought not to be granted bail. I do not regard this legislation as arbitrary or oppressive, if we are to claw back peace, order and good security [*Desk thumping*] for our citizens, sometimes draconian measures are necessary. I thank you. [*Desk thumping*]

**Mr. Vice-President:** Minister of—oh, sorry. Sen. Simonette.

**Sen. Garvin Simonette:** Mr. Vice-President, thank you very much for the opportunity to make a contribution to this very important clarification Bill that seeks to simplify the regime for denying bail in certain circumstances.

May I start by congratulating the Attorney General and Sen. Vieira for very clear contributions touching and concerning the reality of our circumstances in Trinidad and Tobago. It is important for the listening public to understand the true context of this issue of bail and the denial of bail. Simply what this Bill is purporting to do and aims to do, is to amend an existing piece of legislation which is the Bail Act, Chap. 4:60. The Bail Act itself stipulates as it exists today, circumstances in which bail ought not to be granted, and a regime that addresses that issue. So this is not, as it were, an entirely new issue or some elephant of denial that comes to those of us vested with the duty to implement good laws and laws in protection of the general citizenry.

So that words in description of the amending Bill, such as “arbitrary”,

“capricious”, “draconian”, “dictatorship”, et cetera, are quite frankly, Mr. Vice-President, irresponsible and simply to be rejected.

What in essence is the effect of bail? Bail is not an order setting the accused free, let us be clear about that. So when we talk about an infringement of a constitutional right, that is not a right, Mr. Vice-President, that bail creates and that accordingly is being infringed by this amendment, and that is elementary to all constitutional and criminal lawyers amongst us and in the general society.

Bail, in effect, is a procedure and a structure that aims to release an accused from the custody of the police, and to entrust him or her to sureties. “Sureties” meaning those who stand in guarantee to the court that the accused will surrender to his trial and hearing, and those sureties as we know are entitled to seize the accused to ensure that that compliance is effected and achieved.

So, Mr. Vice-President, the effect of bail is not to entitle an accused to some absolute right to liberty, but in appropriate circumstances to liberty pending trial. The parent Act recognized that for certain serious offences and on certain conditions that the Attorney General shared, were convoluted, unworkable and therefore themselves capricious, the accused is not entitled for those serious offences to a grant of an order of bail.

The intervention therefore, in clarification of the law, Mr. Vice-President, is welcomed and has demonstrated by the statistics in the area where curtailment of bail was instituted for kidnapping in years gone by, with a very high likelihood of reducing criminality in the specific areas.

In terms of the right to bail, Mr. Vice-President, again, one needs to understand whether or not there is an automatic grant of bail. I think that it is generally accepted to be correct that you have a right to apply for bail, and that save and except in certain circumstances wherein the court exercises its

deliberation and discretion to not grant bail, then such applications for bail for non-serious offences will proceed.

Again, with that regime for the deliberations and considerations and circumstances in which bail may be denied, having existed not just at common law, but within the parent Act at section 6, it is important to appreciate that these circumstances that the court is entitled to consider in its discretion, rebut any suggestion as being contented for by the shadow Attorney General as being capricious or denial of some absolute right.

So let us be clear, where you have a right or an entitlement to apply for bail, and where the court is vested with a discretion, the considerations that the court—the court is entitled to take into consideration certain matters in exercising its discretion not to grant bail. That exists today and that exists clearly under section 6 of the parent Act, and in particular, the more important sections or more important considerations are as follows:

“...where the Court is satisfied that there are substantial grounds for believing that the defendant, if released on bail would—

- (i) fail to surrender to custody;
- (ii) commit an offence while on bail; or
- (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;”

—Those I would call the principal considerations.

So that coming to the Bill, Mr. Vice-President, what is the Bill seeking to do? The Bill seeks to amend the principal Act and to indicate that for a certain period of time and in certain circumstances there shall be no grant of bail to a category of accused.

Before going into the particular clauses, Mr. Vice-President, in a nutshell,

what are we seeking to do as a Government with the amendments proposed in this Bill? We are seeking to address, firstly, and to define with clarity, cleaning up of what in the parent Act is the Second—I believe—Schedule, and that addresses the serious offences that we are seeking to treat with.

In the first instance, we are seeking to treat with firearm offences and we can accept, Mr. Vice-President, that regrettably in Trinidad and Tobago today, we can speak of a gun culture, and quite frankly, Mr. Vice-President, we would be negligent in our duty as legislators, and dare I say recklessly so, if can we cannot with commonsensical appreciation, focus on treating with what is now, as I said, the gun culture of our society.

**12.30 p.m.**

So that the main thrust, the priority focus, in order of priority is the gun culture, firearms offences, and those who attempt such offences with the use of firearms. The other category of offences being treated with in a very clear and precise manner are serious offences against women and children, and that is sexual offences. And we can all appreciate what this Parliament has been doing, and this Attorney General, and Government, has been doing in attempting to amend and modernize the Sexual Offences Act in addressing the question of paedophilia and the registration process per se.

[MADAM PRESIDENT *in the Chair*]

In relation to the—so that the other issue that we are required to consider in relation to the denial of bail at first application as it were, is what is the balance proposed in the legislation in the Bill to bring proportionality to the process? And that balance, Madam President, is contained at proposed clause 5, amendment to clause 5, at subclause 5(4), where the proportionality is set out in permitting there to be an application to a judge in circumstances where no evidence has been taken

with regard to the particular charge within 120 days of the charge. So that if there is a delay in ventilating the innocence of the accused, that delay is capped at 120 days, permitting for there to be an application by that accused for bail to a judge. In my respectful view, Madam President, that provision is a chief's proportionality whereas were it otherwise there would be no, as it were, consideration of delay as it affects the liberty of the citizen or the person, and more so the person who may well be innocent of the charge laid. At the same time the proportionality exists that if you participate in serious crime, and in the light of this legislative amendment you are now made fully aware that the consequence is that you will not be eligible for bail immediately—eligible to apply for bail immediately. Again, in relation to proportionality, we see that the liability of parents and persons in loco parentis who may be liable to a denial under the Anti-Gang Act are permitted to approach the court if evidence has not be taken within a period of 60 days. A reduced period of time for, if I may put it this way, alleged bad parenting.

Again, Madam President, in my respectful view, that is a proportionate approach to persons who may well be in a position to marshal qualitative arguments as to why they ought not after a period 60 days, to remain incarcerated. Again, what does the legislation address in terms of its modernization? Well, at subsection (6) of clause 5, we treat with the question of deportees and/or those criminal elements who wish to practise their criminality cross-border. So that is, if you are a person arrested and you are a deportee, or who is charged in another jurisdiction then you are caught by the provisions of this Bill, provisions of the proposed amendment to the Act. Again, in my view that is bringing our legislative intervention to address the realities of our society and our environment in today's situations. Of course, the exception to the 120-day rule are offences under the Firearms Act. And again, that offence under the Firearms Act, or rather offences

under the Firearms Act are carefully now by subsection (8) of clause 5, treating with a definition of ammunition that brings the law into the modern-day circumstances. Ammunition, of course, being described to capture all categories of explosive projectile, detonators, and the like, used for causing explosions and used in criminal ammunition assisted and aided type circumstances.

And so the Attorney General and this Government cannot be faulted, Madam President, for addressing amendments of this nature that seek to update the existing law. Just harkening back to the categories of offences that are addressed by the proposed amendment to clause 5, these are now set out in the amendment in the new schedule, Part II, of specified offences. In summary, Madam President, we can appreciate that the focus is on serious offences. What is the distinction serious offence to other offences in these circumstances and in the circumstances of the wanton crime in our country? Criminal offences could comprise serious offences, but that are not relative to harm to the person, death, destruction, mayhem. So, for example, offences that are ordinarily described as white collar crime, offences that are not serious which are obviously the summary offences, et cetera, they are not affected or addressed in this schedule. What offences and categories are therefore addressed? Offences under the Anti-Gang Act, and we know that side by side with the gun culture, we are now experiencing in Trinidad and Tobago wanton gang culture, gang-related, organized and mobilized criminal activity. Offences against the person, punishable by imprisonment for a period of more than 10 years. And those under sections 48 and 54 of the Offences Against the Person Act.

Dangerous drugs along with the gun culture, as Sen. Vieira quite correctly indicated, you have the drug culture, and that is the legal drugs and narcotics sale use profiting, and the related criminal activity, much of it aided and abetted by the

use of guns and ammunition. Kidnapping has always been regarding, and was addressed—itsself addressed by a former UNC Government, is included in the schedule. Sexual offences where the alleged victim is a child, including sexual offences under the Sexual Offences Act or the Children Act. And again, statistics have been ventilated in this honourable Chamber indicating hundreds of sexual offences against children. And I believe that hon. Sen. Thompson-Ahye has tried to alert the society and alert this House as to the seriousness of the prevalence of offences against, sexual offences against children. Of course, we have had co-related legislative activity to address this issue and to address ameliorating the continued increase in offences against our children. Again, serious offences, sexual offences punishable by imprisonment for a period of 10 years or more, and of course these would address rape and the like. Anti-Terrorism Act, offences punishable by imprisonment of a term of 10 years or more. Human trafficking, again, a modern activity affecting both women and children, and this is dealt with here. And of course, firearms offences and criminal activity involving firearms and ammunition. The schedule also addresses charges which seek to establish attempts at the above offences.

So what, Madam President, is a legitimate cause for the out and out rejection of this Bill by the Opposition? We have heard from the opening batsman for the Opposition, the shadow Attorney General, that the Bill will be rejected on the basis that it is a denial of the constitutional rights of the citizen, that the Bill is in some way arbitrary, irrelevant, a suppression of constitutional rights, and that this is established by its requirement to be passed by a special majority. He relies also on the fact, not by reference to the statistics, but by reference to an alleged position taken by an earlier Opposition that on some one or other grounds opposed similar amendments. With respect, our duty here today is not to harken back to invent

arguments as to why via some previous position taken, one should reject a sensible and proportionate intervention aimed at bringing a reduction in the likelihood of those who offend while on bail, or additionally, those who are repeat offenders charged with similar serious offences who are denied bail or denied the right to apply for bail. It cannot be that we embark on our legislative function merely in some quasi-academic exercise to score points against each other. I think it is instructive the approach taken by my learned and long friend, Sen. Vieira, in addressing the fundamental objectives of the Bill by reference to the realities in our society today. And what is the logic in attempting to paint some unconstitutionality when the parent Act itself recognized the requirement for a three-fifths majority, and was passed? Are we here tinkering with any fundamental right? Answer, no, we are not. What we are seeking to do is to address and tweak what existed in the parent Act to expand it and to provide a proportionate balance within which it ought to operate.

So that where does the departure from constitutional adherence, and our duty as legislators to uphold the Constitution exist, where the parent Act obtained the three-fifths majority in compliance with what we do when we embark on legislation of this type? This Bill likewise, requires a three-fifths majority. But it is not a new Bill. It is not a new item of legislation addressing for the first time the matters that it addresses concerning the issues of bail. So let us be clear, Madam President, arguments that seek to paint this Government and the Attorney General, as in some way recklessly or flagrantly or capriciously departing from a respect for the Constitution, embarking upon some violation of the Constitution, are quite frankly unavailable to the Opposition on this occasion. Indeed, on any occasion. But in particular, with regard to the serious work and the serious matters that we are embarked upon under this amendment Bill. Let us be clear about that. And it

is for that kind of reasoning or lack of reasoning that the playbook adhered to by the Opposition will be rejected by the general population. So I urge my learned friends on the Opposition bench, reflect. Reflect and—

**Sen. Mark:** That is why we reject.

**Sen. G. Simonette:** Well, you can proceed to reject and you will be rejected. That is guaranteed. So, continue. [*Desk thumping*]

**Sen. Mark:** Call the elections.

**Sen. Ameen:** Call the elections.

**Sen. G. Simonette:** Continue. Ignore the kind of sobriety of the Independent Bench at your peril.

**Sen. Mark:** We represent the people, you know.

**Madam President:** Please Members, please! Continue Sen. Simonette.

**Sen. G. Simonette:** Thank you, Madam President. I know that my learned friend will indeed, reflect over the lunch period, but, so be it.

Madam President, the constitutional infringement arguments and the care to observe any likelihood of infringement are matters to be taken into consideration without doubt. We look forward, Madam President, to the proposed amendment indicated by Sen. Vieira. But let me respectfully make clear that I do not consider that there is any fundamental attack on the constitutional right of the citizen contained in this Bill. This Bill is not denying bail to those who are entitled to apply for bail for offences and charges and the like that are not contained in Part II of the schedule. This Bill is addressing a clarification of the circumstances in which the parent Act already sets a framework for offences for which bail is denied. It clarifies what I can only adopt in terms of adopting the Attorney General's description, the three-strike, two-strike, one-strike rule. So that it brings a definitive degree of certainty to the operation of the law wherein we are treating

with the question of re-offenders, or similar fact, similar crime offenders who are applying for bail.

Madam President, in relation to the offences that are, rather the amendment to Part II, which is the schedule of serious offences, of course, what is now done in a comprehensive manner is the setting out of the relevant co-related items of legislation, all of which address serious criminal offences, serious criminal activity, and the attendant likely harm to the population and the citizenry.

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

**Sen. G. Simonette:** Much obliged, Madam President. The likely harm to the population and the citizenry occasioned by those who are resolved to engage in such criminal activity.

Madam President, as legislators, we are obliged to act. We have a duty and responsibility in this place and in the other, to put the concerns of the citizen first, and the head of any partisan interest, agenda, or ambition. Madam President, I believe that this Bill intervenes as part of a suite of intervention in the administration of criminal justice, that this Government and Attorney General has embarked on and that will undoubtedly bring results when it is passed.

In closing, Madam President, I urge my friends on the Opposition Bench to be sensible and to reflect sensibly. I welcome the support of the Independent Bench, and I thank you, Madam President. [*Desk thumping*]

**Madam President:** Hon. Senators, at this juncture we will suspend the sitting and return at 2.00 p.m. When we do, Sen. Ameen will begin her contribution.

**12.55 p.m.:** *Sitting suspended.*

**2.00 p.m.:** *Sitting resumed.*

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

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

**Sen. Khadijah Ameen:** [*Desk thumping*] Thank you very much, Mr. Vice-President. I take this opportunity to join in this debate, a Bill to amend the Bail Act, Chap. 4:60. Mr. Vice-President, we are here today because the Government is failing in its duty and its responsibility to fix the social problems in this country. [*Desk thumping*] And they have taken the opportunity to come to get this Parliament to legitimize excessively harsh and severe measures in a hope that it will solve the problem. It will not work.

Mr. Vice-President, this Government has failed to deal with the social problems that give rise to the at-risk youth whom I have spoken about on numerous occasions in this Parliament. The marginalized citizens who resort to a life of crime because of the poor and disproportionate distribution of wealth and income in this country, because of a sense of injustice between the haves and the have-nots. If this Government did its job they will not have to bring plaster legislation to cover the festering sore of crime and violence in Trinidad and Tobago. [*Desk thumping*]

Mr. Vice-President, as long as the perception exists, whether it is true or untrue, that there are senior Government Ministers closely affiliated to the drug trade in Trinidad and Tobago—

**Sen. Gopee-Scoon:** What!

**Sen. K. Ameen:**—blood will continue to flow in our streets. [*Desk thumping and crosstalk*] No, no, no.

**Mr. Vice-President:** Senator. [*Crosstalk*] Senator, as much as—you are literally two minutes into your contribution and you are creating that context, the statement that you are making to the average individual could be misconstrued as imputing improper motives. I understand the context that you are trying to create,

but when you use that particular phrase it can be taken as though it is imputing improper motives to the current Government.

**Sen. K. Ameen:** Yes. Mr. Vice-President, I will rephrase. As long as the perception exists, true or untrue, that senior persons in our society are closely affiliated to the drug trade in Trinidad and Tobago, blood will continue to flow in the streets of our nation. As long as there is a perception that justice is for some and not for all, there will continue to be war in the ghettos. As long as you have first class and second class citizens, the 1 per cent versus the 99 per cent, unless we reduce social advantages, unless we level the playing field for access to opportunities, we will live under siege. The Government must tackle the root of the problem.

In my view, Mr. Vice-President, many of the PNM's policies further widen the gap between the haves and have-nots. The PNM is a big part of the problem in Trinidad and Tobago. [*Desk thumping*] So today the Government has asked us to consider certain amendments to the Bail Act, which would see the denial of bail to certain accused and which would put more persons in Remand. You have no solution for the problem of overcrowding in the prisons; no solution for the situation and the circumstances in Remand, but you have come with this oppressive piece of legislation to ask us, the Opposition and the Independents, to support you to put more people in that same Remand Yard under those conditions.

Mr. Vice-President, I want to let you know that in this country, people are angry, people are outraged. They have reached a point in this nation where if you call an election tomorrow the PNM will disappear from the landscape of governance. [*Desk thumping*]

**Sen. Baptiste-Primus:** Dream on.

**Sen. K. Ameen:** And that is because as far as they are concerned the

Government is doing nothing to deal with the real problems confronting people: economic security; social security, national security; it is failure, after failure, after failure. They are not presenting a solution. They are not part of the solution even. In fact, they are part of the problem, they are the problem. [*Desk thumping*]

So before we consider what, you know, before we consider these measures, I want to ask the Government to be clear in what is your purpose for this measure. The purpose of bail is to ensure that the person shows up for their proceedings in court. The remand and the denial of bail is not a punishment, because you are innocent until proven guilty. So if it is the Government's intention to use the denial of bail as a form of punishment, immediately you run into trouble.

By definition, bail is a temporary release of an accused person awaiting trial, an accused person, not a guilty person, sometimes on condition that money is lodged to guarantee their appearance in court. So this security, whether it is cash or bond or property, is pledged or given to the court by or on behalf of one accused of committing a crime to obtain release from incarceration and to ensure the person's future appearance in court when required during criminal proceedings. It works, Mr. Vice-President, because if the accused fails to appear before the court, the bail could be revoked and he or she would then be remanded in custody. It is not because this person might be afraid to lose the money that was put forward or lose the property. It works because they want to avoid being on Remand.

And, Mr. Vice-President, that brings me to Remand, and I think this is a good opportunity for the Government to account to the citizens of Trinidad and Tobago for some of its promises. Time and time again we always come across broken promises left by this Government.

In a previous debate—I cannot remember if it was on the Bail Bill, but in a previous debate I remember the Attorney General sharing with this Parliament that

the average cost of treating with a prisoner is around \$25,000 per month. And that covered food and transport and other amenities when you do a head count. It is in the interest of the State to reduce the cost of keeping these prisoners, or is it? Between \$80 million and \$90 million is spent a year just on prison transport. Yet the State, over successive political incarnations, has failed to have courts located close to or in the prison. And we have to ask ourselves, as a conscious-thinking nation, whose interest does it serve to spend \$80 million to \$90 million a year in transport alone for the prisons?

The conditions at the prisons, the conditions at the Remand, because we are speaking about a period before a person is sentenced so that this accused will be on Remand. We have heard countless horror stories of the conditions, of the crowded accommodation, of the pail bucket system of waste disposal. And I recall—I came across an article, that was a newspaper article, indicated that the Government had approved \$53.6 million for prison upgrades. And the first line indicates and I quote:

“Prisoners at the Golden Grove Remand Prison will soon find relief from using the ‘pail system’ as Cabinet has approved TT\$53.6 million for the upgrade of the facility’s sanitation, sewer and plumbing systems.”

The article further quoted the then Minister of National Security, the hon. Minister Dillon who indicated, quote:

“This upgrade will look at the wastewater and sewer treatment, plumbing, electrical system, the ventilation, and CCTV system...”

He said that while there is a plan for a long-term remand facility which will be actioned within five years, he said the present financing is being done to address immediate concerns.”

This was in 2017, two of those five years have gone. I have never heard an update

with regard to the improvement of the conditions at the Remand prisons. It is possible that it is ongoing and the Government has not had an opportunity to account to us for the \$53.6 million allocated. And this debate is an ideal opportunity. So I want to encourage somebody from the Government side to take the opportunity to tell us what happened with that.

If we are going to take measures that would increase the population in Remand, my question: Has the Government or anyone on its behalf had any consultation with the Commissioner of Prisons, with the association of prison officers? We have had numerous instances where the safety and security of prison officers has been compromised, has been under threat. Prison officers have been speaking out on it. The overcrowding in Remand is part of the problem and this situation could see more persons on Remand and it is very important for us to have consultation with the stakeholder, particularly the officers who are there to hold and treat, and their security and safety is important.

And, Mr. Vice-President, also important in consulting with them is to ascertain the manpower requirement, given the expected increase or the expected number of persons who might be on Remand because they do not qualify for bail. So those are some issues you must discuss with them.

Mr. Vice-President, some years ago, in 2011, this Parliament passed the electronic monitoring Bill. That is another measure that we have not heard about and it allows the police to track the whereabouts of accused persons. This is a mechanism that we could use to reduce the denial of bail. The purpose of bail is to ensure that the person comes to court. The purpose, in fact, is to secure so that they would not—you know, you do not want them to escape the jurisdiction, go to another country. But if you can track their whereabouts, there would be no need to deny them bail. This is a measure that would help deal with the overcrowding at

the Remand and I think it has to be given consideration. I do not know if any of the Members opposite have any update on that and that is something that if it is not answered in this debate, I intend to bring a question, because I think it is a good opportunity for matters like that to come to the Parliament for the nation to know what is going on.

Mr. Vice-President, during the lunch break, on my return from the lunch break, I met some documents which were distributed to all Members. I believe it came from the Attorney General and much of it is copies of statistics from Crime and Problem Analysis Branch of the TTPS. And some of these statistics were referred to by the Attorney General, arrests under various of the offences identified in this Act to deny bail, arrests under anti-terrorism, arrests under larceny, arrests the Forgery Act, Sexual Offences Act, serious crime detection rate and so on.

Mr. Vice-President, while I appreciate the bundle that the Attorney General has sent, I think it is very important to take into consideration with this, a matter that my colleague, Sen. Saddam Hosein raised earlier. And looking at the arrest rate is one thing, Mr. Vice-President, it gives an idea of how many people may have been accused of the crime. The number of cases that go through the court and you get a guilty conviction and then subsequent sentencing is also important. How many people get off? Also, very critical for us to consider is the number of years that these matters take to be resolved. Attorneys who practise can give you points of hiccups, from a simple thing like getting the client's criminal record. So while it is okay to see the number of arrests I think the statistics brought by my colleague Sen. Hosein about the length of time cases take come to an end, and they were talking about, in many cases six years to 20 years for the crimes that have been identified in this Bill.

Do we intend to deny a person bail for this length of time for them to

languish at the Remand Yard in its present conditions, with the slow pace of the justice system in our country? It is very likely then that their time on Remand would exceed the time they could be sentenced to if they are found guilty.

So, while I do agree that there are a number of—that the offences identified, that there needs to be a clampdown, a crackdown on offences under the Anti-Gang Act, the Dangerous Drugs Act, kidnapping, sexual offences, and particularly sexual offences against a child, terrorism, trafficking in persons and firearm offences. Mr. Vice-President, we have to look at the crime—we have to look at the, when we decide to restrict bail, what has this Government done to improve access to justice?

Areas that I feel, Mr. Vice-President, that, in fact, I know that the previous Government had been working on assiduously, and had some success in, include well-equipped police service, well-staffed and well-resourced public prosecutors, functional courts in rural areas. We have heard time again about Princes Town and Rio Claro Magistrates' Court and the conditions in several of those areas; easily accessible legal aid for those who need it; paying the legal aid attorneys on time and perhaps considering increasing what they do get; having an efficient justice system; having safety for prisoners and accused persons. These are some measures that I think we have to improve before we say we want to deny people bail.

I want to go now, Mr. Vice-President, into some specific areas. The present Bill before us, the new section 5(2):

No bail for—“...a person...charged...”—under the new—“Part II of the First Schedule and has been previously convicted of an offence which is punishable by imprisonment for...ten years or more.”

So the Government is essentially saying, listen, people who committed these serious crime you do not want to give them the opportunity to go back again. The

new section 5(3)(a):

No bail—“...for possession of a firearm,”—possession of—“ammunition or prohibited weapon as the case may be;”

It might sound good, Mr. Vice-President—what is the Government doing to get guns off the streets? What is the Government doing to prevent guns from coming into our country? So by the time it reaches into the citizens’ hand, the young boy, the youth man who feel that it have no alternative but to have a gun and commit robbery, by the time it reaches him, he is the small man who taking the fall for the Mr. Big that has been hiding. New section 5(3)(b), no bail for a person charged with an offence:

“listed in Part II of the First Schedule and has a pending charge for an offence specified in the said Part II;”

There is also new section 5(3)(c), no bail for a person charged for an offence:

“listed in Part II of the First Schedule...”—and the court is informed by the prosecutor that the person used a firearm for the commission of the offence.

So I have some concerns.

This could be very dangerous. Mr. Vice-President, I know of times and I have colleagues who are practising attorneys, I have persons who do social work, who encounter accused, could tell you that this provision could be abused by prosecutors. And this provision simply calls for an indication by the prosecution that a firearm was used. At this stage of the trial no proof needs to be demonstrated, just an indication to the court, so an offence is committed and you indicate that a firearm was used. Of course, Mr. Vice-President, the firearm or the thing alleged to be a firearm has to be tested and proven to be a firearm and then we have the Forensic Science Centre, which I would not touch on right now because it is so much. But let us say an accused person is charged for kidnapping

only. So there is no possession of a firearm, no firearm was found. The prosecution indicates that they have information that a firearm was used in the commission of the offence, the kidnapping offence. But they have not found any gun. No gun went to forensic, nothing like that.

The court then, if this amendment is accepted, would then have to refuse bail just based on that indication. In practice, this could be used by unscrupulous police prosecutors and trust for the police—and we have seen numerous instances, trust for the police in this country is another issue, but this could be used just to deprive persons of their liberty. So thereafter, no gun has to ever be produced and no charge for possession of firearm may ever be laid against the accused, but they would be denied bail.

So there has to be some consideration and amendment to say possibly that if the prosecution does not lay any firearm-related charge against the accused within a specified time, a reasonable time, the attorneys could recommend, based on their practice, whether it is one week, 21 days that the accused would then be allowed access to bail. So we cannot leave a situation like that to languish and the possibility of abuse. Because if the police do not get the gun in a certain specified space of time—I mean, sometimes things magically appear and disappear. I do not know if they do not find the gun within a reasonable time, say, one week or three weeks, are they going to find it in three years? How long are you going to just keep this situation pending? So that is something that I have a concern about and we would deal with that at the committee stage.

New section 5(4), if no evidence has been taken or led before the court, be it Master or a magistrate, relative to the offence in 5(2) and 5(3) in 120 days the accused may apply for bail by a judge in Chambers.

New section 5(5)(a) no bail for a parent who has a child living with them

under the anti-gang who is deemed to be a gang leader.

New section 5(5)(b), where bail is granted in relation to 5(5)(a)—which is the parent with the child under the anti-gang—if no evidence is led in 60 days they could go before a judge in chambers.

New section 5(6), no bail for an accused charged under 5(2)(1) and it has been found that the accused has a conviction for a matter similar to that listed in Part II of the First Schedule in a competent foreign jurisdiction.

Mr. Vice-President, so first of all the section says that it has to be found. So it means that it has to go for tracing, you have to get—pull the records, the police would be given time to get the criminal record and so on. But attorneys who represent criminal clients know that tracing and producing the criminal record to the court does not happen overnight. Even an ordinary citizen who has to get a police certificate of character has to wait some time and when it goes to court it takes much longer than that. In many cases the criminal record is sometimes not made available at the first hearing and the magistrate would say, I give you some time again, come back again. So again it is postponed.

The new Criminal Procedure Rules indicate that tracing must be made available within two days of charge or the court can grant bail. So if it is found on the first day, is it you are going to grant bail or is it that they have find your criminal record, that whenever they find the criminal record the prosecutor can indicate that he has it and that your bail can be revoked. So there may be a contradiction there, because if in one instance you are saying that, according to the Criminal Procedure Rules, that tracing must be made available within two days of charge or the court could grant bail.

And then, on the other hand, if the prosecutor could come forward, sometimes it is three weeks, sometimes three months after, that initial bail is

granted under the new Criminal Procedure Rules, he could come after and say, I have a record that falls under one of these sections that this person should be denied bail. Then do you revoke the bail? So you could have an indication from the prosecutor, do you then have an indication from the prosecutor and have the court or the magistrate wait on the criminal record and disregard the Criminal Procedure Rules or do you go with denying the bail completely?

Secondly, Mr. Vice-President, in this group of clauses that I have taken here, this section speaks to criminal records and convictions in a competent foreign jurisdiction. A competent foreign jurisdiction when it comes to matters of extradition, for example, is defined as jurisdictions where our country has an extradition treaty. So if there is a country where we have extradition arrangement we call it a competent foreign jurisdiction. Is there any definition for a competent jurisdiction as it pertains to bail? And we could probably be guided. So for the criminal record, I mean, what would be considered not a competent jurisdiction as opposed to a competent jurisdiction?

Mr. Vice-President, attorneys who practise in Trinidad and Tobago do matters for people of different nationalities, people from Venezuela of course, people from Colombia, the Dominican Republic, they deal with objections from the prosecution related to the criminal record for these persons. And these criminal records have to come from our local division or from Interpol, but then you also have a question again of the time. And these attorneys would have to request the record and it takes a very long time. In fact, in some instances they never receive the record, but the reality is it takes some time to procure it and then you have somebody waiting for that criminal record to come forward so this measure could really be abused.

**2.30 p.m.**

And Mr. Vice-President, saying that in light of just a few hours ago there was an article put out on the electronic media from CCN TV6 where three police officers were charged with—I have it right here. They were charged with falsely imprisoning and robbing a 51-year-old man last year. There are numerous instances of situations where police officers abuse the system. There are even instances when police officers have personal motives to do so, and there are instances when police officers are alleged to be part of a criminal ring, and you would see that targeting to get rid of a certain person from circulation and so have them before the court and denied bail before the matter could be—and it would be years before the matter could be adequately ventilated.

Mr. Vice-President, I want to also mention a concern for what happens on Remand, what happens to a person who lives under the circumstances in Remand, what happens to them mentally and emotionally. Recently there was a joint select committee—the Human Rights Equality and Diversity Committee had a hearing on the impact on mental health and family life of the remandees at Remand Prison, and there were some interesting findings there. Do we really want to send more people to possibly create criminal-minded persons, to create people whose mental wellness and well-being is compromised, who to return to society with mean thoughts and mean objectives in their minds and in their hearts, to put it mildly? But Remand Yard is a breeding ground for criminals. Even people who have the best intentions, sometimes have to side with a gang for protection and bare survival. It is a recruitment ground for gangs. It is a training ground for criminals. You are literally breeding more criminals when you deny more people bail and send them to Remand. [*Desk thumping*] You are creating a bigger problem.

Mr. Vice-President, I know that justice is a philosophical thing. It is a concept of rightness and correctness in terms of ethics. Justice is concerned with

both the prescriptive nature in terms of what is just, that is, what should be done, and then the response to actions that go against what is just, including retribution. So while justice might be a bit of a nebulous concept, we all have a view, but we can recognize it when we see it, sometimes more so when we do not see it. We can identify injustices in actions, in things we observe in society, in decisions that are made.

So, Mr. Vice-President, I feel very strongly. I have a strong sense of justice and I do not want to go off talking about the philosophical concept of justice and how this is denied in this debate, but this Bill makes it possible for a person to be accused of an offence, denied bail for a very frivolous—possibly a very frivolous accusation or, should I say, something without much basis. It can be used to victimize people. And, Mr. Vice-President, let me say, I am in no way saying let criminals get off scot free. I am particularly concerned about crime and violence in our society. You see the list of offences I called earlier, Mr. Vice-President, things under the Anti-Gang Act: kidnapping, sexual offences and particularly for sexual offences against children: trafficking in persons, firearm licence, we have to clamp down on these things happening. We have to make guns less available. We have to make drugs less available. We have to go, as a nation, and the State has to go after the big boys and the big fish in the drug trade.

When it comes to sexual offences, we, as leaders, have a lot to make up for in terms of how we speak and how we treat with victims of sexual offences. We have to reduce the trial time—the long trial time in our justice system. The Forensic Science Centre is in a mess. They have many challenges, and I know some of my other colleagues will speak about that, because it is an issue that is very relevant to this debate. The DPP, the resources, the human resources in particular, the accommodation, the challenges of the DPP have been shared in this

debate, at JSCs in this Parliament, and it is also very relevant. If it takes six to 25 years for trials to be completed, trials that fall under these type of offences, that goes against the spirit of justice. So had these measures been brought in the circumstances where you had an efficient justice system, where you had shorter time periods, where you had less corrupt police offices, where you had DPP who was well-equipped and forensic evidence that is beyond reproach, I could find myself possibly agreeing, but in the given circumstances, Mr. Vice-President, I cannot.

You know, I always speak about the need for police social work's early intervention within communities. I want to take this opportunity to commend the police youth clubs, [*Desk thumping*] particularly the one in Diego Martin, Mr. Sharbodie and the one in Oropune who I personally worked with and I see the good work that they do, but all of them. I want to reiterate the need for the use of dispute resolution opportunities within the justice system. The previously proposed justice complex at Trincity which was proposed under the People's Partnership Government, which the opposition at the time protested against, that complex had space for dispute resolution in a big way and that is the direction we should be going.

We should be expanding duty counsel services. I mentioned already the legal aid—the poor little legal aid lawyers who “does have to wait so long to get their little fees”. You know? I also want to encourage that we should perhaps look at funds for disbursement when lawyers do pro bono work. Lawyers who choose to do pro bono work in this country have to bear the cost of filing and all those other little administrative costs, and it is very possible for there to be a system to reimburse people who take that decision to give civic duty. Mr. Vice-President, we have to—and I am sure there have been studies by criminologists in this country.

We have to identify the blockages in the court system and systematically work on reducing it over various administrations. That has to be an objective in this nation if we have to see justice being swift; if we are to see crime reduced; if we are to see a fair-minded and even-handed system of justice in our country that does not have the prejudice that people perceive it does have now in terms of between the “haves” and the “have-nots”.

Mr. Vice-President, this Bill, I think it is an opportunity for—one thing I must say, in closing, Mr. Vice-President, the Attorney General in his contribution indicated that when the PNM was in opposition and the Partnership was in government, there were many pieces of legislation that the PNM voted with, and I will tell you the huge difference in this and in other measures that the Attorney General had brought. When we were in government, the People’s Partnership consulted with stakeholders; had meaningful consultation. [*Desk thumping*] That does not happen under the present Government. The Government and opposition very often sat and worked out, and made suggestions for amendments, so that when a Bill came before the Parliament, even though the People’s Partnership had the required majority and did not need the PNM’s vote, we still sat and had collaboration. This Government does not care to do that. It does not care to have consultation and have the legal minds [*Desk thumping*] in our country have their input. And that is the huge difference. That is why you will not get the support, because you bring bad law.

If we sit together and we have collaboration and you bring good law, you will get the support of the Opposition, as we have proven on numerous occasions. In fact, the recently concluded Sexual Offences Registry Bill is one that was just in the last debate.

**Hon. Senator:** Ohh, no, no. You were not here.

**Sen. K. Ameen:** So, Mr. Vice-President, I want to urge that we have more measures like that and I want to thank you for this opportunity to contribute. [*Desk thumping*]

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

**Sen. Hazel Thompson-Ahye:** Thank you, Mr. Vice-President. As a citizen of Trinidad and Tobago I can well understand the sentiments that have moved the Attorney General to bring this Bill before this House. I read the newspapers every day. Unlike many of my professional colleagues who tell me from time to time, they no longer buy newspapers, I spend, I think it is \$9 a day, buying the main newspapers. And when I read the court reports which speak—which write about, I should say—court hearings, about someone being sentenced for an offence involving firearms and that that offence was committed while that person was on bail for a similar offence, I ask myself: What is happening here? What is happening with these personnel who adjudicate on these cases? Can they not see? Can they not hear? Can they not understand? And sometimes I am quite annoyed and frustrated. So I understand the sentiments. I understand the concern and I agree, something has to be done.

But, you know, in spite of my preamble, I do have to part company with the Attorney General. The Bail (Amdt.) Act in its present form, removes the discretion from the Judiciary to determine whether the constitutional right to bail conflicts with the right of the individual. So the Bill that we are bringing here, does it infringe any rights? And I heard it this morning from a Government Senator that there is no constitutional right to bail. And I went back into my Constitution and I looked at the article that dealt with the right to liberty, and I said, does it not happen that when I cannot get bail—when someone cannot bail—that the right to liberty is, in fact, interfered with? What about the presumption of innocence? What

about the fact that under the Constitution you have a right to be released on bail? So that if the right to bail is being restricted—in fact, even if I have excessive bail imposed upon me, the right to bail is being interfered with. I am not saying that that right to bail should not be interfered with. Not at all. There are instances where it ought to be. But when it comes in conflict with what I hold dear to my heart, the right of children, when principles of child justice are being interfered with, well then, we must part company.

Trinidad and Tobago, like all other countries of the world, except the United States—and I am fond of telling them that; they do not like to hear it—has ratified the Convention on the Rights of the Child. We did that in December 1991. Further to that, we, in the Caribbean, held a conference, The Caribbean Conference on the Rights of the Child, and we gathered in Belize City—when I say, we, I mean the Caribbean people—and we produced this report, The Caribbean Conference on the Rights of the Child: Meeting the Post Ratification Challenge. And in this document we came up with a specific document: Commitment to the Rights of the Child—the Belize commitment to action for the right of the child. Signing that commitment on our behalf was the hon. Manohar Ramsaran. It fell within his remit at the time. And one of the things that we committed to do was to review and revise the relevant laws, policies and programmes to fully comply with the letter and the spirit of the CRC, the Convention on the Rights of the Child.

So whatever we do, whatever laws we pass, we must comply with the Convention on the Rights of the Child, the letter and the spirit, and so often we forget the spirit. We undertook, as well, to make, in Article 42, the principle and provisions of the Convention widely known to adults and children alike. That is in Article 42. And when I sit here I say to myself, why are we falling down on this? Because so many times I find that, as a Parliament, as a people, we are not familiar

with the Convention on the Rights of the Child.

Having ratified, we had the obligation to report, and we have reported from time to time. We are always late. We are very late but we do report. And after reporting, the committee on the Rights of the Child, which is the group of 18 experts who look at our report and say where we have done well, they always find something good to say about us, about everybody, because we want to encourage people, and then we say what needs to be done. And one of the things that the committee said, based on our last report, in their concluding observation, was to undertake systematic education and training on the rights of the Convention for children and their parents, as well as professional groups. So the state party is supposed to do that: professional groups working for and with children, in particular parliamentarians, judges, magistrates, lawyers, law enforcement officials, civil servants, personnel working in institutions and places of detention for children, teachers, health personnel and social workers. So this is the concluding observation on Trinidad and Tobago's report—the 2006 concluding observations.

Now what Article? I am sure you are waiting to hear. What am I talking about? What is the Article that is being infringed? And I speak here of Article 37 of the Convention. And Article 37 says:

“That no child shall be deprived of his or her liberty unlawfully or arbitrarily.”

But the important part is that:

“...detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

So when we are talking about “the shortest appropriate period of time”, therein lies the rub, which indicates that somebody must determine what is “the shortest

appropriate period of time”. So there ought to be some determination of what is the shortest appropriate time for a juvenile. So once you take away the original discretion, it means that somebody else—and this Legislature is purporting to do that, to determine that 120 days is, in fact, a period, which is three months. And as I said last week in the Senate, when you are dealing with juveniles, when you are dealing with—the more acceptable word is “children”, you must think of time in a different way from when you are talking about children—with adults.

Now, because there has been so much confusion about child justice, the committee on the Rights of the Child went a bit further and put out a document called a *General Comment No.10: Children’s rights in juvenile justice*, and that document was to encourage state parties to develop and implement a comprehensive juvenile justice policy based on compliance with the CRC. So anytime we are doing anything that is going to affect children, we have to look for guidance from that document.

What are the recommendations for a comprehensive juvenile justice policy? And it talks about pre-trial detention. Children languishing in pre-trial detention for months constitutes a grave violation of Article 37 of the Convention on the Rights of the Child. And it speaks about the need for there being an effective package of alternatives being available for state parties if they are to fulfil their obligations under the Convention on the Rights of the Child.

Now, Mr. Vice-President, when we talk about child justice, we are talking about individualized justice. We must look at the question of proportionality and we must ensure that whatever penalties we impose, whatever we do, it must be fitting to the circumstances, not only of the offence. So what we are looking here in this Bail Bill, we are looking at offences. But when you are talking about children, you must look at both the commission of the offences and you must also look at

the particular offender, because we are talking individualized justice. We have another principle. So we have rehabilitation. We have best interest of the child. We have the child's right to life, survival and development, and all of these things are impacted by how we treat juveniles; how we treat children who are in conflict with the law.

One of my colleagues this morning mentioned restorative justice, and every week I mention restorative justice, because we have a system of retributive justice which asks: How do we punish the offender? That is the question we ask: How do we punish the offender? So we have a list of offences and this Bail Bill is to deal with the offences by punishing the offender, by keeping that offender away of society. But what I want to emphasize is that when we are dealing with child offenders, we must do more than that. We must look to restorative justice which asks: How do we restore the well-being of the child, the victim and the community? It has been well documented that deprivation of liberty has negative consequences for the child's harmonious development and seriously hampers the child's reintegration in the society. And I quote here from the committee's general comment Number 10, which was brought out in 2007, and next time the committee meets they are actually looking at revising that again.

So we want to do what is best for children. We want to do what is right by children. So we are trying to avoid a situation where bail is kept away from them for a lengthy period of time. We try to avoid a situation where excessive bail is given, because if you have excessive bail, it really amounts the no bail at all, and that is the position in which they can find themselves. When we look at the circumstances, sometimes for the offence—and I spoke last week about the young boy who is devastated, who has now a mental problem because he is waiting for his preliminary enquiry and it is a case where—it is a sexual offence. So we want,

really, to try to have the children in our society as wholesome children.

So I am willing to support a bail Bill that will deny for a reasonable period of time, a situation where there is no bail, but when it comes to juveniles, I want to insist that we look at the principle of individualized justice; we look at the principle of proportionality; we look at rehabilitation and we look at reintegration. Because when you have someone in an institution, which is really a training school at times, some of them come out being much better educated in terms of crime than the people who are in the society. So we want a situation where we can save our youth. So we are not going to be looking only at saving the society, because if we do not save our youth, we are, in fact, destroying our society, a society that we have to live in.

So I would urge the Government to look at this Bill again, look at the implications for child justice, see what you can do in terms of removing the restrictions for this lengthy period without bail, and come again, and perhaps then, it would be pleasing to me. And perhaps then, you can get my support.

I thank you, Mr. Vice-President. [*Desk thumping*]

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

**Sen. Sophia Chote SC:** Thank you, Mr. Vice-President, for the opportunity to speak on the proposed amendment to the Bail Act. One of the first things I learnt when I was appointed as an Independent Senator was that your guiding light is really the Constitution of the Republic of Trinidad and Tobago, so I think that is where we should start. And I want the place this on the record. I know my friend referred to it, but section 5(2)(f) says that you are not allowed to:

“deprive a person charged with a criminal offence of the right—  
(i) to be presumed innocent until proved guilty according to law...”

I think that is important.

“but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;”

Well, that does not really apply to us:

“(ii) to a fair and public hearing by an independent and impartial tribunal; or  
(iii) to reasonable bail without just cause;”

And how this works, the reasonable bail without just cause, we can see an example of how legislatively that is possible when we look at the Bail Act which was passed with a constitutional majority. Because if you look at the Bail Act, while the Constitution says that you are entitled to reasonable bail, and so on, section 6 of the Act says, well, while that is true, and in particular 6(2)(a), it says:

“where the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail would—

(i) fail to surrender to custody;  
(ii) commit an offence while on bail; or  
(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;”

The court is entitled to refuse bail.

### **3.00 p.m.**

And there are many categories like that where under the Bail Act, a court hearing an application for bail or considering an application for bail is able to say that regardless of whether you have previous convictions or not, or whether this is the first time you are arrested, the court can refuse you bail. So we already have legislation which is quite draconian in its potential and indeed in its operation. So I would like us to be clear as to what the status of the law is.

Now, it seems to me that the thinking behind this proposed piece of legislation is a certain amount of anxiety about firearms and the impact that

firearms have on criminal activity in the country. Well, who would not be concerned about that? But to me, placing someone in custody for 120 days and telling them, “Well, you will remain there until you could get bail”, is not taking any firearms off the street. It is taking a person off the street, his firearms, unless he is taking it—[*Interruption*] I am sorry? I beg your pardon? I am sorry, Madam President, I thought I heard something. Unless that person is taking his firearms stash into the prison with him, then his firearms are on the outside working for him while he is inside. So if this is the thinking behind what we want to cure, then really, there is a disconnect between the problem that we are trying to solve and the resolution—the legislative resolution that is being offered to this honourable House today.

Now, perhaps I should then go on to look at the statistics provided by the hon. Attorney General and they have been very helpful in my consideration of whether I ought to support this proposed amendment or not. What I do see—and I think all Senators may have it. What I do see for the year 2019, well, we are in June, we are six months into the year and 212 firearms have been found and seized. Now, I do not know what the statistics were at June for 2017 and 2018 but if we are to gauge, it seems as though we are lapsing in terms of our location and seizure of firearms which are out there and which may be being used to commit crimes.

So if we go to the next page and we look at reports of firearm-related offences. Let us only look at 2019. We see, okay, there are 419 reports to date of firearm-related offences. But when we look at arrests for the possession of firearms for this same period, we see that there have only been 140. So you see that the point I am trying to make is that numbers do not always tell us the correct story. We talk about one of the proposals is to include offences under the Anti-Gang Act into the schedule where the person would not be able to get bail for 120

days and so on. Okay. So let us see. In 2018, one arrest under the Anti-Gang Act; 2019, 5. Arrests under the Larceny Act for 2019: serious crimes, 40; minor crimes, 28. Although the hon. Attorney General has said that there might be some ambivalence about whether larceny and receiving should be included in the schedule. Arrests under the Dangerous Drugs Act for 2019 so far, in June 2019, is 148. Now, we are talking about arrest, not charge. Right? Because this is what is headed here.

Arrests under the Anti-Terrorism Act for 2018, well, apparently we have not had any for 2019 which I think should be wonderful for us. Arrests under the Anti-Terrorism Act for 2018 is one. Arrests under the Trafficking in Persons Act—and this one is actually quite terrifying, zero. Arrests under the Kidnapping Act for 2019, 16. Last year, arrests under the Kidnapping Act—well, for 2018, was 119, second only to the number for 2012 which was 141. Arrests under the Forgery Act for 2019, June 2019, 35. Serious crimes detection rate, and out of 3,869 serious crimes reported, the detection rate has been 1,089. Now, I suspect that detection rate may mean when a charge is laid in the matter. So let us look at the next page. Arrests for sexual offences 2019, in all, we have had 36. Now, I accept that criminal activity does not go up a sliding scale or does not move down a sliding scale but I think these figures would give us an idea as to: first, are we using the right approach to solve the problem that we want to solve, and secondly, is the approach that we are taking proportionate.

Now, if I may refer to a report in the *Newsday* of the 9<sup>th</sup> of June, 2019, there was a report which dealt with the Commissioner of Police talking about ballistics and the reporter said there was an:

“...admission by Commissioner of Police...that ballistics testing on weapons fired in a...shooting incident, at Carenage, that killed 14 year-old Naomi Nelson could

take up to six years...”

So you are saying that we are dealing with a problem of firearms and firearm-related offences by incarcerating persons charged for these offences for 120 days without bail in breach of what appears to be their constitutional rights, and yet you are also saying that there really is no possibility or there is a very small possibility that this person will come to trial or even have his trial completed within one year. I accept that there have been things which have speeded up the justice system, judge alone trial and that kind of thing, but I also do know that judge alone trial cannot solve the problem of the Forensic Science Centre. [*Desk thumping*]

And I have been in the courtroom often enough to observe and I have heard from prosecutors at the Office of the Director of Public Prosecutions that there are murder trials that they cannot start or cannot proceed with because the exhibits were sent for DNA testing at the DNA lab which apparently has been non-functional for about a year to 18 months. I have no reason to doubt these prosecutors making these representations to the court.

So it seems as though there is a significant aspect of the criminal justice process that we need to take into account in determining whether we are going to touch the sensitive issue of detracting from a constitutional right outside of the existing law. I totally agree with my colleague Sen. Thompson-Ahye who says that as lawyers, we always have a concern when legislators want to take something outside of the courtroom and to have it determined by Parliament and I must say that essentially, what we are doing here is, we are trying to put in an ouster clause but this is not a contract case or any other civil case that you may think about and even in those cases, ouster clauses are frowned upon. We are trying to put in an ouster clause for a constitutional right. That is how important this is.

Now, at my age unfortunately, I think I have become a little too familiar

with some of the processes which result in legislation of this kind. So, I was intimately involved in 2010 when then Attorney General, I think it had been Mr. Anand Ramlogan at the time, had been trying to have a similar, if not the same piece of legislation passed and he had sought the opinion of the then Criminal Bar Association which was in existence, whose President was Mrs. Pamela Elder SC and there was a joint select committee in 2010 which took into account the paper provided by the Criminal Bar Association, and in the report, actually records its thanks to the then Criminal Bar Association. Now, what the Criminal Bar Association had basically said is that it could not—and it set out the reasons, it could not support the proposed amendment to have someone locked away for 120 days and reasons were given for this. And these comments were placed before the Parliament and before a joint select committee as long ago as 2010. It ought to be on Parliament's website because I know that usually the reports are there together with the evidence provided.

Now, let us move on to 2013 under the previous Government. President of the Law Association at the time, was then Senior Counsel Seenath Jairam. So lawyers were invited to a meeting with various Ministers to talk about this proposed amendment to the Bail Act and we made it quite clear to the then Government that we were opposed to this period of 120 days with no bail and we set out our reasons. But one of the more important reasons that we set out to the then group of Ministers was that it did not take into account the fact that in our law, there are deeming provisions in the Firearms Act and in the Dangerous Drugs Act. So, what this means is that persons found in a vehicle in which there is a firearm or persons found in an apartment in which there is a firearm may find all of them being charged by the police because of the deeming provision. And all of those persons caught by these deeming provisions would not be entitled to bail for

120 days. And when I close, I will give, not hypothetical examples but I will give examples of two actual instances where citizens of this country suffered because of the abuse of the existing law by the police.

Now, after our meeting on the 14<sup>th</sup> of March, 2013—and I can speak of it because I was there—we received an email from the then head of the Law Commission asking us:

Since it may be harsh to deny bail to a person found in possession of drugs near a school—which is Sen. Hosein’s point—which may include a school child, how can the Bill be amended to create an exception to the no-bail provision?

Nonetheless, despite the views of the lawyers, the legislation was enacted and after its expiry, there was an attempt to renew its life, so the Law Association, again, was consulted on this matter.

The Law Association issued a press release. It said:

“In April 2015, the Association advised then Attorney General Senator Garvin Nicholas that given the constitutional guarantees of reasonable bail...”—compared—

Sorry.

—Added to—“...the presumption of innocence and the right to be brought promptly before an appropriate judicial authority, the Association considered the proposed legislation then to be a disproportionate measure. The Association stated...that, even in the face of firearms and firearms related offences, the 2015 amendments to the Bail Act amounted to a denial of a person’s Constitutional Rights. The Law Association...”—had then—“called...for the repeal of the Bail legislation.”

On the 17<sup>th</sup> of June, 2016, the Law Association wrote to the current hon. Attorney General, pointing out:

“...pre-trial detention of persons without bail for a period of one hundred and twenty (120) days is not reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual, given the unarguable inability of the criminal justice system to process those who are incarcerated under this legislation, within a reasonable time...incarceration therefore amounts to a breach of the right to liberty without due process. Bail is now punitive in nature as opposed to securing the attendance of the accused at Court.”

So there has been discussion in the public forum for about nine years about these proposed amendments, and call me cynical, if one looks at the dates, sometimes there are other things happening outside of the Parliament building which may influence the anxiety to bring this kind of legislation to the Parliament. But regardless of the time when it is brought, as a lawyer standing here and as an Independent Senator, sworn to uphold the Constitution, regrettably, I have to say that the weight of the evidence and of the authority in law is respectfully against the mover of the Motion that this Bill or this amendment should be passed.

Now, in the media statement from the Law Association that I had read from, I regret to say at the time that I had not referred to it fully. It was under the hand of the then President of the Law Association, Mr. Reginald Armour SC, our Vice-President had then been Mr. Gerry Brooks, and this is a part of it that I had not referred to:

“...pre-trial detention of persons without bail for a period of one hundred and twenty (120) days is not reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual...”

So you have the Law Association saying over and over again, over many years and with due consideration, that this is the position that they are taking and they have given reasons for taking that position. We have lawyers who, through the then

Criminal Bar Association, had gone before a joint select committee and had set out why they opposed this kind of amendment.

Because the thing about it, as I said in my last contribution in this honourable House, is that when we as legislators agree to legislation, what we should be able to have some confidence in is that we are going to see an impact of the legislation and the impact must not be a negative one. As far as I am concerned where I stand, regardless of where you are, who you are, you are protected by the Constitution of the Republic of Trinidad and Tobago. So, to round up people and put them in prison which is already inhumane and so on, as another speaker referred to in his comments—I think it may have been Sen. Hosein—you put them in these inhumane conditions for a period of 120 days when they can do nothing but sit there and wait for the 120 days to expire before they can apply for bail, really degrades us. It degrades us as legislators to think for us to sit here and think that that is acceptable for any citizen of this country. Our courts are sending strong messages to us through a variety of cases saying what you have going on there is wrong and they are using strong language, and we come here as if we have not heard or we have wax in our ears and we want to legislate to put more people into that system.

You know what I found particularly interesting when these eight men escaped from the Golden Grove Remand Yard? I thought it was a horrible thing that people should actually be able to escape from prison. The police officers had a great deal of sympathy for them because the police officers are the ones bringing them to and from court every day and they were saying, you know, people having to languish in custody for this period of time and so on, is simply inappropriate. So while they wanted them caught by all means, they too were appreciative of the fact that what is going on in Remand Yard and indeed, which may be entirely out

of the control of the Commissioner of Prisons because he does not control the funds that he gets, but in this day and age, for us to be running prisons in the way in which we do, I think it is absolutely—

**Sen. Richards:** Abhorrent.

**Sen. S. Chote SC:**—abhorrent. Thank you, Sen. Richards. And then, when we talk about, you know, in making it better like the Americans, “warehousing” and using lingo like that, you are just going down the same road of inhumanity.

Now, if I may just have one minute. Right. I had said that when I wrapped up, I would refer to two actual cases and I am not going to refer to cases which are before the courts. There are cases which have been concluded but they are examples of instances which happened to citizens of Trinidad and Tobago. One happened to a young man who was a university student driving his dad’s van home after having a few drinks with some friends and so on. At the Piarco roundabout, he was shot in the back by the police. He was dragged off to the Mount Hope Hospital. The police took him out of the hospital shortly after surgery and they took him to a police station to try to charge him for criminal offences. He collapsed. They did it a second time. The second time that they did it, his father begged the police, “Please, just charge him for something”. “Charge him for anything because I know that with bail, he can come out and I can take him to get proper medical care.” They charged him for six offences of shooting at police officers. Thankfully, the boy’s life was saved because he was able to get bail almost immediately and he was taken to a private hospital where he was treated immediately and his life was saved. Now, for me, as a legislator, that saved life has value. It did not end there.

Six years passed while the shooting with intent charges remained before the courts. Well, we know with the new legislation, it might not remain in the

Magistrates' Court but certainly you may not get a trial within a year. He would not have been entitled to bail had this legislation been in existence because he was charged with shooting at police officers. They had not produced any firearm. They had simply told the magistrate that "we were shot at". They did not show up at any time to support what they were saying but this is what they had said to the court. So this could have been a life and death situation for one of our citizens who had the misfortune, a university student, to be shot in the back while driving home to his family's house.

The second example that I will give you is one which I believe I already spoke about in this House. Family, four children, police come to the house, a firearm is found in the house which they share with another person. Every man jack is arrested including a four year-old severely autistic child. So autistic that he kept having seizures while in police custody and the police refused to allow that child or the mother out of the police station. Charged mother, father, watchman and two teenage daughters. You know how that autistic child got out of that station? One young attorney had the guts to pick up the child and walk out of the police station, having a conscience, being unafraid to do the right thing. Even policewomen who were there looking on were saying, "Oh my God, what can we do"? But because of how the police hierarchy is, felt that they were helpless and hopeless.

### **3.30 p.m.**

Now this lady, had this legislation been in place, this lady and her two young children, I think one was 11, one was 13, two girls, would have been in custody for 120 days. Now, whether you have a pending matter or a previous conviction, I think is not the most important thing about this piece of legislation. Because the Bail Act already provides for your entire rap sheet to be given to the magistrate

when you come before the court for consideration of bail. In fact, unfortunately it works very badly for the person who is charged because police officers do not tend to update these records. So even if you won your cases, it may come up as a pending matter before the magistrate and then you have the burden to say: “Well no, I actually won that case.” So that is how it works for real people outside of this honourable Chamber.

Now, what also happens is, I think we do not have examples of courts abusing their powers, letting people get bail when they are not supposed to, giving bail which is unreasonable. I mean, surely if that were a problem, then I could see still that legislation may be considered, or some sort of higher bar may be raised.

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

**Sen. S. Chote SC:** Thank you very much. But we do not have any information like that. All I can say is, as a practitioner in the courts, it is no easy thing to get bail. Courts take into account all of the considerations under the Bail Act before they come to their determination. And furthermore, there are many instances when the Office of the Director of Public Prosecutions has intervened, and when persons have been granted bail, persons who they argue may have been gang members or involved in serious criminal activity, even when those persons have been granted bail there is a provision in the Bail Act for you to go to a judge and have the bail revoked. Or you can go before a magistrate and have the bail revoked.

So, when we take those things out of the picture, it seems to me—well I know, you know, I am sure there are those who have greater knowledge of the law, and so on, and will have much to say about it. But this is how, in my respectful and very humble view, I see the situation. I do not think this legislation is going to solve the problem that we want to address. Instead, it can cause a tremendous amount of harm to individuals in our society.

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

**The Minister of National Security, Minister of Communications and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. Madam President, it is always a pleasure to come to the Senate to contribute, and I hope that this afternoon's contribution by myself is timely and also that it would provide a level of information that the vast majority of persons, and no disrespect meant to them, in the Senate would not have access to; that only a Minister of National Security, who carries the burden of getting security briefings and also the burden—and I call it a burden, although it may be a privilege—but it is a burden carrying the weight of the type of intelligence that the Minister of National Security is privy to.

I would like to start, Madam President, this afternoon by just reminding the population and the citizens of Trinidad and Tobago that bail is discretionary. I sat here and I listened with interest and I heard submissions that bordered on the conclusion that there is a right to bail. There is no right to bail. So let us put an end to that immediately. Bail is completely discretionary. The Bail Act creates a discretion for a magistrate or a judge, in certain circumstances, to grant bail. So we can immediately dispense with, most respectfully, the submission that bail is a right.

I heard reference to the Constitution, and an attempt to use certain provisions and not the entrenched provisions of the Constitution to argue that there is a right to bail. Respectfully, section 4 of the Constitution rights enshrined talks about: “the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof..”

And this is the part that seems to be left out:

“except by due process of law;”

Once there is a process of law and a due process of law your liberty can be affected. Furthermore, the Constitution provides, and that is what section 13 is about, Madam President, for, in certain circumstances, the legislator to infringe one's entrenched constitutional rights.

There is also in section 5 protection of rights and freedom. There is no expressed provision in here that gives one a right to bail. It talks about:

- “(i) ...the right to be informed promptly with sufficient particularity of the reason for...arrest or detention;
- (ii) ...the right to retain and instruct without delay a legal adviser of his own choice...to hold communication with him;
- (iii) ...the right to be brought promptly before an appropriate judicial authority;
- (iv) ...the remedy...of habeas corpus for the determination of...validity of...detention...”

It talks at subsection (5) to:

“deprive a person charged with a criminal offence of the right—

- (i) to be presumed innocent until proven guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;”

You have a right:

- “(ii) to fair and public hearing...
- (iii) to reasonable bail without just cause;”

I suspect that is the provision to which Senators, hon. Senators, are referring. But it starts off with the proviso that Parliament may not deprive a person charged with a criminal offence of the right to reasonable bail without just cause.

And this whole debate here this afternoon, Madam President, with the greatest of respect, is a submission by the Government, on behalf of, not only the

citizens of Trinidad and Tobago and the law abiding citizens of Trinidad and Tobago, but most importantly we have come here today at the behest of the Trinidad and Tobago Police Service, who constitutionally are the persons charged with the responsibility of upholding the criminal laws of Trinidad and Tobago and protecting and serving us as citizens.

There is a constant submission, rightly so, by members of the public that the Government has a responsibility to do what it can to protect its citizens and to secure its citizens and to provide security for its citizens. However, we as legislators have our hands tied. We cannot go out there and arrest persons. We cannot go out there and investigate and bring criminal charges. No, constitutionally the body charged with that responsibility, Madam President, as I am sure everyone in this Senate knows, is the Trinidad and Tobago Police Service.

So, I was listening to Senior Counsel Chote and her contribution. As we all know, she is a senior Criminal Bar practitioner, and she kept referring to a number of historical press releases, for example, from the Law Association. I would like to refer to a very current media release, dated June 11, 2019, that was released by the Trinidad and Tobago Police Service a short while ago, specific, Madam President, to what we are here in this House debating today. No cop out needed for Bail (Amdt.) Bill.

"Commissioner of Police, Gary Griffith, has noted the concerns in relation to the Bail Amendment Bill, whereby, as with any Law, some would say that it should not be enacted as it can be abused by the Police."

Madam President, he is addressing a specific concern I heard made by a number of contributors here, during the course of today's proceedings. He goes on to say:

"He sees this excuse as a usual 'cop out' in not doing what is mandatory to enforce and ensure law and order. The Police Commissioner seeks assistance for such a

Bill to ensure that the Trinidad and Tobago Police Service (TTPS) can defend the rights of law abiding citizens."

This is the Commissioner of Police who constitutionally, at section 123, is in charge of the Trinidad and Tobago Police Service. He goes on to say:

"Statistics have shown that in the last decade, over 75% of homicides were carried out by persons with illegal firearms in this country. If this cannot be seen as a catalyst to approve such a Bill, then he does not know what is.

Presently, anyone who is apprehended with a firearm, could be released on bail and be free to possibly assassinate the same person who was the informant that caused their initial arrest. This improper system has proven to be a liability in getting law abiding citizens to come forward and pinpoint possible shooters with illegal weapons.

The Commissioner believes that someone who has been arrested for possession of an illegal firearm must not be granted bail. Further, he believes that possession of an illegal firearm is enough for someone to lose their freedom and have bail restricted for 120 days. The CoP says this approach takes the guns away from criminals and gets potential cold-blooded murderers, off the streets.

The Commissioner explains that those who speak about Constitutional rights being infringed, should also be cognizant of the right to life which is, in fact, the ultimate Constitutional right of all citizens.

This right is then taken away by cold-blooded criminal elements, who are armed with the knowledge that they can walk around with a weapon and if arrested, they can be released within 24 hours, if the amendment to this Bill is not granted.

The CoP says amendments to this Bill would ensure that a criminal is incarcerated for 120 days, allowing victims to come forward, with the knowledge and sense of safety and protection that the perpetrator is behind bars, which also lessen the

opportunity for reprisal.

If someone is in possession of a firearm, it means that they have the intent to kill an innocent person in cold blood. The intent can be as damaging as the action. One does not wait"—Madam President—"for a terrorist to press a button to have them incarcerated. A criminal with an illegal firearm has the capacity and capability to kill 13 persons in cold blood with just one magazine, and 35 lives could be lost in a 35 round magazine, when they have semi-automatic rifles, which some"—of them—"also possess.

When this Law was enforced a few years ago, it proved to be instrumental to reduce crime, and the Commissioner believes that such a Law, if reinforced, can do so again. We should not wait until they commit the crime to then take decisive action. This is what has provided a low deterrent, as these criminal elements are aware that there are little, if any consequences.

The CoP says it is high time we start caring about the rights of our law-abiding citizens, and not about the rights of criminals."

Madam President, those are the words of the Commissioner of Police who constitutionally is charged with the responsibility of leading the Trinidad and Tobago Police Service. It could not have been said better, with the greatest of respect.

Madam President, I heard some interesting submissions a short while ago, that I would like to deal with before I get into the heat of my contribution, the core of my contribution. I heard a suggestion that this legislation is brought today because there is an anxiety about firearms and the effect of firearms. There is no anxiety, Madam President. It is the reality of what we are facing with the criminal element today. Putting persons in jail, this is quoted:

Putting persons in jail does not take firearms off the street. A firearm will be on

the outside working for him.

The Commissioner of Police addressed that in his release. Madam President, a firearm in of itself does not kill someone. Let us get that clear. It is the person who uses the firearm and easily pulls the trigger aimed at someone, sometimes an innocent person, that takes the life of one other. And there is an element, anyone—I am surprised, I would expect that defense attorneys would be knowledgeable about the concept of shooters. This is a reality that we are dealing with in today's society, Madam President.

In today's society, the gangs and the criminal elements have trained shooters and hitmen. And those are the persons that we are targeting on behalf of the police and the law-abiding citizens of Trinidad and Tobago; these elements outside there who are very capable of just pulling a trigger and taking an innocent life or someone else's life.

And there are statistics to show, Madam President, that these shooters and these elements, once found with illegal firearms and charged, we have many instances of the Magistracy and the Judiciary issuing very low bail and they are back out on the streets again. And even when their illegal firearms are kept from them and are held by the police for the use as evidence in charging them with whatever it is, including possession of an illegal firearm, the availability of firearms out there remains a reality. And we are not burying our heads in the sand and pretending that there is not a ready availability of illegal firearms out there.

Madam President, I would like to talk about, for the period 2013 to 2018. So spanning, and this is not a political football by the Government here today. This is not us saying it was this one or that one. This is dealing with the reality of the criminal situation that we face today, because it could be anyone. It could be anyone in here, God forbid, anyone in here, their family, God forbid, someone they

know, their family, their friends, or the whole of outside there. And as the Minister of National Security, Madam President, on a daily basis, many times during the course of the day, I am privy to briefings as we take firearms off the street. But worse yet, and it thankfully has not been happening every day, but on many days in Trinidad and Tobago, I am briefed about the taking of a life at the hands of a criminal using a firearm.

Let us talk about total firearm offenders, and then break it down to repeat offenders, because this legislation here, Madam President, as I will get to in a short while, is dealing with the concept of repeat offenders utilizing firearms and also other heinous crimes or crimes where they have firearms. For the period 2013 to 2018, I am quoting from statistics provided by the analyst in the Trinidad and Tobago Police Service. For that period of five years, 2013 to 2018, firearm offenders: 4,215 offenders. Out of that, there were occasions of 202 repeat offenders. Out of that, within the space of one year of persons being released, there were 44 repeat offenders; and out of that, over one year, 158 repeat offenders.

Madam President, the scourge of crime is real. Our citizens are facing the scourge and use of illegal firearms and other heinous crimes such as kidnapping. The worse—one of the worse possible crimes being committed against our innocent children and that is what this Bill is here to do with today, to tie it back in to the submission, Madam President, bail is discretionary. But what the police service are asking for is the opportunity. And they have very few opportunities and they have no advantages. Because the criminal element, by definition, does not care what the law says.

The criminal element, by definition, does not abide within the confines of the law that the rest of us law-abiding citizens do. The criminal element, by definition, the vast majority of times, unless we are able to pick up advanced

intelligence, have the advantage of being able to commit their crimes without us even knowing they are going to commit the crime. And the use of firearms has become the core pillar of the vast majority.

Seventy-five per cent of homicides being committed are with the use of illegal firearms in Trinidad and Tobago. If that staggering statistic does not affect all of those sitting in this Senate today to compel us to do something about it—I heard the hon. Senator say: “We agree we should do something about it but.” Now is not the time for “but”, Madam President. Now is the time for action and decisive action. And this action is not an action being taken by the Government of its own volition. This is an action being taken by the Government at the behest and the request of the Trinidad and Tobago Police Service who are doing their all, and I know that, because I work with them on a daily basis, to try and get ahead of the crime and to try and bring back the statistics with respect to crime.

Madam President, yes, there is a presumption of innocence. I also heard it being suggested that if we pass this legislation it will allow corrupt police officers to then victimize and target persons. Madam President, if you have a corrupt police officer, he or she can use any criminal offence to victimize someone. They can say—and the worst possible one, where there is no bail and there is no discretion of bail, murder. A corrupt police officer, if that is the argument, can go and claim anyone of us has committed murder and put us into that process. So, with the greatest of respect, it cannot be that we reject this important piece of legislation in the fight against crime on the basis that corrupt police officers will use it. Even if that is so, Madam President, there are safeguards within the legislation that provide for it.

First of all, I also heard it being suggested on my way here, by one of the Opposition Senators, that you could hold someone with possession of a firearm but

not charge them with possession of a firearm and somehow they will be incarcerated for 120 days; completely wrong, completely wrong in law. What the bail amendment is doing is saying that if you are charged with the offence of possession of a firearm, then you are not allowed the discretion of bail for 120 days. I would also like the public to note, Madam President, that even within that 120 days, as my friends on the other side who practise in the criminal courts would know, within every 28 days, there is an obligation for you to be brought to court. There is always an obligation on the prosecution to proceed with the matters.

The few times that I ventured into the criminal courts, Madam President, I was disheartened to see sometimes the breakdown in that system. And we are the ones who must take the responsibility. When I say “we”, it is in my former hat as a practising attorney, either the prosecuting attorneys, sometimes the defense attorneys and sometimes the courts. Because if we wanted to proceed with the matters, we would proceed. So it is wrong to say that you are just going to languish for 120 days. There is an obligation on all of us. My friend, Sen. John Heath, Sen. Sophia Chote SC, would know that there is an obligation. It is not always carried out, Sen. Vieira, to proceed with the matters expeditiously. It is time that we put the pressure on the criminal court system as we are trying to do, to force them to get on with matters.

The safeguards in here are that you must be charged with the offence within the 120 days. You must be brought before a court. The evidence must be read in support of the charge. If the case is not heard within a year, then you are entitled to seek bail. That puts pressure on the system. The police are the ones. That is us telling the police you have an obligation to get on with the matters.

What this piece of legislation also seeks to do or rather seeks to do, Madam President, at clause 5 it says that:

“A Court shall not grant bail to a person who on or after the commencement of this Act is charged with an offence listed in Part II of the First Schedule...”

And, so it a dual conditionality.

“...and has been previously convicted of an offence which is punishable by imprisonment...”

So Madam President, what we are telling the population outside there, and in particular, the criminal element? Because there is a serious criminal element out there.

If I were permitted to tell the public of Trinidad and Tobago exactly what is going on outside of there and what we have in the intelligence reports, it would frighten them. And this is what the police service is asking for to be able to combat it. So if you have been convicted of an offence previously, and then you decide that you are going to continue in your life of criminality and commit these following offences, one of these or more than one of these offences, Madam President, then no, and using a firearm, no, you should not be permitted the discretion of bail. These are the specified offences. And I challenge anyone in this Senate to say that these offences are not some of the most heinous crimes that could be committed against innocent citizens, innocent persons, and even some who may not be innocent.

The first is offences committed by a person over the age of 18, which is under the Anti-Gang Act. I heard the statistics being quoted here this afternoon, almost on the verge of ridiculing the anti-gang legislation. Madam President, I tell the people of Trinidad and Tobago here, it is on a weekly basis I sit with our heads of security and listen to them and give advice for operations that are taking place under the anti-gang legislation. It is very alive. It has been utilized. There are more than five charges for this year alone. Those five charges were against a gang

in the east of Trinidad. We are targeting a lot more gangs and a lot more gang activity in Trinidad and Tobago. The Act was not retroactive, so we had to start the gathering of evidence from the time of the passage of the Anti-Gang Act, and that was one of the hamstrings, but the right hamstring being taken in the passage of the anti-gang legislation.

The work is underway. I guarantee this country, standing here today, that they will see more charges and serious charges, under the anti-gang legislation before the end this year and the police service are utilizing the anti-gang legislation.

“(b) an offence under the Offences Against the Person Act which is punishable by imprisonment for a term of ten years or more...”

Of course, those are the most serious types of offences committed against persons.

“(c) an offence under the Dangerous Drugs Act which is punishable by imprisonment for a term of ten years...”

So, this does not capture the persons who are just in possession for use and the persons who are recreationally using drugs. This is for the big offenders.

“(d) an offence”—against kidnapping—“under the Kidnapping Act...”

Madam President, we are asking specifically for this one, the Kidnapping Act, because we do not want the scourge of kidnapping to restart.

I was appointed the Minister of National Security on the 8<sup>th</sup> of August, last year. We had the appointment, for the first time in years, since 2012, of a permanent Commissioner of Police in the same month of August 2019, and immediately, yes, this Government should be applauded for taking the time, the effort and doing what needed to be done to appoint a Commissioner of Police.

Shortly after appointments we dealt with a very high-profile kidnapping. If we were not able to solve that, and some of the kidnappings that started thereafter,

the scourge of kidnapping could have become an industry once again. We want to send a strong signal to those out there who think a life of crime and particularly kidnapping is not one to be encouraged. So if you are held with kidnapping, and I can tell you, Madam President, tell the population, through you, gathering the evidence post-kidnapping takes time. And one of the worst things that could be possible is the persons who were part and parcel of the whole act of the kidnapping are out there on bail and still moving around, because it brings a real sense of fear to the victim.

“(e) a sexual offence in which the alleged victim is a child, including a sexual offence under the Sexual Offences Act or the Children Act...”

I heard Sen. Thompson-Ahye, who I understand has a great penchant for dealing with children's rights, say that she could not support this and talk about children's rights. Senator, this Bill and our specific inclusion of offences against children, is exactly to address your concerns.

Madam President, we do not want people interfering with our young children and we need to send a strong message, because the criminal element out there do not care. I can tell everyone in here, without fear of contradiction, the hardened criminals outside there do not care. They would be released on bail this afternoon and by tonight, between the hours of midnight and 4 o'clock in the morning, they would be back at it again and those who engage in criminal activity against our children, let us send a strong message. I would get to what Remand Yard looks like. Let them stay incarcerated for the 120 days. But it puts an obligation on the prosecutorial arm of the State to carry out the charges and to get on with it during that period of time.

“(g) an offence under the Anti-Terrorism Act...”

Well I agree with the contributors before, the Attorney General, Sen. Chote and

others, who said there is only one charged and none last year. Thank God, but it does not mean that it does not exist. It does not mean that it is not going on outside there.

**4.00 p.m.**

I can tell you all that one charge what it was. It was a person who has some element of instability that wanted to assassinate a high profile public official and when we found him, fortunately in time and interrogated his devices, the type of information electronic information contained on those devices was frightening. When we dealt last year with the terror threat that was real, the type of evidence, the type of information that we found electronically was frightening. How to behead people, how to attack a convoy, how to make bombs. These are the type of people that we want to walk in, be charged and walk back out? These are the type of people that we want, Madam President, to just the greatest of liberty? The answer is no. Those on this side do not want it.

In the United Kingdom—in Australia when I was there I met with all of the special—

**Madam President:** The Minister has 13 more minutes of speaking time and I would ask Members to allow those who wish to listen to the Minister to be able to hear him. Continue Minister.

**Hon. S. Young:** Thank you very much, Madam President. The answer is no. In Australia they have legislation, I wish we could have it here. They have legislation even after persons have served their full term of sentence for terrorist acts. The police can apply to a judge for an extension of them being held in custody. I have never heard of such a provision. But it is that they understand very clearly the effects of that one terrorist attack, that one incident.

When I met with the New South Wales police and their antiterrorism unit,

the irony of it, Madam Speaker, was less than 100 metres from the building was where the terrorist attack by a lone wolf ISIS supporter took place at a Lindt Chocolate cafe. We do not want that to happen here in Trinidad and Tobago. The use of firearms in Trinidad and Tobago is bordering on committing terrorism against the people of Trinidad and Tobago.

Just to deal, Madam President, as I heard you say, I only have a few minutes left—this legislation is to prevent the ability of persons who have committed what we believe are the most heinous of crimes against innocent people. No bail for 120 days. More importantly, it is legislation that is—*[Interruption]*—yes, there is no anxiety against firearms; it is the reality of illegal firearms. The day one of us in here faces a number of persons with illegal firearms pointing them in our direction and know that we are shot and killed, or we are shot at and that person can go to court the next day being charged with possession of a firearm and then be out on bail the following day. Is that when we would react? We have a responsibility now to act. *[Desk thumping]* The citizens are calling on us now to act. The citizens are calling on the legislators to do something to help in the fight against crime, to support the police.

We sit here and we are listen that we are not supporting the Trinidad and Tobago Police Service. What can we do to support the Trinidad and Tobago Police Service, apart from physical resources? I just started off my contribution, Madam President, by reading the plea and the cry of the police service through the Commissioner of Police. They are the ones who asked for this piece of legislation.

Murders where firearms were used, again from the police service for the period 2013 to 2018. In 2013 total number of murders, 408; out of those 408 murders, 320 were committed with illegal firearms; 2014, 405 murders, out of that 304 were committed using an illegal firearm; 2015, 420 murders committed, out of

that 340 were committed with the use of illegal firearms; 2016, 462 murders committed, 351 with illegal firearms; 2017, 495 murders were committed, 377 with illegal firearms; 2018, 517 murders committed, 416 with illegal firearms. Those staggering statistics is way above 75 per cent.

In 2013 it was 78 per cent; 2014 it was 75 per cent; 2015, 81 per cent of the murders committed were using illegal firearms; 2016, 76 per cent of murders committed using illegal firearms; 2017, 76 per cent. Last year, 80 per cent of murders of persons in Trinidad and Tobago were committed with the use of illegal firearms. And we as the legislators have the power, the power starting here today to send a strong signal. [*Desk thumping*]

So when you walk in the grocery, you walk in the park, you walk in wherever it is you walk—I heard a Member in the other place yesterday talk about walking in the market, and persons look at us and say, what are you doing to make my life safer? And ten minutes after leaving the market, two imps come in there with illegal firearms and hold up people and shoot somebody. This is what we could do to start the fight and is the reality. I have just read the statistics. [*Desk thumping*]

Madam President, these are only the statistics of murder in Trinidad and Tobago. If I were to tell you the serious crimes where firearms are used. And let me tell with the greatest of respect, the population through you, what is going on outside there. The AR15s, which are a serious piece of gun are being used by these criminals, AK47s, KelTec machine guns and sub-machine guns. Every criminal out there now has a Glock. Anybody who knows anything about firearms would know ten years ago a criminal is using an old rusty revolver, maybe has 3 rounds of ammunition. Now, we are finding them with buckets of all sorts of assorted ammunition and a Glock that has a 35-round extender. Every criminal

outside there that is a semi-automatic weapon that does not stick. And if it is that we are going to sit here and say it is fine because the statistics show it, when they are brought before the courts they are out within a short period of time.

Let me briefly talk about the Remand Yard, I heard them asking—persons asking quite rightly for an account of what we are doing. I, as the Minister of National Security, have visited every single Remand Yard in Trinidad and Tobago and I ask those on the other side. I heard them talking about the Remand Yard and what we are doing. Yes, we have begun the work to provide proper toilets, proper ventilation, we have begun that work at Golden Grove on the Remand for the 53.6 million. But I want to remind the people of Trinidad and Tobago and it sickens me as a citizen, it upsets me as a citizen anyone driving east along the highway when you are passing the Maximum Security, look at a fence, a double fence system, put in by those on the other side for \$80million. If I had \$80 million now as the Minister of National Security what I could do for the prisons, \$80 million for a \$10million fence. And they have the audacity to sit here and ask what is being done.

Madam President, , when I visited Tobago—

**Madam President:** Minister, you have five more minutes.

**Hon. S. Young:** Thank you very much. When I visited Tobago and saw the conditions there, it bothered me, because a billion dollars of cash from the NGC was used for a useless waste water plant that can never be used. We could have built a whole new prison system and a whole new remand—[*Interruption*]

**Sen. S. Hosein:** Standing Order 46(1) please.

**Madam President:** Minister, continue please. [*Desk thumping*]

**Hon. S. Young:** Madam President, electric monitoring. Those on the other side are the ones who passed the legislation for electric monitoring. They did

nothing to implement it. This Cabinet took the decision and approved the award of the contract right now the devices are being fitted, the SIM cards are being outfitted, outside of Trinidad and Tobago and it will be implemented within the next 12 months. [*Desk thumping*]

Prison system, the Prison Officers Association is on record as saying that this is the most committed Government, and Ministry of National Security that they have worked with. [*Desk thumping*] Eighty million dollars on a useless fence they did not even buy the prison guards stab-vest. We did it. We are the ones who ordered the firearms for them. We are working with them to better their conditions. Also for the prisoners, Madam President, we are making more rehabilitative programmes for the prisoners, some of you all might benefit from it.

The forensics, Madam President, they asked—

**Sen. Obika:** 46(6), the only person who will benefit is the step-daughter of— [*Desk thumping*]

**Madam President:** Sen. Obika, please withdraw that statement right now.

**Sen. Obika:** I withdraw, Madam President. The only persons who—

**Madam President:** Thank you. Thank you. Thank you, Sen. Obika when you withdraw—[*Crosstalk*]—please. When you withdraw a statement, you withdraw it unequivocally. Okay. Minister, continue.

**Hon. S. Young:** Madam President, there is something called Cambridge Analytica that they used the money on and that is what they do. [*Crosstalk*]

**Sen. Obika:** Standing Order 46(1). Irrelevant.

**Madam President:** Minister, continue please. [*Desk thumping*]

**Hon. S. Young:** Thank you very much. Madam President, forensics. They did nothing with forensics. You know what we have done, we have negotiated with the Chinese Government, Minister Moses and I just came back a few weeks ago

from Beijing and they are building a new DNA lab gratis for the people of Trinidad and Tobago. [*Desk thumping*] The land has been vested, the plans have been done and we are going to build a new DNA centre as well as a new forensics science centre half of it gratis from the Chinese Government for Trinidad and Tobago. [*Crosstalk*]

**Hon. Senator:** Performance beat old talk any day.

**Madam President:** Members, please. Please desist. Minister, please continue.

**Hon. S. Young:** Thank you very much, Madam President. I heard the talk about corrupt police officers. The Commissioner of Police has dealt with that by and large. It is very normal now but still very disheartening to always hear those on the other side in both Houses disparage and attack the Trinidad and Tobago Police Service. As the Minister of National Security and as a citizen of Trinidad and Tobago, I thank the men and women in the Trinidad and Tobago Police Service for the tremendous work they are doing under the current Commissioner of Police. [*Desk thumping*]

[*Interruption*] “Yuh all are good at Googles”. Anti-terrorism Act, no arrest. Well, I dealt with that before. Trafficking of persons and the statistic that zero charges, I am not sure when those statistics were. I was not privy to where it was being read from. But there have now been charges under the trafficking of persons and we have more coming. What we are facing now, it is something we are targeting, we are building out—taking the intelligence now into evidence and there will be more charges.

As I said previously, Madam President, and I seem to be running out of time, I did not get to deal with some of the provisions I wanted to. There are protections within this Bill, someone is not going to languish in prison unnecessarily and if

they are there for 120 days because they have committed one of these heinous acts, I respectfully say as a citizen of Trinidad and Tobago they deserve it. Because the terrorism that they are committing against our people and against the right-thinking members and against law-abiding citizens with the use of illegal firearms is not something that this Government is prepared to tolerate. I thank you very much.

*[Desk thumping]*

**Sen. Anita Haynes:** Thank you, Madam President. I do not think the Minister of National Security as he ended as he did, expected that I would be the person to stand to speak after him. Because as he spoke about the Opposition, you know, always challenging the police and that we are always talking down to the Trinidad and Tobago Police Service, the Minister may not know this, but I am from a police family. My entire family are police officers. So while the Minister was walking to the Commissioner of Police to find out what the police wanted, I was speaking to the operational officers to find out exactly what the police service wanted. And now I know why the Minister started his contribution with the press release from the Commissioner of Police. You see, the Minister has no popularity of his own to bank on to sell this piece of legislation. *[Desk thumping]* So what he is trying to do is have the Commissioner of Police carry him on his back as he is accustomed doing at this point.

So, the Minister of National Security came here, read out a press release from today—*[Interruption]*—no I said read out, you should listen carefully. Read out a press release from today where the Minister claims that the Commissioner of Police is imploring the Legislature to pass this piece of legislation to give the police a fighting chance.

Now let us be logical about this, Madam President, let us take this entire thing logically. What I did in my preparation for this debate was assess what the

People's National Movement, as a Government promised this nation with respect to crime fighting and reducing the scourge for criminality facing the nation. And the Minister whilst he began his contribution stated that the citizens, rightfully so, would look to the Government, but it is really not the job of the Executive to deal with crime on a day to day basis, it is the police. But I want to remind the Minister very early on with a direct quote from their Prime Minister and the political leader of their party, when as Opposition Leader said that a government that cannot keep a country safe is a government that does not deserve to be in power. [*Desk thumping*] He said that a government that cannot with the deal with the crime problem is in fact part of the problem. [*Desk thumping*]

And, Madam President, so it is Dr. Keith Rowley who placed the burden, as the Minister called it, of fighting the crime scourge squarely on the backs of the Executive. And here you have this Executive after making several promises, and I will go through some of them, because in the promises was not, at no point in time did they tell us when trying to get votes of the population of Trinidad and Tobago, that their only actual solution to the crime problem was a systematic erosion of our rights. They did not tell us that. [*Desk thumping*] They did not tell us that.

You see, Madam President, when we were paying attention from 2013, they were presenting ten-point plans and manifesto promises and all sorts of promises, Madam President. Promises we heard time and time again in every budget contribution of the Minister, promises that they have yet to deliver on and you see them coming today to bank on one thing and one thing only. That they have installed a Commissioner of Police and they are hoping the work done by the Commissioner of Police would be reflective of this Government, which is the reason the Minister finds himself in every picture with Commissioner of Police.

But, Madam President, I want to start off by looking at an interesting use of

statistics by the Attorney General. Now, I will not fault the Attorney General for the manner in which he uses the statistics because he is an attorney, a lawyer. He is not exactly a social scientist or a researcher in that regard. And therefore, when you bring the statistics before us and you look at all of the years and the Attorney General called out the years from 2010 to 2018, and made a very interesting deduction that over the years the only material difference according to the Attorney General is that there were years when this Bail (Amdt.) did not exist. And, therefore, you placed any increases squarely on the fact that people could get out on bail.

Madam President, that is—I mean, with all of the wealth of data and research available to the Office of the Attorney General, I would think that the Attorney General must, must be able to admit that there must be more input into the reasons we are facing rampant crime in Trinidad and Tobago now. And not quite simply—and I understand that it may be simplification today because you have an agenda, you have a specific agenda that you hope to achieve this afternoon. But, Madam President, I think it is very intellectually disingenuous to bring before us all of these statistics and say, guys you know what the only problem here, the only difference here is that we did not have this Bail (Amdt.) to help us out.

And the Attorney General said he was asking for a cooling off period, Madam President, and I wrote that down. A cooling off period, so after four years in Government and many, many promises and, you know, promises and crime plans and whatever else he wanted to call it. After all of that has failed, you come here and say pass this Bail (Amdt.) Bill to give us a little chance, a cooling off period. That is a level of shamelessness that I really was not expecting. [*Desk thumping*]

I want to go to the timing of the legislation, Madam President, 2019 as it is. And I want to start here by referencing an article from the Trinidad and Tobago *Guardian* newspaper, this article, I think it is May 25<sup>th</sup>, it does not give me the actual date here, it says sixteen days ago, but I believe it is May 25<sup>th</sup>. And it is entitled “PNM’s billion-dollar crime bugbear” by Ana-Lisa Paul. And using this article because one, it is a very interesting read and it starts off with Dr. Rowley as Opposition Leader, and Dr. Rowley as Opposition Leader had very interesting inputs and I will put some down here. For example, Dr. Rowley and I am quoting the article now:

“Four years ago”—as Opposition Leader—“predicted the downfall of the People’s Partnership (PP) government due to its inability to get crime under control.”

You see, that is the anxiety people were referencing. That is kind of what we were talking about.

“Rowley also conceded then that spiralling crime had led to the People’s National Movement’s (PNM) losing the 2010 general election.”

I will come back to this article.

You see, so 2019, Madam President, as it were you come to ask for a cooling off period. Why is that? Not because there is any genuine desire by this administration to end the crime scourge facing Trinidad and Tobago. There is not a genuine desire from anyone who presented here today, you know. Why they are asking for a cooling off period because the Prime Minister as he was Opposition Leader knew then the crime brings an end to an administration. And you have failed for the last four years. Crime has spiraled out of control under your watch, [*Desk thumping*] under your watch and now, Madam President, in a desperate, desperate attempt you say let me use my State power and snatch the rights of citizens so that I can have a fighting chance at the polls. Imagine an Executive that

would be willing to do that. But, Madam President—

**Madam President:** Sen. Haynes, I am going to have to caution you in how you are presenting your arguments. Okay.

**Sen. A. Haynes:** Thank you, Madam President, and when you look at this piece of legislation, because this is not the first time we have had to make the argument that says there is a delicate balance between State power and individual rights and that we ought not to find ourselves on a slippery slope. And I have made the point before and I will make it again here, that this Government has been using a nation that is afraid—look at the language presented before us today, Madam President. And I want to agree with my Senate colleagues that spoke before, crime is in fact a major, major problem facing us in Trinidad and Tobago. We are a country afraid. But, Madam President, to use that fear to ask us as citizens to say we will allow our rights to be again, systematically eroded in exchange for a chance at safety, I think is very irresponsible.

Madam President, and I heard the Minister of National Security and the Attorney General tell us about the firearms, and firearms are rampant and if you pass this legislation—but, Madam President, they did not tell us how this legislation was going to stop the firearms scourge facing Trinidad and Tobago. So you have before us, Madam President, that if you are charged for a firearm offence, you can be denied bail for up to 120 days. What next? After the 120 days, what next?

Madam President, and I want to ask all of my Senate colleagues, everyone sitting here today, after this legislation, after we have debated it, imagine it was passed. Would you genuinely feel safer? Would you actually as a citizen of Trinidad and Tobago, say “Ah hah, I could take the chance now and walk down the street”, as Sen. Vieira spoke about, or that you can go back to your daily life as it

were before crime spiralled out of control, if you can remember what such a time was like?

Can we really say that contained in these clauses before us in this Bail (Amdt.) Bill any of them, Madam President, is a solution to the problem articulated by the Government? Because they articulated the problem and not one of them said this was the solution you know, Madam President. They came and they told us we have to do something, time to act is now. But Minister of National Security, it is not simply action that the people of Trinidad and Tobago want, you know, they want effective action. [*Desk thumping*] We want effective action.

We would like to feel safe and the solution that you are presenting before us will not make us feel safe. You corral people, lock them up for 120 days and then what? This is my personal feeling now, Madam President, that the hope is you pass this Bail (Amdt.) and you get your cooling off period and then you come and you take these numbers and you run up and down Trinidad and Tobago and say look what we did for you. Look at this marginal decrease, I hope you feel safe now but having no material impact, no real long term effect after a full term of governance, after a full term of governance having no material impact, Madam President. That is very disappointing.

Now, the Attorney General said while giving us the statistics that the decrease in crime that we saw under the People's Partnership Administration led by Mrs. Kamla Persad-Bissessar, the Attorney General stood here today to insinuate that that decrease fell squarely on the fact that the Bail (Amdt.) existed in that time. Ignoring, Madam President, a number of other interventions that were put in place by the People's Partnership administration. Significant interventions in the field of National Security. So much so, Madam President, so impressed they were with our Minister of National Security that they made him the Commissioner

of Police. [*Desk thumping*] So when you talk, and you know, when you talk about the police want this piece of legislation.

Madam President, under the People's Partnership administration more than 500 vehicles were purchased for the police service and over 11,470 vehicles were refurbished and I am bringing up this point because in the previous debate, last year I believe, I had to bring up the fact that the Trinidad and Tobago Police Service, the officers were being told drive the vehicles slower or try to make less mileage on the vehicles because they cannot afford to maintain the vehicles to do regular servicing on TTPS vehicles.

So before, I think, before you bring the Bail (Amdt.) and say lock them up for 120 days, the police service would like to have basics to be able to catch somebody in the first place, Madam President, the basics. The People's Partnership administration, we instituted those 13 surveillance bays that were on the Trinidad and Tobago highway. Because you know what a lot of people, when we speak to people, are telling us?—that they would like to see a greater police presence. They want their communities to feel safe because when they see the Trinidad and Tobago Police Service around, you feel safer and you want a greater police presence.

**4.30 p.m.**

Let me tell you what is going on now, Madam President, under this administration, because for some people the tighten your belt narrative continues, not for all, not for all, but for some, the tighten your belt narrative continues. You know who are some of those people, Madam President? The same Trinidad and Tobago police officers that the Minister of National Security has so much respect for and high regard for and then does not want to pay them their overtime. [*Desk thumping*] Yeah. So they have to come, you put in the work, we thank you, and

we have all of this great regard for you. But you know what we do not actually have for you? Money. [*Laughter*] Right, Madam President. That is what this Government thinks is a solution to the crime situation.

So you come here, you read out the press release as it were, you hope that the commissioner's popularity carries you through, makes this a lil more palatable to the population at large and, you know, you use all these words about the police service and the Opposition does not like the Trinidad and Tobago Police Service, and yet still you do absolutely nothing for them as a service, nothing. [*Desk thumping*]

Madam President, when you look—when I looked at the promises made by the PNM administration, Madam President, first, to get into office and then in their time since getting into office, you saw a lot of things. You saw things like the manpower audit for the police service which was done. But, Madam President, this is where I am saying when you do things, you have to ensure that they have some impact on the problem you are trying to solve. It is not sufficient to do a manpower audit, and put it in a draw somewhere and have it collecting dust at some point in time. What changes are we seeing effected by that? How is it moving towards creating a solution? Which is why, Madam President, I said there is no denial that the Government is not interested in a solution, but interested in, really and truly, what the Attorney General called it, a cooling off period—a small bligh in the numbers so that they could face the polls with their heads held high or, at least, heads average.

**Sen. Ameen:** They try do.

**Sen. A. Haynes:** I do not know, Madam President.

**Sen. Ameen:** It is too late for that.

**Sen. A. Haynes:** In 2019—in the budget promises for fiscal 2019, Madam

President, and I would tell you why I went back to this while looking at the bail amendment, because while we talk in this legislation about holding people for 120 days before they have access to bail, a significant part of any of these things working is to increase, not just our detection rate, but our rate of conviction. So as you go through the system, are you in fact convicted of a crime? But before I make this point, Madam President, I made a note about the language used in here today, and while pushing your fear politics and trying to make sure the nation utilizes—you try to “weaponize” the fear of the nation against this body of people you have blanket labelled criminals. Madam President, my understanding of the system and of the concept of innocent until proven guilty, and when you are calling and you are saying this Bill gets criminals off the street and we are dealing with the criminals, you are actually not, you know, because until they are convicted of a crime you are not a criminal.

So this Bill is actually—this Bill is saying if you happen to fall within the parameters, we as a state, as a country, want to ensure that we consider you a criminal, so we get to just lock you up, Madam President, and that I personally believe is dangerous. Yes, I am fearful; yes, I think things ought to be done to stymie the crime situation and provide a sense of safety and security for the people of Trinidad and Tobago, but we have to be extraordinarily careful with not just what we do, but what we say because looking on at leaders in the society saying, yes we have to get all the criminals, run down the criminals, but not understanding the process that before you are convicted, we are willing as a state to label you a criminal, that is very problematic, Madam President.

But I wanted to get back to the question of the police service, what they were asking for, why I do not think the Bail (Amdt.) Bill was high on their priority list. Fiscal 2019, the Minister of Finance came to us and promised to create a more

computerized technologically savvy workforce in the Trinidad and Tobago Police Service and that they would give them—what were they promised? Dashboard cameras, body cameras, laptops and tablets for all police vehicles, computerization for all police stations, et cetera. That was a proposal and a promise made. Now, things like that, I think, are part of being solution oriented. You do not do that, right? You do not report on this and that is a policy directive by an Executive. That is the thing that you can do. Right, Madam President? That is when you take resources and you allocate it in a sensible fashion towards a solution, you do not do that.

You come here at the end of the parliamentary term lamenting the amount of parliamentary time that we have, the reason we have to move so quickly and we have to rush through everything, because we are running out of time, and you bring this Bail (Amdt.) Bill knowing fully well, fully well, in 2017, we told you we are not supporting this. Knowing that then, bring it again in 2019, made no changes, brought nothing to convince us that the situation is different now and somehow this is the solution now, and telling us about wasting parliamentary time, Madam President.

So I have another theory on this as well, because you find, Madam President, whenever the Government finds its back against the wall, whenever they are against the ropes, they like to bring pieces of legislation where they know through conversations with us that we are not intending to support, and then mount a public relations campaign and try to involve us in their bacchanal: “Oh, the Opposition is not doing anything about crime”. That is your job. Listen to the word of the Prime Minister and you would know that is your job. [*Desk thumping*] Where we can do our part, we are doing our part. We are in communities because the United National Congress has said that we will build this nation community by

community, and we are in communities. We provide legal services, counselling services, et cetera. So we are doing our part and where you can do your part, you have failed and then now trying to involve us in your bacchanal. [*Desk thumping*]

Madam President, going back to the article that I previously quoted “PNM’s billion-dollar crime bugbear”. I do not have to recite the source?

**Madam President:** No.

**Sen. A. Haynes:** Right. This article, after detailing all of the promises, most of which were not accomplished by this administration and highlighting the increase in murder numbers, which is the number that most of us use to gauge over the years, then sought the advice of criminologists. Because, like I said, it is a very interesting reading. It is a very thorough well-researched article, and the author, Ms. Paul, spoke to Trinidad and Tobago criminologist, Renee Cummings, who spoke about what we need as a solution-oriented approach to our crime problem, and I would just like to quote what she said:

“The detection rate reflects the brand identity of law enforcement agency. The business of law enforcement is the retailing of deterrence.

However, the message being sent is one of impunity. The police must deliver a real time, best practice, homicide-reduction strategy; augmented with a coordinated, comprehensive, data driven, national violence prevention strategy”—that is—“community-driven and sustainable.”

You see, people are willing to help you if you are willing to listen. Right? They are willing to give you to information to create a solution-oriented plan of attack for this crime situation. Instead of doing that—and I have to come back to this article—you bring what is, in essence, a middle of the road intervention here because, as it stands, for the Bail (Amdt.) Bill, for it to come into this whole criminal justice system, the crime has already been committed. So all of the

people that you are trying to protect and all of the crying mothers and the children that you want to keep safe, by the time you get here, the deed is already done, Madam President, and now you are telling me—the Minister of National Security came forward and said, this is about reoffending and then gave us no numbers for that, in particular. Right? He did not tell us what are the statistics on reoffenders. You know, it really was what I thought a surface-level delivery of the statistics without drilling down deeper, and I suspect it is because they cannot drill down deeper, because the statistics do not tell the story they would like for it to tell.

Madam President, the criminologist, Renee Cummings, went on to say that: “‘The approach has never been scientific’—it has never been—‘multi-disciplinary, multi-systemic, evidence-based, trauma-informed, victim-centered and’”—focused on—“‘best practice.’”

It is my respectful view that the Bail (Amdt.) Bill, Madam President, is none of those things. So a mere presentation of statistics and saying, well in 2015 when they had the bail amendment it was a lil lower and in 2018, we do not have and it is higher now, Madam President, is not the level of scientific data-driven that we are talking about. That is just not what we are looking for. It is kind of pedestrian in 2019.

You know what else is pedestrian in 2019, Madam President? Bringing 2016 solutions, telling us: “Oh, well you guys did it and the UNC had a chance to do it, so it is our turn now, so give us a lil chance to get this cooling off period.” Madam President, we are a mature society. We are a society that has entrusted this administration because they made a lot of lofty promises. They campaigned on the reduction of crime. That was all they promised the people of Trinidad and Tobago: “We will make your safe, we will make you safe.” Four years later, you are bringing legislation from our time and saying “Here, this is the solution”. So is it

that you thought that we had the solution then and, therefore, you want to regurgitate it and bring it back now or is it that you are being disingenuous, Madam President? You see, because the logic, the lines, the dots do not connect with what they are saying and what they are doing, Madam President.

And I want to look very closely, Madam President, at some of the other interventions that they promised and they never delivered on. But there was another point I had to make. I think it is the Minister of National of Security or the Attorney General came in to make the usual refrain of the OPVs and, you know, if we had the OPVs—the big “if”. If we had the OPVs, this would be a utopia. Now, Trinidad and Tobago would be a crime-free society, according to their imaginations, I imagine, Madam President. But in the midst of that fallacy, they came into power, grounded the helicopters, Madam President, and what is happening to the Trinidad and Tobago Air Guard as we speak? They do not know for sure, but I know because I happen to have a fair number of friends who used to be in the Trinidad and Tobago Air Guard. You know why they are not there anymore?

Trinidad and Tobago spent a significant amount of money training pilots and making sure that they were able to go through the system. We spent money into this programme. By “vaps” you come in, helicopters expensive, ground it, no use, needed them in Greenvale but, anyway.

**Sen. S. Hosein:** Prison break.

**Sen. A. Haynes:** Needed them in the prison break. Anyway, they made a decision, Executive decision, tightening belt again, Madam President. Massive amounts of people who we trained, who wanted to serve Trinidad and Tobago, who wanted to do their national service, trained as pilots, Madam President, they had them sitting down in there doing nothing—nothing to fly because they ground

all the helicopters. You know where they are now? They are working in the private sector. Well done. That is Government PNM style, and they like to say it. So when you are talking about OPVs, understand that your actions have also systematically crippled our national security apparatus. [*Desk thumping*]

Madam President, in their manifesto, in the 2016 budget—fiscal 2016/2017, they promised an establishment of a joint border patrol. Madam President, joint border protection agency. On the third time this was promised, the only actual allocation was \$500,000. This is what I am telling you about the level of mamaguy this Government really commits to engaging in. Time and time again they brought the same promises on the table—the joint border protection agency, the police management agency and the police inspectorate. They bring it every time. It sounds good. Right? We are doing something for you, then did nothing, nothing. They just bring it back every budget. I am raising that, Madam President, because if, again, they intended to be solution oriented, if they really intended for us to be safer as a society, perhaps they could have looked at engaging in these things instead of engaging in mamaguy and coming and asking for a cooling off period.

Madam President, they also spoke in the budget for fiscal 2018 of an offender management programme. I think in a large part, when you are looking at reoffenders and you are looking at the statistical data to give you a more informed opinion, an offender management programme would be useful. At some point in time they mentioned it, at some point in time they shelved it. We will never hear anything again about it. I bet you they will go on days and weeks of public relations that the Opposition voted no to bail amendments and “dey doh care about you and your safety” but, Madam President—

**Madam President:** Sen. Haynes, you are now starting to repeat a lot of what you said earlier in your contribution. You are nearing the end of your

contribution, so I would ask you to please, you know, raise some new points, please.

**Sen. A. Haynes:** No problem, Madam President. That point that I was making about the solution, being solution-oriented was largely because, Madam President—

**Madam President:** I do not need an explanation as to why you were raising the point. I just need you to take my guidance into account.

**Sen. A. Haynes:** No problem, Madam President. I was just using it to reorient myself in the space of my contribution. The interruption usually kind of—it throws you off a lil bit. I needed to find back my space anew. So I need to reorient myself. [*Crosstalk*] No, no, I would never be disrespectful, I would say. No, no. Madam President, more interruptions. I had, you know, the Minister of National Security—

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

**Sen. A. Haynes:** Thank you, Madam President. The Minister of National Security came in and made a lot of—he spoke a lot about the constitutionality and whether or not we ought to be afraid or whether it is constitutional bail, et cetera. And, you know, what I wrote down as the Minister was speaking was: Why not talk about the effectiveness? Yes, I know a lot of us raised the issue of the constitutionality, but the reason we have been raising those issues is because, generally speaking, most people do not think it is effective. So, therefore, what is the argument for us to give up our rights and freedoms and to give you a special majority for this if it is not an effective crime-fighting measure?

Now, Madam President, as I conclude, there will be—I have to doubt in the level of predictability of the Government—an attempt to say that the Opposition will oppose anything. I think that has already been disproven. We have given you

support when you have done the consultation, when you have acceded to our request for additional consultation, additional scrutiny, safeguards, Madam President, and therefore, the population will no longer buy your empty rhetoric that we are opposing for opposing sake.

What we are saying is that the legislation you have brought before us in no way addresses the problem that you said exists, the problem we all know exists. What we want as citizens of this country are real solutions to the crime problem. This is not it, and because of that, Madam President, we will not be lending our support to this Bail (Amdt.) Bill. I thank you. [*Desk thumping*]

**Sen. John Heath:** Madam President, thank you for this opportunity to contribute to this Bill to amend the Bail Act, Chap. 4:60. Perhaps I should start by declaring my interest. I am an attorney-at-law, private practice. A large portion of my practice is in criminal law. I do some prosecutions but, primarily, I am a defence attorney. So that when a Bill, the effect of which will see my potential clients' liberty taken away from them, I have to stand up and pay attention and so, in a real way, Madam President, I am glad that I can contribute my two cents. They say, whoever they are, that drastic times call for drastic measures. I, myself, Madam President, do not necessarily subscribe to that, but something has to be done and we certainly cannot go on the same way in light of our crime situation which I say is multifaceted. I have looked at the proposed amendments, and I must admit that I am having trouble digesting it. I am not saying that it could not be made more palatable by certain amendments, but in its current form I am not sure it would even achieve the desired results by the movers.

I heard the hon. Minister of National Security say that what they were trying to get rid of is someone who is charged coming to court on that charge and walking out literally the next day having obtained bail. It cannot be that with this

amendment the only difference is the person is charged and 120 days later he walks out having gotten bail. Something has to be different than that simple shift in keeping him incarcerated as to when he would get bail.

The reality is a trial, the commencement of a trial, is not likely to start in 120 days, for the simple reason that when it involves exhibits which have to be tested forensically for which certificates of analysis have to be generated, that by itself is way outside of the 120-day period. Usually, it is the case that until those documents come or are disclosed to the defence attorneys that the matter is put on a trial footing. There is a reason why the standard proof is beyond a reasonable doubt. It is a high standard, because the presumption of innocence in a democratic society must mean something. I have a problem, Madam President, where potentially, someone who has never being charged before in their life can be charged for the first time and has to go to jail for 120 days under this proposed Bill. Now, if that was a far-fetched scenario, I would have less of a problem, but the fact is, it is not so far-fetched. My colleague Sen. Chote would have touched on it.

In possession-type offences, both for firearms and for dangerous drugs, the police often go into, some cases a home or if a car is searched, and everybody goes down and everyone is charged. That creates a potential where persons who are caught in that who have never engaged the criminal system for anything, can find themselves 120 days in our penal system. If it is our Remand section—and, ironically, the Remand part of the prison is the worst and that is where the persons who are still innocent reside—if it was a place where it had a modicum of decency even for prison standards, that would be all right, but when you send someone to there, they are essentially taken to a hell hole. So that when the Bill is asking us to do just that, Madam President, we have to look inside the Bill and see what is there

for us to feel some sort of relief that notwithstanding the hard stance we are being asked to take, it is nevertheless for the greater good.

Now, if I may, Madam President, just touch on those areas, some of which I would make some suggestions, others I would say it is just certainly cannot work in its current form. When you look at the proposed section 5, My Lady:

“Section 5 of the Act is amended—

(a) by repealing subsections (2) and (3)...”

Subsection (2) in the current Act says:

“A Court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule and has been convicted on three occasions arising out of separate transactions—”

Now, I understand what the hon. Attorney General said about the three strikes. It may very well be that when that amendment came in, it was hoped that it would “ketch” a lot of persons who had three prior convictions but, perhaps, it did not, and those persons who are on the police radar have managed to, not necessarily evade capture and charge, but evade convictions. So that they do not find themselves captured there. I do not know that the answer is to take it out. Even if you do not want to say three convictions, certainly, you could say, look, at least one previous conviction of a life-type offence.

So if it is firearms, if you have a previous conviction for firearms, well then no bail. Even if you were to say—I might have trouble digesting it—but if you are charged with a firearm offence and you have one pending for a like offence, firearm, no bail. I would try to digest that but when, as proposed in 5(3), no grant of bail for simply being charged, that—I find it hard to swallow.

In the current Bill, in assessing whether or not to grant bail, convictions over a 10-year period are not taken into account and that is not proposed in this new

Bill. Now, Madam President, that sort of makes it incongruous with what is it is policy now of judicial officers in sentencing, and what is in the current Bill really codified a practice amongst judicial officers to disabuse their minds from convictions over a certain age, 10 years. So what you would have happening here is that for bail, I could consider a conviction, however old, but when it comes to sentencing, you—

**Madam President:** Sen. Heath, thank you. Hon. Senators, we will suspend the sitting and return at 5.30 p.m. Sen. Heath, you have utilized 10 minutes of your speaking time. So this sitting is suspended until 5.30 p.m.

**5.00 p.m.:** *Sitting suspended.*

**5.30 p.m.:** *Sitting resumed.*

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

**Mr. Vice-President:** Sen. Heath, you have 30 minutes. [*Desk thumping*]

**Sen. J. Heath:** Much obliged, Mr. Vice-President. Mr. Vice-President, I was at the point where I was saying that the current Bill caters for a tribunal assessing whether or not to grant bail to disabuse their minds for convictions, 10 years and older, and it would be incongruous if it is that is taken out, and in the proposed Bill that is not something a tribunal can take into account. So that whatever the age of the conviction it can be taken into account, but what you could have is that very same tribunal, in a sentencing forum, not taking convictions 10 years and older into account. Now, why that is important for our legal system is that we do not have, like the United States and the UK, where, just by the mere effluxion of time, you have convictions expunged from your record. The only place where that is recognized is in the courts, and the practice is if it is 10 years and older they do not recognize it.

So you have persons in our system who have convictions from 1901, simple

possession that cannot ever come off their record. It is a stain that follows them throughout their lifetime, save and except, if they are fortunate enough, to get a presidential pardon. There are, Mr. Vice-President, when one looks at the Schedule at Part II, it may be that persons who were not necessarily meant to be captured in this proposed Bill may very well find themselves having their liberty detained by design. And why I say that, the best example of that is in the Dangerous Drugs Act, simple possession is an indictable offence. On indictment the sentence must not exceed 10 years but must be more than five years, so it falls to be considered within the proposed Bill. Now, while it is not customary—or it is certainly not common for persons with a joint of marijuana, upon a recommendation being made to ask for a judge or jury—it does occur, and I have seen it occur and I have represented such persons, and on both occasions that I did, they inevitably were not represented downstairs and felt that a judge and jury trial for a joint of marijuana was the way to go.

Now, the point is this, if it is laid indictably and there is no recommendation from the prosecution, then that person cannot get bail for the joint of marijuana—cannot—because the only way you can bring it as a summary trial is if a recommendation is made and you want to have the matter heard in the Magistrates' Court, then you fall out of the 10 years and you would be eligible for bail. So there can be very well a scenario where someone who is known to the police finds themselves, not on a gun charge, on a simple marijuana possession charge and the police do not make a recommendation as they would normally do. There would be nothing wrong with that and there you can keep Mr. X who you want, who you know to be notorious, and you can keep him for 120 days. There will be the scenario, of course, where persons are unrepresented and they figure the way—they would rather have a judge and jury and they cannot be given bail, and I do not

think that the Bill intends to capture such persons but because these offences are all laid indictably to go to the High Court, and only on recommendation, and if that recommendation is taken that you could fall under the 10 years then it might be an unintended event.

So it may be something that the hon. AG can look at because, certainly, we are at a position where the discussion of decriminalization is right. So that for someone to spend time because they cannot get bail for a stick of marijuana, for which if they had pleaded guilty they probably just would have gotten a fine, depending of course if their antecedents are not long like a grocery list.

Now, Mr. Vice-President, looking at the proposed Bill again, I have already said that with regard to section 5(3) I would want to put in, just as it is in 5(3)(b), that while you are charged for a firearm, that alone does not prohibit you from getting bail, but that person should also have at least a pending charge. And the reason is this, because if you are innocently caught up once and the police pick up everybody in the house or everybody in the car, it is unlikely that lightning will strike twice, not impossible but unlikely you would find yourself in that situation twice. So a person who has a pending charge is more likely to be a person who has a propensity to be engaging in some type of criminal activity simply because he is before the court on more than one occasion.

When I look at subsection (3)(c), I must confess that I too have a problem, and think Sen. Hosein did indicate that he too had a problem with this, that:

“...where the prosecution informs the Court that the person or any other person involved in the commission of the offence used or had in his possession a firearm...”—

Then, just because of that utterance from the prosecutor, this entitles the person to bail.

Now, how it would work is the prosecutor would be telling that to the court; the prosecutor, no doubt, heard it from the complainant; the complainant, no doubt, would have heard it from one of the potential witnesses, and once the court hears it without making an enquiry and testing the veracity of the assertion or making an enquiry, the court is bound to follow the law and not grant bail. And, lo and behold, when the trial comes there might not have been anything about a firearm because there were so many—the Chinese whisper how it went, it changed and morphed into something when it was uttered to the court. But I could see a scenario where, for instance, notwithstanding that you do not have a firearm, let us say there was a robbery, someone was shot, so that you know, circumstantially, from the evidence available, a firearm was used. And perhaps with that type of evidence being disclosed to the court, in a real way, medicals, and so forth, which match up with the time and date and event that it happened, well, then perhaps it could be considered in that light, but it has to be a little more than the prosecutor simply just saying a firearm was used.

Now, wherever it appears in terms of when bail is allowed, why is it necessary for the application to be made before a judge? These are matters which currently are before a magistrate, and because the matter is live and coming up before the magistrate, you think the magistrate would be the appropriate person to make an application for bail, and that is where it is usually made in the first instance, and only upon refusal does the magistrate say that you can apply to a judge in chambers.

So, if by just the effluxion of the 120 days passing, I see no need why you would need to go to a judge in chambers as opposed to the very forum for which the matter is being heard. I find 120 days too long, so notwithstanding all my difficulties which I have indicated, 120 days I find a bit long and perhaps that

could be considered 60; 90, on the outer end, still kind of high, but it all must mean that something could happen within that time. I have already expressed my reservations with respect to being able to obtain the forensic certificates of analysis in that time, but perhaps statements can be filed and other things can be done to gain the process towards starting the trial in a short time.

I am of the view, Mr. Vice-President, in any event where the defence is one of denial, it really does not matter to me if the forensic comes back and says, "The gun is a gun". I deny it in any event. Whatever it turns out to be, I deny it, and in those circumstances we should have legislation which kind of caters for that scenario. If you say it is drugs, whether it is drugs or not it does not matter to me because I am saying I did not have it. So all the years it is taking in the forensics, it is really of no moment.

Mr. Vice-President, I am certainly bypassing all my points which were traversed already by those who went before me. When I look at subsection (7), which says:

"For the purpose of this section, except subsection (3)(a), where a person is charged with an offence listed in Part II of the First Schedule and evidence has been taken within one hundred and twenty days of the reading of the charge but the trial is not completed within one year from the date of the reading of the charge, that person is entitled to make an application to a Judge for bail."

The same thing applies, rather than the judge could be a magistrate from which you are appearing.

The other problem I have with this, Mr. Vice-President, is while the accused man is counting down his days to reach the 120-day mark, and oscillating between hope and despair, the hope that is coming up and the despair when he comes to court and still nothing is happening, the prosecution is very easy to make a matter

part heard, because all you could do is say you are ready, submit a statement under the paper committal provisions and your matter is part heard. What that does, it means that when his 120<sup>th</sup> day comes up, he is not entitled to bail because his matter started, but not started in a real way, because it started and it has to get an adjournment for this to happen and for that to happen; but, technically speaking, it has started and the prosecution would be right to make an objection to bail, and so he has to stay there for a year. And I have a difficulty with that because the system opens itself up to be manipulated, but manipulated in a way in which it caters for that. I can start the matter, I can file my statement, I could read it out and tender it; I have problems going along the way with following it up, and so that I think that has to be addressed because what you would have is someone who—let us just say it goes in as is, someone who has been charged for the very first time languishing in a jail for a year.

Now, as inconceivable as that may be, those are the possibilities when you look at how the Bill is presented, and I am saying that we must find mechanisms to safeguard against that because much is being asked. So we must exhaust all our efforts in trying to make sure that what you propose does the least amount of damage. I quite rather like the change in the specified offences and taking out those offences which really were not the egregious type of offences which are in the current Act, and I think that has to stay.

Let me close off, Mr. Vice-President, by saying, while I recognize that efforts have to be made, not just by the movers of this Bill, but all around, though I have a vested interest in this particular area of law, criminal law, I still try to remain objective from the bench from which I speak, and while in its present form I have indicated that I have certain difficulties digesting this, I am not saying that it cannot be salvaged, but in its current form, for me personally, it is hard to digest.

**Hon. Al-Rawi:** Before you, Sir, may I?

**Sen. J. Heath:** Yes.

**Hon. Al-Rawi:** Thank you, hon. Senator, for giving way. I am deeply appreciative of the opportunity to intervene. Secondly, I am intervening because as a temporary Independent Senator we never quite know how the vagaries of appointments roll and I am particularly intrigued by your submissions. Could I ask—if you could directly answer—if your concerns would be addressed in the fashion that you have identified, which as I have caught it, involve a look at the time frames as may be necessary, a particular caveat to the incarceration for certain offences, and if you could clarify, lastly, your main concern as to where you see an abuse could happen. I caught it that you are also inviting that any court may consider the application, not necessarily the formula we used from 2011 to 2015, which was that the judge would consider it. Would you mind lending me your thoughts on those?

**Sen. J. Heath:** Yes, certainly.

So let me say that the most pressing concern of all is at subsection (3). My problem with it is that—and Sen. Chote would have touched on it—our law as it is with respect to firearms and dangerous drugs deems you to be in possession, and the police, they have not advanced with the case law. So in the old-type cases, Ramdhanie cases, run-of-the-mill, everybody goes down. The latest set of cases, Lutchmie, Bharat, and those sorts of cases say that, if your presence there—it is nothing more than mere presence, you have made no utterance, the particular item is not in a place in front of you, then you ought not to be charged. If the police was moving like that, but they are not, so because I am on the ground I can say they are still being taken down in droves and, inevitably, they get off. Hence, I have a problem where you are bringing this person, first time, could be a student, a

professional, anyone, but first time they are before the court for anything, they are going to jail for 120 days.

I am saying, even if you were to bring it down and taper, a person who is charged and has a pending, you are likely to take that person away because it is highly unlikely that they would have found themselves in that situation twice—I am just saying—not impossible, but hardly unlikely. You do not have, as presently obtains, which I think, perhaps, that three convictions, it does not capture enough of persons in there, because persons who the police may have their eyes on, even though they may have been charged may have successfully evaded convictions, but they may have pending matters. So I am saying that if you can make a compromise there, it makes it more palatable; still a little concern but more palatable.

So that you have here at (b), listed in Part II of the First Schedule and has a pending charge. Now, when you look at that, hon. AG, Mr. Vice-President, you know what is a common charge, wounding, causing grievous bodily harm. I have done a number of those at the High Court, even though it is more than 10 years you would be surprised to know that the sentence, in certain cases that I have done, they are non-custodial sentences, because invariably they involve family members, by the time it gets up to court it is years old; they have made amends and that person is before the High Court years later—10, 15, in some cases 20 years later—brother-brother, brother-sister, brother-uncle, father-son. A lot of that captured on grievous bodily harm under section 12—

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

**Sen. J. Heath:** Sorry?

**Hon. Al-Rawi:** Twice/

**Sen. J. Heath:** Yes, well, okay. Well, once one conviction, another a

charge— another a charge. You see, and so that is it. So, for instance, I have had it again and the person, one conviction up to now. The other one he got off on trial, but I am saying, even if we say that that is the lesser likelihood, I am saying that it is nothing to bring subsection (3) in line with that. That is one of my suggestions.

The other concern is that persons who you may not intend to capture, simple possession, these offences are laid indictably. An accused man has no say as to how his trial goes because they are laid indictably. There must be a recommendation. Only when a recommendation is made the accused man has a say as to where he goes. If he goes summary, this does not apply. I have had the experience where unrepresented persons figure that their chances are better before a judge and jury, not having the benefit of being told that your sentence is greater up there. If he does that, cannot get bail, 120 days. If the prosecutor, and this is it, they would be well entitled on who is the accused to say, notwithstanding the—

**Hon. Al-Rawi:** Thank you, Senator.

**Sen. J. Heath:** Yes.

**Hon. Al-Rawi:** So, would an amelioration happen if you narrow the pot even further because we are talking “charge-charge”? You are on a charge and you come back for a charge for firearms, yes, charge-charge; for specified offences, conviction charge or charge-charge, so even though it might be slim that you are really innocent but you happened to come on two separate occasions for the same charge or a combination of list of schedules, would it be improved if it were three charges?

**Sen. J. Heath:** Yes. Well, not necessarily, for the particular—what I was pointing out to you is that I do not think you intended here to capture an offence which really does not go indictable normally, because no one who is advised

properly—

**Hon. Al-Rawi:** I got you.

**Sen. J. Heath:**—goes to the High Court for a joint. But I have experienced it, but what I am saying, because persons are unrepresented, and they in their own mind think that I want to go before a judge and jury, they do not know by saying that it is 120 days they have signed up for. So I am just saying that it might be because the Dangerous Drugs Act is specifically put into the Schedule, it is not necessarily that you want the simple possession to be there but a circumstance can happen where, notwithstanding these persons are unintended to be captured here, they can. As I say, my experience over the years, it is only two or three such cases that I know of.

Now, the other point I was saying it was simply with respect to subsection (7) where it is a person who—and I am going on the basis that as the Bill is framed has gone through—a person who has never been in court before found himself charged for a firearm is incarcerated, 120 days approaching but the prosecution says, “We are ready”, and it is easy to make a matter part heard. So that part where you say, evidence has been taken, it is easy to satisfy that to start the case, but my experience is, and I know that stakeholders—

**Mr. Vice-President:** You have five more minutes.

**Sen. J. Heath:** Much obliged, Mr. Vice-President. Stakeholders are trying to change it. They are trying to change the way cases flow in the Magistrates’ Court. Right now it takes years. It takes years, and what we are trying to do now is to have it done within days. Some magistrates are blocking off days. It still has teething problems, and I am saying, in those circumstances, we do not make it to the 120 simply because you think you are getting a start, only for your matter to go on beyond a year, and after the 120 days start, that is it, you are not entitled until

the whole year passes and your case is still going on. So that is something that I think, collectively, put our heads together and we can certainly try to fix.

Mr. Vice-President, those are the extent of my submissions—that is the extent of my contribution. [*Desk thumping*]

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

**6.00 p.m.**

**Sen. Taharqa Obika:** Thank you much, Mr. Vice-President, as I stand to contribute to this Bill. Now, in effect we have many issues at play. We have many issues at play. Many issues were ventilated, and I wish to sharpen my focus regarding separation of powers and the other areas where this Bill tramples on the liberty of persons.

I want to start with the Constitution, because I listened attentively and I heard Sen. Simonette stated that bail is not a right afforded to one who is a citizen of Trinidad and Tobago by the Constitution. I am not sure if Sen. Simonette represented the Constitution well. One may say he misrepresented, I will not use such strong terms. But the Minister of National Security tried to cover for Sen. Simonette when he pointed to section 5 of the Constitution, specifically 5(2)(f), where it states regarding the deprivation of the rights of a person in terms of liberty and the right to reasonable bail without just cause.

Now, if one were to take that statement that one has the right to reasonable bail without just cause, then we would have hoped to glean from the Minister of National Security's contribution that there is just cause, as he attempted to shift the debate to focus on just cause. And I am saying that an attempt to shift the debate to focus on just cause and trumpeting the good work of our men and women in the Trinidad and Tobago Police Service is also a distraction, because the real issue of this Bill has to do with separation of powers, and the ability to deprive one of one's

liberty where that tramples upon the rights in the Constitution, and may definitely open up the Government to litigation once this Bill passes, even if it succeeds with a three-fifths majority.

So the Minister of National Security made a case for the issue that he may have with the Judiciary, in terms of persons going in and they just come out, just like that, and they get bail. All right? And it appears to an observer as if the intent was to circumvent the Judiciary with this Bill, [*Desk thumping*] and by so doing circumventing the rule of law, and of course trampling on the rights of citizens with no just cause, contrary to the assertion of the Minister of National Security.

I want to reference what the Minister said, because the Minister referred to persons who are being denied bail as criminals. Now, one always asks the question, in all these Bills that we are bringing here and the terminology that we are using, warehousing of persons—and he referred to persons as “imps” and so on—is it that the Minister of National Security is saying that there is no presumption of innocence until proven guilty?

I listened to Sen. Heath, and Sen. Heath indicated and he stated very clearly that persons in remand are innocent. He did not say they are pests. He did not call them criminals. They are simply on remand and they are innocent.

**Hon. Senator:** Until proven guilty.

**Sen. T. Obika:** I would not even need to add the “until otherwise”, because that is understood, you are innocent. So if one is innocent you need to treat them with the respect and keep, in terms of preserving their rights, as citizens of Trinidad and Tobago. And of course if one is incarcerated the only right that you must surrender is your liberty, freedom of movement.

Now, Mr. Vice-President, the Minister of National Security spoke about supporting the law, and that the police is asking for this, and he read into the record

a press statement by the Commissioner of Police, but the police also apparently called for the Anti-Gang Bill. It shocks me to say that the Minister said that he meets weekly, on a weekly basis, every week, with the heads of national security apparatus in Trinidad and Tobago—every week. The year has passed already, 23 weeks, and he can only boast of just about five charges—charges—not one single conviction. [*Desk thumping*]

If that is the standard that we have to aspire to, by relying on a press release from the Trinidad and Tobago Police Service, and saying that because they are merely calling for this that we must deny citizens their rights, and the only thing he can hold up is five charges. Charges are a dime a dozen, especially when the Attorney General came to this Parliament and said that there are hundreds of gang members, we know their names, we know their addresses, we know where they live, we know their crew. We have the gang here, the gang in this town, the gang in that town, and after all of that song and dance, five charges? We cannot be serious here. If we are to now rely on another press release from the Trinidad and Tobago Police Service and the standard that we are aspiring to is after 23 weeks, five charges. I will leave that there.

Now, the hon. Attorney General in his presentation, in piloting the Bill, pointed to the rise in murders and connected that to migrant issues. He tried to cover by saying it is not only Venezuelans. However, the Commissioner of Police already sounded a warning when he indicated he had some challenges with the amount of criminals that are coming in, when he said criminals are coming in with persons from Venezuela. They are not all persons coming here as economic migrants, some of them are connected to crime gangs at an international level, the kinds we are not accustomed to in Trinidad and Tobago.

A criminologist, Darius Figueira, in an interview covered in an article titled,

“Criminologist warns: Venezuelan violence will spur crime wave”, by Shaliza Hassanali, on Friday April 12, 2019 which appeared in the *Trinidad Guardian* newspaper. He stated and I quote:

“Last year, he said the government in Guyana had to move in additional troops to its western border with Venezuela to deal with heavily-armed Venezuelan gangs crossing the border, as they created havoc and lawlessness. He said that T&T could end up like Guyana.”

Now, I am one for Caribbean unity, and the Cooperative Republic of Guyana is our Caribbean sister nation, with pride I say that. However, if they are suffering these challenges, do we want to follow them? And I continue with this quote from the article:

“‘Closing the gate now is irrelevant,’ he said, referring to the Government’s move to register all illegal and legal Venezuelans living here.

‘The Government do not want to accept the price we will pay for having them flocking into our country. They don’t want to understand the level of criminality that exists among them. They now have a foothold here and they are not going to give it away. These criminals are going to change the nature of violence in this country. The police would have a hard time on their hands as a Venezuelan crime wave has been launched,’ Figueira said.”

And of course, in that same article:

“...Commissioner of Police Gary Griffith said he was cautious about the amnesty the State has offered to Venezuelan nationals.”

Now, there are three points that arise, to my mind, from these statements by noted and renowned national criminologist, Darius Figueira. Number one, the Government is burying their heads in the sand regarding the issue of Venezuelan criminal gangs connected to South American crime syndicates, and it is a problem

of their creation. Why is that? We will see in my contribution.

The second issue is the Commissioner of Police is at odds with the Minister of National Security on this same issue. And the third is that the Government, and by extension the people of Trinidad and Tobago, are watching on as hapless spectators as crime runs out of control.

Now, Mr. Vice-President, clause 5 of the Bill. I do not want to commit the same faux pas as the last time. So I want to make sure I am on the right page. *[Laughter]* So clause 5 of the Bill, and the relevant section would be on page 3. Mr. Vice-President, the Bill is excessive. The contemplation of 120 days is excessive.

I listened to Sen. Heath when he was trying to look at what would be an outer risk—60 days, 90 days, 40 days, 30 days. But do you know in many professions, many occupations, if you do not show up for work after five days, they most likely would take you off the register, notwithstanding the best efforts of your trade union representative—abandonment of work. And you know why, Mr. Vice-President? Do you think you would want your employer to know that you are not in work because you are in Remand Yard? No, you would not want that to be the result. You would hope that you could get away with a medical certificate. All right? So there are many persons who were picked up by the police and were threatened with abandonment of work, only to reappear just before the ink dries on the letter for their dismissal. And in that case it is not a dismissal, they have abandoned the job.

So if you are subjecting a Trinidadian citizen, a national of this country who is working somewhere, to more than five days of detention without bail, you may make that person lose their income, their livelihood and then of course, it would point you to the reasons why. It may make that person more susceptible to even

offend, if they were not an offender in the first place, or reoffend, if they actually did offend.

Why do I say that? Because there are normal conditions that are contemplated for bail. The Law Association has it clearly: travel restrictions, reporting requirements, residency orders, curfews and so on. But also, if you think the person has the propensity to reoffend. And if you take the salary from someone, you take the food off of the tables of their children, and that person had a propensity in the past to offend, what you are doing is pushing that person to the only thing they may know, which is crime. So this in itself, by detaining persons for more than five days is a criminal act and we cannot support it. It is excessive.

I want to read from a judgment, Mr. Vice-President, because I could not—I tried to be eloquent in my delivery today—but I could not commit this part of it to memory. So I hope you can bear with me where this is concerned. And it has to do with the separation of powers and deprivation of liberty, and also, a subject that is close to the Attorney General's heart which is preserving the ability to not have to pay for legal suit. What I am saying is the denial of bail can open up the Government to legal suit which can cause the State to lose moneys.

And I wish to make a quotation, it is just two paragraphs, from a judgment of *Terrance Calix v the AG T&T*. The judgment delivered by Lord Kerr on 23 May, 2013 at the Privy Council, and I quote:

“Privy Council Appeal No. 0003 of 2012, Page 4.

In an ex tempore judgment delivered on 24 November 2010, the Court of Appeal dismissed the appellant's appeal. Stollmeyer JA, delivering the unanimous judgment of the court, said that the trial judge had correctly assessed compensation for the damage to the appellant's reputation. In relation to the claim for loss of liberty he said this:

‘The issue which arises here is whether a person who is incarcerated, although granted bail, can receive an award of damages in malicious prosecution under the head of endangerment of liberty, ...in the circumstances I have come to the view that the grant of bail by the Magistrate, although not accessed by the applicant, is, in law, a sufficient ground in this case, to disentitle him to an award under this head.’”

Now, that is the preamble. What I really want to get to are the points that he made. The first point:

“The first is that granting bail interposes a judicial act between the prosecution and the continued detention of the accused. The prosecution is no longer the cause of the deprivation of liberty. That deprivation is caused by the judicial act.”

That is the first point. What flows from that? The prosecution in this case where this Bill is concerned will be the cause of the deprivation of liberty of persons who are denied bail. When, in fact, it should be the subject to a judicial act, not Executive action. What this Bill will do is endorse Executive action, not judicial action, denying persons’ right to bail.

The second point—actually, that was the main point. So the other issues are—I do not want to read the entire thing into the record, it would take too long. So the other issues regarding this is that the accused persons in this case will have no opportunity to apply to a magistrate or a judge for bail or variation of same, and the State in this regard would be culpable of endangering the rights and the liberty of the accused.

Another issue, Mr. Vice-President, that I want to ventilate, which flows from this very judgment, has to do with the impact on reputation when bail is denied, and the circumstances that surround the denial of such, which can result in the State having to pay damages. And I quote from the very judgment:

“On his appeal to the Board, the appellant contended that the trial judge had engaged in a series of speculative assessments about him which had led to a plainly erroneous evaluation of the damage to his reputation; that the judge had failed to take sufficiently into account the appellant’s good character and the seriousness of the offence on which he had been tried; that he had equated the appellant’s lack of social standing with his character and had, on that account, wrongly concluded that his reputation did not amount to much; and that in consequence of these errors, he made an award for loss of reputation that was inordinately low.”

Now, the issue here is, when we have a Minister of National Security calling persons who are innocent, criminals, we have started already on the road to the maladministration of justice in this country. [*Desk thumping*] Because when you do that what you are doing is you are assassinating the character, Mr. Vice-President, and you know how culture works, especially in a small country like that. You may not be privileged to have a unique culture that is distinct from the rest of the nation.

So, the culture of how persons may perceive ones who are denied bail, who are incarcerated on remand, the culture would be that since the Minister of National Security, in his wisdom, can see those persons as criminals, even though they are innocent, then who am I, the ordinary citizen. They are criminals. So, once anyone—there may be an officer—there are many great officers in my family. My maternal grandfather retired as a sergeant, my uncle as well. So the blood that flows in my veins is that of an officer of the law of Trinidad and Tobago. So, there are many great officers of the law, but to err is human, and we know that there are also, as there are good, there are also corrupted officers.

On an ammunitions charge, if you turn to the Firearms Act, section 6(4) of the Firearms Act, Chap. 16:01 states:

“In addition to any other offence for which he may be convicted, a restricted person who purchases, acquires or has in his possession a firearm or ammunition contrary to subsection (1) is liable in the case of—(a) an offence under subsection (1), on summary conviction to a fine of seventy-five thousand dollars and to imprisonment for fifteen years;”

So how difficult is it for a police officer who is not confined to body cameras—despite the media storm surrounding when it was outdoored—for anyone in his search party, how difficult is it for him to simply lodge in your possession some bullets?

**Mr. Vice-President:** Senator, at this juncture, being the eleventh speaker, we have heard the issue put forward before by numerous Senators in relation to that particular section, and how easy it is to frame an individual. So at this juncture I invite you to bring forth any novel or new points that you may have in relation to the Bill that is in front of us.

**Sen. T. Obika:** Thank you, Mr. Vice-President. Can you tell me how much time I have left?

**Mr. Vice-President:** You finish at 6.38.

**Sen. T. Obika:** I will not detain us much longer. But there are some points I want to reflect on regarding the statements by the Prime Minister. But before I get there, Mr. Vice-President, we had an excellent meeting in San Fernando yesterday, [*Desk thumping*] and a brother in the crowd asked me for a copy of the Constitution. I know it will interest you as to why, because he is worried that he is losing his rights every week when he sees laws being passed, and he sees the rampant crime scourge in the country. But I duly informed the brother that I

always walk with my copy of the Constitution, just in case I have to remind Members of the Government, including Sen. Simonette, who may surreptitiously misrepresent the Constitution of Trinidad and Tobago. I will not want him to do that unknowingly. So I would not want that at all.

Now, I want to close on some reflections. In the first six days of 2014 from an article of May 25, 2019: “PNM’s billion-dollar crime bugbear”, Anna-Lisa Paul in the *Trinidad Guardian*, it is reported in the first six days of 2014, the then Opposition Leader, now Prime Minister, stated that:

“I can’t recall any time in this country, a bloodbath taking place like this week.”—where 16 murders occurred.

However, in the month of April 2019, just a few weeks ago, three and half years into this Government’s term in office, it was declared the bloodiest month ever, in the history of this country, where 49 persons died in just 30 days.

I want us to reflect on that. I also want us to reflect on the promises being made, and I want us as a citizenry to juxtapose that with the statements made by the Minister of National Security, as he was a guest in this House. I am not sure if those statements would hold water, if we put it to the test, because he made many statements in terms of policy—many statements in terms of policy that they intend to achieve after four years. If you cannot achieve after four years, I am sure persons will not be waiting for another year.

Now, Mr. Vice-President, the establishment of a joint border protection agency—they are still blaming the last administration for porous borders. Development of a disaster risk management policy—the flooding in October belies that. Utilizing the Citizen Security Programme—they closed that down; instead their plan is to lock up and run down youths and call them pests, criminals and all other derogatory terms, so that they cannot aspire to any contribution to Trinidad

and Tobago.

They went on with partnering with the Judiciary to re-engineer—this is the most important one—partnering with the Judiciary to re-engineer the structure and improve the efficiency of the criminal justice system. But we had to be subjected to a presentation, notwithstanding this promise by a Minister of National Security who is saying that they simply cannot trust the Judiciary. They simply cannot trust the Judiciary to take care of business, so no bail, because every time one “fella go in, he come back out”. So this flies in the face of the promises that they have made. And the last one is adopting an intelligence-led approach to national security. You could see that the intelligence that led them to Buju’s hotel room what happened out of that.

The last point I want to leave you with, Mr. Vice-President, is this: If we look at the murder toll from 2010 to 2018, the murder toll in this decade, the highest rate of murders happened in the years when the PNM was in office: 485, 2010; in 2011 it dropped to 354, 383, 408, 403; then 2015, 420; 2016, 463.

**Mr. Vice-President:** Let me just caution you at this point. There is a Bill in front of us that treats with an issue that does fall under the wider topic of crime, but what you are doing right now is actually engaging in a more crime debate as opposed to debates dealing with bail, which is the Bill that is before us. As much as you are indicating that you are wrapping up, I am going to ask you at this point that if that is what you are doing to wrap it up, because as you are extending onwards it is becoming more of a crime debate as opposed to the debate on the Bill that is before us.

**Sen. T. Obika:** Thank you, Mr. Vice-President. I was simply responding to the issues that the issues that the Minister of National Security trumpeted, that they claimed that they would solve but now are blaming us, blaming the past

administration, after being in office for four years—four whole years. So, the people of Trinidad and Tobago are not going to buy any argument that the police want this, so we need to have it, we need to trample their rights, because the same argument was advanced that the police wanted the Anti-Gang Bill.

The Minister of National Security is saying that he meets with them every single week. Twenty-three weeks have gone in the year, only five charges he could trumpet. So the people are not going to buy their arguments. What the people want is a government that will take the bull by its horns and solve crime, and they will get that as soon as election is called and the United National Congress returns to Government. I thank you. [*Desk thumping*]

**Sen. Dr. Varma Deyalsingh:** Thank you, Mr. Vice-President, for giving me the opportunity to present on this Bill, the Bail (Amdt.) Bill, 2019.

In the opening statements by the Attorney General, I gathered—two things I got from it actually. One, he mentioned that, you know, our borders are not being protected. He mentioned that more guns are coming in, machine guns and a lot of ammunition is here, also the migrant population is here. When he mentioned that, I saw really it looks like if it was a failure of the Executive to reach its mandate.

The second thing I noticed from his opening presentation was the fact that, you know, it was like an appeal for help, an appeal for the Senators here to see how we can rescue the country from the crime that is taking place, from the guns and, you know, this Bail Bill is supposed to help against this.

So while I am going to look at this Bail Bill, I just want to look at reasons why I am against it and reasons why I am for it, and make an opinion to say, “hey, this is my final, you know, opinion on the matter”.

So why am I against it? Why would I be against a Bill that actually seeks to protect society in a way, that it would protect the society from persons with guns,

persons who reoffend, from serious crimes? So, on one hand we have a duty to see if we could protect society, on one hand we have a duty to see if we can somehow give our citizens a little escape, a little buffer from the criminal activities, go in a little breathing space. But on the other hand we have to ensure that the rights of a citizen are not infringed.

And, you know, that goes back to conventional law, our whole idea of where we looked at the English system, and it actually shows us that in a civil society the rights of the individual we have to look at that. We have to guard against the rights of the individual. We have to look at the presumption of innocence. Even the Declaration of Human Rights in 1948, under Article 11, section I, looked at the French Declaration of the Rights of Man and of the Citizen of 1789, and since then it stated every man is presumed innocent until declared guilty.

The French Declaration of the Rights of Man and of the Citizen decreed by the National Assembly, Article 9, informs:

“As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner’s person shall be severely repressed by law.”

**6.30 p.m.**

So what I am looking at is, this declaration, since 1798, did in fact give the individual, you know, the presumption of innocence before the law. And if there is a presumption of innocence, therefore it is expected naturally that if I am innocent before the law and I am not guilty, you know, the State has to prove I am guilty, that level of innocence would, you know, somehow give me the level that I am supposed to get bail, I am entitled to that bail.

But as I looked at it, you know, we have seen that the granting of bail is not something, it is not absolute, because there are instances where the judicial arm

would look and see if this individual may abscond or if the level of the crime is such a, you know, is such a heinous crime or in such a way that crime would allow an individual to go back in society and cause harm to society, those instances you are able to look at those rights and if even it is a presumption of innocence, you are still able to hold that individual with the bail; so it is not an absolute right. So therefore, I looked at this reason why I may be hesitant, and I may be hesitant because the presumption of innocence is not there.

A second reason why I would be hesitant to support this is, as one of the Senators mentioned, I think it was Sen. Obika, that we have always been hearing in Parliament it is only a small amount, it is a small amount of criminals, a small, you know, known gang members, we know who are they, we can go after them; so therefore, we pass legislation to support this.

So, therefore, if we have had other legislation in place, why has it not, you know, somehow made a dent into this level of crime that we have because we have given the support to the Government previously in passing certain Bills, gang laws were passed and, you see, if we have confidence in these laws, we should be able to get results. So this is another reason why I might say, hey, you know, there are other laws in place that can care take of the situation.

Third, an abuse of power, and Senators have already mentioned that. Sen. Vieira mentioned about persons being framed, so I would not go more into that because we have cases where persons have, in fact, been framed and even in the past we had a Member of Parliament with missiles in his water tank, so we have be careful of abuse of police power. So this is the third reason that I may be a little hesitant; can we trust the police service? We have a new Police Commissioner, he is trying, but somehow we have to look at if we give this level, this freedom for police officers to, you know, the prosecutors to go to court and say “no bail in

certain instances”, would they plant a gun, those are the realities that face us.

A fourth reason why I may not want to support this is because of the fact that we have overcrowding in prisons; it is a known fact that the prison, the Remand Yard is overcrowded. And the report that we had from the Joint Select Committee when they looked at the human rights issue in the prison system, they had mentioned the fact that, you know, if these areas are not addressed—because the JSC on Human Rights, Equality and Diversity spoke about the overcrowding in prisons, they spoke about mental illness. That report actually shows you the amount of persons, overcrowding conditions, all of those are effects in the prison system that we have to be very careful if we are going to be putting more persons in that, we may be opening ourselves up for, you know, for legal litigation because people will say, “Hey, you know, you are going against the human rights”. So this is something we have to be very careful if we are not opening the doors up for that. So the overcrowding in prison is something why I am hesitant also to support this.

Fifth reason, I am thinking, there are other laws in place as some Senators mentioned. Is it poor house management? Is it a failure of the State to staff the DPP to have more things in place?—you know, to get the present laws we have, you know, to get it into motion, to operationalize these laws. Remember we say, “justice delayed is justice denied”, and if you have persons in prisons for a while and you are not putting things in place, we are denying them basic rights.

Another reason I would give is the financial strain because we have already seen some figures that were touted around here that \$50million a month to maintain 2,235 prisoners, and we have a figure that we got—it is almost \$20,000 to \$25,000 a month to keep someone in prison. So these are figures—could the country afford a set of prisoners there that the taxpayers will now have to put out money to support?

Another reason why I may not support this is the fact that if you have—it was mentioned here that somehow we are getting the impression that the judicial arm is not functioning as it should; we have gotten that, that feeling. And if that is so, this legislation is to try to see, how could we put mechanisms in place to allow, you know, somehow allow the judicial arm to act within a certain scenario where we may have these repeat offenders in prison. So somehow I look at it, is it that we are putting pressure on the Judiciary, is that the separation of powers somehow might be affected?

And I looked at this and I wonder, why can the Judiciary in itself not have their own internal mechanism, to have their own checks and balances to see how, you know, if there are certain magistrates, certain judges, get their act together internally rather than we having to go and tell them “do this”. So it is just a simple—we have three arms—Legislature, the Executive and the Judiciary. It is just to let them be in sync with what is going on and maintain their own independence and have own levels of functioning and scrutiny in areas like this.

Again, another reason I would look at it is, if you keep someone in prison, there is a higher chance of being convicted than if they been had assigned bail, as they now take plea bargains just to get out of jail whether or not they actually committed a crime. So some statistics in America show that, so once you are in prison, you want to get out of jail, you would make some plea bargain, you may not even be guilty, but you are doing that to get out of it.

And again, Sen. Chote actually mentioned that instance where the father told the police officers, “Just charge him, charge the guy, so I can carry this person to the hospital”.

So, we are looking at those reasons and the final reason why I am hesitant to support this is, our prison officers are already overburdened with work, our prison

officers are already on the receiving end, they are in a risky job, and with an overcrowding and extra persons in the prison system, you find we may be putting our prison officers at risk. And, you know, he or she may become targets of, you know, those individuals, you know, where they look at these persons and they become a target for inmate reprisal.

So unless we could get our prison system in a way running more efficiently, get more prison officers, improve the conditions of Remand Yard, these are things I am looking at. Unless we get these, I am kind of hesitant to support this, so I have those reasons why I am a little hesitant.

But then I looked at it, I listened to some other contributions, and I looked at reasons why I should support it, and some of these things are: I have realized that society is crying out for help. People are being victims of crime and, again, if it is even Executive failure, I think, you know, we may have a duty in Parliament to see if we could somehow give our population, give our citizens somehow give them a level of relief. And if I think that we are here in the Legislature trying to pick up Executive slack, I think I am tempted to help our citizens in a way because I see the need, I see the suffering, I see when people are out there victims of crime, when the reoffender comes back out into that community and they are facing that person, it is a difficult thing for those individuals. And I am faced with people having panic attacks when those offenders are out on bail, and they are seeing those persons there, they know that they have committed crimes, and those individuals in society have that great distress, so we have to factor that in.

And the figures we looked at is, I mean, it is atrocious where, I think, the figures in 2018, there were 988 guns seized according to information given by the Police Commissioner, and there is an estimated 9,000 illegal firearms; that was in 2018, but as the Attorney General had mentioned that this figure may have been

mushrooming now in the sense that, with the input of migrant population. And I am saying is, if we are looking at forested areas and we are seeing migrant populations coming in there, we will find a lot of people there. What about the guns that are coming in?—smaller; so guns are coming in, there is no doubt about it. So, again, it shows a failure of the Executive.

And, Madam President, there is a new breed of criminal out there. Right? The new breed of criminal will have guns and they are willing to kill and they have no sort of emotion, no sort of compassion, it is like an army of psychopaths going after their own agendas and are willing to kill those persons, so just as how you would kill a fly, they, without any thoughts about these persons and families. So it is a new breed of narcissistic sociopathic criminals roaming our country, and we are seeing that element. So I am thinking, we have a duty to see if somehow we can get these individuals. Now, obviously getting those individuals at that level, they have already reached there, but obviously we need to get to the root causes of crime, we need to start in the homes and schools to recognize these future criminals and put things in place.

So, yes, but in the interim, I think, this Bill will help some of the ordinary citizens who are like sitting ducks waiting for the criminal to rob, shoot them, shoot their relatives. And, I think, thank God our present Commissioner of Police Mr. Gary Griffith has a policy, again, he has opened up a policy of granting FULs so that persons could now be afforded the opportunity to defend themselves, family and property. So this is one of the reasons why I would support it, the fact that we need to help our citizens.

Another reason is, I have looked now at the criticism made against the Attorney General that he is bringing in laws that are, you know, draconian. And I have been hearing, certain persons mention that the Freedom of Information Act is

coming up and people are looking at the Government in a strange way. Are they bringing in—

**Madam President:** Sen. Deyalsingh, there is no Freedom of Information Bill before this Senate, and there is a rule about anticipation, so I would ask you to desist in any commentary on that.

**Sen. Dr. V. Deyalsingh:** I am guided, Madam President. So, I am looking at, is it that we are looking at the Attorney General's Bill and having a cause of unnecessary alarm, is it that we are alarmists/We are saying, "Hey, you know, this is a draconian Bill, it will erode the rights of the citizen". So, I was forced to look elsewhere, and I was forced to look and see, did any other countries look at any sort of bail amendments and what was their reaction. And I looked at Australia, and in Australia there is the state of Queensland. And in Queensland they amended the Bail Act to assist victims of domestic violence; so then we looked at this. And when the Queensland Parliament had to consider this, people also expressed concerns about the erosion of rights of the individuals, but they had amended their Act and in 2017, the Act received assent, and following its passage, you know, on March 22, 2017, they had a similar situation where people argued that their Act would also erode the rights of the individual. So in their Act there was the reversal of the presumption of bail for an alleged offender charged with a relevant domestic violence offence.

So, with this bail reform that they had and they got passed, it actually was now up to the offender to say why he should not be granted bail and allowed back in the community before they face the court.

So, Queensland's Parliament passed the bail, the domestic violence and another Act amendment Bill in 2017, and they reversed the usual legal process where police and the prosecution would have to argue why a person should not be

granted bail and kept in custody, and the need to provide more safeguards to domestic violence victims including provisions for courts to order alleged offenders to be fitted with GPS tracking devices, et cetera.

So what was strange about this Bill, it was the Opposition leader who introduced the Bill in a Private Members' Bill, and there the entire Parliament did support the Bill. So I am seeing a level of support that this Queensland Parliament had that Opposition Leader has a Bill, but it was supported for the good of the population.

And this Bill came about after there was a public outcry where there was a person called David Bradford who had been released on bail, and after he was released on bail, he went and killed his common law wife. So it was as a result of the public outcry, both the Opposition and the Leader of the Opposition came together and got this passed.

And what was strange in Queensland there were only 18 women who died from domestic violence, you know, only 18 but they were allowed to pass that Bill which took away the rights of the individual, and there were more than 22,000 domestic violence protection orders each year, but 18 died per year.

So therefore, Queensland showed me that their Parliament was willing to take away the rights of the individual, but not only in Queensland. We found that in New South Wales their Parliament, again, looked at their bail amendment Bill, and they looked at the 2010 Bill, and they actually made some changes, again, and in 2013, they passed similar legislation that the Queensland legislation had passed. Again, looking at those individuals taking away their rights, so Australia we have examples there.

But, Madam President, in New Zealand in the Parliament of 2013, they reviewed the 2008 law, the Bail (Amdt.) Bill in 2013 requires that a person on a

murder charge or repeat violence, drugs or sex charges, just like our Bill, would have to persuade a judge that the community would be safe if they were released. So again, they put the burden now on the offender, and they called it Christie's Law in New Zealand.

So, again, most of these pieces of legislation came about because something happened to some individual out there, there was a public outcry, and when you get that, you know, that outcry out there in the community, the legislators, they were, you know, they decided this is our time now, let us pass some legislation because the population out there is suffering, the community is suffering.

So they called it Christie's Law, and it came about after the murder of a North Shore teenager Christie Marceau at the hands of a 19-year-old person who was on bail at the time; so he was on bail, and came out and did this. So, again, this Bill would also make it more difficult for young repeat offenders to get bail, and allow police to arrest people who repeatedly breach bail without a warrant, so this is the extent that they went.

In Canada, their Parliament, so I am looking again, the Parliament in Canada there is something called Wynn's Law, and Wynn was a police officer, David Wynn, who was shot and killed by an individual in January 2015 while attempting to arrest a man on warrants. And the person who killed this officer was on bail despite 30 outstanding charges and a lengthy criminal record and he killed this police officer.

So therefore, when the Parliament in Canada looked to review certain pieces of legislation in terms of their bail legislation, they were trying somehow to say that when somebody is applying for bail, they should have there, mention all their previous charges. However, Wynn's Law was officially defeated in the House of Commons in June 2017, but there is still some public outcry out there and a

whipping up of public support to see if they can get this somehow changed, the Bail Act to be changed.

Liberals said that they agreed in principle, but wanted greater changes to the bail system. So with public insistence if kept on the front burner this could change. So if we look around the world, there are changes, so this is a reason why I may want to support this, other jurisdictions out there have supported it, they have seen the need.

Again, why would I want to support it?—because of the cost to the victim. I have seen victims of crime coming in with panic attacks when their alleged offender is out on bail, and if you want to calculate the cost of somebody with a panic attack or depressive disorder or having to hide from their homes, miss their jobs, having to come in St. Ann's Hospital to spend a month to get medication, it is a similar cost to keep somebody in the Remand Yard. If it is \$20,000 you are looking at, it is a similar cost when you factor in the doctors, the nurses, the food, the medical care, so it is a similar cost. So, I am saying, for the victim I would like somehow to say that, you know, we should somehow, you know, look at helping these persons who would have the panic attacks who would have these, facing these repeat offenders; another reason I would like to support it. Okay?

So I have given reasons why I may not support it because of the police may have the capability of framing individuals, but this piece of legislation as mentioned by the Minister of National Security, police have been asking for this piece of legislation for a long while, because the police officers realize they work hard, they may get somebody, they may put them away, but then as it goes before a magistrate, even though the police officers may tell the magistrate, "Hey, we object to this man getting bail", you hire an attorney, you have the right attorney, you know the right legal person, you are out on bail.

So what I am saying is that it makes policing more difficult because they now will have to go back at these individuals while if these individuals were away for a space, the police officers will have, you know, to deal with new offenders, they do not have to worry about the old ones, so, you know, they always have to play “catch up”.

But then as Sen. Vieira mentioned, we need safeguards in place, we have to get safeguards. We have to get to the presumption that a police officer might not like me and next minute I have missiles in my water tank; what am I do to?

When we have the camera system on the police officers, I am suggesting that this is something we need to go after. Police coming to arrest me, be it a “joint”, be it a gun, be it whatever they want to arrest me for, let them be equipped with their cameras so the evidence will be there, so we are putting that as a safeguard to prevent somehow any sort of police, you know, framing up anyone.

Also, if an officer wants to put a charge on someone, let it also be sanctioned by the superior officer at the station. So, I am thinking we have to put things in place to try and prevent any sort of police misuse or abuse of power because, you see, certain individuals when they have that power of being a police officer over someone, their egos may get in place, and they may be quite willing to go after somebody, plant something on them, charge them and, you know, this is what we have to look at. And it is a similar factor we have that when individuals hold guns, when a young guy holds a gun, studies show that their testosterone level goes up, so they and all will have that sense of power.

So, again, why should I support this? Being a medial practitioner, there is the World Health Organization, and the World Health Organization stated recently that crime is a public health issue, so I am duty bound now in my profession, because they say the issue of violence can be prevented, and its impact reduced in

the same way efforts have, you know, helped in preventing and reducing pregnancy-related complications, workplace stress, also infectious disease. In the same way, the World Health Organization is saying, we should now look at crime as a public health issue. So being in my medical training now I am thinking, if I can give any sort of a, you know, support to help in cutting down the violence in society, I will be doing my duty as a physician also and upholding the goals of the WHO.

Again, I looked again, you know, when you look at the system of bail, there are the professional bailors, and we know sometimes things are not too normal in the situations. How people get bail, you know, there are talks about the 10 per cent and a 5 per cent will go to certain persons who own property, deeds, you know, and there is an idea of things may not be right with the professional bailors out there. So, I am thinking in a sense, this may cut down some level of, you know, some level inappropriate behaviour on the part of bailors if you can cut down the amount of bail, you know, that they have to be granted. So, who will lose out from this?—some attorneys. I am happy our new Senator declared his interest that he is an attorney, and he will also have bail to give, so he declared his interest. So attorneys may not like it, the professional bailors may not like it, but what I am saying is that we have to see what can help society.

So, I looked at the objections of the Law Association and I heard it but, again, I am thinking that their opinions may be biased, because attorneys, I mean, in my judgment, the attorneys and they are the ones who may have to go and also apply for bail, it may be money out of their pockets. I hope my other attorneys here do not strike me down for this, but I am just saying. So the Law Association there they have given their opinion.

I have looked at the recommendation of the Joint Select Committee, and I

say Government has to look at those recommendations to help this Bill. And then, again, to support this I also noticed that we have to look at if we are going to support this Bill there will be more prisoners. And even though I mentioned the two cases before in Australia, what is found is, after this Bill was passed in Australia and NSW, after the passage of the Bail Bill, they realized and it was in an online article that I want quote, Madam President, where it is; “Prisons...the new...building boom” in NSW. And it is in the government news at Australia.com. So it actually tells you that in 2016 that, yes, there is an increase in the prison population, there is an increase in persons who are out there in the prison and there is now a need to build more prisons.

So this is what I am thinking the Attorney General may have to look at, and even in New Zealand which passed that legislation, again, we are looking at the fact that they have also recommended that there is a need to building more prisons.

As I am coming to the end, Madam President, I would like to just bring a matter here that, in November 2018, the whole idea of bail came up when I had addressed the mediation board, and we were looking at domestic violation. And the domestic violence, it was recommended that people who are—I am making this contribution because I may want to add on something to this bail, the schedule of offences.

So, I had made a recommendation there that with the domestic violence and people killing their partners, you know, they should have, you know, a level of risk assessment and bail should be denied until, you know, there is a risk assessment to see if these individuals who beat their partners, if they are at risk of killing them and there are risk assessment scales. But I was criticized for that, because people were saying that this was preventative detention, and it was attempted, you know, how could I say prevent that they are going to kill, but there are risk assessment

scales we could use. And even judges in certain jurisdictions there are risk assessments that they have that they could determine if this person who is going on bail would be somebody who is at risk to the community.

So why I quoted this because, you know, people will say, no bail for persons is draconian, but I would like to quote, again, I would like to quote from *Newsday*, Rachael Espinet. *Newsday* Thursday, 11 April, 2019, where the esteemed chairman of the Equal Opportunity Commission Mrs. Lynette Seebaran-Suite actually said, “No bail for them”. This is the headline in the article, “No bail for them”.

So if no bail for persons with guns and with serious offences to the children could be considered in this Parliament. She also considered that, you know: “No bail for domestic violence perpetrators who breach”—restraining—“orders...” And this was a call made by the Equal Opportunity Commission, you know, Chairman Mrs. Lynette Seebaran-Suite.

Now, so here you have an esteemed attorney, chairman, making a call for no bail, and she actually ended her call by saying that we have to review the Bail Act and, you know, which was going to come to Parliament. And— “Commenting on Seebaran-Suite’s statement during a break in the Senate, Attorney General Faris Al-Rawi disclosed, ‘We have a draft of the Bail Act...’— And you know, again, he said there that we are going to look at this domestic violence issue because we have too many women being killed and murdered and I think we can use this Bail Bill to help those women, and this is what I see, you know, lacking a bit in this Schedule that I am seeing here.

So, as I looked at the Queensland law, in Queensland when they recommended the changes to their Bail Act, they actually looked at the domestic violence, that if someone is going to strangle somebody, stalking these women, or

animal cruelty charges, their Attorney General said that those three signs, the strangulation, you know, you attempted to strangle somebody, you are stalking them, animal cruelty charges, those are dangerous individuals. So once you have that, that person if he is applying for bail, should be denied bail.

And I am trying to, you know, ask the Attorney General, just as in Queensland, I looked at clause 5 and I am hoping that we can add on in clause 5 at Part XXIV a Part II, a new subclause (k) where we look at, you know, any sort of breach of a protection order to high-risk offenders including those charged with strangulation, stalking and animal cruelty charges to be also included in this piece of legislation.

**7.00 p.m.**

So in closing, I looked at the Bill Essentials, and I also want to just comment on clause 7, where clause 7 said that we would have this Bill in effect for five years. I am thinking five years may be too much, because if we are looking at the parliamentary, the terms, we do not know who would be in power for the next five years. So, to me it is unfair and an unnecessary burden to saddle another party if they are in power with a five-year—so I am saying, five years, I am willing to say two years, Madam President. And, again, I think we need, in conclusion, to provide, to have a right balance between public safety and a defendant's right to be considered innocent until proven.

And in closing, I think at this time in the balancing of the scales of justice to tip the balance in favour of the victim and the community. Community safety is paramount. We have the stop the wild-Wild West culture we have at our nation right now, and I think two years is enough to at least try and give us some sort of tip back into the balance. We will review it in two years' time. We need to show those persons out there we are willing to fight them, not with guns, but with

legislation. So, I presently would give my support to this Bill unless some other future contribution I hear convinces me otherwise. Thank you. [*Desk thumping*]

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Thank you, Madam President, for the opportunity to join the debate on this Bail (Amdt.) Bill.

Madam President, in my very, very early years I grew up not too far away from Cecil Hume, the famous calypsonian Maestro, and it was not unusual to come in contact with Maestro, because I myself was growing up in a town that had Lord Superior and the famous Zandolie, so very, very early on my two older brothers and my parents ensured that I had my fill of good calypso. And the one I reflect on the most, and as I listened to the four Opposition Senators who went before me, I thought about Maestro's 1974 classic, "Mr. Trinidad", and the most famous line, in fact most people do not know it by that name. Most people know it by "Trinidadians really doh know what dey want." And if I have to amend Cecil Hume's classic, I would amend it in this way after listening to the colleagues on the front bench. I would say, and I cannot sing, but I would say it in this way:

In 2013 you like the 120 days,

In 2019 you saying you amazed.

You say you doh like this Bill.

But in 2013 you passed the same thing still. [*Laughter*]

So to make a long story short from in front.

The Opposition eh really know what dey want. [*Desk thumping*]

**Hon. Senator:** Kaiso.

**Sen. The Hon. C. Rambharat:** Unfortunately, Madam President, I still have also memories of Independence Day 1977 when the news of Maestro's demise came, he having been killed in an accident the day before.

Madam President, why do I say this Opposition does not know what they want? We do not have short memories. I listened to this argument, let me start with Sen. Obika, about separation of powers in relation to the removal of the courts' discretion to grant bail. Well, Sen. Obika was not paying attention. Madam President, it was my friends on the other side in Act No. 7 of 2015, because in a previous debate in 2017 I referred to the 12 amendments that the original Bail Act had gone through, and one of those was an amendment in 2015. And that amendment had to deal with the restriction on bail in relation to the anti-gang legislation, and that amendment in 2015, which my friends introduced, had a provision where a court shall not grant bail to a person who is over the age of 18 and charged with an offence under the Anti-Gang Act, 2011.

So, Madam President, if this Bill before us now breaches the separation of powers and interferes with the discretion of the Judiciary, then my friends are well schooled in how to do that. And since they did it then they should be prepared to do it now. But that is not what is happening here. The Constitution is very clear that this access to bail can be interfered with, with reasonable cause, and that is what Sen. Obika also quoted. So, all I could say when I listened—all I could think when I listened to Sen. Obika is that the Opposition “ain't” really know what they want. And, Madam President, I listened to all the Opposition speakers so far speak with amazement on this 120-day provision as though the Government was doing something that was new, that was virgin territory, that had been conceived by us to interfere with the fundamental rights of these citizens, and of course, that would be unsupported by them. But if I have to find justification to support this 120-day provision I will go to one of my favourite criminal lawyers, Sen. Sturge.

I have on record congratulated Sen. Sturge on many occasions, and I want my friends to go back to the Bail (Amdt.) Bill, 2015, and the debate on Tuesday,

March 31, 2015, and that Bill dealt with anti-gang but it dealt with firearms in the same way we are trying to deal with firearms. Because if my friends on the front bench do not understand it, I understand it fully, you know, and I warned Sen. Mark on the last occasion when I responded to his Motion on the safety of prison officers that this day was about to arise. This day was about to come when the Opposition must go on record in full view of the country in relation to their attitude towards firearms and bail. And what we are doing here, Madam President, is trying to bring back in place what this same Opposition advocated and was successful in getting done in 2015, and it is Sen. Sturge, when Sen. Heath talked about what will happen in the 120 days, it was Sen. Sturge who provided the justification of the 120 days, but even before that it was my friend Sen. Sturge with his expertise and experience in the criminal jurisdiction who was telling us, and I quote:

Criminal—"does not simply carry a 'bullpistle' or a ruler to lash somebody if they resist, he has a firearm, firearms kill. So he is a potential murderer. And that is where the rights are being deprived."

I cannot disagree with Sen. Sturge. I cannot. That is the justification. We are dealing here with a potential murderer, and we are trying, Madam President, to prevent that person from being on the street in certain circumstances, and we are doing what was done in the past by my friends, and I see no reason, because I have listened to them. I commend the Independent Senators who have offered us potential amendments, and I know the hon. Attorney General will address it. I cannot disagree. I cannot disagree with what has been proposed, but I listened to my friends and at no stage did they seek to tweak, to fix or to improve what is on offer today.

What they did, Madam President, so far, is to distance themselves from the

concept offered by the Government. Distance themselves completely from the concept; one, that in order to deal with the issue of illegal guns on the street and the possibility of guns in the hands of criminals being converted to murders, we should deal with the people who stand behind those firearms, and if someone is found with a firearm, then the access to bail should be restricted. And if there are persons who are on charges or a person who is on a charge listed in Part II, and that person is charged for a second time for a Part II offence, they should not have access to bail unless the evidence is not taken in their matter within 120 days. But that is the concept. The concept is to link firearms to potential murders and other offences, to address the pervasiveness of firearms, to address the pervasiveness of criminals, and I make no apology for using the word, and to address it through a process provided by the Constitution through legislation that is eminently familiar to the five Senators sitting on that bench today. And I would accept not a piece of hypocrisy from the Opposition today.

Madam President, it is so ironic that Sen. Hosein himself would disagree or go in the opposite direction to Sen. Sturge, because this is what Sen. Hosein says to us in his contribution, and I must say, I must say, Sen. Hosein shocked me because it was exactly 30 minutes into his contribution, he said, "Let me refer to the Bill"; 30 minutes into his contribution he says to us, "Let me refer to the Bill." He says, "I want to get specific", at exactly 11.59 a.m. He says, "I want to get specific." Well I got specific right off, and before he got specific we had to hear about the detection rate, the ballistics report, the murder rate, the cost of having a prisoner. It is \$15,000 a month. We went through that through several JSCs, it is \$15,000. What is the relevance of that? What is the relevance of that to protecting members of the public from people who walk the street with illegal firearms with intent to murder or cause mayhem? What is the relevance of that? And 30 minutes down

the road we got to something specific. But among the specific things was a link that Sen. Hosein attempted to make. He condemned the Bill on account of the low detection rate. He said, “I disagree with this Bill because the detection rate is low.” But it is funny enough, on March 31, 2015, Sen. Sturge offered the low detection rate as a reason for restrictions on bail and in his explanation this is what Sen. Sturge offered: He says,

“A man who is standing in front of you on a gun charge, loaded firearm, that is a man who may quite possibly be a person who has murdered and he is yet, because of our...low detection rate, he is yet to be picked up on a murder charge...”

So, Sen. Sturge as he was then was saying that because of the low detection rate, a murderer or somebody who should be questioned in relation to a murder has not been picked up, and if he shows up somewhere else behind a firearm there is a likelihood that he may conduct himself in the same way, and restrictive bail will remove him from the streets in the manner the failure to deal with him on the murder charge has not done. And I cannot disagree with that. I happily associate myself with my former colleague, Sen. Sturge. It makes sense. It makes sense. So, Madam President—

**Sen. Ameen:** [*Inaudible*]—about Rowley.

**Sen. The Hon. C. Rambharat:** I would not tell you about Rowley, I would tell about Garvin Nicholas. [*Interruption*] Madam President, the then Attorney General on Tuesday March 31, 2015, Sen. Nicholas as he was then. I cannot disagree. I do not have to go far to explain this 120 days, because it is my friends, they understood. They understood that what it means—it meant doing something that we would not ordinarily do. It meant interfering with fundamental rights. And in piloting that amendment Bill, Sen. Nicholas put it on the *Hansard*, it is there. I do not want to read it out, put it there, that we recognize. We recognize

what we are doing here is not something we would ordinarily do. But these are not ordinary circumstances. And when you we back through the 12 previous amendments, the amendments which were made to bail legislation from 2005 coming right up to 2017, each amendment reflected what was happening in the country at that time.

In 2015, 2005 to 2008, the period of kidnappings. And law enforcement, and citizens, and people who lived here and observed understood that the restricted bail conditions in relation for the crime of kidnapping, persons arrested in relation to kidnapping was one factor which went towards the reduction of the pervasiveness of kidnapping. Later on when we got to the issues of gangs, it is the restrictive bail conditions in relation to anti-gang provisions that if we had done what we were supposed to do then, would have assisted in dismantling gangs and restricting the growth of the gangs. And, Madam President, just like my friends on the other side in 2013, again in 2019 we recognized once again that this issue of firearms, the pervasiveness of firearms, the use of firearms in the commission of offences, it has not stemmed. Whether it is because we do not have enough cars, whether it is because the air condition is not cold in the police station, whatever the reason. And the fact is that I have said in this House on many occasions that if we believe, and if the data shows us that most offences are committed with firearms, murders are committed, the majority of murders are committed with hand guns, then our legislation to target those who hold those guns illegally and are prepared to discharge it to destroy somebody's life.

And more importantly, they should be taken off the streets, and that is what in response to my friend Sen. Mark, in relation to the safety of prison officers, I warned, that if you wanted to protect prison officers, and we should be doing that, and if you wanted to protect all the other citizens of this country, then we should be

looking at serious restriction on bail, particularly the Part II offences, and particularly, Madam President, the issue of firearms. That is the reality. And, Madam President, I listened to my friends talk and it reminded me of Sen. Sobers on one of the occasions when he was here and he said to us, “The Government has done nothing on crime.” And I listened to my friends, and you know I listened to Sen. Haynes, and the thought that crossed my mind, every time the Government brings something, the Opposition wants something we did not bring. It is like that fussy aunt that everybody has. You bring the water, it “ain’t” cold enough; you bring it, it too cold; you bring the tea, it too warm. Every time. So if we bring something on bail they want something on DNA. If we bring something on DNA, the Opposition wants to know about the bracelet that they passed in 2011 and did nothing. And every time we bring something, they want the something that not here. But you know what here tonight, restrictive bail conditions, and we want to see what you will do, and the country will watch you because you should have no problem in doing tonight what you did before. [*Desk thumping*]

I listened to Sen. Haynes, for example, describe what we are doing here as a level of shameless. But what could be more shameless, Madam President, than distancing yourself from a concept and an approach to criminal justice that you introduced. You brought it, the 120 days, and what could be—I do not want to accuse my friends of being shameless at all, but if I have to say anything I will say I am less shameless than you. I am less shameless than you, because the cooling off period—that was in reference to the cooling off period, and I listened to Sen. Haynes also, Madam President, talked about corralling people to lock them up for 120 days. Madam President—

**Sen. Baptiste-Primus:** The state of emergency.

**Sen. Gopie-Scoon:** They should not talk.

**Sen. The Hon. C. Rambharat:** Madam President, I have been around a “lil” while. I have been around a “lil” while and I saw young men, and Sen. Mark got angry with me one day when I used the word “black”.

**Sen. Baptiste-Primus:** Young African men.

**Sen. The Hon. C. Rambharat:** Young African men, afro Trinidadian men, profiled, profiled, corralled, pushed into vehicles—

**Sen. Baptiste-Primus:** Back of the vehicles.

**Sen. The Hon. C. Rambharat:**—Ministry of Works and Transport trunks, public utility, WASA trucks.

**Sen. Baptiste-Primus:** Anything, boat, car and trucks.

**Sen. The Hon. C. Rambharat:** And taken and incarcerated, and something which is costing the State, of course. [*Crosstalk*]

**Madam President:** Ministers, please!

**Sen. The Hon. C. Rambharat:** But that is my concept of corralling people. But we are not locking up anybody for 120 days. The Government is not doing that. The Government does not arrest anybody. In fact, none of us in here will have a direct role to play in the implementation of this legislation. I have always said that.

We have one thing to do. I have one thing to do tonight, and that is to advocate and participate in the passing of this legislation. That is my role. And what happens to it out there, unfortunately, falls to a different group of people over whom we have some oversight when we wear different hats within the Parliament. But, Madam President, we have to create the law. We have to create the law, and we are not directly corralling anybody or interfering with anybody or going and grabbing anybody. And if the police act in a capricious manner, if the police breached fundamental rights, if the police do what they are not supposed to do,

then there are institutions set up to deal with that. It is not for me tonight in the Senate to worry about how the police will manage this piece of legislation. But my job here tonight is to give this country and to give this tool to the Judiciary, and to give this tool to law enforcement in this country, and I am quite happy to do that.

Madam President, I listened to Sen. Obika again, talk about trampling—yes, I listened, he is my friend—trampling on the rights, interfering with fundamental rights and so on. And again I say, this is not the Government acting *vaille que vaille*. This is the Government doing what it is entitled to do, bringing the legislation and looking for the support of the legislators in this House. But, Madam President, I should have known how my friends on the other side operate. I should have known. But I always give them a chance to surprise me, because I remembered having followed the 2015 debate with my friend then Sen. Sturge, having followed the debate and being extremely impressed with his defence of the 120 days provision and the other things relating to the restriction on bail, I was very impressed with his contribution, Madam President. I listened also to when he spoke on his own Motion, own Private Motion to deal with the unacceptable levels of violent crime in the country, and in particular his contribution on the 14<sup>th</sup> of February, 2017, and that is when Sen. Sturge as he was then, referred to an attack, the PNM's 10-point crime plan. And towards the end of his contribution, Sen. Sturge, and I still thank him for it, offered short-term, medium-term and long-term solutions to this scourge of crime as he described it. I immediately, when I responded distanced myself from his first short-term suggestion. I could share it with you; fire all three Ministers of National Security. I distanced myself from that.

But, Madam President, throughout the recommendation, short, medium and long, Sen. Sturge never managed to mention the word “bail”. So 2015, a strong

advocate, on behalf of my friends on that side, strong advocate of bail. They passed Bail (Amdt.) in 2010; they passed Bail (Amdt.) in 2013; and they passed Bail (Amdt.) in 2015. On one of those occasions they made a clean sweep. On one of those occasions, Act No. 11 of 2011 in relation to restrictive bail provisions for gang members or suspected gang members, they had no votes against in the House and no votes against in the Senate. A clean sweep, Sen. Mark. You were down there; you would know. A clean sweep. Everybody supported them, and then this same Opposition, Sen. Sturge came in 2017 and offered a plethora of ideas, short, medium and long and never mentioned the word “bail”. Distancing himself as you are doing today from the idea, the concept that you introduced, that restrictive bail conditions used properly could impact on crime. And crime are we talking about? Most importantly, we talked about everything that is listed in Part II of the Bill, but most importantly, I as warned Sen. Mark a few days ago, this piece of legislation targets in the main, firearms. And if you do not support I have no problem in those who have offered amendments. The Government and in particular the Attorney General has already indicated it is receptive to the amendments.

But if, Madam President, for the sake of making the Government look bad, distancing yourself from what you stood for 2010, 2013, 2015, if you feel, if my friends on that side feel that tonight is the night to punish the Government for doing what is right, then the public in this country would not allow them to escape with their own hypocrisy. I thank you very much. [*Desk thumping*]

**Sen. Wade Mark:** Madam President, thank you very much for allowing me to intervene at this time of the evening.

**Sen. Baptiste-Primus:** And you would not shout, eh?

**Sen. W. Mark:** No, I will be very calm. [*Laughter*] Madam President, as

you know I am a very calm chap. [*Laughter*]

Madam President, I would like to say from the very outset that the Bill that we are dealing with today, an Act to amend the Bail Act, Chap. 4:60, of what is, let me just put it properly, Madam President, the Bail (Amdt.) Bill of 2019. That is what we are dealing with here this evening. Madam President, I want to say from the outset that confession is good for the soul, and I think that what we have been witnessing this evening on the Government bench is a clear confession, and by extension admission of their colossal failure to address the fundamental rights of the citizens, particularly under section 4(a)(1), the right to life, liberty and to the enjoyment of property. The Government has failed miserably. But before getting into the meat of my contribution, I would like to just make some responses to earlier statements made by my colleagues.

**7.30 p.m.**

Madam President, I was a bit alarmed when the Minister of National Security in his—maybe innocence, innocence I should say or exuberance, stated that there will more people charged under the Anti-Gang Act by the end of 2019. And he gave us as a Senate the guarantee that there will be more persons or people charged or being charged. And I was wondering, Madam President, I do not know if that was a slip, a Freudian slip, but I do not understand how a Minister can come to a Parliament and predict that many more persons will be charged by the end of this year. And he went on further as I said to guarantee that to this honourable Senate.

So maybe, Madam President, he knows something that you and I do not know. And I think that we should call on the Minister of National Security to explain to the citizenry of this nation, what did he mean when he said that by the end of this year more persons will be charged under the anti-gang law. That is the

first area I found very interesting.

Madam President, I also want to say from the outset as well that the Minister also shared with us that there is no right or I should say constitutional right to bail. And we agree, Madam President, but what we do know, under our Constitution is that there is a constitutional right to apply for bail. Madam President, there is a constitutional right to apply for bail. But what the Government is seeking to do this evening is to pass legislation that will remove from the Judiciary, the courts of T&T, our magistrates and judges, that right that is inherent and entrenched in the Constitution as it relates to their discretion to grant bail and insert that right more or less onto the shoulders of the Executive arm or organ of the State.

Because, Madam President, you would know that in our Constitution, entrenched in our Constitution, there are three principal organs of government and they are separate and there should be no trespassing by one upon the other. And therefore, if the Judiciary is charged under our Constitution to deal with matters of the nature that I have outlined then what the legislation is attempting to do is to remove that discretion exercised by magistrates and judges to grant bail.

Madam President, I also would like to indicate that my colleague Sen. Deyalsingh made mention of the experiences of Australia and New Zealand as it relates to legislation dealing with bail and what they did. I just want to indicate to my honourable friend that Trinidad and Tobago is a bit unique. We have what is called an entrenched Bill of Rights. Australia unfortunately does not have in its Constitution an entrenched Bill of Rights. I also want to let my friend know that New Zealand does not have an entrenched Bill of Rights. They have a Bill of Rights, Madam President, via statute. But unlike Trinidad and Tobago, ours is entrenched. So I think it is very important for us to understand the difference between those countries and ours.

Madam President, I listened very carefully to my honourable friend, Sen. The Hon. Minister of Agriculture, Land and Fisheries, and he made certain interventions as it relates to this piece of legislation. Madam President, whenever we are debating legislation of the nature that we are debating this evening, we have to look at the context; we have to look at the environment in which this matter is being addressed. And, Madam President, you and I would know that we live in a very challenging environment today, and it is incumbent upon the Legislature, the Parliament which is the bulwark of our democracy to ensure that whatever we do, we seek at all times to balance the rights of and the liberties of the citizenry against that of the State. And you know, Madam President, there is always an attempt by the Executive arm or organ of the State to accrete onto itself more and more and more power.

We in the Legislature have the responsibility to exercise checks and balances to ensure that there are no—well, we do not engage in what I call, excesses, as it relates to power that is going to be placed into the hands of the Executive organ of the State. And that is why when we look at some of the provisions in the legislation, Madam President, you would realize that innocent citizens can become easy targets of an oppressive, repressive, malicious, let us say, State.

And, Madam President, the agencies of State, as you would know, one of them is the police. And whilst we have very great and good police officers and they work extremely hard, I read with alarm in the last month several judgments coming out of the High Court in which the judges are calling for the Executive to amend the legislation dealing with damages and where the State has to be called upon to honour those damages to persons who have taken up matters at the level of the courts and they have won. And you know, Madam President, it is you, it is me, it is the taxpayers who are called upon to pay damages and compensations to

victims who have been maliciously prosecuted by police officers. And what the courts of our country have been saying is that the time has come for police officers who engage in malicious prosecution, for them to be directly responsible, culpable [*Desk thumping*] and let them pay and not taxpayers. And the courts are saying to the Executive arm of the State, please consider that, because there is too much money that is going down the drain and they are not being held accountable or culpable.

So that is an area, Madam President, we have to take into account when we are dealing with legislation of this nature. Madam President, I am not going to repeat, because you will stop me, [*Laughter*] I am not going to allow myself to become repetitive. What I would say is that we are very conscious of what would take place and what takes place in this country on a daily basis involving innocent citizens in our land.

Madam President—

**Sen. Khan:** Sen. Mark, I will save you the chance of not repeating.

### 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 contribution of the last speaker prior to the Attorney General's wrap-up.

*Question put and agreed to.*

### BAIL (AMDT.) BILL, 2019

**Sen. W. Mark:** Thank you. Madam President, I want to join my honourable colleague, because like him—you know, we think alike. He did extensive research, I too did my research and I want to share with you and this honourable House, because just as how he said earlier on, he was in total

agreement with Sen. Wayne Sturge's intervention. I want to share with this honourable House statements and contributions by very hon. Members of the Parliament of the Republic that dealt with this same question of bail. And bail, Madam President, as my colleague said, came in 2010, 2011, came in 2013 and it also came in 2015.

Madam President, I have the contribution here of, at that time, one Mr. Colm Imbert, Diego Martin North/East at time. It is dated, the *Hansard* record, the 12<sup>th</sup> of June, 2013, and we are dealing with the Bail (Amdt.) Bill of 2013. And I do not want to bore you. I will let my colleagues go to the record and let them riffle through the pages of the *Hansard* so that you can get more details. But I would just share a few sentences with you, Madam President, so that we can understand the consistency that we have had on this matter coming from the Government when they were in Opposition.

Madam President, I quote—this is on page 33 of the *Hansard*, Colm Imbert: “And in most situations in England, it is the judge or the magistrate that decides whether you should be granted bail or not... Throughout the eastern Caribbean, that is how it is. In most of the world...that is how it is. The right to bail”—Madam President—“is left to the competence of the Judiciary...”

He went on to say, Madam President. He said at that time:

“Mr. Speaker”—I guess he was speaking to me—[*Laughter*]—“I cannot support legislation like this.”

I want to repeat this. This is in 2013, the Government at that time had brought a Bail (Amdt.) Bill and seeking the support of the Opposition and that time, this is what Colm Imbert is on record as saying:

“Mr. Speaker, I cannot support legislation like...”—that.

He goes on, Madam President:

“—that is so disproportionate, that it has declared the Judiciary of”—T&T—“to be incompetent to determine matters of bail...”

And I just close with the sentence, Madam President:

“The Government has provided no justification for this. They have not told us what the objectives are...and we are not supporting this legislation...”

And so said so done, Madam President. Not a single member of the PNM in 2013 supported this piece of legislation that was brought. [*Desk thumping and crosstalk*]

Madam President, I want to share with my colleague, because I am supporting my colleague here, right, like you. I share and I join and associate with the views expressed by the then Colm Imbert, Member for Diego Martin North/East.

**Sen. S. Hosein:** Do not sin your soul Sen. Mark.

**Sen. W. Mark:** Yes, Madam President, I will not bore you nor this honourable House. I am just quoting a few sentences and I am dropping the case. I will leave it to my colleagues and to the country to go and get the record.

Madam President, the Hon. Dr. Keith Rowley; he is the Member of Diego Martin West then, eh, now hon. Prime Minister. This is on the 10<sup>th</sup> of January, 2014, on the Bail (Amdt.) Bill. I would just go to the last few sentences of his contribution. I quote:

“So today, I am saying to the Government, do not waste”—your—“time. We are not supporting this, and I am asking you, why have you not brought all the measures we thought we had agreement on and come to this House and use the Cabinet on other matters, to deal with matters you could deal with. Right? ‘Yuh’ coming here, trying to browbeat us. We will not be bullied into passing bad law.”

So, Madam President, as the Leader of the Opposition then, he did not support the Bill. [*Crosstalk*] Yes, I am going on, Madam President. I also have

the contribution of the then Member Marlene Mc Donald. And, Madam President, it is the same refrain. I do not want to bore you, just one sentence:

“I await”—on—“the response”—from—“the AG...to state that this Bench cannot support this amendment.”

Marlene was the Chief Whip at that time, not supporting the amendments. That is the third person.

Madam President, like *Alice in Wonderland* [Laughter] it becomes “curiouser and curiouser”, because I cannot leave out the Senate, you know I am a veteran here. I am a veteran in the Senate, so I must come to my House, which is the Senate. [Desk thumping]

Madam President, I come to my House and then who do I see? I see the distinguished Attorney General who is here in flesh and blood and he made it very clear in this piece of—it is his contribution and may I share with you the date? The 21<sup>st</sup> of January, 2014. And I am just quoting a few sentences here, Madam President, so that you can get an understanding of what went on here:

“The fact is that the Bail”—Bill—“itself provides the remedy. What we must ask ourselves is: Are we satisfied as legislators this”—evening or this—“afternoon that we are making a reasonable and proportionate intrusion, in the balancing act that we are doing right now, between the State’s general guarantees of certain liberties and freedoms to us all, versus the accused’s right to the presumption of innocence, fair trial...”

And he went on to talk about:

“Are we making a proportionate decision...”

Madam President, he said:

“...the Bail”—Bill—“itself—we are saying in this amendment, that we do not think that the current legislation can meet the demands of what we as a society

want. This is the case of the Government. But the Act itself requires a judicial officer, someone trained in impartiality, as recognized and advocated by”—then—“Sen. Raziah Ahmed when she sat in Parliament many years ago...”

So, Madam President, the Attorney General at that time, as Sen. Faris Al-Rawi, made it very clear that he was in support of the Judiciary having that impartial and independent role in determining bail and not taking measures to remove that important responsibility. And, Madam President, I will not bore you any further. All I can tell you is that when we look at Camille Robinson-Regis, it was the same.

So when we hear from my honourable friend today, [*Crosstalk*] no, I am talking about 2013 and I am showing the hon. Senator, I am explaining to the hon. Senator that at that time the Opposition did not lend any support whatsoever to the Bail (Amdt.) Bill. They all voted against it in the House of Representatives and they voted against it in the Senate. [*Desk thumping*]

So, Madam President, we in the United National Congress have made it very clear that as the Government that will be taking control of this Legislature and the other place in a short while, through free and fair elections, we will become the new Government, I give you that assurance.

Madam President, what we are saying is that when we look at this situation very carefully that is before us, we are seeing where the Government through this piece of legislation is seeking to undermine a very important principle in our Constitution. And, Madam President, you will know under our Constitution every individual who is charged with an offence is assumed innocent until proven guilty. And what we have in the Bill that we are debating today is a situation where the Government is seeking, through this legislation, to reverse that particular principle.

So, Madam President, you are not yet convicted, you are simply charged and

by being charged you are being told that you are guilty without being convicted and therefore in those circumstances the Government is asking the Opposition to agree with a measure that could involve innocent citizens being incarcerated for 120 days and even more on the presumption that they say you are guilty. And on what basis, Madam President? On the police charging you for a particular offence.

Madam President, I do not have to tell you that when you look at the legislation, you look at the clause 5 of the legislation and you would see where the provision is very clear, where in subsection (3) of section 5, it is pellucidly clear as the former Prime Minister would tell us, that the:

“...Court shall not”—Madam President, they did not say, may not, eh, they say the—“Court shall not grant bail to a person who on or after the commencement of”—this Act—“is charged with an offence...”

So, Madam President, all you are telling us here this evening is that an individual simply has to be charged and once you are charged in accordance with the Schedule which is listed in Part II you are just charged under Part II of the First Schedule that is in this Bill. Once you are charged you can find yourself innocently behind bars.

Madam President, we have a duty and a responsibility to avoid any abuse or any perceived abuse by the Executive arm of the State against innocent and defenseless citizens of our country. And that is why our role is so vital and crucial. And the Government is so bold they have come here with even a five-year sunset clause. You know, Madam President, the Government did not even say for consideration, we will have a six months trial or a 12-month trial, so they want a five-year trial so citizens can give to the Executive of this country a carte blanche power to do whatever it wants and whatever it will. How can we in a society that has respect for freedom and democracy and human rights, how can we associate

ourselves with such draconian and dangerous measures? We cannot, Madam President.

Madam President, if the State via the Government, in this instance the Government, cannot provide protection for life, property and longevity for our society along with security and safety, then what the Government should do is what any decent government should do. I think they should pack up, they should call the elections and let the people decide. [*Desk thumping*] But we cannot sit down with a few months to go before local election and a few more months to go before general election to give to a very—a Government, Madam President, I do not want to run afoul of the Standing Orders, but the Government cannot be trusted, Madam President, you know, you cannot trust the Government. You look at some of the actions that the Government has been taking over the last three and a half years into four years, how can we now give to the Government this kind of power? We cannot do that.

And, Madam President, in Trinidad and Tobago today, the amount of legislation we have on our books, is this Bail (Amdt.) Bill that the Government has come with, is it necessary. Can the Government not, Madam President, can the Government not look at other—enforcing other laws that are on our statute books?

Madam President, you know in the United Kingdom there is something called anti-social behaviour orders. I think they borrowed that from Giuliani when he was the Mayor of New York. They went at the small problems, the small misdemeanors, the small crimes and then they were able to snap up the big crimes. And that is where I believe the Government should be seeking to move, because if we know crime is the major problem in our country, if we know firearms are coming into this country, you know, willy-nilly, we know our borders are open, why is it the Government over the last four years have not taken measures to close

our borders so that, for instance, the invasion of—

**Madam President:** Sen. Mark—

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

**Madam President:** I now have to just give you a little guidance that you are now going into tedious repetition, okay.

**Sen. W. Mark:** Yeah. So, Madam President, what we are saying this evening is that when we look at our situation in Trinidad and Tobago today, we cannot associate ourselves with the reality of further crowding our prison environment. Because as you know, this matter of bail, when you do not grant people bail it is not only, they go to the Judiciary and the Judiciary has to effect what is in this law, but when they are not granted bail they have to be sent to jail, they have to be put on Remand Yard or put into Remand Yard. But, Madam President, when we look at the state of play in our country, can we rest with some degree of assurance that we have the capacity and the ability to house this excess amount of persons who will now have to be incarcerated?

**8.00 p.m.**

Madam President, that is an area I do not think the Government has given serious consideration to. We believe that there is need for the Government to look at this whole question on a more organized basis, meaning, we not only have to fix our Judiciary but we also have to fix our prison system at the same time to ensure that these matters are, in fact, addressed in a proper way.

Madam President, we know that the granting, or the holding of bail, has been a matter, as I said, for the court. But when we talk about bail, the Bail (Amdt.) Bill—when we talk about bail—you only grant bail not as a punishment, you grant bail to ensure that the accused, or the person who is the defendant, is able to appear before the courts of Trinidad and Tobago. And one gets the

impression, Madam President, in looking at this piece of legislation, and listening carefully to the Attorney General, that what is being advanced here this evening is that we seem to be interpreting bail from a punitive perspective. We seem to be looking at bail as a form of punishment. And I want to indicate that there is need for this honourable Senate not to look at bail from that perspective.

We have been tampering with our Constitution since 1994 and we are now in 2019. We have had exhortations from the Law Association as it relates to this question of bail and having the Executive arm of the State determine bail for our citizenry.

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

**Sen. W. Mark:** And, Madam President, we would like to suggest to the Attorney General that a matter like this should require some degree of consultation. I do not know which organizations the Attorney General has been in consultation with on a matter like this. When we are dealing with the rights and freedoms of our citizens, Madam President, there is need to have consultation on a matter as important as this.

**Madam President:** Sen. Mark, I know you have a few minutes, but consultation has been raised by so many of the speakers before you. So just use your last few minutes wisely, please.

**Sen. W. Mark:** So can I ask, through you, Madam President, for the Attorney General to inform us in his winding-up, which organizations were involved in consultation on this matter, and I would stop on that particular point.

But, Madam President, we have seen in the last few weeks in our country, where this Government has been taking measures and taking action against innocent citizens in our country. We have seen, for instance, the invasion of people's homes by state agencies.

**Madam President:** Sen. Mark, that is really—you cannot present a statement like that. Okay? So you have a few more minutes.

**Sen. W. Mark:** Well, in other words, Madam President, we have seen, for instance, citizens' privacy and the whole question about freedom of expression and freedom of thought, for instance, the whole invasion, Madam President, as you recall, of Radio Jaagriti, that is a public situation in our country.

**Madam President:** Sen. Mark, no. I really will caution you, please, in your last few minutes, to not impute improper motives. Say what you have to say. You may have to say whatever you have to say differently, please. Do not impute improper motives.

**Sen. W. Mark:** Well, I am not imputing improper motives but I am guided by you. All I am saying, Madam President, is that the Government has embarked on a course of action that has the citizenry extremely uncomfortable, and in those circumstances we are saying that we have seen signs, we have seen measures and steps being taken by the Government against defenceless, and voiceless, and powerless, [*Desk thumping*] and ordinary citizens of our country, and you need to have an institution and an organization that can beat back this aggression. And I can tell you here this evening before I wind up, Madam President—before I close off, Madam President—that the only institution that stands between the PNM and the establishment of a full-fledged dictatorship in our country is the United National Congress. We are the ones that are defending the rights of the citizens. [*Desk thumping*] We shall continue to defend the rights of the citizens in those circumstances.

We want to tell this Government, do not bring repressive laws; do not bring laws to remove the rights of people; do not bring laws, and so on, to whittle down the rights of our citizens. We will not be associated with those laws. And,

therefore, we serve notice on the Government today. They will pass it in this House because they have the majority. They will get the majority, but I give you the assurance, the Government of Trinidad and Tobago will not be able to convince us in the United National Congress, and the 350,000 people [*Desk thumping*] that we represent, that this is good law. So they brought it here. They will get it through, but they have to go somewhere, and when they go somewhere else, then we will talk a different language.

I thank you very much, Madam President. [*Desk thumping*]

**Madam President:** Attorney General. [*Desk thumping*]

**The Attorney General (Hon. Faris Al-Rawi):** Madam President, I propose to do the majority of my wind-up tomorrow, but I am only proposing to address one point tonight, and that is to deal with Sen. Mark. Madam President, the rationale for taking the time to consider recommendations made by hon. Senators on the Independent Bench includes the need to do a little bit of homework on the recommendations coming from Sen. John Heath, Sen. Hazel Thompson-Ahye, Sen. Vieira, Sen. Chote, in particular, as they relate to matters of law, because I think that there is possibility for us to craft a little bit differently to find some measure.

Sen. Mark, however, in his most astounding, outrageous—intellectually outrageous propositions—comes to us and cherry-picks, and I want to deal with one point. Sen. Mark came here to treat with Act. No. 1 of 2014 and referred to a debate in the House of Representatives and in the Senate and went through, including parts of my own submission then, as a Senator sitting on the Opposition Bench, saying that we had not supported that particular law. And he was right. But Sen. Mark did not say why we did not support that law in the full context. And the hon. Senator clean skipped over the fact that the law which is closest in measure to the one that

we bring today is, in fact, Act No. 7 of 2015. And that particular piece of law, for the record, on a division in the House of Representatives, 36 said “Aye”, no abstentions or objections. [*Desk thumping*] In the Senate, the division was 37 saying, yes; three saying, no; and the “Noes” were: Helen Drayton, Independent Senator; Elton Prescott, Independent Senator; and Dr. A. Edwards, Independent Senator. And so, Sen. Mark does not have the intellectual disposition to tell us the truth tonight in the way that he ought.

### ADJOURNMENT

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Mr. AG. Madam President, I beg to move that this Senate do now adjourn to Wednesday, June 11, 2019. That is tomorrow, at 2.30 p.m.—

**Sen. Mark:** The 12<sup>th</sup>.

**Sen. The Hon. F. Khan:** The 12<sup>th</sup>, sorry—Wednesday, June 12, 2019, at 2.30 p.m. At that sitting we will bring to its conclusion this Bail (Amdt.) Bill and hopefully we will conclude the Miscellaneous Provisions Bill.

**Madam President:** No, the Financial Institutions.

**Sen. The Hon. F. Khan:** Well, yes, yes. Miscellaneous Provisions (Financial Institutions, Securities and Insurance) Bill. Same thing.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 8.09 p.m.*