

**SENATE**

*Tuesday, November 19, 2019*

The Senate met at 1.30 p.m.

**PRAYERS**

[MADAM PRESIDENT *in the Chair*]



**LEAVE OF ABSENCE**

**Madam President:** Hon. Senators, I have granted leave of absence to Sen. The Hon. Paula Gopee-Scoon, Sen. Dr. Lester Henry, Sen. Sophia Chote SC, all of whom are out of the country and Sen. Khadijah Ameen who is ill.

**SENATORS' 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. NDALE YOUNG

WHEREAS Senator Paula Gopee-Scoon, is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago: NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the

**UNREVISED**

Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NDALE YOUNG, to be a member of the Senate temporarily, with effect from 19<sup>th</sup> November, 2019 and continuing during the absence from Trinidad and Tobago of said Senator The Honourable Paula Gopee-Scoon.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 19<sup>th</sup> day of November, 2019."

**“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

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

/s/ Paula-Mae Weekes

President.

**TO: MR. HARVEY BORRIS**

WHEREAS Senator Dr. Lester Henry is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, HARVEY BORRIS to be a member of the Senate temporarily, with effect from 19<sup>th</sup> November, 2019 and continuing during the absence of Trinidad and Tobago of the said Senator Dr. Lester Henry.

**UNREVISED**

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 19<sup>th</sup> day of November, 2019."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. JOSH O. W. DRAYTON

WHEREAS Senator Sophia Chote S.C., is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOSH O. W. DRAYTON, to be temporarily a member of the Senate with effect from the 19<sup>th</sup> November, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Sophia Chote, S.C.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 19<sup>th</sup> day of November, 2019."

**UNREVISED**

**AFFIRMATION OF ALLEGIANCE**

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

**OATH OF ALLEGIANCE**

*Senators Harvey Borris and Josh O. W. Drayton took and subscribed the Oath of Allegiance as required by law.*

**SENATOR'S APPOINTMENT**

**Madam President:** Hon. Senators, I am awaiting the instrument of appointment for Mr. Zakour and when we receive it, with your leave, we will revert to this item on the Order Paper.

**URBAN AND REGIONAL PLANNING PROFESSION BILL, 2019**

Bill to establish a Council for Urban and Regional Planners and to provide for the regulation of the urban and regional planning profession and other matters incidental thereto [*The Minister of Planning and Development*]; read the first time.

**PAPERS LAID**

1. Minimum Wages (Amendment) Order, 2019. [*The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus)*]
2. Annual Report of the Public Service Commission for the year 2018. [*The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Agricultural Marketing Development Corporation for the year ended September 30, 2016. [*Sen. The Hon. A. West*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Agricultural Marketing

5. Development Corporation for the year ended September 30, 2017. [*Sen. The Hon. A. West*]
6. Annual Administrative Report of the Vehicle Management Corporation of Trinidad and Tobago (VMCOTT) for the period October 2015 to September 2016. [*The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan)*]
7. Ministerial Response of the Ministry of Attorney General and Legal Affairs 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)*]
8. Ministerial Response of the Ministry of Education 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. [*Sen. The Hon. F. Khan*]
9. Ministerial Response of the Ministry of Health 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. [*Sen. The Hon. F. Khan*]
10. Ministerial Response of the Ministry of Trade and Industry to the Eleventh Report of the Joint Select Committee on State Enterprises on an inquiry into the activities, administration and the operations of National Flour Mills (NFM) including the company's role in the Processing of Rice from Local Farmers. [*Sen. The Hon. F. Khan*]

11. Annual Administrative Report of ExportTT Limited for the fiscal year 2015/2016. [*Sen. The Hon. F. Khan*]
12. Annual Administrative Report of ExportTT Limited for the fiscal year 2016/2017. [*Sen. The Hon. F. Khan*]

### **URGENT QUESTIONS**

#### **Drowning at Argyle Waterfall**

##### **(Measures taken by THA)**

**Sen. Wade Mark:** [*Desk thumping*] Thank you, Madam President. To the Prime Minister: In light of the recent drowning of two teenagers at the Argyle Waterfall in Tobago, can the Minister advise as to what measures are being taken by the Tobago House of Assembly to address the safety of swimmers at the waterfall?

**The Attorney General (Hon. Faris Al-Rawi):** Madam President, I must apologize that I was not aware that I was assigned the task of responding to this particular matter. I have not received the approved reply immediately. I expect to have it within a matter of moments. May I respectfully ask that we stand this down, just for a couple of moments, and I will return to the answer?

**Madam President:** Yes. Question No. 2, Sen. Mark.

#### **Scholarships Grade Profile**

##### **(Adjustment of Grades)**

**Sen. Wade Mark:** To the hon. Minister of Education: Having regard to reports of the grade profile adjustment to the grades of students considered for scholarships, can the Minister advise as to when the adjustments were made?

**The Minister of Education (Hon. Anthony Garcia):** [*Desk thumping*] Thank you very much, Madam President. Madam President, grade profiles are only changed or adjusted by CXC, consequent on the review requested by candidates

and their parents. The review process and adjustment remain the purview of CXC and not the Ministry of Education. Thank you.

**Sen. Mark:** Can the Minister indicate whether he can advise us, when did the CXC adjust or amend these grades?

**Hon. A. Garcia:** Madam President, I am unable to advise with respect to the work of CXC. What I have said yesterday, on October 23<sup>rd</sup>, we received the database from CXC and on November 5<sup>th</sup> we received the T-scores from CXC and that is all. We have absolutely nothing to do with that. Thank you.

### **Claxton Bay Secondary School**

#### **(Measures Taken)**

**Sen. Wade Mark:** To the hon. Minister of Education: Can the Minister advise what is being done to address conditions at the Claxton Bay Secondary School that have resulted in teachers falling ill?

**The Minister of Education (Hon. Anthony Garcia):** Thank you very much, Madam President. Madam President, the Ministry of Education undertook repairs to works to Block E, that were related to flooding of level two that resulted from a burst water line in the staff room of the school. The repair work was conducted during the period November 07 to November 11, 2019, and were met with the satisfaction of OSH inspectors who visited the school.

OSH inspectors and the public health officials also deemed to be adequate and acceptable, the work that was done. The alternative arrangements that were put in place by the principal to accommodate teachers were also accepted and deemed to be adequate. Based on a refusal to work which was submitted by the teachers, and this was accompanied by a medical certificate, OSH in a letter dated November 18, 2019, that was yesterday, has requested that the following be done:

1. To conduct a scientific assessment of the interior surfaces of the administrative building and the staff room;
2. To sanitize the interior of the administrative building and staff room post; and
3. To carry out air quality testing at the school.

These matters are currently being addressed in order to return the school to normalcy in the shortest possible time. Thank you.

**Sen. Mark:** Given what the Minister had said, Madam President, can he advise as to what time frame he anticipates this matter will be rectified.

**Hon. A. Garcia:** Madam President, I can only say that we need to get the report from CARIRI who will be doing the air test and once that is done then we will be able to give the school authorities the information with respect to when school can resume.

### **Sangre Grande Magistrates' Court**

#### **(Police Officers and MTS Security Guards Stand-off)**

**Sen. Wade Mark:** To the Minister of National Security: What is being done to address the recent stand-off between police officers and MTS security guards who are insisting that the police be searched before being permitted to enter the Sangre Grande Magistrates' Court?

**The Attorney General (Hon. Faris Al-Rawi):** [*Desk thumping*] Thank you, Madam President. On behalf of the Minister of National Security I would like to first of all say that there is in fact no stand-off between security services. It has always been and will continue to be part and parcel of the procedure of the Judiciary which manages the security at all premises that it has under its control, including courthouses that all persons entering judicial premises are subjected to searches. This is particularly the case, insofar as there have been recent security



threats which are well known in the management of significant and high profile matters. I had an opportunity to speak with the administrative officer in charge of this matter at the Judiciary directly to enquire whether there was any merit to the bold assertion that there is in fact a stand-off between security services and I am told categorically that there is no such stand-off.

**Sen. Mark:** Can the hon. Attorney General indicate whether he is aware that police officers are not cooperating with the MTS security guards and as such court processes and matters are being slowed down? Is the Attorney General aware of this development, Madam President?

**1.50 p.m.**

**Hon. F. Al-Rawi:** I am not aware of such a scurrilous and scandalous allegation, Madam President. To even present the question that way is born on the portrayal of presenting a fact. That is not a fact, Madam President. Whilst it is that security is a major concern, anyone who has visited any sophisticated jurisdiction—and Trinidad and Tobago is one, I admit—will see that this is par for the course. Security, even at an airport, is managed with strict process, including all police officers, et cetera. So I reject Sen. Mark's attempt to make this into something that it is not.

**Madam President:** Next question.

**Sen. Mark:** You are ready, AG?

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

### **Drowning at Argyle Waterfall (Measures taken by THA)**

**Sen. Wade Mark:** Madam President, to the Prime Minister. In light of the recent drowning of two teenagers at the Argyle Waterfall in Tobago, can the Minister advise as to what measures are being taken by the Tobago House of Assembly to

address the safety of swimmers at the waterfall?

**Madam President:** Attorney General.

**The Attorney General (Hon. Faris Al-Rawi):** I wish to apologize to the hon. Senator for not being prepared to answer this question when it first arose. Madam President, there can be no greater tragedy than the loss of your children, and I wish, on behalf of the Government and this entire Senate, to offer deepest condolences to the parents and family members, school mates and teachers of those two beautiful teenagers who lost their lives in what appears to be an act of nature, an act of God. Far be it to even call it an act of God.

With respect to the matter, the reports that have come to the Office of the Prime Minister, and certainly those portrayed in the national domain, demonstrate that it was as a result of very heavy rainfall; that there was a water surge coming out of the water flow and that that water surge caused one of the teenagers at the fall, in regular and normal conditions, to be thrown into waters, and then she succumbed to difficulties. It was an act of bravery, pure unbridled selfless bravery by that beautiful young man who lost his life when he dove into the water to try and save his friend and colleague. Regrettably, Madam President, both of these teenagers lost their lives.

Whilst the THA may give every assurance possible that the safety of swimmers is paramount, these are not, in fact, swimmers, per se. These are persons caught in the rip current coming onshore which pushed one of them into the waters. It is unfortunate that these things happen. And if I dare say so, in the nine years that I have spent in this Parliament, far less than my friend, the hon. Sen. Wade Mark, this is perhaps one of the most difficult answers I have had to give. So that is the update coming. The THA is out and running on this matter and wishes to assure people of its concern.

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

**SENATOR'S APPOINTMENT**

**Madam President:** Hon. Senators, I am in receipt of the instrument of appointment, so I shall now deal with this item.

“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. ELI ZAKOUR

WHEREAS Senator Khadijah Ameen is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, ELI ZAKOUR to be temporarily a member of the Senate, with effect from 19<sup>th</sup> November, 2019 and continuing during the absence from the Senate of Senator Khadijah Ameen by reason of illness.

Given under my Hand and the Seal of the President of the Republic of Trinidad and

Tobago at the Office of the President, St.  
Ann's, this 19<sup>th</sup> day of November, 2019"

### **OATH OF ALLEGIANCE**

*Senator Eli Zakour took and subscribed the Oath of Allegiance as required by law.*

### **ANSWERS TO QUESTIONS**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you, Madam President. Madam President, Government is pleased to announce that we will be answering all three questions on notice that is for Oral Answers, and we will be answering Questions 43, 47 and 49 for Written. The answers will be submitted shortly to the Parliament, and we ask for a deferral of Question No. 30 for two weeks.

**Madam President:** Question No. 30 is deferred for two weeks.

### **Vehicular Accident of Shaquille Forbes**

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

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

In light of reports that Shaquille Forbes sustained serious injuries as a result of a vehicular accident involving members of the Trinidad and Tobago Police Service, can the Minister indicate:

- (i) whether an investigation has been conducted into the circumstances surrounding the accident;
- (ii) if the answer to (i) is in the affirmative, what were the results of the investigation; and
- (iii) what measures, if any, are being taken to compensate the civilian?

**The Attorney General (Hon. Faris Al-Rawi):** Madam Speaker, I am authorized by Cabinet to provide the following answer: According to information provided by

the Commissioner of Police of the Trinidad and Tobago Police Service, an investigation was conducted into the circumstances surrounding the accident. The results of the investigation revealed that no further action was recommended and, accordingly, no compensation was deemed by the TTPS to be due to Mr. Forbes.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can the Attorney General indicate to this honourable Senate whether the Government would be prepared to provide to the Senate a copy of the report dealing with this particular matter?

**Madam President:** Attorney General?

**Hon. F. Al-Rawi:** That is respectfully out of place, Madam President. Obviously, there having been a step in this matter by conclusion of a report and the police having confirmed that they will take no further action, the next step is that there is an availability of litigation in the hands of the person injured. In the event of litigation, one therefore has to be careful about the rules of disclosure and premature disclosure. Certainly disclosure is permitted in the court. The Parliament is not a place to litigate matters, hence the rule against sub judice matters.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can the Attorney General advise this House as to some of the factors that the police would have taken into account in arriving at their conclusion that this matter ought not go to any further, Madam President?

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

**Sen. Mark:** Can I ask, through you, Madam President, whether the police has contacted Mr. Shaquille Forbes indicating that this matter has been closed?

**Madam President:** Attorney General.

**Hon. F. Al-Rawi:** I certainly could not say, Madam President, but I am genuinely

concerned that the hon. Senator is pursuing a line of enquiry into a matter such as this. I am genuinely concerned. These matters must be dealt with in a disciplined and proper fashion and I really do believe that this line of questioning on this matter is entirely out of place.

**Madam President:** Sen. Mark?

**Sen. Mark:** Well, you know, I disagree vehemently with this Attorney General.

**Hon. F. Al-Rawi:** Are you coughing?

**Sen. Mark:** But, Madam President, may I proceed with the questions? I will ease him up at this time. I know he is on his way out.

**Madam President:** Sen. Mark—

**Sen. Mark:** Sorry, Madam President. I understand he is leaving San Fernando West to go to San Fernando—

**Madam President:** Sen. Mark, please?

**Sen. Mark:** Sorry, Madam President.

### **Reorganization of the Judiciary (Government's Intention)**

5. **Sen. Wade Mark** asked the hon. Attorney General:

In light of concerns regarding the proposed reorganization of the Judiciary, can the Attorney General advise whether it is the Government's intention to undertake discussions with the representing trade union(s)?

**The Attorney General (Hon. Faris Al-Rawi):** I thank the hon. Senator for presenting an actual question as opposed to vagaries. Madam President, good industrial relations practices and certainly Government policy have, for decades, required that the representing trade unions negotiate and treat with the entities from where their members originate directly. The Government has been advised by the Judiciary that meetings were held with the union executive of the Public Services

Association, with the staff side of the Joint Consultative Committee and with Judiciary staff.

The Judiciary has further advised that at those meetings updates and documentation were provided and there was dialogue wherein question and answer sessions were had. The Judiciary indicated that an agreement was made between the parties wherein the trade union requested specific information and documentation in order to review, from which they would provide feedback on same. The Judiciary has advised and today confirmed that it has, in fact, provided all the requested information and documentation to the PSA.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can the Attorney General indicate when was the information outlined by the Attorney General on behalf of the Judiciary—when was the information and/or report on these matters made available to the recognized majority union?

**Madam President:** Could you be a little—

**Sen. Mark:** In other words, the Attorney General is saying—All right. May I just recast?

**Madam President:** Yes.

**Sen. Mark:** Can the Attorney General advise this Senate when the information gathered by the Judiciary, requested by the union, was forwarded to the said union?

**Madam President:** Could you say “when last”? Because it was different—

**Sen. Mark:** When last?

**Madam President:** Yes. Attorney General?

**Hon. F. Al-Rawi:** I really could not say, Madam President. You have, of course, anticipated the fact that there has been an ongoing dialogue and that there have been multiple provisions and submissions made—requests and submissions made. I really could not say. Suffice it to say that it has been done.

**Madam President:** Sen. Mark?

**Sen. Mark:** Is the Attorney General satisfied that based on discussion thus far, and taking into account the rights of the workers in the Judiciary, and in the interest of the Judiciary, whether he is satisfied that there is an amicable settlement on the way, or possibly to bring some kind of conclusion to what was initially a very ugly situation and standoff between the Judiciary and the workers through their union?

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

### **Blockage of Watercourses in Granville, Cedros**

#### **(Measures Taken to Treat with)**

6. **Sen. Wade Mark** asked the hon. Minister of Planning and Development:

Given reports that a land developer has blocked watercourses and bulldozed large sections of the forests in Granville, Cedros, which may have an adverse environmental impact, can the Minister state what measures are being employed by the Government to treat with this matter?

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, the EMA issued a certificate of environmental clearance, No. 4498 of 2015, to the permit holder for the development of 64.49 acres of land at Coromandel Road, Granville Beach, Cedros. In November 2018, the permit holder indicated that all works on site had ceased and the permit holder was advised to inform the EMA on the recommencement of the work.

In response to media reports of works continuing on site and impacts being held by neighbouring receptors, site visits were conducted on April 02, 2019 and April 04, 2019. The EMA held a meeting with the permit holder on April 05, 2019 during which the permit holder was informed of three specific observations of



noncompliance with the CEC. The permit holder committed to addressing these non-compliances. During the EMA site visits, no natural watercourses were identified on site or on any map of the region, with the exception of a drainage channel at the eastern end which appears to contain surface runoff.

As there were complaints in the *Trinidad Guardian* article regarding possible aquifer breach, the Water Resources Agency was engaged to confirm the depth of the water table in the area. Based on the response of the Water Resources Agency, it noted, and I quote:

The proposed development overlies an unconfined aquifer. The Erin Formation recharge occurs by the infiltration of water from the ground surface directly into the aquifer. The 64 acres of concern is estimated to be less than 1 per cent of the recharge area. Consequently, its potential impact on the aquifer is expected to be minimal, if not zero.

Another site visit was conducted on April 12, 2019, to investigate an incident of flooding which was reported to the EMA. Based on observation of the site there was evidence of flooding observed only on the south-eastern boundary of the permit holder's development site. The permit holder has since responded to the complaints by installing additional drainage channels within the flooded area which mitigated the issue.

Further assessments of the measures introduced to prevent further collection of water on the site was conducted and have been effective, ensuring the flow of storm water throughout the surrounding areas. The EMA has received no further complaints on this matter. This site will be closely monitored by the EMA's permitting, monitoring and compliance unit for adherence to all applicable CEC conditions. The permit holder has communicated that all works on site have been stalled due to the unfavourable weather conditions for construction during the rainy

season and there are plans to resume the work in the dry season of 2020. The development continues to be closely monitored by the state agencies involved.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can the Minister advise what were the three specific observations of non-compliance by the permit holder?

**Madam President:** Leader of Government Business?

**Sen. The Hon. F. Khan:** Madam President, I do not have that with me at this point in time, but I can surely get it because they were subsequently addressed.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can the hon. Minister share with this Senate the name of this permit holder that was in breach and violation of all these matters surrounding the EMA guidelines? Who is this permit holder? Would you care to share with us?

**Madam President:** Sen. Mark, I would not allow that question.

**Sen. Mark:** Okay. Can the hon. Minister indicate what kind of surveillance or monitoring does the Ministry of Planning and Development, the EMA, intend to carry out to ensure there are no further and future breaches by this permit holder? What kind of monitoring surveillance would be effected to ensure that there are no further breaches?

**Madam President:** Minister.

**Sen. The Hon. F. Khan:** Obviously, Madam President, the EMA has its compliance officers so they will be making periodic visits to check what is happening, whether any work that is being conducted is in breach of the CEC that was issued, and when work recommences in the dry season of 2020, that process will begin in earnest.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, can the Minister indicate whether this permit

holder, having been in breach of certain guidelines established by the EMA, whether he can advise this honourable Senate, whether, for instance, that permit holder was charged—or any sanctions, I should say, instead of charge—were imposed on this permit holder given the breaches that were discovered by the EMA, by the Town and Country Planning and by the Ministry of Planning and Development—what sort of sanctions?

**Madam President:** Minister.

**Sen. The Hon. F. Khan:** Madam President, in a lot of CECs, and when it is being implemented, there are instances of noncompliance. That is not unique. And Sen. Teemal is shaking his head because he is in this type of business. So periodically the EMA makes a check. If complaints come from the community or from surrounding areas, they are informed and then they make a check. So non-compliance is not possibly the same as breach. So once the non-compliance is corrected, the development goes on.

**Sen. Mark:** Madam President—

**Madam President:** Sen. Mark?

**Sen. Mark:** Madam President, I just wanted clarification on a matter. Madam President, you would recall that Question 30 which you, based on the request made by the hon. Minister be deferred for two weeks, you would be aware that this matter was on the Order Paper in the last period. It is back here, and I would have thought that the Government would have had adequate time to reflect and report on this matter. So I am just raising, Madam President, the fact that it was there in the last session and I am hoping that the Minister will bring the answer within the two-week period.

**Madam President:** Minister.

**Sen. The Hon. F. Khan:** I am reading from the Order Paper here, Madam

President, and it said: “Answer due by 19.11.2019.” That is today. I am within the Standing Orders to ask for a two-week extension.

**Madam President:** May I just indicate that when I allowed Sen. Mark, I thought that you were going to raise an issue re the Standing Orders. What you did, really, was to just recite some facts. So I would ask you to be a little more relevant to the Standing Orders the next time I allow you to raise an issue at the end of question time. Okay?

**Sen. Mark:** I am guided.

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

[Second Day]

*Order read for resuming adjourned debate on question* [November 12, 2019]:

That the Bill be now read a second time.

*Question again proposed.*

**Madam President:** Hon. Senators, the debate on the Second Reading of the following Bill entitled an Act to amend the Bail Act, Chap. 4:60, which was in progress when the Senate adjourned on Tuesday, November the 12<sup>th</sup>, 2019, will be resumed. Those who spoke on this matter are as follows: The Hon. Faris Al-Rawi, MP, Attorney General who moved the Motion; Sen. Saddam Hosein; Sen. Anthony Vieira; the Hon. Stuart Young, MP, Minister of National Security; Sen. Sean Sobers; Sen. Hazel Thompson-Ayhe; Sen. Sophia Chote SC; Sen. The Hon. Clarence Rambharat, Minister of Agriculture, Land and Fisheries.

**Sen. Taharqa Obika:** [*Desk thumping*] Thank you, Madam President. As I begin my contribution I want to echo a phrase that we have heard time immemorial in this country: “tough on crime.” And I want to anchor my contribution to the truth to that phrase. What exactly do we mean when we say we are tough on crime and

if, in fact, the creeping provisions in this Bill—and I say creeping, because we are trying to make changes to legislation that was supposed to have been the fix for bail just this year in the last session; that should have been the tool that the Government would have needed to be tough on crime.

Now, the Bill has three clauses, where the material clause being the clause which seeks to amend the Bail Act to provide for circumstances in which bail may be denied to a person who is charged. And then we have several offences that are scheduled that, in some instances, would bring many things into question. One of those things would be the role of the Police Complaints Authority and the resources for it, which I would deal with at the tail-end of my contribution.

Another thing would be, what exactly is in place for officers in executing the law to ensure that they are truly, in fact, operating in good faith? Because a lot of this legislation, Madam President, I want to submit, depends squarely on the full faith and confidence of each and every single police officer in the police service. And where we have a Police Commissioner who is on record as being openly complaining about police officers who, for some reason or the other, had challenges with a lie detector test, we have to first understand that there must be some caution when we are giving such sweeping power to each and every police officer in this country.

So one can assume that the intent is to curb crime. For the past four years and three months of this Government, the measures that were brought to this Parliament did not succeed in fixing that main issue that the citizens look to when they try to assess crime, which is the murder rate. Of course, you know crime is more than the murder rate. We know violent crime is still more than the murder rate, but it is still that statistic that the population looks to. And the murder rate is climbing to dangerous proportions.

It is clear for all to see, Madam President, that this current Minister of National Security has failed. And it is clear also that in that failure the Government is trying to use legislative fixes that will not solve crime, but that will only deflect where the blame should be. So there is a Government failure. And I want to say being tough on crime, when you look at the Anti-Gang Act, the Firearms Act, Sexual Offences Act, and all these scheduled offences that are captured by this legislation where bail is concerned once committed with a firearm, and so on, should have been the end result. And they talk of a whole-of-government approach that this Government came in with, should have been really what the focus was on, but there is no whole-of-government approach, because there is no providing for opportunity for our nation's youth.

When you take away access to education in the HYPE, and the MuST and the NESC and so on, and the GATE Programme, what you are actually doing is you are increasing the push factors, pushing out nation's youth into crime. When you have the increase in hunger in the country, removing social support with food cards and so on, you are contributing to that. And this is also being expressed, Madam President, by the youth of our nation.

There is a popular song by an artiste called Jaron Nurse, where he is extolling the virtues of positive vibration and good music to direct our nation's youth in a good direction, and he is calling on the singers of the day, the young people—Jahllano and Swan Dan—to sing positive songs. So Jaron Nurse is recognizing, Madam President, what this Government has failed to see, that it is a whole approach, a holistic approach, that is required to solve crime. But if every six months we come to Parliament and we take this approach where we increase fines, we increase sentencing which we have done, we widen the net where the police officers can capture persons, but yet crime is not being abated, we must

recognize that this problem of fixing crime does not find a solution in a legislative fix. A legislative fix is not the solution. The only solution to fix crime is for the Government to get down and do the work that is required [*Desk thumping*] to fix crime in this country.

So, I want to ask, what did the Minister of National Security expect? The case that the Minister used about a young person in a vehicle with eight pieces of a gun and scaring the population—Madam President, I want to say the population is already scared beyond belief.

**2.20 p.m.**

There is no more scaring the population again. The population is clear. They are clear that changing the law will not fix crime in this way. The population is also clear that a criminal does not do a cost-benefit analysis when he is about to commit crime. The population is also clear too, Madam President, that an unjust system also creates criminals, because when a father has to look at his children for nights on end and he cannot put food on their tables, what we are doing as a country is creating criminal intent in that father. When you take away the food card programme, you take away tuition for preschool education, we are doing that. Now, one of the solutions we can look to is the Police Complaints Authority. If we—and I hope other contributors who have better knowledge of this, the work of this Authority, can show how we can strengthen the Police Complaints Authority notwithstanding the measures in this Bill. Because what are the roles of a well-resourced Police Complaints Authority?

- “ • To investigate criminal offences...
- To undertake inquiries into...police corruption...
- To monitor an investigation being conducted, in relation to criminal offences involving police officers, police corruption...

- To advise and make recommendations to the Police Service...”—regarding—“...police corruption...
- To gather evidence that may be used in investigating serious police misconduct and furnish such...to the Commissioner of Police...
- To gather evidence that can be used in the prosecution of a police officer involved in a criminal offence and furnish...”—that—“...to the Director of Public Prosecutions.
- To perform any other functions that may be conferred on the Authority...”

Now, ensuring that we go after corrupt police officers, Madam President, it does the police service justice. It does justice to the police officers who are doing their work honourably. I always say my grandfather, my mother's father, was a police officer, retired sergeant, when he died, and police officers who work hard on behalf of the citizens of Trinidad and Tobago put their lives on the line. No manner of legislative fix could change the fact that the good officer knows that there is a corrupt officer controlling blocks in Sea Lots, on the Train Line in Marabella, in Warden Road in Point Fortin, in Bangladesh, in St. Joseph. Madam President, no manner of legislative fix will erase that knowledge in the mind of the good officer that there is a corrupt officer in the vehicle right next to him who is undermining the very system. So one would have hoped that this Government would have engaged the Police Complaints Authority and sought to resource them properly given the nature of offences, and I want to point to some of them. Under the Firearms Act, Madam President, we see selling or transferring a firearm or ammunition to a person who does not hold or is not exempted from holding an FUL—firearm users licence—being captured under this amendment in clause 3 of the Bill.



If we were to consider trafficking, for example, Madam President—simply trafficking—and if we were to consider that the number of police officers that we have across this country and the level of information that they have at their disposal, and the level of information that the public feeds them on a daily basis, it will be very difficult to fathom that officers, collectively, will not know where persons are who are conducting this type of business, but yet we hear of only forty-something, thirty-something guns collected across the country. It raises suspicions in the minds of citizens and that suspicion is fed where persons believe that in fact if the police officers who knew, could have been empowered to intercept these persons who are involved in illegal gun trafficking and trade, we would have been able to take up much more guns off the streets without even considering a gun amnesty.

So, the Police Complaints Authority is where individuals as well as police officers can provide information, but there must also be a stronger support for the police service to weed out corrupt officers and one would have hoped that a police commissioner would have no such complaints, but with every other month we hear the Police Commissioner complaining of challenges within the police service. So, Madam President, I want the Government to look at that and also to look at another aspect of legislation. There is much talk—and I do so without anticipating. I know I will be guided, so I will run afoul at some point. So I would stop when I do.

**Hon. Senator:** There is no Bill.

**Sen. T. Obika:** [*Crosstalk*] Oh, there is no Bill. Okay. So there is much talk of decriminalizing marijuana, and, Madam President, we can all see the value of decriminalizing marijuana, and for the citizen, the average citizen, if we were to paraphrase, if we were to use layman's terms, to make marijuana as legal as

alcohol is legal—because alcohol is not legal. It is decriminalized. Because if Sen. Cummings were to be as enterprising as he is, as an astute businessman, were to decide to allow someone to have a half barrel of “babash” in his backyard, Sen. Cummings would be arrested in the morning. So alcohol is not legal.

You need a licence and so on to conduct your affairs where that is concerned. So we can all see the benefit of decriminalizing marijuana so that the day where a young man—because it is mostly young men—is arrested and incarcerated for a roll-on—and we are not talking about deodorant here—of marijuana, those days should come to an end. So maybe we should look to first get that done. What you do, you separate—just as was done with alcohol, you separate the persons who use marijuana from those who are engaged in the gun running, and so on, and the cocaine trafficking. So you bring the recreational marijuana users into the mainstream so they do not have to go to the gun block or the drug block again to get a smoke. They can go to a regular store where the regular man can get a licence to distribute for sale, for recreational use, marijuana.

I want to submit, just as taking away the traffic cases from the court would have eased up the Magistrates’ Court system once we get the traffic court running, as a nation if we decriminalized marijuana, whether it be medicinal as well as recreational use, it would free up a lot of the police officers to focus on the real criminals, and we would be able to, once you have a proper licensing regime that allows small persons, not big people like in Barbados and in Jamaica—in Jamaica, where they are still burning down ganga fields despite decriminalizing marijuana, they have not empowered the small man to be involved in the industry. What we have to do is ensure that we empower the small man to be involved in the industry.

So just as the neighbourhood guy could go to a magistrate and get a bar licence, that the neighbourhood guy can go to whichever mechanism and get a

licence to sell in their community, marijuana for medicinal and recreational use, that would now remove the power of the underworld specifically for marijuana. It would not remove the power of them for cocaine which our population has no longer been in love with because the days of crack have practically gone—but we are still a transshipment for cocaine—it would now increase the distance that the recreational user of marijuana has from the guy who is trading in guns.

So I want to say that whilst the Government has hastened to bring this particular Bill because of the particular instance where the police are frustrated with getting persons out on bail after first offences, maybe this should not have been the time to bring this Bill. Maybe the time—the Bill that should have been before this House was just as we want to, as a nation, remove the traffic offences from the Magistrates' Court, now could have been the time to bring proper legislation to decriminalize marijuana with accompanying regulations that have a licensing regime that allows individuals in the country to purchase for recreational use without having to go to the criminal in the community. So what you do is you bring people mainstream. You may even have a mechanism where you can remove persons who are involved in this criminal underworld in a form of an amnesty of sorts—might be a drug amnesty—so that they can become now legal and law-abiding citizens just as was done when alcohol was legalized in other jurisdictions.

Now, Madam President, I want to say that when you look at the offences—except the ones that are offences of the person regarding sexual offences in the Children Act—specifically relating to anti-gang and firearms—because the offences captured under the Bail (Amdt.) Bill speak to persons becoming a gang member, a gang leader, and so on, counselling a gang and so on—when you look at a lot of the activities of these gangs, whilst guns are involved where they commit

violent offences against persons, assault as well as shooting with intent and murder, many of them are really involved in marijuana trade. So if we were to—of course, this is anecdotal so we would need to depend on better studies from criminologists at the University of the West Indies, as well as researchers in the Government.

I grew up in Marabella, very close to the line in Marabella, and I have seen, Madam President, in a household a father had three sons and one daughter on my street and all the three sons were killed. All the three sons were involved in the marijuana trade. But if the marijuana trade was decriminalized and they could have opened a shop in Marabella to sell the marijuana legally and the supply trade is also registered and legal, they may have been alive today. But because guns and gangs which are offences captured under this Bill are tied to the marijuana trade, if we pull the marijuana trade out of it, it would separate and free up many of our nation's youth. I am saying this Bill is the wrong Bill.

**Sen. Rambharat:** Marijuana is a precursor to guns.

**Sen. T. Obika:** No, I am saying that the guns—so the question, Madam President, is that whether marijuana is seen as a precursor to guns. That is not the argument I am making. The argument I am making is that within the marijuana trade you have the gang culture around it and you have the gun culture around it. If you remove the marijuana trade from the underworld and you bring it mainstream, it becomes legal, you do not have the opportunity now for users to interface with those who are involved in guns and so on. So there is a better opportunity for persons to be involved in legal activity and you can fight crime without even firing a shot, and that should have been the approach of this Government.

Now, Madam President, I would not be long because I have made the main point that I want to make, and I am happy that the legislation was not before us at

yet so I was not running afoul of the Standing Order regarding anticipation. Now, Madam President, the Bill seeks to deny bail to persons for 120 days. I want to submit that this could make—despite the best efforts and the best intent of the good officers of the police service, it can make Trinidad and Tobago resemble a police state. We have to be very careful how we give these powers to officers especially where you have a police commissioner, himself, complaining that you have officers who have refused to take the lie detector test and he himself having significant issues with them. How can we then give such powers to police officers where even the Police Commissioner has trust issues with several members of the police force? That is a big issue. We have to be very careful when we give much responsibility to them, that we can trust that they will be persons who we can hold to the highest level.

The procedure depending on a charge to deny bail assumes the infallibility of the process of conviction. So, where there is no recourse to a judge, as Sen. Vieira was asking about, as Sen. Chote was also pointing to, in my mind we are saying that the process is infallible, and that we trust the entire process of apprehending and conviction, and that we have no issues that persons can be framed, and that we have no issues with trusting every single police officer. If we have even an issue with one step along the way to conviction, then we should give the opportunity to the courts to intervene.

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

The court must have the opportunity to intervene at any material time that someone so accused believes that they wish to avail themselves of the court. So therefore, if there is any chance that an innocent person could have been captured wrongfully, the courts can provide some assistance to that person so that their name can be cleared and they can be free until they are finally convicted.

Now, Mr. Vice-President, there is a report titled—a police corruption report on T&T—“Police deviance and community relations in Trinidad and Tobago” by Nathan Pino and Lee Michael Johnson. It is in *Policing: An International Journal of Police Strategies and Management*, and the date is the 23<sup>rd</sup> of August, 2011. I just want to read just a short abstract from it, the purpose of the report. It said:

“Corruption and poor relations with citizens are known to be pervasive in the Trinidad and Tobago Police Service.... Police deviance permeates all levels of the TTPS and threatens the sustainability of reforms.”

And, of course, there is a caveat here. The methodology of the research was one where they spoke to persons who may have been persons of interest to the police service. So, of course, you have to be cautious how you take the information, but it is still information that you can balance with other sources.

So the findings are the types of police deviance that emerged as major themes:

1. “...inadequate of crime control and protection of citizens,”
2. “maltreatment of citizens,”
3. “capricious response to criminals...”
4. “bias toward less serious crimes, and”
5. “police corruption and collusion with criminals.

However, respondents also offered solutions and expressed optimism about police-community cooperation.”

So what are the social implications of this? The results suggest that both the need and potential to improve police/citizen relations and reduce police deviance.

So, Mr. Vice-President, every single aspect of police deviance here can cause someone—well, except bias towards less serious crime—to be wrongfully accused and so charged, and therefore, an injustice can be served. Because, if you

were to go back: inadequate crime control and protection of citizens, maltreatment of citizens, that can easily lend to a police officer looking at this and saying, “Okay, you are members of a gang and by virtue of this, first offence, no bail.” Simple, for the first 120 days. Capricious response to criminals: the system decides well, you are a criminal anyway, so we are not even going to provide any facility for you to be heard. Police corruption and collusion with criminals: criminal A who has a corrupt officer in his grip decides that he wants to get rid of individual B, and individual B becomes classed as a criminal; they find a charge, whether it be anti-gang or firearm charge, and that is it, he languishes in a cell for 120 days.

Mr. Vice-President, we cannot ignore the research that is available to us. We cannot ignore the complaints of the police commissioner who has complained ad nauseam about his efforts to weed out corruption in the police service. We have seen his results, we are encouraged by his results. He has declared there is still a long way to go which we understand as a citizenry, but, therefore, it means that because we still have a long way to go, it becomes very difficult, in any good conscience, to give the powers that we want to give to police officers in this Bill. It becomes very difficult to accept that.

And finally, now is not the time for this Bill. There are other things that could have been done, that could still be done to fix crime and, as I say, one, not panacea, but one method could be taking marijuana out of the hands of the criminal underworld, bringing it mainstream with wide sweeping stakeholder consultation that leads to the decriminalization of marijuana in Trinidad and Tobago. I thank you. [*Desk thumping*]

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

**Sen. Paul Richards:** Thank you, Mr. Vice-President, for me recognizing me and

affording me the opportunity to make a contribution, which I hope will be short, to this Bill, “An Act to amend the Bail Act, Chap. 4:60”. Before I actually start my substantive contribution I would like to also add, with the sentiments of the hon. Attorney General, to add my condolences to the family of the two teenagers who drowned in Tobago. A really tragic circumstance and their families, and because Tobago is a small community, the wider Tobago community at large. And also while I am at it, to the family of Sat Maharaj and his colleagues at the Sanatan Dharma Maha Sabha. You may not have always agreed with his very strong convictions, but he certainly made a strong and significant contribution to Trinidad and Tobago. So my condolences to his family and the Hindu community as well.

So, on to the Bill now. I have to admit that this is one of the Bills that agonized me over the past week. I am glad we had an extra week so I could think about it even more clearly. There are several issues that really had me deeply contemplating, because I mean, sometimes the popular thing may not be the right thing to do in circumstances, eh, and this job or this role is not a popularity contest. So, what troubled me about it? Anyone can understand, and endorse, and support a significant challenge is facing law enforcement in Trinidad and Tobago, and the level of rampant, seemingly, unabating criminality in this country; it pains us all. It should be fairly easy to approve these proposed amendments given what is facing Trinidad and Tobago without a second thought.

Between 2001 and 2008, Trinidad and Tobago experienced a 357.6 per cent increase in homicides in that seven-year period. From 151 in 2001 to 514 in 2008. Most of the homicides are attributable to firearms-related offences. In 2005, the homicide rate was 21.9 per 100,000 of the population compared to 3.8 to 100,000 of the US population, and that is from a study titled, “Firearm possession among arrestees in Trinidad and Tobago” by Williams Wells, Charles Katz and John Kim,



2010. This issue to me, after I thought about it carefully, has many dimensions which are just sought to be addressed in the Bill, but not really in plain sight, which are very important because I agree that no one, and I mean no one, should really have an AR-15 rifle or a grenade in their possession. There is no lawful reason for someone having those types of weapons.

Just for curiosity, an ArmaLite AR-15 is a selective fire air-cooled gas-operated magazine-fed rifle manufactured in the US between 1959 and 1964. Its military version was adopted by the US armed forces as the M16 rifle. The military version M16 was a selected fire air-cooled gas-operated magazine-fed rifle. Now, hear that description. That is on the streets in Trinidad and Tobago. That is an instrument of war. So that is why this situation here troubled me so much. And taking a holistic look at the situation, I think it has a couple of dimensions which I would like to outline:

1. Police detection, identification and seizure rates for illegal firearms in Trinidad and Tobago including the AR-15 and grenades, et cetera.
2. How many of these weapons are coming into the country, how are they coming into the country, where are they being stored, and what is the reason for bringing this level of sophisticated weaponry into the country?
3. The increased level of sophisticated itself as a matter of grave concern, and how they are being illegally imported—because they are very expensive weapons also. They are extremely expensive—and how many of these illegal weapons are actually in the country presently especially in relation to how many are being found and seized by law enforcement?

Because it is also important to get a sense of the scale, and I know the Minister of

National Security in his contribution last Tuesday went through some of his data, but I will present some data that I think is quite credible from the University of Sydney which paints an even more dire picture in this country.

So I quote the—because the number of weapons also has a bearing on what we are facing in relation to what is being proposed as the solution or part of the solution in this Bill. So *Newsday* newspaper, Sean Douglas, Thursday 21 February, 2019:

“...8,154 illegal firearms...in Trinidad and Tobago, according to estimates by the strategic Services Agency (SSA), revealed by Fitzgerald Hinds...he chaired the Parliament’s Joint Select Committee on National Security. JSC member...”

—And I am not seeking to bring the Vice-President into the debate today, but it is just part of the quotation:

“...Nigel De Freitas noted the police’s seizure of 1,054 firearms and 18,000 bullets in 2017”—18,000 bullets—“...slightly fewer...item in 2018.”

There was an estimation by the SSA and ACP Jayson Forde who says that on average, the police recover about 1,000 firearms a year, and the query as to the number of gangs ranging from 200 to 2,000, generally a total of 40,000 gangsters according to this information.

*Newsday*, Sunday 18 May, 2019, Julien Neaves, “V’zuelan guns among 8,000 illegal arms in TT” and it is quoted as saying:

“The Prime Minister says the illegal guns in TT have been traced to almost 30 countries including neighboring Venezuela and”—now—“...defunct Soviet Union.

He said the police provided information for seized firearms analysed for country of origin for the period 2014—2018, and 27”—countries—“were

identified...”—in terms of origin of firearms.

To give us a sense of the scope of the challenge we are facing in the proposed provisions in this Bill, the countries as listed: Argentina, Austria, Belgium, Brazil, Canada, China, Colombia, Croatia, Czechoslovakia, Germany, Hungary, Israel, Italy, The Philippines, Romania, Russia, Serbia and Montenegro, South Africa, Soviet Union, Spain, Switzerland, Turkey, the United Arab Emirates, the UK, the US, Yugoslavia, and neighbouring Venezuela.

[MADAM PRESIDENT *in the Chair*]

And quite a number of these weapons come from Venezuela especially under the turmoil that has been going on in that country in the past couple of years. *Newsday*, Monday 30 September, 2019: “Security group: 1.6 million guns in the C’bean”

“...revealed Peter A Barcroft, senior director of the International Peace and Security Programme, run by Parliamentarians for Global Action in New York City.”

Also, an article adapted from a *Guardian* newspaper article, Trinidad *Guardian* Newspaper, September 15, 2016: “Venezuelans Trading with Trinidadians: Guns and Ammo for Food”.

“Venezuelans and Trinidadians are bartering on the high seas, selling and/or exchanging arms and ammunition for food and basic commodities.”

That—“These trades also take place at some of T&T’s remote coastal ports, according to Assistant Superintendent of Police Vernly Gift of the Organised Crime, Narcotics and Firearms Bureau (OCNFB).”

So that gives you a sense of the number of guns in Trinidad and Tobago from a local perspective.

**2.50 p.m.**

But I had the ability to also go through an article “Illegal Gun Markets in Trinidad and Tobago: Report to the Minister of National Security” by William Wells, 2008, “Gun Possession and Ownership”. The TTPS Firearm Selection estimates here approximately 10,550 firearm users in the country. That is in 2008. And also, I would like to go through, through you, Madam President, an article which I got, as I said, from the University of Sydney which paints an even more dire picture and the article is titled “About GunPolicy.org” which is a very credible portal. It is hosted by Sydney School of Public Health, University of Sydney:

“The School provides internationally recognised leadership in public health advancing and disseminating knowledge—in this case, supporting global efforts to prevent gun injury.”—which is also part of intention of this Bill—  
“A close partner an organisation is the Centre for Armed Violence...”

So, according to our articles, including the Ministry of National Security, the Police Service and the Prime Minister in one instance, we have about 8,000 illegal guns in Trinidad and Tobago. According to this website and organization, the University of Sydney, in 2017, the number of estimated guns, both licit and illicit, held by civilians in Trinidad and Tobago, 2017, was 43,000. In 2012, it was 30,000, which means it has increased between, according to this article, between 2012 and 2017 by 2,600 per year. If we are to believe that and the police are seizing 1,000, it means then, for the last of those number of years, 1,500 or guns, 1,600 have been dispersed throughout society, right, which is to me frightening. The number of licensed firearm users according to the article is 10,550 which correlates with the information we have from the SSA and the TT Police Service, which means we generally have 32,450 illegal guns in Trinidad and Tobago, according to this article, not the 8,000 as proffered by the SSA, and I kinda believing this more, given what we are seeing. And it went 2015, 7,801; 2016,

7,900 and in 2017, 10,550 and that is illegal guns.

But if we really have 32,450 illegal guns in Trinidad and Tobago, we have a significant problem. We are underestimating the scope and scale of the problem in Trinidad and Tobago. So we are feeling it that we have 8,000 or so guns, so that is what we are telling the public, but if we have 32,000 illegal guns in this country and the level of sophistication as AR-15 rifles, we are almost into the area of a war zone for 1.4 million people. This is of grave concern to me and should be to other members of the public and other Members of this august House. Also from the article, small arms exports to the US. The annual value of small arms and ammunition exports from Trinidad and Tobago reported by Customs is US \$727 and the small arms exports to the US Customs, imports to Trinidad and Tobago by Customs US \$385,784 and that is to buy illegal guns. Just as a comparative, Jamaica is, according to this article, in the realm of \$200,000, so compared to Jamaica we are not doing good, but we are still much smaller, and in terms of the population, we should be very, very afraid.

So, I would like to reference some of the concerns articulated by my colleagues, Senators Chote and Vieira, that one of my concerns in the proposals in this Bill is that more and more, we are being asked to abrogate and circumvent the role of the Judiciary in terms of the basic rights of citizens and put those in the hands of law enforcement. As I indicated, I went out of my way to underscore the sentiments of the Minister of National Security and the hon. Attorney General in terms of the scale of the problem we are facing. So to me that should be an easy fix but it still bothers me tremendously. Because institutions like the Judiciary, Parliament, TT police force get their power and authority from the Constitution; the supreme law of the land but also from confidence of republican credibility and what we are generally to me saying in this is that—and this has been articulated by

Commissioner of Police and the Minister of National Security who I really want to put on record as saying, I laud their efforts. I see these two gentlemen age in 12 months, turn grey with pressure, trying to keep this country safe. I believe their intention is noble. The only person who is not turning grey is the Attorney General [Laughter] because it is either “he have good genes or ah good bottle ah hair dye”. [Laughter] So it is either one of the two. I will defer to the good genes and resilience because “I eh believe yuh dyeing yuh hair”. [Laughter and crosstalk]

And I am making light of it but I see these two gentlemen putting everything into crime fighting in Trinidad and Tobago. No one wants to go into those jobs and fail, they are trying their best, and I know the provisions in this are in furtherance of that effort trying to get a grip. And even with that still and my understanding, I still have fundamental concerns about the fact that what we are saying is that—and as I said before, institutions, significant critical institutions like the Judiciary, get their authority and power from the Constitution but also from public confidence and credibility and what we are saying here is we have no confidence in the Judiciary to make these decisions. And yes, there may be one or two judges or magistrates who make the wrong decisions but do we abrogate the authority of the entire Judiciary because of that? [Desk thumping] I knew you were going to ask me to give way, but yes.

**Hon. Al-Rawi:** Thank you in my non-ageing self, appreciated, hon. Senator. I just wanted to remind in your reflections that nowhere in the bail law as last amended or even on this occasion, do we remove the Judiciary’s discretion, that was a feature of the old law for somewhere close to 20-years odd. We specifically amended that in the last round of amendments that we did and on this one, we specifically allowed the Judiciary two bites at it. There is no exclusion of the Judiciary at all whatsoever.

**Sen. P. Richards:** Thank you for the clarification, AG, but my understanding of it—and please correct me if I am wrong—is if a person is held with any of these weapons, the option for bail is removed.

**Hon. Al-Rawi:** No. It is exactly the case that the option is not removed, the person will go before the magistrate or the judge, the person will be invited to show cause, if necessary, why he should be granted bail, in other words then, it is a reversal of burden. That is done on a balance of probabilities. It then returns to the prosecution to carry out the position. That is under section 5(7)(a) of the Bail Act. Under section 5(1) of the Bail Act, there is an absolute discretion which is not affected of the right to bail. So in no circumstance whatsoever, do we exclude the Judiciary, otherwise that would be unconstitutional.

**Sen. P. Richards:** Thank you hon. AG for the clarification, through you, Madam President. And that was one of my greatest concerns because it would have been saying to the public that the fundamental right of appearing before the courts to plead your case in the circumstance where you are found in possession of these extremely dangerous weapons, weapons of what we might use the phrase “mass destruction”, has been removed, and to me, it speaks to a wider issue in Trinidad and Tobago in addition to that. Because among the real issues, as I have outlined before, if these guns are used in the crimes in the illegal market, how did they migrate, one, to the illegal market? How are we dealing with the issue of stemming the inflow of these illegal weapons into Trinidad and Tobago which we do not seem to be successful at doing? How do we deal with the TT Police Service although it has made significant strides under Mr. Griffith since his appointment almost a year and three months ago? But there are still, as Sen. Obika outlined, serious concerns about creditability, police malfeasance and corruption which may thwart this intended process. How are we identifying the actual number of illegal

guns in Trinidad and Tobago and why are these sophisticated weapons being brought into this country? What are the distribution methods through Trinidad and Tobago? How many of these gangs are in possession of these weapons and how these street gangs are actually operationalizing, moving these guns away from Trinidad and Tobago? And if we have 32,000 illegal guns in Trinidad and Tobago, we have a much bigger problem because I do not know that we had 32,000 illegal weapons in 1990 and though we have different structures and mechanisms in place now, we should be all concerned as nationals of this country if that is indeed the case, when we see the trends around the world. So these are questions we need to answer in addition to this.

In my closing moments, Madam President, I want to read out something that really disturbed me which is online for everyone to see as a proud and patriotic national of this country. *Trinidad and Tobago 2019 Crime & Safety Report* by the OSAC, the Overseas Advisory Council which is a joint venture between the Department of State and the US private sector created by then Secretary of State, George Pratt Shultz under Federal Advisory Committee Act, and this is really an advisory to American citizens or international travellers coming into Trinidad and Tobago about the state of affairs here and what you should and can expect in terms of your personal security. The article under the heading “Crime Threats” states that and I am paraphrasing:

“T&T Police Service...2018 crime statistics show a 2.5% increase in overall serious criminal activity compared to 2017. Violent crime remains a major concern for local security services and the general”—public.

“Despite the seizure of 988 firearms in 2018, 80% of murders involved firearms, highlighting the problem of imported, and often illegal, weapons and firearms smuggling. Drug trafficking and gang-related activities



continue to fuel the demand for illegal...”—guns in Trinidad and Tobago.

This is our public online profile in the OSAC report.

“According to TTPS statistics, there were 517 murders nationwide in 2018, after 495 in 2017...”

And we all know the statistics.

“The 2018 numbers represent an increase of 4.4%. The detection rate for murder was 16.6% for 2018, a decrease from 17.9% in 2017.”

So detection rate going down.

Gang and drug-related activities continue to drive the murder rate.

...There were 13,444 reported serious crimes in 2018, 331 more than in 2017.”

Going up. Approximately one-third of crimes resulted in violent incidents in 2018 and they go on to outline a list of the most serious crimes to paint the pictures for persons coming into this country about what they are facing in our beloved Trinidad and Tobago.

In March, the police found the bodies of four persons, two of whom were teenage girls. And I am paraphrasing. In July, gunmen opened fire on the group on the Boardwalk in Chaguaramas. In November, police discovered the body of a pregnant 19-year-old. In December, there was a home invasion of a Canadian diplomat’s home in an affluent neighbourhood in Port of Spain. The suspects tied up the occupant, ransacked the house and fled with jewellery and other valuables including a vehicle. That is what is out there about us.

Under terrorism threat and I am paraphrasing again. In 2015, the TT High Court declared Trinidadian national Kareem Ibrahim a terrorist. Paraphrasing. In 2015, an ISIS propaganda video featuring several young men claiming to be Trinidadian nationals fighting in Syria. Since 2014, sporadic videos have surfaced

on social media allegedly featuring Trinidadian nationals declaring their support for ISIS.

In 2015, Saudi Arabia accused a Trinidadian studying there of being a terrorist. He spent 16 months in Saudi Arabian prison before being released and returned to Trinidad and Tobago in 2016. This is what is being said about us outside and these are the facts from the American website that tells their nationals, if you are coming to Trinidad, this is what to expect. The long time when they used to say Trinidad is paradise, land of steelband and calypso is no more. “Yuh going and face serious crime.” So I say that to underscore the proclamations of the Attorney General and the hon. Minister of National Security.

One of the suggestions that I think is noteworthy in terms of ensuring that persons who are found with these weapons and other dangerous weapons is a suggestion by High Court Justice Frank Seepersad and I think the Police Commissioner endorsed this and this is a Rickie Ramdass article of November 6<sup>th</sup> in the *Trinidad Guardian*. I hope it is the *Trinidad Guardian*, I am hope I am not misquoting and I quote:

It is time for police officers to be replaced with skilled and legally trained people to prosecute matters in the Magistrates’ Court. High Court Justice Frank Seepersad seems to think so. He said far too often accused individuals have their cases dismissed or not convicted because of evidence so simple because the police prosecutors are ill-equipped to address.

And if we are addressing shortcomings in the Judiciary, we have look at the other shortcomings in the police service equally vehemently because it is not one part of the flowchart that is in need in Trinidad and Tobago and I understand this part is aimed at dealing with a perceived shortcoming, but if you are presenting proper cases, as colleague Sen. Chote indicated to the judicial officers, then you are not

going to get, in some cases, the granting of bail and the persons coming back out after having been found with an AR-15 in two, three days. So it is not one part of the process that we need to fix.

In summation, Madam President, this is not an easy contemplation by any means at all and I am still quite frankly in the process of making up my mind because more and more, because of shortcomings in several dimensions—and I appreciate the Attorney General’s clarification—we are being asked to become more and more drastic where our fundamental rights are concerned, and we are not talking about all of us but it is aimed at the few who are disrupting our society. But as Sen. Obika indicated, it is very easy for a corrupt police officer to throw an AR15 or a grenade in “yuh” yard and in many instances, as they say in local parlance “set yuh up” and it will take you a while to get out of that drama and your reputation is soiled already even if you get out of it. So we have look at it holistically and from all sides before we make decisions that in many cases may not be popular but may be right for Trinidad and Tobago at this time and I thank you, Madam President. [*Desk thumping*]

**Sen. Charrise Seepersad:** I think the Attorney General wanted to say something. [*Crosstalk*] Okay, sorry. Thank you, Madam President, for the opportunity to contribute to the debate on a Bill to amend the Bail Act Chap. 4:60. Madam President, I am prepared to support any measure which will reduce the incidents of gun-related and other violent crime in general. While I understand the frustration of law enforcement in the courts and recognize that continuous improvements are required in ever-changing conditions and systems, knee-jerk reactions and quick fixes are not advisable.

My simple interpretation of this amendment is that it seeks to change the constitutional rights of citizens so that anyone in possession of or in proximity to a

dangerous weapon can be arrested and denied bail. Despite numerous initiatives taken by Parliament and law enforcement agencies, there appears to be little or no significant reduction in gun trafficking and the use of guns in serious and violent crimes. In my view, the Bill is draconian. The weapons prohibited are defined as artillery or an automatic firearm or grenade, bomb or other like missiles. These are weapons and devices of mass destructions. These are the type of weapons used in mass shootings. While I do not want to imply hysteria, shootings occur locally almost daily. Internationally, there are examples of mass shootings which thankfully have not reached our shores. We can all recall the mass shootings in El Paso, Texas on August 03, 2019, where the gunman went into a Walmart Super Centre and carrying a WASR-10 rifle, a semi-automatic civilian version of the AK-47 and killed 22 people and injured 24 persons.

The Christ Church mosque shootings with two consecutive terrorist shooting attacks at mosque in Christ Church, New Zealand during Friday prayer on March 15, 2019, 51 people were killed and 49 injured. The police recovered five guns at the scene: two semi-automatic weapons, two shotguns and a lever action firearm. One of the firearms used by the gunman was an AR-15 style rifle.

At Sandy Hook Elementary School in Connecticut in 2012, Adam Lanza shot and killed 26 people including 20 children between six and seven years old and six adult staff members. Several semi-automatic firearms were used in the slaughter. The US Supreme Court cleared the way on November 12, 2019, for relatives of Sandy Hook Elementary School shooting victims to sue the Remington Arms Company, the maker of the rifle used in the massacre.

Madam President, this Bill is not removing the judicial powers to grant bail. I do understand the concerned voice by my colleagues about innocent persons being framed. We trust that police officers will exercise due care and attention

according to law in detaining and charging persons and thoroughly interview all suspects to ensure persons who are not a party to the crime are excluded. This should be explicitly phrased and included in the amendment so that the constitutional rights of innocent bystanders are preserved.

Madam President, it is my view that inadequate attention has been given to increasing the resources of the agencies that are required to examine and report on the firearm exhibits used in criminal cases. Firearm exhibits in criminal matters that are sent for analysis usually take years before they are returned with their respective certificates of analysis to the police complainants. This must mean that there is a significant backlog of cases involving firearms in the courts. With all the legislation that has been passed to streamline and speed up the process flow in the courts, little will be achieved if firearm matters are unable to be heard by the courts in a reasonable time.

Madam President, the procedures that will be used by and resources that will be given to the entities that are involved in the investigative aspects of firearm matters need critical attention for the Act to be truly operational. Strategic methods must be put in place to reduce the inordinate delay in testing firearms. What are the resourcing needs? Is it manpower, finance, equipment, space, leadership? For example, a weapon that is retrieved from a crime scene may have fingerprints of not only the perpetrator of the specific crime but of other persons who may have used that weapon to commit other crimes. Is there a databank which contains all the information and intelligence obtained from each firearm that has been retrieved and analysed in relation to a crime? Are there statistics that are compiled to determine the most frequently-used type of weapon for a particular type of crime? Has any attempt been made to match the type of weapons with specific gang or gangs?

Madam President, my concern is that we do not maximize or store or resort to the intelligence that can be gained from a single weapon when we are dealing with the holistic fight against crime. I am of the view that while we extol the much belaboured use of intelligence, serious intelligence and analysis, using current advanced techniques and tools are not yet there. We are still operating in silos and we are losing important intelligence that can assist in bringing persons to justice. We need cross-functional cooperation that works in practice.

Madam President, we do not manufacture firearms in Trinidad and Tobago but weapons are being brought into the country and distributed with relative ease amongst criminals. The Customs division and other agencies must be properly outfitted to detect the importation of weapons. It does not help that our borders are porous and weapons can be easily smuggled into our country under the very noses of those who are supposed to prevent the illegal entry of firearms. There is also corruption in services of those who are meant to detect and prevent crime. Further, some members of these services are involved in a myriad of offences involving firearms. It makes no sense to strengthen the law and hope that the legislation will automatically result in an increase in detection and conviction rates for firearm offences.

Madam President, I would like to urge the hon. Attorney General to audit the resources, that is, personnel, technology and systems for adequacy and effectiveness. I would also like to suggest that a special court be set up to deal with firearm offences. This will speed up the hearing of cases. People who plead guilty will be dealt with speedily. Persons who are wrongfully charged will be able to be heard on a timely basis. Persons who plead guilty may also be able to provide useful information to the court to help connect the dots and increase the crime detection rate.

These are my thoughts and suggestions for making this amendment more than a quick fix or the proverbial plaster to a festering sore. I thank you, Madam President. [*Desk thumping*]

**Sen. Dr. Varma Deyalsingh:** Thank you for very much, Madam President, for allowing me the opportunity to contribute to this Act to amend the Bail Bill, Chap. 4:60. Six months ago, Madam President, you know, we were asked to look at the Bail Bill, look at amendments and as Sen. Richards said, he agonized over it then and now, and it is a similar thing, Madam President, in the sense that you know, we were looking at balancing the rights of the citizens which is entrenched in our Constitution with looking at the greater good of society, protecting society on one hand as a whole. So, again, I had to grapple with the situation then, six months ago and here, it brings back a level of distress where we are, again, asked to look into this amendment of the Bail Bill.

And what I must say, Madam President, sections 4 and 5 of the Constitution does in fact show the rights that we have. You know, the right to liberty, the right not to be deprived thereof except by due process of the law, the right to protection of law, the right not to be subject to arbitrary detention and imprisonment, the right of not to be deprived of the right of a fair hearing in accordance with the principles of fundamental justice for determination of rights and obligations, the right not to be deprived of the right to reasonable bail without just cause. So, therefore, it is there. It is there as a right and we have seen the changes throughout the years where various governments that tried to institute changes and we have seen those in Opposition when they were in the Government, there were various attempts made to amend the Bail Bill. We had the 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. So therefore, we saw the need for the then Government to say, listen, something is not working

here, criminals are probably getting the upper hand, let us see if we could somehow change our laws to see if we can help tip the scale adjusters probably back into the hands of the law-abiding citizens and away from the criminal elements who may be seen to be getting away.

So there were probably five amendments which came from the now Opposition then Government and again, each of those amendments, the arguments were to try to get this three-fifths majority and the Senate then and the laws then were passed where they actually got their three-fifths majority and it actually strengthened the anti-gang legislation, the anti-kidnapping legislation, trafficking in persons legislation and it seems that the need for the three-fifths majority was something that the Opposition then thought was much needed at the time. And similarly, the Government of today, again, came with these Bail (Amdt.) Bills, the one six months ago and the one today, to try to see if we can get the three-fifths majority to somehow strengthen the system to fight the criminal element.

Madam President, we have about 500 murders approximately. I mean, Trinidad is in a state of—you know, I am thinking it is a state where people are scared to go out, people are worried: will they be shot? We have seen some figures from the Attorney General, I think, mentioning the amount of guns used in those 500 murders. I think it is around 300 and something. It is a lot. So the guns are out there, the guns are doing the damage.

**3.20 p.m.**

Sen. Richards also mentioned the fact that the international profile of Trinidad looks bad, because it seems that, you know, people would look at us as a gun-running country. And somehow, I think, we have to do something. So we have to do something about it. We have to see if we can help somehow. And if the 17<sup>th</sup> amendment to the Bail Act can help, I again, like Sen. Richards, will have



to agonize: Is it something that we will give up the rights of an individual, give up the rights of a citizen very easily? Because we have been doing it in a piecemeal fashion.

We have seen when the legislation came out before. When it first came out, I think it was in 2005, somewhere around there, we looked at the matter that, you know, if you are going to deny bail, you could deny bail up to 60 days. And then gradually it went from 60 days to 120 days. So again what we have seen, it started off with 60 days. It went to 120 days. So the rights of the individual again, the rights of the person who is probably denied bail, let us say that person is innocent, moving from 60 to 120 shows that we were willing to erode the rights of the individual, the liberties of the individual then.

And the graduation from 60 to 120, when I looked at that, I wonder how come, you know, it was in 2011, Act No. 9 of 2011, that we started changing the no bail consideration from 60 days to 120 days. So starting with 60, going to 120, it makes it a little more draconian. So I am saying, you know, Act No. 11 of 2011, we introduced the anti-gang legislation. And again there was the ouster clause where we say the court now, the court may not be able to get involved in certain instances where the bail is there for certain cases.

I am saying that right now, with this Bill before us today, it is a little different from the one that we contemplated six months ago. The Bill we contemplated six months ago mainly had instances of repeat offenders. For instance, let us say there was someone who was already on a charge, a conviction, for some weapons with guns, you would look at the firearms. The second would say it is really a second attempt. And if you are charged with possession of firearms and you have a pending charge for possession, you are denied bail. So it looked at, not just a first-time offender, but it looked at mainly pending charges for

possession. Again it had, if you are charged with a schedule offence but you have a conviction for an offence that carries imprisonment for more than 10 years, you are denied bail.

So what we looked at then, look again, if you are charged with a schedule offence and have a pending charge for a schedule offence, you are also denied bail. It looked at cases where persons may be repeat offenders. It looked at categories, that if you have already been charged with an offence, we would now look at you, the courts would now look at you, and say we are going to deny bail because you seem to be in this habit of crime, doing the crime and you are there and we have to teach a lesson. We have to get those persons in.

But this category we are looking at, the Bill is very short. And when I looked at clause 3(d) of the Bill, we are now going to deny a person who has a 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. So it is no longer looking at a criminal element who has a history of flaunting the laws, who has a history there of getting away and coming with a repeat offence. This is now first-time offenders. So is there a danger there? And I looked at it.

Well sometimes, we may say it is a first offender, the law should be easier on the first offender. But Madam President, sometimes, that is the first time you may catch somebody in the Act. So having a first offender, in my opinion, does not necessarily say we treat a first offender with a degree of like a tap on the wrist, a smaller charge. I think a first offender may be the only time we may have been able to get an individual. So, therefore we may have to look at the laws in such a way that treating the first offenders, just as how we treat repeat offenders. So, I do not have a—you know, is it not really a bitter pill for me to swallow asking the

first offenders to be treated differently from repeat offenders.

But, Madam President, I wondered why this Bill came today. Why was it introduced today? Is it that there was a lapse six months ago and it was an oversight in terms of the Attorney General's Office? Was it due to the fact that this recent magistrate's decision, which has caused some concern, in terms of the fact that the amount of guns that was in the possession of that individual who got bail? What is that that caused the furore that we said we missed out on something?

But in any case, if it was a lapse in the Attorney General's Office for not bringing everything forward, that is not a problem. We bring it forward. We will deal with it. If it is due to the knee-jerk reaction of the magistrate's case that I think the Commissioner of Police spoke about, I am thinking this might be overkill. Because, you see, the magistrate may have made a decision. But in the magistrate's opinion he may have assessed that case. He may have seen something amiss. He may have seen cases where he thinks the police probably acted inappropriate, and in his opinion he may have thought, this is a case where I will grant bail. And why I am thinking it is overkill, because the Attorney General's Office, or the DPP or even the police prosecutor at the time could have objected to the bail. They could have told the magistrate: "Hey, magistrate, we do not think this individual should have been given bail because of the seriousness of the charge or whatever we found him at." So there were other avenues, I am thinking, instead of coming to the Senate to try and change this. There were other avenues that we could have used to see if we could still appeal that decision, instead of having to run to the Senate to say let us change the laws.

Madam President, I look at the fact that, you know, there were successive changes in the previous administration, each one asking us to go after the rights of the individual. Even in this present legislation today, we are asking for three-fifths

majority again. We are now asking again to look at the rights of the individual, comparing it to the rights of society.

In psychology there is a term called a foot-in-the-door persuasive approach, where you ask a little thing. You get people accustomed to giving up the rights of an individual. When they get accustomed to that, then piece by piece as we get accustomed, the foot-in-the-door approach is you then convince everyone, well you did it then, the three-fifths majority so let us go a little further. Let us go from 60 days to 120 days. Let us go from repeat offenders to first-time offenders. And that might be a psychological approach to get us to agree. So far, if that is so, well, I am saying it is there but we have to be aware of it.

So, Madam President, I looked at the fact that the Minister of National Security and the Attorney General, they have a very hard time. Their efforts, I think, were commended by Sen. Richards, and I want to join in. I mean, it is not an easy job to be out there. It is a lot on the shoulders of two young men. I mean, I consider them like, what you say, two crime fighters, the duo, Batman and Robin, I think, to try and save our nation. But now—[*Interruption*]

**Hon. Senator:** Who is Batman?

**Sen. Dr. V. Deyalsingh:** They will have to decide who is the Batman and Robin. But there is a new super hero, CoP, the Commissioner of Police has joined you. So three of you out there are really, you know, super heroes. So three of you out there, there is a lot, a lot on your shoulders. The nation is depending on you. The nation is hoping that something positive could come out. The nation is hoping that we can tackle this crime situation to get us a better national picture. The persons out there need to know that they are going to get some relief from the crime.

We have to also be cautious though that, you know that, we do not have a knee-jerk reaction to whatever the Judiciary does. Because if you find a decision is

given that the Police Commissioner does not like, I mean, there may be other ways to handle that by appeals and training your police prosecutors to appeal certain decisions. There may be other ways. But you see, I am not sure if this was a knee-jerk reaction. I am not sure if it was really needed to help the fight of crime. And the Police Commissioner, I think, had alluded before that he needs the legislation. And I think the last Bail Bill that we actually agreed to, the majority of us agreed to, did in fact give him some other ammunition to fight crime.

So, I am the first one to say that I will be willing to support certain legislation that I think could be for the benefit of our country. But the apprehension I have, Madam President, is the judicial figure. That magistrate in that case, I wonder how he may have felt being criticized in the media, social media, probably even in the House that, you know, people may be questioning his judgment? And we really cannot tell why he went that way. Was he aware of any other information? And it leaves a little bitter taste in your mouth that, you know, I might be part of a process to try to so-call "manners" the Judiciary, to tell the Judiciary: "If you do not give us certain things, in terms of judgments or no bail, or full extent of the law, if you do not give us that, we will just come to Parliament and change the laws." So, we have to be careful that you are not sending a wrong message to the Judiciary.

So, Madam President, there is a crime explosion. There are certain cases where persons have been caught up in the crime. We have people, collateral damage, as they say, getting shot, being in the wrong place. We see there is a need to do something. We see there is definitely a lot of ammunition out there that basically has me frightened, when I see the ammunition, the grenades. Those are things, I think, as a person in the Senate, I cannot go and fight these persons hand to hand, or gun to gun, but we can use legislation. And this is what I am thinking.

We can use the legislation to see if somehow we can fight these individuals who does not seem to be bothered by the laws, who was not even affected by all the five amendments that came before, from the last Government, and who seem to be going about their business hunky-dory, as if there is nothing to be scared of.

So we are seeing more guns. We are seeing more killings. We are seeing citizens being traumatized. And I have seen citizens traumatized after they have been robbed. And part of my duty, Madam President, is to see if I can give some ease to the citizens. And I am thinking, we are asked to put further restrictions to the right of bail on the individual. So I want to balance this, and I feel uncomfortable because, you know, we have to appreciate, as Sen. Vieira said, there may be rogue elements in the police service. There may be cases where you have—he has asked for the legislation to be put forward that if police officers abuse their authority, if police officers frame-up someone, they can have that frame-up legislation, and I want to second that call for that.

There are cases, there was a recent case, Madam President, where the judicial officer actually questioned the shortcomings of the police officers. And I quote from the *Guardian*, dated the 14th of December, 2016:

"Siblings are freed as police fabricated evidence"

And in this case, the magistrate then said she actually believed the claims of the two siblings over the claims of the police, and the two siblings who were actually freed for illegal drugs being planted in their home. So, while I would want to support this legislation, I would like to see if anything could be put in place to protect the rights of individuals like this. Because as recently as 2016, we have had criticisms from the courts of the police involvement in this matter.

I would like, Madam President, if somehow, that if we are going to put further restrictions on the right of bail, that we do so in the sense that if there is any

evidence that you are going into someone's home, you are going in to look for guns, you are going to search a car, I am asking and hoping that the Attorney General could give us some sort of a guarantee, some sort of assurance that video evidence will be there. Because we have been promised that body cameras would be given to our police officers. So if a police officer is going into my home, I would want to say you know, bail as we are saying in this case, bail can be granted still, Madam President, in exceptional circumstances. And I am thinking in exceptional circumstances, yes, we have case law that will actually tell us what the exceptional circumstances are. But I am thinking, if somebody is going to search my home, I would rather the video evidence is there, so we can now look at it, so we can somehow cut down the level of police framing us or framing individuals that was mentioned before. So the video evidence, I think, is very important, so nobody could scream it was planted. This will serve as a safeguard both for the police officers, so people would not be able to say they planted evidence, as well as the individuals who may come out now and feel aggrieved.

So granting these restrictions to the right of bail, I am thinking, we have to tidy up the Evidence Bill. We have to also ensure, Madam President, that since this legislation looks at first offenders and some people might say well first offenders, you know, it is not like what happened six months ago. I will be a little more comfortable, Mr. Attorney General, if this piece of the legislation is given a sunset clause for one year. And one year would at least, looking at the first-offenders especially, give them rather than, you know. So one year we will look at this piece of legislation and decide, hey, it is working, it is not working.

And I am thinking, Madam President, I may be more comfortable, instead of the 120 days for first offenders, bring it back to the 60 days, where I am thinking that, you know, it will ensure that, if it is really a first offender set up, I will be

more comfortable giving them 60 days rather than 120 days in our horrendous system that exists in the jails. So, those are the two areas that I would hope we could get some sort of agreement, some sort of comfort, in terms of giving up the rights, but at least putting certain aspects in place that we can help these individuals, just in case it is an individual who has been framed.

You see, Madam President, while we are coming with these pieces of legislation I ask, you know, yes, it is necessary to help fight crime. But I am saying, most respectfully to the Minister of National Security: Why not borrow the Jamaican issue where they the limited state of emergency in certain areas? Because we want to tackle crime. We cannot tackle guns. So we should not go with it just in the legislative aspect. We use other methods; limited state of emergency. Why not have an all-out attack like a joint army/police patrol? These are things, I am thinking, we should have in place, as well as changes in the legislation.

Madam President, as I close, I look at the fact that, you know, we are asked to take away the rights of an individual for bail. But those rights are not absolute. Because remember things like murder, treason, piracy, hijacking are offences for which the death penalty is fixed by law. It is already, you know—so it is not really, the right to bail is not absolute. So taking away this right, to me, in certain instances, with safeguard—I have no problem in giving the support of it once I am thinking that I will get a level of comfort of the evidence, video evidence being there and probably looking at the fact that the sunset should be one year to review this piece of legislation.

And the third aspect I have asked for is that we look at the 120 days and bring it down to 60 days. Thank you, Madam President. [*Desk thumping*]

**Sen. Wade Mark:** Thank you very much, Madam President. Madam President, I



rise to speak on a Bill to amend the Bail Act. Madam President, this Bill that we are dealing with comes on the heels, as you would recall, on a Bill that we have just enacted into law in this country.

I sought to determine very early, because of the nature, far-reaching and sweeping consequences of what is before this honourable Senate. The first area that I wanted to clarify is to get the Government to tell this Senate, and the Attorney General in particular, what sort of consultation did the Government/the Attorney General had with the various bodies like the Law Association and the Criminal Bar? Because Madam President, I can tell you from research that I have conducted on this matter, when it came to previous amendments to the very Bail Act back then 2016/2015, both the Criminal Bar, as well as the Law Association came out against the attempt both by the last administration and this current administration to restrict the rights of citizens, as it relates to accessing bail, as they are entitled to under the Constitution.

And here it is, Madam President, we are being asked today to engage in further restrictions. The only difference, Madam President, is that the Government is saying we must move away from someone being charged, or someone who has a pending charge and is in possession of what we have described in the legislation as a prohibited weapon, or somebody who might be engaged in the trafficking of firearms. That person, for the first time, Madam President, first time will be denied bail and therefore be incarcerated for 120 days.

We believe, Madam President, that that is draconian. It is very, very dangerous. And we believe the entire piece of legislation that we have before us is unconstitutional. It is disproportionate and we would like the Government to consider, as we proceed in this debate, certain amendments to the legislation. Because, Madam President, there is no doubt that weapons of the nature that we

have been told, whether it is AR-15, whether it is semi-automatic, whether it is automatic, whether it is artillery, whether it is bombs, whether it is grenades, Madam President, we all know that these are weapons that ought not to be in the hands of people, unless they are out to do harm to citizens. So, we understand the need for us to take action.

But, Madam President, in taking action, we have to be very careful and mindful that we live in a society in which the Constitution is the supreme law of the land. And there are rights. There are freedoms that every citizen enjoys and is entitled to, and you should not abrogate, breach, violate or subvert those rights unless, Madam President, you can justify it in a society that has respect for rights and freedoms. And we know, under sections 4 and 5 of our Constitution, there are rights outlined. Madam President, we believe that the Government has reacted in a manner that clearly, the evidence is showing that it has not been properly considered or thought-out.

Madam President, we have evidence from both the Attorney General and the Minister of National Security, that between 2009 and 2019, some 40—I want to be generous, it was 43 machine guns were discovered, up to the time in June. As of November, it went up to about 46. So, Madam President, you can see that we are not talking about, for instance, a situation where thousands of automatic weapons are being discovered.

And, Madam President, may I remind you that there was no finding, or no location, or no discovery of machine guns AR-15, up to 2015, in this country. That is the statistics we got. But come 2016 into 2017, into 2018, Madam President, we are seeing a number of these weapons being discovered. So we have to be very careful, Madam President, that we are not creating a situation, because of a particular kind of development that we have seen, and using that to justify the

restriction and the compromising and subversion of a citizen's rights.

**3.50 p.m.**

So, Madam President, I have seen in the Trinidad *Guardian* sometime in October of 2019, I think it was the 1<sup>st</sup> of October, where the Attorney General is reported in the Trinidad *Guardian*, the headline was “Amendments to Bail Act on the way”. And in that article we got the impression from the Attorney General in this article that the Government was bringing to this Parliament an amendment to the Bail Act on the heels of some discovery, some development that took place and that resulted in someone being granted bail. But as you know, Madam President, I am not a lawyer, you are. We cannot be engaged in what is called ad hominem legislation.

And what I have before me based on an article dated the 1<sup>st</sup> of October, 2019, is our Attorney General indicating how astounded and shocked he was when a judicial officer granted bail to a person who was charged with having nine automatic firearms in his possession. This is what we are being told in this article in the Trinidad *Guardian* and that is prompting the Government to return to Parliament and ask for a significant improvement in the bail laws as it relates to the possession of firearms. And, Madam President, I do not want to believe it, that the basis of the legislation that is before us today had to do with what is in this article and I would not detain you too long on that one.

What I can tell you, Madam President, we were all here in this honourable House on the 12<sup>th</sup> of June, 2019, Madam President, and the notes are here we were in the committee stage. Sen. Heath made interventions on this whole question, Madam President, of “possession”, and charging and individual for possession and the dangers involved in that. Madam President, under the Dangerous Drugs Act and the Firearms Act there is something that we understand known as “deeming

provisions". It simply means from my layman understanding that if the police were to come to your home in search of some—on intelligence and they discover one firearm in your home that is put there by somebody and six of us are in that home, Madam President, under the Firearms Act, six of us are being charged and will be charged under the Firearms Act, similarly, the Dangerous Drugs Act.

And, Madam President, I was in the committee stage as you were and I have the verbatim notes where that point was prosecuted to the extent, Madam President, that the Government relented, the Government gave in and they removed an offensive provision in the Bail (Amdt.) Bill of that month that we were debating it and discussing it, in order to ensure, that it would not apply to simply possession and it simply would not apply, to by extension a first-timer. It is here. The AG is on record as talking about the potential dangers involved in this provision. But here it is, this was said in June. It is in the *Hansard* record and the Government removed that provision and then they brought it back in this Bill, Madam President, it is in this Bill.

So, Madam President, we are saying to the Government, first of all, we would like the Government to fight and to win the war, or the battle against crime. So, first thing that we would like to clarify, Madam President, whether the Government based the need for this particular amendment on this story of this nine AR-15 machine guns that were found in some vehicle where a young man was asleep, 19 years old. And, as a result of that discovery, we had a narrative being generated by the Government.

Madam President, I took offence in the last debate that we had on this matter, when we were told as Senators that we did not understand the ground, we did not understand the reality of what is going on in this society. It was as if we were being told by the Government and the Government's spokesmen, that you

Senators do not understand what is taking place. And therefore, what was being generated here, Madam President, is like hysteria and fear. The Government is trying to inject fear, not only in the population, but I was quite astounded when they were trying to inject fear in the Senate and in the Senators. I could not believe, Madam President, what I was hearing. I have been in this place for some time now, and I could not believe it.

And, Madam President, we have to be very careful. Rights are fought for, people die for rights and when those rights are established, you cannot come here and simply try to remove them by injecting fear in the population, and want us, Madam President, to contribute to the surrendering of the rights of the citizen without any real concrete evidence before us.

Madam President, why should there not be bail for a first-timer when the Constitution says that you, and I, and every citizen is entitled to bail in this country unless you can show otherwise? And the only line of authority under our Constitution and in the laws of T&T that can determine that are the members of the judiciary, be they magistrates, be they judges, Madam President. But we are being asked to take over the functions and the role of judges and magistrates, they may not be telling us that in a direct way or words that I am using, but when you look at the legislation, the end result is that we are being asked as Senators to determine these things.

Madam President, you know under the Bail Act, section 6, there are criteria and guidelines that a magistrate and a judge can use to determine if a person should be granted bail or not. But we are being asked, Madam President, that if an individual is setup and a gun is found on his premises, or in his vehicle we are being told, Madam President, mere possession, it does not matter how it happens, you are not going to be granted bail for 120 days. And the Constitution says that is

a subversion and a compromising of your liberty as a citizen of this country. So we have to be very careful as citizens and as Senators, Madam President, how we go about, you know, dealing with these matters.

So we are asking the Attorney General, Madam President, through you, the initial Bill that we passed and was assented to on August the 19<sup>th</sup>, had a three-year sunset clause. I would ask the Attorney General through you whether the amendment that we have before us, whether what we passed, this amendment that we are dealing with, whether this amendment will be carried forward in the context of the sunset clause, or whether this amendment that we have here stands alone. If it stands alone and the Attorney General will have to tell us, we on this side of the House, the Opposition, we are calling for a sunset clause to be included in the legislation. If the Attorney General cannot give us the assurance this evening, clear, that this is not—in other words, the Bail Bill that we passed that has a three-year sunset clause and what we are dealing with, it follows that this Bill will carry a sunset clause as well and therefore it is deemed so to do. So that is the first area we would like the Attorney General to clear and clarify for us because we are insisting that there must be a sunset clause in the legislation that we are dealing with.

Madam President, we do not support that an individual who is caught for the first time, a first-time offender should be denied bail for possession. We are saying that that person should go to the courts and we are saying that the courts will determine that. We are going further, we are saying that the person must have either a charge pending or he has been charged. Either he has a charge pending and he is found in possession, or he is already charged, Madam President, and he is caught in possession. You can come and indicate in those circumstances that that person will not be granted bail for whether it is 60 days or 120 days.

But we cannot agree to any first-timer or first offender not being granted bail, Madam President, for possession. We have to be real, I think someone made the point, I think it was my brother Sen. Taharqa, he made the point the Commissioner of Police has been trying to get his officers and the Second Division officers to do a lie detector test and they said they are not doing it, because it is voluntary. Right? But you know what, they are not doing it. They refuse to do it. And, Madam President, we have so many instances and cases before us, live cases. Sen. Chote outlined some for us recently. Sen. Vieira said as a practising lawyer he knows of several instances, where innocent people were framed, Madam President. The courts based on case law and cases, determined by the courts. We have evidence and we have cases showing where innocent people were set-up and the courts ended up compensating citizens who were innocently set-up.

And the Government comes here, Madam President, in the year of the Lord 2019, the 19<sup>th</sup> of November, to tell this Parliament, “trust the Executive, trust law enforcement”. I take umbrage, to anybody, whether it be the Chief Justice, whether it is the Commissioner of Police—

**Hon. Senator:** You are shouting.

**Sen. W. Mark:**—whether it is the Deputy Commissioner of Police, or whoever out there, DPP, telling us in this Parliament—sorry, Madam President—telling me and us in this Parliament how we must conduct the affairs in the interest of the people. We are law makers, we are here to protect the rights of the people, and nobody can—you think I could tell the Commissioner of Police how to do his work? Man, the first thing he will have a press conference and he will dismiss me.

I could tell the Commissioner how to do his work? Or could I tell the DPP how to do his work? Madam President, let us play in our sections, nah. We are responsible for lawmaking, we are responsible for protecting the rights of citizens.

Listen, the Parliament is almost—the Parliament represents the oxygen of democracy. Without the Parliament, without the legislature, you would easily run into a dictatorship. [*Desk thumping*] So do not come here and tell me, and tell us and try to inject fear into us, and say give more power to the police. The Executive controls the police. Do you not understand that? The Executive controls law enforcement, Madam President, and what the Government is telling us to do, is to give them by extension, more power.

Madam President, may I remind you, that freedoms are never taken away in one fell swoop, by small degrees, sometimes almost imperceptibly, they are removed, and before you know it, you are living in a fascist dictatorship. That is how it happens, and what is happening before our very eyes, we are seeing where the Government is restricting, and removing, and reducing the rights and freedoms of our citizens on a daily basis through these measures that they are bringing here. And then you do not support them, they go outside and they engage in all kinds of, you know, the normal thing—

**Sen. S. Hosein:** Blame Kamla.

**Sen. W. Mark:** Blame Kamla. “But we go deal with that.” Right now they are blaming us for data mining when they are the biggest data-miners. [*Desk thumping*]

**Madam President:** Sen. Mark, I urge to confine your—yes.

**Sen. W. Mark:** Yes, yes, Madam President. I am guided by you. Get into your section. So, Madam President, we are saying that the separation of powers, these are things that we have to deal with. There is another area, Madam President, I spoke about one, first-time offender. Secondly, sunset clause. There is another amendment that we are proposing. Persons who are before, who are denied bail, first-timers again, denied bail for 120 days and the case, Madam President, during



those 120 days, just merely called, they are in jail for the rest of their life. You just have to call the case, start the case and you are there for the rest of your life.

Madam President, we need to amend that situation and we are proposing, so if the Government wishes to work with the Opposition to get this Bill passed, the ball is in their court. We have amendments that we want to put on the table for consideration, but we are not rubber stamping any draconian, oppressive measure without making the appropriate amendments in order to protect the rights of the citizens of this country, Madam President.

So, Madam President, I tell you that we were given the impression and, Madam President, I do not know at what stage the truth will be told on this matter that led to this piece of legislation before us today. I do not know at what stage it will be told. But, Madam President, you know, if you do not have a criminal record, you have never been convicted of any offence, then if you go before a court, the magistrate must look at you in a more favorable way when compared to someone who would have had a criminal past.

Madam President, would you believe or would you want to believe that this so called AR-15 weapon that we have been hearing about, it was components? They were broken up, they were not, for instance, found in their original form. And therefore, the person who would have been charged, what would that person have been charged for? Not the components? But, you know, everybody believes in this country that a person was charged for possession of nine AR-15s, not components, eh. [*Crosstalk*] When you say you charge somebody with components, you understand, as opposed to saying 15 or 10 or nine, let us be serious, nah. [*Crosstalk*] Yeah, it is like you telling us, Senator—

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

**Sen. W. Mark:** Sorry. [*Crosstalk*]

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

**Sen. W. Mark:** Madam President, I want to indicate that under our Constitution there is the presumption of innocence until one is proven guilty. The attorney General has brought legislation here seeking to reverse the burden of proof. You are guilty, prove your innocence. That is what we are being told here. Again, Madam President, trying to turn our Constitution in all different directions.

So, Madam President, I have made it very clear that when it comes to firearms and the prohibition of firearms, we know under the Firearms (Amdt.) Bill, what it means when we speak to the issue of a prohibited weapon. We know what it means, Madam President.

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

**Sen. W. Mark:** Thanks, Ma'am. Madam President, when we look at clause 3 of this Bill we would see under new subsection (3A):

“...‘prohibited weapon’ means any—

(a) artillery or automatic firearm;”—it means—

“(b) grenade, bomb or other like missile.”

**Hon. Senator:** “Miss-ile.”

**Sen. W. Mark:** Some say “miss-ile”, some say “missal”, it all depends on the tone. You know about “mistle-tone”? Madam President, so at the end of the day these are some of the realities that we have to deal with. I think Christmas is around the corner. [*Laughter*] So, Madam President, at the end of the day, these weapons that we are talking about here in clause 3 of the Bill; artillery, automatic firearms, grenade, bomb and “missal” or missile, whatever you call it. Madam President, the reality is as Sen. Seepersad said, we do not produce these things here, we do not produce these things here.

Both the Attorney General and the Minister of National Security have

admitted, Madam President, that the borders are porous. So rather than go to the source of the problem, lockdown the borders, deal with the migrants, tighten Customs, strengthen your border control ports of entry, you know what they prefer to do, Madam President, they prefer to take away our fundamental rights, put the young people in jail, Madam President, rather than deal with the issue, this is a lazy Government. [*Desk thumping*]

They are taking the easy way out, Madam President, and they want us to support these things. We are not going to be compromising, undermining, subverting, breaching the fundamental rights of the people unless there are proper checks and balances to ensure that freedom is there, so when you lock me up I can go to a judge. So when you lock me up, Madam President, and you tell me I cannot go to a judge, the judge cannot have any right to determine—and I do not support what the Attorney General is saying, eh. It is not in the law that is before us. It is clear, what the Government is trying to do, Madam President, is to oust the judiciary from the legislation. That is what they are trying to do. And they come up with some kind of exceptional circumstances, whatever that means, wishy-washy.

But at the end of the day, Madam President, we have to ensure that we protect the rights. So, I call on the Government, deal with inequality, deal with poverty, deal with the 100,000 people who are unemployed in this country, deal with the social crisis in the country and do not react, Madam President, only to punitive measures. This thing is not about punishment, bail is not a punishment, Madam President, and that is what they are doing, they are using bail as a punishment. It is to make sure that I, if I commit an offence or I am charged, Wade Mark must appear in court. If the judge believes or the Magistrate believes I would not appear, then they could deny me bail.

Madam President, I know my time is up. I want to let you know, we shall be circulating appropriate amendments to this piece of legislation. It is up to the Government, they can reject it, they can modify it, they can dump it, that is their business, they have the majority but they want our support, but in any event we want to work with them and we look forward, Madam President, to the committee stage where we will be able to engage the Attorney General in this matter and have some serious way forward for the people of this country. I thank you very much, Madam President.

**4.20 p.m.**

**The Attorney General (Hon Faris Al-Rawi):** Thank you, Madam President. Madam President, I thank hon. Senators for their contributions in this debate. I am torn at this moment as to whether I should take the bait that Sen. Mark and the Opposition offer to respond to scandal and scurrilous issue and breach of constitutional right and a bunch of irrelevancies to this actual core focus, rendered both on the first sitting last Tuesday and, again, repeated today, largely by Sen. Mark, or whether I should actually speak to the Independent Bench and the solid observations brought. [*Crosstalk*] I am hearing Sen. Hosein in crosstalk, asking whether we have a right to privacy. And that, of course, takes us down to the path where the Opposition tells you, that when the Government—and when I say that there is no such thing such as an absolute right in law, they somehow believe that there is.

The fact is that the Constitution is pellucidly clear. Section 2 of the Constitution says that it is the supreme law. Sections 4 and 5 set out the enshrined rights in our Constitution. One of them, section 5(f)(ii), provides for the right to reasonable bail and not to be denied, except for just cause, effectively, paraphrasing. Section 13 of the Constitution clearly says that you can infringe or

abrogate the section 4 and section 5 enshrined rights in two circumstances: one, where you have a special majority of three-fifths of the House or Senate voting and, two, importantly, where there is a qualification that the law is reasonably justified in a society which respects democracy and the rule of law such as Trinidad and Tobago.

Section 54 of the Constitution is absolutely clear that there could be a derogation of rights in certain circumstances where there is a deeper level of entrenchment. It may be two-thirds majority, it may be three-quarters majority. So there is, Sen. Hosein, if you do not know, no such thing as an absolute right. That has been anchored in the Privy Council decisions, too numerous to mention. Of course, there are very sensible dicta as well in our Court of Appeal and in our High Court. Perhaps, it is under the continuing legal education seminar that some of my colleagues on the Opposition Bench would catch up with that.

Sen. Vieira said something which was very important. Sen. Vieira said that we ought to handle this Bill like a grenade. Sen. Vieira also went on to say, the question will be whether section 5(7A) of the parent law, which we amended the last time we amended Bail law, is the antidote to possession. Now, effectively, this debate really has had resonating on this floor, a constant refrain. The refrain is that we are taking away the right to bail.

I want to say absolutely clearly that this law and, very importantly, the law that we piloted and passed, Act No. 17 of 2019, this law does not take away the right to bail, and I will demonstrate that in two conclusive ways: one, by way of reference to the law itself as it has been amended by Act No. 17 of 2019 and also by reference to a case, the Court of Appeal judgment in Danielle St. Omer, and that case I have, in fact, circulated to all Members including the Opposition, by way of the Clerk, having pitched that particular judgment out, and also taking the

opportunity to provide hard copies to Members as well, and that particular judgment of the Court of Appeal, written by the judge who provided the majority decision—the decision which is a whole decision, that is, Mr. Justice of Appeal Smith—that anchors that there can be no doubt in our mind that we are not excluding or ousting the jurisdiction of the court in any circumstance whatsoever. I think I have made that pellucidly clear. It is now only to demonstrate it by virtue to statute and by virtue to law.

First of all, hon. Members have before them—and I circulated this on the last occasion—a marked up copy of the Bail Act. I want to remind of this—Sen. Vieira would know this well. I have now spent roughly nine years in Parliament, and I can tell you in the five years and three months that I sat in Opposition and, certainly, times prior, it was never the habit of any Government sitting to circulate marked-up copies of law. Never. I asked the CPC's Department, why that was the case? And it was said: "Well, you will be giving them too much ammunition to fight you with if you make it too clear." That was not the CPC's decision, it was what previous Attorneys General seemed to be saying, "Look, do not clarify the issue for the Senators or Members of the House, let them truck through the law, have to write in to a printed copy of the law and make sense of it." I took a very deliberate decision that under my watch, I would provide all information to hon. Senators, all information, so that we can actually share and understand the perspective. So you have before you the marked-up version of the Act.

First point, section 5 of the Bail Act starts off with section 5(1):

"Subject to subsection (2), a Court may grant bail to any person charged with any offence other than an offence listed in Part I of the First Schedule."

Today, this Bill does not propose an amendment to section 5(2) of the Bail Act. We are proposing an amendment to section 5(3) of the Bail Act. In amending

section 5(3) of the Bail Act, we are inserting that if you come before a court charged with possession of an automatic weapon—meaning a weapon of war as defined, submachine guns, et cetera—Sen Seepersad read for us, quite correctly, what five guns did in the United States of America, what five guns did in the United States of America, what three guns did in Christ Church in New Zealand effectively, in total, killing hundreds of people.

We also propose that if you come before the court on the first occasion and you are charged with trafficking of firearms, in other words then, two or more firearms, we say in those circumstances that you will, effectively, run through the mill of having to convince a court in subsection (7A)—that is section 5(7A) which says:

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

So, step number one, we are not amending section 5(1) of the Bail Act. Section 5(1) only effectively excludes capital offences, treason, murder, et cetera. We are not amending subsection (2), which subsection 5(1) makes reference to. We are amending subsection (3). We are saying if you come before the court for the very serious thing of being in possession of an automatic weapon, a weapon of war or if you are on a charge for trafficking of firearms that your must fall to a reversal of burden.

Now, Sen. Mark made the most outlandish statement saying that we were twisting the Constitution in reversing the burden of proof. Sen. Mark then said the Government is lazy. No Sir, the Government is not lazy. The definition of “laziness” is where you do not read section 5 of the Constitution yourself, Sen. Mark, and you realize that it is specifically and expressly provided in section 5 of

the Constitution, that it is not unconstitutional and that you can reverse the burden by putting someone to prove a fact, a defendant to prove a fact. That is laziness, Madam President.

So, we are saying in this law, you have the right to go to the court. Sen. Vieira has put it on its head, hit the nail on the head. The question is, are you satisfied with exceptional circumstances? Number one, there is a separation of powers principle. You have the Legislature which is us, the Executive which is the Cabinet and you have the Judiciary. The Judiciary's role is to consider the interpretation of the law. They do so on the basis that the law is a living creature which continues to evolve. That is captured, certainly, in the common law itself, and in the interpretation of law saying that law is not static—the Constitution is not static, any law is not static. The courts are allowed to interpret law from time to time. Where have we got that idea of exceptional circumstances from?

**Madam President:** Attorney General. Hon. Senators, at this juncture, the sitting will be suspended. We will return at 5.00 p.m. Attorney General, you have used up 11 minutes of your speaking time.

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

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

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

**Hon. F. Al-Rawi:** Thank you, Mr. Vice-President. Mr. Vice-President, I was literally at the point of dealing with the concept of exceptional circumstance. So, if I were to rethread the matrix, we are saying, number one, Sen. Vieira said no part of the Bail Act should operate as a court-free zone. Submission number one, nothing in this amendment, nothing in the Bail Act as amended by Act No. 17 of 2019, that is what we last did, nothing is a bail-free, court-free bail consideration zone. Absolutely nothing.



The two points that I was making, point number one, the expressed language of the Bail Act as amended and as is proposed to be amended, demonstrates clearly that the court has a complete supervisory jurisdiction and, number two, I am going to go to the case law which treats with that. And I was on the point of Sen. Vieira having said the question is, where do we find satisfaction with the concept of exceptional circumstances? I will remind, section 5(1) of the Bail Act says that:

“Subject to subsection (2), a Court may grant bail...” That means the court has jurisdiction in every circumstance. Section of 5(1) of the Act says, the only place that you would not get bail is for capital offences. That was the 1994 Act.

We then went on to look at section 5(7A). Section 5(7A) of the Bail Act is what we put in, a few months ago, that is, in exceptional circumstances, you can have the right for a court to consider your application for bail. The question is, what does exceptional circumstances mean? And I was making the point that we did not pluck exceptional circumstances from the ether. We, in fact, brought the concept of exceptional circumstances directly out of the United Kingdom and the United States and Canada and, Mr. Vice-President, we did that because originally in 1994 when Keith Sobion piloted the bail amendments, the bail amendments were specifically said to be in the context where, the person should prove why bail should not be granted. Let me repeat that, in 1994, the Bail Act was produced. Section 5(1) said, you cannot get bail for a capital offence, you cannot get bail in subsection (2) matters. In the Bail Act in 1994 they said, effectively, the accused should show cause why bail should not be granted.

For 22 years thereafter—let me repeat that—for 22 years thereafter, right up until 2016, we changed that position. Successive governments—certainly for 11 years beginning in 2005 to 2016 when the bail amendments all collapsed, because

the UNC would not support bail amendment law—in the 22 years that the 1994 Act stood, what happened was we had an ouster of the court for anti-kidnapping, for anti-gang legislation. We said that the court would, effectively, not be permitted to consider the grant of bail.

In 2016 enter Anand Ramlogan, Gerald Ramdeen, when they were no longer in Government, they went to court in the Danielle St. Omer case and they challenged the constitutionality of the bail amendments that they themselves put into law and, very fortunately for us, there is a decision on that and I will come to that in a moment. So exceptional circumstances exist.

Now, let us jump to the case. Sen. Vieira has painted the point, what happens if somebody is framed on a first time offence? He raised the example of the Sadiq Baksh matter, the grenade or rocket launcher or whatever it was in the tank. In those circumstances, the Bail Act must be read as a whole. The Bail Act says in section 5(3) that it is subject to, when you look at section 5(7A) it is subject to the consideration of exceptional circumstances. It is my submission that it is opened to defence attorney, relying upon the fact that section 5(1) of the Bail Act says, you have the right to approach the court, relying upon the fact that section 5(7A) says you can ask for exceptional circumstances to be considered by a court. You could say to a court, “I am not in actual possession. I am in constructive possession”, and let us put this narrowly.

We are not talking about marijuana. We are talking about automatic firearms and we are talking about prohibited weapons and we are talking about trafficking in firearms. When you look to section 5 and section 6 of the Firearms Act, because that is what we are looking at here in this Bail Act, you are in unlawful possession. The element of that offence is that you must be absent, lawful excuse. Let me repeat this.

The bail amendments that we are considering today are to be read alongside the Firearms Act as amended. We amended the Firearms Act after we amended the Bail Act. We introduced into the Firearms Act, the trafficking in firearms offence and the heavy weapons, the prohibited weapons. So we could not have amended this before. And contrary to Sen. Hosein's radical idea that there should be one piece of law that takes care of everything in Trinidad and Tobago, that is just not the way it is done. The law is intended to be developed, piece by piece, as it comes along. So I reject that submission. It is simplistic, and the position is, having amended the Firearms Act after we amended the Bail Act, we are in the situation where somebody has the right to approach the court and say: "I fit the bucket of exceptional circumstances. I am asking you the court to hear me and these are my exceptional circumstances."

The submission that I make today is that we ought not to define "exceptional circumstances". The exceptional circumstances should be left to the Judiciary to develop. Why? That is how the common law is developed. Why? That is how the Constitution is described. We do not say in the Constitution what a religion is. We say you have the right to religion. We do not say what privacy is. We say you have the right to privacy. We then put qualifications to those. We do not say what property is. Types of property have developed to include intellectual property. Had we defined "property" in the Constitution, we would have been left in a stasis, a static position. We say that the Bail Act ought not to define what exceptional circumstances are—

**Sen. Thompson-Ahye:** Mr. Vice-President, may I ask the Attorney General, if the legislation that he referred to from the UK, the US and Canada, if all of them or any of them defined exceptional circumstances?

**Hon. F. Al-Rawi:** None of them defined exceptional circumstances. It is left to

the jurisdiction of the court. I want to make a further submission on the letter of the law. Right now, the Bail Act says that a judge can consider in section 6 when to grant bail. Section 6(2) says, the court should be satisfied that there is substantial grounds for believing the defendant may fail to surrender to custody, effectively, may interfere with a witness, may prejudice, may be at risk of his own safety being at risk or that of a witness, et cetera, but nowhere inside of there do we get to the matter set out in subsection (3). Subsection (3) says:

“In the exercise of its discretion...the Court may consider the following:

- (a) the nature and seriousness of the offence...
- (b) the character antecedents...
- (c) the defendant's record...
- (d) ...the strength of the”—case—
- “(e) any other factor...”

Let me put this submission forward. We as a country witnessed until 2005, we witnessed the Judiciary having the right to not grant bail in Trinidad and Tobago. We witnessed that. That is what the law said. From 2005 straight up to 2015, we amended the law. The UNC took it from 60 days to 120 days and we supported it. Why? It was clear that the Judiciary, notwithstanding a beautiful piece of law in 1994, consistently failed to express the odium that Parliament directed it to. It was only when the Parliament said to the Judiciary, kidnapping for ransom must have the 120 days which was originally 60 days and the one year, it is only then that the police were given a fighting chance to suppress matters, taking kidnapping for ransom from 100 to zero.

So could we have left the Bail Act as it was? Sen. Deonarine, I do not know if I have lost you there. I am seeing your face a little concerned. What I am saying is, the 1994 law was perfect and it was perfectly inconsistently applied by the

Judiciary. I have no problem as a member of an Executive and a member of a Legislature in making observations about judicial decisions. That is what we are allowed to do in this House. We are allowed to develop law as representatives of the people, because a judge is not a representative of the people. A judge is there to carry out a judicial exercise of interpretation in relation to law, and what we have proved in our country, when you look at section 6 of the Bail Act, is that it was only when Parliament expressed its odium against kidnapping for ransom that we had a fighting chance. This law, as it is set out is also subject to more protection.

We have in the Bail Act, first of all, section 9. Section 9 of the Bail Act says, where a magistrate is going to refuse bail or grant bail, in the case of refusal, must inform the person and give reasons why he is refusing bail and say, you have a right to go to the High Court and appeal me. Section 10, the:

“...Magistrate’s...inquiring into...an offence alleged to have been committed by a person refuses bail, it shall inform him that he may apply to the High Court to be granted bail.”

Section 11(a), where an application is made to the High Court under 11(1) and the High Court refuses or grants the application or varies the conditions, the accused person or the prosecution as the case may appeal that decision to the Court of Appeal. So you have exceptional circumstances for the first time included into law in our Act No. 17 of 2019. You have the right to appeal to the High Court. You have the right to appeal to the Court of Appeal, both defence and prosecution. You have the example of the 1994 Act not working the way it should have, which saw our country for 11 solid years as a Parliament tell the Judiciary, in what seems to be unconstitutional circumstances, that you cannot consider bail.

Let us go now to the jurisdiction of the court. In the judgment that I have

handed out, it is Civil Appeal No. P351 of 2016. It is between the Attorney General of Trinidad and Tobago and Danielle St. Omer. It was also consolidated with the Attorney General and Justin Stuart Charles. That lactic one being Civil Appeal S350 of 2016, and I am reading from the judge of Gregory Smith, Justice of Appeal, at page 1, and it has been circulated to all of you so you can follow with me, paragraph 2:

[MADAM PRESIDENT *in the Chair*]

“Section 5(1) is a statutory affirmation of the constitutional right to bail except as provided for in sections 5(2) and 5(4) of the same Bail Act...Section 5(5)(b)(ii) purported to take away the right to bail in certain cases. However section 5(5)(b)(ii) did not mention or seek to affect section 5(1) above.”

Stick a pin. Take this Bill into consideration.

This Bill is saying that we are amending subsection 5(3). We are not amending subsection 5(1). We are therefore within the four corners of the Court of Appeal of Trinidad and Tobago interpreting law of similar type which says, you have the right to approach a court and I make this point strenuously, as I do, to debunk and take off the table for all times this submission that has been coming as a refrain, that we are ousting the jurisdiction of the court. We are not in any circumstances, most respectfully, doing that hon. Senators and it is here, not only from my reading of the law which I took you through, but also from the dicta which stands as the highest court in our country speaking to the very kind of law which we are passing now. But, mind you, that was law which was very different from ours because there was a complete ouster of the court's jurisdiction. The court interpreted the law to say 5(1) was not touched, you always have the right to access bail. We went further in 2019. Our Act No. 17 of 2019 says, “Ay, put in a

subsection 5(7A). We have the absolute right.” Now what we do? Why do we want to tell the Judiciary to have a second look at a matter, put the burden on the accused? In keeping with our Constitution have the accused addressed on a balance of probability standard addressing the court, why the court should look twice. You know why? Because I can tell you this. We are at war.

Sen. Chote made a most outstanding statement to say that this law is reflex and that the country is not at war, and that some public official was upset. I reject those submissions. I am sorry that my learned colleague is not here. I would say it equally to her face as I do on *Hansard* record, I beg to differ. Sen. Chote brings a sensible degree of perspective to us, which I am grateful for. She is a defence attorney at the inner Bar. She lives off of, quite properly—and no improper motive here—she lives quite correctly in the domain of law—

**Sen. Mark:** Madam President—

**Hon. F. Al-Rawi:**—which says that you can approach these matters that way.

**Madam President:** Attorney General, I think Sen. Mark is invoking a Standing Order.

**Sen. Mark:** Yeah. Hon. President, 46(6), please.

**Madam President:** Attorney General, as you proceed, just be careful in how you present it.

**Hon. F. Al-Rawi:** I am making an observation. I am rejecting a submission made by one of my colleagues, and I do not think I am offending anybody by doing that. I am entitled to do that. It is a legal submission that I am addressing, because the hon. Senator said that this law was unconstitutional and I must address that as a member of the inner Bar sitting in the Senate, I must address that.

The submission that I make has demonstrated that the Court of Appeal in the Danielle St. Omer matter has sided with me on this issue. The Court of Appeal

was not even considering a law which had the equivalent of section 5(7A) where we put the exceptional circumstances and, therefore, I do not agree with my learned colleague, Sen. Chote in the submissions made by her on this particular issue, though I find profound respect in her perspective, particularly insofar as she has a line of sight into matters of this as a defence attorney. We must always heed caution.

Let us go, Madam President, into the very, very dangerous ground that Sen. Mark went to. Sen. Mark, unrestrained and unbridled in his submission did something that was exactly done by the last Government when we are dealing with the repeal of section 34. Sen. Mark put on record the facts and circumstances of a case which is the allegations standing in the public domain of possession of parts of automatic weapons which went total up, equal to 19 weapons—not 19 parts, 19 AR-15s weapons—and then made the very boldfaced and dangerous submission that we were passing ad hominem law.

Put, quite simply, the Privy Council in the landmark case of Liyanage—Liyanage came to the fore and said you cannot pass law to fix one particular matter, a legal case. That is ad hominem. It is directed towards the person, and you cannot pass law that is ad hominem. You can pass law for the general purposes of society, but not targeted to do a legislative fix to an individual problem.

**5.20 p.m.**

The last time we saw that kind of danger was when we were repealing section 34 and then the UNC spent chapter and verse of saying why the section 34 matter, the repeal of that law was associated to the cases in the Piarco Airport enquiry. Fortunately, the Privy Council rejected that argument, fortunately the Privy Council accepted my own argument in that debate and said that that law was



for general purpose. But I want to say that Sen. Mark went about a very dangerous purpose this afternoon and we have to be extremely careful to acknowledge that this law is for general purport. Why is it for general purport? Let me put it this way, we were asked in the submissions coming from my learned colleagues to give some statistics, tell us about the law, what has the right to denial or restriction of bail resulted for us? Madam President, what time do I end in full time?

**Madam President:** You end in 5.34.

**Hon. F. Al-Rawi:** Thank you, Madam President.

I would like to say that I have received from one court alone and this is from Magistrates' Court 4B right here in Port of Spain. I have confirmation in my hands that we have had 11 matters where the denial of bail has happened pursuant to our Act No. 17 of 2019, 11 matters, and those 11 matters concerned possession of firearm, anti-gang matters, et cetera, ammunition, et cetera. And I would like to say for the record as to where we are coming to as a country, in one particular matter there was possession of prohibited weapon and possession of ammunition. The charge was laid on the 26<sup>th</sup> of September, 2019. The trial on indictment and preliminary enquiry was determined on the 13<sup>th</sup> of November, 2019. Let me repeat that, 26<sup>th</sup> September start, preliminary enquiry, and that aspect of it finished 13<sup>th</sup> of November, mere days after.

What has been happening is that there has been a rapidity in the hearing of matters and the other matters are now in the system where none of the trials have in fact started in the 120 days and 120 days once having lapsed, those people will be entitled to knock on the door of the court. So if you are worried about the statistics coming forward, there are exactly 11 matters in court 4B, which is where we deal with the gun matters. Of those 11 matters, one was heard and completed in a matter of two weeks flat. The others have not even started in the 120 days and

therefore their time will result in them knocking on the door. That feeds the allegation of propriety, of proportionality.

We have had the statistics of the possession of prohibited weapons. We have had the statistics showing that we have machine guns in place in our country. You know, I listened to the Members of the Opposition, Sen. Hosein, and today, Sen. Obika talked about locking down the borders. I heard Sen. Hosein do the usual genuflection to the Leader of the Opposition, “All hail Kamla Persad-Bissessar, she got back \$1 billion in the arbitration claim for the OPV matters.” The relevance to this, apart from answering the submission is that, when we lost the offshore patrol vessels, we lost the ability to man our maritime borders. I can tell you now, as Attorney General, having taken over that portfolio from the last two Attorneys General, we did not win any \$1 billion in the arbitration proceedings. I can publicly say that my attorneys in that matter, Trinidad and Tobago’s attorneys who acted in that matter said, “It is only because the Brazilians agreed to buy the vessels, which the UNC said were not good, that we got the credit of the \$1 billion in not having to pay it.” So let me debunk this foolishness that is being spread as fact, Madam President.

We did not win any \$1 billion award. We were lucky that the Brazilian Navy, to protect their coastlines, took the BAE vessels, and you know what they named the BAE vessels? Trinidad class vessels. The Brazilian borders are being patrolled by Trinidad class vessels. And I heard Sen. Hosein talking about the AG’s office and somehow me being responsible and putting it on the record that we lost a particular matter where there was a default judgment, I would just like to say that the default judgment matter, handled by the Solicitor General’s office without the Attorney General’s involvement, is a matter under appeal. But I would like to put on the record to Sen. Hosein, who apparently knows it all in connection

to helicopters, that he needs to go off and do a little bit more work. You see, Madam President, I can tell you in two matters that I have personally negotiated and are now settled, and they are in reference to the UNC's acquisition of two helicopters, we were facing claims of US \$32 million. You know why? In one case, the UNC bought a helicopter and paid for it for an entire five years and the helicopter was never sent to Trinidad and Tobago. So we paid five years for a helicopter that stayed in the manufacturer's hangar. In the second case, we actually had a helicopter sent to us and we could not get the airworthiness certificate done.

I am very pleased to tell you, Madam President, that I negotiated those claims down to \$6.5 million down from the US \$32 million that the UNC left us into. So I respectfully say to Sen. Hosein, do some homework and get your facts right before you try to pelt stone on other people's house. [*Desk thumping*] Madam President, it is true, as Sen. Seepersad put here this afternoon, obviously the law cannot work by itself. It is true that under the last administration, and I genuinely mean this, all building and maintenance facilities at the Judiciary were shut down. They were shut down because we were supposed to have administrative complexes built for courts, and as you know, not a single court opened in Trinidad and Tobago. Sen. Seepersad has made the submission that we ought to have specialist courts for gun matters, I will remind hon. Senators, that is why we passed the Criminal Division Act and section 24 of the Criminal Division Act allows the Chief Justice to establish specialist courts.

But I will put on to the record now that it is this Government that has opened two court buildings in the Children Courts, one in Fyzabad, one in Port of Spain. We have opened the Family Court in Tobago and right here where we sit, in January of this year all of the civil courts will be brought to this particular place,

including the appellate division, and we will yield 70, 7-0 criminal courts in Port of Spain. The Magistrates' Court in San Fernando is about to go out for full tender. The court in Princes Town is about to be completed in the course of this week from Cabinet approval basis. We are dealing with courts in Arima. So we accept, Sen. Seepersad, the recommendation that we need more than just the law. And that is why I remind hon. Senators that we amended the law to allow for the movement in the number of judges from 36 judges to 64.

We, as a Government, introduced the concept of case management under Criminal Procedure Rules. When we came into office there were two Masters, we have 14 Masters today and we are about to take on 10 more Masters. So we already accept and have implemented Criminal Procedure Rules, divisions of court for family and children, divisions of court for the criminal arena, computerization of the Magistracy, introduction of court mail, introduction of electronic payment and electronic filing, maximum sentence indication, preliminary enquiries soon to be abolished. There is one more tweak to do by way of an amendment which would come in about a week or so to this Parliament.

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

**Hon. F. Al-Rawi:** Thank you, Madam President. That will come to this, when we this year move by the introduction of the electronic payment side, the 104,000 cases from the Magistracy. We are treating with that, but this law, this law, hon. Senators, this law is intended to treat with the war that we are in.

Last week we saw a Member of Parliament in the Opposition robbed at gunpoint. Hon. Members in this very House know what it is like to lose someone to crime. We are witnessing children murdered in gun spray from automatic weapons. We are witnessing state witnesses with automatic weapons mowing them down. The very Judiciary that has to interpret these laws, I can tell you, the

Judiciary when they are exercising the criminal jurisdiction are protected to the hilt, security outside the home, security in the car, security on the way to work, security standing outside; the average citizen does not have that. The Leader of the Opposition runs with two or three cars flagging, the detail running behind her. They do not operate with that—

**Sen. Mark:** But what this have to do with the Bill?

**Hon. F. Al-Rawi:**—and therefore when we say Trinidad and Tobago is at war, if you ask, as was done in the newspapers—[*Interruption*]

**Madam President:** Sen. Mark.

**Hon. F. Al-Rawi:**—when you ask, as the newspapers have, and I will say, I drive in one car unlike my predecessor that had four follow cars behind him. [*Crosstalk*] I drive in one car and I can tell you, Madam President, notwithstanding Sen. Mark's obscene histrionics—

**Madam President:** Sen. Mark. Continue, Attorney General.

**Hon. F. Al-Rawi:** Notwithstanding extreme histrionics, the vox populi, the voice of the people taken from the newspapers that asked San Fernando and Port of Spain whether they think Commissioner Griffith was correct in asking for prohibited or weapons of war-type weapons to be subject to no bail filtration, not prohibition, every single person that appeared in the newspaper said, yes.

What can I say, if this House chooses not to support this law, I am sure that the record will reflect the reasons why. I believe that our society has already had the exercise on this law by far a more draconian circumstance. That was in the amendments between 2005 to 2016 which were a complete ouster of the courts' jurisdiction. For 11 years that law stood on the books of Trinidad and Tobago and collapsed in 2016. I genuinely believe that the Parliament has the ability under its legislative regime to create law for the peace, order and good governance of our

society, as section 53 of the Constitution permits. I genuinely believe that we have the right to tell the Judiciary what we consider the people ought to have. This law is proportionate. This law is measured, Madam President. I believe that we have the ability to support it. For the record, the sunset clause applies. The law will collapse when Act No. 17 of 2019 collapses because we are amending section 3 and therefore, the sunset clause goes there.

There is the proportionality in having three bites of the cherry, magistrate to consider yes or no, High Court to be told yes or no and the Court of Appeal to hear the appeal on that; you end at the Court of Appeal. So we have due process protection. We have the right to access the court in section 5(7A). I ask you to reject fear. I ask you to reject the war that is being told cannot be won. I ask you to give us and our law enforcement agencies a fighting chance. This is not intended to be a punishment by way of sentence, it is within the parameters of bail as has stood the test for 22 years in our country. I beg to move. [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Madam Chairman:** Sen. Mark, I understand that you have submitted some amendments and, hon. Member, the amendment I am told should be here very shortly, so I am going to suspend for—yes, Sen. Vieira.

**Sen. Vieira:** Chair, thank you. I am wondering, could we not use that time while we await Sen. Mark's amendment to have an important discussion because it is a very short clause but I think there are some very important points that we may wish to consider?

**Madam Chairman:** So you mean as we sit in committee we can—

**Sen. Vieira:** Yes, please.

**Madam President:** Sure, no problem.

**Sen. Vieira:** And if I may start off—

**Madam President:** No, no, we have two clauses that I think we can—[*Crosstalk*]  
Yeah.

*Clauses 1 and 2 ordered to stand part of the Bill.*

*Clause 3.*

*Question proposed:* That clause 3 stand part of the Bill.

1. Insert after the words “Firearms Act” in new subclause (ab) the words “has a pending charge or previous conviction for:
  - i. possession of a firearm, ammunition or prohibited weapon or;
  - ii. an offence listed in Part II of the First Schedule.”
2. Insert after the words “prohibited weapon” in new subclause (ac) the words “has a pending charge or previous conviction for:
  - i. possession of a firearm, ammunition or prohibited weapon or;
  - iii. an offence listed in Part II of the First Schedule.”

Delete clause 3(c).

**Madam President:** Sen. Vieira.

**Sen. Vieira:** Thank you, Chair. Attorney General, through you Chair, I want to come back to the sunset clause, I think it was an important point that was raised. It is quite clear in the 17 of 2019 that this Act, this Act which is 17 of 2019 shall continue in force for a period of three years. Now after three years, in 2022, this amendment goes by the wayside but the original section 5 would remain and the amendments we are making to section 5 today arguably would also remain, because this Bill does not have a similar sunset clause. So perhaps you are right, maybe one can argue it either way but I would think, out of an abundance of

caution, you may want to consider the sunset clause if we are going forward with this.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** I thank the hon. Senators, all who raised this particular point; Sen. Mark raised it, Sen. Vieira raised it. I can say that this was actually tested when the St. Omer case came up because by 2016 all of the laws cascaded and all of the amendments, from 2005 straight up to 2015 cascaded whether they recited sunset clause or not because the original sunset clause applied. So we looked at it, we are absolutely confident that the amendment to subsection 5(3) as this Bill proposes is to be amended will automatically fall apart. Because what happens, assuming that I agreed with you and that somehow we needed a sunset clause because there was a risk that the new sub (a), (b) and subclause (a), (c) would still somehow stay, the original 1994 version of subsection 5(3) does not permit that because you are back down to three strikes, 15 years, no offence happening within 15 years apart. So it was tested properly in court already.

If you wanted, out of an abundance of caution, to put in some form of clause that said that we should harmonize it with Act No. 17 of 2019, I have no objection, but I looked at it and I am confident of that but again I have no objection to even doing that.

**Sen. Vieira:** So, AG, I accept what you say, I just wanted to have it on the record.

**Mr. Al-Rawi:** Sure.

**Sen. Vieira:** I think the more important concern for me, and I have looked very closely at the St. Omer case, I thank you for providing it. When we look at the other sections there are all involved a clear risk to society. Accused persons who have prior convictions, accused persons who have pending charges, accused persons who have—they were caught in the act of committing an offence with a



firearm and all along—it is not just the offence but is this add-on here now, being in possession of a prohibited weapon, no pending charges, no prior convictions, none of this. So right away the question is, should they not be treated differently to these real risks and treats to society?—that is one thing. The other thing is, in the St. Omer case, a woman was held for five months before she was able to get jail. It is true, and in that case this was even when the sunset clauses had been gone by the wayside. She is exactly the sort of person that we are concerned about, unblemished record, first offence, just happened to be in the wrong place at the wrong time. Now, in St. Omer, what I gather they are saying is, even though we are giving a statutory discretion to deny bail, you cannot oust section 5(1) which says you have a constitutional right to bail, but look what happened in St. Omer, she bounced around magistrate, judge. It took years to reach the Court of Appeal for her to get a just decision and it also took many months for her to be given bail.

So what I am saying is, even if you are right on the law that theoretically you will be upheld at a High Court or in the Court of Appeal, there is still a very real risk that a person who is innocent could be incarcerated while they go through all of these motions. Is that not disproportionate? In the St. Omer case it was clear, and you said it, 1994 was inconsistently and wrongly applied by the Judiciary. The way the wording of this section goes, I would see most magistrates saying, “I am not granting you bail”, and then you are going to come down to the question about what is the exceptional circumstance. Now, I agree. I understand what you are saying that this is an evolving part of the law and it is arguable that you can be, but the concern we have, and it is a very real concern for me, is how do we protect, how do we guard the St. Omer’s from going through a similar situation?

**Mr. Al-Rawi:** May I? Thank you, hon. Senator, for being very clear on the mischief that you intend to guard against. I can do two things, I can address

proportionality, which I will, and I can also address distinguishing St. Omer from the current situation because they are not equal. In the St. Omer matter, we did not have the equivalent of section 5(7A), the exceptional circumstances. So, in St. Omer's case, she could not knock on the door to say, "Look, I am an exceptional circumstance." What St. Omer acknowledged was that she had the right to approach the High Court and the Court of Appeal and fortunately, that due process worked out and proved that even though she was brought in—remember it was her right to access bail not the fact that she was charged, so she may still have a matter before the court but she accessed bail.

So, St. Omer proves, number one, the system works, right to High Court, right to Court of Appeal. In those instances, they took a few months but they worked. The second aspect, St. Omer is to be distinguished because St. Omer did not have section 5(7A), which says that you can approach the court notwithstanding the restrictions of 120 days and one year, and anti-gang, et cetera. You have the statutory underpinning, let alone constitutional, because St. Omer turned on section 5(1) and the Constitution. We went further, we put in section 5(7A) which in the statutes says, "You can knock on the door and argue what you consider to be exceptional circumstances." So, in fact, we have not only gone magistrate, High Court, Court of Appeal, we have added in the horizontal exceptional circumstances in the Magistracy on the issue of proportionality.

We are in a situation where the Parliament is narrowing down the playing field and the war. We are saying, listen, our society is at a place right now where a court should look at you in a jaundiced way and ask you to explain why you, who are alleged to be in possession of a weapon of war or deemed to be trafficking in weapons—you do not have one weapon, you know, you have two and more, you should not have to explain yourself to a court because we are not removing the

court. We are not removing the jurisdiction of the court at all, we have reaffirmed the jurisdiction of the court and we believe that the proportionality is to be found in the state and condition of Trinidad and Tobago. Has it worked in the past? It worked for kidnapping for ransom.

I would just like to remind that if you look at what is scheduled as the offences captured under the Bail (Amdt.) Bill on a charge-charge basis, conviction-charge basis or having possession of a weapon in the course of conducting an offence, carrying out an offence, they are actually all very serious matters, you know. I do not think that we are outside of proportionality to add possession of an automatic weapon or a grenade or a missile as opposed to a “missile”.

**Sen. Vieira:** I have no problem with that in principle but, you see, two things, easy to be framed with possession of a prohibited weapon; a grenade is a small thing. And the other thing is, again, when I come back to the exceptional circumstances, if I were to take a conservative interpretation, everything I see when it talks of exceptional circumstances conditions require so as to alleviate or mitigate unforeseen or unconventional hardship. The court’s interpretation of exceptional circumstances has traditionally been narrow, usually relating to medical circumstances. Justice Rouse made clear that exceptional meant just that. The usual consequences were not sufficient to displace. Exceptional suggests that the situation is extreme. Most involved personal circumstances like medical and mental, so I could really see somebody being caught on the wrong side of the law even though innocent and “exceptional circumstances” not availing them.

**Madam Chairman:** Attorney General, Sen. Vieira, I just want to make an interjection, I think the amendment proposed by Sen. Mark has now been circulated so all Members should have the amendments. I will allow the Attorney General to respond to Sen. Vieira but then we will move to deal with the specific

amendments that we have before us. Okay? Attorney General.

**Mr. Al-Rawi:** Madam Chair, the fact is that our policy as a Government is effectively that we are comfortable with a court having the supervision under section 5(1) as to why your bail ought to be considered which we have not touched. We are comfortable with the court having supervision under section 5(7A) which is the backup clause of exceptional circumstances. We believe from a policy perspective that our society has to be assisted and that anybody in possession of an automatic weapon or who is on a charge for trafficking in weapons ought to be treated differently.

**5.50 p.m.**

We can only do our part—we can only do our part. We can add our voice to what we prescribe as a remedy. We have distinguished ourselves from every single law to treat with bail for 22 years. Act No. 17 of 2019 does not have the construction that all other bail amendments had—none of them had it. St. Omer, all of those cases were built upon a complete ouster of the court's jurisdiction. We separated ourselves by allowing section 5(1) to prevail and also the section 5(7A). If this Senate genuinely feels that it cannot risk telling people that they ought not to have these things in their possession; if this Senate is comfortable on constantly telling us that Singapore is the model of success and we ought to follow Singapore—in Singapore, if they find drugs in your suitcase, they do not even ask you, they execute you. In Singapore, if you are found in possession of an automatic weapon, you are subjected, not only to no bail, but to execution and death.

So we very much have a love and an admiration for jurisdictions that have very tough approaches on gun laws and on drugs, et cetera. On this occasion the question is, where do we stand? And that is not a threat; that is a philosophical

discussion that obviously we have to have in balancing mischief and in protecting rights.

**Madam Chairman:** Sen. Vieira is giving me a most appealing look. So I am going to allow Sen. Vieira to close off this discussion as we move into the discussions on the amendments.

**Sen. Vieira:** Thank you, Chair. Hon. AG, we get it, we understand, we are equally—I must tell you we are all torn, that comes out in the debates. We know what you are trying to combat, we want to support the legislation, but we are in a society where we are also painfully aware of how many innocent people have been framed and set-up. So what I am saying is, if we could get some comfort, some stronger comfort than having a St. Omer having to bounce around the court and to test exceptional circumstances, you will get the support you want, but we are torn.

**Mr. Al-Rawi:** Madam Chair, I know you said that you would close off, but he raised a very important point, if you would allow me. The Prime Minister instructed me. Let me repeat that: The Prime Minister instructed me to draft a framing charge. I am working on it right now. The Bill has been laid in the Senate already. We are proposing an amendment to the several law enforcement agencies: Trinidad and Tobago Police Service, it is the Miscellaneous Provisions (Law Enforcement Officers) Bill. So we are proposing to introduce a charge, and I am giving the undertaking now, that there will be introduced in the debate next week, an amendment to that Bill, to introduce a charge, a criminal charge for framing. I already have the first draft, the drafter is actually sitting on my left right now. Whilst we were sitting here I was going through various iterations of the charge, and I have been given that instruction to present that by way of an amendment to this Senate for consideration.

**Sen. Mark:** Madam Chairman, how does what the Attorney General is saying

help us? I do not understand the relevance of that in the context of what Sen. Vieira is advancing.

**Madam Chairman:** Do you wish to respond?

**Mr. Al-Rawi:** I thought that that was just rhetorical. I did not understand Sen. Mark to be asking a question.

**Madam Chairman:** I think at this stage, because this philosophical discussion can continue, and I think we should go into the specifics. So, there is a proposed amendment circulated on behalf of Sen. Mark. So Sen. Mark perhaps you would like to speak to your amendment.

**Sen. Mark:** Yes, thank you very much. Madam Chairman, we are very clear, and we have said in our contribution that we believe that this new offence, trafficking, that the Government has introduced, does require some balance. And therefore, we do not believe a person who, for the first time, without any conviction or pending charge and merely in possession, should be denied bail as a matter of course. Therefore, we want to safeguard the rights, particularly of the innocent, in circumstances that can prevail and from examples have prevailed.

It is against that background we are proposing, for the consideration of the Government, that we amend clause 3 by inserting after the words, "Firearms Act", a new subclause (ab) the words "has a pending charge or previous conviction" for:

- i possession of a firearm, ammunition or prohibited weapon or;
- ii an offence listed in Part II of the First Schedule."

Madam Chair, we are also going further, because the context of a prohibited weapon is in the legislation, and we are also introducing a new subclause (ac), the words, "has a pending charge or a previous conviction", and the words are clearly outlined. The purpose of this is to avoid innocent people and people who are caught in the net for the first time.

You would recall when we were debating this matter, we got a number of examples as it relates to the Firearms Act. You can have five persons in a place and one person has a weapon, and all persons in that home go down—all the persons—and they are charged. Many of those persons may have had a very clean record. They would have had an unblemished record and a clean past, and therefore we believe as legislators we need to protect the innocent from the guilty, and this is why we are submitting this amendment for the consideration of the Attorney General.

**Sen. Richards:** Thank you, Madam Chair. It is in relation to my overall interpretation of the clause we are discussing, and it is out of an abundance of caution because of my absolute ignorance of legal interpretation. So I apologize for that, but also in relation to part of what Sen. Mark is proposing in the amendment. Just for my clarity, Attorney General, does the accused have instant access to the courts? As you said, the judicial process is not taken out in your submission, without having—because I got some advice from several different legal counsels and it was quite confusing because of the handshake between the parent Act and these proposals and the convoluted nature of some of the language, so I was a bit lost in terms of my understanding. Does the accused have access to petition the judicial officer immediately upon being charged, or is there a delay of any kind in that process? That is the first part of the question, if you could respond to that. Does the accused have to serve 60 or 120 days without bail before having that access to the judicial officer?

**Mr. Al-Rawi:** Thank you, may I respond in reverse order to Sen. Richards first. You have really come upon a very important area for clarification, so I thank you for allowing us the opportunity to do that. First of all, there is no requirement for the accused to petition. In other words then, it is never going to be for the accused

or the defendant to ask for it, because the law as it is, is that the minute that you are arrested, you must be taken before a magistrate within a reasonable period of time. Once brought before the magistrate, there is a process that is invoked. Sometimes that process involves, particularly in serious matters, the DPP considering whether you ought to be there or not at all. I will give you an example: 7,000 people were arrested under a state of emergency, 7,000 people got out from under the state of emergency. The DPP basically returned to court every single time and said, "I will not volunteer a charge because there is no evidence in relation to these matters". So that is an extreme example of abuse of the people of Trinidad and Tobago, in the circumstances of that state of emergency.

That is now amplified in terms of protection by what we call the "remanding cycle". So you are bound to be brought back before the magistrate in the remanding cycle. If no date is given to you, it was originally eight days, it went to 28 days. So you must come back before the court every 28 days.

In any event, where the accused or defendant has a right, is the right which is a constitutional right for habeas corpus, so that is to bring the body. So the accused always has the right where the police have not done what they should do by taking you to the court to have you subjected to the magistrate's consideration, with judicial officers' consideration, which is your constitutional right to bail. If that does not happen, you can knock on the door of the court immediately and say, "Bring the body", habeas corpus, the body. So there is the existing framework of law where you must be brought. And to answer your specific question, no you do not serve 60 days loco parentis, anti-gang exception, or 120 days for all of the Schedules. That is not it at all. You must always be brought to court, subjected to the court's jurisdiction. The court may adjourn the matter for consideration of tracing or other matters, et cetera. You are bound to come back to court. If they



miss the day, every 28 days you must be brought back before the court, et cetera. So there is that existing safeguard on that point. I hope I have answered your question from that perspective.

**Sen. Richards:** Well, you have answered the question but you have opened a hornet's nest, with my greatest of respect, because if I am in a car, for a scenario for example—I am trying to be succinct, Madam Chairman—and the car is stopped by police and discovered with an AR-15, or a maxi-taxi, and we are all, 20 of us, taken down and charged under the provisions of this, and I fully support the seriousness of it. The process that you have clearly outlined kicks in, and 28 days passes and another 28 days passes, and I am trying to prosecute my case to show that there is legitimate reason why I am not to be found in the ambit of this. My liberties are being thwarted, and that is of great concern to me. As we say part of our job here is the protection of the citizenry who should not be subject to this.

**Mr. Al-Rawi:** There is confusion here. Let me assure you, in any circumstance, if we did not pass this law at all that would happen. Once you are in possession of a firearm under the Firearms Act and you are absent of a lawful excuse which the burden is on you to prove, and it is done so in the course of a trial, exactly what you have described would happen. Why? Under the Scheduled offences, possession of a firearm is included in the Schedule II offences, except for section 6. So that is how the whole system works right now.

What this law is proposing to be introduced is that the court will for the first time ask you to address your situation before the court in a slightly tighter environment; show exceptional cause why you should be granted bail. But that is not to say that everything that you just described does not happen in any event. So that hornet's nest, the "grap" that get taken down, that happens every day in our system. For dangerous drugs where there is a lack of a mens rea, it is a qualified

mens rea, meaning intention to have possession is not necessarily the case. That has been fine-tuned now to say that you must have actual and not constructive possession, meaning you must know about the thing, and then secondly for firearms, et cetera. So that happens right now. Madam Chair, I did not get to address Sen. Mark.

**Madam Chairman:** Not yet. Sen. Sobers I think for the longest while has been trying to make an intervention.

**Sen. Sobers:** Thank you, Madam Chair. Through you, AG, just a couple of things with respect to this particular amendment. Now, in terms of your response to Sen. Richards, it really is not the case actually that if it is there are 10 persons in a maxi and a firearm is found, yes, all persons may be very well arrested. But if there are persons who at the point in time subsequent to tracing, they do not have any criminal records, as it stands right now they would be entitled to bail. Based upon this particular piece of legislation, if it is enacted, they will not be entitled to bail if the firearm in question is the AR-15.

The difficulty is, I appreciate then that we have this exceptional circumstances situation. In terms of practice with respect to driving under the influence, there is a very large area of law in the UK where they deal with exceptional hardship principles, wherein if someone has their driving permit taken away from them, they can demonstrate to the court through exceptional hardship principles why that licence should be returned to them. In terms of my contribution I indicated that we should consider something like that.

The problem is when I listened to what you were saying just now, and even to Sen. Viera and also Sen. Hosein, the exceptional circumstances that the legislation is encouraging, appears to be very narrow and specific to the individual. Because as I was explaining to Sen. Hosein, we already utilize some form of

exceptional hardship when we are applying for bail. So we refer to a dependant that the applicant may have who would suffer some type of prejudice if he is not currently out on bail. But if it is exceptional circumstances is different from that particular position and is specific to the applicant, then it is an extremely high threshold that I do not think many applicants would be able to pass, if any at all.

Then lastly please, Madam Chair, I could recall when the debate was ongoing on the last occasion, not last week but before, I believe it was Sen. Chote who indicated that you would have—we have used all different types of examples, but a very good example that was used I think by Ms. Elder SC, was a situation where an individual would have been found with two derelict firearms that he may have had on his property from time immemorial. With respect to this particular framework, a person like that who would have had no previous or pending matters, and for whatever reason his house would have been searched and those derelict firearms would have been found, he would fall under the trafficking provision, and that individual would not be granted bail for up to 120 days, pending the starting of the matter. I think those issues, coupled with what has been said by Sen. Viera and others is what we are really grappling with, with respect to this particular piece of legislation.

One other thing, sorry Madam Chair, in terms of the habeas corpus point that was raised, hon. Attorney General, the difficulty is—and to also assist with respect to Sen. Richards—a habeas corpus application is not something that is easily made by an individual. An individual would have to get an attorney, who has to make an application to the civil court, High Court, for them to access the court for the body to be produced. So it is not as simple as put on the record, respectfully.

**Mr. Al-Rawi:** Madam Chair, what we are really trying to decide is where we as a

society decide the line should be drawn. We in the Government are saying that there is a war afoot. We have the phenomenon of automatic weapons that are in fact killing people. There would be 100 or if not 1,000 examples we could give today of where somebody would have some hardship in the law.

I hear Sen. Hosein saying, \$10,000 to get a lawyer. What about the bailor? There is a monster that we are not addressing in this country of bailors—professional bailors. Everybody says it is illegal and every lawyer goes outside there and looks for a professional bailor.

**Sen. S. Hosein:** You cannot say that, Attorney General.

**Mr. Al-Rawi:** Yes, I can say whatever I wish to say.

**Sen. S. Hosein:** No, you cannot say that. You cannot say that.

**Mr. Al-Rawi:** I can say what I wish to say. I can say, Madam Chair. I wish not to be interrupted. I can say what everybody knows. What I can say in deciding this particular position is we believe, from a policy perspective, that the law ought to be—that you should be extremely hard-pressed in circumstances with weapons of war or trafficking. We believe that there is a due process provision that is allowed. Whether it is difficult or cumbersome, when anybody is in difficulty with the law, it is always difficult and cumbersome.

I accept the general philosophy of hardship provisions, which you have again, always very commendably, put onto the record. I think that is already a feature of the law in your submissions that you can give in the section 6 submissions that you would give before a court that considers bail. You are not in any circumstance, I wish to draw a distinction, ever excluded from accessing the presentation of your bail. The question is what will exceptional circumstances mean, or whether you fall under section 5(1) in accordance with the St. Omer principle.

The amendments proposed by Sen. Mark for instance, are already captured in essence in Act No. 17 of 2019. So, if you are going to put that you must have a previous, let me call it that, whether it is a previous charge or previous conviction, well, that is already what we passed in Act No. 17 of 2019. So the recommendations made by the hon. Sen. Mark are otiose. They are superfluous, they exist already. You could consider it in that sense. It can probably be done by way of an amendment to the Schedule, as opposed to the Act itself. *[Interruption]* I see you saying no, but allow me to at least present the case just for a moment, Sen. Mark. Under the Specified Offences in Part II, what we do have is in letter (i) an offence under the Firearms Act other than under section 6(1) or 6(2), which is punishable by an imprisonment for a term of 10 years or more, or an offence under sections 8, 9 or 10 of that Act. So it is at that point that the inclusion of section 9A might be considered for the trafficking in firearms position. Unless I hear something further on that particular proposed amendment that may change my mind, that is where my mind is for now.

**Madam Chairman:** Sen. Hosein, you wanted to say something?

**Sen. S. Hosein:** Thank you very much, Madam Chair. Let me address Sen. Mark's proposed amendment. Madam Chair, what Sen. Mark has attempted to do is create a level of safeguard for all of the dangers that have been outlined by the Senators on this side of the House. The Attorney General said that, well, this is an otiose amendment and it is redundant. I do not agree, simply because currently as the Bill is presented is that as soon as you are charged for the first time with trafficking or simple possession of a prohibited weapon, there is no bail. What the amendment attempted to do is now create a safeguard so that bail can be granted if someone is charged for the first time for a trafficking offence or possession of a prohibited weapon. So that is the first safeguard that we are putting in here.

The second safeguard would of course be the right to apply for bail under the exceptional circumstances. Let me deal with the exceptional circumstances. In criminal law this is one of the most, if not the highest threshold in which an accused person will have to reach, before the court can grant some relief. If I may just draw an example to what the court would have used for exceptional circumstances, there is something called “abuse of process”. So therefore, when someone believes that their trial has been delayed for far too long, they can apply to the court for them to be discharged because there is an abuse of process.

There is case law that suggests that delay can be exceptional circumstances. For example, there are cases in Jamaica where the delay was exceptional in terms of being 12 years before you had a trial, and the court came back and said well, no, that is not exceptional circumstances. There must be more, you must show some more level of hardship.

Now, Madam Chairman, in this particular instance, we are exploring here as a Parliament what would be exceptional circumstances, and nobody could agree, and yes we agree it is a judicial discretion. But you have to remember that the persons who would be captured under this law, they are automatically denied bail as soon as they are charged. If this Bill is not passed, what stands is that, for example, if five of us are in a vehicle and the police find two weapons in the car, that is a charge for trafficking. Now, at the hearing of bail, if four of us never had any pending matters or any previous convictions, the likelihood of four of us having good character will get bail. But if there is one person there who probably had some previous or a pending matter, well, the court has the discretion to not grant that particular person bail. What we are doing right now is removing that particular discretion from the court.

I believe that we need to put the safeguard here with respect to that in terms

of protecting innocent people who can be caught under this particular amendment. I thank you. And let me just correct the record, 7,000 persons were not detained under the SOE.

**Mr. Al-Rawi:** It was more, properly more, and millions spent to get them out.

**Madam Chairman:** If I could just ask, Sen. Vieira and Sen. Richards, are you going to—

**Sen. Vieira:** I am speaking to the amendment.

**Madam Chairman:** I know, but are you speaking anything further to the amendment or are you echoing what has been said before by other Senators and by yourselves as well?

**Sen. Vieira:** No, I think it is different.

**Sen. Richards:** Same thing, Madam Chairman.

**Madam Chairman:** Okay, Sen. Viera and then Sen. Richards.

**Sen. Vieira:** Chair, I would support Sen. Mark's proposed amendment because I do think it would provide a safeguard for the first-time offender, and it is also consistent and in line with the other parts of section 5. When you go through section 5, it is quite clear under section 6 of the Firearms Act, and the person has a pending charge for possession of a firearm. You go down, listed in Part II of the First Schedule, and (a) has a pending charge for an offence specified in the said Part II, or the person or any other person involved in the commission of offence used or had in his possession a firearm or imitation firearm. But when we come to these new amendments, no qualification. Sen. Mark's qualification I think, does support and is consistent.

The other thing is I would remind the hon. Attorney General that even if it is a first-time offender charged with a prohibited weapon, the court still has a discretion not to give bail. If the court gives bail, the prosecution still has the

option to apply for the bail to be revoked. So we have to look at the thing, as you like to say, in the round.

**Madam Chairman:** Attorney General, I think Sen. Richards has a similar view and then you can respond.

**Sen. Richards:** I want to echo Sen. Vieira's point that I support Sen. Mark's amendment. I just want to put on the record, with the greatest of respect Attorney General, and through you, Madam Chair, I am dying to support this because I understand the seriousness of it.

**Hon. Senator:** Do not use that word.

**Sen. Richards:** Well, I support this strongly. I take your counsel, Madam Minister. I support this strongly because of the seriousness that I feel convicted about. But I also have to balance protecting that one or two innocent people who would have to go through that cumbersome system and have their lives traumatized, if not destroyed, and the lives of their family. That is the balancing act that I am torn with. So it is not that I do not want to support it—I want it on the record—I just want to balance people's rights and especially the rights of the innocent people.

**Mr. Al-Rawi:** Madam Chair, I thank hon. Senators. Let me explain why Sen. Mark's submission is not necessary and let me point it out in black and white, and then let me just summarize what has come to us and what our position is.

Sen. Mark's amendment effectively has a pending charge or previous conviction for any one of these two things. Everybody has a copy of the Bail Act as amended that I have provided to everyone. As amended by Act No. 17 of 2019, you will see in subsection (3), it is page 2, it is in blue:

“Subject to subsections (2, (4) and (5), a Court shall not grant bail to a person...on or after...commencement...”—who—“...is charged with an



offence—

- (a) under section 6 of the Firearms Act and the person has a pending charge...”

So that is the lowest of the hurdles. Sen. Mark is saying apply the same formula, pending charge, if you come for a charge with possession of more than two firearms, that is the trafficking, or if you come with a possession of an automatic weapon and you have a pending charge, “you good to go”.

I will take you now to section 6 of the Firearms Act. Section 6 of the Firearms Act is all encompassing. Section 6 says subject to subsection (7) you could only have a firearm if you have an FUL, that is subsection (1). Subsection (2) says nobody except qualified people can have automatic weapons basically, prohibited weapons: police officers, defence force, SSA, et cetera. So the automatic firearm, the prohibited weapon and the more than two weapons are all caught within the definition of section 6 of the Firearms Act.

**6.20 p.m.**

What is in summary being said by Senators Richards, Vieira and the Opposition, is that you do not want anything other than two strikes on charge. That is the lowest of the standards. Lightning must strike twice on a charge for firearms. That is what you are in summary saying.

The Government is saying that we consider that the time in the war that we are fighting right now, to consider one strike; lightning striking you once for the very narrow position of an automatic killing weapon or two or more weapons is now. We are saying that this country is not reinventing a heavy hand because we did it for anti-kidnapping, and we did it for anti-gang. The Opposition supported no bail on the first occasion for anti-gang because we went down to one strike as the St. Omer judgment has it.

So, Sen. Mark's amendments in effect say, forget the inclusion of automatic, prohibited, et cetera, what he is really saying is, you must have, at least, a charge-charge, that is what he is saying, charge-charge.

Where we are drawing a line and asking the Senate to consider, and it is either the Senate has an appetite for it or not, we are convinced based upon the data and the fight that we are fighting that we need this law. We are convinced that based upon how the anti-kidnapping law worked, and how we fought that scourge down, we do that. Because I will tell you this, as it comes to us at National Security and at the Executive, we are being told that people who are released, go out and commit further murder. We are not blocking the right of access to the court, we are putting it in the sharp context of that filtration of exceptional circumstances in subsection (7A) of section 5, or in section 5(1).

So, in essence, Madam Chair, what we are really down to right now is a philosophical difference. I think that I understand clearly that Senators Vieira and Richards and the Opposition have said that they do not want one strike; you are not up for that game, you believe that people must trip twice.

Our problem is, tripping twice with weapons of war is a problem for the Government and a problem for the society, a problem which the police— let me put this clearly, eh, the police in Trinidad and Tobago and the Commissioner of Police have come out and said that there is a problem with automatic weapons, killing machines which we have seen statistically, I have given you statistics.

At the end of the day, obviously, we can agree to disagree, we can respect each other in terms of philosophical differences, I understand the passion of all Members in particular Senators Richards and Vieira, and the Opposition Bench in saying what they wish. From a political perspective, I think that it is duplicitous for the Opposition to be saying today, the opposite of what it said in the period of

the five years and three months that they were in government, but that is the Opposition's role. They are allowed to do that, they do it consistently.

So I think that the Government's position is, that we have genuinely tried to allow for a balance, we have not restricted, as other laws have, the right to access the court, it is preserved in section 5(1), in section 5(7A) of the Act. We believe that the time to draw the line in the sand on the war is now. We say that you should not have in your possession, weapons of war, and you should not have more than two weapons, that is what we say. So, Madam Chair, I do not know if there is much more to discuss.

**Madam Chairman:** Okay. So Senator—

**Sen. Mark:** Just one.

**Madam Chairman:** Sure.

**Sen. Mark:** I just would like, with your leave, to remind my hon. Attorney General of a statement he made on the 12<sup>th</sup> of June, 2019, at the committee stage, and I quote:

“Move away from you are under possession, first time, you are out, and modify it to charge-charge. Would that allay the difficulties?”

And all the Senators said yes, and the Attorney General struck—

**Mr. Al-Rawi:** I acknowledge I said that. We had not introduced trafficking in firearms or weapons of war which we did in the Firearms Act after. So we agree to disagree.

**Madam Chairman:** So, hon. Senators, I think that we have exhausted all discussions on this, so I am now going to proceed with putting the proposed amendment to the Senate. Sen. Mark, Attorney General, Senators Vieira and Richards, everyone spoke to the second part of Sen. Mark's clause 3 amendment, because he did ask that clause 3(c) be deleted, and everyone is clear on that as

well. All right?

So, hon. Senators, the question is that clause 3 be amended—

**Sen. S. Hosein:** Sorry, Madam Chair. Clause 3(c), we did not have any discussion on that, please. That deals with whether or not that your trial starts within the 120 days that you are denied bail until the completion of the matter. Yes, please.

**Sen. Mark:** And that is a very serious one.

**Madam Chairman:** Sen. Mark, it is your amendment that was proposed by you, and so, are you saying that you are handing over the deliberations to Sen. Sobers on clause 3(c)?

**Sen. Mark:** Yeah. For this one.

**Madam Chairman:** Sen. Sobers.

**Sen. Sobers:** Yes. Madam Chair, when you look at clause 3(c) in particular, while we are saying to delete clause 3(c), the way in which section 7 of the Bail Act is currently, 3(a), if your matter— if you are arrested and you are denied bail for 120 days, if the trial starts within 120 days, but the trial does not finish within a year, this widens the ambit now to catch persons who would fall under the trafficking of firearms, as well as the persons who would fall under being in possession of prohibited firearms, that they would also not be granted bail if the matter is not concluded within a year. And we were saying that we wanted that particular new amendment to be deleted, and it stands as it is that only persons who are charged under 3(a) would fall within that, and not persons who would fall under this new 3(ab) or 3(ac).

So basically, if 3(ab) and 3(ac) are allowed, then we are saying that if you are denied bail for up to 120 days, your matter starts within your 120 days, but your trial is not completed within a year, then those persons under 3(ab) and 3(ac)

would be allowed to apply for bail.

**Mr. Al-Rawi:** Madam Chair, I thank the hon. Senator for raising the position, it has alerted me to the fact that we inadvertently have word “paragraphs 3 (a), (ab) and (c)” and it really should be “subsection”, so it is that to be observed first of all. But secondly, the reason why we have included (ab) and (ac) that is the new positions along with 3(a) is that they are all of the sub-type of firearms, so we had sort to treat possession of firearm as we did in 3(a) similar to possession of prohibited weapons and trafficking in weapons and therefore, we had applied—because we had done it that way for firearms, we had applied it that way.

**Sen. Sobers:** The only thing is, hon. Attorney General, through you, with respect to 3(a), you would have persons who would fall under the charge-charge or the conviction-charge. But now with 3(ab) and 3(ac), you would have the persons who would have—there would be some persons who have no pending, no previous who would now also be denied bail for as long as the trial takes place, which I thought to be—even if we are to consider accepting 3(ab) and 3(ac) as they are, to have that person now be denied bail until the matter is concluded, just by the very statistics that you would have read in your summation, it would be—

**Mr. Al-Rawi:** Forgive me for interrupting. It is a very novel suggestion that you are putting forward. And the novelty is that you are introducing the fact that persons who have these types of offences, they have a charge for this type, should not have the same treatment as people who lighting struck twice.

**Sen. Sobers:** Correct. Yes.

**Mr. Al-Rawi:** And that they should have the ability to knock on the door of the court.

**Sen. Sobers:** Subsequent to—

**Mr. Al-Rawi:** Right? But you just said something that was extremely important

provided you are willing to accept the former which is keeping 3(a) and 3(b) on a single strike. If you are prepared to that, that might be something that is definitely worth the while talking, because what you are now proposing is, you will accept the fact that you must show exceptional circumstances for the 120 days effectively, and you are saying, “Look, because these people only have one strike against them, one charge, give them the opportunity to approach the court after a 120 days whether their trial has started or not.”

If the Opposition is prepared to accept that, right now I can say, yes, to that. I fear that you have angered Sen. Mark [*Laughter*] because that is a very sensible submission, It might even persuade Senators Vieira and Richards. [*Crosstalk*] So, you are withdrawing that submission? Sen. Sobers, again, I submit that you are on the wrong bench [*Laughter*] and I mean that in the best way possible. That was a sensible submission, eminently sensible. [*Laughter and crosstalk*]

**Madam Chairman:** Sen. Vieira, Sen. Richards, anything on the amendment proposed by Sen. Mark to 3(c)? No? So it seems that I am going to have to break-up the amendment as proposed at 3(a) and then as proposed at 3(c). Yeah? All right. Members, as this stage I am going to put— it is one amendment to clause 3. All right?

*Question, on amendment, [Sen. W. Mark] put.*

**Sen. Mark:** Division.

*The Committee divided: Ayes 8 Noes 22*

AYES

Mark, W.

Hosein, S.

Sobers, S

Haynes, Ms. A.

Obika, T.

Zakour, E.

Vieira, A.

Deyalsingh, Dr. V.

NOES

Khan, F.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

Moses, D.

Hosein, K.

West, Ms. A.

Le Hunte, R.

Cox, Ms. D.

Singh, A.

De Freitas, N.

Cummings, F.

Dookie, D.

Young, N.

Boris, H.

Richards, P.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Drayton, J.

*Question negatived.*

**Mr. Al-Rawi:** Madam Chair, you did note that I had observed, thanks to Sen. Sobers, the need to just amend in subclause (c) paragraphs to do with subsection.

**Sen. Richards:** And Madam Chair, if I could just—

**Madam Chairman:** So that the amendment as proposed by Sen. Mark has not been accepted. Sen. Richards.

**Sen. Richards:** Just for clarity from the Attorney General, 3(ab) the “grenade, bomb or other like missile”, is that legal phrasing or is it an error?

**Mr. Al-Rawi:** It is taken exactly from the definition of prohibited weapons, minus noxious substances. We did not want to catch tear gas because we are to introduce pepper spray, for instance, to assist women and men in the other way. So pepper spray we did not want to include as a noxious substance.

**Sen. Richards:** It just reads like if bombs are missiles.

**Mr. Al-Rawi:** So, a grenade can actually be launched by a rocket-propelled grenade, an RPG launches grenades, so they are technically a missile, the question is how you deliver it.

**Madam Chairman:** The question is that clause 3 be amended as follows as proposed by the Attorney General:

By deleting at 3 subsection (c) the word “paragraphs” and substituting the word “subsections”.

**Mr. Al-Rawi:** Yes, Madam Chair.

**Madam Chairman:** Yeah?

*Question put and agreed to.*

*Clause 3, as amended, ordered to stand part of the Bill.*

*New clause 4.*



“This act shall continue in force until 05<sup>th</sup> August 2022.”

*New clause 4 read the first time.*

*Question proposed:* That new clause 4 be read a second time.

**Madam Chairman:** Sen. Mark, you have to give us some guidance—

**Sen. Mark:** Yes.

**Madam Chairman:**—on new clause 4.

**Sen. Mark:** Madam Chair, I would say out of an abundance of caution, I would have liked to have this provision or this clause rather, inserted in the legislation. Now, I know the Attorney General indicated that it is part of the overall Bail Act and therefore, it automatically will fall by the wayside come the 5<sup>th</sup> of August, 2022, given the three-year sunset clause, but I see no harm in having it inserted in this amendment once the AG is willing to facilitate it.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Madam Chair, I understand the concern offered by my learned colleague. We have taken advice on the issue, A, in the St. Omer judgment it is canvassed, and B, the CPC’s Department is insistent to me, and I agree with them that it is not required, but in any event, and I take Sen. Mark’s caution out of an abundance of caution, I put it on the record expressly that the law will collapse, and the Government’s intention is, of course, that that happen when the sunset is considered with the ending of Act No. 17 of 2019.

*Question put and negated.*

*Preamble approved.*

*Question put and agreed to:* That the Bill, as amended, be reported to the Senate.

*Senate resumed.*

[*Crosstalk*]

**Madam President:** Members, please, we are still having a sitting. Okay?

*Bill reported, with amendment.*

*Question put:* That the Bill be now read a third time.

**Madam Chairman:** This Bill, hon. Senators, as you know requires a three-fifth majority, and therefore, a division will be conducted by the Clerk.

*The Senate divided:       Ayes 22*

AYES

Khan, Hon. F.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Cox, Hon. D.

De Freitas, N.

Singh, A.

Cummings, F.

Dookie, D.

Young, N.

Borris, H.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Drayton, J.

*The following Senators abstained:* Mr. W. Mark, Mr. S. Hosein, Mr. S. Sobers, Ms. A Haynes, Mr. T. Obika, Mr. E. Zakour, Mr. P. Richards and Mr. A. Vieira.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**Madam President:** Leader of Government Business.

### **ADJOURNMENT**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, I beg to move that the Senate do now adjourn to Tuesday 26 November at 10.00 a.m. During that sitting we will doing Bill No. 4 on the Order Paper, a Bill entitled an Act 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.

**Sen. Mark:** Madam President, my colleague probably, with elections around the corner, is a bit confused. He would know that under the Standing Orders, the fourth Tuesday is Private Members' Day, and Private Members' is on the 26<sup>th</sup>, so I think he would want to deal with those matters after Private Members' Day which will be the following Tuesday.

**Madam President:** And may I suggest that the Members deal with that while I deal with what comes next. So, hon. Senators, before I put the question on the Adjournment, leave has been granted for two matters to be raised. Sen. Dillon-Remy. [*Desk thumping*]

**Sen. Dr. Dillon-Remy:** Madam President, I wish to withdraw my matter.

**Madam Chairman:** Sen. Mark.

### **Resources to MTS**

#### **(Failure of Government to Provide)**

**Sen. Wade Mark:** Yes. Madam President, the matter that I would like to address deals with the failure of the Government to provide critical resources to MTS. Madam President, I do not know if my colleagues are aware that this very important institution known as the National Maintenance Training and Security Company that does outstanding work for government Ministries, government agencies, state enterprises, statutory authorities, among others, has been experiencing a crisis of cash. Recent reports or reports when I filed this Motion revealed that up to that time which was a few months ago, the Government had owed MTS close to \$300 million and rising.

Many of the Ministries have not been paying MTS their bills on time. My information is that the recent budget that was passed resulted in some of the government Ministries seeking to correct their deficits and their outstanding sums of moneys owed to MTS.

**6.50 p.m.**

Madam President, whilst they were owing these hundreds of millions of dollars to MTS, hundreds of workers were unable to access funds that were deducted via credit union deductions, based on loans that they had with their respective credit unions, those loans were not being serviced. Some of them had medical plans, medical insurance plans, moneys were being deducted, but the moneys were not being directed to the particular insurance company. So, a lot of the workers suffered enormously during that period. I think it is incumbent upon Government agencies to meet their obligations to MTS on a more timely and

reasonable basis.

So, I have raised this matter this evening, to get from the Government a status report on moneys that are outstanding to this very important state enterprise. I hope that the Minister would be in a position to give us a detailed breakdown as to how much is outstanding as we speak, and when will the various bills that are outstanding be satisfied so that MTS can continue to perform the service that it does on behalf of the people of Trinidad and Tobago.

So, Madam President, it is really an attempt on my part to get a status report on this matter so that Trinidad and Tobago and the people at MTS, that is the workers and the union, and of course the employees, management included, would have a better understanding of where MTS stands at this time from a financial perspective and point of view. So, with these few words, Madam President, I look forward to the hon. Minister of Public Utilities, providing some clarification on a status report on MTS at this time. I wish to thank you, Madam President.

**Madam President:** Minister of Public Utilities. [*Desk thumping*]

**The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte):** Madam President, for once, another time, I am getting a question by Sen. Mark, where he is asking for information, and if properly posed I have no problem in giving a status report at MTS. However, the question that was posed to us in the Senate clearly did not ask for that.

The Senate question as posed and I read: “The failure of the Government to honour outstanding payments of approximately \$300 million to workers of the National Maintenance Training and Security Company Limited.” This talks about MTS, all right, making—owing workers, workers, of the National Maintenance Training Company Limited, some \$300 million.

Madam President, there is a simple difference between accounts payable and

accounts receivable. All right? If MTS owes their workers, that is an accounts payable. Money owed to MTS is an accounts receivable. This question that was put to me talks about accounts payables, money that MTS owes to their workers. And I am clear to say here emphatically in answering the question that was put to me, that MTS never at any point in time owed any workers any amount of \$300 million from an accounts payable perspective, that is erroneous, that is not so, and they do not owe any workers \$300 million, as posed in this question.

As for the other side, as I heard now, coming out what Mr. Mark would really like to find out about money owed to MTS, what I could say at this point in time, that MTS has all their bills that they have collected, they have made all their payments with regard to—there are still some funds that are from some of the Government Ministries that are owed to MTS, I did not walk with that information, because it was not the question that was being asked, but in any course of business you will have an accounts receivable situation. It is in the normal course of business. MTS continues to be a very profitable entity as of their last financial statement. They made, as of the financial year ending 2018, they had a profitability of \$1.7 million, and the company continues to be profitable. All deductions that were taken out of the employee's accounts have all been settled and paid to their respective places that they are owed.

So again, in answering the question that was posed, which is talking about \$300 million, approximately \$300 million owed to workers of the National Maintenance Training and Security Company Limited, there has never been that amount of money owed to workers by MTS. Never been!

So with that, that is the clear position, and MTS continues to be a profitable entity. Thank you very much. [*Desk thumping*]

**Madam President:** Leader of Government Business.

**ADJOURNMENT**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, I crave your indulgence to re-move again the adjournment. Not very often in this Senate does Sen. Mark gets a chance to correct me, but I humbly genuflect towards him in this regard.

Madam President, I beg to move that this Senate do now adjourn to Tuesday the 26<sup>th</sup> November at 1.30 p.m., Private Members Day, and once Sen. Mark indicates to me what Motion—there are 10 Motions here—I will inform this honourable Senate as to what Motion we will be doing next week Tuesday. Okay, thank you.

**Sen. Mark:** I shall communicate with my friend.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.57 p.m.*