

SENATE

Tuesday, May 03, 2016

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. Dennis Moses and Senators David Small and Gerald Hadeed, who are all out of the country.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Anthony Thomas Aquinas Carmona O.R.T.T., S.C.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS
AQUINAS CARMONA, O.R.T.T., S.C.,
President and Commander-in-Chief of the
Armed Forces of the Republic of Trinidad and
Tobago

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President

TO: MR. RONALD HUGGINS

WHEREAS Senator the Hon. Dennis Moses is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

UNREVISED

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, 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, acting in accordance with the advice of the Prime Minister, do hereby appoint you, RONALD HUGGINS to be temporarily a member of the Senate, with effect from 3rd May, 2016 and continuing during the absence from Trinidad and Tobago of the said Senator the Hon. Dennis Moses.

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 2nd day of
May, 2016."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS
AQUINAS CARMONA, O.R.T.T., S.C.,
President and Commander-in-Chief of the
Armed Forces of the Republic of Trinidad and
Tobago

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President

TO: MR. GERALD IAN RAMDEEN

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

UNREVISED

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, GERALD IAN RAMDEEN to be temporarily a member of the Senate, with effect from 2nd May, 2016 and continuing during the absence from Trinidad and Tobago of the said Senator Gerald Hadeed.

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 2nd day of
May, 2016.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS
AQUINAS CARMONA, O.R.T.T., S.C.,
President and Commander-in-Chief of the
Armed Forces of the Republic of Trinidad and
Tobago

/s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President

TO: MR. JUSTIN JUNKERE

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

UNREVISED

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, 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, JUSTIN JUNKERE, to be temporarily a member of the Senate, with effect from 3rd May, 2016 and continuing during the absence from Trinidad and Tobago of the said Senator David Small.

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 2nd day of
May, 2016.”

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law: Ronald Huggins, Gerald Ian Ramdeen, Justin Junkère.

PAPERS LAID

1. Criminal Procedure Rules, 2016. [*The Attorney General (Hon. Faris Al-Rawi)*]
2. Audited Financial Statements of the CEPEP Company Limited for the financial year ended September 30, 2013. [*The Minister of Rural Development and Local Government (Sen. The Hon. Franklin Khan)*]
3. Audited Financial Statements of the CEPEP Company Limited for the financial year ended September 30, 2014. [*Sen. The Hon. F. Khan*]
4. Consolidated Annual Audited Financial Statements ExporTT Limited (formerly Business Development Company Limited) for the financial year ended September 30, 2012. [*Sen. The Hon. F. Khan*]

5. Consolidated Annual Audited Financial Statements of ExportTT Limited (formerly Business Development Company Limited) for the financial year ended September 30, 2013. [*Sen. The Hon. F. Khan*]
6. Consolidated Annual Audited Financial Statements of ExportTT Limited (formerly Business Development Company Limited) for the financial year ended September 30, 2014. [*Sen. The Hon. F. Khan*]
7. Privileges and Immunities [CARICOM Implementation Agency for Crime and Security (IMPACS)] Order, 2016. [*Sen. The Hon. F. Khan*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the Public Accounts of the Republic of Trinidad and Tobago for the financial year ended September 30, 2015. [*Sen. The Hon. F. Khan*]
9. Public Accounts of the Republic of Trinidad and Tobago for the financial year 2015. [*Sen. The Hon. F. Khan*]

URGENT QUESTION

LIDAR Speed Guns (Increase of Speed Limits)

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Works and Transport: Given the recent announcement to implement LIDAR speed guns, could the Minister state whether consideration will be given to increase the speed limits on the nation's highway to avoid further traffic congestion?

The Minister of Works and Transport (Hon. Fitzgerald Hinds): Thank you, Madam President. The question hinges, it rests, on this question of traffic congestion. I want to advise this Parliament and, of course, the Senator, that traffic congestion is the result of a number of factors, the least of which might be people driving under or at 80 kilometres and 50 kilometres per hour in Trinidad and Tobago.

Madam President, I wish to advise this House that the Minister of Works and Transport will continue to consult with the technocrats and experts in the area of traffic management and after those consultations, a determination will always be reviewed and be made in respect of the design and posted speed of the country's highways. We are prepared to consult with technocrats and experts outside of the Ministry as well. All voices in this democracy will be heard. And these matters are under constant review. After these reviews are taken into account, then priority for us in the Ministry of Works is the question of public safety, which, I give the hon. Senator the assurance, will never be compromised.

Sen. Mark: Madam President, through you, maybe the hon. Minister may wish to share with this House how the implementation of this particular project is going at this present time. Can he bring us up to speed, seeing that today is the first day of its implementation? Could the hon. Minister help us?

Hon. F. Hinds: Let me assist my friend. Today is not the first day of its implementation. This was actually, the Order was signed by yours truly last Friday. It was published as well last Friday. It took effect since then, so I hope the hon. Senator was observing the law, since then and even before.

Madam President, the situation is that the law of Trinidad and Tobago is now that speed measuring devices are now in use to detect excessive speeding on our nation's roads and the reason for that is to detect these offenders and to prosecute them and, of course, all with a view of public safety constantly, Madam President.

Madam President: Sen. Mark, you giving way to Sen. Ameen?

Sen. Ameen: Thank you, Madam President. I want to ask the Minister in his consultation, I know that previously technocrats had looked at the area of e-ticketing and different technologies with regard to speeding and other offences on the road. Can you say whether your Ministry, or you or the Government, has given

any consideration? I mean the speed gun is a pretty well-established technology, I do not want to say old, but there are other very modern methods with regard to e-ticketing and reducing speed and dealing with driving offences in general.

1.45p.m.

Hon. F. Hinds: Thank you very much. That matter is, of course, under active consideration as we speak. We are reviewing the amendment to the Motor Vehicles and Road Traffic Act, and that matter is under active consideration, and will find itself before you for debate very shortly.

ORAL ANSWERS TO QUESTIONS

The Minister of Rural Development and Local Government (Sen. The Hon. Franklin Khan): Madam President, I just want to assure this House, that the Government will be answering all three questions listed on the Order Paper today.

Retrenchment Notices Received (Details of)

40. Sen. Wade Mark asked the hon. Minister of Labour and Small Enterprise Development:

In light of the 830 retrenchment notices received by the Minister of Labour and Small Enterprise Development for the period September 11, 2015 to January, 2016, could the Minister provide the Senate with:

- (i) a breakdown of the number of workers retrenched in each of the companies;
- (ii) the names of the companies; and
- (iii) the total number of workers actually retrenched during the same period under review?

The Minister of Labour and Small Enterprise Development (Sen. The Hon.

Jennifer Baptiste-Primus): [*Desk thumping*] Thank you very much, Madam President. In response to my hon. senatorial colleague, I wish to forward the following information: 836 workers—Sen. Mark, not 830; 836 workers were identified for retrenchment in notices submitted to the Minister of Labour and Small Enterprise Development, in accordance with the Retrenchment and Severance Benefits Act, during the period September 11, 2015 to January 2016 as follows:

1. Alstons Building Enterprises Limited, 6 workers
2. Anthony P. Scott Company Limited, 15 workers
3. BP Trinidad and Tobago LLC, 7 workers
4. Brickforce Limited, 28 workers
5. Bristow Caribbean Limited, 13 workers
6. Columbus Communications Trinidad Limited, 19 workers
7. Construtora OAS, 317 workers
8. Crown Packaging Trinidad Limited, 16 workers
9. Fair Chance Racing Service (2006), 39 workers
10. Goodwood Racing Service, 15 workers
11. GulfMark Marine Trinidad Limited, 1 worker

—and that is unusual—

12. Katerserv Limited, 14 workers
13. Kenson Operational Services Limited, 12 workers
14. Metal Designs & Concepts Limited (MDC-UM), 6 workers
15. Methanex Trinidad Limited, 5 workers
16. OCM Group Executive Corporate Services, Trinidad Express Newspaper, 42 workers
17. RBC Royal Bank Trinidad and Tobago Limited, 95 workers

18. Regency Recruitment and Resources for Repsol E&P T&T Limited,
15 workers

19. Schlumberger Trinidad Inc.—[*Crosstalk*]

I am a Trinbagonian, Madam President, and with a foreign company, I am entitled to make such a mistake.

—1 worker

—which is unusual, because the Act calls for informing, 5 and over.

20. Scotiabank Trinidad and Tobago Limited, 35 workers

21. Superior Energy Services Trinidad Limited, 10 workers

22. Tissues Limited, 10 workers

23. Trinity Exploration and Production Services Limited, 48 workers

24. Trinsulate 2 Caribbean Limited, 12 workers

25. University of the Southern Caribbean, 37 workers

26. Weatherford Trinidad Limited, 17 workers; and

27. West Shore Medical, 1 worker

—bringing it to a total of 836.

It is difficult to provide data on the total number of workers actually retrenched during the period September 11, 2015 to January 2016, as there is no statutory provision for reporting such information, or providing formal notice of retrenchment where an employer proposes to terminate the services of less than five workers.

It is in this context, Madam President, and hon. Senators, should note that the applicable legislation is being currently reviewed, in consultation with the stakeholders. That is to say, through you, Madam President, to Sen. Mark, the review of Retrenchment and Severance Benefits Act, that process of consultation will be held on the 18th of this month. [*Desk thumping*]

Sen. Mark: Madam President, through you, could I ask the hon. Minister, in light of the growing spade of retrenchment and layoffs, whether the hon. Minister sees the need to fast-track the revision of the Retrenchment and Severance Benefits Act, and bring such changes as quickly as possible to this honourable House for its approval, well, debate and ultimate approval? Do you think that there is need to speed up the process, Madam President, through you?

Sen. The Hon. J. Baptiste-Primus: Thank you, Madam President. To the hon. Senator, I do not know that—today is May 3rd, the consultation would take place May 18th, and we have to go through that period and that process of consultation, because at the end of the day, we would not want it to be said, as has been said of my predecessor, that he brought a piece of legislation to this Senate, without going through the consultative process.

So once the consultation has been completed, the technocrats at the Ministry of Labour and Small Enterprise Development, they would try to pull the strands together into a working document, that we will send back out to ask the participants, the stakeholders, “Did we get it right? Is this what we agreed upon at the consultation?” Then it comes back to the Ministry, then I would have to take it to Cabinet, by way of the Cabinet Note, and the Cabinet will deliberate on it and decide on the time frame for it coming before this honourable Senate. But rest assured, it is of concern to this Government, and we will be working as speedily as possible.

And lastly, Sen. Mark, you will agree, after being in office only eight months, for such a piece of legislation, engaging the attention of the stakeholders is really one, noteworthy of worth, yes? [*Desk thumping*]

Sen. Mark: So could I ask the hon. Minister, well, apart from that very important piece of amendment to the Retrenchment and Severance Benefits Act,

Sen. The Hon. Jennifer Baptiste-Primus (cont'd)

whether there any other measures, that the Minister intends to pursue in an effort to address the chronic job loss, or loss of jobs, I should say, that workers are experiencing quite frequently in T&T? Is there any other measure that you will want to examine, or you will like to share with this honourable Senate, to ease the burdens of the working people as a result of layoffs and retrenchment?

Sen. The Hon. J. Baptiste-Primus: Yes, thank you, Madam President. As a matter of fact, hon. Senator, there is a piece of legislation as a Ministry of Labour and Small Enterprise Development, I intend to work diligently to bring before the Cabinet and this House. It has to do with the basic conditions of employment code that will be converted into a Bill and hopefully legislation, because I believe at the personal level, it has not engaged our Cabinet as yet, but at the personal level, this country requires basic conditions so that all workers in Trinidad and Tobago, when they go out there, they know they will be eligible to enjoy certain basic conditions of work.

So that a consultation has been carded. My Permanent Secretary and the rest of our team, we agreed on having a consultation on the basic conditions of work or basic conditions of employment code on June 29th, the 29th of next month. As a matter fact, you are the first person I am sharing it with, Senator, after the team at the Ministry.

Sen. Mark: May I ask the hon. Minister whether the Unemployment Insurance Fund, which I understand exists in Barbados, I may be wrong, but that is what I understand, whether that is a measure that you would be looking at, so that when workers are retrenched or laid off, there will be some kind of cushion or buffer to take them through if between, let us say, six months to a year, before they can find meaningful employment through training and retraining? Is that a measure that you would also wish to consider as a buffer, to ease the burdens on behalf of the

working class?

Sen. The Hon. J. Baptiste-Primus: Thank you, Madam President, to the hon. Senator, that suggestion was placed before the party that I belong to, and does form part of the policy of the Government, to put in place all mechanisms that can assist workers during good times and bad times. As a matter of fact, that suggestion has been noted by the leader of the Joint Trade Union Movement, and I have absolutely little doubt that coming out of that consultation on the 18th of this month, undoubtedly that would form part of the discussion and the conversation.

**Concordat Between Churches and State
(Review of)**

41. Sen. Wade Mark asked the hon. Minister of Education:

Given the nationwide consultation on education that is taking place, could the Minister inform the Senate whether the Government also intends to review the Concordat between the Churches and State?

The Minister of Education (Hon. Anthony Garcia): [*Desk thumping*] Madam President, the Concordat came into being in 1960, more than 55 years ago. Since that time, a number of questions have been raised by stakeholders and members of the public, in relation to the selection of students, the teaching of religious education, and the funding arrangements for repairs and the construction of denominational schools inter alia.

During the recent national consultation on education, feedback was sought from all stakeholders on both the Education Act and the Concordat, and how the administration of the education system can be improved. Arising from this feedback, the Ministry of Education intends, subject to Cabinet's approval, to actively engage denominational boards in further discussions, in order to ensure that the mutually beneficial and cordial relationship that exists between the

denominational boards and the Government can be improved, and be strengthened, where applicable, to provide the best educational opportunities for the nation's children. Thank you.

Sen. Mark: Madam President, Could I ask, hon. Minister, before these consultations were to commence, whether the Government intends to issue a policy document, so that the public of T&T can, in fact, understand what is the Government's thinking on the way forward, as it relates to the future of the Concordat, before you embark on consultation? Would there be a policy document issued by the Ministry of Education, on this very important subject?

Hon. A. Garcia: Madam President, it appears to me that Sen. Mark was not listening attentively when I spoke, because I explicitly stated that we had a national consultation on education, which included discussion on the Concordat. What Sen. Mark is trying to get from me now is, perhaps another consultation. I will like to inform this House that the report on that national consultation, will be ready in a few weeks' time, and then after it is taken to Cabinet, we will relay to the general public, the contents of this Concordat. I will like to say that it was based on extensive discussion that we had during this consultation. [*Desk thumping*]

2.00 p.m.

Profiteering/Price Gouging (Measures Taken)

42. Sen. Wade Mark asked the hon. Minister of Trade and Industry:

Could the Minister inform the Senate of what measures have been put in place to ensure that the business community is not engaged in profiteering or price gouging arising from the recent changes in the VAT system?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you, Madam President. Subsequent to the reading of the 2016 budget on October 05, 2015 and the announcement by the Minister of Finance on the

reduction in the rate of value added tax from 15 per cent to 12.5 per cent, an interministerial committee was formed to oversee the implementation of this measure. The interministerial committee comprised representatives of the Ministry of Finance, including the Customs and Excise Division and the Board of Inland Revenue and representatives of the Ministry of Trade and Industry and the Ministry of the Attorney General.

Extensive consultations were also held with key industry stakeholders including the Trinidad and Tobago Manufacturers Association, the Trinidad and Tobago Chamber of Industry and Commerce and also the Supermarkets Association of Trinidad and Tobago and the Food Distributors Association of Trinidad and Tobago. Therefore, Madam President, the major stakeholders, and hence the implementers of the amendment were fully apprised of the measures being proposed by the Government. This was a critical element of the process to ensure consensus and buy-in of the measure prior to actual implementation.

Further, in order to ensure that there were no misconceptions or miscommunication about the new VAT regime, a number of measures were implemented to ensure compliance by businesses, and ensure that instances of profiteering or price gouging by businesses were mitigated. These measures included the establishment of a VAT hotline, a VAT email address, inspection of business places by the field officers of the Consumer Affairs Division of the Ministry of Trade and Industry.

A series of public awareness and promotional activities and publications by the Consumer Affairs Division were also implemented, including the publication of a list of prices of various items prior to the change in the VAT regime, and the prices of such items after implementing the new VAT regime.

The VAT hotline and the VAT email system were set up to field calls and

emails from members of the public to clarify any matter that was unclear to consumers and to business owners and to address any inconsistencies or violations of the law. These measures were quite instrumental in the filing of complaints against unscrupulous businesses that were not following the new VAT regime. Such complaints were either investigated by the Consumer Affairs Division or transferred to the BIR, the Board of Inland Revenue, for immediate attention.

As at Friday, April 29, 2016 over 100 phone calls and over 50 emails were received and responded to by the Ministry of Trade and Industry on issues relating to the new VAT regime that became effective on February 01, 2016. The Consumer Affairs Division also engaged in awareness building campaigns to ensure that consumers and business owners were fully aware of the law. To this end, data and information relating to prices, brand names and outlets, et cetera, were published on a periodic basis to highlight the prices of selected items by selected businesses by product and brand name. The Consumer Affairs Division also conducted a series of interviews on Music for Life Radio 107.7, and with the *Business Guardian* newspaper.

The information published by the Consumer Affairs Division was geared towards informing consumers of the prices and offer by various businesses so that consumers can make an informed choice and choose to purchase items from those outlets with the lower prices and abstain or boycott those with the higher price.

Madam President, while there may be a small percentage of unethical and unscrupulous business owners that choose to break the law, the majority of business owners are compliant with the new VAT regime. I also wish to assure consumers that the field officers of the Consumer Affairs Division and the Board of Inland Revenue will continue to be present in the field to monitor and ensure that businesses continue to uphold the law, and that the pockets of businesses that

continue to breach the law would be penalized accordingly.

Thank you. [*Desk thumping*]

Sen. Mark: Madam President, based on the various devices and mechanisms outlined by the hon. Minister to safeguard the interest and the rights of consumers, could the hon. Minister indicate to this honourable Senate how many business owners who have been engaged in price gouging have been charged and have been brought before the courts of Trinidad and Tobago thus far?

Sen. The Hon. P. Gopee-Scoon: Thank you, Madam President. This is a matter for the Board of Inland Revenue, but to the best of my knowledge I do not believe that any business houses would have been brought before the law. Certainly, there were complaints, very early, and maybe two or three of those—most people wanted clarification on price—complaints pertain to businesses who we felt may have been offending the law, and those matters were referred to the Board of Inland Revenue. Quite likely, those businesses may now have conformed, and are acting within the law.

But we continue to be on the field, the Consumer Affairs Division, doing reviews at about 40 supermarkets per month and other business houses, including hardware as well, checking on prices and publishing in all of the daily newspapers at least, once a month, but also bearing in mind the cost of advertising, and certainly on social media every month.

STRATEGIC SERVICES AGENCY (AMDT.) BILL, 2016

Order for second reading read.

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

That a Bill to amend the Strategic Services Agency Act, Chap. 15:06, to expand the functions of the Strategic Services Agency, be now read a second time.

Madam Speaker—Madam President, it took me a long while to get used to saying “Madam Speaker”, and now I have to refer to “Madam President”. I am very pleased to be back in the Senate this evening and, more particularly, pleased to pilot before the honourable Senators of this Senate and through you to the national community, a very important piece of legislation, one which has its root in burning issues that grip our country in Trinidad and Tobago right now. Any Bill that comes before our Parliament must meet with certain criteria. We are assembled here as a Parliament, a bicameral structure that we, pursuant to section 53 of the Constitution, as we are obliged to make laws for the peace, order and good governance of our country. This Bill has passed through the House of Representatives, but one may say that, as with any Bill, that is simple majority legislation that the real test to be had is in the Senate. After all, there are other minds and the bipartisan politics which grip our country, and it is with that focus in mind that persuasion has to be had, not so much to the numbers that you have in any one House, but also to grip in to the bona fides of any Bill that you bring. All law must be democratic within the context of our Constitution. All law must be proportionate within the context of our Constitution.

There has been an argument offered by Members of the Opposition in the House below, and without holding Members opposite now to the same point of view, there has been a statement that the law that we now seek to bring is one which traverses on constitutionality. It is for that reason, therefore, that I must freeze-frame on a few basic issues before this Senate, and I propose to do so in the following fashion: one, to speak to the legitimate aim of the legislation now before us; two, to speak to the manner in which any rights which could be potentially affected are being traversed in fact or potentially and, thirdly, to speak to the

proportionality of the intrusions as may be alleged as may be in fact. That must be done in a context, Madam President, and the context is seated in the very starting point of what this Bill is about.

This Bill seeks in the very short form—five clauses only—essentially to amend three clauses in the SSA Bill, the parent Act. This parent Act, as we know, was passed in 1995, considered in 1994, and was on the back of a considerable amount of work until then Minister of National Security, John Eckstein, on September 11, 1995 piloted legislation, which we now 16 years—21 years—later now seek to adjust.

Specifically, we are inviting Senators to recognize that this legislation has been around for a very long time. We seek, in essence, if I were to summarize the points, to attenuate the law before us now by materially amending the definition of what is the subject matter of the parent Bill into a forming of what we now call serious crimes.

Senators will note that we have circulated not just the very skinny version of the Bill, but I have asked as Attorney General, that the Parliament distribute out marked-up versions of the legislation so that the amendments that are to be considered can be factored alongside the parent law. After all, we must make intelligible sense of the proposals which we are putting before you, and the law must not be considered in a vacuum, but in the context of the amendments.

We ask the honourable Senate, specifically, to consider a definition of “serious crime” and we have asked that this definition include offences relating to homicide, treason, terrorist acts, terrorist financing, hijacking, kidnapping, trafficking in persons, trafficking in children, gangs, illicit trafficking in narcotics, psychotropic substances, precursor chemicals, dangerous drugs, corruption, money

laundering, smuggling, arms and ammunition, chemical biological and nuclear weapons and weapons of mass destruction, computer misuse, cybercrime, transnational crime or any offence which carries a penalty of not less than five years imprisonment.

We have asked that Senators consider that we take the definition of serious crime, we essentially substitute this broad-based definition throughout the body of the Act. We allow for the SSA which has a proven and established architecture for now 21 years, to be allowed as the springboard for intelligence-based agencies specifically to coordinate the collation of information gathering in the context of the existing law and that, therefore, the purview is now widened.

We say that this law does not stand alone. We specifically recognize that this law must be read alongside all of the other laws that interact directly with it. They include: Customs and excise enforcement—customs legislation. They include, specifically, the position of—I have actually listed it so hon. Senators could have reference to it: the Constitution of the Republic of Trinidad and Tobago, the Proceeds of Crime Act, Trafficking in Persons Act—importantly, and I will spend some time on this—the Interception of Communications Act, the Financial Intelligence Unit of Trinidad and Tobago, the Dangerous Drugs Act, Anti-Terrorism Act, Firearms Act, Police Service Act, Defence Act and, specifically, we start to drill down into Computer Misuse, Data Protection, Administration of Justice, Deoxyribonucleic Act, 2011 and then we factor serious crime as now broadened into this SSA Bill by asking Senators to put it into operation articulating with those laws.

We say, specifically, that we want this law to operate in the very few sections that stand as the existing law. The existing law is, after all, only 14 clauses long—

14 sections long, and we say that there is adequate balance in amending this definition of serious crime, and putting it into effect into the law for a number of reasons. We say that there is no enshrined right that is being infringed. We say specifically that there is no right to privacy as some people alleged exists in this jurisdiction, but which our courts do not recognize specifically so.

Our Constitution does in section 4(c) recognize the right to private and family life. Our courts are replete with judgments that say that the right to privacy is not per se a right. Our common law recognizes a right which says that there is breach of confidence. Our equitable jurisdiction has, most recently, in certain cases recognized an equitable jurisdiction to the protection of certain privacy issues, but the debate is still ongoing with respect to a right of privacy per se.

We say that even if one were to take it as an allegation that there is an intrusion into section 4(c) of the Constitution, that we do not need to look to a three-fifths majority argument, because the law is proportionate and taking avail of dicta such as Baroness Hale has offered for our consideration, such as many of our cases have recognized—be it Surratt, be it any one of the decisions—that we simply need to look to whether there is a proportionate safeguard to the operation.

2.15p.m.

So when one takes the definition of serious crime, when one asks for the functions of the SSA Act, as we are now broadening through an amendment to section 6 of the legislation, when we take the functions of the Act, we apply it to the purview of surveillance, which is one of the functions only of the SSA, that in fact we must read that management of that issue alongside the laws which govern how one intercepts communication, how one articulates the operability of any issues arising from that, and, specifically, I invite the hon. Members of this Senate

to look at the argument that society is now discussing.

This debate which happened in the House of Representatives was an interesting one. We received from the Opposition no suggestions of amendments, no written concerns. That debate, in fact, the first reading, second reading in the House was on March 16th, the third reading and passage on April 15th. I understand, however, that the Opposition has in fact written to all Independent Senators, that the Opposition has also—I say as I understand, I could be wrong. I understand that the Opposition has written to members of the diplomatic and consular corps. I could be wrong, this is the information that has come to me, but I wish to simply say that the Government of the day has not received a single submission from the hon. Members opposite. However, any Government that intends to pass legislation is obliged to listen to the views of all and to work together with the legislative aim of coming up with the best laws possible.

Madam President, when we look to the issue of serious crime, I think it incumbent to just stick a pin in the argument for a moment before we look to how the amendments will be operationalized in the existing law if it is that this Bill passes muster here. We must look to some of the ills or mischiefs in society right now, and permit me for a moment to refer to a few examples.

The Financial Intelligence Unit in their 2015 report looked at the dollar value of monetary transactions passing through it and specifically stated in their report that \$3.665 billion of monetary value were considered. In that context, I am able to say from information received at the Ministry that in Trinidad and Tobago we have had 68 seizures only. The value of money detained, but not seized, is \$4.2 million, or US \$121,000. The amount actually forfeited from roughly \$3.7 billion is a massive sum of TT \$250,000.

When we look at money laundering, I am able to say, 10 offences are currently before the court only. When we look at suspicious transactions reported as disaggregated we see in 2011 there were 303; 2012, 258; 2013, 554; 2014, 617; 2015, 609. When we look at murders, in the period 2010 to 2015, going through each year, they are as follows: 485 for 2010, 354 for 2011, 383 to 2012, 408 to 2013, 403 to 2014; 2015, 410, a steady rise up after the state of emergency effects that rebalanced. Detection and conviction rates for homicide in the period 2008 coming forward: 2008, 15.9 per cent; 2009, when Special Anti-Crime Unit came in, 26.8 per cent; in 2010 they were stopped; the Special Anti-Crime Unit in April 2010, the figures attenuated down to 22.8 per cent; in 2011, 21.9 per cent; in 2012, 16.6 per cent; in 2013, 10.3 per cent, and so the trend falls down.

We heard one of the Members in the House say, on bench opposite, that the figures now stand close to what inflation rates look like, that is under 10 per cent. The low has actually been as bad as 3 per cent in the period 2010 to 2015, including murder/homicide. When we look at woundings and shootings: 2013, 542; 2014, 558; 2015, 600, steady increase. Let us look at another mischief in our prisons. Some of us have heard statements made in our prisons consultation. We heard, in fact, and I wish to take this opportunity to address an issue in the public domain; the information that I put into the public domain then, as I will do now, came to me in respect of items recovered in our jails from the Commissioner of Prisons himself in writing, so I am not quite sure what the Prison Officers' Association is speaking about in contesting some issues.

Secondly, as a matter of fact, items including gun, ammunition, firearm projectiles, marijuana, cocaine, SIM cards, telephones, video recorder cards, all of these were found in their thousands. Thirdly, as a matter of record on coming into

office, we implemented the jamming technology into the jails, “grabbers” and “jammers”, previously in a draw. We intercepted in a 99-day period in one jail and in a 30-day period in another jail, 1,530,535 calls coming from in the jail going outside; 126,247 text messages coming from inside the jail going outside. In another jail, 379,864 phones were jammed, text messages blocked in this other jail, 48,581 text messages blocked, originating from in the jails and coming out. [*Desk thumping*]

Now, I do not do that for a pat on the back, it is after all common sense that one should apply the laws available, or technology available to you. I do that to state and mark the condition that Trinidad and Tobago finds itself in, allegations of corruption abound everywhere. They have found themselves in our fourth round mutual evaluation conducted by the Caribbean Financial Action Task Force, which at its plenary in June 2016, will be invited to consider what is now in the public domain whether Trinidad and Tobago should have sanctions visited on to it as a result of being put into enhanced follow-up. Cut that clean, CFATF, which is a 27-basin country, which applies the FATF 40 recommendations, says that Trinidad and Tobago’s efficacy in relation to applying its laws is woefully short. They say you may be technically compliant in some laws, but the effect of your laws being applied are woeful. I think that the figures I have just put statistically beforehand demonstrate that that may perhaps be true.

Therefore, when one considers serious crime as now defined, are we really doing something that is mischievous in allowing the SSA the ability to have purview of what we have now defined as serious crime? In considering that, I would like hon. Members to refer to the annual reports of the Strategic Services Agency for 2009, 2010, 2011, 2012, 2013, 2014, and in those written annual

reports you will note in writing that the SSA has in fact been involved, as I read from page 6 of the 2010 report:

Within the first quarter of 2010 the agency continued to pursue issues relating to the combating of money laundering, financing of terrorism—et cetera.

When we look to another report that the resultant policies, the nature of TOC's inclusive, they are looking at illicit trafficking in drugs, trafficking in arms and ammunition explosives, trafficking in persons, smuggling migrants, money laundering, corruption, terrorism, kidnapping, cybercrime, organized criminal groups. So these are what the reports tell us the SSA were actually doing.

And now we come to the Parliament and we say, listen, let us take avail of the state of Trinidad and Tobago, let us look at all serious crimes, let us look at what the SSA was in fact doing, and let us now legislate it. Another mischief before us by way of a legitimate aim is, specifically, that as a matter of fact Trinidad and Tobago has a National Operations Centre which was specifically the subject of a Cabinet Note under the last Government, which created the National Operations Centre. It is Minute No. 1005, dated March 13, 2014, coming out of a UNC Government, which specifically set up a National Operations Centre to take control of operational assets which that entity took; specifically, operational assets provided for in the budget of the Office of the Prime Minister to the tune of \$80 million a year, which included flying of helicopters, boots on the ground, CCTV cameras, and the NOC, under the previous Government, purchased from Huawei Technologies, surveillance equipment and facility equipment to the tune of close to a billion dollars, all under the National Operations Centre under the Office of the Prime Minister.

By Cabinet Note the Operations Centre also included, specifically, CCTVs for surveillance, which the NOC had direct access to, and which the predecessor NSOC as it was called, and then relabelled NOC, had in active operation, and the documents to prove this have been found in the National Security Council Minutes and Notes under the Office of the Prime Minister, as the Prime Minister heads the National Security Council. Further, Trinidad and Tobago had a National Training Academy. Specifically, we had a National Security Training Academy which in fact has now effluxed, and that academy was a combination of ventures between the Ministry of Education, Tertiary Education, and the Ministry of National Security.

Question to the hon. Senators, through you, is it appropriate then to now come to the Parliament and say, specifically as we do, in the modelled legislation before us now, if one were to look to section 6, as it is proposed to be amended by clause 4 of the Bill, we look to subparagraph (b)(v), and where we see we are adding—strike training only for staff and insert training for staff of the services. “Services” is defined in the Bill as Customs, TTPS, all agencies falling under the purview as defined in the legislation. And we now ask, is it appropriate as a nation to leave a billion-dollar enterprise, called the National Operations Centre, without parliamentary scrutiny, previously had to it, without management and oversight? Is it appropriate to take a national academy, not under one umbrella, and just leave them in the cold? Or is it appropriate to do as we do now and to say, take avail of these assets, take avail of the work that was being done, bring it under one umbrella and park it under an SSA? [*Desk thumping*]

But I found it quite interesting to listen to Members opposite me speak to some very interesting facts, and Members opposite would be very surprised to learn, or

perhaps Members would be invited to look at a few specific publications produced under the hand of the last Government. I refer to Policy to Establish National Security Institute of Trinidad and Tobago. It is a document, a strategic interagency learning model, September 20, 2012. I refer Members also to another very interesting document produced under the hand of the last Government, Policy on the Amendment of the Strategic Services Agency, produced by Carlton Denny, Chairperson, Margaret St. George, Keith De Freitas, Golda Chase, Alexa Makel, Susan Alfonso. I also refer Members to another policy document on the amendment of the Strategic Services Agency Act produced by that last Government, and which spoke to the NOC as well.

2.30 p.m.

In writing in these documents, words such as:

This proposal was developed against the backdrop of Cabinet's decision recorded in Minute 373, February 2011 to dissolve Special Anti-crime Unit and instead establish National Intelligence Agency.

It goes on specifically to talk, for instance, in another section:

Issues specific to the SSA.

It says specifically:

The SSA's relevance lies in its ability to effectively formulate a unified policy and coordinate national strategic response to illicit sale and trafficking of drugs...Its establishment made Trinidad and Tobago one of the leading regional and hemispherical exemplar States that responded to the call for demonstrating a shared responsibility. As a result SSA was placed alongside other regional hemispheric partners. SSA became operational July 01, 1996. It functioned as a central coordinating body for dangerous

drugs...Functions of the SSA are stipulated as follows...—and it recants. It goes on to say that the SSA and the NOC—it speaks to SAUTT and NOC coming after SAUTT, after the cancellation. It says that:

The NOC formed by the National Security Council by that Minute took responsibility for—listen to this—direct action team, canine agency, air assets, former SAUTT assets. NOC's formation took place during state of emergency declared on August 22, 2012. It would appear that functioning began even before that Cabinet Minute. NOC's operation room provided a feed from CCTV cameras. Three to four helicopters operated by the NOC. NOC operated with an informal configuration being granted Cabinet extensions.

It goes on to speak as well that the National Operation Centre should be put into—listen to this wording:

Rather than reinvent the wheel, it is proposed that inspiration be drawn from the proven legislation establishing the SSA. The SSA Act has provided for sound administrative and accountability structures and has worked for over quarter of a century.

All UNC documents. It goes on to speak in detail about the appointment of an SSA Director and, lo and behold, shock be onto me, when I realized that the Director as appointed under the three recommendations of the last Government—do you know what the Director's appointment was, conditions and terms? Keep it as it is in the SSA Act. It is proportionate. It does not require a three-fifths majority. It is excellent law; it is balanced in proportionate measures, which I will come to in a moment.

So imagine my surprise when I listened to Members opposite me now—not

now, in another place—tell me chapter and verse of what I should be doing to consider amending this law. But apparently it is not do as I do, it is do as I say not as I have written, not as I intended to do, not as I bothered to write down and pay millions of dollars for. It is do something else instead.

What the last Government had before it was over and over again this nagging issue of how to formalize issues. I want to put onto the record the international agencies which Trinidad and Tobago cooperates with, have insisted that they wish to do business with a country that has a formalized structure. Listening to our international partners we have accepted the wisdom of that argument, and we are taking forward now by way of persuasion for acceptance before hon. Senators, a structure of the SSA, one which we think is better by accepting assets only in relation to intelligence and never in relation to operationality, because the architecture of the Bill before you as amended works upon the back of the existing law.

The existing law says all functions must be intelligence-driven; as amended it is the same. It says all actions are to be handed over essentially, when you look to the implication of the law, and to be dealt with by the Trinidad and Tobago Police Service or other investigative or prosecutorial agencies. We do not change that. We instead provide a filter for de-siloing information, because it is a known fact that Trinidad and Tobago has in operation right now a number of entities which are engaged in surveillance. Proof one for that fact is that the Interception of Communications Act specifically says the Trinidad and Tobago Head of Defence Force has the authority to be an authorized officer to intercept communication. The Trinidad and Tobago Police Service has the authority to intercept and the Director of the SSA has the authority to intercept. That is the law that was passed in 2010

by the last Government, which we supported because we agreed that that should be so.

It is a matter of fact that the agencies that also have surveillance right now under those three Heads include: Defence Force, FIU through the FIB, Financial Intelligence Bureau, the Anti-kidnapping Squad, Criminal Investigations Division, Homicide Bureau, Cyber Crime Unit, Special Branch, Organized Crime and Narcotics, prison service intelligence, Counter Trafficking Unit.

But, Madam President, it is important to recognize, hon. Senators, through you, that surveillance is not the only function of the new Bill. It is coordination, it is production of reports, it is production of audit capacity. Surveillance, if it is to be had, must only ever be done under the interception of communication legislation. Specifically, I invite hon. Senators to reflect upon section 6 of the Interception of Communications Act which specifically says all interceptions are unlawful unless—subsection (2) provides the exceptions. It is done pursuant to a warrant or it is done pursuant to certain activities which are, in fact, excepted out and those include—and if those specifically include under the Interception of Communications Act—permit me to refer Members specifically to it:

Communication intercepted:

“(i) in the interest of national security;”

That is anything in national security—

“(ii) for the prevention or detection of an offence for which the penalty...is...ten years or more...”

I will come to that point:

“(iii) for the purpose of safeguarding the economic well-being of the State;”

That is wide open to interpretation:

“(iv) for the purpose of giving effect to the provisions of...international mutual assistance agreement, and any communication so intercepted...”—must be done in accordance with section 8 and section 11 of the Act.

Section 8 describes the circumstances which you go to the judge for; section 11 describes the circumstances where you do it in an emergency.

Under the Interception of Communications Act all information intercepted must be recorded, and if it is not to be used it is to be destroyed in accordance with section 20 of the Interception of Communications Act. Interception includes any form of interception: music, listening, visual, any form. It is intercepted here within the definition of what interception is.

The SSA Act, as it is now proposed to operate, is not reinventing the wheel. The Interception of Communications Act works with that. The issue of databases—databases are not new. A database if it contains personal information or sensitive personal information may potentially be dealt with by the Data Protection Act. The Data Protection Act specifically excludes that type of application for criminal records or law enforcement activities or anything to deal with crime. If it is that samples are collected by way of DNA, et cetera, it is not the SSA that collects that. It has no operational function. The SSA asks the Trinidad and Tobago Police Service to go and do their job, and the Administration of Justice (DNA) Act then prevails as to the holding of information that may be caught there.

So, hon. Senators, do not be persuaded by an argument that this is some new power. The fact is serious crime—and I told you I would address the 10-year point—in the Interception of Communications Act they specifically allow for

offences five years and under to be dealt with. But if you want to intercept anything under the Interception of Communications Act, you must strictly comply with the law. The law exists. Why have I raised that? Because, hon. Members, the fact is proportionality is to be factored against what is the balance to the power you are giving. So that is one balance, the interarticulation of laws that exist.

What is another balance? Is it not laudable, hon. Members, to apply the strength of the Constitution to the new agency in its broadened capacity, by inviting the Auditor General under section 116 of the Constitution to have purview of all of this? Is it not also laudable to allow that public scrutiny to be backed against, when we are looking to who works for the SSA? Who works for the SSA? The legislation tells us, the parent Act, that it is members who are either contracted offices or members who are public officers so seconded or police officers so seconded.

Police officers seconded have the weight and strength of the provisions in Chapter 9 of the Constitution. You have public officers so seconded, having Chapter 9 of the Constitution—and what is that? Police Service Commission, Public Service Commission, the powers and authorities that vest there. On top of the police there is the PCA providing check and balance, police service rules. Is it not laudable, therefore, to recognize the strength and support provided by giving constitutional structure to this? Is it not also laudable, hon. Senators, to take conscious reflection of the improvements we made as a Parliament to the Standing Orders of the Senate and the Standing Orders of the House?

Let us use the Senate alone. Is it not true that Standing Order 93 allows for a Joint Select Committee on National Security? Is it not true that Standing Order 103 allows for the powers of all joint select committees to be applied there? Can you

not therefore call for papers, call for persons, call for interrogation, invite sanctions? Is that not proportionality and structure to law that we now propose? Is it not true that the statutory services—statutory authorities fall under the purview of the Parliament, and apart from the National Security Joint Select Committee you also have the Statutory Authorities Joint Select Committee? That is where the Legislature provides a countervailing balance against the Executive. The documents produced by the last administration speak to absolutely no need to interfere with the Director's appointment as has prevailed for 21 years in the SSA Act.

They had an opportunity in 2010 to amend it when we did the Interception of Communications Act. They had an opportunity, we as a country in 2010, to say, "We do not want the Director of the SSA to be involved in surveillance", but we did not do it. Why? Why did we as a country not do that? Why did the then Government not do it? Because the Interception of Communications Act has a balance of judicial scrutiny, destruction. Who, under section 20 of the Interception of Communications Act, destroys data? Not the officer by him or herself, you know, because there is a digital footprint. It must be done. Commissioner of Police, TTDF, with the advice of the Director of Public Prosecutions.

Do not take my word for it, look at the legislation itself. Look at the Interception of Communications Act that we see in section 20. Watch—section 20:

"The Commissioner of Police shall consult with the Chief of Defence Staff, the Director of the Strategic Services Agency and, where he considers it appropriate, the Director of Public Prosecutions, prior to the destruction."

That is what you call recognizing that the law speaks to balance.

Hon. Members, this Act, as we propose to amend by the Bill, seeks

specifically to operationalize another important section, and that is in relation to the financing of the SSA. Serious crime to be operated by services, to be balanced by Constitution and interarticulating laws, functions specifically to allow for training—for the first time to be given lawfully under an umbrellaed structure, to all of the services—services is defined, first time. But specifically we say that we should amend section 9 of the Act to allow for moneys to be received from the Seized Assets Fund established under section 58 of the Proceeds of Crime Act. What is that all about? Under the Proceeds of Crime Act, the Minister of National Security is obliged to create a Seized Assets Committee. The Seized Assets Committee is obliged to suggest what moneys which go into that pot and which are disaggregated from the Consolidated Fund and stay in that pot are to be used for—social activities, law enforcement training, law enforcement activities.

Would you be surprised to know that even though the Proceeds of Crime Act has been flirted by way of amendment for umpteen years—let us look from 2009 come forward—you know the first time a Seized Assets Committee was comprised and formed was under this Government, in this incarnation? [*Desk thumping*]

2.45 p.m.

No intent to operationalize the law, but specifically the amendment before you as proposed to section 9 speaks to allowing for the law to go to work for assets to be lawfully dealt with under due process and then come into the seized assets pot and to be applied for bona fide purpose, so that we can then build an enterprise. Not by ourselves, but as CFATF advocates—and I confess I am the chairman of CFATF this year—as I advocate as chairman on behalf of Trinidad and Tobago for a regional operationalization of seized assets committees, it is wide on our published legislative agenda, one published for the first time in six years. We have

listed civil asset forfeiture, we have listed amendments to the Proceeds of Crime Act, et cetera, as priority items, because we intend through due process to enable the law enforcement investigative authorities and prosecutorial authorities to hunt down money laundering, corruption and criminality. [*Desk thumping*] Trinidad and Tobago, Madam President, is numb to the allegation that there is no consequence to crime. You can say and do anything.

Madam President: Minister, you have five more minutes.

Hon. F. Al-Rawi: Thank you, Madam President. You can say and do anything it seems and nobody will suffer the consequences. Is that perhaps not an allegation as to why our country seems to have no real resolution in its pursuit to deal with issues?

Madam President, Trinidad and Tobago has to look at the argument of proportionality, as time does not permit me to go into the full argument; suffice it to say that in discussions with the criminal justice advisors to the Government, who operated for the past Government and this Government, from international agencies as well, there is no expressed concern in relation to the operationality of this Act, as it is intended to be operationalized by way of amendment.

The position put before hon. Senators is that this law has a legitimate aim to treat with security and serious crime; it intends to operationalize the un-operationalized obligations we have under international treaty, especially in relation to UN Resolution 1278 which we signed on to deal with anti-terrorism and its financing. The law does not seek to intrude any much further than is required by way of intrusion, and in the event that one thinks that the law intrudes beyond its scope, I invite hon. Members to consider the law is not being changed in a vacuum, it is being operationalized with the architectural support available to us through the

Constitution, through the intersecting pieces of law which work in tandem with this, such as the interception of communication legislation, et cetera.

We seek to pour the cleansing light of public scrutiny before us sitting at the public accounts of Trinidad and Tobago by the Auditor General on the table of the Parliament these large volumes. What do those mean? Is the Auditor General not an important creature on our Constitution to be invited in to look at the whole of government operationality as opposed to silos? If I sat down today and the Government said, “We will not pursue this Bill”, is it status quo? Do we just operate the way the last Government did or previous governments before that? Because it surely is not only the last Government. Is there a serious issue in our country that we must attend to right now?

I invite hon. Members to think as to the proportionality argument—is there balance? Is there perspective? Do we accept the Opposition’s submissions—nonwithstanding report after report in writing under their own hand, in their own Cabinet, in their own National Security Council, under their last Prime Minister—which say SSA Act is good, let us run with it? Let us use it exactly as it is. And do we now listen to their arguments, as I anticipate they will be made, to say, well, do not do as I wrote, do not do as I recommended, just do as I say now today. Time for more analysis paralysis.

The public interest must be factored against the law. The bona fide of moving our society forward must be considered, and I hope that hon. Members will give fulsome reflection to the pin-point arguments. I do intend to listen with great interest to the course of the debate, and there will be a lot to be said in terms of wrap up. I am available to answer any issues that hon. Members may have. This is not a closed-door session. It is why we have bothered to be as public in our

interactions, whether we surveil statistical information, whether we have consultations on the prison system, notwithstanding criticisms by my learned colleague, who I welcome to the Senate, I am glad to see him, Sen. Ramdeen, today. I have heard you on the public utterances in relation to some things which I find quite remarkable, but that is all part of the course. But, the point is, we are here to listen. It is not a one-way position. But, we do believe it is high time that our country progressed its national issue of combating and beating the scourge of crime before us, and meeting our international obligations in a meaningful fashion.

I beg to move, Madam President, [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Thank you very much. Madam President, I would like to begin my contribution on this very important measure before this Senate, which is the SSA (Amdt.) Bill, 2016. I almost go to say the SS Bill of 2016. [*Desk thumping*] With a famous and provocative poem written by one Pastor Martin Niemöller during the Nazis rise to power, and the subsequent purging of their chosen targets, groups after groups, hear what Martin Niemöller left for the history and legacy of humanity:

“First they came for the Socialists, and I did not speak out—

Because I was not a Socialist.

Then they came for the Trade Unionists, and I did not speak out—

Because I was not a Trade Unionist.

Then they came for the Jews, and I did not speak out—

Because I was not a Jew.

Then they came for me—and there was no one left to speak out for me.”

[*Desk thumping*]

Unlike Pastor Martin Niemöller, we in the People's Partnership intend to speak out and not allow our voices to be silenced or stifled by modern-day Nazis.
[*Desk thumping*]

Hon. Al-Rawi: Madam President, 46(4).

Madam President: Continue, Sen. Mark.

Sen. W. Mark: Madam President, what is before this Senate as amendment to the SSA Act is not in law, or fact, an amendment, but really a new Act disguised as an amendment in order to prevent this Government from bringing an Act that would require a special constitutional majority which they know in its present form they would not be able to secure. Instead what the Government has chosen to do, Madam President, is to engage in cherry-picking. [*Desk thumping*] It is a cherry-picking exercise which they hope would satisfy their ultimate objective, and not meet the standard requirement necessary for the passing, as my good friend said, of good law for the peace, good order and good Government in the interest of people.

Madam President, we shall attempt to clinically and surgically examine this Bill, and advance for the consideration of this honourable Senate some of the best practice that we have been able to access, apply our intellectual rigour to this exercise, because in spite of what one can describe as a sloppy drafting, the manifest deficiencies and the absence of appropriate mechanisms of accountability designed to safeguard the public fundamental interest as well as innocent citizens from abuse and misuse of power, an arbitrary and capricious abridgment, breach and violation of citizens' fundamental rights and freedom especially—I want to disagree with my hon. friend—the fundamental human right to privacy. [*Desk thumping*] And I hope, Madam President, in his usual style, I know he is under some pressure, these days they have put him out to roast, but it does not matter, he

is going to get my full protection.

Hon. Senator: To roast? [*Laughter*]

Sen. W. Mark: Madam President, I hope that my hon. friend will take on board at the end of this debate a number of important considerations. I hope so. Because, if he does not, I want to remind him of a very important quotation from the late Harold Wilson when he said:

“He who rejects change is the architect of decay.

The only human institution which rejects progress is the cemetery.”

So we hope that when we put forward proposals and suggestions, that the hon. Attorney General would be open to accepting these proposals. We would like to early flag the need to have this matter referred to a select committee of the Senate. [*Desk thumping*] We want to flag that very early. We want to suggest that we send this matter to a select committee of the Senate for deliberation and complete airing, because there are fundamental issues that are involved.

Madam President, I want to tell you Article 12 of the United Nations Declaration of Human Rights states, and I quote:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Madam President, in the absence of any credible or meaningful mechanisms of accountability and/or systems of checks and balances and safeguards to prevent abuses and the misuse of power by the authorities, it is essential that this honourable House take pause for a worthwhile cause. The expanded remit of the SSA in clause 4 will lead to an invasion of one's privacy, and without even one's

knowledge of that invasion.

3.00 p.m.

Madam President, privacy enables us to create barriers and manage boundaries to protect ourselves from interferences in our lives. Privacy helps us limit who has access to our bodies, to places and things, as well as our communication and information. It is the right to know that one's personal communications, medical records, personal data and bound details are secured, Madam President.

Privacy is essential to human dignity and autonomy [*Desk thumping*] in any society. The right to privacy is a fundamental human right and solid grounds must be advanced if it is to be trampled or tampered with in any way. [*Desk thumping*] We know as a fact that the threat of terrorism is giving governments across the globe carte blanche to ramp up state surveillance. Industry is voracious in its appetite to profile people, to predict what we will do and to profit from our data. It is our firm belief that technological development should strengthen rather than undermine the rights to private life. [*Desk thumping*] And everyone's privacy must be carefully safeguarded.

We need, Madam President, appropriate safeguards to prevent rights' abuses. An important element of the right to privacy is the right to protection of personal data, while the right to data protection can be inferred from the general right to privacy. There are specific international and regional instruments, inclusive of our own Data Protection Act, which stipulate a most specific right to protection of personal data. That is law, although some aspects of it have not been proclaimed.

Madam President, I raise these matters to highlight the need for extreme caution and sensitivity and care in expanding the reach of the State as it seeks to fulfill its international obligations, as it seeks to detect, prevent and overcome the serious

crime scourge and seeks to balance the rights and freedom of the citizens vis-à-vis the security and safety of the State.

Madam President, measure should always be proportional. My friend talks about proportionality, but we are discovering how disproportional this thing is before us, that is the legislation. Madam President, I want to go further, the European Convention on Human Rights under Article 8 states and I quote:

“Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Madam President, there must be a measure of legal protection in law against arbitrary interference; [*Desk thumping*] arbitrary interference by public authorities, especially where a power of the executive is exercised in secret. This is what is crucial here. This is being exercised in secret. The risks of arbitrariness are more real and evident in such an environment, where a law confers a discretion that law must also indicate the scope of that discretion. It cannot be a case of unfettered power by the Executive.

Madam President, any unwarranted and uncontrolled arbitrary invasion of privacy through interception of communication may even serve to compromise a person's right to a fair trial. We must prevent big brother from becoming the masters of citizens' private lives. [*Desk thumping*] Today, interception of communication

without a warrant is equivalent or tantamount to interference. The State cannot enjoy an unlimited discretion in its drive to intercept one's communication as it is being proposed in this legislation and therefore, I think it is important that the AG pay attention. It is an old case. And I think I want to study law now. It is an old case, but I ask the AG to refer to the *James Malone v the United Kingdom* judgment which was handed down by the European Court of Human Rights. I think it is a case that you would do well to study during your period in the Senate, Madam President. We are very clear in our minds and I would like you to join me as I seek to examine the absolutely fertile soil for these abuses—[*Interruption*]

Sen. Khan: Madam President, a point of order, please. I know you invoked 42(10) a while ago, but I just want to crave your indulgence on that.

Madam President: Sen. Mark is referring extensively to his notes, I will allow it. All right? I will allow Sen. Mark to continue.

Sen. Mark: Thank you very much, Madam President. Madam President, as I said, we want to look at this matter because in the absence of what is called appropriate mechanisms of accountability there is going to be room for arbitrary intervention by any agency of the State. And I want later on in my contribution to make reference to the former Leader of the Opposition, now Prime Minister, when he debated extensively in the other place on this Bill that was referred to earlier, the Interception of Communications Bill. And he made real, very important reference to the systems of accountability that ought to be established to avoid that kind of invasion by Executive authority in the lives of citizens of this country.

Madam President, in view of the expanded remit of this particular legislation, clause 4 of the Bill gives a very expansive definition of serious crime. Initially the SSA was designed to deal only with drugs and drugs interdiction. We

are now expanding authority to other areas and I do not have to detain you, it is there in the interpretation section as to what serious crime includes and what the offences involve. And therefore, in these serious areas that we have outlined, there is the possibility, the real possibility of political influence and when we go to section 3(3) of the parent Act we see under section 3(2) rather, of the parent Act, that:

“The functions of the Agency shall be exercised by the Director after consultation with the Minister.”

So, even though as my friend is saying, in 2010, the SSA was included in the Interception of Communications Act, but that was only for drugs. In 2016 you are now expanding drugs to include several other categories falling under the rubric of serious crime. That is what you have done and that is a fundamental difference between then and now. [*Desk thumping*]

So, Madam President, here it is you have a director who is a civilian appointed by the politicians. I have nothing against Colonel George Robinson. He is now the director, but who was he appointed by? He was appointed by the Cabinet of Trinidad and Tobago. And when he was appointed these functions here: treason, homicide, terrorism, terrorist financing, money laundering, and a host of other specific offences were not included. He now has a larger remit but yet still he has been appointed by the President, in this instance, the Cabinet.

Madam President, what is even more alarming, the director after consultation—so let us assume that this director, before he could even take action on any matter, he has to first consult with the Minister. So let us assume that one of their own was involved in some kind of nefarious act. He must now first consult with the Minister and say, “Mr. Minister, X or Y is involved in X or Y. Can I

pursue?” He says, “No, go for the other one.” Madam President, that is what you are talking about. You are giving this individual a power to abuse power and there are no checks and balances in this particular Act; none. [*Desk thumping*]

The director—it goes on further—is to be appointed by the President as I said, and he shall be subject to the directions of the Minister, which is essentially the Prime Minister. The Prime Minister is the Chairman of the National Security Council and the Minister of National Security reports to the Prime Minister. So if the Prime Minister does not like X or Y and the director has to take directions from the Minister of National Security who is de facto, the Prime Minister, Madam President, we will have police state here. [*Desk thumping*] And that is why we are saying we need checks and balances to ensure that there is no arbitrary invasion of the privacy and the spaces of the citizenry of this country. We need checks and balances.

Madam President, I want to tell you, I read with alarm, personal financial data in one newspaper two Sundays ago where the HDC provided I understand—and I want the Attorney General to investigate this. I want the Attorney General to investigate, how an *Express* journalist was able to come into contact with 900 pages of personal financial data of persons who applied to the HDC for housing. Where did she get that data from? My information, it came from the boardroom and I am calling on the Attorney General to tell this country, what was the role of the chairman and the board of directors in the releasing of this information to this journalist. [*Desk thumping*] What was the reason?

3.15 p.m.

And, Madam President, if you are talking about coordinating information and you have to analyse information and you have to collect, gather and analyse in

order to transform it into intelligence, and this is how the PNM has begun to use information for mischievous purposes, and then attack the whole police service—Special Branch attacked, other police officers attacked, because of what? “He geh a house”, which is a normal thing that happens throughout the history of this country. But they use the information for mischievous purposes.

So, Madam President, I am asking, when we talk about communication—and this particular officer, the SSA director, has the authority to intercept communication. Madam President, you know what they are talking about? Madam President, communication means anything comprising speech, music, sounds, visual images, data. They can hack into your email, they can hack into your facebook account, they can hack into your Twitter account, because under the Interception of Communications Act, the SSA director can intervene on grounds of national security. And what is that ground? Madam President, it is as broad as it is wide, and we cannot sit here and allow the Government of Trinidad and Tobago to bring a measure, and to allow the Attorney General to come and try to mamaguy the population.

Madam President: Sen. Mark—

Sen. W. Mark: Madam President?

Madam President: Withdraw that part about “mamaguying the population”, please.

Sen. W. Mark: All right. Well, we will not allow him to mislead and misguide and misinform the population.

Madam President: Sen. Mark, I did not hear you withdraw it.

Sen. W. Mark: I withdraw “mamaguy” but I will not allow him to misinform and misguide and mislead the population. [*Desk thumping*] So, Madam President, it is

clear to us that this Bill is either withdrawn in its current form or it is sent to a select committee [*Desk thumping*] to be completely redrafted. It cannot go in its present form, and I am not buying “no” argument without any information. The Attorney General said he is the Chairman of CFATF and he has a report and we are on this enhanced list in terms of sanctions, possibly in July. Where is the report? Where is the report? So we are debating a matter and we do not have a report before us.

Hon. Senator: In the dark, yeah.

Sen. W. Mark: I want a report.

Hon. Senator: Where is the transparency?

Sen. W. Mark: No, no, “doh puh up yuh hand now”. Circulate the report.

Hon. Al-Rawi: It cannot be circulated and you know that.

Sen. W. Mark: All right. Well, if it cannot be circulated and so on, “doh” come and tell us we must compromise our rights. [*Desk thumping*] We are not prepared, Madam President, to compromise the people’s rights on some flimsy basis. No, no, no, no. You have to be serious, man. You have to be serious. This is a double-edged sword. This is for CFATF and this is also directed at journalists. This is also directed at politicians. This is also directed at Opposition Members. It is a double-edged sword. It could go anywhere. It cuts both sides.

Sen. Ameen: Their very own as well.

Sen. W. Mark: So, Madam President, we are saying that this strategy that the Government has advanced today is a political one and it is designed, as far as we are concerned, to undermine the office of the Police Commissioner. [*Desk thumping*] We think that this present measure will undermine the Police Service Commission as well. We think this is sword two dressed up in appropriate legal

garments.

Madam President, it is clear to us that the director of the SSA—not this one, but past—for 21 years—and I want the Attorney General to tell this country—Madam President, if you go clause 14 of this Bill, it says that the Government shall make—the SSA shall make regulations and have those regulations tabled in this Parliament for negative resolution. Madam President, it is 21 years since the SSA has been established and 21 years have passed and no regulations have been tabled in this Parliament—for 21 years. [*Desk thumping*]

That is why, Madam President, we could read in the newspapers that 75 people have been fired from the SSA. Every day you read in the papers; you are hearing people being fired left, right and centre because—the reason is because under this section of the Act they are supposed to establish in regulations the provisions that deal with the conduct and discipline of employees and establish a disciplinary procedure. Where are these procedures after 21 years? So, hon. Attorney General, bring the regulations in select committee before you take this thing further. [*Desk thumping*] Bring the regulations.

So, Madam President, we are not buying this talk—and, Madam President, may I, as I am on this point, may I ask, through you, I looked through the Act and I saw no provision for a deputy director of the SSA, yet still—I saw the Minister of National Security lurking around some time ago, but he is no longer here. I would have asked him—well, he was somewhere around, I should say.

Hon. Senator: Spying.

Sen. W. Mark: I “doh” know if he was spying. [*Laughter*]

Hon. Senator: Oh, oh, oh.

Sen. W. Mark: No, I withdraw that. He is my friend. I withdraw that, Madam

President.

But Madam President, I saw in *Sunday Express*, with your help and leave, May 01, 2016, where the SSA, before this Bill could even be debated in this House, since the 15th of April they went ahead and appointed a woman, a former Deputy Commissioner of Police and former Special Branch Head, Ann Marie Alleyne-Daly, as a new deputy director, administration.

Hon. Senator: What?

Sen. W. Mark: And, Madam President, there is no provision in the law for a deputy. I know a deputy, they say, is essential. [*Desk thumping*] I hear somebody say, Madam President, that a deputy is essential, but I do not know how essential this is if it is done illegally.

Hon. Senator: Power to women, man.

Sen. W. Mark: So this is a very brilliant lady. I have no question about the competency and capability of this lady. She is a very competent person. But, it goes further. It says alongside her, former Lieutenant Colonel Claude Bridgewater is also appointed as deputy director of Intelligence Operations. Where have these two appointments come from? Could the hon. Attorney General point out to us in law where these appointments derived their status—their statutory validity?

So we may possibly have already an illegality taking place at the SSA as we speak. [*Desk thumping*] An illegality. And, Madam President, you know what is even more serious? The hon. Minister is quoted as saying all appointments in this story at the SSA have to do with his knowledge. So he knows every person who was appointed at the SSA. He knows about the two deputy directors and others. So it tells us again, Madam President, that here it is, the Government is appointing an organized body which is going to be accountable to the Prime Minister. And I want

to debunk this argument this hon. Attorney General raised about accountability within the parliamentary framework.

We want to have a real accountability body here. We have a Joint Select Committee on National Security. It is frozen in time. [*Desk thumping*] Madam President, there is a senior Cabinet Minister who is in charge of that committee, and I understand that committee has met twice, if so many times. And we have always objected to Cabinet Ministers being appointed to head these committees, and you are telling us, accept your word, we have a mechanism for accountability. Who are we going to use to account, or how are we going to get the SSA to come before us and properly account? Through a Cabinet Minister who is not meeting?

Madam President, I want to tell this honourable House that—we want to tell the Attorney General, you have to withdraw that Cabinet Minister from that position and either appoint a Member [*Desk thumping*] of the Independent Bench to head that, or you appoint a Member of the Opposition Bench to head that JSC on National Security. Madam President, this is gimmick! We are not serious. And then he comes here and boasts about mechanisms of accountability and safeguards. How can we get safeguards when a Cabinet Minister is accounting to himself? So, Madam President—

Hon. Senator: He sits by himself.

Sen. W. Mark: Well, no, no, he does not sit by himself. I am saying in all civilized countries that you are aware of—and this argument that has been advanced by this Attorney General that 97 per cent of the Bills that we brought here whilst we were in the PP, they supported. I want to tell you, Madam President, that is a myth. I want to tell you that every time a Bill was passed in this Parliament with the support of the PNM, hundreds of amendments were put forward. [*Desk thumping*]

No Bill was passed in its current form. Our current Attorney General always brought a slew of amendments to strengthen the legislation. This is right, and that is what we are doing today.

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

Sen. W. Mark: And, Madam President, that is what we are doing today. We are bringing a lot of—two things we are doing. We are asking the hon. Attorney General to have this matter referred to a select committee [*Desk thumping*] of the Senate, and at that select committee we intend to propose a series of amendments for the consideration of the Parliament. [*Interruption*]

Sen. Ameen: “Sen. Mark just tell yuh he have amendments for yuh. He jes tell yuh dat.” Just relax, relax.

Sen. W. Mark: So, Madam President, we are saying that the measure before us today, we want the Attorney General and Minister of Legal Affairs to understand that there is a document which I intend to circulate to you, Madam President, and to him and to this honourable House. It is a United Nations document in 2010 that deals with best practice when it deals with intelligence services and the kind of oversight mechanisms that the United Nations is proposing if we want to have these intelligence services accountable to the people of any country. I want to provide this copy to the hon. Attorney General and to Members of this honourable House. [*Desk thumping*]

So, Madam President, we would like to strengthen the legislation but we must be given the opportunity to do so. If the Government is not prepared to have this matter referred to a select committee of the Senate, if the Government is not prepared to entertain meaningful amendments to strengthen the legislation, Madam President, the next alternative is for the Government to withdraw this measure.

[*Desk thumping*] This measure in its current form is not going to fly because it violates our Constitution; it violates international law; it violates the Declaration of Human Rights and there are sufficient cases. I think there is another case called *Kennedy v The Charity Commission*, Mr. Attorney General—Kennedy. And you have *Malone v Commissioner for the Metropolitan Police (No. 2)*. So you have a lot of homework to do—Malone and Kennedy.

Let us do what is right. Let us make sure that we put together legislation that is acceptable, that is palatable, that is meaningful, that will safeguard the rights and interests of the people and at the same time, Madam President, balance the safety and the security of the State. [*Desk thumping*] We want to ensure that the criminals are dealt with. We want to deal with them. We want peace and security for our people but we will not stand idly by and allow the Government to use crime—and runaway crime—to bring dictatorial measures, draconian measures, to undermine the rights and the freedoms of the people of Trinidad and Tobago. [*Desk thumping*] We will not do that, Madam President.

We will work with the Government to strengthen the legislation to ensure that these balances are established but at the end of the day, we want good law, we want good order, we want good Government in the interest of the people of our country.

3.30 p.m.

I want to close by reminding the Attorney General that in this country, we all are living here together as one family and we want to ensure that whatever we do, we do not make laws for today but we make laws for future generations. And Madam President, in closing, freedom is never snatched away in junks or large amounts. Freedom is always eroded and whittled away incrementally and

gradually, and this Government is using a Bill to begin the erosion of our fundamental rights and freedoms and we have discerned it, we have identified it and we are saying the time has come for the Government to step back, withdraw this Bill, refer it to a select committee if it wants to, but it cannot go in its present form. I thank you very much, Madam President. [*Desk thumping*]

Sen. Dr. Dhanayshar Mahabir: Thank you, Madam President. As I join in this debate, I must say it is a most pleasant experience, once again, to see the hon. Attorney General in the Chamber. We have had many interactions and today is, I would imagine, not going to be different.

Madam President, in this particular amendment, I want to refer to the parent Act, 15:06 of 1995. The SSA now is in existence for over 20 years and under 6(1)(a) of the Act that we are seeking to amend, under the parent Act, it states and I must read:

“The main functions of the Agency are to—

(a) act as an office for centralising information...”

For centralizing information.

“that could facilitate the detection and prevention of illicit traffic in narcotic drugs, psychotropic substances and precursor chemicals, for co-ordinating operations for the suppression of illicit and drug trafficking and drug-related matters and for co-operating with the Services or the corresponding Services of other countries;”

This was established in 1995, October 04th, to really supplement our police force. Before the SSA, we relied on the police force of Trinidad and Tobago to engage in its own intelligence gathering operations so that it will be able to identify and bring to justice drug traffickers in this country.

Over the last 20 years, what have we seen? We have seen that the police has been relatively successful in the area of drug trafficking offences with respect to the small big players on the pavements, on the streets. In fact, it is my understanding that there are a number of individuals in our prisons who are incarcerated because they were peddling relatively small quantities or perhaps, using small quantities of the various narcotics which are currently illegal according to our statutes.

But Madam President, the SSA then, if it left the small players to the police because they are easy to observe visually and we could shake them down and physically collect the rocks and the joints that they have in their possession, we ask ourselves, clearly the division of labour dictated that the SSA would concentrate, over the last 20 years, on collecting information on the large players in the business. [*Desk thumping*]

Madam President, we frequently hear of Medellín Cartel. My interest in it is a cartel. A cartel is a relatively small number of players, as OPEC has, where you could come together, agree on pricing and output strategies and you could easily identify them. And when I saw the amendments brought by my friend, the Attorney General, for whom I have tremendous admiration and deep affection and for whom I have locked horns, perhaps, only once where, I think I won, in the period of time that we interacted, and we frequently collaborated. When I looked at the amendments, I asked myself, I said, should the Attorney General not have taken another look at the SSA to ask the following question. Given that at any time, there, perhaps, are a maximum 12 large drug players in Trinidad and Tobago, could it be five? Could it be 10? Could it be 15? Let us say there, perhaps, in Trinidad, is a maximum of a dozen players. The police force deals with the little

guys. They bring them to the Magistrates' Court and the magistrates will give them a three months and clog the prison system. But should the SSA, over the last two decades, not have been able to identify one or two or three of the 12?

Madam President, what was disappointing to me from where I stand is this: not so long ago, there was a major drug find in Boston from Trinidad and Tobago in juice tins in a liquid form worth millions and millions and millions. It made the news for a while and then it disappeared, tarnishing the reputation of our country, [*Desk thumping*] and I said to myself, since we have an SSA that is charged with monitoring a dozen of their five, 10—I do not know how many, it could not be large. We know there are many people on the ground but a few at the very top.

Should the SSA not have been working because it is charged with prevention of illicit traffic in narcotic drugs, centralizing information and cooperating with the services or the corresponding services of other countries? Should the SSA not have given me, as a regular citizen, some assurance that it had all the information on that Boston drug find from Trinidad, that it shared with the DEA of the United States, as it is charged to do under the SSA Act of 1995? So that as a citizen, I would have some comfort in knowing that here we have an agency that is able to collate the information, share it with an international agency and bring to court a case where there could be a prosecution. To this day, we do not know who the players are in that cocaine in juice tins find and to this day, the file has gone cold. Where was the SSA? What has been the success of the SSA in discharging its functions in identifying the mega players in the narcotics field over the last 20 years?

Madam President, there is in the business literature—Sen. Shrikissoon will be most au courant with it—something known as the cockroach theory. It was

identified by Warren Buffett, and he said this and it applies in all areas, when you see one bit of bad news coming out of a business, assume that that is the cockroach, there are many other bad bits that the management did not tell you. Here we have one cocaine find, how many passed through our shores on the way to other destinations undetected and unfound? I am not convinced that the agency has been very effective in discharging the one function we have asked it to do. [*Desk thumping*]

I will speak from now until—in hell, there is, Madam President, a snowflake on this matter that we need to strengthen institutions in Trinidad and Tobago. The SEC, Securities and Exchange Commission, you will hear it from this Bench over and over, established at around the same time, in the last 20 years, has not brought a case for prosecution far less secured a conviction, and the FCB IPO, we are told “it takes time”, it has gone cold. I am sure now, nothing like that cocaine find, nothing on the FCB IPO, will materialize.

And I think given the glaring facts, I thought that the Attorney General was going to come to Parliament with respect to the SSA to ask me, as a member of the public, with no axe to grind with the Opposition or the Government, asking me as an Independent Senator, to strengthen the institution because, maybe, we need to change some laws such that there could be more cooperation with the United States DEA or the British or the European and the international drug interdiction agencies, and if we needed to amend our laws to give other people a right to enter and operate in Trinidad to train our officers, I would say fine.

But here I am being asked to give an agency jurisdiction, not only on drug interdiction which it had demonstrated to me no capability in discharging and we are now promoting it to do the following. Well, you cannot identify who the big

players are, so okay, let me add to you: homicide, treason, terrorist acts, terrorist financing, hijacking, kidnapping and whole slew of activities. Is it that we are on the wrong direction? Madam President, as far as efficiency is concerned, I cannot support this measure. [*Desk thumping*] I think it would be much more practical for us to strengthen the agency so that it will be able to discharge its one function and not to burden it on things where I see a tremendous scope for mischief and an injury to the public. [*Desk thumping*]

Let me look, again, on—and I heard the hon. Attorney General with respect to the Interception of Communications Act and so on, but let me, again, quote and emphasize one word from 6(1)(a) of the parent Act:

“The main functions of the Agency are to—

(a) act as an office for centralising information...”

Information, Madam President. Information now, I am asked, to include treason, homicide, terrorist acts, kidnapping, trafficking, trafficking in children, illicit trafficking, psychotropic substances and then, what worried me is slipped into here is corruption and cybercrime.

When I read the list of all the crimes here, I think an agency can just identify every single individual in Trinidad and Tobago and say, I am going to monitor you, [*Desk thumping*] I am going to monitor your emails, I am going to monitor your conversations. In fact, I got worried. They will not get Sen. Mahabir on corruption, they will not get me on cybercrime, they may get me on treason. They may say this guy had been voting against the Government on a number of Bills and he is treasonous, let me monitor his conversations, let me monitor his emails, let me track all his correspondences.

Madam President, this is not the Attorney General, you know, this is not the

AG, this is, as Sen. Mark rightly indicated, the director of the SSA who has now a responsibility for centralizing information. This information has to be collected, Madam President. It does not have to be that the SSA is collecting the information for all of these crimes.

3.45 p.m.

Somebody then has the authority to collect it as long as the Director of the SSA says: “Well I am duty-charged under the amendment now to include serious crime” and it says or any offence which carries a penalty of not less than five years imprisonment. So that there are many crimes. When you read all the red books they gave me, the *Laws of Trinidad and Tobago*, there are many crimes. Car theft, and so on, can carry that kind of penalty. You have a lot of those crimes. So it gives this agency a wide scope, either to listen in or its own or to subcontract to some agency.

Madam President, I ask myself, where is the separation of powers? As a private citizen I always held the view that if someone is to listen in on my conversation, if someone is to invade into my private space, there should be some intervention from a judicial officer and not an officer of the Government. [*Desk thumping*]

Madam President, now let me refer to the Constitution. I have had occasion where Senior Counsel has sent legal opinions to me in a joint select committee and to this day, I want to put on record, I have not read it because I do not understand legalese. I am not a lawyer. But you see the Constitution, Madam President, is written, not for lawyers. The Constitution is written for me, the regular person. And in reading the Constitution, let me focus on rights enshrined.

“Rights enshrined

It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist...

4 (c) the right of the individual to respect for his private and family life;"

Let me focus on private and family life. I have heard the Attorney General indicate that we do have a right to privacy. But Madam President, permit me, if I were to read because I suspect some of what I have to say, recorded in the *Hansard* may have to be argued in some other place. Let me indicate, when I read this in the Constitution this is what I interpreted it to mean. The right to a private life, to me, is the right to keep a domain around me, a sanctuary, which includes my home, my thoughts, my feelings and secrets and I should be able to control which parts of this domain can be accessed by others.

Madam President, when I look at the right of the individual to respect for his private life, I think the Constitution, when we read the Constitution as ordinary people, the Constitution tells me that I have a sanctuary. It tells me that I am not someone who is operating and living my life at the whim of the State. I have a sanctuary and that sanctuary is my home. I am entitled to a space where I will be left alone.

Madam President, in American jurisdiction, the American system, there is a statement that what is whispered in the closet should not really be broadcast to the world. I have a right to have a closet. I have a right to my living room. I have a right to a circle of friends. I have a right to speak to them. I have a right to send an email to individuals who are not concerned about how I function at the level of the State. And that is my property to keep. No one should be able to invade my private space without my permission.

But what the law does is that it creates a potential for mischief, not the intention of the Attorney General, but it creates the potential where, given the expansion of this intelligence information-gathering agency, we have a situation where the legitimate expectation that I have as indicated to me by my understanding of the Constitution, which is written for me and not for Senior Counsel to argue in the High Court. This is written for me to understand, what do I understand and the hundreds of thousands, the 1.3 million people in Trinidad understand when they say you have a right of the individual to respect for his private and family life.

Well, let us focus on the word “respect”. What does respect mean? It is not put in the Constitution there simply because there is a need to add to words. Respect really means something or someone in high regard. We show respect to someone’s family life and respect for someone’s private life. Can you have someone having a private life and then someone showing no respect for it?

The Constitution says let us show respect. And by whom? It has to be by agencies of the State, which may want to intervene in the private life of an individual. And, therefore, it interferes with his private space, his sanctuary. We could quibble from now until a long time, on whether private life means privacy or not, but for me, reading the Constitution and acting now in the public interest, I am very reluctant to give an agency a power to use any excuse so that it could invade that sanctuary which is given to me by the Constitution. And I understand that there are circumstances in which, Madam President, an individual’s private space and his sanctuary will have to be invaded.

The circumstances are that there is just cause for thinking that this person is up to harming the society, he is not just living his life in his private space. He is

plotting with others, and we need to listen in and, therefore, invasion of the private space has to be justified. It has to be warranted. Hence, we have the use of a warrant, warranted. It has to be justified. You simply cannot, because we have Israeli spy technology, because we have technology to track email, because we have the technical capability to observe and eavesdrop and to know what someone is doing that we have the right to do it. We do not. We are encroaching upon the private space of the person and we must enter that private space with respect. The Constitution says respect. We must respect it. We must not act as though that private space belongs to an arm of the State; respect in high regard. You have to show consideration and you have to show due process.

Madam President, let me focus on another area of the Constitution that I would like to emphasize, with respect to my disagreement with this Bill. When I looked at the rights again I see under 4(i) there is freedom of thought and freedom of expression. When I examined Constitutions around the world and I try to find out bases of where these came from, it exists in many Constitutions. Freedom of expression we know. Freedom of speech, no one should be able to muzzle me, given an opinion I have. I should be able to say what I have to say as long as I am not libelling someone.

But what does freedom of thought mean and what is the relevance of freedom of thought with the amendment that the hon. Attorney General is advancing for consideration of me and members of the Senate? The freedom of thought for me when I read it, gives me the right to contemplate ideas, which, if expressed in the public domain can lead for me ridicule, loss of stature and even ostracism. I have a guarantee, under my constitution, Trinidad and Tobago's Constitution, that I have freedom of thought and I can contemplate, pontificate,

ponder things which, if they were to go in the public domain, can bring me ostracism or ridicule. Take for example, recently in the news there is an issue of abortion. It is contentious here, settled in some of the advanced countries. Someone in our country may belong to a particular faith, which says that even thinking about abortion is unacceptable.

You could be ex-communicated but the Constitution says, since we are a secular state, you could be a member of that religion, but if you think that Madam President, that abortion is acceptable in cases of rape and incest and danger to the health of the mother, then you are free to so do.

But underlying my reading of the freedom of thought is that sanctuary I spoke about; the right of the individual to respect for his private and family life. It is not as if you are just able to think it and keep it to yourself. It implies, in my opinion, a domain, a sanctuary, a space where you are left alone and you are able to articulate this view to those in your inner sanctum and it is not going to go out. It is, in my mind, unconstitutional for an agency to be able to listen in to someone's conversation, which may very well involve the thoughts he has, which may be in contradiction of popular opinion and the problem with that is the potential for mischief and misuse.

Madam President, I remember what happened in the Vietnam War. The United States was losing this war. Robert McNamara gave the directive, Secretary of Defence gave the directive, I want you to maximise the headcount. The American army could not find the Vietcong, as the SSA could not find the drug traffickers. So what the American army do? It killed out whole villages and it caused—you wanted headcount? You will get headcount. Madam President, the SSA cannot really identify the major drug traffickers in Trinidad. What it will then

do is that it will begin to gather intelligence on a lot of activities which, I fear, can be put to no good.

Madam President, on efficiency grounds, I hope that the Government, the hon. Attorney General, whom I suspect the friendship may diminish little bit after today. But the hon. Attorney General should, on efficiency grounds, look seriously at the situation where this agency has not been discharging its function. Madam President, I want to solve crime as much as anybody. I am not being irresponsible.

Sen. Al-Rawi: May I just ask, just so I get the argument correct? Thank you so much for giving way. Is it that you are gauging the lack of success, as you put it, for the SSA by the prosecution and conviction, which the Trinidad and Tobago Police Service alone can do? Is it that?

4.00 p.m.

Sen. Dr. D. Mahabir: Well, I would have thought—yes, to answer the Attorney General, I am saying, if they are going to really engage in, Madam President, drug interdiction, narcotics exercises, I thought the police force then, would have gotten the data and the information from the SSA. So that if the SSA was doing its work, then the police force would have gotten all the information on the cocaine in drug tins, not in drug tins, but it was in juice tins, they were drug tins too, and that there would have been no embarrassment to Trinidad and Tobago. That is what I am saying. [*Desk thumping*]

So here is an agency, you are supposed to collect data, to build a case, you are supposed to feed it then to the police. Over the last 20 years I know of only one large case, where a drug trafficker was brought to prosecution. That is the Dole Chadee gang, and that was not for drug trafficking. That was for, I think, murder, some other thing.

So, Madam President, the SSA—I am gauging the success by the fact, the big players in the drug field, which was the intent of the original legislation. The intent was to ensure that the police can deal with the little fellas, and the SSA can compile the info, because we do need technical expertise. We need international sharing of information. Does the SSA have any major international communications with the DEA, the Russians, and the Europeans, and the Indian, and the Chinese? I would have thought that they would be able at least—I come back to the cockroach theory. We did not find that one in Boston, and I am sure there are many others which are going undetected.

Madam President, on the basis of efficiency, I would have liked to see a strengthened SSA. Had the SSA been an agency which was showing major success in discharging its functions, identified for it under the parent Act, then I would have no hesitation indicating to the general population, that I think the SSA has grown and we could now move, because it has caught all the big fellas in drugs, all the big fellas to come, they will catch, and not let us move towards the treason and the kidnapping and the car theft and all that, because this agency is so good, that it is now going to be able to help the police force, gather the information that we need to prosecute crime.

I have a suspicion and a fear and a worry and a concern, that the powers we will give, and the range of crime that I see under the new amendment, this agency has a power to collect information, not that it will, as the Attorney General said, quite rightly, collect it on its own, but it certainly has the power to collect information on almost everybody. I would imagine only my grandmother would be exempt, because I do not see any crime here that you could reasonably charge the lady for contemplating, perhaps except smuggling. She may be smuggling.

Smuggling something, coming through the airport and so on. Little old ladies can be charged for doing that, and you provide a justification that, yes, I will spy on this lady. I will collect information. I would listen in on her conversation.

Now, Madam President, even that may not be bad. However, what is injurious to the public interest is as Sen. Mark alluded, the information so collected can be used by persons not to prosecute them for crime, but really to embarrass them, in the public domain, their health status, they may be HIV positive, about their financial affairs, they may be heavily indebted and so on. It can be used wrongly.

There is no guarantee in this particular piece of amendment legislation, that the information is not going to go into hands which will find its way into the newspaper or elsewhere. And, therefore, since on grounds of efficiency, I think the SSA needs to be strengthened, before we add to it. Then on what is contained in the Constitution, the right of the individual to respect for his private and family life, freedom of thought and expression. We need to be very, very careful. As given technological change and the ability now to engage in activities which will be such that you enter into peoples' space, let us respect the need for people to have their private space. Let us respect the people to have freedom of thought. Without freedom of thought, there can be no progress. We need our private space for freedom of thought. Without freedom of expression, there can be no liberty. I need to have liberty, and without my private space and without my privacy, I can have no life. And I would be living like in North Korea, where everything I do is under the scrutiny of the State and, Madam President, that is not the Trinidad and Tobago that I have come to learn to appreciate. It is not the Constitution that I respect, and I request that this Bill be withdrawn.

Thank you very much. [*Desk thumping*]

Sen. W. Michael Coppin: [*Desk thumping*] Madam President, thank you for the opportunity to contribute to this Bill. This Bill deals with national security. We all know that national security is perhaps the most important scourge to the—national security is important to the way we live our lives, the quality of each and every one of our citizens, and we must deal with this matter as a matter of urgency.

Madam President, permit me to commence my contribution by looking back at some of the remarks of the hon. Sen. Wade. Sen. Mark has become a bit of my good friend. [*Interruption and laughter*] We are on several Committees together. So his behaviour here today is not a shock by any means. In fact, Sen. Mark is as we know, an alarmist person, who at times lets his imagination run away with him. [*Desk thumping*]

I do not intend to engage in name calling. However, in preparing for my contribution here today, I had cause to go to the *Hansard* and to see what the Leader of the Opposition had to say particularly about this Bill.

Sen. Mark: Where?

Sen. W. M. Coppin: In the Lower House. [*Interruption*] In any event, it is important to know because we need to understand exactly what the Opposition's policy is, with regard to the SSA Bill, and that is the crux of my argument today. Now, in the Lower House—and may I refer to the *Hansard* of the Lower House, Madam President?

Madam President: Sen. Coppin, yes. I will allow you, but your contribution cannot just be quoting from the *Hansard*, okay?

Sen. W. M. Coppin: Well, the Opposition Leader spoke about the Opposition's support for the principle of this Bill. In fact, she spoke to a depoliticizing of the

issue. She spoke about the Opposition having no problem with the purpose and the intent of the Bill because, in fact, during their time, they had supported what was known or was proposed as the NIA.

So, Madam President, it came to me as a shock, when lo and behold, Sen. Mark comes here today, and he somehow has an issue with the intent and purpose of this piece of legislation. So, I want to refer specifically to some of the things Sen. Mark had to say, because he spoke about the constitutionality of this Bill or that this Bill was not constitutional because it, in fact, in his estimation, expanded the powers of the SSA so wide, that it required in his estimation, a special majority.

Now, I thank you for the opportunity to refer to the Leader of Opposition in the Lower House, in the other place, because in that House, and I quote, she speaks:

“...I do agree that you are not giving operational power, day-to-day operations, for law enforcement to the SSA, and therefore, on that basis it does not require the special majority.”

Madam President, this is in direct contradiction to what was said here today. So it appears as if the Opposition does not caucus. One House says one thing, and the other House says another thing. *[Interruption]* It begs the question, as the hon. Joseph, former Attorney General Joseph Toney had said, “Who is your leader?” Is it Sen. Mark? Or is it Kamla Persad-Bissessar?

So, she said:

“...on that basis...”

—that is the Opposition leader, that the Bill:

“...does not require the special majority.”

But Sen. Mark, thinks otherwise. She says also:

“So the issue of constitutionality...does not arise...”

Sen. Mark: Madam President, I do not want to interrupt my colleague, but—
[*Interruption*]

Madam President: Is it a point of order you are invoking, Sen. Mark?

Sen. Mark: Yeah.

Madam President: May I hear what the point of order is?

Sen. Mark: Madam President, [*Interruption*]

Hon. Senator: Standing Order what?

Sen. Mark: I want to ask you to consider?

Hon. Senator: Standing Order?

Sen. Mark: No, it is not in the Standing Orders, but I know it is a practice.
[*Interruption*] No, no, no, Madam President, it is a serious point. If somebody is not here to defend themselves, is it a good practice to allow for instance—
[*Interruption*]

Madam President: Sen. Mark? Sen. Mark? Sen. Coppin, please continue. [*Desk thumping*]

Hon. Senator: “Doh try dat.”

Sen. W. M. Coppin: So, Madam President, it is public record. I understand Sen. Mark may feel a bit of trepidation because he, perhaps, did not look and he did not understand what was said by his Leader, but this is the crux of his argument. He stood up here for a very long time—[*Interruption*]

Sen. Mark: What is your argument?

Sen. W. M. Coppin:—that the Bill was unconstitutional. In fact, Madam President, Sen. Mark goes on, he says:

The Bill as proposed, breaches the fundamental rights to freedom, fundamental rights to privacy.

Now, Madam President, the hon. Attorney General, the learned Attorney General who has done a law degree. Not like my friend who plans to do a law degree, [*Laughter*] referred to his presentation, and he referred to the Lower House, the other place, about the right to privacy and respect for private life. He said it, and I know that Sen. Sturge, and Sen. Solomon and Sen. Ramdeen when they stand to give their contribution, they will all deal with that particular point.

I just want to reiterate what the hon. Attorney General would have said in his presentation. He referred to the case of *Suratt v Attorney General*. Now, Madam President, with your leave, I would like to speak a bit about that particular case, because the learning of Baroness Hale who gave the judgment in that matter, is very instructive in how we deal with or how we envision the rights for family life, and other rights which in Baroness Hale's estimation was not absolute.

So, Madam President, Baroness Hale in that judgment she opines:

"The constitutionality of a parliamentary enactment is presumed unless it is shown to be unconstitutional and the burden on a party seeking to prove invalidity is a heavy one."

So what that means is that an Act is presumed to be constitutional until it is proven otherwise. That is what she says.

4.15 p.m.

Now, this case of *Suratt v the Attorney General* it concerned the Equal Opportunity Act. The former Government, the PNM Government at that point in time, quite remarkably and ironically, claimed that the Act was not constitutional because it had not been passed by a special majority, and it had

not been—a particular section 13 of the Constitution clause had not been put in that said Act, therefore, stating that the Act would have been inconsistent with the Constitution. It was on that basis that the past PNM Government had objected to that Act as being constitutional.

A motion was filed, a constitutional motion, and it went all the way to the Privy Council, and it was found by the learned judges, Baroness Hale giving the judgment that, in fact, that law was constitutional, and the learning is this. The ratio decidendi of that matter of this case was this:

“It cannot be the case that every Act of Parliament which impinges in any way upon the rights protected in ss 4 and 5 of the Constitution is for that reason alone unconstitutional. Legislation frequently affects rights such as freedom of thought and expression and the enjoyment of property. These are both qualified rights which may be limited, either by general legislation or in the particular case, provided that the limitation pursues a legitimate aim and is proportionate to it. It is for Parliament in the first instance to strike the balance between individual rights and the general interest.”

Madam President, this is the Privy Council.

So, Madam President, I say all this to say that when we are assessing whether or not a Bill is constitutional there is reasoning, there is learning on the matter. So, Sen. Mark, in my estimation, is slightly incorrect when he comes to this Senate and says that this Bill is automatically, or he suggests, it is automatically unconstitutional. That is not the case. There must be a balance that must be struck between the rights of the individual, and the role of the State

in protecting another equally important right, the right to liberty and security. Now, those two rights, Madam President, are contained within the Constitution of the Republic of Trinidad and Tobago, and I want to quote the Constitution of Trinidad and Tobago for the persons listening and at home. “Chapter 1—The Recognition and Protection of Fundamental Human Rights and Freedoms. Part I Rights enshrined”—this is section 4.

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without...discrimination by reason of race, origin, colour, religion or sex...the following fundamental...rights...”

I want to quote the two rights which I believe are relevant in this matter.

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

That is one right. The other right which Sen. Mark and Sen. Mahabir would have also spoken about was:

“(c) the right of the individual to respect for his private and family life;”

Those are the two rights. There appears to be sometimes the tension between those rights.

There is the need to protect the security of individuals, at the same time, there is also a concomitant right not to do it in such a way that it constrains, it takes away the individual liberty of the individual and that is normal, Madam President. So that is where the principle of proportionality which the Attorney General so lucidly explained to this honourable Senate. That is where we must

strike the balance.

Sen. Mark spoke to Article 8 of the ECHR, which also speaks to the right to family life. It is important because while he read it in its entirety, he did not, Madam President, focus quite enough in the qualification contained therein. If I am allowed to quote from that right, Article 8, respect for privacy, family life, home and correspondence, it says:

There shall be no interference by a public authority with an Article 8 right, except such as in accordance with the law and is necessary for a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

So contained within that said ECHR Article 8 is a qualification, and if one reads the judgment of Baroness Hale, Baroness Hale speaks about the qualified right of the individual. She specifically stated that it is not an absolute right. And why that is? It is obvious, Madam President, that it cannot be an absolute right for one to do as he must, as he pleases, because one's autonomy affects another person's autonomy, and as the Leader of Senate Business would have said in a contribution on the Commissioner of Police Bill:

When we as individuals left the state, the primordial state, and we agreed to become enjoined, to become a member of a state, we did so primarily because we understood that by living in a state of primordiality, a state of wild—of being in the wild—one could not protect himself from the dangers therein. So, we effectively decided to centralize some of the

power within the ambit of the State.

So, we are no longer autonomous, totally autonomous creatures, as if we were in the wild, Madam President. We are part of a civilized society and, therefore, we are governed by rules and laws and, therefore, there must be proportionality in what we do.

So, Madam President, I say all this to say that when we are looking at the mischief of this particular legislation, we must ask ourselves: what is this legislation trying to address? The hon. Attorney General would have commenced his presentation here and in the other place, and he would have spoken to the rise in criminality that is currently plaguing this country.

Madam President, allow me to quote some of the statistics that I gathered from the police website, from the TTPS. Reported crimes—and this is between year 2014 and 2015—fraud in 2014, 223, in 2015, 592; wounding and shooting, 2014, 558, 2015, 600; larceny of motor vehicles, 742, 2015, 785; murder, 403 in 2014, in 2015, 420; kidnapping, 94, 2015, 106; narcotics 436, in 2015, 453. So what we see, Madam President, is an escalation in the crime rate from 2014 to 2015. Would the Opposition have us sit on our laurels while criminals run rampant in this country and do nothing? I call, Madam President, for the Opposition to do as instructed by their leader to depoliticize this issue, to act not in their own interest, but in the interest of Trinidad and Tobago. [*Desk thumping*]

So, Madam President, I want to turn now to deal with a bit of what Sen. Mahabir would have spoken about and Sen. Mahabir being an economist, one understands his need to assess a Bill within the ambit of efficiency and

effectiveness. I understand. The issue, however, one of the issues that I have noticed in doing my research is that it is very difficult at times to measure the cost and the benefits of surveillance-type expenditure and the reason for that is simple. One simply does not know—it is shrouded in such secrecy—where the money is spent. I think this Bill, the way it is drafted, it would bring a lot more accountability and transparency to the process. So this is one of the great benefits of this Bill as drafted.

Madam President, I want to refer to some statistics that I would have gathered while doing my own research, and it has to do with government spending. Now, government spending on the SSA has increased dramatically in the last several years. It is very important that we understand what we are dealing with. The SSA was allocated \$707.6 million in the 2013 budget. Right? This was an increase of \$30.3 million from the 2012 budget. Further, it was allocated \$140 million in 2014; revised 2014 expenditure, \$110 million; and in the year 2015, \$135 million.

So, Madam President, we have an institution which we do not know much about, that is not very transparent, not very accountable to the public, yet we are giving them vast sums of money and, for me, that is quite worrying. So, I understand what the Attorney General and his team has done, attempting to do, to bring a level of transparency and accountability to the functions of the SSA as it relates to money, and I think it ought to be lauded. We ought to embrace such an attempt to increase transparency within the public sector.

What we do not know, Madam President, because we know that there has been a degree of siloing of information. We do not even know that there has

been a degree of duplication, but we do not know how much money the other agencies that are currently involved in investigation and intelligence gathering, how much they actually spend in gathering intelligence. Now, that for me is very worrying, because the police service is engaged in intelligence gathering, so is the defence force and so I think 11 other agencies which the Attorney General would have mentioned in the other place.

I think he spoke to the Customs and Excise Enforcement and Operations Unit, the Defence Force Intelligence Unit, Financial Intelligence Unit, Financial Intelligence Branch—a division of the TTPS, Integrated Threat Assessment Centre, the Ministry of Foreign and Caricom Affairs, National Coastal Radar Surveillance Centre and the Anti-Kidnapping Unit, the Crime and Gang Intelligence Unit, the Criminal Investigation Unit, the Homicide Bureau, the Cybercrime Unit, the Special Branch, Fraud Squad, the Organized Crime and Narcotics and Firearms Bureau, Prisons Service Intelligence Unit, the Counter Trafficking Unit, and the Immigration Investigation Unit. All of these have surveillance units, but we really do not know to what extent the money that we actually allocate to them it goes to—the surveilling and doing the exact same thing that the SSA is supposed to do because there is no centralization of the information.

So, Madam President, through you, Sen. Mahabir, I think we ought to look a bit deeper, and have a critical look at the cost and benefits of leaving the SSA as it is, of not expanding the powers. The cost of the status quo versus the cost of reform is something that we do not know, but we can surmise that there would be significant cost savings if we remove the silos and we bring greater

efficiencies to the operations of intelligence gathering in this country. So that was on that point, Madam President.

As it relates to the operations of the FIU, Madam President, Sen. Mahabir spoke also about lack of conviction rates and the Attorney General was correct in standing up to point out that intelligence is, but one part of the conviction rates. There are so many other things that one must consider in looking at the conviction rates in a country. It is not only a function of intelligence, intelligence obviously being—*[Interruption]*

Madam President: Sen. Coppin, do you have much longer to go? You have used up 25 minutes already. You have 40 minutes altogether.

Sen. W. M. Coppin: Yes, I want to take the break now. *[Crosstalk]*

Madam President: Okay. So, Hon. Senators, at this time we will take the break for the tea and we will resume at 5.05 p.m, five minutes past five. So this Senate is suspended until five past five.

4.31 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

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

Sen. W. M. Coppin: So, Madam President, before we left for tea I was speaking a bit about the SSA from the perspective of efficiency, and I want to return to that particular discourse and that line of reason because it was raised in this honourable Senate by Sen. Mahabir as perhaps the foremost reason why he would choose to support or not to support this particular Bill. Madam President, for the record I would like to take this honourable House back to some of the recommendations that would have been born out of the enquiry into the 1990 coup, because they are

very instructive in the way we think about security agencies and intelligence agencies going forward.

Madam President, may I refer this honourable Senate to the said report, page 788, and in this report it is reported by one Mr. Harvey, who was told by the Commissioner of Police, Mr. Louis Rodriguez, that the major problem with the Special Branch, during the 1990 insurrection period, was its lack of efficiency and effectiveness:

“This was 1989 and the Special Branch was the official agency providing information and Intelligence to the Executive and the Diplomatic Corps. The Army and Coast Guard collected their own information or Intelligence for their own purposes.”

Madam President, he goes on to say that the:

““Special Branch did not share information and Intelligence with any other agency, including the Defence Force.””

He says:

““The Special Branch’s reluctance to share information was rooted in its distrust of other agencies. Customs and Immigration were seen as departments riddled with...corruption. The Defence Force was perceived by””—the—““Special Branch as considering itself ‘superior’ to the Police.””

Col. Brown, Madam President, he reports to the Commission that:

““There””—had—““always””—been a—““rivalry between the Police and the Defence Force.””

And he says that:

Mr. ““Harvey””—ought to—““have volunteered information about the Jamaat to us and not wait for us to ask for it but he never did.””

Mr. Mervyn Guiseppi, he reports:

““Our remit was not to share Intelligence with the Army.””

So, Madam President, what this report shows is that there was a level of distrust amongst agencies. There was an inferiority and superiority complex pervading amongst the infrastructure of the intelligence agencies of this country, and there was belief that some were corrupt and, therefore, ought not to be, for want of a better word, put into the loop. Now, Madam President, I do not know to what extent these considerations now exist, but it would be remiss of us as policymakers, aware of what happened in the past, to ignore such considerations and pretend that it is not a possibility that such a lack of sharing of informations can occur again. And we all knew what happened as a direct consequence of not sharing information between these agencies of State, and at that time the Commission of Enquiry spoke, more or less, to about four agencies, four key agencies: the Special Branch, the Defence Force, the police, and, I think, Customs. But I said earlier, there is now a proliferation of security agencies, each with their own remit, and who are important to national security in their own right.

So given that it happened in 1990, and the results are well known, we must do our best to prevent such incidents from happening in the future, Madam President. That was 1990, but if we fast forward we saw, arising out of this security failure, was the SIA in 1994, and then we had the SSA in 1995 which arose for a particular set of crimes relating to narcotics. Madam President, the Opposition would not like to admit but it is well known that this Act was not passed by any special majority, so to come here now and to act as if a special majority is somehow needed, to me, is disingenuous; it is disingenuous. There is a prevailing thought, Madam President, that the Opposition are—the only thing sincere, or the

most sincere thing about the Opposition is its insincerity. [*Interruption*]

Sen. Mark: Please, please, please, please, please, please, please, do not go there, please.

Sen. W. M. Coppin: So, Madam President, and this is another indication of the UNC—[*Interruption*]

Madam President: Can I please be allowed to hear him? Can I be allowed to hear Sen. Coppin? All other Senators are to remain silent when the Senator is speaking.

Sen. Mark: Is this his maiden speech?

Madam President: Sen. Mark, this is not his maiden speech.

Sen. Mark: So we could interrupt?

Madam President: Sen. Coppin.

Sen. W. M. Coppin: So, Madam President, that said, what we had during the period from 2003 we had the establishment of the SAUTT, which was then in 2010 subsumed within the ambit of the SSA. In 2010, Madam President—[*Interruption*]

Madam President: Sen. Mark, what did you have for tea? [*Laughter*] Continue, Sen. Coppin.

Sen. Mark: Sorry.

Sen. W. M. Coppin: So, Madam President, we had in 2010, we had SAUTT being alleged to be unlawfully operating, and we had this agency being vilified, and we had this agency being subsumed within the SSA, and since then we have had a proliferation of different agencies by different names, different anagrams. We had the SIA being subsumed, we had the NIA proposals, Madam President, and I think this was pursuant to the 2011 Gibran report, a steering committee report of a 67-page comprehensive document, and in this report it spoke to merging the SIA, SAUTT with the SSA to form the NIA and to abolish the SSA.

We also had the NSIA plans, right, Madam President, and these plans entailed, and it was announced by Brig. John Sandy, one of the many Ministers of National Security that the last administration had, and I think that is one of the reasons why they were so inconsistent with their approach to National Security. They simply had too many Ministers of National Security. They do not like when you speak the truth, Madam President, they get particularly perturbed when one speaks the truth—when we speak the truth. We had the NSIA proposal, we had the NSIA plans, right, and then we had the formation of the NOC, Madam President, in exactly the same way that the SIA was created by a Cabinet Minute. So for the Opposition to come and to claim illegality, and to claim that we had SAUTT that was operating illegally, they really have no moral standing—[*Interruption*]

Madam President: Sen. Coppin, you have five more minutes.

Sen. W. M. Coppin: They really have no moral standing on which to base such allegations.

So, Madam President, what we had was a proliferation, but we had the NSIA, we had the SIA, we had the NOC, but we had an Opposition leading in Government that simply did not understand the A, B, C, of national security, and that is the problem. So, Madam President, before I take my leave I want to deal particularly with the issue of safeguards, because the constitutional safeguards are something that the Opposition would have said today were missing, and, therefore, there were not enough checks and balances, but if we look at the inter-articulating pieces of legislation we would see that there are safeguards contained within the SSA Act, as well as the Interception of Communications Act. Now these safeguards are important because they provide the checks and balances that are needed for any agency to be constitutional and to be proportionate in the way it

operates national security in this country.

So, Madam President, I want to speak, perhaps firstly, because the Member for Siparia, the Opposition Leader, would have spoken about the right to privacy as being one of the reasons why the Bill was not apportioning, but we have in the SSA Act, we have section 5(2), which speaks about the employees of the agency taking the oath of allegiance. It helps with the protection of privacy because oath of allegiance and secrecy, Madam President, and that oath is set out in the Schedule. We have regulations that can be made, and Sen. Mark would have spoken about it, he said that for 21 years there was no regulation, but he conveniently forgot that for a large period of time the UNC was in office. So they had the opportunity to pass regulations and they did not, so it is also very disingenuous of him.

Madam President, we have, in addition to the regulations, offences for breach. We have disclosure of information in section 8:

There shall be “no employee of the Agency shall disclose...information” unless it is “in the course of the performance of”—their—“duties”.

So there are safeguards within the SSA Act. Within the Interception of Communications Act, I want to point out a number of safeguards, constitutional safeguards. For instance, Sen. Mahabir would have spoken about there being no warrant, but, in fact, a judge, a warrant is needed, and there is provision for a judge to give a warrant for the interception of communication, and that is the only way in which communication can be admissible in court, this is section 6(2). There is also the provisions as to how that warrant should be issued in section 8(1). There is a time period in which it can be issued for, 90 days, which is contained in section 10.

There is also, Madam President, another constitutional safeguard contained within the said legislation that the judge, in section 14:

“Where a Judge issues a warrant, he shall issue such directions as he considers appropriate for the purpose of requiring the authorised officer to make such arrangements as are necessary.”

And it speaks about the directions would speak to:

“the extent to which the intercepted communication is disclosed
the number of persons to whom any of that communication is disclosed”—
and
the extent to which”—it would be—copied...”

Finally, Madam President, within that said legislation there is an offence in section 23 which speaks to a person who intentionally discloses information obtained by means of a warrant, in contravention of the Act. So confidentiality is protected, Madam President, and there are offences within the said Interception of Communications Act, which has been in operation for so long, and I am sure the Opposition knows about that, which can provide that constitutional safeguard.

So, Madam President, in closing I would like to say that this Bill is proportionate. It is reasonable. It does not intrude. It does only so much as is necessary to protect national security. It strikes the right balance between the protection of life and liberty, and private life and family life. It is important because we are at a stage now where our country is rife with crime, and, therefore, it is one of the only effective ways to ensure that the crime rate is brought down. And with that, Madam President, I thank you. [*Desk thumping*]

5.20 p.m.

Sen. Gerald Ramdeen: Madam President, thank you. As I rise to make my maiden contribution in this Senate I would like to thank Almighty God, the Leader of the Opposition and you, Madam President, for the opportunity to contribute in

what I consider to be a very important debate on very crucial legislation that has been proposed by the Government in this matter. I had planned my contribution in a particular order, but having regard to what has fallen from the two speakers on the Government side, I think that there are certain issues that I wish to correct immediately.

The first of those issues deals with the issue of safeguards. The Attorney General has indicated that there is no risk to the rights that are enshrined and guaranteed to us and the citizens of this country because there are sufficient safeguards in this legislation. The Attorney General went on to indicate what he considered to be the appropriate safeguards that are inherent or expressly apparent on the face of the legislation that we have before us.

The first safeguard that the Attorney General indicated was that the SSA is subject to the Auditor General. With respect to that, perhaps the Attorney General would want to indicate to this Senate what is the record of the Auditor General when it comes to safeguarding institutions over which the Auditor General has authority. Let us take for instance, we have already in the public domain the record of the Auditor General with respect to the THA which is abysmal. [*Desk thumping*] The record of the Auditor General with respect to the SSA was that in 2015 the Auditor General produced reports for the SSA with respect to the period 2003 to 2008. So we are still awaiting 2008 to 2015, but we are in 2016 now, so we are eight years behind with respect to the Auditor General. [*Desk thumping*] And the Attorney General, who is supposed to be the guardian of the public interest—and that is a phrase that is not to be taken lightly, Ma'am—the Attorney General, who is the guardian of the public interest will come to this Senate, propose legislation and indicate that the

appropriate safeguards that are to protect the rights of the citizens of this country must be the Auditor General. Well, we do not accept that as a safeguard by the Government. [*Desk thumping*]

The second safeguard is with respect to annual reports. Madam President, the only way in which we can judge if there are appropriate safeguards for legislation that touches, concerns and may infringe the rights of the citizen is to test those safeguards by their records, as we will test the record of the SSA, as Sen. Dr. Mahabir has indicated. When you look at the annual reports with respect to the SSA, in 2015 you had annual reports for 2009 to 2013, so we are three years behind in relation to that, and that is also considered an appropriate safeguard by the Attorney General. I think the most material safeguard—and in Trinidad and Tobago we have a saying that we have a short memory—but the Attorney General has indicated that an appropriate safeguard for this type of draconian legislation is that you have a joint select committee of Parliament that will provide oversight over the SSA.

Madam President, we have just had the experience of what took place with respect to Petrotrin. When questions were asked of a committee with respect to Petrotrin, legal professional privilege was raised as an objection to producing documents that were relevant to decisions taken by this Attorney General with respect to litigation conducted by Petrotrin. [*Interruption*]

Hon. Senator: On your advice too.

Sen. G. Ramdeen: Not on my advice.

Hon. Senator: You were the lawyer. [*Crosstalk*]

Sen. Ramdeen: Madam President, no, I wish to say this, let me put it on the *Hansard* record, because I want to respond to the Attorney General in the

appropriate place in Parliament. That when the Attorney General sought advice from me, my advice to the Attorney General was to continue with the litigation.

[*Desk thumping*]

Sen. Ameen: Do not let him distract you.

Sen. G. Ramdeen: Let me put it on the *Hansard* record, because the advice that the Attorney General is speaking about, I want to reply because he cannot be allowed to make allegations like that against people's character in the Parliament.

[*Desk thumping*] The Attorney General was relying on advice from Senior Counsel. I was Junior Counsel, and I delivered advice as Junior Counsel. I indicated to the Attorney General in a meeting, not in writing—[*Interruption*] so the fact that it was not in writing—[*Interruption*]

Sen. Mark: Do not respond to him. Do not let him distract you.

Madam President: Excuse me, could we have silence please. Please, Sen. Ramdeen is on his feet, could we all listen in silence.

Sen. G. Ramdeen: Thank you, Madam President, for your protection.

Let me just finish the point on the JSC which is this, we will end up in a position where you will end up before a JSC, and when the questions are asked, the issue of national security will be raised and it will be shut down. So that there is no safeguard in a JSC. With respect to all of the safeguards that have been suggested by the hon. Attorney General, they amount to absolutely no safeguards at all. [*Desk thumping*]

Madam President, I would like to underlie my contribution in this House by a saying that is renowned, about sacrificing your rights for the purposes of security, and it is this: a people that are prepared to sacrifice liberty and their rights in the hope of achieving security, deserves neither. So that if this Government—

[*Crosstalk*]

Hon. Senator: Say it again.

Sen. G. Ramdeen: A people that are prepared to sacrifice liberty and their rights in the hope of achieving security, deserve neither. [*Desk thumping*] Madam President, I am happy in my maiden contribution that I am being disturbed by these sounds from the other side, because there is a particular issue about the state of emergency that I would get back to it. But let me deal with it now, since it was raised by the voices on the other side. It deals with the hon. Attorney General as well.

I was happy with Madam President's ruling that we can refer to what was said in the debate in the other place, because the hon. Attorney General who at times is a mind of useless information, said in the other place with respect to a state of emergency—[*Interruption*]

Madam President: Sen. Ramdeen, it is your maiden contribution, but please the Standing Order still applies, so do not impute improper motives or do not say things like that about others Members of either House. But you may proceed.

Sen. G. Ramdeen: In the other place, the Attorney General had this to say:

“A state of emergency. We saw it in the figures. We saw in 2012 a drop down to 383. I could tell you, as Attorney General and Minister of Legal Affairs, millions of dollars in false imprisonment, in malicious prosecution, nearly 7,000 people detained, released, “whash”.”

Those were the words of the Attorney General. Let me correct that, Madam President, because I was retained on behalf of the Attorney General to defend all of the state of emergency matters. Arising out of the state of emergency, I was retained to represent the Attorney General in every single state of emergency, from

pre-action to trial. I checked last week, and the State has not paid one cent in damages, not one cent in damages arising out of the state of emergency.

Hon. Senator: Legal fees. [*Crosstalk*]

Madam President: Would you all like that I suspend for five minutes so that there could be order? I have made it very clear, let us listen. Please let Sen. Ramdeen make his contribution. All other Members are to remain silent, all other Members—Government, Opposition, Independent, please. Continue Sen. Ramdeen.

Sen. G. Ramdeen: Madam President, not infrequently I have heard the hon. Attorney General make reference to the fact that when they were in Opposition they supported 95 per cent of legislation that was proposed by the People's Partnership, and that he said demonstrated that they were a responsible Opposition. Such support by the then Opposition simply does one thing, it evidences the quality of law that was passed by the People's Partnership that was supported by the Opposition at that time. [*Desk thumping*] We however on this side as the Opposition understand the role of a responsible Opposition, and it is a bit different from that described by the hon. Attorney General.

References have been made over and over of what transpired between 2010 and 2015, and references have been made to a number of documents by the hon. Attorney General. Madam President, I think it is only a matter of fundamental fairness that if the Attorney General is going to refer to documents and information contained in documents, at the very minimum we are required to actually see those documents. So that the reports that are being referred to by the Attorney General and the statements that are being put on the *Hansard* at least we can confirm whether that is actually so, and whether that is contained in those documents. So at

this point I would ask or request humbly on behalf of the Opposition, that whatever documents the hon. Attorney General is referring to, that he alleges certain things were said and certain things were done and that was the basis for decisions made by the People's Partnership Government when they were in power, if he could be so kind to just supply the Opposition and the Independent Senators as well, so that we can all see what was there. We can all judge for ourselves and we can all contribute in an intelligent way to this debate. [*Desk thumping*]

It is not a role the success of which will be judged by us, by the percentage of litigation. The success of a sitting Opposition is not going to be judged by the percentage of legislation we support, that the Government brings to this House. We understand our role and our duty as a responsible Opposition to act in the best interest of the people of Trinidad and Tobago. That role, to act in the best interest of the people of Trinidad and Tobago, is not one that is confined to the people that have put us here. It is all of the people of Trinidad and Tobago, a concept that is very strange to the present Government.

As a constitutionally entrenched part of the legislative process, we as an Opposition understand our role to be, to support legislation that is brought by the Government that strikes the right balance between the citizen and the State and promotes the social contract that our democracy is based upon. But we will not support legislation that gives an unfair advantage to either the citizen or the State. [*Desk thumping*]

We collectively as a Parliament ought to understand that it is our collective role to put aside our political affiliation and act in the best interest of the State when legislation of this nature is proposed by the Government.

5.35 p.m.

Where legislation is proposed, we will identify to the Government where that legislation does not pass the test of constitutionality. And I can indicate, the Attorney General has indicated that in the other place no suggestions were made. Madam President, that is not so, a number of points were raised by the Opposition with respect to the weaknesses that were inherent in the principal legislation and that were inherent in the amendments, and the Government chose not to take it on board. So, we, not being satisfied with that, we have traversed the commonwealth jurisprudence of every single country where legislation of this nature has been enacted, and we have proposed a number of amendments that will strengthen this legislation if the Government chooses to act upon it, and if the Government chooses not to act upon it they cannot rely on this Opposition for that support. *[Desk thumping]*

The legislation that is before us today, Madam President, has far-reaching consequences, legally and politically, and I regret to say that having heard the way in which this legislation has been piloted here by the hon. Attorney General, it is clear that the implications and the consequences that can be put upon our people by this type of legislation has not been taken on board by the Government. The consequences of passing this legislation in its current form can be catastrophic for our democracy and the entrenched freedoms that we as a sovereign democratic state that is Trinidad and Tobago, enjoy and have enjoyed since 1962.

I have looked carefully, Madam President, at what is proposed in the amended Bill, and I have looked carefully at the intertwining of the legislation that is affected by this amendment, and I can say that this legislation if it is passed in its current form has the potential to infringe the right to liberty, the right to the security of the person, those rights having been declared and guaranteed under

section 4(b) of our Constitution:

“(b) the right of the individual to equality before the law and”—more so—
“the protection of the law;”

—and I will explain why.

“(c) the right of the individual to respect for his private and family life;
(e) the right to join political parties and to express political views;”

—the right to:

“(i) freedom of thought and expression;”

—the right to:

“(j) freedom of association and assembly; and”

—the right to:

“(k) freedom of the press.”

And very, very importantly, the right of each citizen of this country who is guaranteed the rights under sections 4 and 5 of our Constitution, not to:

“deprive a person of...such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.” [*Desk thumping*]

Madam President, the situation that we as a Parliament or we as a Senate are faced with today, we are lucky that there is jurisprudence arising out of our jurisdiction a number of years ago, and perhaps if I go straight to it, and I refer to the very infamous decision of the Judicial Committee of the Privy Council in the matter of *Thomas v The Attorney General*, which is to be found at 1982 appeal cases at 113, and, Madam President, allow me to quote what was said then in a situation where at the time that Lord Diplock was delivering the speech for the board, perhaps may have foreseen that a constitutional democracy such as Trinidad

and Tobago would be faced with legislation similar to what we are faced with today. May I say that the words of Lord Diplock in 1983 are very prophetic to what we are faced with today, and this is what he said:

“Under a party system of government such as exists in Trinidad and Tobago and was expected to exist after independence in other Commonwealth countries whose constitutions follow the Westminster model, dismissal at pleasure would make it possible to operate what in the United States at one time became known as the ‘spoils’ system upon a change of government”—and this I wish to emphasize, Madam President—“and would even enable a government, composed of the leaders of the political party that happened to be in power, to dismiss all members of the public service who were not members of the ruling party and prepared to treat the proper performance of their public duties as subordinate to the furtherance of that party’s political aims.”[*Desk thumping*]

and even more pointed to what we are faced with today, he goes on:

“In the case of an armed police force with the potentiality for harassment that such a force possesses, the power of summary dismissal opens up the prospect of converting it into what in effect might function as a private army of the political party that had obtained a majority of the seats...at the last election.” [*Desk thumping*]

And in 1983 it was said:

“Their Lordships do not suggest that there is any likelihood of any of these extreme consequences of the existence of a legal right of summary dismissal without cause occurring in Trinidad and Tobago; but what has actually happened in some other countries suggests that the possibility of their

occurrence was not too far-fetched to justify the constitution-makers in the nineteen-sixties making provision to eliminate any such risk in constitutions which follow the Westminster model.

The whole purpose of Chapter VIII”—now Chapter 9—“of the Constitution which bears the rubric ‘The Public Service’ is to insulate members of the civil service, the teaching service and the police service in Trinidad and Tobago from political influence”—[*Desk thumping*]—“exercised directly upon them by the Government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, powers to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service.”

So, Madam President, what the Privy Council was saying was that since Independence those that went to Marlborough House to negotiate the terms of our Independence in 1962, and I checked up to this morning, one of the persons that went to Marlborough House in 1962 was none other than Mr. Lionel Seukeran, to negotiate that to protect us, the citizens of this country, from political interference by what could be deemed a political police force, we were insulated by putting in place in our Constitution independent service commissions. If it is that the bona fides of the Government is really to stop crime, that they are truthful and genuine in their intentions behind this legislation, then the Attorney General in his reply will kindly indicate to the other Members of this House, why is it that what is being done here under the SSA Act cannot be done under the police service? [*Desk thumping*] Why what is being proposed in this legislation cannot be governed by one of the service commissions so that we can be sure that there is [*Desk*

thumping] independence, there is insulation from political interference.

But, as we indicated, Madam President, when one looks at what was the principal legislation, the SSA Act itself, and—[*Cell phone rings*—I apologize, Madam President. If one looks at the principal Act itself he will see that I can point out, how is it that this Government, how is it that the Attorney General can come to this House, know of these cases, know what the jurisprudence in our jurisdiction is and seek to expand the powers of the SSA and leave in, without touching in the principal legislation, that the functions of the agency, that is the SSA, shall be exercised by the director after consultation with the Minister? How is it that the Attorney General can bring legislation and ask us to support that legislation, and ask the Independents to support legislation where the director of the SSA shall be subject to direction of the Minister?

Hon. Senator: A politician. [*Desk thumping*]

Sen. G. Ramdeen: How is it that we can say that we are properly safeguarding the rights of the citizens of this country when the director of the SSA—and I will go to the Interception of Communications Act and show the pitfalls in that legislation.

And, Madam President, let say at the outset, if things were done wrong before, we are here to correct it. [*Desk thumping*] It matters not whether it was done by the People's Partnership or whether it was done by the PNM. We are here to do what is right and what is proper now. [*Desk thumping*] So, it is no excuse to go back to the record of the People's Partnership or the PNM. A responsible Parliament will do what is right for the people of Trinidad and Tobago. [*Desk thumping*] If we as parliamentarians abide by the oath that I took today, there can be no other outcome to this legislation than to either withdraw it or go with the amendments that have been proposed by the Opposition, and I am sure the

suggestions that would be proposed by the Independents as well. But this legislation cannot stand in the form that it is now. [*Desk thumping*]

Madam President, a lot has been made and your ears might be tired of hearing the word “proportionality” and the word “constitutionality”, and I will take you and the other Members of this House, and demonstrate to you why it is that this legislation in the form that it is in now, and as it is proposed, will infringe the rights that are guaranteed to the citizens of this country. And, in doing so, if you would just allow me to take you to the Interception of Communications Act, and if we can go to section 5, and I will take you, Madam President, through it step by step. Under section 5 which is the interpretation section, an:

“‘authorised officer’ means the Chief of Defence Staff, the Commissioner of Police or the Director of the Strategic Services Agency;”

And before leaving the interpretation section, “intercept”, which is the power that is given to these three officers as authorised officers under the Act, is defined as:

“...in relation to a communication, means listening to, monitoring, viewing, reading or recording, by any means, such a communication in its passage over a telecommunications network without the knowledge of the person making or receiving the communication”—without the knowledge.

And, Madam President, it may have been an error, it may have been an oversight, but it is clear that section 6 notwithstanding that this legislation was passed with a special majority under section 13 of the Constitution, ought not or will not pass the test of constitutionality of legislation that would pass the section 13 test of being legislation that is reasonably justifiable in a democratic state. And section 6, under the heading—Part II—Interception of Communications provides that:

“Notwithstanding any other law, a person does not commit an offence”—
and that offence is under 6(1), which is that—

“...a person who intentionally intercepts a communication in the course of its transmission by means of a telecommunications network commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for seven years.”

So, 6(1) creates the offence, and when you go to 6(2) you have what I wish to emphasize is that 6(2) is not caught or engaged in the offence in 6(1), if:

“(b) the communication is intercepted by an authorised officer—”

and an authorised officer as we indicated is the head of the defence force, the Commissioner of Police, and the head of the SSA—

Hon. Senator: Director.

Sen. G. Ramdeen: Director of the SSA, and—

“the communication is intercepted by an authorised officer:

- (i) in the interest of national security;
- (ii) for the prevention or detection of an offence for which the penalty on conviction is imprisonment for ten years or more, and includes an offence where death, imprisonment for the remainder of a person’s natural life or life imprisonment is the penalty fixed by law;
- (iii) for the purpose of safeguarding the economic well-being of the State; or
- (iv) for the purpose of giving effect to the provisions of any international mutual assistance agreement.”

Now, Madam President, those four clauses sound very laudable and sound as though it provides a proper constitutional threshold for the exercise of that power. But, the pitfall in the legislation is that what is not said is that when one of the

authorised officers goes to execute or goes to intercept a communication under section 6, there is absolutely no judicial intervention.

5.50 p.m.

It is interception at the discretion of the authorized officer. And it is because there is no judicial safeguard in the application of section 6, that section 6 will not pass that test of constitutionality. [*Desk thumping*] And if one wants to be generous, Madam President, we can understand why the head of the defence force or the Commissioner of Police, the Parliament thought it necessary to give those powers to those persons, because they are subject to a service commission. But it falls far short to allow a politically appointed person as a Director of the SSA to have that kind of draconian power for this type of legislation. [*Desk thumping*]

One must not easily forget, Madam President, that what transpires in the way in which the Director of the SSA is appointed now is that it is a Cabinet appointment under section 80 of the Constitution, and it is not one that falls within the exceptions for the President to exercise his discretion. So whoever it is that the Cabinet appoints as the head of the SSA, either appoints or chooses to dismiss, the President has no discretion, so whoever the Cabinet appoints they will be appointed. Whoever the Cabinet chooses to dismiss they will be dismissed as has been the recent experience with the SSA. [*Desk thumping*]

Madam President, it baffles me to stand here and contribute to this debate. So short thereafter, people who were employed in the SSA have been fired at the discretion of the political directorate and the statements that have been made in the public domain as to why Carlton Denny was fired from the SSA. Why he was fired?—because he did not participate in ethnic cleansing of the SSA. [*Desk thumping*]

Madam President: Sen. Ramdeen, please, you are making a maiden contribution

and the convention and the practices that someone doing that is allowed to make his maiden contribution without interruption. But the person who is making the maiden contribution must also not be provocative. So please, in this Parliament, in this Chamber, please withdraw any reference to ethnic cleansing, any sort of reference. Withdraw it and please move on.

Sen. G. Ramdeen: Madam President, I withdraw it. I think what was said—
[*Interruption*]

Madam President: No. Let us not go over what was said. Just withdraw any reference, apologize and move on.

Sen. G. Ramdeen: I apologize to you, Madam President.

Madam President: Thank you.

Sen. G. Ramdeen: I think what is clear, Madam President, is that the fears that were indicated back in 1983 have come to pass with respect to the experience of any agency. A number of agencies, in the contributions that have been done thus far, have been identified as possessing this kind of power and this kind of discretion. And what—the fears that were indicated by Lord Diplock in 1983 have come to pass, because it is clear on what is in the public domain that what we are fearful of, which is political interference in positions where persons have the power to infringe the fundamental rights of person, have come to pass. [*Desk thumping*]

Madam President, I do not understand how the Attorney General can read out from reports and indicate that the SSA was performing functions that it had no authority to do. [*Desk thumping*] The reports say that the SSA was engaged in anti-terrorism. Where did they get that power from? And instead of rectifying that position, instead of doing something about the illegality that has already been committed, what we are seeking to do is provide legal justification for an illegality

that has already been committed. [*Desk thumping*] So let us not fix what went wrong. Let us provide legal justification for it by the amendment.

Now, Madam President, if we go to the principle—[*Interruption*]

Madam President: Sen. Ramdeen, you have five more minutes.

Sen. G. Ramdeen: Madam President, in those five minutes let me just deal with this issue about proportionality, because a lot has been said about proportionality and the Attorney General has indicated and I am happy that the Attorney General indicated that he has Malone and Kennedy in his bundle of cases and I trust that reference will be made in the reply to the learning by the European Court of Human Rights as to what constitutes an infringement on the right to privacy. [*Desk thumping*] Because I can indicate, Madam President, that agreeing with Sen. Mahabir, we in this country, whether it be lawyers or citizen, we have a right to privacy that is enshrined in section 4(c) of the Constitution. [*Desk thumping*]

Madam President, perhaps the Government will do well if they not only read Surratt but they also read the decision of the Court of Appeal in Inshan Ismael, a decision that was delivered by one who I consider one of our brightest judges in the Court of Appeal, Justice of Appeal Jamadhar, for whom I have the greatest respect, [*Desk thumping*] where he indicated, Madam President—and I cannot understand how a sitting Attorney General cannot bring this to a Senate where we are deliberating the constitutionality of legislation—that right now in our jurisdiction the state of the law is uncertain because there are two schools of thought with respect to proportionality. There is a school of thought that applies in our Constitution that arises out of the infamous Hinds from Jamaica, which said that any right, any legislation, that touches a fundamental right must be passed by a special majority. [*Desk thumping*] And then there is the learning in Surratt, and if

the Attorney General were to read the decision of Justice of Appeal Jamadhar in Inshan Ismael you would see where Justice of Appeal Jamadhar said that there is a collision between what we consider to be the correct test—

Hon. Al-Rawi: The Privy Council.

Sen. G. Ramdeen: That did not go to the Privy Council—

Hon. Al-Rawi: Not that case. [*Crosstalk*]

Sen. G. Ramdeen: So, Madam President, in wrapping up I would like to say this in closing. We all have a responsibility to those who have gone before us, those who are here with us today and those that will be our future. Let us be remembered as a Parliament who stood up for what was right when we could so easily have given in to what was wrong, so that our children and our grandchildren will look back upon us and be proud of the decision we make when we were called upon to vote on this legislation.

Let us abide by the oath we all took, the choice is ours. We as a democracy are 54 years old. We recognize in our Constitution that we are a sovereign democratic state. We recognized in the Preamble to our Constitution that men and institutions remain free, only when freedom is found on the respect for moral and spiritual values and the rule of law. Are we going to sacrifice all that we and our forefathers, yours and mine, have worked so hard for in the interest of selfish political gain. Is it really worth it? Are we going to support this legislation that has the potential to undermine the freedoms that we all enjoy as a people, as Trinidadians and Trinbagonians?

Madam President, with the most generosity afforded to the Government it would be a breach of the oath that I have taken today to support legislation in its current form and with all good conscience I cannot. Thank you for allowing me the

opportunity, Madam President. [*Desk thumping*]

Madam President: Before we move on to the next speaker, may I congratulate Sen. Ramdeen on his maiden contribution. [*Desk thumping*]

Sen. G. Ramdeen: Thank you.

Madam President: Sen. Roach.

Sen. H. R. Ian Roach: Thank you, Madam President, for the opportunity and I will also like to congratulate Sen. Ramdeen on his maiden contribution this afternoon. Much has been said this afternoon to awaken one's anxiety to see where it will end. But let me commence my contribution, first of all, on a positive note, one that is encouraging. I am proud to say that, and I am sure those who are concerned will also be proud to say that for the first time as a Senator I received a package from the Opposition Leader, Kamla Persad-Bissessar SC, MP for Siparia, which to me was diligent and purposeful in providing me with her contribution and that of the learned Attorney General's contribution along with four other enclosures.

Now, I have not conferred with any of my Independent Senator colleagues to know whether or not they received such a package as well, but I want to believe that they did. And it provides a lot of food for thought for me in terms of understanding the Opposition's position where this legislation is concerned. And like the learned Attorney General here this afternoon, he also indicated that—he also made certain materials available to Parliament, the track changes and so forth, which have assisted us in our deliberations and preparations. And I thank both for that.

But as important as this debate is, Madam President, and it concerns certainly all citizens listening on this debate. The Bill is not a voluminous Bill, it is not a

complicated one requiring grave hours of deliberation. And I say so with great respect to those who have spoken and those yet to speak. However, having said that, therefore, I will try to—my intention is to keep my contribution as brief as possible and to the point. As indicated time and time again by various Senators here, that the Bill consists of basically five clauses, three clauses which are seeking to amend sections 2, 6 and 9 of the Strategic Services Agency Act, Chap. 15:06, of the laws of Trinidad and Tobago. The Attorney General here indicated that it touches and affects about 11, he said, pieces of legislation and he listed them out: the Constitution, the Proceeds of Crime Act, Trafficking of Persons Act, the Interception of Communications Act, the Financial Intelligence Unit of Trinidad and Tobago Act, the Dangerous Drugs Act, the Anti-Terrorism Act, the Firearms Act, the Police Service Act, the Defence Act and he said the Computer Misuse Act, which I believe is yet to be born.

Hon. Al-Rawi: It is the old one.

Sen. HRI Roach: It is the old one. Now the genesis of this as you have heard again throughout the deliberations, contributions of the Senators, is that the Strategic Services Agency Act came out in 1995. It came specifically to deal with the influence of drugs in detecting and certainly, principally, in meeting our treaty obligations to the United Nations. And it afforded our agency, our local intelligence agencies, I guess, a certain power or latitude in assisting in the detection and the curtailing of the rampant scourge of the drug trade. But as we know the drug trade is a morass of criminal activities. It is complicated, it is complex and it is far-reaching.

The use of technology in today's world has facilitated crime across borders with almost impunity. As fast as you pass laws, in most instances, they are unable

to keep abreast with the changing and considerations and morphing of the criminal activities. They almost sometimes seem to be a step ahead. There are a lot of concerns and, of course, there is suspicion on the part of those on the opposite side concerning the objective of the Government passing this bit of legislation which seems to be draconian in nature.

But, Madam President, let me hasten to say this, where you have a grave situation, where you have a drastic situation as the scourge of—seems to be a runaway horse of crime in our country. It is almost a pandemic. Drastic measures are necessary sometimes so as to bring back some sort of evenness into it. Yes, the liberty of citizens is always and must always be foremost in those of the legislators and those who see about passing and protecting the very citizens, and where liberty could be not trampled upon it is to be very careful, to do so with caution.

6.05 p.m.

This Bill, to me, seems to expand the capacity of the SSA's initial remit, which was the gathering of intelligence specifically for drug-related matters. It has been amended by adding serious crimes, which is being elucidated here and listed in, I think it is section 6 of the Act. And what I understand the agency to be charged with is the collection of intelligence. I read somewhere—I think in one of the contributions or the literature I was given—that there is a sum total of 19—for want of a better description—spy agencies or spy units in Trinidad and Tobago. That is quite a bit for a small country such as Trinidad and Tobago, with a police force of, probably—what?—I think at this point in time it could be 7,000 or 5,000. We have the defence force, we have customs. And they are being listed.

I do not want to take up too much time in listing all of them, but they are quite significant. Much of them I was very surprised to know of them: the Customs

and Excise Enforcement and Operations Unit, the Defence Force Intelligence Unit, the Financial Intelligence Unit, the Finance Intelligence Branch, a division of the Trinidad and Tobago Police Service, the Integrated Threat Assessment Centre, the Ministry of Foreign and Caricom Affairs, the National Coastal Surveillance Radar Centre, Anti-Kidnapping Unit, the Criminal Gang and Intelligence Unit, Criminal Investigation Department; Homicide Bureau, Cyber Crime Unit, Special Branch, Fraud Squad, Organized Crime, Narcotics and Firearms Bureau, Prison Service Intelligence Unit, Counter Trafficking Unit and the Immigration Investigation Department.

Madam President, that is a significant number of intelligence agencies and what I gather is that there is no synergy, there is no smooth interrelation between them in terms of passing and using their information or sharing their information towards a productive end, which is either preventing crime, detecting crime and leading to the successful prosecution of crime. One of the Senators here—I am not sure which one it is—that said that, you know, in terms of giving the SSA more powers when they could not have fulfilled with a certain amount of success or any success at all; their mandate was limited in terms of drug surveillance, how can they be trusted in dealing with this expansive power?

Now, because our criminal justice system is one that is not unique to us, but is a typical criminal justice system that you would find in any developed country, which is the police, the Judiciary—you have the prison—sorry, you have the DPP and in all of them what supplies, what assists and promotes that, is intelligence at all levels. We will know how important intelligence is, going back to—I think it is 9/11 in the United States of America. America is a country that spends billions of dollars annually on their intelligence-gathering and sophistication in keeping

abreast with the times and so, to prevent the security of their citizens, and notwithstanding the billions of dollars that were spent in terms of intelligence, yet still 9/11 happened, unfortunately.

It changed the course of how everything went on in the world thereafter. It changed the way people travel; it changed the way people communicate and everything like that. And, certainly, there was some—what caused it? On examination—I think they had hearings and there were some flaws notwithstanding the amount of money that was spent on it. But that did not deter them from taking some more stringent measures in terms of trying to fill gaps or close gaps in their intelligence-gathering and so forth.

Because what intelligence does in a security system is to be most useful when it is pre-emptive, when it can prevent as opposed at the other end when it already happens. And as much as there are flaws and there must be concerns about the powers that is being given to the SSA as an agency, as wide as it is under the definition of section 6, still, one has to weigh, as Sen. Ramdeen was talking about, proportionality. All lawyers will talk about proportionality. Legislators here that understand will understand proportionality. But at some times the freedom of the citizen must be put—it cannot be absolute. It certainly cannot be absolute. And the fact that it is not absolute it means that something has to be given up in order to achieve some other end. In this particular instance one has to determine whether or not what is being sought to be done in terms of securing and making the agency of collecting the type of information would be necessary to filter down the whole criminal justice system is one that is adequate and sufficiently equipped to do so.

But I guess the concerns of all present here and listening is if this is, in fact, going to be as draconian as it is being made out to sound by some commentators?

What are the checks and balances that are being offered to keep an eye on it? And there are a number of other concerns which were raised by the Opposition and it has to do with the appointment of the directorship; it has to do with the funding of the agency; it has to do with the staffing of the agency; it has to do with the collection of the data and the type of data that is being collected by the agency, and it has to do with, at the end of the day, the supervision of the work of the agency, the ability for them to have easy access to invade people's private communications and so forth.

But we know that without giving the necessary agencies the necessary power to be able to do those things, we allow ourselves to be exposed to the very same things that we all fear, which is the commission of crime at some point in time, in some form against us or our families and friends. And, therefore, I am very much willing to support this legislation on the basis that there are certain concerns that were raised by the Opposition, some of which are not whimsical and I think ought to be looked at carefully by the Government and considered. And it is probably important to also say that, you know, we are making a lot of fuss about the appointment of the director of the agency, which is an important appointment because he will be charged with a lot of responsibilities as one of the authorized officers in determining when and who could be tapped for whatever purposes.

Let it be known that in the United States the CIA Director is appointed by the President, yes by resolution of, I think the Congress at the Senate. In South Africa, of which I am very familiar, the director of the two agencies are appointed by the President and they are not public servants, they are contract workers, basically. However, you have a joint select committee on intelligence that supervises and deals with the operations of the agency as a monitoring, oversight

committee, and you have an inspectorate of intelligence. And that is South Africa's model for their checks and balances in their intelligence agencies. And, of course, they had a number of agencies prior to the ending of apartheid and since post-apartheid, and they have consolidated over the years through a number of intelligence Acts—2009, 2011, I think; most recently, probably, 2012. I am not sure.

But I am saying this to say that the appointment, if in our community, in our society, we are that uncomfortable with the Executive having the sole discretion of appointing the director of an agency as such, well, probably, we can find a compromise that may rest comfortably among all concerned. Because, to me, Madam President, what I find amazing is that when Members sit on the Opposition—Members of the Opposition that come and go—when they are here they have 20/20 vision. Madam President, they see all things; they know all things; they have the remedies for all the ills of our society, but something strangely happens when you become government sometimes. Amnesia sets in; cataract sets it. You know, hearing sometimes disappears. The rumblings of the public become muted and, to me, wherever it is in Trinidad and Tobago right now, over the last—since 1985, I think or so—there has been a constant revolving of governments in for one term rather than two terms and three terms or for time immemorial that used to exist before, for expansive years.

And it is quite easy to make laws bearing in mind that I will not always be on this side. These sides are changed very quickly and within five years. You know, you have the discerning public who is restless and I think is losing patience quite quickly with governments that are not meeting up to their expectations and, therefore, their threshold for tolerating inefficiencies, dishonesty and so forth, is

quite low, as we have seen.

Having said that, Madam President, therefore, if it is that we are all here—and what I have been hearing from all the Senators so far, they are not saying that the law is not to be passed; that it is not a law that is not required, they have concerns of how it is going to be used; how it is going to be monitored and so forth, and therefore, I think this can be addressed through proper, open, frank discussions in the debate, or if it is necessary that the debate is not sufficing the needs of those who need to vote on it, probably a joint select committee—being referred to a joint select committee [*Desk thumping*] may not be a bad thing.

But it is quite evident to me that there is a distrust on the part of the Opposition for what is being promoted or being projected by the Government in terms of the main aims and objectives of this Bill passing. I believe it is a Bill that is—I believe the requirement is necessary. We need to empower our agencies. We need to have proper checks and balances in the power that we give them and if it is in Trinidad we can—we are a unique society, I keep saying all the time—we probably can fashion something that can meet our peculiar circumstances.

Why not? South Africa has done it in the way in which they have done it. They have not copied the American system; they have not copied the English system. We can probably fashion one—engineer one that is suitable to us that we are comfortable with, so probably for, you know, in the appointment of the director, probably in consultation with the Leader of the Opposition and the Prime Minister as a midway at least. Right?

In terms of the joint select committee, yes, I do not think that the annual reports being laid in Parliament is sufficient, because again of the timeliness, always behind time in being appropriate. I also think that the scrutiny of the

Auditor General also a bit tardy in terms of just volume, for whatever reason. It could be lack of staff, whatever it is. And therefore a joint select committee, under—I think the Standing Order for the Senate is 102. I think if these joint select committees can be given more coercive powers, powers of sanction, that it could go a long way in sort of alleviating some of the concerns and the anxiety of Members, and of the public as well, because, of course, nobody wants to be on the wrong end of the intrusion on their privacy.

As I said before in the other Parliament, if I could recollect in one of my contributions, I did speak about persons coming to me—friends and other persons—and they would take out their batteries from their phone, leave it in the car. Some of them do that. This was not the government in power at the time. So, obviously, people know what they are talking about in this country. Right? I spoke about that in the Tenth Parliament. This is the Eleventh Parliament, and now this Bill has come up here and I think it is a real concern. You know? So having the judicial supervision is also very important. It is provided, according to the Attorney General and which I have seen, in the ICA. Right?

And the question of whether there is a loophole in terms of being able to intercept without judicial scrutiny or permission first, I am not sure if that is tightly taken—that is taken care of completely. But you have in terms of emergency, which will arise. You cannot always go to court to get what you need if something is happening momentarily, you know, the urgency of a matter. But what it does stipulate is within 96 hours, I think—92 hours thereafter—after you have the judge giving an oral hearing and probably an authorization, section 11, you must apply the written application draft and he can either revoke it, or confirm it, or extend it as the case may be.

So we could look all these provisions to see whether or not they are, in fact, tight enough, but judicial supervision is something that is necessary and should not easily be shunned at all. It is always the protector of the citizens' rights and freedoms.

6.20 p.m.

One of the other concerns, I think, was raised is the heading of the same Joint Select Committee. I do agree and I will advocate that the Joint Select Committee dealing with intelligence of our national security should not be headed by a government person. [*Desk thumping*] It should be headed either by an Opposition Member or an Independent Member of the Bench, just to give that level of objectivity and control in oversight. I think it leads more to confidence than anything else. And as I said earlier on, if we are to treat with each other, putting ourselves, exchanging ourselves in each other's places, I guess you will do the right thing much more often than you would tend to do the wrong thing or do things that would unearth suspicion unnecessarily so.

Madam President, as I said, there are a number of different things we can go on and on talking about, about the constitutionality, we can pick at some of the shortcomings of this legislation, but it is nothing that is not curable. It is not a Bill, I think, that should frighten anyone that is hearing of it. I mean we, in here, have different roles to play in terms of how we approach our task, but at the end of the day, as Sen. Ramdeen said, we all should be on the same page in terms of doing what is best for the public, for Trinidad and Tobago.

I believe that the Government indicates that they have—as the Attorney General said, he has an open ear. It is not a closed book, closed session, he “just come here” to run through this debate. He is open to suggestions that are

constructive, that may assist in making the law a robust, effective and one that is reasonable and proportionate in its nature.

So, Madam President, as I said, I do not want to detain this Chamber going over and traversing what has been highlighted by my other colleagues, very cogently in many instances, in this instance and informative and therefore, I will trust that the learned Attorney General in his wrapping-up will address some of the issues that were raised by all Members, and where possible, seek to make the necessary amendments so that we may have a Bill that can really be for the benefit of the people of Trinidad and Tobago. Madam President, with that, I say thank you. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you for the opportunity to join this debate on the Strategic Services Agency (Amdt.) Bill, 2016. In this House, five years ago to the date, Tuesday, May 03, 2011, the then Minister of National Security, John Sandy, stood to answer a question posed to him by then Sen. Fitzgerald Hinds, and that to me, both the question and the answer, sets the context of this debate on the Strategic Services Agency (Amdt.) Bill. And you know, in this country, we have a way of saying somebody “take in front” and I recognize that Sen. Ramdeen took in front by removing himself and his party from involvement in anything prior to today, giving his party a clean sheet.

This year the PNM celebrates its 60th anniversary [*Desk thumping*] and what distinguishes this party from every other party before us is that we are prepared to defend our 60 years whether in Government or in Opposition. [*Desk thumping*] We do not pick and choose the parts that are favourable to us and pretend that the unfavourable parts do not exist. And today, Sen. Ramdeen, in his maiden

appearance, will not be given the pleasure of having the record of the UNC erased.

So on Tuesday, May 03, 2011, Sen. Hinds had asked then Sen. John Sandy about the highest level of qualification of one Resmi Usha Ramnarine. Resmi Ramnarine, of course, had been nominated—someone who remains unknown—to a position that remains in doubt. It was never very clear if Resmi Ramnarine was nominated to head the SSA or the SIA. But one thing we are absolutely sure about, Resmi Ramnarine did not possess the very basic qualifications. [*Desk thumping*] Qualifications taken at its most basic level to head a strategic agency involved in anti-crime efforts in this country. That is something we are very clear about.

In fact, Resmi's qualifications, in answer—then Sen. John Sandy, in answer to Fitzgerald Hinds' question, said that Resmi possessed a Microsoft Certified Systems Engineer, MCSE, certification. And Mr. Hinds referred to a discussion in the other place, at the time, that Resmi Ramnarine was said to have possessed a university degree, and the then Sen. John Sandy begged off the discussion saying, "I had already been in that place and I had apologized to the country for providing misleading information"; and in the course of answering that question, John Sandy suggested that that misleading information regarding the qualifications came from no one but Resmi Usha Ramnarine.

And so five years later, the UNC, COP, whatever they call themselves, return to this House but on the other side, raising issues of qualifications and questioning matters of integrity and trustworthiness and so on, and wishing this country to forget what went before. [*Desk thumping*] But that is the context of this debate because this is five years later and more than 2,000 murders later and I do not intend to list all the criminal offences since that day, five years ago. And if it is anybody, any organization, that has led to the level of distrust Sen. Roach says

exists and the total failure of the national security apparatus in this country, it is the UNC. [*Desk thumping*] For having the temerity to foist on this country someone as unqualified Resmi Usha Ramnarine to head a significant agency in the national security apparatus of this country. Let me start that way.

Then, Sen. Mark comes here today and there are references to NOC, National Operations Centre; and right away, I remembered the debate over SAUTT, the Special Anti-crime Unit of Trinidad and Tobago and I, in my life as a newspaper columnist, also raised, over the years, concerns about SAUTT. But the persistent argument against SAUTT was that SAUTT was not created by legislation and it lacked the sort of oversight that was required and a series of arguments. The same people who fought SAUTT got into Government and by Cabinet Note empowered the NOC to do exactly what SAUTT was doing. [*Desk thumping*] The same people empowered the NOC to do everything including what the SIA and the SSA and everybody else was set up to do, and that same group returns today to question this Government's decision to deal with the SSA, not by Cabinet Note but by legislation brought openly to this Parliament for full debate. An administration that for five years was prepared to allow the national security apparatus in this country to be governed by a Cabinet Note by the very same politicians they accuse today of wanting to tamper with national security. [*Desk thumping*]

Madam President, it was never lost on me the day when the NOC was put under the complete control of the Office of the Prime Minister and the choppers and the surveillance system and in this case, not the Israeli equipment that they complained about under SAUTT but the Chinese equipment; all put under the Office of the Prime Minister together with, of course, full procurement

responsibility.

And of course, Sen. Ramdeen, in his maiden speech, excises the five-year period, May 2010 to September 2015, and refers to the Auditor General and criticizes the Auditor General in the period before, forgetting LifeSport [*Desk thumping*] and the special audit into the School Nutrition Company Limited and the special audit into police vehicles, and putting blame at the feet of an independent office, an independent constitutional office and expressing distrust in that constitutional office. Because unlike the people on this side, Sen. Ramdeen is part of an organization that has given onto themselves the luxury of selecting the parts of their political life they wish to select. [*Desk thumping*]

And Sen. Mark has done the same, putting forward NOC and criticizing this process by which legislation is being brought to deal with the SSA.

6.35 p.m.

And, of course, Sen. Mark again refers to the absence of regulations in the 21 years of the SSA, conveniently forgetting that for 11 of those 21 years the UNC was in Government [*Desk thumping*] and if anybody has failed this country in failing to bring regulations for the SSA, it is on both sides of the House and that is why we are here today.

And then Sen. Mark talks about the appointment of a Deputy Director of the SSA and specifically refers to a recent appointment reported in the media of Ann Marie Daly as Deputy Director of the SSA. And in fact Sen. Mark goes so far as to say Daly's recent appointment as Deputy Director may even be an illegality because the position of Deputy Director of the SSA does not exist. Sen. Mark being a UNC has that luxury because, Madam President, five years ago, on this day, Tuesday, May 03, 2011, then Sen. John Sandy, responding to then Sen.

Fitzgerald Hinds on the question of Resmi Usha Ramnarine's appointment, was asked about the nomination of Miss Ramnarine and John Sandy answered: "The nomination came from the Deputy Director of the SSA", five years ago. Five years ago, under a UNC administration, there was a Deputy Director of the SSA real enough to make a nomination of Miss Ramnarine and have it accepted and five years later to the date Sen. Mark talks about illegality and the non-existence of that position.

Of course, Sen. Ramdeen talks about the Joint Select Committee and says: "Well, you know anytime a national security question is asked, they would say in response, it is protected as a national security issue", and he has the luxury of saying that. Because when asked by Sen. Hinds about the identity of the Deputy Director of the SSA, who nominated Resmi Ramnarine, then Sen. John Sandy took the exact position. He said: "It is a national security matter and you should know that I cannot disclose the identity of the Deputy Director of the SSA". [*Desk thumping*]

And so today, Madam President, we have been fed the usual fear from the other side, fearmongering, arbitrary imprisonment, spying, privacy invasion, from an Opposition that has absolutely no moral authority on any anything related to the SSA. [*Desk thumping*]

This is simple legislation, simple legislation, Madam President. This legislation seeks to do four things. The first thing, it seeks to expand the remit of the SSA, and that is obvious. In 1995, in Trinidad and anywhere else in the world, the trade in narcotics would have been a big issue. In 1995, we were not talking about terrorism and money laundering to the extent that it is a problem now. We surely would not have been talking about human trafficking. All of us, our

forefathers were trafficked to this part of the world. We would not have been talking about that. But 21 years later, drug trafficking and the narcotics trade is one of the major issues facing the country in relation to crime, and the expansion of this remit of the SSA, Madam President, is capture all those serious offences. The alternative, of course, is to create an agency to deal with human trafficking and one to deal with terrorism and yet another one to deal with money laundering and to create a series of agencies. That is the alternative, and all this Bill seeks to do in the first instance is to expand the role of the SSA.

And the fact that the SSA, to get to Sen. Dr. Mahabir's point, we have not had the level of prosecutions in relation to major drug hauls, but surely that could not lie solely at the feet of the SSA. Experience has shown us that the failure in this country to prosecute to the extent that the citizens of this country would like is a failure that runs throughout the judicial system. It is not one agency. This Bill seeks to deal with one agency today. The Attorney General, I am sure, will bring to this Parliament legislation to deal with all the other aspects of the judicial system.

The second part of the expansion is that this expansion would give the Government an opportunity to remove duplication, to remove the overlaps and the proliferation of various agencies and entities in the country performing the same exercise, and the rationale for doing that, Madam President, is not only because resources have gotten scarcer. It is just simply the human resource to staff various agencies which proliferate does not exist in this country and what we need is a single agency, fully resourced and focusing on the serious crimes which have been identified in the Bill.

The second thing about the Bill, Madam President, is that it seeks to empower the SSA, and that is obvious. Now that the remit has been expanded,

empowering the SSA is a consequence of that expansion. The entity must be given the powers over those serious offences and other offences for which the term of imprisonment is more than five years.

But thirdly, and this is something that Sen. Roach pointed to and maybe others, this amendment Bill seeks to restore some balance, but there is no question, Madam President, in any country, a population of 1.3million, where we have averaged more than 350 murders a year, in any country, those statistics demonstrate that the balance of power is in the hands of the criminals. And what do we do in the face of that? Pontificate like academics on the issue of fundamental rights or attempt to restore the balance and give the country's national security apparatus an opportunity, an advantage, a chance, to restore the balance in favour of the citizens of this country? And this issue of restoring the balance is not new.

In fact, it is interesting that Sen. Mark referred to the Interception of Communications Act and the debate and Sen. Ramdeen referred to the same piece of legislation, of course, distancing himself from it this time around. But it was the former Attorney General, then Sen. Anand Ramlogan, in that debate on the Anti-gang Bill, that talked about restoring balance. But he did not say restoring balance. He talked about clawing our way back into a constitutional position, where the rights of the citizens would be balanced with all the other considerations, always putting national security as a priority interest.

And, of course, in the debate on that Anti-gang Bill as it turns out, Madam President, every speaker on the other side supplied the data to demonstrate how well the Government at the time was doing on crime, every speaker. Murders were down and they were doing well, very hopeful of reversing this trend of crime and, of course, history would show three months after the same Government had to

resort to a state of emergency to deal with crime and all that has happened, it does not matter who is defending whom and who appeared for whom in which court, all that matters is that young black men in this country, targeted because of wearing vest and three quarter jeans were rounded up, rounded up under this anti-gang legislation and dragged before the courts, not one prosecution being successful. Three months after, this last administration came to the Parliament with anti-gang legislation and boasted about how well they were doing on crime.

So when we talk about distrust and lack of integrity and concern about the excessive hand of government, we do not have to go further than the state of emergency imposed on a particular demographic in this country, by these gentlemen who are now in Opposition. [*Desk thumping*] We do not have to go very far.

And going back to Sen. Ramdeen and his contribution, as I say in this country we have an expression called “taking in front”, and Sen. Ramdeen knows why. He is well read, and unless I am wrong, Madam President, and correct me if I am, he practised in the chambers of the former Attorney General, Mr. Ramlogan. Perhaps he is still practising with him.

But on that communications Bill debate, Tuesday 30th October, 2010, this issue of safeguard came up. But, of course, the UNC in Government had the luxury of working with a PNM in Opposition and it is a matter of record, Madam President, PNM has demonstrated that almost on every occasion it has cooperated with the UNC in government, particularly on matters relating to crime.

So that when the issue of safeguard came up on that piece of legislation, it is then Sen. Anand Ramlogan who talked about these three offices that Sen. Ramdeen referred to and he talked about those three offices, Chief of Defence

Staff, Commissioner of Police and the Director of the SSA, being part of the safeguard. That is the assurance he gave then to this country, that these offices being independent represented the safeguard that the country needed.

In fact, I was surprised to hear Sen. Ramdeen talk about the appointment of the Director of the Strategic Services Agency, in terms of a political appointment, because it is the then Sen. Ramlogan who said to the Parliament, the Director of the Strategic Services Agency is appointed under section 4 of the SSA Act by the President for a term not exceeding five years and is eligible for reappointment. And then he says that forms the first safeguard for the citizens of this country. And five years later, from that side, the Director of the SSA is putting a different light, a political appointee, subject to the whims and fancy of the Minister; as they like to say about the PNM, a creeping dictatorship. And for all that time, five years in Government, they sat and did absolutely nothing until now, when the PNM has to come back in office and continue where we left off in May 2010.

6.50p.m.

Madam President, the discussion was the same on the warrant and the judicial intervention, and the same answers were offered except that today, the answers are being offered by the PNM in Government, years after we cooperated with the Opposition in getting this legislation through.

And there is another discussion, Madam President, on this issue of the additional offences, what we now call the serious offences. So as I have said before, the SSA legislation dealt with one category of offence, narcotics offences, and this Bill expands that to a range of offences. So serious crime now includes:

“...homicide, treason, terrorist acts, terrorist financing, hijacking, kidnapping, trafficking in persons, trafficking in children, gangs, illicit

trafficking in narcotic drugs...”—et cetera, et cetera.

At least this Bill lists the serious offences, and towards the end of the definition there is sweep-up line, which refers to any other offence:

“...any offence which carries a penalty of not less than five years’ imprisonment;”

On that same Interception of Communications Bill, the then Attorney General, then Sen. Anand Ramlogan, was asked about the absence of a list of offences to which the Interception of Communications Bill would apply, and his response was that, “it is easier, it is simpler to simply say, the Bill would apply to those offences that carry a term of imprisonment five years or more”.

Hon. Senators: Ten!

Sen. The Hon. C. Rambharat: That was what he said in the debate, and what was his rationale for saying that? What was the rationale he offered the country? He said:

“...unlike other countries where they have a schedule”—and—“you legislate by reference to the schedule, you have to keep coming back to Parliament...to amend the schedule and there are so many crimes that we would create in the future...—you would have to keep coming back to Parliament every time to—“amend the schedule...”

In fact, he said:

“When that happens each time you would have go back and amend the schedule to permit for interception of communication in the investigation of that”—new—“crime.”

It made sense, and the PNM in Opposition supported him fully, and this time, in this legislation, we are not giving the SSA expanded powers in relation to

simply the prison term. You have set out specific offences and in addition to those offences, those which carry a term of more than five years. The rationale of the Attorney General must be the same as the rationale of then Sen. Anand Ramlogan, when he answered the question in November 2010, in relation to the Interception of Communications Bill.

Madam President, the fearmongering and rumour-mongering, and the concern supposedly for the citizens of this country, should not prevent us from doing what is right. And doing what is right does not carry itself the luxury, of standing on principle today and then reversing yourself tomorrow. That is a matter of convenience. On this side we belong to a party that has been called upon time and time again in this country, to defend a 60-year record, and we have always stood up to defend that record. [*Desk thumping*]

Today, we are presenting what we believe is right for this country and the citizens of this country. This is not an academic exercise. This country does not have the luxury of spending more and more time. We have to address the serious issues of crime. [*Desk thumping*] This piece of legislation is a step in the right direction and for that reason it has been laid in this House. It is not brought in a capricious manner through the Cabinet. The SSA is not being moved under the Office of the Prime Minister in a capricious manner. It is being dealt with in full view of the country, the way it should be done.

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

Sen. Khadijah Ameen: Madam President, I thank you for this opportunity to contribute to this debate on a Bill entitled an Act to amend the Strategic Services Agency Act, Chap. 15:06, to expand the functions of the Strategic Services Agency.

Madam President, let me begin by indicating that the Opposition remains committed to supporting measures aimed at reducing crime in Trinidad and Tobago, for the sake of all our citizens. [*Desk thumping*] Notwithstanding the shortcomings of the Bill presented before us, it seems to me that although the tone has been set for a debate that will dwell on the situation at hand, it seems that there are some Members of the Opposition, “de way thing going these days”, I am not sure if Ministers are speaking on behalf of the Government, or their own selves these days. But the contribution of Sen. Clarence Rambharat, it is clear that there some Members of the Government who want to be stuck in this time warp. I heard mention of Resmi Ramnarine and the situation that occurred. A situation that was corrected immediately, well, within two days of it occurring. [*Interruption*] I heard criticism after criticism with regard to the qualifications of Ms. Ramnarine. Today, Ms. Ramnarine is probably more qualified than Sen. Clarence Rambharat himself now. [*Desk thumping and laughter*]

But what I did not hear, Madam—what it makes very clear is that Sen. Rambharat is, in fact, indicating the shortcomings of the Attorney General by not making recommendations to bring correction to this situation, which he has an opportunity to do now by laying this Bill. So he has indeed, in fact, added his voice of criticism to this Bill.

We have not—this country, Madam President, is yet to hear a comprehensive plan to deal with crime and violence in the country, a plan that citizens can buy-in to. The citizens have not seen a strategic approach to dealing with lawbreaking in this country. We are in a situation now, where Members of the Government even would point to the increase in violence, the increase in gang activity, the increase in the number of murders. As of Saturday it stood at 153, but

I understand there were about three murders last night. So it is just below 160 at this moment.

The murder rate for this year 2016 has surpassed the murder rate of previous years, every other year in history of Trinidad and Tobago under the People's National Movement, and we are yet to hear of concrete recommendations to move forward. There are three Ministers in the Ministry of National Security. One Minister and two Ministers in the Ministry, and yet there is a deafening silence, but there is no doubt that the concern and fear of the citizens of this country is being played upon by the present administration. While it is very clear from reports going back several years, there was the Gibran Report, the Ross Report and several others, it appears that the Government is agreeing that they see the need for a centralized intelligence gathering agency in Trinidad and Tobago. If that is so, then the Government is duty-bound to bring suitable, wholesome legislation to establish such an agency, to get the approval of Parliament, to engage the Opposition and the Independents, if it requires a two-thirds majority, but—[*Interruption*]

Sen. Sturge: Three-fifths.

Sen. K. Ameen: Or, three-fifths, my apologies. But, Madam President, this Government and this Attorney General, has failed in this measure and has brought before us really, an insufficient piecemeal Bill, that will not do the job. With greater power, comes greater responsibility. This Bill seeks to increase the responsibility of the Strategic Services Agency. We have seen increased power, increased responsibility and what we on this side, and what I have heard from Independents, and those stakeholders in our society, is that it lacks measures for increased accountability and any measures for independent oversight, which is very critical.

Madam President, intelligence services play an important role in protecting nation security and in upholding the rule of law. The main purpose is to collect, to analyse and disseminate information that would assist policymakers, the law enforcement agencies and other public entities, in taking measures to protect national security, and this includes the protection of the population and their human rights.

7.05 p.m.

The mandates of an intelligence agency should be precisely and narrowly defined in whatever law that is coming before the Parliament. The mandates of an intelligence agency should be limited to protecting legitimate national security interests and must be clearly outlined. For instance, they spoke about if terrorism is included, you know, it must be clearly defined. You must be precise in terms of what you intend to target and for what you will allow those rights to be violated.

The powers and the competence of intelligence services are usually clearly and very explicitly defined in law. They are required to use these powers solely for the purpose for which they are given, and measures must be put in place to prevent abuse of any of these powers; in particular, any powers given to intelligence services for the purpose of counterterrorism must be used exclusively for that purpose.

While the amendments before us seek to expand the power of the SSA, I wish to ask this Senate that every one of us, as individuals, has a responsibility to ensure that we utilize this Parliament to consider oversight mechanisms to ensure accountability in line with the power to be given. Accountability, Madam President, at the end of day, protects the citizens of this country. It protects the people. It protects the people from abuse of power. It is very easy to name the

politician as the potential abuser of power, but there are circumstances which we may not conceive of right now that could arise, that we must always be mindful to protect our citizens from abuse of power from arbitrary rule.

The question is whether we want to allow the political directorate to have a say over intelligence gathering and, to an extent, law enforcement. And that measure, Madam President, if I could ask the Senators on the other side to silently let your conscience be your guide. Flip the script and ask yourself—the powers that you are asking to be bestowed on the SSA in the present form with a political appointee as director—if you would be comfortable with this method being implemented if you were not in Government and any other political party were there? [*Desk thumping*] Would you be comfortable giving this same power to any other political party?

Madam President, I want to submit that the legislation must be sturdy enough to withstand changes in the political environment and not leave room for any perversion from the original intent of passing these laws and the amendments that were brought by the Attorney General. Any law enforcement agency or intelligence gathering agency which is receptive to the political machinations of a Government poses a danger to the fundamental human rights guaranteed in the Constitution and in our democracy. [*Desk thumping*] Political influence, whether it is direct or indirect, overt or implied, actual or perceived, regardless of the political party in power, is dangerous.

The appointee does not have to be a friend or close associate, but the mere fact that he knows that his appointment is due to a politician or the fact that he knows that he could easily be fired by a politician without any spoken or direct instruction from the politician who appoints him, it is very likely that his actions

will be influenced by the political affiliation of that person who appointed him. Madam President, and this is where I ask that we consider putting in measures for independent oversight.

The recommendations brought forward by the Attorney General do not include any such. I ask: what is the harm? If you are going to expand the responsibility of the SSA, then we should ensure that there is balance by providing external independent oversight. This independent oversight really will serve to secure and to maintain public trust in the institution in the agency. It will also be useful in highlighting the shortcomings of any of the internal regulations. So I think we have to be very clear as to—we must have very clear procedures for anything when it comes to confidentiality and privacy.

Madam President, several speakers before me referred to the fundamental human rights of the citizens to privacy. Several speakers mentioned the United Nations Universal Declaration on Human Rights, Article 12, and I ask if we are to surrender any of our rights, in the end the question is: what rights are we willing to give up in the name of national security? Are we guaranteed to be safer at the end of it?

The legitimacy of our Constitution and our very democracy is at stake. We have, in history, numerous instances of rights being eroded, little by little, until the State wakes up one day and asks itself: how did this happen? The fact is that we are all responsible when we agree to give up our rights little by little.

I mentioned before that we are yet to see a plan from this Government. I believe that if the citizens see a clear direction in terms of where the Government wants to go in fighting crime, the citizens themselves as stakeholders can participate and partner, but you are yet to have a plan being presented by the

Government. My fear is that out of desperation there are citizens who will indicate that they are willing to give up their rights, their fundamental rights that we are afforded in our democracy, because of sheer desperation, because of the situation with our crime being out of control. We in this Parliament have a duty to protect our citizens so that we will not get to that place, and that is why the Opposition today has put forward several amendments, and they include oversight mechanisms that should be included in the Bill.

Madam President, any intelligence services, sorry—intelligence services should be overseen by a combination of internal, executive, judicial and specialized oversight institution with mandates and powers that are based in law. Previous speakers referred to a joint select committee and an independent committee, a body similar to the Police Complaints Authority and so on with different methods of appointment. An effective system of oversight would include, you know, you can have civilian institutions that are independent of the intelligence agencies as well as the political arm. The combined remit of oversight institutions should cover all aspects of the work of intelligence services, including ensuring that they comply with the law, the effectiveness and efficiencies of their activities, their finances, that they are utilizing state resources adequately and that their administrative practices are in line with best practices. Madam President, I think in this Bill we should take the opportunity—the Attorney General should take the opportunity to include that manner of oversight.

Later on, in terms of the administration and implementation, we should—and I say “we” as a State—regardless of who is in Government should ensure that these oversight committees are adequately resourced. We should take the opportunity as well, Madam President, to perhaps deliberate on the expertise of the

people we want to be on that oversight committee, the expertise of the people we want to be appointed as director, the other persons—other key positions within the SSA. We must consider and, perhaps, include the levels of access to information that we want to authorize, and we should ensure that we include measures that would almost guarantee full cooperation from the SSA, whether it is the director or other officers to the oversight agency.

A previous speaker, I believe Sen. Ramdeen, mentioned that very recently there was a joint select committee where a state agency, Petrotrin, refused to bring information to supply documents on the Malcolm Jones matter. The Parliament really does not have any power as such to compel and to ensure that it does happen. I know that the Attorney General's name has been mentioned in issues with regard to that whole Malcolm Jones matter. I do not know if it is a matter he would want to ponder on when he is giving consideration to these things.

Madam President, I also want to make recommendations that when we are dealing with oversight and checks and balances we must look at the ability of the external body to review the conduct and the decisions of the SSA, in this instance, and to give them powers, for instance, to have investigations, to make inspections or audit. Mention was made of the Auditor General. We do know that there is a severe delay, and by the time the report comes, in many cases, very little could be done in terms of action.

We have had a number of state agencies who escaped where directors take decisions and the report from the Auditor General is not immediately available, and they escape the noose. There is so much in the public domain being said about accountability and calling on public officials to be more transparent, but we must ensure that the agencies we empower are given the power to do what they are

required to do.

7.20 p.m.

We must also make provisions for, for instance, if an individual feels that his rights, his or her rights, have been infringed by this, by the SSA, in this intelligence agency, for whatever reason, that he is able to bring a complaint to the court or to an oversight institution in other jurisdictions; it could be called an ombudsman, a human rights commissioner. There are different names and these institutions, of course, would be responsible for addressing complaints and claims for effective remedies arising from the activities of the intelligence gathering agency, and they would remain independent again of the intelligence services, as well as independent of the political arm.

The investigation or enquiry by the oversight body could be based on a complaint from a person who feels aggrieved. It could be based on a legal obligation that we could include in the Bill, if this is being considered, or it could be based on the oversight body's own Motion. I want to mention that there are cases, again, in other jurisdictions where people who feel that they were unfairly targeted, had the opportunity to bring up these grievances and have them aired. Madam President, when you seek to give expanded power to an intelligence gathering agency, as the Attorney General is seeking to do with the SSA today, considerations must be given for avenues to treat with grievances. The protection of the citizens of this country should be of paramount importance. The Government has a duty to protect the rights of the citizens, and I do not see any measures in this Bill to protect the rights of the citizens.

Madam President, I want to speak a little bit in terms of the rationale for making this recommendation. In order to maintain the integrity of government

agencies and public officials we must hold them accountable for their actions, for their decisions, and any such decisions that they will take while carrying out their duties. I say public officials, and it applies to politicians, yes, but when it comes to people who will be specially appointed and be given expanded powers—powers especially that could be seen to violate our human rights—we must ensure that, as a Government and as a Parliament, we put measures to protect those rights.

Madam President, we are in a society where we pride ourselves in our democracy, and a keystone in representative Government is accountability. Accountability enhances public confidence in the agency, and conversely it would help to ensure that the Government and the policymakers, regardless of who is in Government, is responsive to the interests of the public and the need of the public.

So the situation we have where crime is spiralling out of control, and one Minister fails, and you add two more Ministers to the Ministry and it is still not working, and so on, we have to go past that and really look at responding in a tactical strategic manner. We must look at having quality control mechanisms that would help the agency to demonstrate its integrity. There are agencies in this country now who operate as independent oversight agencies, they are not without their shortfalls, and you have the Auditor General that was mentioned before. You have the Office of the Ombudsman, again, laden with—shall I say, lessons. There are a number of lessons that we could take from these agencies, and the Police Complaints Authority, again, another agency that has received a lot of public attention, and we could take some lessons from that agency with regard to how persons are appointed, the powers that are given to them, and the checks and balances when it comes to accountability.

Madam President, I know that very often the Government tends to spend a

lot of their time—the Members on the other side dedicate a big part of their speaking time to criticizing the Partnership when it was in Government. Let me tell you that the population is fed up of that. [*Desk thumping*] The PNM has been in office long enough to get down to work, and there are many in the population who feel that they are still campaigning and they have not gotten down to work, to the extent where today—and I am sure that there will be other speakers who may mention what happened in the past. I want to urge every Member in this House, those on the Government Bench, as well as on the Independent Bench, let us use the lessons of the past 21 years of existence of the SSA under the different political administrations and ask ourselves, what were the successes?

Was the SSA perfect in carrying out its duties? I am sure that there are areas for improvement. There are recommendations that the Attorney General should have brought today in this Bill circulated before the House, that he failed to bring, but, nonetheless, the procedures of Parliament allow for a select committee, or a committee of the entire Senate, but there are provisions for the Senate to make amendments and make recommendations to put these measures in, in this Bill, and I think we are all duty-bound to ensure that that happens before this debate is closed. Madam President, the alternative to that is really for the Attorney General to take this opportunity and completely withdraw what he has brought before the House, [*Desk thumping*] and he could completely withdraw it and take the opportunity to do some wholesome development of the amendments if he wants to create a national intelligence gathering agency, because he has failed to do that today, Madam President. [*Desk thumping*]

I want to give you the assurance, I think you will be better off—the Attorney General will be better off in the eyes of the public, and in terms of how the public

would view him, their level of confidence in him. I think the public will have a higher level of confidence in him if he is man enough to say, listen, this was not properly thought out, let me withdraw this, I will come back with meaningful amendments, and we can agree on it. [*Desk thumping*] I know that he has taken quite a beating in the public domain recently with his pronouncement on decriminalizing marijuana, and the Prime Minister's subsequent comment on it, so I hope that in his wrapping-up—[*Interruption*] No pun intended. [*Crosstalk*] Madam President, I hope that in his wrapping-up the Attorney General would be able to speak on behalf of the Government and we will not have a situation as did occur in the public domain. [*Desk thumping*] I trust that whatever views he puts forward will be the views of the Government and that we can rely on the views put forward, and that we can go forward with something meaningful to make a dent in crime, make a dent in law enforcement, and the intelligence that would support law enforcement.

Madam President, some key areas that we should look at, based on the past 21 years of experience with the SSA, include the manner of appointment; the manner of appointment for the Director. There has been much controversy with regard to how a director is appointed, and I say much controversy in that many, including myself, are of the view that a person with the power of the Director of the SSA should not be appointed by political appointment. [*Desk thumping*] There is need to revise the administrative structure because, clearly, from the operations and from what we have seen in the media, from the contribution of Sen. Mark earlier, the position of Deputy Director, which does not exist in the law, but which there is practical need for, has to be addressed. The provision of senior staff, the qualifications, the manner of appointment for the oversight body, I am of the firm

belief, Madam President, that if the SSA is to be given these powers that are proposed in this Bill that there must be an independent oversight body. [*Desk thumping*]

Madam President, the manner of appointment for this oversight body, as well as for key positions such as the Director, should be insulated from political influence. And there are examples of appointment processes that we utilize, as well as in other jurisdictions in other nations with similar political and government structures as ours, for instance, where the President could appoint, in consultation with the Prime Minister and the Opposition, where the President can appoint based on the guidelines provided, and we must look at the qualifications and the composition of the oversight committee. So, for example, whether we want to term it a complaints authority, whether it wants to be a parliamentary committee, there are places where there are requirements for members of the oversight committee to be, for instance, retired judges, former military personnel; there must be minimum qualifications. We must give consideration to these things, and the Attorney General has failed in this duty to bring something with these type of recommendations before us. [*Desk thumping*] [*Interruption*]

Madam President: Sen. Ameen, you have five more minutes.

Sen. K. Ameen: Thank you. Madam President, I know the AG had a tough week, he seems to be jittery.

Madam President, we can also look at the issue of term limits so that you can break that power hold that interest groups may develop while there. Madam President, in wrapping up I want to take the opportunity to respond to something that was mentioned earlier by—well, the Member is not here. I think it was Toppin.

Sen. Cummings: Coppin.

Sen. K. Ameen: Sen. Toppin, he is not here.

Hon. Senator: Coppin.

Madam President: Sen. Ameen, yes, the Standing Orders provide for other Members to be referred to by their proper designations.

Sen. K. Ameen: It is Coppin, right, so my apologies, Madam President. It was not intentional at all. I really cannot see his name tag from here. [*Interruption*] No, no, no, my apologies. I do not know the guy, I hold no brief for him, and I have no reason to.

I would just want to mention, Sen. Coppin, in his contribution earlier, mentioned—[*Interruption*]

Sen. Mark: Where is he?

Sen. K. Ameen: He is not here, I do not know where he is. He mentioned that the contribution of the Leader of the Opposition contradicted that of the Members in this House. Madam President, I know that there may not have been provisions to correct it while he was on his feet, and let me indicate to you that the Leader of the Opposition had indicated that while she had no difficulty, in principle, with the provisions of the Bill, that there was need to establish a national intelligence gathering agency.

7.35 p.m.

Madam President, in her contribution, the very same contribution that he conveniently extracted from, she spoke about the issue of the definition of serious crime and the idea of saying “related to a particular crime”. “Related to” really widens that width of people who you can deal with or interfere with. She spoke about the issue of the offence which carries a penalty of not less than five years.

Madam President: Sen. Ameen, when the reference was made to the *Hansard* in the other place, what the Leader of the Opposition said it was in respect of one issue. I do not think it is necessary for you to summarize everything that was said by the Leader of the Opposition in the other place.

Sen. K. Ameen: Madam President, I thank you. I just felt that the Member conveniently took points that could be misleading, misconstrued and that he did not bring the other side of it. There were several recommendations in the Leader of the Opposition's contribution in the Lower House with regard to safeguards, with regard to oversight, with regard to the power that would be given to the SSA, with regard to the rationale in the five years; the fear of sedition being a part of the list of crimes and the fact that anything related to the list of crimes that were listed could be considered the need for gathering intelligence.

So I pray that the other Senators will be balanced and fair in their contributions, as they make their contribution to this serious Bill. Madam President, in closing I thank you for the opportunity, and I want to ask every Member of this House that we take into consideration the seriousness of the matter before us. I think it was more serious than the Attorney General may have anticipated when he brought this matter to the House, and that you will have the full cooperation of the Opposition in bringing meaningful, balanced legislation that will protect the rights of the citizens of this country, and ensure that the protective services have the necessary information, but not sacrificing the fundamental human rights of the citizens of this country.

I thank you.

Sen. Justin Junkère: Good evening, Madam President and fellow Senators of this honourable House. I am very grateful for the opportunity to address this august

Chamber on the Strategic Services Agency Bill.

Through you, Madam President, and I am sorry that he is leaving, but I wish to commend Sen. Mark on his ambition to study law. I do not envy him his task. I know that he is eloquent enough, he has the passion.

Well, anyone who wishes to go down that road I admire you. I will not descend to actually try to assist, I have stopped teaching law, and there are no fewer than half a dozen other very qualified, competent, capable attorneys in this august Chamber who can do a much better task than I can.

I say that because lawyers tend to speak in a particular way, but we need not speak the language of lawyers when addressing the law. Sometimes we ought to speak the language of the citizens on whose behalf we advocate, because it is their interests that we serve. So I speak this evening, not as an attorney-at-law, but as a citizen. I do not need to be a drug lord or a gang member or a terrorist or a money launderer to seek the interests in the amendments to this Bill.

I can speak as a citizen, a citizen who uses a phone, a citizen who uses a computer, a citizen who has an opinion, who has friends, who shares these opinions with friends on the phone and on the computer. I speak also as a country boy “come to town” who uses GPS mobile applications so I do not get lost in the big city lights and as a citizen, as someone speaking hopefully on behalf of others who have similar concerns.

Many of the arguments that have been proffered here by both sides, and even from the Independent Bench, with the greatest respect to the persons before me, a lot of the arguments, if I am an average person, flies over my head which, given my stature, is not a difficult task. But concepts such as constitutionality and proportionality—*[Interruption]*

PROCEDURAL MOTION

The Minister of Rural Development and Local Government (Sen. The Hon. Franklin Khan): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continues to sit until 9.00p.m.

Question put and agreed to.

STRATEGIC SERVICES AGENCY (AMDT.) BILL, 2016

Sen. J. Junkère: Grateful, Madam President.

Instead of proportionality and constitutionality, I think the average man on the street simply wants to know three basic things: who is going to be monitoring me? Why will they be monitoring me? What will they do with this information? That is it. If we dovetail out of those three simple points, the concerns can zero in on: these people who are going to be monitoring me, who are they? This person under whom they act, the Director, who appoints him or her? Do those persons have persons to whom they report? Who appoints them? From whom do they receive instruction? Why will they be monitoring me? What activates surveillance on poor me? What will they do with this information?

I have heard, Madam President, young ladies complaining about officers knowing where they are and what they have said on phones. How do they know this? I do not wish to impute improper motives on anyone in or out of this House in terms of the manner in which information that is currently being elicited is being used. But these are legitimate concerns, and if it is on the streets, if it is in the minds of the citizens, it ought to be in our minds, because the laws that are created here affects the persons that are bound by them out there. So we need to pay attention here, but we have to think about what they think about, because that is what they put you here to do.

As an average man, almost everyone has a phone, some have two. How many people still use a “me too” though? How many? Not very many. Just the term “me too” brings a look of scorn to most people’s faces. You know why? Because even my six-year-old daughter is begging for a smart phone because she knows that phones no longer just make phone calls. A phone can be used as a calculator. It can be used, as she has recently found out, as a mirror, as a camera, a flashlight and, quite possibly, a tracking device.

Phones are not just phones anymore, look at the size of this. This is my phone. It almost looks like a tablet, probably because I am holding it. [*Senator displays cell phone*] You can say it is a “fablet”. I tell people it is not a phone, it is a multimedia communications device, and it was not cheap. But the number and the multiplicity of uses of this device is what justifies the expense. I am not here to market for Samsung—although bmobile is my preferred network—but I make this analogy to draw reference to the phone as a tool, and ask that this honourable House looks at the SSA as a tool. Why have a tool that has just one use?

How I see this amendment is that you are trying to make multiple uses out of one tool. I hope I have not oversimplified what the Attorney General has been trying to do, but in order for me to understand the mind of the man in the street, how I see it, you have an Act that empowers the SSA to do one thing. Given that you have spent all those resources, all that time, all that money to do just one thing and you have the ability to do other things, why not use it to do those other things. [*Interruption*]

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

So in principle I too have no difficulty with expanding the powers of the SSA. In that way the moneys that have been expended all these years and that will be

expended in the future can somehow be justified, because rather than having the police, the Customs officials, the FIU scrambling for information, we now have one reservoir, one source of information, one source of intelligence.

Quite like summer school and political integrity, police intelligence appears to be a contradiction in terms most times. But now with the expansion of the SSA's powers, we have the ability to arm and equip these ancillary bodies with the intelligence, with the knowledge, with the information they need. Of course, there is the antithesis to that. What about our civil liberties? What about our privacy, our right to privacy?

Mr. Vice-President, we speak about our rights to privacy, but I bet you if anybody lost their phone in this august Chamber it would not be unreasonable to expect that they would want everybody here to be searched before they left. Take that to its logical conclusion. How many people care about the privacy of others if their child is kidnapped? I would personally want to listen to every single phone call on every single frequency to ensure that whomever is responsible for the offence can be brought to justice.

Privacy is an illusion, because sometimes we think that what we say is amongst ourselves, but we unwittingly share our own information when we are careless with it. But if we entrust our privacy to persons who use it for the protection and the security of our nation, it is a small price to pay. I say that because I have nothing to hide. I trust that this august Chamber in their conversations, professional or private, also will have nothing to hide from the SSA.

So respectfully, I support the expansion, because I think that the utility of the expansion justifies the means. However, the ordinary man will still insist, even more so, that if you are expanding the powers of this tool you must also control the

responsibility with which it is being used, and it is a legitimate concern. I too have some legitimate concerns that I hope the Attorney General will take with the good intentions that these recommendations are being made.

7.50 p.m.

Now, firstly, I looked at the list of crimes that are now being defined as serious crime, and it occurs to me that crime does not occur in puddles and ponds. You do not have drugs here, homicide here, kidnapping here. Crime and criminal activity, bad acts are like streams that flow into rivers that flow into the sea. If we do not stem the flow we could end up with a tidal wave of criminality, the likes of which we have never known. So, if we have an opportunity now to look at these streams, we will see that many of the homicides that are reported, I do not know what the statistics actually are, but the perception is, “Where dey get shoot, north-eastern district? Oh, tha’s drug related.” So, if we have a tool used to monitor drug related activities, why not use that tool in surveillance of persons committing homicide. I see there seems to be a paranoia regarding terrorist acts and terrorist financing.

Hon. Al-Rawi: [*Inaudible*]

Sen. J. Junkère: Okay, so that amendment would be made. Hijacking, kidnapping, it is not a stretch of the imagination that persons involved in illicit drug trade may also be involved in kidnapping. Obviously money laundering is a by-product of the drug trade, as too is smuggling.

When we talk about—they have it here—human trafficking, trafficking in children, the porosity of our borders that will allow for the movement of humans can also allow for the movement of drugs, and the information culled from strategic surveillance of these routes can ably assist us. I must confess, when I see

computer misuse as a serious crime, without making any admissions, the types of things persons do on their computers may leave much to the imagination when it comes to the definition of computer misuse. Cybercrime, the definition of cybercrime by extension, I am not sure to what extent one can say cybercrime is serious crime, but I accept the Attorney General's position that it is covered under the Act. I just find that treason, as serious a crime as it is, a definition of treason and what activates and what triggers the need for surveilling someone who they may be suspected of treason, is very slender. If someone has an anti-government sentiment and expresses it in a forum which is open to monitoring and surveillance, what becomes of them? It is for these reasons I respectfully suggest that no matter how small the minutia of these items listed under serious offences requires a collaborative effort across the political divide. It may not require much amendment. I had an opportunity to look at the proposal for amendments proposed by the Opposition, and I do not see much difference in the list of serious crimes, and I think there could be consensus there.

I respectfully suggest a hard look at the appointment of the Director of the SSA. It appears to me, objectively speaking, that it is untenable that someone with so much power, with so much responsibility is beholden to a Minister, Cabinet Minister. [*Desk thumping*] I think just so that the appearance of impartiality is maintained for the benefit of the persons we surveil, the persons we serve, that the person who is appointed director ought to be seen as someone that can be trusted by everyone [*Desk thumping*] and appointed by no one in particular. The average man on the street will be concerned about the protocols that will effect surveillance activity. They will be interested in hearing about the strengthening of any sanctions to be imposed on any officer who will misuse or mistreat information that comes to

their hand under the powers granted by the SSA.

It would be useful to set controls in terms of the time this information is held, the purpose and the use for which is employed, and possibly even the imposition of a very transparent and public grievance procedure [*Desk thumping*] so that if any citizen feels that their information has been misused or improperly obtained for no good reason, they may have recourse. Because when we are doing these things and we are asking persons to submit to these inconveniences, the benefits that arise or accrue from it must not just simply be the actual security of the nation. It must also be the feeling that the relationship between the State and its citizens is one based on trust. Once you engender trust in the people you govern and you make it out that these are people you serve, they will be happily governed and they will be happily served. If this Bill in its present form moves forward it should receive support. But if it is tweaked to include the relevant amendments that will ensure that our citizenry feels comfortable to surrender what they perceive as their right to privacy in favour of a more secure nation, then it ought not to be objectionable to anyone no matter what colour T-shirt you wear before election.

I see Sen. Mark is with us again, and I know that his passion for law will continue to grow, continue to increase and ably assisted by persons on both sides of the divide, he will make it where he ought to be. For my part, I no longer teach the law but I can share the little I have left with you. You would realize that in law there are a lot of Latin phrases. Through you, Mr. Vice-President, there is one particular phrase by Marcus Cicero, not his godfather, cannot remember his middle name: *Legum servi sumus ut liberi esse possimus*, which loosely translated means, we are slaves to law so that we may be free. What the Government seeks to impose is a measure that could appear to enslave us by us giving up what we perceive to be

our privacy. But it is done with the intention that we shall be free of the scourge of criminality which if left unchecked will swallow us whole. [*Desk thumping*]

[MADAM PRESIDENT *in the Chair*]

So, I respectfully ask Members of both benches of this august Chamber to think of the man in the street who for no good reason thinks that you are coming to listen to him on his phone. Before you impose measures in how you do that, listen to what he has to say and make the appropriate amendments that makes him comfortable to submit to this new regime.

Madam President, welcome back and I thank you. [*Desk thumping*]

Sen. Melissa Ramkissoon: Thank you, Madam President, for the opportunity to join in this debate at this hour, almost 8.00 p.m. Before I start, I must congratulate the temporary Senator on our bench for doing quite a justice with short notice, excellent, eloquent delivery and valid contribution to this debate. I must commend him. [*Desk thumping*]

Madam President, we do acknowledge and admire the passion of the hon. Attorney General in relation to operationalizing the laws of Trinidad and Tobago. It could be quite frustrating for one to try to have written laws in the system and only serve as dead paper weight, so I do understand it can be frustrating for the hon. Attorney General. At the last sitting in this very Senate he gave a snippet or a prelude to the Strategic Services Agency Act with hopes of its achievements, and upon reflecting on the last sitting, I must take just a moment to sincerely thank the coordinator of the Independent Bench for acknowledging and correcting one of my grave mistakes due to oversight on my behalf. The last time I was sitting I rose to speak on a Private Motion which I brought to this House. Due to oversight I made a grave error in which it was corrected at the last sitting, and I must say I do

commend Sen. Wade Mark for giving way to bring forward my Motion as well as Sen. Khan for acknowledging and also agreeing to this arrangement between the benches, and for all Senators for supporting the Motion, I do thank them all.

Madam President, we are here to speak about the Strategic Services Agency Act, the amended version. The last time it was amended it was 1997. Madam President, I do commend the Attorney General and his team for their continuous efforts to reduce the negligence as he had explained in his opening remarks about the prison system, and how we was able to make a positive impact by confiscating contrabands, also intercepting phone calls, and different sorts of avenues he was able to enforce through the authorities. Now, I must give him a little advice. At my last contribution or one of my past contributions I spoke about the Netherlands prison system, and the prison system in Netherlands is actually making money where they do not have prisoners to house, so they had 19 prisons actually close down. So, maybe we could learn something from that system and maybe we could make some money in our present prison system. By that was just a side note. So, after reading this Act, I must say it is very important to hold our institutions accountable for what is written. We have very good drafters, they have written; we have regulations; now we need to hold them responsible for what they are committing themselves to do.

So, I read this piece of Act and I said, okay, my initial thoughts. As a citizen of Trinidad and Tobago I would have zero tolerance for any sort of crime after this. I do not expect to ever get robbed; I do not expect anybody to do me anything because you know all the criminals, you have their phone calls, you have their names, you have database with all information. I should be free to walk as I please.

I should be able to go to the car park and not have a security escort there because I know I am safe to do that, Madam President. So, I thought, okay, this is great, but then I remembered we are not in an ideal world. We are Trinidad and Tobago and we are unfortunately 85th in the most corrupted countries in the world, so I said okay, well, maybe this may not go as best as I thought.

So, we have many different agencies, and when I really thought and listened to the hon. AG in his opening remarks and also did my own research into this piece of legislation, we are looking specifically at the Strategic Services Agency Act and, unfortunately, I had to come across this very bold statement which I have to make, is which I do not support this amendment, and I would give you reasons. It is not the reason you thought initially by hinting the reason why we may not support. I am going to list at least five, permit me, hopefully my time will allow me to give you five reasons as to why I do not support this piece of legislation at this time.

8.05 p.m.

So my first point, we have not operationalized our existing laws and you have listed many pieces of legislation. You have listed the Constitution of the Republic of Trinidad and Tobago Act, the Financial Intelligence Unit of Trinidad and Tobago Act, the Justice Protection Act, the Anti-Terrorism Act, Proceeds of Crime Act, Strategic Services Agency Act, the Strategic Intelligence Agency which was just a Cabinet Note in 1994. So we have a lot of legislation, I mean good legislation, written, well-written. Why is it the first step, instead of trying to operationalize or trying to amend the existing systems or hold persons accountable, why is the first step that we are trying to add more responsibilities into this present agency? And I could not really see that connect, Madam President, I could not

understand. We have an agency here 21 years old and we have not, well, I mean “we” the public, you may have statistics but we do not have statistical data to show this is working for us, this is serving us.

Madam President, it is only when I had—this came up into the Parliament and I had to sit down and read, I said, “Oh my goodness”, we have an agency dealing with drug trafficking? “Oh my goodness”, why do we have drugs on the streets? I could not believe that. I mean it was such a great agency talking about centralizing unit, a database—they even spoke about trending data too, you know. That is in the existing past law. It is not something we are trying to amend; that is there, written. So I really could not see the connection and that is why, one of the reasons, I could not say yes to this amendment.

Now, I always like to share data and findings with the Senate, as well as the listening audience to know where I got my information and for them to base their own opinions. So I looked at a review of the national security sector, it was dated April 2009 and it was conducted by a review team led by a Canadian Major General Cameron Ross. And I quote, Madam President:

““There is considerable overlap in the collection, analysis, and distribution of intelligence among the security agencies. Having SAUTT, defence force intelligence, SIA, Special Branch, SSA and NSCS all involved is difficult to justify in a country as small as Trinidad and Tobago.””

And this was a quotation from a review saying that there are so many agencies involved, there are so many overlaps. I believe we heard that already in the Senate. Why is it that now—and surprising enough this review did not even take all the agencies into account. I mean, I must say I was very educated by the number of agencies because I learnt of the Customs and exercise—

Hon. Senator: Excise.

Sen. M. Ramkissoon: Sorry. Customs and Excise Enforcement and Operations Unit. I think they should probably exercise that, probably that is why I said that. Sorry, I do apologize. They spoke about the Integrated Threat Assessment Centre, a National Coastal Surveillance Radar Centre, an Anti-Kidnapping Unit.

So, all of these again are agencies that exist in Trinidad and Tobago. They are not new. They are existing for some time now. So I felt, okay, is it that we have more agencies than solved crime. So I felt that we needed to get some statistical data, so I requested the assistance of the parliamentary Librarian to request data from the Judiciary to share how these intelligence agencies have impacted on the criminalizing of cases.

Unfortunately, the response was they do not have that information. They do not have statistical data to show where these intelligence agencies have solved cases, have helped us to know if you are guilty or innocent, have showed data recorded or collected, however they are doing it, because I know there is a lot of software available that can record all your emails. Just from a click of a button, they can pull up what date and they can zoom in to who you are and stuff like that. So there is no record showing that this is of help to our very backlogged judicial system and it was very scary to know that. And one of the 1995 SSA mandates, Madam President, was to trend, analyze and interpret patterns of criminal activity that relates, but not limited to, dangerous drugs.

So, Madam President, it was good to see, I did find one piece of evidence where the SSA was involved. And if one wants to find it they can go back to a *Guardian* published article June 9, 2015 where it says:

“...the SSA also provided much needed intelligence to support ongoing

criminal investigations. It did not elaborate.”

So we hear of it. I only knew about it when I had to do research for this debate, 21 years in the making and I still do not know what it has done for my country, for this 21 years.

My second point into why I am against this piece of legislation is that we are attempting to set up legislation to build infrastructure to fight against serious crimes. And “serious crimes” is defined in the amended version. And when I read the 1995 version and the inability to operationalize the existing law I was quite alarmed that if such legislation existed for 21 years and we still have rampant traffickers, drug traffickers and other criminal activities going on, what next. So a little history, I did not really hear any of the Senators really deal on it, but this was something that happened in 1995 that was enacted by the PNM administration on October 4, 1995. And according to the Act then, the agency was set up to:

“act as an office for centralising information that could facilitate the detection and prevention of illicit traffic in narcotic drugs, psychotropic substances and precursor chemicals, for co-ordinating operations for the suppression of illicit drug trafficking and drug-related matters and for co-operating with the Services or the corresponding Services of other countries.”

And that is the existing law as it says.

But, Madam President, let us check reality. So since I could not get any statistical data from the institutions, I needed to go to the public domain. So what is available, publicly? And what is available, if you look at the *Guardian*, January 21, 2016:

“2 illegal guns, \$6m in drugs seized in raids”

And the article goes on to say:

“Police said acting on a tip from a concerned citizen they were able to recover”—the—“illegal”—drugs and—“gun.”

Okay, no agency. Another article published July 3, 2015 from the *Guardian* again:

“Guns, drugs found in police raid”

And it went on to say how many laptops, computers, DVDs and cellphones that were gathered. Again, a raid. Police activity, normal run-of-the-mill. Another one:

“Drug trade fuelling crime”

Madam President, the *Guardian* published this on January 13, 2015, and it had a nice piece of statistics:

“Link to violence

According to gun policy...country profile of T&T, in 1995 44 per cent of the 135 murders were committed with guns and in 2009...72 per cent of the 506 murders were because of fatal shootings...”

So they are relating the gun trade and the drug trade industry. I did not realize that illegal weapons and drugs were directly related in that sense.

And the most interesting article I came across was September 24, 2010. And, Madam President, please permit me to share some of the information in this article, because it was quite applicable to this SSA agency. And the first line is:

“British and Spanish police are investigating why 1.5 tonnes of cocaine, worth close to \$1 billion, left Chaguaramas earlier this month aboard a yacht headed for Spain.”

Now, Sen. Mahabir alluded to this earlier, where how much crime pass our shores and we are not aware of it. But it was quite interesting, the article went on to say:

“In 2002 a British court was told several politicians from Trinidad were said

to have had a close alliance with a British millionaire-drug-pusher, who was at the time in hiding from British authorities.”

And the article went on to say they were involved with this shipment of drug trafficking.

“The court also heard that in conjunction with the Sea Mist”—which was the yacht that was in question—“a series of yachts left their Chaguaramas anchorages laden with cocaine and into the ports of England and Europe... Local intelligence authorities are said to be closely working with their international counterparts on Monday’s bust.”

That is from this article. It is quite interesting, Madam President, to hear the reasoning behind this drug trade.

So that is what we find in the public domain in relation to intelligence, in relation to safety of our shores, in relation to operationalizing the laws of Trinidad and Tobago. More data was found in the osac.gov website and it had a nice quote from the then Acting Police Commissioner, Mr. Williams, and in August 2014 he noted:

“...that despite the seizure of...380 firearms, the highest number of firearms taken off the street”—for that—“period.”

He said:

“...75 percent of the murders”—was due to—“firearm”—or due to guns.

And, again, the increase in that highlights the growing problem of imported and often illegal weapons and firearms smuggling. And they were even—they related again in this article that:

“Drug trafficking and gang-related activities continue to fuel the demand for illegal weapons.”

So quite a learning.

Madam President, Trinidad and Tobago is our country and when we hear statistics that say:

“The detection rate for murder was 6.1 per cent for 2014.”

—with existing intelligence agencies, I am surprised. Not knowing about intelligence agencies I will not be surprised. But knowing about these things and having such a low detection rate is a bit confusing. And even the murder rate for Trinidad and Tobago was approximately 35.3 per 100,000 “inhabitants”.

Hon. Senator: Inhabitants.

Sen. M. Ramkissoon: Inhabitants—“oh gosh”—according to the 2014 United Nations and the World Health Organization global report. And that report, Madam President, went on to say:

“The murder rate continues to be driven primarily by gang- and drug-related activities...”

So we know the root cause according to these reports and the statistical data are due to drugs and now drugs is also influenced by the illegal weapons that come into the country and we have an agency set up with that sole responsibility to monitor, to trend, to centralize data in relation to our drug trafficking in our country and yet 21 years later it feels like we have lost control of it.

Again, it is very difficult to understand how we are trying to give more responsibility, because that is what I interpreted it to be, to an agency that is not performing. We are giving them just drugs, eh, just drugs you have them to look at, just drugs you are centralizing, just drugs you are trending and they cannot give you data for that. And the thing is we have other institutes, like your financial institutes, your Anti-Kidnapping Unit, all these people are gathering information about our citizens and, I hope, the criminals. I really hope for my sake and your

sake and everyone's sake that, Madam President, they are gathering information that could help save our crime situation, because that is what we want.

8.20 p.m.

We want less crime in Trinidad and Tobago. Throughout the world we have people sending out bulletins, "Do not visit Trinidad and Tobago". That is disheartening. Nobody wants that. We want to ensure that when we write laws, I mean, a lot of thought and time goes into it. It is not something that we snap and it happens. When we have a law we expect it to be enforced. If it is not enforced, we need to fix that problem before we bring more pieces of legislation to confuse more people. Because if I am telling you now this agency is supposed to do all these serious crimes and they cannot even get one of the serious crimes right, how am I expecting you to give me information for the rest? And that is my point, Attorney General.

So, let me see if I can make another point. I do not know how much more time I have.

Hon. Senator: Plenty time.

Sen. M. Ramkissoon: I think Sen. Coppin spoke about the amount of money for the SSA, and the *Guardian*, June 09, 2015 published the recommendation coming out from the SSA that says they need to buy new equipment in 2014 to improve the confidentiality of information developed, gathered and analyzed by this intelligence unit. So we still have now, a new area now. We may have a breach because we do not have proper equipment now to ensure that our intelligence is safe, Madam President.

So the cost of this project was about half a million US dollars just to operationalize that part of it. I am yet to fear how much to ask what is going to be

the cost of all of these additional responsibilities. I hope, for our country's sake, it is zero because we are looking at value for money—value for money—accountability, and if we cannot get the value there, there is little that the citizen can have faith in. A very young wise man told me that you cannot expect blood from a stone, so I do not know what we expect from this agency since it is just like a stone right now. So we expect value for money, and I think in 2013 the allocated budget was about \$107.6 million, just to give you an idea of how much money we feed into these agencies.

My third point is the fear of this information ending up in the wrong hands, and for the listening public, Madam President, I thought of this very simple analogy that people could connect with because we say SSA, we say SIA, we say all different terms that sound very fancy, and I thought there was a simple thing that local persons can connect to. There is this new series—this fictional series—running on local television. I do not know how many persons look at it because we do not have the luxury of TV time. But for the listening audience, there is this excellent television show called *Person of Interest*. Do you all know about it? Okay.

Person of Interest is about these two guys who have developed a software, or technology, to monitor persons and ensure that they could zoom into crime and prevent it from happening. And I felt that this was something that we are trying to do with the SSA or with operationalizing our laws by really having this technology—or digital technology—to ensure that we can zoom into our crime situation and eliminate it.

One of the biggest fears of that television show and what they try to always cry out is if the guys who are using the software were ever kidnapped and this

information ended up in foreign technology, or foreign hands—so then we have the anti-terrorism activity happening—where another country now has access to all your information. That was the biggest scare. Now you have your government officials' data, you have your bank accounts, you have all this information—one hub—and now any country can come now and access that information. I found that to be quite scary and I felt that show really promoted it. So I felt that is something that persons can connect with, about what is the SSA; what are we trying to do, and it really can show that piece of how digital technology that can be used to save a life but also can destroy so many others.

I want to just touch on trust, because we have intelligence agencies throughout Trinidad and Tobago, but trust, Madam President, is very, very important because you cannot have buy-in if you do not trust the system. And if you all look into the Police Complaints Authority, the allegations against police officers during the period of December 29, 2010 to 2011, there were 255 complaints. For the period of 2011 to 2012, 340 complaints; 2012 to 2013, 470 complaints; 2013 to 2014, 491 complaints. They are not reducing. They are going up. And this is the fact also, that citizens are afraid to go to the police station to report the police officers of any wrongdoing because of fear of victimization or fear that they would be hurt or discriminated against. So, we have complaints lodged by some brave souls and I am not sure what is happening to reduce those numbers. Instead of increasing over the years, why are they not decreasing?

So the public perception is very, very important, and that would lead me into my fourth point which is the misuse of intelligence agencies. And, unfortunately, this has happened in our sweet country, Trinidad and Tobago where there was an article published in the *Trinidad Express*, November 13, 2010: “Spouses As

Spies”, and it had: “SIA hired friends and relatives to be ‘informants’ at \$20,000 a month”.

I do not know if this is true but it was published in the newspaper for public purview. And it also went on to where:

“The unit, which was not known to citizens or even police officers, consisted of...200 civilians.”

So, again, we need to be mindful because, unfortunately, we are mortals and we do not live forever, and what we are putting up for now, it needs to be able to exist throughout time. So if the persons on the other side and this side are not here, whoever comes forward and is here to enforce the law, is enforcing something that is not illegal, or can be used for illegal activities.

So to have civilians and not involving your police officers or your citizens to know about this type of technology is a bit alarming.

Hon. Al-Rawi: Could you expand on that? Sorry?

Sen. M. Ramkissoon: Okay. I did not want to read the whole article but if you want, I can quote.

Hon. Al-Rawi: Sorry. It is best not to interrupt you.

Sen. M. Ramkissoon: No, not a problem. Okay. The gist of it was that:

“The...(SIA)...was financed by the Ministry of National Security with no level of accountability.”—It—“paid as much as \$20,000 a month to ‘informants’ who supplied no creditable information in the fight against crime.

The unit, which was not known to citizens or even police officers, consisted of close to 200 civilians and personnel from the Army and the Coast Guard. According to a reliable source”—the article published stated that—“close to

the Canadian team hired by the Police Service to conduct a forensic audit on the SIA, allegations of”—heavy—“corruption within the unit”—was said to happen.

“Speaking with the Sunday Express”—in that time—“on condition of strict”—

Sen. Mark: Anonymity.

Sen. M. Ramkissoo: You all know the article? [*Laughter*] All right.

“of strict anonymity, the source said many of the agency’s ‘informants’ were friends, relatives and spouses of the SIA personnel. These ‘informants’ were paid in cash so that their identities would not be compromised by the tracing of bank records.”

Hon. Al-Rawi: What year was that?

Sen. M. Ramkissoo: This was published on November 13, 2010. And it even said that:

“The SIA had several bank accounts which were concealed as company accounts to avoid the exposure of the secret agency.”

So this is something that happened in Trinidad and Tobago and this is a case.

Now, the—something that you were actually listed in. I saw in the November 13, 2010 *Newsday*: “Clear and present danger”, where there was the talk of the illegal wiretapping in our country and you were actually listed as one of the names that was tapped. I do not know how you felt, if you would like to share with us—

Madam President: Sen. Ramkissoo—

Sen. M. Ramkissoo: Oh sorry. I do apologize.

Madam President: Yes. When you are addressing the Attorney General—through

the Chair. Thank you.

Sen. M. Ramkissoon: Definitely through you, Madam President, I would like to know how the hon. Attorney General felt when he learnt of this invasion of his privacy. Did he feel a breach of confidentiality when he was listed as—his name? Because I believe he was serving in the Senate at that time, Madam President, and he was just an Opposition Senator—so how he felt or how any of those persons listed felt, because I guess it is against their will, against their knowledge.

Hon. Al-Rawi: I found it was not true.

Sen. M. Ramkissoon: I do not know if—well, the hon. Attorney General, Madam President, through you, is saying that it was not true and I hope that it was not true and I hope that we can retract articles like this in the newspaper.

But anyway, it is also noted that media, journalists—and information was collected on them. I do not know what information did, but it is very much alarming to know that your name is appearing on a list to be monitored and you do not know why. And I do not know—my name will appear on a list and I do not know why. [*Laughter*] So, no, I do not say that, okay, this is not already happening to me because my phone drops my calls when they want; you hear Chinese speaking sometimes, Madam President. It is so scary. But nevertheless I have nothing to hide.

But it is not the point of hiding something. The point is your rights as a citizen. Okay? [*Desk thumping*] Are you going to have a breach of confidentiality because someone feels that you should make a list? So it is kind of—it is a little bit concerning. Okay?

My last point is wastage, Madam President.

Hon. Al-Rawi: With the three before, you have five.

Sen. M. Ramkissoon: Oh gosh, I do not know how much numbers I have.

Hon. Senator: You were not following. She made four.

Sen. M. Ramkissoon: Madam President, wastage. The hon. Attorney General mentioned this in his introduction on the SSA Annual Report 2013 which was laid before Parliament and it highlighted some interesting ones. Unfortunately, I did not see the 2014 one on the website. They only had the 2013 as the last updated report, and it was quite interesting, though, because they had: “Work Completed” and they had “Assessment of Regional Security Threats”, as one of their completed jobs, as we would say, from the SSA agency.

This is great. So what is happening with these threats? Where are the assessments? Are we using them to solve crime? Is the Minister of National Security aware of these assessments? And are they being used to fight crime in our country?

Another one they went to say that they had a final edit of the National Drug Policy and Operational Plan, 2014—2018. I wonder if this plan was rolled out and what happened with this information. This is good work. I am sure it took a lot of time to prepare and do. If the SSA is a functioning unit—I would believe it is because we are putting money and we have a budget allocation to it—so what is happening? Where is the disconnect, if there is a disconnect? Or where do we need to fill the gaps?

Madam President: Sen. Ramkissoon, you have five minutes.

Sen. M. Ramkissoon: Okay. Thank you, Madam President. Madam President, there is a lot of statistical data out there that shows that Trinidad and Tobago is affected by cases of corruption and inefficiency. Even the 2012 United Nations Development Programme, Caribbean Human Development Report, had a piece of

the report titled: Gangs are the new law in the urban Trinidad and Tobago with approximately 100 criminal gangs identified in Trinidad and Tobago.

8.35 p.m.

We have so many different reports identifying things that I believe the agency should be identifying and should be putting out there for the public to know. This is how we can trust an agency and understand the functioning of it and then we can say, okay, yes, we are seeing value for our money, let us add on these extra serious crimes to them; no problem, we can have them go for kidnapping because they are performing; they are accountable and we are proud to say they are an agency of Trinidad and Tobago.

Now, we have instead a lot of agencies, a lot of overlapping, we are not sure who is doing what and maybe they are stepping on each other's toes by having overlapping and I am not sure who is responsible for this area and who is responsible for that. I do not know because we do not have that information available to us. But we must know what our capabilities are; what our performance is and what the success of the SSA is, the last amended 1997 version.

So I do understand the Government faces numerous challenges. We have an overburdened legal system, no doubt. We have influence of gangs, drugs, but we also have lots of intelligence agencies. So we do not give up, we do not attack, we say—let us cut out the fat as the local term is, remove agencies that are not functioning their duties and if you want to have an overarching system and have one agency, then say that. Say that we do not want to have the Anti-kidnapping Unit anymore and we just want to have a serious crime unit. I can understand the link but why we having all these different agencies, I cannot really understand that because we are not holding them accountable.

So I found this really nice quote from Julian Assange, an Australian Computer Programmer, he is a publisher and a journalist:

Intelligence agencies keep things secret because they often violate the rule of law or of good behaviour.

I hope that is not our case. We are not violating our laws and good behaviour, Madam President, and I do look forward to having this piece of legislation withdrawn from the Parliament, and I have laid my case for consideration. I do thank you. [*Desk thumping*]

ADJOURNMENT

The Minister of Rural Development and Local Government (Sen. The Hon. Franklin Khan): Madam President, I beg to move that this Senate do now adjourn to Tuesday, May 10th at 1.30 p.m.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for a matter to be raised on the motion for the adjournment of the Senate. Sen. Solomon, you have 10 minutes.

State Witnesses (Government's Failure to Address)

Sen. Daniel Solomon: I am grateful, Madam President, and I see the hon. Minister of National Security is here. I am sorry that it is so late in the day, Minister. But my Motion is the failure of the Government to properly address the safety and security of the lives of state witnesses. This is of paramount importance to the proper functioning of our society. The police rely on the information from the public. Witnesses for the State must be made to feel safe, secure, and comfortable, in the giving of their evidence.

If the public feels as though the witnesses are not being made to feel safe and

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State Witnesses
(Government Failure to Address)
Sen. Solomon (cont'd)

secure, then what would happen is the public would be reluctant to ever come forward to give evidence in serious criminal matters. Not only for the safety of the state witness but for the proper functioning of the entire judicial system. Without the public and without state witnesses, there would be no detection, there will be no conviction and the entire criminal system would fall apart and crime would be rampant. [*Desk thumping*]

So, Madam President, there are a number of state witnesses and executions of state witnesses that have been happening lately in the media. A number of state witnesses who have come forward and said about their treatment under the state Witness Protection Programme. In particular, there was a young man by the name of Darian Nedd and I refer to an article March 21, 2016 where 14-year-old Darian Nedd finally met his death yesterday. He was a witness in a contraband deal. Two men chopped off his limbs with a cutlass and then set fire to his home leaving him to die.

Madam President, the details of this horrendous murder are gruesome and I do not want to go into it just for the alarmist side out of it, but it is imperative that the rippled effects that this sort of horrendous crime has, it creates fear. It makes the public feel as though once you step forward and you take the chance to give evidence, you will be executed. Your family can be executed, you can be intimidated and it is just not worth it. It is better to say nothing, do nothing and stay out of the reach of the criminal world. Madam President, this is why it is imperative that I ask the Minister of National Security to please, put effort into keeping state witnesses safe, keep state witnesses secure because everything relies on the fact that these state witnesses come forward and give evidence.

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State Witnesses
(Government Failure to Address)
Sen. Solomon (cont'd)

Another alarming case came to light recently, a case involving a police officer witness. She is a state witness called Nicole Clement. She actually was the main witness in a case involving six of her own police officers who alleged to have murdered three civilian citizens of Trinidad and Tobago. The evidence that Clement gave in the Magistrates' Court actually pointed towards these officers having received instructions from senior officers. And although we do respect the hard work of the officers, we also have to understand that this state witness has risked her life by coming forward as a police officer and to this day, she has not, three years on, actually been offered police protection. Three years and nine months later, she is still not yet in the justice protection programme. That is unacceptable.

She is guarded by fellow police officers who know her movements because those are the same colleagues that the officers to whom she has given evidence against. She has gotten threats to her life. She has been moved to four different safe houses. She has a four-year-old child who has had to leave school. She was promised that she would be taken out of the country and kept safe and her family is still exposed as she is. This is crucial that the Minister of National Security make a concerted effort to keep, not only the state witnesses safe and secure but also their families safe and secure and that they must be made to feel comfortable.

There is another state witness who recently came into the public media's attention. She is a young Muslim woman who is giving evidence against the murder of Amos Dick who was murdered on October 17, 2015. She says that she was kept in a safe house, Alicia's Guesthouse. On two occasions, she bumped into people that she knew. She says that she was not given halal food. She is pregnant.

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Sen. Solomon (cont'd)

She was moved around from safe house to safe house, and on one occasion, information came to light where she was moved from the safe house and taken to a police open dormitory where she spent the night.

Madam President, she gave evidence about a possible terrorist attack against this country. She gave information about terrorist training and planning an attack on this country. We have not heard anything more of that but it is crucial that such witnesses are kept safe and secure. And through you, Madam President, I implore, I beg the Minister of National Security if he can please make an effort because the entire nation is depending on the system to work and the witnesses to be made safe. Thank you, Madam President. [*Desk thumping*]

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President. I heard Sen. Solomon a while ago and he started off his presentation with respect to the failure of the Government to properly address the safety and security of state witnesses. And I really must ask the question as to in terms of his own thesis, the failure of the Government, where did he get this empirical evidence? Where is his measurements in terms of assessing the failure of the Government to protect the state witnesses?

Madam President, from the outset, let me say that in dealing with issues pertaining to the state witnesses, it is a very sensitive area, one in which security classification, in dealing with any witness programme in any country, normally deals with two classifications: secret and top secret, because of the very nature of the programme. So that my information here would be very much guarded and be very responsible.

Madam President, the Trinidad and Tobago Justice Protection Programme which is

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Hon. Maj. Gen. E. Dillon (cont'd)

commonly referred to as the Witness Protection Programme is in conformity with the Justice Protection Act of 2000 which, in fact, became operationalized in 2003. The programme provides for the security and support of witnesses and their dependants once they are willing to procure, to provide a certain kind of evidence that is necessary in dealing with crime and criminality in Trinidad and Tobago. The programme supports providing payments for participants to meet his or her needs and also living expenses for his or her dependants; the provision of psychological assessments, diagnosis and therapeutic interventions where necessary and other support that is required to ensure that the witness is able and capable to give the necessary evidence, Madam Speaker.

Madam Speaker, the offences—[*Interruption*]

Hon. Senators: Madam President.

Hon. Maj. Gen. E. Dillon: Madam President, sorry.

Sen. Mark: I know you want to come and join us here, you know.

Hon. Maj. Gen. E. Dillon: I will not be deterred, Madam President. [*Laughter*]
The offences that give rise to these protections are listed in the First Schedule and I will not go through the entire list but just to show some example. A situation such as murder, manslaughter, treason, sedition, piracy or hijacking, possession or use of firearms and ammunition—the list goes on.

But more importantly, the Witness Protection Programme is a voluntary programme. It is one in which you cannot entice, you cannot induce, you cannot coheres, a witness to join the programme because that has implications for the legal aspects. And so, Madam President, the Witness Protection Programme entails a rigorous assessment. It entails a psychological evaluation and there is certainly

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input from law enforcement and the Director of Public Prosecutions.

But more importantly, in order to get into the programme, the witness must sign a memorandum of understanding and that memorandum of understanding must not only be signed by the witness, but it must be signed by an officer so authorized by the Minister of National Security who is, in fact, the director of the programme. Unless the witness signs that memorandum of understanding, because in joining that programme, of course there is a certain kind of inconvenience because it is for the security and safety of the participant and their dependants. And unless you sign that memorandum of understanding, then it is difficult to enter in the programme.

And so, I really want to understand whether in Sen. Solomon's investigation, did he understand that some of the people mentioned were not in the Witness Protection Programme because some of them were not, in fact, willing to sacrifice their time, were not willing to sign the memorandum of understanding to join the programme. And so I urge him to go a little deeper into his investigation and realize because I can tell you that this programme that has started, was operationalized in 2003, to date, has, in fact, 106 witnesses in the programme as we speak together with about 99 dependants, with a total of 205 persons in the Witness Protection Programme.

Madam President, I wish to state even emphatically that to date, that programme that has started under the PNM in 2000, 2003 and continued, it is still in existence. To date that programme—no one has been harmed or killed in that programme since 2003 [*Desk thumping*] who has entered into the Witness Protection Programme, who has signed the MoU and understands the rules of the

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game because there are established rules once one enters into the programme.

Hon. Al-Rawi: There is one in there for 16 years.

Hon. Maj. Gen. E. Dillon: That is right and longer than that. I can tell you, Madam President, I was in charge of the Regiment in Teteron Barracks at the time of Clint Huggins. Clint Huggins was one of the witnesses in this programme, an early incarnation of that programme. He was safe and secured while he was under the protection. It is only when he left that programme voluntarily and went into—to “lime”, as we say, in local parlance. Went in the local parlance when he left the programme and he was executed.

Once you stay in that programme and evidence is there, once you remain in that programme, the track record has shown quite clearly that you, that the State has spent and expended quite a lot of money because you are dealing with dependants and the participants themselves. And so, once you remain in the programme, so far we can say that you have guaranteed that they will be protected and you will secured to be able to provide the necessary evidence to bring convictions insofar as what we are dealing with.

Madam President, and I would clearly like to say that the Government will continue to invest in this programme. The Government will continue to provide the programme, to provide the necessary support to those who are willing because, again, I want to mention that we cannot induce or provide even reward or bribe. They must be of their free will in order to really treat with issues of criminality and crime and we want to encourage and ensure that our track record shows that we can protect our state witnesses. We can protect them once they are willing participants.

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Madam President, I thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.52 p.m.