

**SENATE***Tuesday, November 12, 2019*

The Senate met at 10.00 a.m.

**PRAYERS**[MADAM PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Madam President:** Hon. Senators, I have granted leave of absence to Sen. Dr. Varma Deyalsingh who is out of the country.

**SENATOR'S APPOINTMENT**

**Madam 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. JOSH O.W. DRAYTON

WHEREAS Senator Dr. Varma Lennox Deyalsingh, H.B.M., 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

**UNREVISED**

Tobago, do hereby appoint you, JOSH O.W. DRAYTON to be a member of the Senate temporarily, with effect from 12<sup>th</sup> November, 2019 and continuing during the absence from Trinidad and Tobago of Senator Dr. Varma Lennox Deyalsingh, H.B.M.

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 November, 2019"

### **OATH OF ALLEGIANCE**

*Senator Josh Drayton took and subscribed the Oath of Allegiance as required by law.*

### **SESSIONAL SELECT COMMITTEES**

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

**Madam President:** Hon. Senators, in accordance with Standing Order 79(2), I wish to make the following appointments to the sessional select committees for the Fifth Session (2019/2020) of the Eleventh Parliament.

#### **Standing Orders Committee**

Ms. Christine Kangaloo	Chairman
Mr. Nigel De Freitas	Member
Mr. Clarence Rambharat	Member
Mr. Wade Mark	Member
Ms. Sophia Chote SC	Member

#### **House Committee**

Mr. Franklin Khan	Chairman
Mr. Foster Cummings	Member
Mr. Daniel Dookie	Member

Ms. Khadijah Ameen	Member
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Dr. Varma Deyalsingh	Member
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### **Committee of Privileges**

Ms. Christine Kangaloo	Chairman
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Mr. Nigel De Freitas	Member
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Mrs. Jennifer Baptiste-Primus	Member
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Mr. Wade Mark	Member
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Mr. Deeroop Teemal	Member
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### **Statutory Instruments Committee**

Ms. Christine Kangaloo	Chairman
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Mr. Clarence Rambharat	Member
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Mr. Rohan Sinanan	Member
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Mr. Saddam Hosein	Member
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Mrs. Hazel Thompson-Ahye	Member
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### **Business Committee**

Ms. Christine Kangaloo	Chairman
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Mr. Franklin Khan	Member
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Mrs. Paula Gopee-Scoon	Member
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Mr. Wade Mark	Member
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Mr. Paul Richards	Member
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## **PREMATURE PUBLICATION OF EVIDENCE**

### **(STANDING ORDER 103)**

**Madam President:** Hon. Senators, I wish to briefly address you on the matter of Standing Order 103. Standing Order 103 states:

“The proceedings of and the evidence taken at a meeting of a Select Committee or Sub-Committee, and any documents presented to, and

decisions of, such a Committee shall not be published by any Member thereof or by any other person before the Committee has presented its report to the Senate.”

I have noted with great concern that in camera deliberations and decisions of, as well as documents presented to parliamentary committees, have been making their way into the media long before these committees have the opportunity to report to the Senate. Most recently, the deliberations of the Joint Select Committee on Energy Affairs, held on Wednesday, October 30, 2019, were divulged to the media without the Committee’s consent and almost immediately after the Committee met.

Erskine May on *Parliamentary Practice* instructs, and it is recognized in virtually every legislature, that premature disclosures of the deliberations and decisions of a committee or of any documents which a committee has under consideration may be treated as a contempt. Hon. Senators, I wish to state at the outset that I view this matter very seriously and I expect all Members to do the same. The work of our parliamentary committees is very important and can only be successful if Members can function knowing that their deliberations which are conducted outside of the glare of the public can be kept confidential until they choose to report to the Senate.

This confidentiality provides committee members with the atmosphere necessary for free, open and constructive analysis of the issues before them, particularly procedural issues. The unauthorized disclosure of committee evidence, documents and decisions is unacceptable and will only serve to undermine and stymie the bipartisan work of our committees. Indeed, committee meetings, committee proceedings, reports and all documents, including evidence which were not the subject of a public hearing of the Committee, must remain confidential

until tabled and therefore to break this confidentiality is a breach of privilege.

A select committee on procedure of the United Kingdom House of Commons of 1989/1990 said the following:

“All leaks are a breach of the trust amongst the Members and staff of a Committee which is essential to its smooth functioning.

If leaking becomes the common practice then there can be a cumulative effect and a general slippage from the standards of responsibility in maintaining committee confidences that the rules require. This could damage the standing of select committees in the public eye.”

Experienced Members are reminded and, similarly, less experienced Members are advised that during the Ninth Parliament a similar occurrence was deemed to be a contempt of the House of Representatives by a previous Committee of Privileges. There are also several other precedents, both here and in other commonwealth parliaments, of the unauthorized release of committee work being treated as contempt.

I therefore wish to condemn this breach of the Standing Orders and lack of respect for the privileges of the Senate. The undermining of confidence which will ensue due to unauthorized releases of the committee's in camera deliberations and confidential documents could be extensive and extremely counterproductive.

I take this opportunity to caution all Members of this Senate, it may be accidental or due to inadvertence, it may be the result of negligence or it may be the deliberate release of information, the growing trend of disclosing, leaking, discussing or sharing committee deliberations, decisions and documents, must be discontinued.

This practice is wholly inconsistent with the dignity of this Senate and as guardian of the privileges of this House, I will continue to ensure that there is no

obstruction or interference placed on Members in the exercise of their duties, whether collectively or individually. I so rule.

### **MISCELLANEOUS PROVISIONS**

#### **(LAW ENFORCEMENT OFFICERS) BILL, 2019**

Bill to amend the Criminal Law Act, Chap.10:04, the Prisons Act, Chap. 13:01, the Police Service Act, Chap. 15:01, the Immigration Act, Chap. 18:01, the Fire Service Act, Chap. 35:50 and the Customs Act, Chap. 78:01, brought from the House of Representatives [*The Minister of National Security*]; read the first time.

### **PAPERS LAID**

1. Trinidad and Tobago Trade Policy 2019-2023. [*The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon)*]
2. Administrative Report of the Cipriani College of Labour and Co-operative Studies for the period 2015-2016. [*The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus)*]
3. Sector Wide Approach Programme Loan Agreement between the Government of the Republic of Trinidad and Tobago and Corporación Andina De Fomento in the amount of US \$200 million. [*The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Statement of Recovery of Expenses of the Ministry of Energy and Energy Industries for the year ended December 31, 2018. [*Sen. The Hon. A. West*]
5. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Public Transport Service Corporation for the year ended September 30, 2015. [*Sen. The Hon. A. West*]

6. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Public Transport Service Corporation for the year ended September 30, 2016. [*Sen. The Hon. A. West*]
7. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the year ended September 30, 2014. [*Sen. The Hon. A. West*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the year ended September 30, 2015. [*Sen. The Hon. A. West*]
9. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Tobago House of Assembly for the year ended September 30, 2009. [*Sen. The Hon. A. West*]
10. Annual Audited Financial Statements of Petroleum Company of Trinidad and Tobago Limited for the year ended September 30, 2018. [*Sen. The Hon. A. West*]
11. Audited Financial Statements of Caroni (1975) Limited for the financial year ended June 30, 2019. [*Sen. The Hon. A. West*]
12. Ministerial Response of the Ministry of Finance to the Sixteenth Report of the Public Accounts (Enterprises) Committee on the Examination of the Audited Financial Statements of the Trinidad and Tobago National Petroleum Marketing Company Limited (NP) for the years ended March 31, 2008 to 2017. [*Sen. The Hon. A. West*]
13. Ministerial Response of the Office of the Prime Minister to the Twelfth Report of the Joint Select Committee on Human Rights, Equality and Diversity on the Sexual Exploitation of Children in Trinidad and Tobago

- with specific focus on Child Prostitution and Child Pornography. [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]
14. Ministerial Response of the Ministry of National Security to the Eleventh Report of the Joint Select Committee on Human Rights, Equality and Diversity on the Status of the Implementation of the Recommendations of the Third Report of the Joint Select Committee on Human Rights, Equality and Diversity into the Treatment of Child Offenders. [*Sen. The Hon. F. Khan*]
  15. Ministerial Response of the Ministry of National Security to the Seventeenth Report of the Public Administration and Appropriations Committee on an Examination into the Expenditure and Internal Controls of the East Port of Spain Development Company Limited. [*Sen. The Hon. F. Khan*]
  16. Trinidad and Tobago Housing Development Corporation (Vesting) (Amendment to the First Schedule) (No. 2) Order, 2019. [*Sen. The Hon. F. Khan*]
  17. Ministerial Response of the Ministry of Energy and Energy Industries to the Sixteenth Report of the Public Accounts (Enterprises) Committee on the Examination of the Audited Financial Statements of the Trinidad and Tobago National Petroleum Marketing Company Limited (NP) for the years ended March 31, 2008 to 2017. [*Sen. The Hon. F. Khan*]

## **JOINT SELECT COMMITTEE REPORTS**

### **(Presentation)**

#### **Private Security Industry Bill, 2019**

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

**UNREVISED**

Report of the Joint Select Committee appointed to consider and report on the Private Security Industry Bill, 2019 in the Fifth Session, Eleventh Parliament.

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

**National Emergency Ambulance Service**

**The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus):** Thank you very much, Madam President. Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Thirteenth Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA), Fifth Session (2019/2020), Eleventh Parliament, on an Inquiry into the Efficiency and Effectiveness of the National Emergency Ambulance Service.

**URGENT QUESTIONS**

**Edinburgh Government Primary School**

**(Measures taken to Address Health Issues)**

**Sen. Wade Mark:** Thank you, Madam President. To the Minister of Education: In light of reports of health and safety issues affecting the Edinburgh Government Primary School, can the Minister inform the Senate what immediate measures are being taken to rectify said issues?

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, thank you very much. I thank the Member for his question. Madam President, in relation to immediate measures a contractor is already on the site dealing with the issues, and in relation to the rectification being asked in the question, this will be completed by Thursday 14 November, 2019,

which is two days away, and we thank the parents, the teachers, the students, the community for being patient as we deal with this particular issue. I thank you.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, through you, can I ask the hon. Minister what is going to take place in the interim pending the completion of this exercise on the 14<sup>th</sup> of November?

**Sen. The Hon. C. Rambharat:** Madam President, the work that is going on now is targeted to the key area, this has to do with an issue of pigeon infestation and the risks that go with that. So the repairs are concentrated in the areas where the pigeons have found a home, that is, in the ceiling. The repairs are being done to the existing pigeon proofing. There is a photo of the school on the newspaper today for those who are not familiar with Edinburgh, which is most of my friends on the other side. You would see the pigeon proofing on the photo and there are repairs being done to that.

In relation to some of the other aspects of health and safety, the washrooms need repairs and the sinks, and so on. This is not a new school, this is an older school and there is cleaning and sanitization being done around the affected areas. So the staff is well aware, the parents, the students and the Ministry of Education, Health and Agriculture have taken steps to ensure that the children and the staff are not affected during this short period of repairs. Madam President, however, some more significant work as a long-term solution will be done in the December vacation, a repair programme, and that had already been programmed since during the August break for the December vacation period. Thank you.

**Madam President:** Sen. Ameen.

**Sen. Ameen:** Thank you very much, Madam President. This is a follow-up. I appreciate the information the Minister has given with regard to the medium and

long-term solution. As of now the children are in the school. I am asking what steps have been taken to ensure their protection and their health and well-being given the hazards with regard to the pigeon infestation, immediate from now until the repairs are over?

**Sen. The Hon. C. Rambharat:** Madam President, I must apologize for not making myself abundantly clear, the repairs are targeted to the affected area to the exclusion of the staff and students who have been advised, who are well aware and who are not in the affected area, and the repairs are being conducted over the next—will be completed by Thursday 14 November, 2019. And between now and then, the staff and the students and the other persons entering and using the premises are not going to be affected because of measures the Ministry has taken. Thank you.

### **Caura Hospital**

#### **(Claims of Shortage of Four Critical Drugs)**

**Sen. Wade Mark:** Thank you, Madam President. To the Minister of Health: In light of claims by patients at Caura Hospital of a shortage of four critical drugs, can the Minister advise as to what measures are being taken to address this issue?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you very much, Madam President. Madam President, there is no shortage of four critical drugs. And let me put on record, the four drugs are: isoniazid, there are 114,200 doses; Ethambutol, there are 3,000 doses; Pyrazinamide, there are 3,300 doses. There is no shortage of these three drugs. There is a problem with a drug called rifampicin, and I put on record an article from *The Globe and Mail* of Canada, dated July 12, 2019:

“A looming shortage of a crucial drug for the treatment and prevention of tuberculosis has physicians across Canada rationing pills...”

It goes on to say:

“...Sanofi Canada, warning that manufacturing delays could prevent it from restocking rifampin until next April.”

That is April 2020. There is a global shortage of rifampicin. What did we do as a responsible Government? We sourced the clinical alternative called Rifabutin. It is available, however, my understanding is not all patients are candidates for Rifabutin.

However, even in light of a global shortage, and anybody could type in “global shortage rifampicin” and it comes up. There is an absolute global shortage. Rifampicin is in the country and will be delivered to Caura Hospital today. So there is no shortage of tuberculosis drugs, there is a global problem with Sanofi of Canada in manufacturing the drugs which they said will not resolve itself until April 2020, but we have circumvented that by doing two things, bringing in a clinical alternative and we have supplies of rifampicin as of today. Thank you very much.

### **Point Fortin Hospital Construction**

#### **(Moneys Owed to Sub-Contractors)**

**Sen. Wade Mark:** To the Minister of Health: Given reports of the non-payment of outstanding moneys owed to sub-contractors involved in the construction of the Point Fortin Hospital, can the Minister advise as to what steps are being taken to address this issue?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you very much again, Madam President. Madam President, the construction of the Point Fortin Hospital was predicated on it being a listed item on an MOU with the Austrians. This was never done by the UNC. It is this Government that got it put on to the MOU. Because there was no MOU to start the project there was no funding and

the UNC funded it from cash balances. It is this Government, working with the Attorney General, working with the Ministry of Foreign Affairs and the Ministry of Finance that put the full funding in place via UniCredit of Austria for €81,395,922.

So it is this Government that has fully funded the Point Fortin Hospital. So the hospital is fully funded because of the careful approach we have taken and not due to the recklessness of those who went before us in funding this from cash balances. As far as sub-contractors are concerned, neither the Ministry of Health nor the Government has any control over sub-contractors. That is a matter for VAMED who was the contractor and UDeCOTT. But the project is fully funded, and my information is it will be finished for opening by March 2020. Thank you very much, Madam President. [*Desk thumping*]

**Madam President:** Sen. Mark.

**Sen. Mark:** Since the project has been fully funded, according to the Minister, can the Minister share with this Senate, Madam President, why these two PNM sub-contractors have taken legal action against the Government of Trinidad and Tobago through this agency to get moneys that are outstanding that are owed? Can the Minister advise this honourable Senate as to the circumstances surrounding this development, Madam President?

**Hon. T. Deyalsingh:** Madam President, I have no control over the legal proceedings that may ensue and there is something in this honourable Senate via its Standing Orders called the sub judice rule. It will be reckless of me to even contemplate a comment. The Ministry of Health and the Government have no locus standi when it comes to the hiring of the sub-contractors. That is a matter for the main contractor which is VAMED. However, as I said pellucidly clear, the project will be finished on March of 2020. And may I reiterate, if we did not fix

this financing, do you know what legal challenges and what liability the State and the people of Trinidad and Tobago could have incurred because of the recklessness in not having this project on the MOU to build Point Fortin Hospital? The liability that could have flowed for breach of contract could have cost this country millions of dollars. Thank you very much. [*Desk thumping*]

**Madam President:** Hon. Senators, the time has expired.

### ORAL ANSWERS TO QUESTIONS

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, the Government will be answering Questions Nos. 1, 2, 3 and 45. We ask for a deferral of two weeks for Questions No. 46 and No. 48.

**Madam President:** Questions Nos. 46 and 48 are deferred for two weeks.

*The following questions stood on the Order Paper in the name of Sen. Taharqa Obika:*

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

##### **(US Dollar Sales and Expenses)**

- 46.** As regard the Telecommunications Services of Trinidad and Tobago (TSTT) for the period 2016 to 2018, can the hon. Minister of Public Utilities advise as to the following:
- (i) the total US dollar sales earned annually by the company; and
  - (ii) the total US dollar expenses incurred annually by the company?

#### **US Dollar Denominated Bonds**

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

- 48.** Given the announcement that TSTT intends to issue US dollar denominated bonds, can the hon. Minister of Finance indicate:
- (i) whether this decision has been approved by Cabinet;

- (ii) the total US dollar value of the intended bonds;
- (iii) how such bonds would be guaranteed; and
- (iv) the impact of servicing these bonds on the country's foreign reserves?

*Questions, by leave, deferred.*

### **Petition for Fire Station in Cedros**

#### **(Government's Intention)**

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

In light of a number of fires in the Cedros community during August 2019, and the petition signed by residents requesting the construction of a fire station, can the Minister state whether the Government intends to facilitate said request?

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, there are no immediate plans by Government to construct a fire station in Cedros, although this can be considered in the future. While the concern of the Cedros residents is understood, the Chief Fire Officer has advised that the Point Fortin Fire Station which has responsibility for responding to fire calls in Point Fortin and environs, inclusive of the Cedros community, has proven adequate in meeting the demands of residents. The Government is proceeding with the construction of a new fire station in Point Fortin which will have the necessary capacity to adequately serve the surrounding areas, such as, in particular, Cedros.

**10.30 a.m.**

**Sen. Mark:** Madam President, can the Minister indicate when this new fire station that is earmarked for construction will take place?

**Sen. The Hon. F. Khan:** It will take place in next year 2020, most definitely.

**Sen. Mark:** Madam President, is the Minister aware that the Point Fortin Fire

Station is under-resourced and there are inadequate facilities to facilitate not only Point Fortin but the wider community of Cedros? Is the Minister aware of this situation affecting that part of the country?

**Sen. The Hon. F. Khan:** The Government is aware that there are some challenges facing the Point Fortin Fire Station. It is currently housed in an ex-Petrotrin bungalow, and we are working assiduously to construct and rectify that situation.

**Sen. Mark:** Madam President, whilst the Government has recognized that particular situation, can the Minister indicate what immediate temporary measures can be taken to establish some interim solution in the Cedros community, with the frequent occurrences of fires which have brought a lot of destruction to property in that community? What measures can be taken in the interim, given the situation that exists currently in Point Fortin?

**Sen. The Hon. F. Khan:** Madam President, responding to fire, calls for fire tenders. Once there are fire tenders at the Point Fortin Fire Station they will respond and respond very, very quickly. It has nothing to do with the actual physical comfort of the building, although that is important also. But the response of fire tender is what is significant in firefighting.

**Sen. Mark:** Given the distance between Point Fortin and Cedros in terms of the fire service's equipment and resources, would the Minister indicate whether the Government is contemplating in the future to the establishment of some limited facility to service the residents of Cedros in the event of further fires in that community, having regard to their past experiences?

**Sen. The Hon. F. Khan:** Sen. Mark obviously did not listen to me. The first sentence that I read from the answer is that there is no immediate plan by Government to construct a fire station in Cedros, although this can be considered in the future.

**Madam President:** Next question, Sen. Mark.

**Diego Martin Sporting Complex**

**(Details of)**

2. **Sen. Wade Mark** asked the hon. Minister of Sport and Youth Affairs:

In view of the March 2019 opening of the \$115 million Diego Martin Sporting Complex and the Government's decision to award another contract for phase two of the project, can the Minister indicate the following:

- (i) what tendering process will be used; and
- (ii) the projected cost of the second phase of the project?

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. The Sport Company of Trinidad and Tobago is responsible for the construction, maintenance, and management of the country's major sporting facilities.

In 2007, to serve the 100,000 residents of the Diego Martin region who were without proper major sporting facility, the then PNM Government developed a plan for the construction of the Diego Martin Sporting Complex as a multi-purpose multi-sport facility. The 2007 plan proposed the development in two phases. Phase one comprising a main pavilion with a seating capacity of 2,000 persons, internal side drainage, fence, main gate, field irrigation system, field lighting, VIP lounge, media rooms, facilities for home and away teams, gym and concession stands. Phase two is expected to comprise of a community play field, hard courts, children playpark, car park and training rooms. However, the construction of this project was abandoned by the former Government during the 2010 to 2015 period. The most densely populated part of Trinidad, the Diego Martin Valley, 100,000 residents with no sporting facility. It was abandoned by the UNC administration.

After the 2015 election, construction work was restarted and the project was

successfully completed and commissioned. This long overdue sporting complex was formally opened by the hon. Prime Minister, Dr. Keith Rowley, in March 2019.

In February 2019 Cabinet agreed that the Government enter into a contract with UDeCOTT for the implementation of phase two. The Sport Company will provide monitoring and oversight services for the project. One, the tendering process for phase two of the project will be in accordance with UDeCOTT approved procurement policy and procedure, and the cost of phase two of the project will be determined in due course.

**Sen. Mark:** Thank you very much, Madam President. Can the Minister indicate, in light of the fact that phase one of that project has been completed, Can the Minister indicate the agency that is responsible for managing this particular multipurpose sporting complex in the Diego Martin community? Can the Minister advise, is it the Sporting Company or is it a special organization within the community? Can the Minister advise please?

**Madam President:** Sen. Mark, that question does not arise.

**Sen. Mark:** Can I go on, Madam?

**Madam President:** Yes.

**Sen. Mark:** The Minister has also advised that the tendering process will be conducted by UDeCOTT in accordance with established procurement procedures. Can the hon. Minister indicate when this second phase and the issuing of this tender for phase two will take place? Is there a time frame, Madam President, for this event to occur?

**Sen. The Hon. F. Khan:** I am glad to see that the UNC is so interested in the Diego Martin Sporting Complex at this point in time. Phase two will begin and hopefully be constructed in 2020.

**Sen. Gopee-Scoon:** We are getting it done. [*Laughter*]

**Madam President:** Next question, Sen. Mark.

**ANR Robinson Airport Expansion**

**(Land Acquisition Strategy)**

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

In light of concerns expressed by residents of Tobago about the ANR Robinson Airport expansion project and their possible dislocation, can the Minister indicate the State's land acquisition strategy for this project?

**The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):** Thank you, Madam President. The Government shall continue to be guided by the process of compulsory acquisition as set out in the Land Acquisition Act, Chap. 58:01. This legislation regulates land acquisition and established defined procedures for the acquisition of land and resettlement regarding affected persons in Trinidad and Tobago.

The Act also has specific provisions to provide for fair compensation to those persons whose land is acquired by the State, bringing transparency to the entire process, and gives the Commissioner of State Lands the responsibility to acquire land on behalf of the State.

When the State is desirous of acquiring land for public purpose a section 3 Notice is published in the *Gazette* and at least one daily newspaper, no later than seven days after the date of publication. The notice is required to be served personally or by registered post to the persons who are believed by the Commissioner to have an interest in the land. The section 3 Notice is a notice of intent to acquire.

After publication of the section 3 Notice, the Commissioner or his agent, in this case NIDCO, under the authority of the Ministry of Works and Transport, has the power to enter the land and conduct the necessary surveys to acquire as much

data as possible on the properties. This would include, but is not limited to, social surveys, soil surveys, cadastral surveys, topographic surveys, site plan surveys, subdivision surveys.

The publication of section 4 notice gives the power to the State to apply the land to the purpose for which it is being acquired without waiting for formal vesting. By the time section 4 notice is published, the Commissioner or his agent would already be in a position of information with respect to ownership of the land, and all preliminary surveys would have already been conducted. According to the Act, section 4 notice would be published no earlier than two months after the date of publication of section 3 Notice.

Madam President, the Tobago House of Assembly is also working on identifying various parcels of land to be made available to the residents who are affected by the land acquisition process. I thank you.

**Sen. Mark:** Thank you very much, Madam President. Can the Minister indicate how many persons in Tobago will be affected by this expansion of the ANR Robinson International Airport?

**Sen. The Hon. R. Sinanan:** Madam President, the process as I just outlined is ongoing, and only when the section 3 and the section 4 notices would have been published to all the residents, then we will know exactly how many households will be affected and that is why this process is free and it is fair to everyone, and it allows the Government to go in and identify exactly the land that is required. I thank you.

**Sen. Mark:** Madam President, through you, can the Minister indicate whether the Government through NIDCO, the National Infrastructure Development Company Limited, has determined the actual size of the area earmarked for the expansion of the ANR International Airport?

**Sen. The Hon. R. Sinanan:** Madam President, this project has been long in the making, and the area earmarked has been identified. However, until all the surveys and the process is completed, only then we will have an exact amount of properties that are required. Thank you.

**Sen. Mark:** Is the Minister aware that there is massive dissatisfaction among the potential residents that are to be relocated from their homes, which they have been occupying for decades, if not centuries? Can you indicate to this honourable House—

**Madam President:** Well, you just asked a question there. “Is the Minister aware”.

**Sen. Mark:** Is the Minister aware that there is growing discomfort among the residents whose properties are earmarked for relocation?

**Sen. The Hon. R. Sinanan:** Madam President, it is never easy when someone has to part with a home, especially when they would have had family going back, and so it is never easy to take that decision. However, any government must act in the best interest of the national population, and this is why the Government would have chosen this process. What the Government has to ensure is that we continue to develop the country as a whole for future generations. We must ensure that taxpayers are not saddled with a bill that is totally ridiculous, as what happened with the San Fernando to Point Fortin Highway, and we must also ensure that the families who are going to be relocated do not suffer any social impact.

The Government will take all these responsibilities on board, and we would have learned significantly from the way the acquisition was done in the San Fernando to Point Fortin Highway and this Government will never make that mistake again. We will stand and we will do what is right to ensure that everybody who might be affected will be treated fair in terms of their compensation package.

Thank you.

**Sen. Mark:** Madam President, can the Minister indicate whether this project has been hijacked by NIDCO at the expense of the Tobago House of Assembly that has responsibility for such a project in Tobago? Can the Minister indicate whether the Tobago House of Assembly's role has been undermined by Central Government through NIDCO's invasion of Tobago, giving the people of Tobago a raw deal in the process? Can you clarify that for us?

**Madam President:** Sen. Mark, that question does not arise. Next question, Sen. Obika.

**St. Stephen's College**  
**(Allegations of Discrimination)**

**45. Sen. Taharqa Obika** asked the hon. Minister of Education:

In light of allegations of discrimination against a female student wearing a natural hairstyle at St. Stephen's College, Princes Town, can the Minister indicate:

- (i) how many students have been similarly affected; and
- (ii) what action has been taken by the Ministry to address same?

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. The answer to (i): For the academic year 2018/2019 and the current academic term, no other allegation of discrimination against students wearing a natural hairstyle has been reported. There were three cases, however, reported where the issue identified was one of grooming and hygiene for the same period. The matters were resolved amicably at the school level and with the parent and school supervisors.

Response to (ii): The school supervisor, on receipt of the complaint, met with the school administration, which are: the Principal, the Vice-Principal and

Dean and the Archdeacon of the Anglican Church. Discussion centred on one, section 7 of the Education Act, Chap. 39:01, which treats with the prohibition of discrimination, and two, the Revised National School Code of Conduct, May 2018, principles of respect and rights.

Further, the Principal gave the assurance that no student at that school will be denied an opportunity for education because of any form of discrimination. The student in question continues to wear her natural hairstyle without any negative repercussions, and so do all other students.

**Sen. Obika:** Thank you, Madam President. This question of hairstyles prohibition is a relic of our colonial era. I want to ask the question: What redress mechanisms that are officially available—apart from that special circumstance—to school administrators, be it principals, teachers and as well as parents?

**Madam President:** That question does not arise based on the response given to the question that has been filed. Next question please, Sen. Obika.

**Sen. Obika:** Madam President, I am confused because to me there was no mechanism mentioned there, respectfully.

**Madam President:** Sen. Obika, move on. Ask another question. I have ruled.

**Sen. Obika:** Okay. The question is: What is the role then of the NPTA? Was the NPTA invited to that meeting?

**Sen. The Hon. F. Khan:** Madam President, the school has an administration. The school supervisor met with the Principal, the Vice-Principal, the Dean, and the Archdeacon of the Anglican Church because it is a denominational school. The discussion centred on section 7 of the Education Act, prohibition of discrimination and, two, the revised National School Code of Conduct. The situation was amicably sorted out and if people could take lessons from these, the chances of such a situation re-occurring should be very small, and let us progress as a society.

We know it was a historical relic and a colonial relic, but we are moving on, and this society, despite all the detractors, is getting better and better in matters pertaining to issues like this.

**Sen. Obika:** Madam President, I just want to say that I got calls from as far as the Emancipation Support Committee on this issue. Many people reached out to me on this issue.

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

**Sen. Obika:** The question is: Why was the National Parent Teacher Association not involved? The Parent Association is important. The parents went by themselves, so you stacked the meeting against the parents.

**Madam President:** Sen. Obika, please. Please take your seat. You have an opportunity to ask questions. You have been in the Chamber long enough to understand how to frame your questions, okay. So that question will not be allowed.

**Sen. Ameen:** Follow-up to this question, Madam President.

**Madam Speaker:** To one that has been allowed?

**Sen. Ameen:** Yes.

**Madam President:** Continue.

**Sen. Ameen:** Madam President, through you to the Minister. Given the lessons out of this and given the acknowledgement by the Minister that the rules may be a bit old, is there any move on the part of the Ministry or the Government to revise the rules and guidelines with regard to matters like these?

**Madam President:** I think maybe I was the only person listening to the answer that was given. Minister, I will allow you to answer that question.

**Sen. The Hon. F. Khan:** Madam President, the rules are there. Section 7 of the Education Act deals with prohibition of discrimination. The Revised National

School Code of Conduct speaks about principles of respect and rights. The Education Act is what governs the education system in Trinidad and Tobago. If situations like these arise so infrequently, and when they do arise it is sorted out amicably, we have to say that we are in a good space. I personally am proud to see how the Anglican Board responded to this in a way, and the answer is clear that the matter has been amicably resolved.

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

Bill to amend the Copyright Act, Chap. 82:80, to give effect to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled and to the Beijing Treaty on Audio-visual Performances [*The Attorney General*]; read the first time.

### **PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE**

#### **(APPOINTMENT TO**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Madam President, I beg to move the following Motion:

*Be it resolved* that this Senate agree to the appointment of Mr. Foster Cummings to the Public Accounts (Enterprises) Committee.

*Question put and agreed to.*

### **BAIL (AMDT.) (NO. 2) BILL, 2019**

*Order for second reading read.*

**The Attorney General (Hon. Faris Al-Rawi):** Thank you, Madam President. I beg to move:

That a Bill to amend the Bail Act, Chap. 4:60, be now read a second time.

The Bill before us today is a three-fifths majority Bill requiring the support of more than the Government Bench. It is a Bill which is a mere three clauses long, but despite the brevity of the Bill it is indeed a very deeply important piece of

law, of proposed legislation for consideration by this august House.

Madam President, Trinidad and Tobago is at war. The issues of the crime situation, the issue of the economy, are two central issues that have not been centre stage only in the last five years, or in the last 10 years, but indeed have been anchored in the fulminations of many of our writers, many of our commentators and certainly in the hearts of citizens for a very long time.

I recently came across the 1973 writings of the Committee set up to look at the reform of our independence Constitution, and that Committee's work then resonated in the 1976 Constitution. And centre stage in that particular reflection came the submission of the writers that Trinidad and Tobago was in a fight for its life, where there was a growing criminality, where there were young people up in arms unemployed, where they were seeing at that point in time a rise in crime which seemed to have no dissipation and no relief.

The statistics in the criminal justice system, in the court system, all demonstrate that criminality has grown as a direct ratio measured against the growth in our society. There was a point in time when our society was a mere 300,000 people. We are now a 1.3 million close to 1.4 million population. Trinidad and Tobago right now wrestles, as many of our Parliaments have, certainly in relation to amendments to the Bail Act, we wrestle with finding a proportionate balance between the protection of the rights of the individual on the one hand and the society as a whole.

Our Constitution is quite unique. It is in fact a Constitution which stands unique in the Caricom context and very much so in the Commonwealth. Our Constitution in its Preamble, in its anchoring of enshrined rights in sections 4 and 5, recognizes that we may abrogate or derogate from enshrined rights in section 4, in section 5. One of the rights standing out obviously in section 5 is the right not to

be deprived of bail without reasonable cause, if you put it quite simply.

Our Constitution recognizes in section 13 and section 54, that a Parliament properly assembled can, with sufficient majority support, in this case three-fifths majority support, abrogate or derogate from what are set out as enshrined rights.

Madam President, it is true that we are looking squarely at the following rights: the right to liberty and the right not to be deprived thereof except by due process of law; the right to protection of the law; the right not to be subject to arbitrary detention and imprisonment; the right not to be deprived of the right of fair hearing in accordance with the principles of fundamental justice for determination of rights and obligations; and the right not to be deprived of the right to reasonable bail without just cause. Those are the essence rights contained in sections 4 and 5 of the Constitution.

But we are also treating with a very important core constitutional concept and that is the separation of powers principle. The separation of powers principle quite simply says that the three-pole architectural points of management of our society, that is the Judiciary, the Legislature and the Executive, ought not to so intrude upon each other's purpose as to offend the separation of powers which they ought to have, because that is how the balance happens. The courts interpret the law, the Executive provides the purpose, the Parliament considers law in the round.

I would like to say that I am entirely satisfied that the amendments that we propose today are permitted in the context of the constitutional arrangement, that is section 13 of the Constitution, which has two limbs. Number one, if it is to be passed by three-fifths majority support, and number two, that it is reasonably justifiable in a society such as Trinidad and Tobago. Secondly, and very importantly—and I say this up front, because I had the chance to have a very brief conversation with a couple of the Senators before the start of this—I am going to

address squarely the issue of separation of powers, and perhaps the misunderstanding that this Bill seeks to intrude upon the separation of powers. I say misunderstanding because the Bill as it is crafted in the Explanatory Note—I think the Explanatory Note can take one along the wrong path because even though the Explanatory Note does not form part of the law, clause 3 is set out in the Explanatory Note as saying:

“Clause 3 of the Bill would provide for the inclusion of the offences of possession of firearm or”—possession of—“weapon for the purpose of trafficking under section 9A of the Firearms Act, Chap. 16:01 and possession of a prohibited weapon, as offences for which a person would be denied access to bail for the period of one hundred and twenty days under the Bail Act, Chap. 4:60.”

It does not go on to provide for section 7A of the Bail Act which was in fact brought into law when we as a Parliament last sat together and came up with Act No. 17 of 2019, that is where we amended the Bail Act, and that was assented to on the 5<sup>th</sup> of August, 2019.

**11.00 a.m.**

So those are the two constitutional purposes that I propose to speak to. In underpinning the proportionality of this legislation and, therefore, its propriety for consideration, I am obliged to put now the factual matrix of Trinidad and Tobago so that in the event that there is a challenge to this law which can only be a challenge to constitutionality of the law, that the factual matrix of Trinidad and Tobago, as it stands, is on the record via the mover of the Bill under the consideration principles of the rule in *Pepper v Hart*.

That said, quite simply what we are talking about, what does Trinidad and Tobago look like, what are our statistics, what are we grappling with, how does

that fall into the concept of section 13(2) of the Constitution where we are looking at what the reasonableness of the legislation is in a society such as Trinidad and Tobago, not any other society, that respects the rules and principles of democracy. Madam President, therefore, I now put onto the record, the following. Let us go very quickly to the statistical arrangements in Trinidad and Tobago.

It is now a matter of course that this Parliament, this Senate in particular is well-seasoned in statistical information. I can tell you, Madam President, that in the five years that I served in Opposition, we did not have the presentation of statistics to anchor legislation which we were considering, certainly as it relates to the bail amendments that were considered in Act No. 9 of 2011, Act No. 11 of 2011, Act No. 12 of 2012, Act No. 1 of 2014, and Act No. 7 of 2015, we had no grounding of statistical information. The three-fifths majority amendments brought into there, which were to deny flatly the right to bail being considered by a court. Let me repeat that. The one, two, three, four, five amendments which came from the now Opposition, then Government in the period 2011 to 2015, which was passed by three-fifths majority, they denied the court the access to considering the grant to bail, specifically as it related to Schedule II offences, which included anti-gang legislation, anti-kidnapping legislation, trafficking in persons legislation, et cetera, those pieces of law which were a carry-on from the 2006 amendments come forward, those pieces of law flatly denied the jurisdiction of the court. It is necessary therefore, Madam President, to remind, today we are, in fact, on the 17<sup>th</sup> amendment to the Bail Act.

Quickly, in 1994, Keith Sobion then Attorney General, approached the Parliament, codified the bail legislation because the common law was what treated with bail. In the period 1994 to 2005, the Act stood as it was, effectively there was a three strikes principle. You would be denied bail if you came forward for two

matters, one, the Part A Schedule, which dealt with, of course, murder, and the other capital offences, treason, et cetera, where it kept the saved law and said that there would be no bail pursuant to our pre-1962 law, but on the second occasion, the three strikes rule came in, in 1994, and there was a codification of the common law. In 1994, the law actually provided for the Judiciary to have a discretion in the Bail Act.

It was in 2005 straight up to 2008, that Trinidad and Tobago was fighting the scourge of kidnapping for ransom. And in 2005 to 2008, there were multiple iterations of the bail law, and the law was introduced and passed with three-fifths majority support to say, in kidnapping for ransom matters and certain other serious matters, there would be an ouster of the court's jurisdiction to consider bail in certain circumstances, where if your matter started within 120 days you would be denied bail, you would have a second aspect if your matter was not completed at the end of the year, and in that year you were effectively denied asking a court to grant you bail. That was passed on each occasion with three-fifths majority support. In many instances there were a lot of fights because when the UNC is in Opposition they say, no, to what they promote as law and therefore, there were sunset clauses, some as short as three months.

It was in 2011, by Act No. 9 of 2011, that we started changing the no-bail considerations from 60 days to 120 days no bail. That was, again, supported in the introduction of the amendments to the anti-kidnapping and bail considerations.

In Act No. 11 of 2011, we introduced gang legislation, anti-gang legislation, and, again, there was an ouster to the court considering. That went straight up to Act No. 7 of 2015, and effectively in that period 1994 to 2015, what we saw in 2005 was the introduction of the right to appeal for prosecution and for the defence. We then saw the ouster of the court in the circumstances of kidnapping

for ransom, et cetera, we saw the move away from three strikes, to two strikes to one strike in 2015, and that law stood perfectly on the books of Trinidad and Tobago with a very important result—kidnapping for ransom by the year 2009 went effectively out of existence.

Now let me put on record, there has not yet been at the Privy Council, which is the highest court of appeal for Trinidad and Tobago, a case which considers the three-fifths majority legislation of this type. The first of those cases will be coming to the Privy Council and that, Madam President, is to be found in the cases of *St. Omer* and *Charles*.

In the cases of *Danielle St. Omer v Attorney General* it started at CV 2015-03475, and *Justin Stuart Charles v the Attorney General* which started as CV 2016-00074. In those cases quite interestingly, the latter one in particular, Anand Ramlogan, Gerald Ramdeen, as members of the UNC, Ramlogan standing as Attorney General of Trinidad and Tobago, who saw the birth of Act No. 9 of 2011, Act No. 11 of 2011, Act No. 12 of 2012, Act No. 1 of 2014, and then the UNC taking paternity or maternity of Act No. 7 of 2015. All of those Acts which ousted the court's jurisdiction with UNC piloting and support, Mr. Ramlogan, arrives now to challenge the constitutionality of the exclusion of the court's jurisdiction. Let me repeat that. Pass the law whilst you are in Government, get fired, go into the public domain and then take a case to challenge the constitutionality of the very law which the UNC piloted on five occasions, Madam President.

Madam President, in those circumstances the statistical information standing in Trinidad and Tobago's docket as it is right now demonstrates—and I will go to the targeting of this Bill—in this Bill we propose that we amend section 5 of the Bail Act as recently amended by Act No. 17 of 2019. We propose that we amend that particular law to include in the no-bail considerations subject to section (7A)

we propose that we include, if you come before a court and section 5 of the Bail Act is read, that subject to section (7A) effectively:

“...a person who on or after the commencement of this Act is charged with an offence...”

—as amended of being charged for trafficking in firearms pursuant to section 9 (a) of the Firearms Act or being in possession of prohibited weapons of military grade, those persons will fall into the bucket of persons who a court ought not to consider granting bail subject entirely, Madam President, to the provisions of section (7A) of the Bail Act as amended by Act No. 17 of 2019. And clause (7A) says this, Madam President:

“Notwithstanding subsections (3) and (7)...”

And subsection (3) says, it is those provisions where you will be now amending and adding in trafficking in firearms, and also possession of military grade artillery:

“(7A) Notwithstanding subsections (3) and (7), a person to whom those subsections apply may, in exceptional circumstances, make an application to the Court for bail.”

You can only figure this out if you read the Act as a whole. The inclusion of clause (7A) is pellucidly clear, it applies as an exception to the law that we are now proposing in this Bill. So statistically, what are we treating with? Madam President, may I ask, what time I end in full time?

**Madam President:** 11.37.

**Hon. F. Al-Rawi:** Thank you, Madam President. Madam President, let us go to persons charged for the period 2009 to 2019, and let us go to that period ending 30 June 2019. I can say this, Madam President, for firearm-types going across the range, revolver, pistol, shotgun, home-made shotgun, rifle, trap gun, flare gun,

machine gun, sub-machine gun, other air rifles, in total we have had in that 10-year period 6,588 persons. I will go specifically to the subsets machine gun and sub-machines guns. For machine guns there have been 97 people charged, for sub-machine guns, 44 people; machine guns and sub-machine guns.

Madam President, what I can tell you is that the reports of firearm-related offences 2009 to 2019, we have had in that 10-year period firearm offences being reported, 17,908. Arrests for possession of firearms, in 2009 to 2019 we have had 5,900 persons. Arrests under the Anti-Gang Act, 2009 to 2019, not including the several alleged gang leaders that have recently been arrested, we had 213. Madam President, what we can say, we have arrests also under Anti-Terrorism Act and under the Trafficking in Persons Act, and under the Kidnapping Act 2009 to 2019, we have had 876 arrests.

Madam President, what I can say, serious crime detection rate 2009 to 2019 demonstrates detection rates across that 10-year period as follows: 17 per cent, 16 per cent, 19 per cent, 17 per cent, 18 per cent, 23 per cent, 23 per cent, 24 per cent, 31 per cent at 2017, 34 per cent at 2018, 30 per cent at 2019 which is still going on. Detections 34,080 for that 10-year period, reported 156,630. In other words, even though in the last four years the detection rate has gone up, we are looking at 30 per cent. We therefore fall to the philosophies and theories of law. Can law stand as a deterrent? Can law modify your society's behaviour? Do we have examples of that? Yes, indeed we do. Look at the seat belt law, look at the introduction of speed guns via legislation in causing Trinidad and Tobago to slow down.

In this particular direct effect of the considerations of the bail amendments, look at the effect in the drop to near zero of kidnapping for ransom from a scourge in 2005, to 2009 the phenomenon dropping to nearly zero. Why?—largely due to the credit of the restrictions on bail.

Now, Madam President, let me put this into the mix now. Trinidad and Tobago is not being asked today to carry on the law that stood on the books of Trinidad and Tobago up to 2016 when the bail amendments fell flat. You will recall even though the UNC piloted bail amendments five times in the period 2011 to 2015, they came to this Parliament and they refused to extend the sunset period for two years to allow the bail amendments, as they stood, to go into effect. That caused the bail law to collapse back to the 1994 law, three strikes as slightly amended by the 2005 amendments which still stood for the right to appeal, et cetera, and effectively that law changed only by Act No. 17 of 2019. That law changed with this Parliament, this Senate supporting the bail amendments. And what did we do in that law which was assented to on the 5<sup>th</sup> of August, 2019? We introduced something which is a constitutional measure never before applied in this jurisdiction in that way.

Specifically we introduced in those amendments, and this Senate will recall and it is germane today to the debate, we introduced, if you have a charge and a conviction for scheduled offences, you will not be considered for the grant of bail subject to clause (7A). If you have a charge for possession of firearms and you come for another charge for possession of firearms, you will have no consideration of bail subject to clause (7A). If you have a charge in the scheduled offences and you come before, again, treating with a firearm offence where you are using it in the course of the conduct of an offence, again, you will be considered for no bail. But very importantly you will hear me constantly repeating that this law was subject to this Senate agreeing to the introduction of section (7A) of the Bail (Amdt.) Act and section 7(A), Madam President, is the section that I referred you to a little bit earlier where we added in the following language, and I will repeat it at this

point, section (7A), ““Notwithstanding subsections (3)...”

And subsection (3) which is 5(3) of the Act—5(3) is where you say, no bail in certain circumstances. Notwithstanding section 5(3), notwithstanding section 5(7), section 5(7) is where you are dealing with the anti-gang provisions where you are dealing with a child or somebody who is in loco parentis. Notwithstanding those sections:

“...a person to whom those subsections apply may, in exceptional circumstances, make an application to the Court for bail.”

We specifically said that the court included the range of judicial officers, the magistrate, the judge, the master. We specifically put that into the law. And why did we do that, Madam President? We did that because we accepted, number one, that there ought not to be a breach of the separation of powers.

Number two, this Government proposes specifically that we ought to maintain of the sanctity of section 5(2)(f)(iii) of the Constitution. It is section 5(2)(f)(iii) of the Constitution that says that you ought not to deny bail without just cause.

We also saw it as fit to address the section 13(2) of the Constitution issues, a society such as Trinidad and Tobago fighting the scourge of crime, having sub-machines guns, having machine guns, having thousands of reported matters, having murder statistics close to 500 right now. Remember, a murder is, mostly insofar as firearms are used, as shooting gone right from the killer’s perspective. The wounding and aggravation by firearms is where the murder goes wrong. So if you add those two together, we are fighting a scourge.

In recognizing no breach of separation of powers, preservation of section 5(2)(f)(iii) of the Constitution, section 13(2) considerations of the Constitution in terms of proportionality as they are well anchored in the cases that we are now

very well familiar with, whether they originate from the European Court, whether they originate from the Privy Council or from the local jurisdictions we said, introduce clause (7A) to section 5 of the Act, and that is to preserve the court's jurisdiction.

Madam President, of course, persons can stand today, refer us to *Caballero v the United Kingdom* appeal; that is the European Court. They can refer us to *SBC v United Kingdom*. Of course, the very famous case of *State of Mauritius v Khoyratty, R. v Morales, R. v Pearson*, all of the cases, Northern Construction. Wherever they may be, we will be looking at the position of proportionality. Is there a legitimate aim? Is the aim rationally connected with the purpose of the Bill? Do we go any further than we must in the derogating from certain enshrined rights. And is it proportional and proportionate in a society much as ours? Sen. Thompson-Ahye, you wanted to ask something?

**Sen. Thompson-Ahye:** Yes. Through you, Madam President, I hate to stop the hon. Attorney General in full flight, but he keeps alluding to section 7, when he really means subsection (7), and you see, then it goes into the *Hansard*, anybody reading it.

**Hon. F. Al-Rawi:** Thank you.

**Sen. Thompson-Ahye:** I have been going back and forth, and I know that (7) is the sunset clause, so you could not mean that.

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

**Sen. Thompson-Ahye:** So if you could say subsection when it is subsection when it is subsection.

**Hon. F. Al-Rawi:** Section 5 subsection (7A)—

**Sen. Thompson-Ahye:** Thank you very much.

**Hon. F. Al-Rawi:**—of the Bail Act. Of course, I am speaking quite quickly

mindful of the fact that I have 10 minutes left to do justice to this legislation. And I thank the hon. Senator for getting the *Hansard* right.

So, Madam President, this has direct precedent. This has precedent in a law coming out of England, Criminal Justice and Public Order Act 1994 in the introduction of section 25 to that law as it was amended after the European Court effectively said to the UK Government, “You cannot oust the jurisdiction of the court”; that is the origin of section 5 subsection (7A) which we as a Senate put into law, and which stands as the measure against any argument against constitutionality for the inclusion of trafficking in weapons introduced in the Firearms Act by Act No. 18 of 2019, assented to on 19<sup>th</sup> of September.

We just amended the Firearms Act to include for the first time the concept of trafficking in firearms and ammunition. And we said, if you have two or more firearms that you would be trafficking, and we introduced into that law where you are in possession of military weapons. We took the definition of “prohibited weapons”, prohibited weapons is defined in the Firearms Act, but we narrowed the definition of “prohibited weapons” down to what we are considering to be offensive to our society. And the prohibited weapons effectively stand as follows, and it is set out in this Bail Act.

“Prohibited weapons” means artillery or automatic firearm, grenade, bomb or other like missile. So we are narrowing the definition of “prohibited weapons”, because in the Bail Act it is to be narrowed, but in the Firearms Act it is a broader definition in the general interpretation section, the clause 2 of that legislation, section 2, and also in the possession aspects where we introduce trafficking in firearms, the new section 9A of the Firearms Act in particular.

But in the UK, and I think it is germane to this debate, it is, in fact, the parliamentary speech coming from Lord Falconer that really addresses why we are

in part treating with this.

In the piloting of the amendments to section 25 of the United Kingdom Criminal Justice and Public Order Act it was Lord Falconer who moved that particular position, who really set it right, I think, Madam President, and I want to put it onto the record here, and I quote. This is from the House of Lords speech:

“We consider that, in the exceptional cases at which section 25 is targeted...”—

—and we have exceptional cases

“...it is right to reverse the general presumption in favour of bail...”—

—because that is what we do.

“...and shift the onus onto the defence to provide good and sufficient reason why bail should not be denied. We do not envisage that this new burden on the defence will be easily overcome in most cases, but to rule out the possibility of granting bail cannot be justified. We see this new provision as allowing some flexibility to prevent injustice, while ensuring that the protection of the public remains the primary concern and providing a tough additional safeguard against bad bail decisions in these particularly serious circumstances.”

I saw a small smile from Sen. Chote who I respect in the most sincere way. Yes. Do we have bad bail decisions? We do. Yes, did we in 2005 introduce the concept of appeal both defence and for the prosecution position? Yes, we have. Yes, we can as a Parliament decide to say what the Parliament says ought to be considered. We the elected and appointed representatives of the people of the Republic of Trinidad and Tobago have a unique voice and privilege under the Constitution, in the Constitution allowing us to make under section 53 of the Constitution, laws for the good order of Trinidad and Tobago, peace, order and good governance.

Do we have a problem with firearms in this country? Yes, we do. Are we detecting them? Yes, we are. Are we catching all of them? No, we are not. Porosity of evidence, witnesses not turning up, that is the matter of the evidence considerations which are in joint select committee which there is a prohibition against discussing at present, but we are trying to treat with evidence. Yes, are we asking the police to go out and do more drilling? Yes, we are. But when we have reported incidents as are littered in the newspapers of mothers being gunned down with automatic firearms, children being shot dead in scattered gun fire with automatic firearms; up to 19 automatic firearms being found in one location, we have the privilege and ability to cause amendments to the law. Are we saying to the court that you have no role in this purpose? No, we are not. Are we asking for the defence to be in a position of reversal of burden proof? Yes, we are. Can we do that under the Constitution of the Republic of Trinidad and Tobago? Yes, we can, it is set out in section 5 of the Constitution.

The reversal of burden is a particularly unique circumstance, the burden shifts once the defendant has done certain steps, and the prosecution must then go on a proof beyond reasonable doubt to deal with the rest. But, Madam President, where we are treating with a prohibition against firearms as we agreed as a Senate that we ought to. We the Senate, I the guest in the Senate, the mover of the Bill, we passed the trafficking in firearms clause, we passed the possession of military weapons in the prohibition of the prohibited weapons circumstance as we did.

Today, we are saying, and hence my position that it is deceptively simple, today, we are saying in section 5 subsection (3) of the Bail Act, we are asking pursuant to clause 3 of this Bill we are saying, let us consider the introduction of reversing that burden of proof, having the defendant show just cause in exceptional circumstances why bail should not be granted, let the court take an extra step and

consideration as to those matters.

And I can tell you this, Madam President, in the case of *RO v Crown Court at Harrow*, Lord Brown in that particular case, UK House of Lords, 42 [2017] 1 Appeal Case 249, dealt with Lord Falconer approach, dealt with prohibitions and the reversal of burden and effectively said that there was no real placing of an evidential burden to the point that offended justice.

So there has been since 2005, 2006 in particular there has been fulsome consideration of the “precedented” version of what we are doing in similar circumstances to section 25 of the Criminal Justice and Public Order Act 1994 as has been amended in the United Kingdom. Canada has a similar approach and run up to the wicket, and they also have that position clear, but, Madam President, this management of crime and criminality in Trinidad and Tobago cannot be without reference to the Parliament. It for us to decide what we consider to be offensive or non-offensive.

Section 3, we are asking for a simple possession point. If you are brought before the court where you are in possession of prohibited weapons meaning artillery, automatic firearm, grenade, bomb or like missile, the court ought to consider not granting you bail, but you can pursuant to section 5(7A) of the Bail Act in exceptional circumstances say to the court, “Listen, I want to hear my access to bail”. You have the right of appeal. You have the defence and prosecution having that. And we are saying, in those circumstances, these things are so odious, trafficking in firearms. These things are so odious, grenades, missiles, automatic firearms, that our Parliament ought to have people on the first occasion of coming before a court explain themselves to the court. Why would you want to be in possession, as has been reported in the newspapers of 19 automatic firearms? What reason could there be? This is not anecdotal, this is

now a matter of fact in our jurisdiction. I make no aspersions as to guilt or innocence, but I am drawing an example that the country is well aware of.

It is an opportunity for us to consider righting the ship. Have we done it before? Yes. We did it in the amendments between 2006 to 2009 where we dealt with the kidnapping for ransom scourge. There was a benefit. Are we seeing a push by our law enforcement? Yes, we are.

Madam President, I am confident that hon. Members will have a fair amount to say today. I welcome the submissions to come from the respective benches. I ask us to think very carefully about the coordination of laws that we are engaged in, and I look forward to having a proper response, reply, perhaps amendment to any considerations that hon. Senators may have. I beg to move. [*Desk thumping*]

*Question proposed.*

**11.30 a.m.**

**Sen. Saddam Hosein:** Thank you very much, Madam President, for allowing me the opportunity to contribute to this Act to amend the Bail Act, Chap. 4:60. And, Madam President, we would have missed you for the period that you would not have been here, but the last time I expressed such sentiments, I was ejected. [*Laughter*] But, Madam President, we are engaged in a very serious discussion today, and that deals with the restrictions of certain constitutional rights and privileges of individuals and citizens of Trinidad and Tobago, and in particular, the right to bail when one is charged under the criminal law. And Madam President, it was like déjà vu because I could remember, I believe it was in June of this year, that this Parliament would have considered and deliberated on the Bail (Amdt.) Act, Act No. 17 of 2019. And that debate took place in June and July of this year, and the Bill was assented to on the 15<sup>th</sup> of August, 2019, where there was a host of various restrictions being placed on the right to bail.

And, Madam President, the Bill before us is one that amends those provisions of the last Act, which is Act No. 17 of 2019, by creating two categories in which bail will be denied, and those are for persons who are charged with trafficking of firearms or who are charged with the possession of a prohibited weapon. And when a Parliament, through the policy of the Government, seeks to restrict one's constitutional rights there must be a high level of accountability, because you are denying effectively a person, his constitutional right to bail and also his right to liberty. So therefore, once these heavy restrictions are put in place and imposed, it is on the account of the Government to come to the Parliament to justify further restrictions. So, I would have thought that the Attorney General, while piloting this Bill, would have given us a report of what has taken place with respect to the effectiveness of the last amendment that we would have passed in this Parliament [*Desk thumping*] so that we would have had an idea of how many persons would have been captured by this new Act No. 17 of 2019 here, because now we are going to create further restrictions to the right to bail.

So as a Parliament, and for us to make a more informed decision, you should have explained to this House and the country what is the effectiveness of the previous law, how many persons were charged and denied bail under that particular law, how many persons' trials have been started, whether any of those cases, if any, there have been charges, what stage of the proceedings those matters are at. Because, this Bill runs—there is a sunset clause in this Bill for two years, in the last Act. So, you are creating this restriction for a very long period of time, and if you would allow me, Madam President, I would just like to go through some of the categories in which a person would have been denied bail under Act No. 17 of 2019. If you are charged with a scheduled offence but you have a conviction for an offence that carries imprisonment for more than 10 years, you are denied bail.

If you are charged with possession of firearms and also have a pending charge for possession, you are denied bail. If you are charged with a scheduled offence and have a pending charge for a scheduled offence, you are also denied bail. And if you have a charge for a scheduled offence but the prosecutor informs the magistrate that you used a firearm in the commission of that offence, you are also denied bail.

Now, the categories in which we are going to include here is charged for—when you look at clause—the Bill is very short—when you look at clause 3(d) of the Bill, is that you are going to deny bail for a person who has a charge, first offence, no pending offence, so once you have a first offence for a charge for trafficking of firearms under section 9A of the Firearms Act, you are denied bail for a period of 120 days. Secondly, if you have a first charge for possession of a prohibited weapon, which is defined as artillery or automatic firearm, grenade, bomb or other like missile, you are also denied bail for a period of 120 days.

Now, Madam President, I admit that it is a problem. No right-thinking citizen of this country should have in his possession any automatic firearm, or any automatic rifle, a bomb, a grenade. No one should have that. But, what is important is that the citizens of Trinidad and Tobago must have their constitutional rights. [*Desk thumping*] Those rights should not arbitrarily be taken away from them. Because what is the ultimate test for bail? Bail is not a punishment. Bail is not meant to be something to punish an accused. Bail is meant to secure an accused attendance at trial. That is what bail is. The Bail Act goes through several factors in which the magistrate, which the judge, which the Court of Appeal will take into account when a person is effectively granted bail, when they are denied bail, or when their bail is varied.

So, Madam President, what this Bill does, it was a reactive measure.

Because, in this country you have an Attorney General, you have a Minister of National Security, and you have a Commissioner of Police. The Minister of National Security is responsible for setting the policy of the Government. The Attorney General is responsible for converting that policy into law and bringing it to the Parliament. And thirdly, the Commissioner of Police is charged with the responsibility to enforce the laws that this particular Parliament passes. That is how I understand the system to work. Now, the Commissioner of Police expressed severe dissatisfaction with respect to an instance that took place in the courts with respect to the granting of bail, and all of a sudden there is an amendment to the Bail Act.

So it seems in this country that the Commissioner of Police has to fight crime, he has to tell the Government which law he wants, and he has to create policy. That shows the incompetence of this PNM Government. [*Desk thumping*] Because without Gary Griffith, the Commissioner of Police, this Government is blindsided when it comes to crime. They have no idea what to do with respect to fighting crime in this country. [*Desk thumping*] They have nothing to add. And you would have thought that we would have just amended this Act. This piecemeal approach that this Government keeps coming to this Parliament with, is that the prevalence of firearms and, submachine guns, and machine guns is nothing new, because when we debated this Bill earlier on, the Attorney General provided us with the statistics, and on the statistics you have machine guns and submachine guns, why did you not include this amendment in the previous Bill? We are just wasting more and more precious and limited Parliament time with the piecemeal approach that this Government is taking. [*Desk thumping*] The Opposition has always called for a holistic approach and a holistic view with respect to the criminal justice system in this country. That is what we are about. Do not come—

today you want to amend the Bail Act in section 5 and then you want to come back and re-amend that section and do the same thing over and over and over, Madam President. We are wasting parliamentary time. Do the work properly so that we do not have to come every single time here in this Parliament to fix what nonsense would have taken place before.

And, Madam President, as I was on the point that this epidemic of firearms is nothing new. The Attorney General quoted the figures. Look at this! When you look at machine guns for the 10-year period 2009—2019, the Attorney General told us the figures were 44 as of June. I have 43 as of May, so that means there was one extra submachine gun that was found in Trinidad and Tobago in the year of 2019. Well, let us look at the last three years, in 2017, there was zero machine guns; 2018, zero; 2019, zero. In 2017, with respect to submachine guns there was a find of 23, there was a find of 14 in 2018, and a find of seven in 2019. And yes, it is a problem. I agree with the Commissioner of Police that one of those submachine guns can take out dozens of lives in a few seconds. I agree with that. But, how are these things happening in Trinidad and Tobago? Trinidad and Tobago does not manufacture firearms. We do not manufacture grenades. We do not manufacture bombs here. We do not do that. It is because of the porous borders we have that we have a high influx and importation of firearms in this country. Because when you look at the figures, the figures simply show that it is a booming trade. Crime is probably the most booming trade in Trinidad and Tobago because the Government has not been able to arrest the situation.

Now, the Attorney General also spoke of figures. He talks about the number of arrests. He spoke of the number of arrests with respect to reports of firearm-related offences as of June 17, 908. He spoke of arrests for possession of firearms, which was 5,900 as of June. He spoke of arrest under the Anti-Gang Act. But you

know what the Attorney General did not tell us, how many convictions were there for these offences. We hear about the high number of arrests, but where are the convictions? How many of these persons have been sentenced? What was the sentence given to these persons? Because bail is not a deterrent in this country. It is the sentence that is imposed on a person who is convicted of crime should be the deterring factor with respect to a person going to commit a crime. I say it again, that bail is not meant to be a punishment in this country. Bail is only to secure your attendance at a trial, Madam President. [*Desk thumping*]

This Government lambasted the Opposition. They tell us that we are unpatriotic, that we do not support the legislation. But that is false, Madam President. The Opposition has supported the Government; that is why they have these particular amendments to the Bail Act. They have the Anti-Gang Act. But let us look at the effectiveness of what is going on with the Anti-Gang Act, because you would agree that most of the gang-related offences are committed through the use of firearms, and you have these high-powered rifles that are being found by the police. In 2016, you have two arrests; in 2018, you have one arrest; in 2019, you have five arrests. The Attorney General promised this country that they knew the gang leaders by name, by address, where “dey does lime”, and they would have picked up everybody. The country had the presumption that once the Bill was passed they would have picked up all of the gang members and arrested them because that is what the Attorney General would have given the presumption of in this country. But, look at what the figure shows, five arrests in 2019 and no convictions.

Madam President, we cannot continue like this. We simply cannot continue doing this and passing law without any effectiveness. [*Desk thumping*] You have the Commissioner of Police recently crying out that this Government is not giving

the police service resources and releases on time. You have the Commissioner of Police crying out. But we have a plan. Part of our national transformation plan, Madam President, we indicated with respect to national security is to give the Commissioner of Police releases on a quarterly basis [*Desk thumping*] so that he does not have to come cap in hand with respect to this Government begging for resources so that he can do the work to fight crime because we all agree that crime is probably the most important issue in this country. Persons are afraid of their lives in this country. On a daily basis you have persons dodging bullet holes in this country, and something must be done. But, I want to say that law, passing law alone in this Parliament is not enough. You must have a competent Government in order to carry out the effectiveness of this particular piece of law.

Madam President, this Government again— and you see the types of laws that they are passing. Most of the laws that they bring to this Parliament is with respect to the restriction of certain fundamental rights and privileges guaranteed under the Constitution. And today, when you look at the provision of this Bill, basically what the Government is doing is legislating a judicial discretion. They are legislating a judicial discretion by telling the court that once these persons are before you, you have no discretion, send them to prison on remand. [*Desk thumping*] And under our Constitution there is a doctrine that is well in place which is the doctrine of separation of powers where everybody—it means everybody stay in your section. Let the Parliament stay in their section, the Judiciary stay in their section, and the Executive stay in their section. And each institution must respect each other in this country. Every single one. So that when you hear things like the Prime Minister of this country and the Minister of National Security of this country attacking lawyers in this country, saying that lawyers are involved in criminal activities. Well I say, Madam President, if you have the

information, lock them up. [*Desk thumping*] But do not make all the lawyers in this country be painted as though we are criminals and that we are supporting criminal activities in this country, because we have—

**Hon. Al-Rawi:** Two get lock up already.

**Sen. S. Hosein:** Two “geh” lock up? Madam President, let me just say, on this side of the House we have nobody on bail here, eh. We have nobody on bail on this side of the House. I do not know if the Government could boast of that. Madam President, we “doh” have any body dollar wining in Tobago with persons on—

**Madam President:** No! Sen. Hosein! Sen. Hosein, your contribution is now starting to go down a particular path, I would ask you to revert to the Bill that is before the Chamber, please.

**Sen. S. Hosein:** Thank you very much, Madam President. Madam President, and you know that the Law Association of this country had to come out in defence of the lawyers, because if you read the statement of the Law Association on the 2<sup>nd</sup> of November, 2019, they acknowledged the fact of the Minister of National Security of this country attacking lawyers. Well lock up the lawyers who are involved in the criminal activities, but do not paint the rest of us as criminals. [*Desk thumping*] You cannot do that. You would be eroding the democratic institutions of this country. You cannot do that. Then you hear words from the Prime Minister always attacking the Judiciary. On political platforms you go and you complain about the decisions that are being made by the courts.

**Madam President:** Just one second. Sen. Hosein, please. Do not let me have to caution you again. Okay? Confine yourself within the Standing Orders when you are making your contribution.

**Sen. S. Hosein:** I am so guided. Madam President, it is the point coming out that

we must have respect for each independent institution of this country. The Executive must have respect for the Judiciary of this country. [*Desk thumping*] And when you look at what this Bail Act is going to do, is that, and I know my colleagues would expand on this point with respect to the considerations that a court will have with respect to granting bail. But, Madam President, because there was an unfavourable decision, you cannot simply just come to the Parliament and ask the Parliament to legislate on that decision. Under the Bail Act there are avenues in which both the defence and both the prosecution can use if they are dissatisfied with a decision of the court. Madam President, when you look at section 11 of the Bail Act, section 11 states that:

“Where a Magistrate’s Court grants or refuses bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings, the High Court may, on application by an accused person”—so the defence—“or the prosecution, grant or refuse bail or vary the conditions.”

So, Madam President, you are seeing that there are avenues available to the State. But—

**Hon. Al-Rawi:** Senator, just give me one second? Thank you, hon. Senator for giving way, just a courtesy call. I have asked the Clerk of the House to email out to all Senators a consolidated version of the Bail Act, as amended. It is now on your phones, your devices, so you can see the amendments into context. I thank the hon. Senator for giving way.

**Sen. S. Hosein:** You are welcome, Attorney General, but I have the version that you would have passed on to us. I did my own mark up with respect to the assented Act. Thank you very much.

So, Madam President, you would see that there are avenues available, but what is not available to the police service are the resources. Because 95 per cent of

the prosecutions in this country, is not done by the Office of the Director of Public Prosecutions, they are done by the police service of Trinidad and Tobago. The police would be the first port of call when it comes to these persons appearing before the magistrate charged with these offences of trafficking and prohibited weapons. They would be the first ones interacting with the court. The Government must take the step, the active decision, to give the police the resources of additional attorneys to help the prosecuting police officers in the court, because the police officers simply cannot do it by themselves. They need the assistance of the State, and I am pleading with the Government to give the assistance to the police officers in the courts of Trinidad and Tobago because those police officers do very good service when it comes to prosecution. They do very good service, but I think they require the additional assistance from the State.

Now, when we look at legislation in this Parliament, we must look at the benefits of the legislation. So, the ultimate aim of this is to get those persons who are charged with these offences off the street. That is really what this Bill is about. But you must also look at the disadvantages. You look at the cons with respect to passing legislation, because you must weigh the both. The Attorney General speaks of the test of proportionality, you must look at the proportionality with respect to your legislative aim. Let us weigh the advantages, let us weigh the disadvantages. So what are the disadvantages of this Bill? Madam President, this particular piece of legislation is denying bail, and I am going to repeat it again, for persons charged for the first time in their life. The first time in their life they are going to be charged. So once they are charged with the possession of two or more weapons, and let me put this in context, is that they do not need to have the weapons on their person. As long as they are in the same car, for example, or they are in the same house and weapons are found in the house, they are deemed to have

in their possession those particular articles.

So there is deeming provisions with respect to the trafficking, section 9A of the Firearms Act. You are deemed to have these weapons in your possession, and once there is a deeming provision, what happens is that the burden of proof reverses on the accused person. So there is a reversal of burden so that the person now has to prove that, one, I had no knowledge of these firearms, and two, that those firearms were not in my control. But at what stage that happens? That happens at the stage of a trial which comes almost 10 years after you have been charged. So, Madam President, we can see that there can be misconduct and misuse of this particular piece of legislation, and it is no secret. We are looking at things like automatic firearms, grenades and bombs. This country knows what happened to Mr. Sadiq Baksh. Had this Bill be in force then Mr. Sadiq Baksh would have been in jail for 120 days. No previous conviction, no pending charge. You found missiles in your water tank, you were sleeping in your house and you are going to be denied bail for 120 days. One hundred and twenty days. One hundred and twenty days.

**Sen. Obika:** To jail politicians, that is the plan.

**Sen. S. Hosein:** Let me look at another—

**Madam President:** Sen. Obika, may I remind you that you must listen to the contribution in silence, please. Continue, Sen. Hosein.

**Sen. S. Hosein:** Thank you very much, Madam President. Madam President, the concern is real, there are judicial decisions in this court where they have found that the police has planted illegal substances in persons' property. There is one case in particular *Anisha Raffick v The Attorney General of Trinidad and Tobago*, CV 2017-01077, and in that case if you would allow me to quote from page 75 of the written judgment by Justice Margaret Mohammed. She said that:

“The allegation of fabrication and planting of evidence by police officers is a serious matter...I am satisfied that there was cogent and compelling evidence that the black plastic bag containing the alleged cocaine was planted by the police officers who searched the middle bedroom since they had the opportunity to do so as no occupant from the house was present during the search of the middle bedroom.”

So the judge went on to also give the factual matrix with respect to how the police would have planted drugs in someone's home.

Now, yes, the facts may be different in this case, but what stops any person or any police officer from planting any firearm in your property? And you know who bears the burden when these misconduct happen? It is the taxpayers of this country. Because in this case, Anisha Raffick, she was awarded \$220,000 with an additional \$20,000 in exemplary damages. All because of what? Misconduct by the police officers in this case. That is what it is.

Madam President, recently in the newspaper, you see in the *Guardian* dated the 14<sup>th</sup> of December, 2016, “Siblings freed as police fabricated evidence”. This is from the *Guardian*, where two siblings were freed based on, again, illegal drugs being planted in their homes.

—Magistrate—“Cardenas-Ragoonanan said she believed their claims over—the police officers' claims—“as she found them both not guilty.”

Madam President, this is a real situation.

And I want to commend this morning Sen. Vieira, because Sen. Vieira saw something and he informed this Parliament. When we were debating Act No. 17 of 2019 in June of this year, Sen. Vieira piloted a very essential, and a very important amendment, a safeguard in fact. Sen. Vieira spoke of creating offences of frame-up. That is the offence, frame-up. So that you create a deterrence so that the

police officers would not do these things, or ordinary citizens, because they have a vendetta against you. And I think we need to put some more safeguard with respect to this particular clause, because this can be used for misconduct. It is very worrying.

Also, when you look at the Police Complaints Authority, they must be more robust with respect to dealing with errant officers in this country. I am not casting any aspersions on the Trinidad and Tobago Police Service, but every group there are rotten apples. Now, I raised the point earlier on with respect to border control, and border control in this country is a serious issue, because in this Parliament we are passing laws to deny bail for those firearms. But how does the firearm get here? How does it get on the street? We have passed several pieces of legislation in this House dealing with follow the money, follow the money, follow the money. We have passed laws, because in order to acquire these firearms you must have resources. The criminals are resourced. But we must stop the importation, we must stop the product from flowing into the borders.

When you look recently, Madam President, as recent as of this morning, if you read the Trinidad and Tobago *Guardian* you would have seen a headline, “State loses US \$10 million appeal over the maintenance of the helicopter fleet”. And this has to do with the helicopters that would have been charged with the responsibility of monitoring the borders. Madam President, there were four helicopters that were purchased by a previous PNM Government, together with the particular maintenance contract. When this new Government was installed, the maintenance contract was not renewed, so there was interim arrangements. Come up to 2017, interim. Do you know that the Government awarded a contract to the same foreign company to maintain the fleet for two years—the Minister of National Security at that time, 2017, awarded a contract to maintain the aircraft for

two years. Then they told the foreign company, no, we want to reduce it to one year, while all of this time the company was servicing and maintaining the aircraft.

**12.00 noon**

The company subsequently sued the Government because they have not been paid. Madam President, would you know that today the country is US \$10 million poorer, because the Office of the Attorney General of this country did not file a defence in time in that particular matter?

**Hon. Senator:** What!?

**Sen. S. Hosein:** A defence was not filed. Madam President, after three extensions were given, a defence was not filed in that matter. The people of Trinidad and Tobago today are poorer by US \$10 million, because the negligence, the omission of the Office of the Attorney General of this country. You know they used an excuse why they did not file a defence, is because they were moving from Cabildo to the new tower?

**Madam President:** Now, Sen. Hosein, you started making reference to the decision by making reference to the porous borders, now you are going into the decision, with absolutely no—you are making no link to the matter at hand.

**Sen. S. Hosein:** May I, Madam President?

**Madam President:** Well, no, you may continue in your contribution by maintaining relevance. Okay?

**Sen. S. Hosein:** Thank you very much, Madam President. And the point is that those helicopters are down because of a decision made by this Government not to maintain them. So you have no helicopters now and you have to pay \$16 million today and interest also, and you have nothing. But what is even more funny about this situation and worrying is that, you know the Office of the Attorney General went to argue with the Court of Appeal that the contract they awarded was illegal

because it breached the Central Tenders Board. That is the defence that they used, that they awarded an illegal contract basically that is not with respect to following the provision of the tendering rules.

**Madam President:** So Sen. Hosein, you are not following my guidance. I will ask you to move on please.

**Sen. S. Hosein:** Sure, Madam President. Madam President, I am finished with the air guard, I am going to the coast guard now with respect to the porous borders. This Government has done absolutely nothing to maintain the coast guard vessels, the 12 Damen vessels. They have done nothing. [*Desk thumping*] Imagine, we have to wait until 2020 to get some coast guard vessels in this country to protect our borders from Australia. And we are not even certain that we will get those vessels delivered on time, because this PNM Government is only about talk, talk, and more talk. [*Desk thumping*]

I saw the Minister of National Security was joyriding, he had a boat ride with the members of the media all around Trinidad recently, showing them how far Venezuela is from Trinidad and those sorts of things. But, Madam President, he would never issue a statement with respect to when we are going to get all of the fleet back up and they will continue to—I know, I am sure one of them will stand up and talk about the OPVs. But it was a Kamla Persad-Bissessar Government that recovered over \$1 billion for the people of Trinidad and Tobago with respect to that failed OPV deal through arbitration. [*Desk thumping*] We recovered that to the people of Trinidad and Tobago and they will continue to say that we get rid of the OPVs, but I am sure that the OPVs would have end up in the same situation as the four helicopters because this Government would not have been able to maintain those particular vessels. [*Desk thumping*] It would have run to the ground. It would have run to the ground.

You must also have consideration to what is happening with our neighbours. You have Venezuela right there, and you had thousands of Venezuelans passing through our borders. So you could imagine how easy it is for guns and other items that are illegal to pass through our borders. It took 10 days for this Government to register 16,000 Venezuelans, but it had some gathering in the Savannah and I hear they registered 18,000 of them in a few hours. Madam President, I will move on.

**Madam President:** Sen. Hosein, as you move on I would ask you to really, be relevant to the matter at hand and, please. I do not want to have to interrupt you again.

**Sen. S. Hosein:** Sure, Madam President. [*Crosstalk*] “You should ah be there, you would ah see.”

Madam President, Trinidad and Tobago is a unique island with respect to our laws and our Constitution. But when we look at our neighbours like Jamaica and in particular, they had passed a Bill in 2010, July 22<sup>nd</sup> of 2010. And that Bill was cited as the Bail (Interim Provisions for Specified Offences) Act, 2010. And in that particular piece of legislation, Madam President, you would have seen that they would have put a sunset clause on the Bill because they know of the importance of the restriction. Their sunset clause is actually one year, just one year. Then the second issue I want to raise with this is that while we had put in a subsection (7A) in our Bail Act that bail will only be granted in exceptional circumstances, what the Jamaicans did is that they said, they created a lower standard, they said:

“3A. (2) A person who is charged with any offence specified...in the...Schedule and who has not, on a previous occasion, been convicted of any offence specified in the...Schedule, shall be entitled to be granted bail only if that person satisfies the Court

that bail should be granted.”

So it is a much lower standard that proving exceptional circumstances, Madam President.

The third point with respect to the Jamaican experience is that, in the Jamaican legislation there is a review relating to persons held under the mandatory denial of bail. And it says that:

“3B—1. A person who is held in custody without bail under section 3A”—of that Act—“shall be brought before the Court at the intervals specified in subsection (2), for the Court to review the question of whether the person should continue to be held in custody or the grant of bail should be considered, in relation to the offence by virtue of which the person has been held in custody under that section.”

And they said that:

“(2) The intervals”—should:

- “(a) not be more than seven days after the person is first charged with the offence concerned;
- (b) thereafter, subject to the determination of any review under subsection (1), at intervals not exceeding fourteen days, until the sixty day period referred to in section 3A...expires.”

So you see what Jamaica did. Jamaica gave the opportunity for a constant review of bail with persons who are denied mandatorily. So while Trinidad denies bail for a period of 120 days, Jamaica denies for 60 days. While Trinidad and Tobago there is no review of your bail for that 120 days, Jamaica has a review of your bail every 14 days.

So you see the difference with respect to how this takes place and protecting

the fundamental rights because it is a balancing exercise. Because when you remove the right you must also give the accused something also to show that there is proportionality. And, Madam President, we must never forget that the golden thread runs through every democratic society is that a person—

**Madam President:** Sen. Hosein, I apologize. You have four more minutes.

**Sen. S. Hosein:** Thank you. That a person is presumed innocent until found otherwise. So you cannot impose these harsh, restrictive measures on a person when they are presumed to be innocent in this country. But I do not know, I might anticipate the Attorney General but I know he comes with a usual menu of what the Government did. He boasted of the achievements of his office for the four years that has gone. And the Attorney General will look at the court system. And the first thing he spoke of, he will talk about, is the Criminal Division, the creation of the Criminal Division. But I would like to report on what happens in the Criminal Division.

Most of the courts of this country that have to enforce this Bail Bill, there are no magistrates. The Tunapuna Court has no air conditioning for months; Princes Town is without a court; Point Fortin, courts are held in the police station; San Fernando, there is no house for the Magistrates' Court, they are squatting at the High Court. The Attorney General will boast of the Children Court, that they established the Children Court. But I want to remind the Attorney General that it started under the United National Congress Government led by Kamla Persad-Bissessar. [*Desk thumping*] So the Attorney General is benefiting from the work that we have done, Madam President.

You would hear about moving out of trafficking cases. Not a single case, those traffic offences were moved from the Magistrates' Court. You would hear talks about preliminary enquiries, not a single one has yet been abolished by this

Government; you would hear the Attorney General boast about 400 MSIs. Do you know who is responsible for MSIs in this country? It means Maximum Sentence Indication. It is the Judiciary. There was a case called the Goodyear Case, the Goodyear Hearing, where the court is empowered to make a deal with the accused saying, this will be your maximum sentence. This was nothing, no creation of the Government. This was a creation of the Judiciary but the Government continues to put it as part of their achievements, Madam President. That is misleading. That is misleading. And it shows, Madam President, that they are taking credit for work done by the Judiciary that they had nothing to do with.

**Madam President:** Sen. Hosein, you have two more minutes. May I advise you—

**Sen. S. Hosein:** I am winding up, Madam President.

**Madam President:** But wind up in a relevant manner please.

**Sen. S. Hosein:** Sure. Madam President, because you would have understood, because with the Maximum Sentence Indications those would be very valuable to persons who are charged under these trafficking offences or processional offences. But, Madam President, the point is that this Government is desperate for achievements. [*Desk thumping*] And you will see that they will go all over this country to boast and cut ribbon all over the place, mamaguying the people, but they have achieved nothing. They are all about talk, Madam President, talk, talk, talk. [*Desk thumping*] But, Madam President, talk done, everybody knows that the UNC works. I thank you very much. [*Desk thumping*]

**Sen. Anthony Vieira:** Thank you, Madam President. And like Minister Baptiste-Primus, may I also join in welcoming you back.

**Sen. Baptiste-Primus:** So you did not miss her?

**Sen. A. Vieira:** I did. [*Laughter*] Madam President, let us not be beguiled by the

brevity of this Bill. Its potential implications and consequences are enormous. I would say this Bill needs to be handled like one of the hand grenades mentioned at clause 3(b). Now my contribution should not be taken as a rebuke or criticism of the Government. The hon. Attorney General loves the law as much as I do and I am hopeful that after hearing our concerns and contributions he will give serious consideration to our recommendations.

All of us are committed to getting dangerous weapons off the streets. That is a given. There can be no lawful justification for an ordinary citizen to be in possession of automatic firearms, grenades, bombs, artillery. In fact, left to me there would be no guns in Trinidad and Tobago. I read recently a major global report which confirms that gun-related homicides, suicides and accidents are falling after the introduction of anti-gun laws in places like Australia, Brazil and South Africa. So there is empirical evidence that tougher gun laws do work. But my concern with this Bill has to do with the risk of unintended consequences and the deprivation of the court's discretion.

Now, I have previously raised concerns about weapons and drugs being planted on persons or in and around their premises. In fact, for me the core issue in this Bill has to do with the possession of a prohibited weapon and how that gels with subsection (7A). Ultimately it is going to boil down as to whether subsection (7A) is the antidote as claimed by the hon. Attorney General to a person wrongfully charged with being in possession. But I am going to come back to that.

Sen. Hosein talked about the instance with Sadiq Baksh. Now, if we bring our minds back to what happened on that occasion, he was charged being in possession of missiles and narcotics in his water tank. Now I have water tanks at my home, and they are not near my house, they are up by the road. And I can tell you, when police do searches of premises they would never think of going and

look in a water tank. It just does not factor in, in a normal search of a premises. The only way you would go and look in a water tank, is if somebody tipped you off, told you to go and look in a water tank.

So, as Sen. Hosein points out, if Mr. Baksh had been charged for possession of those missiles and drugs, under this legislation, no ifs or buts about it, he would be incarcerated for 120 days. The court has no discretion that is a real concern for me. And why is it a real concern? Because as these tougher laws begin to bite and to take hold, the bad guys are going to get more desperate and they are going to get more creative.

Now, I understand the genuine frustration, I understand even the anger felt by the public, by law enforcement, by government when persons charged with serious offences are led back on the streets. But we also must respect the ideal that the Judiciary must be responsible for establishing guidelines and criteria on bail and sentencing. [*Desk thumping*]

We should not let one or two instances of purportedly perverse decisions be taken or treated as the norm. Rather, they present us with an opportunity for us to better understand and to appreciate the nature of discretionary powers. Something that we as legislators must always be mindful of when trying to determine what is the correct legislative approach. We should seek to understand and appreciate the difficulties faced by magistrates when trying to apply broad discretionary powers into decisions in individual cases. What help if any help is available to them in identifying the right principles, and making the right judgment calls in the heat of the moment, under pressure from seasoned, high powered attorneys who by the way are also just doing their jobs.

Each case is different and because discretion includes weighing factors, such as the relevant facts, past criminal history, flight risk, potential danger to victims,

the relevant law, seriousness of the charges, there is always going to be the risk of piecemeal and unsystematic decisions when setting bail to suit the particular circumstances. But is taking away the court's discretion to grant bail on a charge of possession for a first time offender or any possession charge the best or only solution? How does removing the court discretion gel with the separation of powers? The Attorney General spoke about the separation of powers principle, the need for proportionality. Well, let us drill down into those things.

In the common law system all exercise of official power must have a legal basis and it is the courts that lay claim to have final authority in deciding the legality of any action. It is the courts that must have final say on any matter pertaining to the fundamental rights and freedoms of individuals. Now, we understand the problem Government is facing on crime and what they want to solve. We understand the need for these tough gun laws and we all want the same outcome to protect society from dangerous people. Yes, Parliament has the powers to make laws for the peace, good government and order of the country, but I would suggest we must be careful not to sacrifice process on the altar of desired outcome. Yes, feelings can vary, perspectives can vary from person to person, magistrate to magistrate; yes, due to the choice in discretion there is always a danger that discretionary powers can be used mistakenly or inappropriately; yes, decisions can be made based on irrelevant factors; yes, discretion can fall short because the decision maker was mistaken or he made the wrong judgment call, but is the answer to remove the court's discretion altogether on a charge for possession?

In a democracy the Executive is elected by the majority to implement its political programme. Yes, Government has gotten tough on crime.

**Hon. Al-Rawi:** Hon. Senator, thank you for giving way. I noticed you said quite importantly that the antidote may be in (7A), but you are making a very strong

submission over and over that we are removing the discretion of the court completely. May I ask you, if you do not mind, just to clarify that point?

**Sen. A. Vieira:** Absolutely. Thank you, Attorney General. As a good lawyer you have anticipated where I am going, but it really has to deal with what constitutes an exceptional circumstance and that is the rub with subsection (7A). I am going to come back to that, but that is where I am going. Yes, so Government has gotten tough on crime and one understand the impatient and the frustration on the part of some because lawyers and the courts seemed to be out of step or not cooperating with the democratic will of the people.

But I want to remind you, democracy is not only about fulfilling the will of the majority, the police and the Government. It is also operating government within frameworks of norms and values, collective and individual human rights. [*Desk thumping*] Democracy and justice requires us when making law for the peace, order and good government of the country not to drop the ball where protecting and safeguarding the rights of the individual is concerned. When our courts make decisions aimed at safeguarding fundamental values and protecting the rights of the individual, they are also supporting democracy. I have no doubt that 99 per cent of the cases the person charged with being in possession of prohibited weapon is a bad guy who needs to be kept off the streets. But that is no comfort to the innocent person who is charged and wrongly incarcerated. Because this law says you would be denied bail on just a charge. And I am going to come down to the (7) here.

But, what if the accused was tricked into carrying or taking possession of something he was unaware of? You are an Uber driver or something like that. What if the accused had let someone else used or occupy his property, you renting, you lending to a friend without realizing what would have been put into the

property. People have lockers, people have businesses where they rent locker spaces, all of these people are potential victims of set up. I spoke in the past about accused persons being framed. This is not an unusual, an exceptional thing in Trinidad and Tobago. It happens. I have been in a number of cases where people were framed. What if the accused is being coerced by threats of violence to himself or his family? You know, you are being made to become a mule because somebody says if you do not do this your family is going to be hurt or something is going to happen to you.

So we have to consider the possibility of unintended consequences, in particular, the very real risk that an innocent person may be wrongly charged. Even where the odds of that happening may be just one in 100. It would not be right for an innocent person to have to languish for 120 days in jail to be denied bail without recourse to judicial intervention and relief.

Now, let us look at subsection (7A), because what we have done is that we have expanded the list of the specified offences and as Sen. Hosein pointed out none of us have any problem with all the other list of specified offences. Because when we agree to (7A) in the context of those other offences there was already evidence that the accused was a potential threat, he was a risk. He had pending charges, he is in the course of committing some crime. This is a different scenario. Here you are just being charged with being in simple possession. There is no pending charge, you have not committed a further offence. This is a serious situation now, because as I say, you could be set up. So what does (7A) say:

“(7A) Notwithstanding subsections (3) and (7), a person to whom those subsections apply may, in exceptional circumstances, make an application to a Court for bail.”

Well, when I think about exceptional circumstances and I recall that debate

we were talking about softening the harshness of this section so that a person, even somebody who has pending charges and is a bad guy on the face of it, could get relief if there is a medical emergency. He had a heart attack, he had some particular situation. Now, is a charge of possession going to qualify as an exceptional circumstance? I do not see it. You are charged with being possession, what is exceptional about that?

So I am going to recommend that we soften or we expand (7A) so that a person aggrieved by denial of access to bail under subsection 3A(c), which is this, may make an application to the court for bail. That is my real bugbear with this Act. It is the only thing that has to do with the possession aspect. We should be uncomfortable. In fact, we should all be very concerned about any legislation which seeks to exclude the court or to take away its discretion. As far as I am concerned, once the liberty of the subject is at risk, the court must have the final say. When it comes to fundamental rights and freedoms our courts must always have power to review and intervene as necessary appropriate. I have supported all the tougher guns laws and legislation, but I am very concerned about the real risk that an innocent person may be put in a situation and when I say it, I am not looking to put "goat mouth" on anybody, but it could happen to any of us.

**Hon. Al-Rawi:** Thank you, hon. Senator. Because we are in the middle of this again, thank you for giving way. It is never the circumstance as drafted or as intended, perhaps I just ought to say this, that the exceptional circumstance in section 5(7A) will be the mere fact of being charged for trafficking or possession. The exceptional circumstance is anything in the individual case which means that a court ought to consider. A youth, I do not live there, constructive possession, the aggravation of the point, et cetera. So it is not the circumstance that the mere charge would be that. But respectfully, if the position is that we ought to just allow

the access to bail, then effectively you are saying withdraw the Bill.

**Sen. A. Vieira:** No. No, AG. With respect, I am saying that insofar as we are talking about subsection 3A(c) that my recommendation is, that with respect to subsection 3A(c) a person may make an application to the court for bail. All the other offences were under the exceptional circumstance. I did not have access to researching case law and precedent on exceptional circumstance, but when I googled what constitutes exceptional circumstances. Conditions are required so as to alleviate or mitigate unforeseen or unconventional hardship. Well, that does not cover the possession charge. That to my mind is in keeping with my understanding about exceptional circumstances means.

So I think there is a very real danger that subsection (7A) does not address. As I say and I think not for just for this Bill but we must always be mindful of the importance of judicial discretion, it is fundamental in the functioning of our criminal justice system. There will inevitably be tensions between the Executive and the courts, but we as lawmakers we must strive to always maintain the separation of powers while assisting the Executive and law enforcement to carry out their respective duties effectively. No part of the Bail Act, in my respectful submission should operate as a court free zone. I thank you. [*Desk thumping*]

**12.30 p.m.**

**Madam President:** Minister of National Security. [*Desk thumping*]

**The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. Madam President, good afternoon. It is always a pleasure to come to this House to contribute, and I find myself here once again contributing on what we see as a very important piece of legislation. I was fortunate enough, in my scrambling before coming to the Senate, to listen to the normal and usual, very sensible contribution

of Sen. Vieira. I heard some of the previous contributions—or contribution—by the Opposition.

Madam President, it brings me absolutely no pleasure and no joy to come to the Senate here today to deal with this particular piece of legislation. But I want the opportunity, and I am grateful for it, to put this particular piece of legislation into the reality of the setting of Trinidad and Tobago. Because, fortunately for the vast majority, if not all of those who sit in the Senate, I think, save for my colleague, the Attorney General, who sits on the National Security Council, a lot of people, including the vast majority of the public of Trinidad and Tobago and the vast majority of the Members of the Senate, do not have to deal or face the reality of what it is that we are really facing out there. Because like Sen. Vieira—I agree with him—in the practice of law we are all about the protection of rights. I heard you talk about the water tanks up on the hill and what are the realities, et cetera.

Madam President, unfortunately, the reality of what we are facing today in the national security realm and spectrum is extremely frightening. Yesterday I chaired a meeting with the heads of all divisions and their second-in-commands of the Trinidad and Tobago Police Service of those divisions that the murder rates and the use of violent crime, in our opinion, are at risk of running away. In that meeting I had the Chief of Defence Staff and his head of operations, Head of Intelligence. I had the Intelligence Services. And it is always coming out of those meetings that, as a citizen of Trinidad and Tobago, I am most disturbed. Because, you see, the reality of what we are facing there, out on the streets, is very different, fortunately, for the vast majority of Trinidad and Tobago, to what we know as reality. Because, you see, perception is reality. So reading about crime in the newspapers, seeing reports of criminal activity on television, is very, very different, I would like to suggest, from when you feel, touch and are exposed to crime.

I think I can say without fear of contradiction, that 99.9 per cent of the people in this Chamber are fortunate never to have read more than one intelligence report about persons who have been provided with AR15s with the task of going to murder someone. Ninety-nine point nine per cent of the people sitting in this Senate, fortunately for us, have not received a briefing that there is a real and present danger and threat to their life and their family's life by the criminal element who we now know are in possession of automatic weapons, sophisticated handguns and assault rifles. And this piece of legislation here today, colleagues, with the greatest of respect, is designated to deal exactly with that, and specifically with it. It is very easy for someone on the outside to sit down and say, but when I look at the charges that a person has been charged with, I do not see nine AR15s,—being in possession of 9 AR15s.

And just to remind the population, as well as the hon. Members in the Senate, what an AR15 is. It is a weapon of war. Every time we turn on our international news and we see mass shootings and the murders of more than 10 people in the United States, for example, the one that took place in Las Vegas with someone in a hotel room hundreds of metres away from a concert taking place, where people are enjoying themselves, and the aftermath of the room when the authorities got into the room and found empty magazines and tons of 5.56 ammunition, it was an AR15 being used. What happened in El Paso, Texas outside of a Walmart, it was an AR15 being used. In Trinidad and Tobago, lest anyone does not get the reality of what we are facing in national security, the criminal element is now in possession of AR15s. And I guarantee everyone in this Senate here today, Madam President, without fear of contradiction, that God forbid, any one of you or your family members are told that criminal X has been put into possession of AR15s to kill you, how you would feel at night; how you would feel

walking in the road on a daily basis.

Because, you see, the reality of what we are facing in this country, in Belmont, Madam President, my constituency, in an area that I walk in constantly, the St. Francois Valley Road, HDC plannings, the housing—HDC housing, eh, on St. Francois Valley Road in Belmont, God intervened and we recovered nine AR15s. And to show you how sophisticated the criminal element is, they did not have them put together. Anyone who knows anything about firearms knows you can dismantle and put into pieces an AR15, or any firearm whatsoever; a simple handgun. Those nine AR15s were soon followed by the recovery, again, fortunately God intervened, of eight AR15s in Four Roads a few weeks later. And I tell you, the Members of this Senate, with the greatest of respect, and the population of Trinidad and Tobago who are listening, with the greatest of respect, one of the things we have been doing in national security is trying to analyse and decipher where these AR15s have come from; who is in possession of these AR15s and what for. Because, you see, Madam President, it is easy to talk about being in mere possession of an illegal firearm. That is a nice academic concept, with the greatest of respect, because I put it to this Senate and to everyone in Trinidad and Tobago, there is absolutely no legitimate reason whatsoever to be in possession of an illegal firearm.

As I have said here before and in the other place, the only reason a person is in possession of a firearm is to kill somebody. A firearm is not a toy. A firearm is not—Sen. Vieira, you want me to give way? Please.

**Sen. Vieira:** Just to be clear. I am totally in support of the amendment to make those firearms, bombs and so on, prohibited. My only concern is that in respect of that possession charge there should be a right to review by a court. I am not shooting down the proposal.

**Hon. S. Young:** No pun intended. Thank you very much, Sen. Vieira. I was not responding directly to the point you had raised on possession, but I am putting it on the record once again, lest anybody misses the point, there can be no legitimate reason to be in possession of a firearm. These firearms having the ability to kill masses and multitudes of people. Unfortunately for us in Trinidad and Tobago, it is a reality, and it has been a reality since 1990. Because I believe everybody sitting here today would be aware of what happened in the House of Parliament in Trinidad and Tobago in 1990, and that changed the landscape of Trinidad and Tobago.

Every time I sit and meet with all of the international agencies I have to explain what it is we face in Trinidad and Tobago and try to dissuade their minds that a certain religious part of our brothers and sisters in society in Trinidad and Tobago, our Muslim brothers and sisters in society in Trinidad and Tobago, are not terrorists. I tell them what happened in 1990 in Trinidad and Tobago that changed the landscape was after that it changed the psyche of the people of Trinidad and Tobago. But you will all remember storming Parliament on the 27<sup>th</sup> of July, 1990, those involved had assault rifles. What is frightening today is what exists out there—and we are not only talking about assault rifles, and I put it to this honourable Senate that anyone who is in possession of an illegal firearm can only be in possession of it because at some stage they intend to harm or to kill someone. Because when you point an AR15 at someone and you pull that trigger, the type of round that shoots out of it will kill you. A handgun, you have an opportunity to escape.

And I am putting it here in this House on record on the *Hansard* on the 12<sup>th</sup> of November, 2019, a bulletproof vest is not going to stop the round of an assault rifle. Understand that. Understand the seriousness of this piece of legislation today.

So a person found in possession of nine AR15s, and then us finding eight AR15s, and then last week two individuals dressed in police uniform, in a vehicle with blue lights in possession of the same Glock handgun I have been talking about, as well as an AR15, with two magazines of rounds, that is not someone, with the greatest of respect, any civic-minded or right-minded, or legal citizen of Trinidad and Tobago should want to see out on the road—out on the streets.

I am sorry to say, but it is the reality. I heard reference to Jamaica. Let us not be fooled by what takes place in Jamaica. We are fighting hard in National Security to make sure we do not get anywhere near to what our brothers and sisters are facing in Jamaica. Their murder rate is over 1,800 a year. They have legislation for the last three years that allows them to go to Parliament to declare an area a state of emergency. And when that was raised here, I opposed it. Because you know why? I knew it would not work. A state of emergency does not work. It is an acceptance that there is nothing left behind you. And I stood with the men and women in our security services and apparatus and said, “Under my watch that will not happen, because we have not exhausted every single opportunity and every single operation we can do legally within the parameters of the law to fight the scourge of what is going on out there.”

And I also promised them at the time that I would work with the Attorney General to see what legislation we can bring to make their jobs easier. Because let me, again, with the greatest of respect, tell everyone in this Senate, as a police officer or member of the defence force, or the intelligence services, when you go out there and you put your life literally at risk and you find nine AR15s, nine weapons of war, nine machine guns, and then on the first occasion that comes up and someone exercises a discretion to grant bail and put them out for \$500,000, why should you go back out the next day and look for the same people and take the

fight to the same criminals?

Has anyone here ever faced the instance where you have been a victim of crime, been held up at gunpoint? Someone has come to kill you, in the worst-case scenario, they are captured with an illegal firearm in their possession. So like where Sen. Dookie is, standing here facing me, the police holds me, the perpetrator going to do harm to Sen. Dookie, and then I appear in court on the first day, tell the magistrate I “not guilty” to the nine firearms that PC Al-Rawi held me with. Five hundred thousand dollars is small change for a seasoned criminal. And they do not even have to come up with the \$500,000, eh. That is not how bail works. And the next day I am out and I come and I stand up next to Sen. Dookie. I say, “Dookie, how yuh going man? That nine was only half of the cache ah de 18 ah have. I will see yuh at yuh home.”

That is the reality of what Trinidad and Tobago faces, and the reality of what Trinidad and Tobago faces with the possession of illegal firearms. And if I have any interruption today I will talk about a different type of reality, and I will talk about the reality of who interfacing with the criminal element out there and what it is they are talking about. But with the possession of these illegal firearms that I have come to discuss today, let me put it—I will see when last Rajae speak to you.

The possession of illegal firearms, the crime statistics that were discussed at length yesterday with the heads of the divisions of the police services in Trinidad and Tobago as we take the fight to the criminals, they are the ones who have asked the Attorney General and myself to look at this legislation; pleaded with us as they go about picking up the illegal firearms, what it is they are facing.

Madam President, Trinidad and Tobago Police Service Crime Statistics, dated the 11<sup>th</sup> of November, these are the statistics that we as citizens of Trinidad

and Tobago face as of yesterday, given to me by the Commissioner of Police in our weekly meeting. And I start with the monthly comparative of firearms found and seized. As at yesterday, in Trinidad and Tobago, for the year from the 1<sup>st</sup> of January to the 31<sup>st</sup> of October, 2019, the police service has seized 841 illegal firearms—841 illegal firearms. And in some months when you look at the frightening numbers—and this is compared to last year, 702.

And I heard some discourse about the borders. Absolutely correct. We are fighting to keep the borders more secure. Last week I took the media out on a coastguard vessel for them to see for themselves, lest they be misled, at what it really means. Seven miles of coastline separating us from South America, lest anyone just look outside here during your lunch break. Members, I ask you—and see that wide expanse. And when you are outside there, the media could not even pick up the pirogues that were off in the horizon.

Murders, shootings and woundings, illegal firearms found and seized. When you look at the woundings and shootings by divisions, that is how we are targeting and what we are doing. And let me tell people, through you, Madam President, the firearms and ammunition found and seized from the 1<sup>st</sup> of January to the 11<sup>th</sup> of November for this year, in Port of Spain, last year at this time, found and seized, 75. This year, 71—in Port of Spain. We are in Port of Spain. The rounds of ammunition for the same time last year, 1,500 rounds of ammunition. This year, 1,192. That is in a single division. For the whole year last year at this time, we found and seized 15,278 rounds. Every single round of ammunition is created to kill somebody. Fifteen thousand is what we found and seized. How much more is outside there, God forbid, to hurt and harm any law-abiding citizen of Trinidad and Tobago? As at this year, 9,828. As at this year, we have seized 716 illegal firearms; 873 were seized at the same time last year. In the Southern Division, last year, 127

illegal firearms. As at this time this year, 104. This year in the Northern Division, the East-West Corridor, last year 170 illegal firearms seized; 148 this year.

These are the startling statistics and every illegal firearm is in a criminal's hand designed to harm somebody; designed to kill somebody. Those are not the types of individuals that any civic-minded, sensible, law-abiding citizen of Trinidad and Tobago would want out on the street. Because as politicians, unfortunately those in the Senate do not face this, but as any elected Member of Parliament would tell you, when you go out and interface with the people out there who have put you into Parliament via democracy and elections, you go and tell them, you think a criminal who has just been held with nine AR15s, guns of war, should be put out back onto the street the same day of their first court appearance? Go and tell them that. Go and tell a person who has lost members of their family as a result of illegal firearm activity who are living in a community traumatized by illegal firearms and the criminal element using it.

The other day, Madam President, I walked in La Horquetta because we launched an operation, and I was shocked, being on the ground there. It is such a well-thought-out community. Every second block there was a recreational facility. I have seen that nowhere else in Trinidad and Tobago. But whilst walking, the police took me to the corner where the week before a man was murdered who had just come from the tuck shop less than a block down. And I saw a man's motor vehicle with a patch on it, and they said that man's motor vehicle on that corner was shot with an AR15 that the bandits used—the criminals used—to kill the man, another person. And his children had just come out of the house to get in the vehicle to go to their afternoon lessons.

Go and tell that man and his family who are law-abiding citizens of Trinidad and Tobago that it is okay for the criminals we have held with the illegal firearms

to come back on the street and stand up next to him, rather than going to prison. And we are now under—we, meaning the State—an obligation to get their trials started within 128 days and to have it proceed and be completed within the space of a year. It is nice to talk about who should be out on bail and these types of things. That is not the reality of what we face in Trinidad and Tobago.

Murders by motive, not woundings. Murders by motive. Unfortunately, as at the 11<sup>th</sup> of November we have had 455 murders. But I want hon. Members of the Senate to understand, out of that, 144 definitely gang-related; 60 revenge; 53 drug-related. You then have things like altercation and 69 unknown. So 56.5 of the murders, we have been able to say, are related to gang activity by the use of firearms. Gang-related murders: total murders and woundings and shootings by division, on the record here, through you, Madam President, I place on the *Hansard* that as of yesterday, 80.2 of the murders committed were committed with the use of firearms. And think out of those murders how many did you read in the newspaper was somebody with a legal firearm. Eighty-eight point two per cent of the murders were committed using firearms. I would hazard to say, out of that 80.2, 80 per cent of that 80.2 is through the use of illegal firearms. Shootings and wounding, in 2018 there were 482 woundings and shootings as at the same time in November, while 625 were recorded in 2019. That is like a war zone—625 as at yesterday, woundings and shootings completed in Trinidad and Tobago.

When we look back 10/15 years ago, the figures were much lower than this. What we have to do as legislators, with the greatest of respect, Senators, is we have to move with the times. We have to understand the reality of what it is outside there. I practised for many years. My first case at the Privy Council was a human rights case—Matthews—all about death penalty and whether hanging should be mandatory. I am not coming here today, with the greatest of respect, to make these

pleas and submissions with you, hon. Members, on the basis of any politics. I am coming here today as a concerned citizen of Trinidad and Tobago, someone who has young children, someone who intends to spend the rest of my life here, God give me life.

Today we are being called upon, Madam President, through you, to keep persons who are in possession of tools of war designed to kill people, off of the streets, and not to languish and be lost in prison. They can go to the court if they want to make an application for bail. But more importantly, give us the opportunity, because you cannot build, as I have been telling the police service, unfortunately, you cannot build that case and that evidence as quickly as we would like because people are afraid. None of us here—nobody here—is living in a community where every single night there are people walking up and down the streets with automatic firearms, shooting people.

**Madam President:** Thank you, hon. Minister. Hon. Senators, as I indicated before, there is a ceremony that will take place shortly with the UN, the pins for the sustainable development goals. There are some excellent young people there, anxious and excited to give the pins to Members of Parliament. That ceremony is going to take place at one o'clock. So I am going to suspend now and we will come back—because I am such a generous person—at 2.15. So we are suspended until 2.15.

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

**2.15 p.m.:** *Sitting resumed.*

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

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

**Hon. S. Young:** Thank you very much, Mr. Vice-President. Mr. Vice-President, just before the break, in my contribution, I was sharing with my colleagues in the

Senate, as well as the public, what I believe are the startling statistics which are an accurate reflection of reality that we face in Trinidad and Tobago at this time. So just to put it back into context, for the period the 1<sup>st</sup> of January to the 11<sup>th</sup> of November—which was yesterday—2019, 625 woundings and shootings with firearms were recorded in Trinidad and Tobago. So up to yesterday, for this year, 625 shootings and woundings, via the use of illegal firearms, are recorded as our reality in Trinidad and Tobago.

Even more startling than that, Mr. Vice-President, is that of the 455 murders committed for the year as at yesterday's date—455 too many—365 were committed using firearms. So let the people of Trinidad and Tobago understand as they do on the ground, as they do on their street, as they do in the various communities affected with the scourge of illegal firearms, that of the 455 murders committed for the year as at yesterday, 365 were through the use of illegal firearms. So only 90 murders in Trinidad and Tobago for the year to date, as of yesterday, were not committed through the use of illegal firearms, and I repeat it because it is worth repeating over and over, Mr. Vice-President.

The only reason a person will have an illegal firearm in his or her possession is to fatally harm another individual. There is no legitimate reason to have an illegal firearm in Trinidad and Tobago. Absolutely none! These are not toys. These are weapons made to kill people. And just to bring that squarely into context at this stage, Mr. Vice-President, to the public out there, for them to understand—because I am certain by this time, and at this stage, the Members of the Senate, the right-thinking Members of the Senate, the civic-minded Members of the Senate, understand what is the reality that we are facing as citizens of Trinidad and Tobago out there.

This Bill here today, three clauses as the Attorney General said, is simply to

address what we have defined as prohibited weapons, artillery, or automatic firearm, a grenade, bomb, or other like missile. And you see, Mr. Vice-President, again I challenge any Member of the Senate to go outside of the precincts of these hallowed halls and to ask any person in Trinidad and Tobago, who is law-abiding, whether they believe a person who has an automatic firearm, artillery, a grenade, or a bomb, or other like missile, should be permitted bail when they are caught in possession of it.

This is not about possession of a revolver which is designed to kill someone. This is not possession of a semi-automatic firearm which again is a scourge on the streets of Trinidad and Tobago. We are here today to determine the future and the fate of Trinidad and Tobago with a very limited arsenal of items designed for war. An automatic firearm is what you expect to see in a warzone and on a battlefield; a grenade or bomb is made for a warzone or a battlefield. So you see, Mr. Vice-President, anyone who is in possession of any of these items, it is our respectful view, as the persons charged with the responsibility to offer safety and security for the people of Trinidad and Tobago, we stand here without fear of contradiction and state here today, in this Senate, that there can be no legitimate reason whatsoever for an individual to have in his or her possession an automatic firearm, a grenade, a bomb, or any other device, or artillery. Artillery in itself by definition is for war.

So whoever, with the greatest of respect to them, believes that a person found with an automatic firearm and a grenade in his or her possession should be permitted bail or the opportunity for bail at first instance, I beg to disagree. But you see, Senators, population of Trinidad and Tobago, we are not even shutting the door. Because when you flip the page of the Bail Act, we have permitted—and you all not too long ago were participants in the passage of the first amendment to the Bail Act that we did for this year, and in there what we did is we permitted for

persons to go before the High Court in exceptional circumstances even in this instance that we are here to debate today, and to make a case for an application of bail.

Now, it may be asked what are exceptional circumstances and how do you define exceptional circumstances. Courts on a daily basis are charged with the responsibility. You talk about separation of powers, what is their legitimate role in society? They will define the same way they have done for centuries in law what are exceptional circumstances, and the Interpretation Act talks about speaking law which means the evolution of the law. And I strongly advocate here that those exceptional circumstances, let it be up to the person who is found in possession of an automatic gun, going to kill Mr. X or Miss Y, and a hand grenade, to explain to a court, a High Court, a judge of the High Court, why he or she should be allowed back on to the street before the expiration of 120 days.

So to put it in the context and the reality of what I have described—

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

**Hon. S. Young:** Thank you very much, Mr. Vice-President. Senators, with the greatest of respect, as citizens of Trinidad and Tobago, you are blessed and privileged with the duty and the task of determining via legislation how we protect people in Trinidad and Tobago.

Sen. Hazel Thompson-Ahye was with me last week in the prisons and seeing what takes place in that setting with the prisons. But this is not for those that we interacted with last week, Sen. Drayton. This is for those who are out there with automatic weapons and a grenade. Not even the policemen who we see on a daily basis have in their possession hand grenades. Nobody will see a policeman in Trinidad and Tobago with a hand grenade in his or her possession, and they are trained. But what we are seeing today, and the strong signal I am asking that this

Senate sends to the criminal underworld, is that if you are found in possession of an artillery, an automatic firearm, a hand grenade, or a bomb like device, you are not safe to be walking amongst us on the streets of Trinidad and Tobago. However, if you think you are and you think they are exceptional circumstances as to why you should be allowed bail after being found in possession of any of these items of war, you have the right to go to a judge of the High Court and persuade him or her in those circumstances as to why within 120 days before your case is dealt with you should be back out on bail.

And I end by saying this, Mr. Vice-President, with the greatest of respect to all of those out there, until God forbid the day comes—and I hope it never happens to anyone that any of us know, or associated with—and you are face down the barrel of an automatic weapon, and these weapons that we are finding being used by the criminal element out there, or worse yet a grenade, that is when you will understand and by then it will be too late why the persons found in possession of these items of war should not be permitted bail on the first occasion, and give us the opportunity to keep them inside for 120 days whilst we start their cases where they will have their day in court. But before that time, Senators, make Trinidad and Tobago a safer place by not permitting these people the automatic right to bail, and that is the decision that you have to make here today. I thank you very much, Mr. Vice-President. [*Desk thumping*]

**Sen. Sean Sobers:** Thank you, Mr. Vice-President, for allowing me the opportunity to contribute this afternoon on the Bail (Amdt.) (No. 2) Bill, 2019. Now, Mr. Vice-President, I just like many other Senators and persons who may have been listening to contributions, I do understand the gravity of the situation that we are currently placed in. The charged atmosphere that persons would have by simply just walking out on the street not knowing what could in fact face you,

and it ready does not matter in some instances because we have seen this type of gangland style activity stretching out past particular areas within this country, and meeting persons within their homes, meeting persons in places that would normally and naturally be considered to be safe havens. So that we here in the Opposition do understand and appreciate that something in fact has to be done.

The issue I think that we have been having for some time is the manner in which the current administration has approached this situation. I do appreciate, being a lawyer myself, having been involved in the criminal justice system as well, that legislation is an essential tool to be utilized. However, we have said it time and time again that legislation alone without the assistance of proper infrastructural changes and measures at the various institutions within this country is not the answer [*Desk thumping*] and it worries me sometimes, especially when we are dealing with a particular piece of legislation like this, that in lieu of adopting what I would consider maybe the best approach to treating with this situation, it appears then that the Government instead of aggressively pursuing a hybrid situation like that, creating legislation while assisting the correct institutions with infrastructural changes and development, it appears is choosing to go a step further in terms of infringing upon persons' rights within this country, and that without proper representation to facilitate such a move is a dangerous step that we have to be very careful about taking.

Even with a sunset clause it is something that we have to consider very carefully, and I would have listened quite carefully to both the hon. Attorney General and the Minister of National Security in terms of what was said. I would have listened to Sen. Vieira and Sen. Hosein as well; and I can relate. I have been the victim of a crime. I would have been about 19 or 20 when I was in fact robbed. So that I know how the effect that such a situation could have on a person. I was

such a victim that I made the report to the police station, and then because the officers, the crime just occurred they took me into the vehicle and they say, “Well, let’s go and look for the person.” And when we started to drive through the particular streets and I started to think about how difficult this thing could be later on, I told them, “You see me and this thing, leh me forget that.” They say, “Well go home and think about it.” And then the following day I came back with my parents and I told them that I did not want to go any further with this matter.

So I know about being a victim. I know how that could have a psychological tool and effect upon a person, and I could appreciate trying to legislate or assist in terms of alleviating that position that an individual may be in, but whether or not this is the right tool to so do I am not a hundred per cent convinced and I will elaborate on that a bit later on when I get deeper into my contribution. But what I want to do from the onset of this matter, is that this situation with respect to simply treating with trafficking in firearms and legislating to make it a non-bailable offence, really and truly the genesis of this particular matter has its roots as have been mentioned by the Minister of National Security in a decision made by a particular judicial officer.

I know Sen. Vieira and Sen. Hosein touched on it, but what I wanted to put plainly, and as pellucidly as possible upon the record, is that the Judiciary and members of the Judiciary have a particular function when it comes to bail. They cannot derogate from that function as loosely as persons would want to represent to the country and certain statements have been said within this Chamber, certain statements have been made outside of this Chamber, but no one has really truly explained to the public or put on the record what those ramifications, or the structure, or the procedure as it relates to bail involves as a judicial officer, and one particular case that outlines that procedure in itself is the case of *Yasin Abu Bakr v*

*The State.*

Most practitioners in the criminal jurisdiction, defence counsel, utilize this case. At least any of them who are worth their salt would know this case inside out. And this particular matter dealt with certain statements that would have been made by the individual that were considered seditious in nature and he would have been denied bail, and there were certain circumstances that would have changed during his incarceration during that period that moved his counsel to make an application for bail again. And the learned Justice Prakash Moosai, as he then was, who sits now in the Court of Appeal, would have indicated, I think at page 5 of that judgment, what judicial officers should consider in terms of contemplating bail, and what he indicated at page 5, he specifically pointed out that judicial officers should consider, firstly, what could be considered the grounds for an objection to bail, can be found at section 6(2) of the Bail Act. And section 6(2) of the Bail Act states:

“Where the offence or one of the offences of which the defendant is accused”—or convicted—“in the proceedings is punishable with imprisonment, it shall be within the discretion of the Court to deny bail to the defendant in the following circumstances:

- (a) 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;
- (f) where he is charged with an offence alleged to have been committed while he was released on bail;...”

Now the difficulty with understanding section 6(2) is that police prosecutors must raise that as the ground to object to bail. They have to look within section 6(2), juxtapose it within their particular circumstance with respect to this particular defendant and raise it as an objection for bail. That is what is supposed to happen. The prosecutor is supposed to indicate to the magistrate or the judge, “Your Worship, this person, if he is released on bail, I am objecting to this individual to be released on bail because he would fail to surrender”, which can be found in section 6(2)(a)(i); or that “We believe based upon evidence he would commit an offence whilst out on bail”; or that “We believe based upon evidence he would interfere with a witness whilst out on bail”; or “We believe that based upon his criminal record”—once it is available at that juncture—“he is currently out on bail for some pending matters and it is alleged that he has committed this offence whilst out on bail in those matters”.

And then, Justice Moosai indicates that in the exercise of its discretion under subsection 6(2) which I just read, the court shall considered the following:

- “(a) the nature and seriousness of the offence or default and the probable method of dealing with the defendant for it;
- (b) the character, antecedents, associations and social ties of the defendant;
- (c) the defendant’s record with respect to the fulfilment of his obligations under previous grants of bail in criminal proceedings;
- (d) except in the case of a defendant whose case is adjourned for inquiries or a report; the strength of the evidence of his having committed the offence or having failed to surrender to custody; and
- (e)” —which is a catch all—“any other”—relevant—“factors.”

So what is supposed to happen, is subsequent to the police prosecutor

indicating to the magistrate or the judicial officer, well listen, I am objecting based upon the first ground which is:

“(i)”—he will—“fail to surrender to the custody;” or

“(iii)”—he will—“interfere with witnesses.”

And the factor to support that ground will now be found in section 6(3), which is the seriousness of the offence, and other antecedents that the gentleman may have; and that is how a bail application and an objection to a bail application is made.

So when persons simply say, who in my respectful opinion, in my considered view, are also members of the Bar, senior members of the Bar, go out in public or even in this Chamber and say that it is an unfit decision, or it may be ridiculous in nature that this individual may have been granted bail because of the seriousness of the offence, that is a very, to use the words of the hon. Attorney General, infantile approach to dealing with this thing. [*Desk thumping*] It is an infantile thing to say. Because there is a procedure that must have been adopted for the person to make that objection and for the judicial officer in those particular circumstances to rule.

I have sat in court on many occasions, and I am certain other Senator Members who are lawyers as well who practise in the Criminal Division, would have sat in criminal courts and serious matters—I agree the majority of matters that come through criminal courts, whether they are victims that are alive or victims that have passed, all those matters are serious matters—and you would have the matter come up, and the best thing unfortunately maybe because of lack of the training—I really do believe it may have been because of lack of training—the police prosecutor not knowing better would indicate to the magistrate, “Well we are objecting to bail this morning, Your Worship, because of the seriousness of the offence.” And a simple retort to that would be, well with the greatest of respect

please, he has not indicated which ground under 6(2) he is raising this objection, and in most instances the prosecution is left flatfooted.

And again, it is not to rub scorn or pure scorn upon the police or the police prosecutor. It is unfortunate that they may not have had the requisite training to properly respond, and these are the things that I am saying in terms of infrastructural changes that should be made before we aggressively pursue infringing upon persons' right. So that if that individual who was objecting to bail in that particular matter where the young man, or the young woman, or whoever it was, was held with these plethora of firearms had indicated some of these things, then maybe the magistrate may have been able to rule differently, or maybe the magistrate would have been able to set a higher bail. But this is what the public needs to be aware of, and these are the decisions or the approaches that could have been adopted first before we even think about moving to legislation like this.

I appreciate the calls that are being made. I appreciate what the Commissioner of Police had said. I do appreciate what the hon. Attorney General said. I do appreciate what the Minister of National Security is saying. These are warzones out there, but we must, as the Minister of National Security indicated in his contribution, that persons from the National Security Council may have approached him and indicated that, listen, maybe we should consider the Jamaica model with the states of emergencies in particular parts of the country and he indicated to them that, "Listen, we are not there yet. Let us try the other approaches first. Let us explore all other possible options." Is it then that this was an option that that was not explored by the administration in terms of properly resourcing or educating police prosecutors with respect to these matters and objecting properly to bail? This is a situation that is ongoing for quite some time, and it should be looked at carefully before we look at this particular situation.

Now, the Act is quite short and I do not intend to detain hon. Senators for much longer than I would want to. In looking at the Act, however, I looked at section 5, the amendments that would be moved to section 5—and I mean, Sen. Hosein made mention of it, I think the hon. Attorney General made mention of it, Sen. Vieira made mention of it—that the biggest difference with respect to this amendment of including trafficking in firearms as a non-bailable offence is that when we were here in June, individuals who would have been caught by this particular part of the legislation would have been persons who at that juncture did not have a sanitized record—they did not have a clean record—and I think it would have been Sen. Heath, as he then was, indicated the story about lightning not striking twice and we agreed with that particular position.

You have now a situation where someone who would have an impeccable character up until that particular time being caught by this legislation and being denied bail for up to 120 days, and Sen. Vieira mentioned the fact that there are possible scenarios where persons could be framed and I could attest to that. One of the very first matters that I was involved in when I got called dealt with a taxi driver. Normal taxi driver plying his trade, registered H car and whatnot, and he had this passenger who he would pick up from time to time. Did not really know the fella too well. The fella had his number. He will give out the number, he will pick him up. He just knew him as Reddo. So now and again he would assist Reddo and whatnot. Reddo had some kids and thing, he would pick up Reddo and them sometimes on Independence Square and whatever the case is. So Reddo called him a day and Reddo say, “Ay listen, I have a lil job for you. I have a partner he have some fertilizer and whatnot. Just pick him up nah, he needs some transport.” He said, “All right, no problem. What time and where?” He give him the time. He went, he pick up the man. Man tell him, “Drive, pop the trunk” and

he have these two crocus bags. He assumed it is the fertilizer and he puts the fertilizer into the trunk. Close the trunk, passenger jumps in the car, two of them going down the road. Lo and behold they bounce up a roadblock. Passenger see the roadblock and he bolt from the car.

So the taxi driver sitting down in the car, I “doh” know what going on with this fella. The police come now, they give chase behind the man, they come by the taxi driver, the police car capture the guy, search the vehicle, pop the trunk, open the crocus bag, marijuana, a couple kilograms well. So the police at that juncture would ask the gentleman in question, “Well, whe’s dis?” And he gives them the exact same story that I have just told this honourable House, and they say, “Well okay, Reddo tell you to go and pick up de man, well call Reddo”. He call Reddo and “whe” you think he will get? “Welcome to bmobile”. That phone gone off. In those days you did not have the systems in place with respect to being able to track an address with SIM card because in those days GSM had now come out. You just walk in TSTT, or Digicel, or whoever, ask them for a SIM card, they give it to you and you walk out the store.

So you think about it as a police officer, or a member of the prosecution, being in that position, what are you to do? The law says that this man is in possession of these items, and that in terms of the deeming provision he has to now to prove—the burden shifts to him to prove to who? Not to me, the police officer you know, but to the magistrate, or to the judge and the jury. He has to prove to them that that does not belong to him. So what am I to do as an officer of the court? I have to charge the man. I have to. And you think about how ridiculous that story may have sounded to the police officers. Reddo tell “yuh”. You “cyar” tell me what is Reddo real name, you “cyar” tell me where he lives. You tell me you pick him and his kids up. Which part he is living? “Well, all the time I

picking him up at Independence Square”. And this is the situation and the scenario that many persons are in. There are many of us who sit in this Chamber who know persons by their nickname, but when you really think about it where does that person live? You could attest to the fact that you know that person for over 15 years but you know nothing about them, save and except for their nickname, and that the man might like Manchester United and he is a fool for doing that because look at what is going on with Man U now.

That is the total sum of your knowledge of that person, and that is the position that that particular client was in. He could prove nothing beyond the fact that he was found with this marijuana in his trunk and he was charged for trafficking. A perfect record before that point. By the ambit of this amendment he would be denied bail for 120 days, and that is the scenario that we would be wading into. Yes, it may very well be—he may be the only person if we enact this legislation that may be caught by it, but he is still that one innocent soul that we cannot turn a blind eye to. That is the consideration that hon. Senators must attach to this particular piece of legislation, and balance that with everything that the Minister of National Security and the hon. Attorney General would have indicated, that we are in fact living in a war zone.

But what of this one poor soul? That is the level of consideration that we must attach to this particular piece of legislation.

**2.45 p.m.**

And hinged to that, Mr. Vice-President, is the fact that when you read on in terms of the clause itself, you go to section 5(7) and section 5(7) indicates that if the matter is started within 120 days, no bail for you and if it starts within the 120 days, these two amendments—the trafficking in firearms and the prohibited weapons—if it started in 120 days but the trial does not finish within a year, well

no bail for you. You cannot apply for bail after that 120 days if that matter is not concluded within a year. That is the legislation. So you, a person who previously had a clean, impeccable character, “working yuh tail off to mind yuh family”, caught in that particular situation, you have to sit down until thy kingdom come until your matter is concluded. That is what we are sitting here to legislate.

So no matter—and not to pour scorn at all, no matter how gory the details are of our society, we have to consider that one taxi driver because that is the position he could possibly be in. I mean, we could consider an amendment to that particular section, possibly that we remove 5(7). We remove the fact that if you have an impeccable character before that particular situation and the matter is not concluded within the year, that at that juncture, you could possibly make the application for bail but we still have to consider that you would have been inside these four walls for 120 days. And then what happens to that individual when he is in that position? You become a changed individual because we know the state of our prison system. There are so many knock-on effects to this particular piece of legislation that we have to consider before even thinking about just moving with it because of gory details and situations out there that are extremely dangerous.

And it brings me to the point as well too, if we are to leave that situation as it is with respect to an individual having to stay inside if the matter is not completed within the year, what systems have we put in place to ensure that the DPP’s office is able to treat with those matters as quickly as possible? Have we properly resourced the office so that there are sufficient prosecutors to prosecute these matters? And if not the DPP’s office and it is police prosecutors, have we properly resourced the police prosecutors? Because clearly, based upon the genesis of this particular matter, it appears that the police prosecution service is not as resourced as it should be and we care about our officers. Do we not? We care about the state

of the TTPS. We cannot always be relying on “Captain Gary Griffith” to be saving the day, we have to save him too and assist him properly. [*Desk thumping*] This is an extremely serious issue.

It also leaves me to talk about the Forensic Science Centre because they would be treating with these exhibits as they come along. I would have seen in the newspapers this talk about a MOU being signed with India and China, but no real tangible demonstration of these things actually being enacted. We would have that talk about this Forensic Science Centre being built in Mount Hope but no sod turning. These are the things that infrastructurally should be dealt with as well too, in my humble opinion, first before we look to aggressively pursue legislation and not only any type of legislation, serious legislation like this. This is no laughing matter, I agree. We live in a warzone. But is this the step that we have to take now?

I also heard the hon. Attorney General comment on issues with respect to kidnapping and I must say in terms of kidnapping going down, apart from legislation again, that is another perfect example of the police service being properly resourced then as well too to reduce kidnapping. So it cannot be done in a silo, it must work in tandem with something else and that something else is properly resourcing these institutions, providing them with the infrastructural changes required by them.

And also, to just comment on the exceptional hardship and circumstances, I do not know, for hon. Senators to think about as well too. In England, with respect to driving under the influence and “totters” as they are referred to in England, there is legislation that is alive that has been developed over time to treat with persons making applications for their licence to be reinstated and it is the exceptional hardship principle. So there is some degree of development in some area of law in

the United Kingdom to treat with such situations and they do extend pass the person. So if you have dependants which is also an application that can be made in furtherance of a person to get bail and you have a certain degree of dependants within the household that depend upon you being outside to provide for them or you have a sick relative, these are developments in that exceptional hardship and circumstance situation that can be explored by lawyers as well too.

So there is room for the law to grow and whatnot, I do agree with that, but in terms of what we have before us currently, there needs to be more. There needs to be a greater show of force, a greater demonstration that the Government really and truly has the will to treat with the other issues first than just rushing into significant changes in legislation that could really affect the most vulnerable persons within our society. And until I can really see that happening, I do not know if we are at this point or we are at the point where we need to affect an individual's right to this extent, especially a person who would have had an impeccable character before being thrust into this nefarious and terrible situation.

And with those few words, Mr. Vice-President, I thank you. [*Desk thumping*]

**Sen. Hazel Thompson-Ahje:** Mr. Vice-President, for the record, I would like to explain that when the Minister of National Security said that he was with me in the prison, [*Laughter and crosstalk*] he meant only that we were in the same space, being independently invited. So, Mr. Mark will know I am not only against him. All right.

Thank you for the opportunity to speak on this very important Bill. The Constitution of Trinidad and Tobago is the supreme law of our land. It has certain rights enshrined in section 4 and as a teacher, I want to explain what “enshrined” means for those people who are outside. So these fundamental rights and freedoms

which are enshrined and to which we are all entitled without discrimination by reason of race, origin, colour, religion or sex. Now we know what is a shrine. Some of us have been to Medjugorje, they have been to Lourdes and we have our own Laventille shrine here. A shrine is a sacred place, a holy place. “We go there tuh pray, not tuh play.” And these rights which are our fundamental rights and freedoms are sacred. “We doh play with them, we doh trifle with them.” We have been assured and we feel reassured that the law will recognize and protect these rights which are enshrined. Our Constitution has made a solemn vow, a solemn promise to us and we hold those rights very close to our heart. So today, we are looking at an amendment of one of those fundamental rights: the right to bail.

Now, when we look at our Constitution, section 5(2)(f)(iii), we see that there are certain constraints and we are told that:

“(2) ...Parliament may not—

(f) deprive a person charged with a criminal offence of the right— (iii)  
to reasonable bail without just cause;”

At common law, the denial of bail was considered a breach of the right of the liberty of the subject. It could not have been done arbitrarily. Now, when I used to teach law students which was not too long ago, I would always tell them that whenever you learn a new principle of law, you have to look out for a little wicked man who is there waiting to trip you up and that man, I gave him a special name, Mr. Exception. So during the years, every time I would teach something, I would say “And what we looking for?” They say “Ms. Ahye, Mr. Exception”. So we have these exceptions to the rights.

When we examine what the law says, we see that there are exceptional circumstances where Parliament can curtail these rights and we know that there are some of these exceptions we are very familiar with, for example, the state of

emergency. We know about the state of emergency when we were told we cannot go outside or some people used to have emergency parties. I remember one night after law school graduation, people could not leave my house because the hour, the bewitching hour had arrived, but I was not going to feed them the next day, anyway. So we have situations where bail can be denied in certain circumstances. So when you hear “without just cause”, again, you see that is a curtailment because you must have a just cause, so the legislative is given a window of opportunity to curtail that right, to limit your right to bail. So the issue is, what is a just cause? It is a cause that must be satisfied if at the end of the day, you want to hear us say “aye” or “yes”.

So you look at what limits you have in the Schedule to the Bail Act, we look at the circumstances, we look at what the Constitution says and we see in the section 6, existing law exceptions. We have heard the Attorney General and others speak about what is reasonably justifiable in a society and has a proper respect for the rights and freedoms of the individual, and we are told that if you want to do that, then you must have a two-thirds majority. So you will hear at the end of the day, a call for a division. And whenever that happens, whenever you have a two-thirds majority, you find that is when people try to be a little friendly with you [*Laughter*] because they want you on their side.

**Hon. Senator:** Call names, call names.

**Sen. H. Thompson-Ahye:** So sometimes they come in early into the Chamber [*Laughter and crosstalk*] and they smile with you, they may even hug and kiss you because that two-third—[*Interruption and crosstalk*] Nobody heard me mentioned Minister Franklin Khan. [*Laughter*] All right. So we must have the two-thirds majority and that fact that it was passed with requisite majority must be certified on the legislation.

Another thing that happens is that you put into your legislation circumstances under which people are not entitled to bail and early o'clock, you have things like murder, treason, piracy, hijacking, any offence for which death is the penalty fixed by law. Now, growing up in Trinidad and Tobago, I thought once you were charged with murder, there is no way you could get bail until I realized in other jurisdictions, they are getting bail for murder, so I really thought that was the norm, but that is very special to Trinidad and Tobago. So why we have these serious offences which are not bailable is because the more severe the penalty, the more likely it is that someone who is granted bail and facing those serious charges, those persons would be likely to abscond.

So you find that you have all of these exceptions coming into the law and during the course of the last few years, we have been coming—well, not we, but parliamentarians have been coming here and amending and amending the Bail Act: 2005, 2012, 2015, 2017, 2019. We have been here for this year already you know and before 2019 expires, we are presented with another Bail (Amdt.) Bill. And many of the amendments have had to deal with accessing bail, sureties and so on, and specified offences, you know, whether we are adding to them and that is in the Schedule to the Bail Act. And I heard my friend a little while ago speaking about—and it has disturbed quite a few people, that you can be charged with possession and be denied bail. But when you look at the specified offences, are you not concerned that somebody could be denied bail for offences such as receiving stolen goods? You may be quite innocent as well. What about buggery? So you have other offences and we sat here in this Parliament and we legislated and denied persons bail for those offences but the question of possession is one that has aroused the concern for many of my colleagues.

What has been happening as well is that we are adding to the list of offences

various charges coming under new legislation: anti-gang, anti-terrorism, firearm, trafficking in persons and so on. So we have a situation where we are looking at the prohibited weapons and I know—because I read the newspapers, I listen to the radio—the genesis of it, but the fact is that we have to weigh. The genesis of it was a pronouncement in court and that aroused the ire of the Commissioner of Police. But is that so fundamental?

We know the society that we live in. We know that a number of things have been happening in society, and I have said before in this Parliament Chamber, I have repeated a conversation that was overheard by a reliable source and my daughter always tell me, “You know, yuh telling these stories in Parliament, yuh going to repeat yourself” and I say some stories need to be repeated. And that story is one where some bandits were talking amongst themselves in a public place and they were saying “dey fed up ah the police” because they were getting too greedy, because long ago, they would say, “Look, we would say we find the gun in the bushes if you give so many thousands of dollars.” Now they want more than the amount they wanted before. So we have that situation.

Some years ago, I was informed—I remember at one point, I was sitting at the Bar table in NIPDEC house, so that is to tell you how long it was and there I was hearing a story from the lawyer, a former police officer and he was admitting to me that he had brought false charges. I was appalled and he thought it was funny and it did not happen once, it happened twice and “doh come and ask me after who was the lawyer”. All right. So we had situations where former police officers are saying quite openly to me, “Yeah, I bring false charge already” and so on and they did not think anything of it. A father said to me, “Look, ah do not like that man coming around meh daughter eh know and ah have ah police officer. He just tell meh, tell me when yuh ready, tell meh when yuh ready, ah go drop

something on him.” So we know for a fact it happens in the society. It happens. But in spite of that, in spite of that information, in spite of the experiences, I stand here today to support this legislation. I wish I did not have to be a party to the denial of any fundamental rights but I think it is necessary. I think it is expedient and I think we must provide the necessary weapons for the arsenal of the Police Commissioner in this war against crime being waged fearlessly on our behalf.

In 1993, I was attending a symposium at the Integrity Commission at the Central Bank and there you had an acting, I think he was an acting DPP and his way of fighting crime was, you know, “put all ah them, all the bandits, put them in ah field, let them take dey guns and shoot down one another. Who eh dead, badly wounded.” That was the way of solving crime. There is a better way. The horrifying crime statistics, the brazen way in which murders are committed at any time on anybody in any place leads to the inescapable inference that this is a war. This is a war that we must not lose. So with apologies to the Bard of Avon, I quote:

“In peace there’s nothing so becomes a man as modest stillness and humility; but when the blast of war blows in our ears, then imitate the action of the tiger; stiffen the sinews”—Gary—“summon up the blood, disguise fair nature with hard-favor’d rage.”

And one day before that the sunset clause fades in a distance below the horizon, maybe one day we will say like our own Bard, remember we pass that stage. Thank you. [*Desk thumping*]

**Sen. Sophia Chote SC:** Thank you, Mr. Vice-President, for the opportunity to speak briefly on this proposed legislation. I feel that it is easy to speak briefly on this proposed legislation today, simply because we went over much of this ground already in May of this year, when we had been asked to agree to another

amendment of the Bail Act. Now, I am glad that my colleague, Sen. Thompson-Ahye focused on what is actually confronting us because with all due respect to colleagues on both sides, I think sometimes when elections are approaching, we hear a lot about other things and not so much about the legislation which we are contemplating.

And it is quite accurate for my colleague, Sen. Thompson-Ahye to point out that perhaps the reason we are here is because of that matter reported in the newspaper of someone charged and being allowed bail. And I start from that because in my respectful view, I have to disagree with my colleague, Sen. Thompson-Ahye, for that very reason and I will say that because the police in one case or the prosecution in the one case failed to convince a magistrate, it does not mean that we as legislators, when we are applying the test in law, which we are supposed to apply for the ouster of the court's jurisdiction, we ought not to be giving undue weight to that fact because our allegiance and our oath is to the Constitution of the Republic of Trinidad and Tobago. [*Desk thumping*]

Now, the other thing that concerned me and which is something no one has really spoken about as yet is while we had a very angry outburst about the magistrate who, poor man, cannot defend themselves because he is a member of the Judiciary. A court officer, a judicial officer cannot defend themselves in the press as other officials can and do. The magistrate was lambasted in the media, in the press, on the platforms and so on for his decision. One of my colleagues was suggesting that it was perhaps the police did not make a proper representation and so on. We have no evidence of that.

Let us remember this: A magistrate, even where lawyers agree that a person may be entitled to bail or where they may disagree, the magistrate is the one who can make a decision on the matter and magistrates often do. You may have both

sides agreeing that the person is entitled to bail and the magistrate will say “No, this is a very serious matter” or there are too many matters like these before the courts and the magistrate may give that factor additional weight in the exercise of his discretion under the legislation. We cannot complain about that. We are not a court of appeal, we are legislators. The Bail Act provides that if the prosecution is dissatisfied with the decision of a magistrate or if an accused person is dissatisfied with the decision of a magistrate, there is a legal forum for either the prosecution or the accused person to go before the High Court. So the prosecution, if they are in disagreement with the magistrate’s adjudication, can go before the High Court and ask for bail to be revoked or that conditions be placed on the bail.

Now, quite frankly I do not see why that is my job. That is not my job as a Senator in the Parliament of Trinidad and Tobago. There is law which permits for how that situation needs to be addressed and I see no reason why we need to circumvent that and have legislation brought in this Parliament when there are perfectly valid options open to the parties in cases like that. [*Desk thumping*] That is up to them. Court matters are court matters. We as legislators, we must respect the separation of powers that is deeply entrenched. [*Desk thumping*] We must not be here for kneejerk reactions because a public official is annoyed or a public official is annoyed because his officers were treated badly. Those are opinions which should not influence us in the least.

[MADAM PRESIDENT *in the Chair*]

Furthermore, I have heard so many issues conflated in this honourable House this afternoon that perhaps the only explanation I can think of is because there are two elections in the air. Please, let us step back. Our beloved country is not at war. If we were at war, we would not be having two democratic elections coming up. Our beloved country, according to the statistics given both by the

Attorney General and the Minister of National Security, are faced with, and I will tell you because it was said in the debate on the 7<sup>th</sup> of May, 2019, 43 submachine guns during the period 2009—2019, weapons of war, prohibited weapons.

**3.15 p.m.**

So we heard talk of war. We heard talk about prosecutors not doing their jobs and infrastructure needed. We heard about those of us here not really knowing what is going on the ground. We heard about, we must be afraid because we really do not know what happened in 1990. But many of us are old enough to know; regrettably I was one of those. In the Hall of Justice I spent the night on the floor of the home of the Office of the Director of Public Prosecutions together with Dana Seetahal, her sister and two others. When I came out of that building, I could not get to my car, because it was parked in the then Solicitor General's car park. I was a prosecutor at the time. I faced and heard those guns.

So, let us not pretend that knowledge or human experience about matters like these rest in the heart and minds of any particular group in here. We all bring our collective experiences and knowledge. And my concern is: Why are we constantly being asked to make exceptions to what the Constitution provides for?

When we came here in May, I do not know if many of you will recall, but I refreshed my memory from the record, we were asked to have bail refused or not allowed for persons charged for the first time with the possession of firearms.

The hon. Attorney General had said in his presentation then that consideration had been given by himself, the Minister of National Security, and I believe another Minister, as Chairman of the LRC, to the issue of prohibited weapons, and that was left hanging. I looked at all of the contributions—I read them through, when we went to committee stage, and so on—and it was agreed that there was a great danger in having bail not be allowed for persons charged for

the first time for the possession of arms and/or ammunition, because of the multiplicity of ways in which such a person could become charged. So we agreed in May that that would not happen. But we did agree, on that occasion, most of us agreed that we will allow the Bail Act to be amended to make it more draconian in terms of how the courts could grant bail.

Six months later, we are back here again asking for yet another exception, asking for another special majority, asking for us to consider some of the very matters which we had considered in May of this very year. And I respectfully submit, as far as I am concerned, that that simply is not good enough. If we have to draw a sort of perverse analogy, it is the kind of situation where a man on a gang charge, he goes and he asks for bail from the magistrate, he does not get it, and every time the case comes up after that, he is there asking for bail, perhaps doing very well. What the response is likely to be if the magistrate had said this is very serious offence and the case against you is strong, and so on and so forth?

I think that unless we have some sort of solid basis, in terms of data, in terms of, you know, build up of weaponry in a particular area and this kind of thing, then perhaps, I may have considered it differently. But even if we had that, I was thinking: Is that not a matter for policing, for the police to seize and charge and hopefully the person who is held in possession can be kept in custody and we can find out who placed those guns there, who he bought it from, who brought into the country, and things of that nature?

As my colleague, Sen. Richards had said during the lunch break: We look too much to the end product without looking to find the source. And to me, if we are doing that kind of cosmetic thing to policing, then do not come here and ask for a piece of legislation to be passed, which infringes upon a constitutional right. Go to the court, use the avenue open to you in the courthouse and ask for the bail to be

revoked. But do not come here and ask us to make exceptions to the Constitution. I have a fundamental problem with that. [*Desk thumping*]

The irony of this, Madam President—and it is an example used in May of 2019—is the very same Commissioner who had expressed dissatisfaction with this magistrate's ruling, when asked about the shooting of the young girl, Naomi Nelson, by the *Newsday* on the 9<sup>th</sup> of June, 2019, had said he did not know how long that case or that enquiry would take. Because, you know, ballistics could take up to six years. So is it that there is one practical experience when police officers are being considered as possible suspects in the shooting of a young girl? And one for other persons?

I did not know that our Constitution applies differently to different categories of people. I thought it applied to all of us in the same way. So this whole thing about: Okay, we will keep you inside for 120 days. Right? So you could get your trial done. That is a laugh. That is a laugh. That is an insult to my intelligence, in the third decade of practising law in the Republic of Trinidad and Tobago. Who gets a trial done in 120 days? So, the only purpose then, of the incarceration for 120 days, is punishment. And we also talk about philosophy and conflated philosophical reasons for this and that and the other.

Well, let us talk about punishment and let us go to the root of this. What you want to do is you want to punish the person presumed to be innocent by incarceration for 120 days, knowing full well no case is going to start and finish in 120 days, without any regard, without any regard to the statistics in relation to this particular kind of crime, because we—apart from the number of 43 submachine guns—have been loaded up with statistics about different kinds of crime and firearms. Three hundred and sixty-five of the murders committed with firearms. So I started to ask myself, after three decades, you become a little cynical, 365

murders with firearms. So we have a Bail (Amdt.) Act here talking about prohibited weapons and certain kinds of artillery and we are being asked to treat with that in a certain way to say no bail for 120 days. So is it that we are going to come back here in the next few months and say: "Well, remember you amended the Bail Act, and there is already a category of weaponry for which you cannot get bail. So, we are asking you now, in this war that we are fighting, where there have been 365 murders alleged to have been committed with firearms, we are now asking you to say that there shall be no bail for this kind of offence."

Call me suspicious, perhaps, call me paranoid, but I cannot rule it out as a possibility. Certainly, when we were asked to amend the Act in May of 2019, I did not think that we would be back here, if you read the transcripts, as I have done, I did not think we would be back here in November of this year with this proposed amendment.

So, hon. Madam President, I oppose this proposed amendment. I could be standing alone, at the end of the day, so be it. But I think the proposed amendment is unconstitutional. It is not warranted in law. It is not warranted in fact. And I believe that from the contributions I have heard, that we need to refocus on what test we should be applying when we treat with applications for the amendment of legislation requiring a constitutional majority. We need to focus our minds when we address this piece of legislation to those considerations. In spite of the heat and the furore and whatnot, I would respectfully urge us all to step back a bit, think with a clear mind and apply the test which we should be applying as legislators. Thank you very much, Madam President. [*Desk thumping*]

**The Minister of Agriculture, Lands and Fisheries (Sen. The Hon. Clarence Rambharat):** [*Desk thumping*] Madam President, thank you very much for the opportunity to join in this debate on this Bill to amend the Bail Act, for a second

time. Madam President, when the hon. Attorney General made his contribution, I took note of a phrase that he used and I think it is worth repeating. He says this Bill is deceptively simple. I hope I got it right; deceptively simple. I focused on the simple more than the deceiving. But I feel that some of my colleagues have been deceived. This is not a debate on the denial of bail, which was addressed in May 2019, and this is not a debate on firearms legislation.

I think the simplicity, Madam President, comes from the chronology of things. When the Bail (Amdt.) Bill was dealt with, the one that was assented to in August 2019, the Firearms Bill had not yet been debated in this place. And one of the most important things I remember contributing on the Firearms Bill, and several of us would have made the point, that that Bill, Act No. 18 of 2019, was introducing a brand new but very important offence, and that is this offence of trafficking in firearms.

I remembered making the point that when I considered, at the Legislative Review Committee, the Firearms Bill, as it was presented, considering the definition of "firearm", I saw the opportunity in my community in particular, in relation to hunting and hunters. I saw the opportunity for people who were committing an offence, but an offence that may not have been contemplated in this trafficking offence we were creating and I then made the point that I resolved myself around the fact that we had to address a significant, national issue, and I felt that my concerns ought to be minimized. But it is the creation of that offence, through the inclusion of a new provision in the firearms legislation, 9A, that brings us back to this House today. It is the creation of that new offence, after the assent to the Bail (Amdt.) Bill that brings us back to this House. In other words, if the Firearms (Amdt.) Bill was passed before the Bail (Amdt.) Bill, the Bail (Amdt.) Bill would have addressed the offence of trafficking. It would have addressed it,

but it could not. And that is the simple reason we are back here today.

And we all agreed, I am sure, that that issue of trafficking had to be brought into law. We had to distinguish between those cases where there was possession of a firearm or a part of a firearm, and where there was possession of more than one. And if, I remember making the point, if you want to stretch your logic and find a defence for somebody being in possession illegally of one firearm, I do not think that you could really justify being in possession of more than one. And we discussed in this House the proliferation, the way it is brought in, the way it is handled, the many handlers and many persons whose eyes have to be turned away for guns to get into this country. So this trafficking in firearms was, to me, the centerpiece of that Bill. And, in that sense, the AG used the expression “simple”, that chronologically we had to come here now to deal with that offence

Madam President, we are trying to do three things in this Bill, none of which ought to reopen a debate on denial of bail, proliferation of firearms or anything like that. We have gone past that. And if there is to be a challenge, separation of powers allows for a place for that to be challenged.

Madam President, last week in the Special Select Committee appointed by this House to consider the amendment to the Evidence Act, it was a public hearing, Madam President. The Director of Public Prosecutions was before us, and we all appreciated his presence. He was very frank and took up a significant part of the opening hour. And he used an expression "cocktail". He was making the point, Madam President, that in the circumstances of this country, we need several things to be put together in order to deal with crime. And the Director of Public Prosecutions was making the point in support of the evidence amendment, that we needed what was in that Bill, alongside other things.

I know my friends attempted, and Sen. Sobers opened with that temptation

of going back into the failure of the institutional arrangements, the resources which have to be put towards enforcement and all those things. I said on many occasions, our job here is to make the law. Somebody else's job is to enforce the law. Our job here is to make the law. And the Director of Public Prosecutions was speaking in support of a law that he felt we needed and we needed to put in that cocktail. He says a cocktail of solutions is required and some of them are not easy to accept. And the incarceration of anybody is something that is not easy to accept.

Family members are found wailing outside both the prison and the courthouse. Family members are found running down the Black Maria. They on the outside screaming and those on the inside pounding. But that is what we need, Madam President. That is what we need to deal with the circumstances that we have. Because I do not know where some of you live. I do not know where you walk, but there are a lot of young men in this country, it is not the community leaders again, you know. Even the community leaders, when you talk to them, tell you that they are back peddling at the hands of these young men—toting, not firearms, you know. I will get to that. I will get to this inclusion of prohibited weapons shortly. I am just on 9A.

Even seasoned criminals and gang leaders in communities are telling you that these schoolboys with AR “dong dey pants have dem trembling”. And if they have seasoned criminals, if Mano Benjamin was around still, Mano would have had to cool himself. And Mr. Khan will tell you that when we were growing up in our community, you had to clear the street when Willy Smith come out for a stroll until “ah youth man”— 1980s in Rio Claro— “until ah youth man put ah knife in Willy Smith”.

So, Madam President, what the Director of Public Prosecutions was talking about is a serious situation in this country. And it plays out every day before us,

every day. And the Commissioner of Police, the Director of Public Prosecutions and those involved in law enforcement have asked for this support. And the fact is when these criminals are taken off the streets, law enforcement officers find it easier to do their jobs.

So in relation, Madam President, to the first amendment, which is at clause 3, proposes the insertion, under subsection (3), of a new paragraph in the first instance (ab). And going back, Madam President, it is that, what is now Act No. 17 of 2019, that bail amendment from March 2019 sought to insert a new subsection (3). And this Bill seeks to insert after that subsection (3)(a), a new provision (ab). And it refers to 9A of the Firearms Act, which is the trafficking offence that was created. It says if you are charged whether or not you have a pending matter, whether or not you have a conviction, if you are charged being in possession of more than one firearm, you are charged for a trafficking offence, then there is no bail in the first 120 days.

Madam President, I could tell you, when we sat at the LRC to consider this particular provision dealing the offence of trafficking, we also considered, we also considered that we seem to be treating firearms as a generic thing, as treating all of them alike, and we were not paying sufficient or any attention to prohibited weapons. And, Madam President, the Firearms Act contains a definition of "firearm". But it is in the definition of "prohibited weapon" that you get to the meaning of "prohibited weapon":

- “(a) any artillery or automatic firearm;
- (b) any grenade, bomb or other like missile;”

And thank God, so far we do not have an issue to confront with grenade, and bomb and missile. But there was a time, very recently, when we did not have to contend with ARs. And it seems, from what we are seeing happening with the

police and what we are seeing happening in the media, the AR is becoming pervasive.

But that automatic firearm is also defined. And I want to refer to the definition of “automatic firearm”. And, Madam President:

“‘automatic firearm’ means any firearm so designed or adapted that if pressure is applied to the trigger missiles continue to be discharged until pressure is removed from the trigger or until the magazine containing the missiles is empty.”

And these young men with the ARs “dong dey pants”, they have come out for a war and they have armed themselves with a weapon that could level a classroom, could clean up a schoolyard, deployed in a market or something, it would level, not one, not two, but dozens. And around the world we see it playing off. We just have not had our share of it here.

As far as I know, from my own experience, you want to see ARs, go to some of the funerals of the criminals. They end the evening with an AR display. And so far we have been fortunate, Madam President, that one of them, one of these youngsters have not pointed that at a classroom full of children in the school to settle a score and none of them have not walked in to a movie theatre to settle a score. Because down in Carenage, a Sunday evening, “dey gone down there and killed people on the beach”. They have done it in Maracas. And it is only a matter of time, it is only a matter of time, Madam President, before we come to this.

So when we were considering this amendment, we paid careful attention to this treatment we have been giving to firearms and this treatment we have not been giving to automatic firearms, which gave rise to the second amendment being proposed. I would readily say, Madam President, when we did the Bail (Amdt.) Bill in May 2019, I would admit that the opportunity existed then for us to include

this amendment. It existed then because the offence existed then. And for whatever reason it not being brought forward, it is here now. And I cannot contemplate any one of us in this House sitting with the prospect of ARs that we know are here, that we have seen; that we have seen photos of six, and seven; that we do not believe we have a responsibility to enact legislation to deal with the holders of weapons like that who have no right or reason to hold these weapons.

[*Desk thumping*]

**3.45 p.m.**

Because the courthouses are there; you have more courthouses than houses of Parliament. So they have an advantage. They have an advantage and they have access to lawyers in this country. You do not need the sanction of the State to hire a lawyer, you know. A Trinidadian who operates in Canada, Selwyn Romilly in a judgment, he described the Legal Aid system as platinum support for criminals. A support that in any other aspect of life, you would not get. If you are a parent needing help to read a scholarship agreement for your child and understand the legislative jargon, you could not walk into an office of the State and get free legal advice for that.

But, if you are a criminal in this country you could get legal support on my back and yours and if your parent or my mother, as recently happened, had a pain and my mother had a pain and it took three months for her to get an MRI done. But, if she was a criminal grazed by a bullet, she would have been carried into Accident and Emergency and stitched-up. The criminals injured in a shootout, where they go? Where they go? In the hospital under police guard. While you are on a list, “police does carry them”. While my parents and yours have to wait for a call from Mount Hope.

It is time to even the odds, Madam, it is time to even the scales. Nobody has

a right, nobody has a right to be protected by unwilling legislators if they are walking the street with ARs that could level a classroom full of children in this country. That is my responsibility, Madam President, today we distinguish between the trap gun, the pistol, and the automatic firearms that we are going to deny bail if you are found with it.

**Sen. Dillon-Remy:** Minister?

**Sen. The Hon. C. Rambharat:** And the third part of it, Madam President, of what we seeking to do.

**Sen. Dillon-Remy:** Minister, just one question. At the beginning of your contribution you said you could not bring this amendment because the firearms was not yet enacted. And yet you are saying that in May, so please forgive me for not understanding, you said in May that you did have an amendment that could have been brought but for some reason it was not brought. Could you please explain?

**Sen. The Hon. C. Rambharat:** Right. So to clarify, when I opened I was dealing with the first amendment, which is in the Bill. The proposed clause 3, (ab), which deals with the offence of trafficking. And the Firearm (Amdt.) Bill which was debated after the Bail Bill created that offence. My point is that we could not deal with it because the offence was not created.

**Sen. Dillon-Remy:** Okay.

**Sen. The Hon. C. Rambharat:** Having moved to (ac), I have admitted that possession of a prohibited weapon existed in law as an offence and we did not deal with it even though we could have. But, we have come to deal with it. And then the third area for amendment, Madam President, is the insertion after subsection (3) of subsection (3A) and that is not as simple as the Attorney General says, but it is important.

And while the Firearms Act has a definition of “prohibited weapon” with contains three elements; artillery or automatic firearm, (b) grenade, bomb or other like missile and (c) any weapon of whatever description or design which is adapted for the discharge of any noxious liquid, gas or other thing. That (c) in the definition of “prohibited weapon” is not repeated in this subsection. In other words, the definition of prohibited weapon for the purpose of 3(ac) in this Bill is only the first two elements of the definition of prohibited weapon. In other words, we have left out, the noxious liquid, gas or other thing.

In other words, if you are found with pepper spray—which is either a noxious liquid, gas or other thing—with something like that, it does not fall within this restriction and we have accepted it. That we should not go that far now. But, what if the possession of pepper spray is introduced into law? The opportunity to possess it within certain conditions and we find that a problem is created, and in true Trinidad and Tobago style we cannot accept responsibility. So we possess it without meeting the requirements. Then a day, some other time, a group of us will sit in a house like this and deal with that. But we do not believe that we ought to be dealing with the definition of “prohibited weapon” for the purpose of this section at this time, and we have restricted it to artillery, automatic firearm, grenade, bomb or other like missile.

And in that way, Madam President, the AG used the expression “deceivingly simple” that if you go looking in this to reopen a debate on bail, a denial of bail, and firearms and all of that, you are really looking in the wrong place. This seeks to deal with an issue that arose on account of the chronology of things, we have corrected that. It deals with something we should have dealt with before and we did not. And it narrows the definition of “prohibited weapon” for the purpose of this section.

Madam President, this is necessary and you troll social media and you look at the newspaper and you understand the necessity of it. It is not an overreach of the power of the Executive and if it is beyond the powers of this Legislature then there is a place for that matter to be addressed. And it is not political, it is not political. To say it is political it places the DPP in a position that you would argue with him. But I am satisfied that the Director of Public Prosecutions appeared in a public hearing of the Parliament last week, to deal with another Bill, but spoke about a cocktail of solutions that is required some of which are not easy. This to me is an easy, sensible, logical fix, [*Desk thumping*] a problem that has become more and more pervasive and if it takes one AR, one AR holder off the street, we would have done our job. I thank you.

### ADJOURNMENT

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Madam President, I beg to move that this Senate do now adjourn to Tuesday the 19<sup>th</sup> of November at 1.30 p.m. During that sitting we plan to conclude the debate on this Bill.

*Question put and agreed.*

*Senate adjourned accordingly.*

*Adjourned at 3.54 p.m.*