SENATE

Tuesday, March 14, 2017

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. Daniel Solomon and to Sen. David Small, both of whom are 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

APPOINTMENT OF A TEMPORARY SENATOR

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

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

President.

TO: MR. SEAN SOBERS

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

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, SEAN SOBERS, to be temporarily a member of the Senate, with effect from 14th March, 2017 and continuing during the absence from Trinidad and Tobago of the said Senator Danny Solomon.

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 13th day of March, 2017."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

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

President.

TO: MR. JOHN HEATH

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

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, JOHN HEATH, to be temporarily a member of the Senate with effect from 14th March, 2017 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 13th day of March, 2017."

OATH OF ALLEGIANCE

Senators Sean Sobers and John Heath took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Ministerial Response to the First Report of the Joint Select Committee on Energy Affairs on an Inquiry into the Strategies and Incentives to Promote New Production in the Energy Industry with Specific Focus on the Ministry of Energy and Energy Industries. [*The Minister of Trade and Industry* (*Sen. The Hon. Paula Gopee-Scoon*)]
2. Annual Audited Financial Statements of the Trinidad and Tobago National Petroleum Marketing Company Limited for the year ended March 31, 2016. [*Sen. The Hon. P. Gopee-Scoon*]
3. Annual Audited Financial Statements of the Trinidad and Tobago National Petroleum Marketing Company Limited for the year ended March 31, 2015. [*Sen. The Hon. P. Gopee-Scoon*]

4. Report of the Central Bank of Trinidad and Tobago (CBTT) with respect to the Progress of the Proposals to Restructure CLICO, BAT and CIB for the quarter ended December 31, 2016. [*Sen. The Hon. P. Gopee-Scoon*]

5. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Trinidad and Tobago Civil Aviation Authority for the year ended September 30, 2005. [*Sen. The Hon. P. Gopee-Scoon*]

6. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Housing Authority for the year ended September 30, 2004. [*Sen. The Hon. P. Gopee-Scoon*]

7. Ministerial Response of the Ministry of Energy and Energy Industries to the First Report of the Public Accounts (Enterprises) Committee on the Examination of the Audited Financial Statements of State Enterprises (NSDSL, e TecK, NFM, NQCL, GHRS, NIDCO and TTMF). [*Sen. The Hon. P. Gopee-Scoon*]

JOINT SELECT COMMITTEE REPORT

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

South-West Regional Health Authority (Presentation)

Sen. H. R. Ian Roach: Madam President, I have the honour to present the following report as listed on the Order Paper in my name:

Third Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on an Inquiry into the Administration and Operations of the South-West Regional Health Authority (SWRHA) in relation to the adequacy of medical staff and

equipment at the San Fernando General Hospital (SFGH), Second Session (2016/2017), Eleventh Parliament.

URGENT QUESTIONS

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Madam President, may I say that the Minister of Tourism is out of the jurisdiction and the question will be taken by the Minister of Labour and Small Enterprise Development. Also, with regard to the Minister of Social Development and Family Services, she is on bereavement leave and I will, therefore, answer in her absence. Thank you.

Dissolution of TDC (Job Security of Employees)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Tourism: In light of the Government's decision to dissolve the TDC, Tourism Development Corporation, what measures will be adopted to address the job security of employees affected by this decision?

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you very much, Madam President. In light of the absence of the hon. Minister of Tourism, I have the honour to respond to the hon. Sen. Wade Mark.

Madam President, the tourism sector is regarded as critical to the achievement of economic growth through balanced and sustainable development and can be a catalyst for socio-economic benefits for local communities; the preservation of our natural and cultural assets; and the advancement of our nation. The impact of travel and tourism on the economic and social development of the country can be enormous as it would allow for the opening up for investment, trade and business opportunities. The Government recognizes that the development of the tourism sector requires a more strategic approach to long-term competitiveness and has

intensified its thrust towards diversifying the economy in order to enhance its revenue on job creation potential.

Madam President, the Tourism Development Company Limited, also known as TDC, was established as a limited liability company in September 2004 with responsibility for three main areas. One, tourism marketing and promotion; two, product control and development, that is the standards and licensing; three, tourism investment promotion, which is new hotels and attractions. It is to be noted that over the years, the TDC had challenges in meeting its mandate to market and promote Trinidad and Tobago and to place focus on product development and control. The organization—[*Interruption*]

Madam President: Minister, you had two minutes. Your time is up.

Sen. Mark: Madam President, given the mandate outlined by the hon. Minister, could the hon. Minister share with this Parliament what measures are going to be taken to deal with those workers, over 100 workers, whose jobs are likely to be affected because of the decision taken to dissolve that company?

Sen. The Hon. J. Baptiste-Primus: Thank you, Madam President. I wish to assure this honourable House, hon. Sen. Wade Mark and the entire country, that sometimes hard decisions have to be taken but we want to give the assurance that the workers of TDC will be treated fairly and they will also have the opportunity to apply for the new jobs that will emerge from the new structure, the new organization. In addition to that, Madam President, I am informed that opportunities for employment also exist with the establishment of the Trinidad and Tobago tourism regulatory and licensing authority which would have responsibility for product quality and service standard in all segments of the tourism and hospitality industry.

The affected employees, may I point out that at the level of the Ministry of

Labour and Small Enterprise Development, there is a division called National Employment Service where unemployeds register on our website, employers also register on our website and the public officers would match the CVs of those who apply to the jobs as advertised—as the employers—and they engage in that matchmaking and would forward the information to the prospective employers. So that all will be done to ensure that the workers of TDC would receive all that they are entitled to.

Sen. Mark: Madam President, would the hon. Minister indicate that having regard to how the decision was taken to dissolve this company, whether there would be any reconsideration given by the Government to have this decision revisited and if not, rescinded?

Sen. The Hon. J. Baptiste-Primus: Madam President, while I understand the motivation of the hon. Senator, of course, he would appreciate that I am not in a position to respond to that. What we are dealing with here is a Cabinet decision and, therefore, I cannot speak on behalf of the Cabinet. But I wish to give the assurance that the hon. Minister is out of the country, and upon her return, she has all intentions of meeting with the recognized majority union which is the Communication Workers Union.

Steel Plant
(Potential Investors)

Sen. Wade Mark: Thank you Madam President. To the Minister of Labour and Small Enterprise Development: Why has the Government refused to meet with potential investors interested in restarting the steel plant previously owned by ArcelorMittal?

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you, Madam President. The ArcelorMittal

plant is in liquidation and that is a legal process and therefore, any investors coming into the country would have to make a bid to the said liquidator. The Government has to be careful about inserting itself into a court-ordered liquidation and it is against that background, having met with the Steel Workers Union of Trinidad and Tobago and they having submitted certain documentation to the Government of Trinidad and Tobago, the Government of Trinidad and Tobago is awaiting legal advice on whether or not we have any authority to be part of such a procedure. As soon as we receive that legal advice, we will be meeting with the Steel Workers Union of Trinidad and Tobago.

Sen. Mark: Madam President, through you, given the strategic importance of the steel industry and the important role that the Government plays in this economy, would the Minister then not agree with me that there is need for some kind of dialogue to commence with the stakeholders with a view to determining the way forward for the steel industry?

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

Sen. Mark: Well, Madam President, seeing that I am on my legs and you have cancelled that one so that—I still have two more.

Madam President: No, you have one more.

Sen. Mark: Oh, I see. All right. Madam President, may I ask the hon. Minister, would she be in a position to inform this honourable Senate of a time frame that would be required or that you believe would be needed to report back to the country and to this Parliament on the legal way forward as it relates to the insertion of the Government into this whole exercise? Because she just indicated that the Government was awaiting legal advice. I want to know if there is any time frame for this particular legal advice to be offered.

Sen. The Hon. J. Baptiste-Primus: Thank you very much, Madam President. I

understand the anxiety of Sen. Wade Mark but I will give you the assurance that legal counsel who is attending to the matter would be advised of the request made in this House and I have no doubt that some degree of speed would be placed on getting that legal advice to us.

Senior Citizens Activity Centres
(Government Subventions)

Sen. Wade Mark: Thank you, Madam President. To hon. Minister of Social Development and Family Services: In light of recent reports that several Senior Citizens Activity Centres have not received their government subventions to date, what measures are being taken to have this situation rectified?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you. The Senior Citizens Activity Centres Programme was initiated in 2006 with the establishment of five centres in Maloney, St. James, Rio Claro, Chaguanas and Pleasantville. Since then, additional centres were established, however, the centre at St. James and Pleasantville, both centres were closed by the Ministry because of poor management practices. A centre was subsequently established in Woodbrook but that centre was also closed due to poor management practices.

The Ministry of Social Development and Family Services, through its Division of Ageing, continues to monitor and provide oversight to the remaining centres. In January 2017, the Chaguanas centre closed. The Ministry periodically undertakes a detailed evaluation of the operations of the centres to ensure the efficacy of the programme and the value for money. This is currently being undertaken utilizing a more scientific instrument developed by the Ministry of planning. The exercise is expected to be completed by mid-April following from which a Note will be taken to Cabinet.

Madam President: Sen. Mark, before you ask the supplementary questions, hon.

Senators, the time for Urgent Questions has expired. Will everyone agree to extending the time so that we can finish the answering of those questions? Yes?

Assent indicated.

Madam President: All right. Sen. Mark.

Sen. Mark: Thank you very much, Madam President. I would like to ask the hon. Minister, having regard to the fact that four centres have been closed thus far, whether the Government will be taking urgent measures to supply subventions to the remaining centres so that they can remain open and contribute to the services that they have been designed to achieve?

Sen. The Hon. P. Gopee-Scoon: What I can say is that the Ministry is, in fact, reacting with seriousness to the matter and as I said to you before, a detailed evaluation is being done, again, using more scientific methods and also ensuring that there is value for money. It is receiving the attention of the Ministry. A detailed Note will be presented to Cabinet after properly assessing and evaluating the programme, so it is being met with urgency.

Sen. Mark: Madam President, having regard to the value that these centres serve to the elderly in our country and as well as the fact that the hon. Minister indicated there have been poor management practices, could the Minister indicate to this House, given the urgency of the matter, how long would the Government expect this report on the evaluation of this exercise to be submitted to them or to the Ministry, so that this matter could be resolved soonest?

Sen. The Hon. P. Gopee-Scoon: We are looking towards a swifter evaluation and as I said to you, the exercise will be completed by mid-April. We understand the value of these senior activity centres. As I said, this programme was started under a PNM Government in 2006, so we do understand the reasons for them and the value of having them as well and as I said to you, we are doing a detailed analysis and

this exercise will be completed by mid-April. It is receiving the attention of the Ministry of Social Development and Family Services.

Gang Leaders
(Extortion of Money)

Sen. Wade Mark: Thank you, Madam President. To hon. Minister of Works and Transport: Having regard to reports that gang leaders have been extorting money from contractors involved in road works, what urgent measures are being taken to address this problem?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. It would be helpful in this instance to understand the report which is being referenced since the issue of extortion by so-called gang leaders is not a new phenomenon. As a Ministry and as a Government, it is an issue that we have made clear will not be tolerated.

To this end, I have advised the population in my statement to the press and the printed media dated 13th March, 2017, that the following steps have been taken:

- Affected contractors have been called in and a strategy developed to ensure that we are working together on this problem.
- The National Security Ministry have been alerted to ensure that greater resources are provided to the affected areas. We have been assured that the police and the army will be deployed to ensure that we get the job done.
- Follow-up meetings will be held with the National Security Ministry to strengthen the information sharing channels and to ensure that we have resources in the right areas.

From a Ministry perspective, we are determined to ensure that this practice is stamped out. Thank you. [*Desk thumping*]

Sen. Mark: Madam President, through you, would the Minister be in a position to share with this Senate how many contractors might be involved in this particular matter as well as the value that is involved in terms of the moneys that are being extorted by these criminal elements on works that are being conducted on behalf of the Ministry of Works and Transport?

Sen. The Hon. R. Sinanan: Thank you, Madam President. As I said, this has been an on-going problem plaguing contractors for quite a while. There has not been any quantum to assess the amount of money or the amount of contractors being affected but as indicated, it is a problem that is spread throughout Trinidad and Tobago. Thank you.

Sen. Ramdeen: Thank you, Madam President. Madam President, through you, can the hon. Minister indicate to this honourable Senate, having regard to his discussions with the Minister of National Security with respect to this matter, how many, if any, persons, is the Minister aware of—are there any persons who have been charged for these criminal activities that are taking place with respect to these contractors on this matter?

Sen. The Hon. R. Sinanan: Thank you. Madam President, as the Minister of Works and Transport, our duty is to report the matter to the relevant authorities and statistics are not necessarily collected by us on this issue. Thank you.

Storage of Rice
(Details of)

Sen. Paul Richards: Thank you, Madam President. Through you to Minister of Trade and Industry: How does the Ministry intend to address the issue of 200 tonnes of rice valued at approximately $400,000 being stored at the non-operational Rice Mill Complex in Carlsen Field?

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

Thank you, Madam President. There is, in fact, no longer an issue. When paddy is delivered, it is usually put into this open storage shed and that is, in fact, the first part of the process of drying. So there is some amount of moisture reduction that takes place whilst it is spread there. The issue you are speaking about would have been the storage in that particular section of about 190 metric tonnes of paddy.

What had happened is, on the Friday before, there was a delay. In fact, there was a breakdown in operations of processing because the conveyor belt was not working. I can assure you that that conveyor belt is now functioning, and I have been in touch with National Flour Mills; it is functioning as of yesterday so that there is no longer an issue and within the next 10 days, all of the paddy which is there, will, in fact, be processed.

This is the height of the paddy season so we do have substantial paddy coming in—and substantial is relative—coming in on a daily basis and it is all going to be treated with. But let us also accept the fact that this is a very old operation. The machinery and equipment is about 25 years old and therefore, it is part of the reason why and also due to the fact that we would want to see rice production increase and we would want to see our own rice on the shelves in the supermarkets and so that we can cut down on the importation of foreign rice, parboiled and white. So that these are all reasons why we engage in the divestment of the Carlsen Field Rice Mill.

Sen. Richards: Thank you, Madam President. With that said, Minister of Trade and Industry, are there plans by the Government for alternative processing options given the age you have outlined of that mill in particular and the shortcomings of a mill of that age?

Sen. The Hon. P. Gopee-Scoon: Thank you, Madam President. The divestment process is already through. The request for proposals, in fact, closed on Monday

gone, yesterday and so we imagine that this would be completed by June and we should—now understandably, there would be some time before this new process takes over. Meanwhile, there will be vigilance by the National Flour Mills and the Ministry of Trade and Industry to ensure that these breakdowns and time loss are at a minimum.

Sen. Richards: Can the Minister, through you, Madam President, with this new arrangement, presuming the divestment process moves smoothly, would this, in any way, affect your present arrangement with the rice farmers?

Sen. The Hon. P. Gopee-Scoon: No, not at all. There is no anticipated fallout in the arrangement with the rice farmers.

2.00p.m.

ORAL ANSWERS TO QUESTIONS

Increased Number of Deportees (Details of)

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

In light of public statements made by the President Elect of the United States of America, that millions of immigrants with criminal records will be deported under his administration, what measures are being taken by the Government to deal with any increase in the number of deportees arriving in Trinidad and Tobago?

Madam President: Minister of National Security, you have five minutes.

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President. Several protocols are already in place to facilitate the return of citizens of Trinidad and Tobago who are deported from the United States. In fact, Madam President, these protocols have been in place since the year 2000, when a memorandum of understanding pertaining to the removal of

criminal aliens from the United States was signed by the two countries.

The MOU covers three main areas, namely the provision of travel documents for deportees, advance notification and the provision of deportee information and travel arrangements. If there is an increase in the number of Trinidad and Tobago citizens being deported from the United States under the new administration, the Ministry of National Security would have to reassess the current staffing arrangements, particularly at the Immigration Division to manage any increased workload at the airport. In addition, the Ministry of National Security will strengthen collaboration with the Ministry of Social Development and review subventions provided to organizations such as: Vision on Mission, which provide assistance to resettling deportees on their return to this country, Madam President.

Sen. Mark: Madam President, could the hon. Minister indicate whether there are discussions, or ongoing discussions, between the United States and the Government of Trinidad and Tobago, as it relates to what can take place given the new Executive orders issued by the President of the United States and their negative impact on immigrants that may be undocumented in the United States, and including our nationals, and what steps are we going to be taking to ensure that that situation does not result in a floodgate being opened and, you know, deportees being, you know, sent here by the hundreds in the coming period?

Hon. Maj. Gen. E. Dillon: Madam President, in the international relations environment there are always ongoing discussions, especially through our embassies abroad. So our embassies would be monitoring the situation in the Unites States and so inform, through the Minister of Foreign and Caricom Affairs what the situation might be, so the Government can take the necessary action, Madam President.

Sen. Mark: Madam President, again. There is a local organization. Is it Mission—

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Hon. Senators: Vision on Mission.

Sen. Mark: Vision on Mission, that deals with the deportees and persons coming from those circumstances. In light of what we can anticipate, hon. Minister, through you, Madam President, is there any discussion taking place between this particular organization and your Ministry and the Government to provide that organization with more resources to deal with the anticipated inflow of deportees when that occurs?

Hon. Maj. Gen. E. Dillon: Madam President, I can inform this Senate that there is ongoing discussion between the Ministry of National Security and Vision on Mission. In fact, as recent as about three hours ago, I have had a meeting with Mr. Wayne Chance, who is the Executive Director of Vision on Mission, among other things, that formed part of that discussion.

Sen. Mark: Madam President, through you, again, could I ask the hon. Minister if he can share with us what mechanisms are in place to monitor deportees, particularly criminals, who come to Trinidad and Tobago? What kind of monitoring mechanism is in place by the Ministry of National Security to ensure that these people, when they arrive here, do not continue their nefarious acts and behaviour and conduct as they were doing when they were abroad? What mechanism do you have in place?

Hon. Maj. Gen. E. Dillon: Madam President, there are different levels and categories of deportees who come from the United States, Canada, United Kingdom, et cetera. Therefore, different levels of monitoring takes place, depending on the information that is sent to us in advance with respect to the various deportees. Monitoring takes place through the Trinidad and Tobago Police Service, and, of course we also work with Vision on Mission to treat with

deportees, Madam President.

Sen. Mark: Madam President, could I ask the hon. Minister if he could enlighten this honourable Senate as to the categories you refer to? Could you share with us, and so on, the categories of deportees that you would like to share with us?

Hon. Maj. Gen. E. Dillon: Madam President, the categories are the number of ranges in different areas, for instance, those who may have been deported for murder, those who may have been reported for traffic offences, for domestic violence, for ticketing, and so on. So there are different categories and, therefore, different levels of monitoring takes place based on the categories.

Inland Offshore Contractors Ltd (Details of)

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

What steps are being taken by the Ministry of Labour and Small Enterprise Development to address the ongoing industrial action by workers of Inland Offshore Contractors Limited?

The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you very much, Madam President. I just wish to advise Sen. Wade Mark that the love is returned. Madam President, the Ministry of Labour and Small Enterprise Development seeks at all times to establish and preserve a peaceful industrial climate.

The current industrial impasse concerns the breakdown in negotiations for a collective agreement between the Oilfield Workers Trade Union, also known as the OWTU and the Inland and Offshore Contractors Limited (IOCL) on behalf of the hourly-rated workers in the offshore marine operations, for the period January01, 2013 to December31, 2015.

The Oilfield Workers Trade Union, by letter dated 18th October, 2016, gave notice to the Minister and the employer of its intention to initiate strike action following the breakdown in negotiations on September27, 2016. However, strike action actually commenced on October to 2016. It should be noted that during the period of strike action overtures were made to the partiesto continue the discussion. Both parties, IOCL and the OWTU were invited and attended an informal meeting on November29, 2016, in an attempt to bring resolution to the impasse.

Another meeting was scheduled for December06, 2016. However, this meeting was cancelled by the employer. Both parties retained their position, with respect to wages. The employer remains steadfast in its position of its inability to meet the union's demands, with respect to wages.

After the 90-day statutory period of strike action which was conducted, the employer, by letter dated January 23, 2017, wrote to the Minister of Labour and Small Enterprise Development, in accordance with section 61(d) of the Industrial Relations Act, Chap. 88:01, and requested that the trade dispute SF399/2015 be referred to the Industrial Court for determination. The said dispute was referred to the Industrial Court of Trinidad and Tobago for determination by letter dated the 10th of February, 2017. The Ministry of Labour and Small Enterprise Development continues to monitor the situation as strike action has ceased and we are very mindful at all times of the economic impact this dispute is having on the Petrotrin/Trinmar operations and which could also impact on the national economy and as such we will continue to do all that we can in resolving this issue.

The Minister of Labour and Small Enterprise Development remains committed to continue working with all parties involved to find an amicable settlement or agreement to this matter. Thank you, Madam President.

Sen. Mark: Thank you, Madam President. Could the hon. Minister indicate to us,

seeing that the Ministry is monitoring this matter, what is the present status of that matter at the level of the Industrial Court? Can you bring us up to speed on that matter?

Sen. The Hon. J. Baptiste-Primus: Madam President, I cannot at this particular point in time, but before this session is over I can provide that information for Sen. Mark.

Sen. Mark: Madam President, could the hon. Minister indicate to us how many workers or employees are involved in this particular dispute?

Sen. The Hon. J. Baptiste-Primus: Madam President, Sen. Mark, I am always willing to entertain any valid questions asked. I cannot answer that at this point in time. If you had indicated that, I would have gotten the information. But, Madam President, I can source the information and present it before the end of today's session.

Haig Street, Carenage
(Garbage Pile Up)

30. Sen. Wade Mark asked the hon. Minister of Rural Development and Local Government:

What steps are being taken by the Diego Martin Regional Corporation to address the garbage pile up at Haig Street, Carenage?

The Minister of Rural Development and Local Development (Sen. The Hon. Kazim Hosein): Thank you very much, Madam President. Since 2013, waste collection services in the Haig Street, Carenage area was collected as follows: household waste, Mondays, Wednesdays and Fridays; open-tray waste/bulk waste, that is, on Tuesdays; mechanical bins, Mondays, Wednesdays, and Fridays. However, the contractor has not been able to manage the waste collection at Haig Street, Carenage with optimal efficiency and this problem is currently being

examined with a view to arriving at an acceptable long-term solution.

However, in the interim, the Diego Martin Regional Corporation, in an effort to address the situation of garbage pile up at Haig Street, has supplemented the work of the contractor as follows:

1. Engage two additional contractors, one for the collection of household waste on Tuesdays and Thursdays, and the other for the collection of open-tray waste, Mondays and Wednesdays.
2. Utilize the services of the Diego Martin Regional Corporation equipment and personnel on odd Saturdays for household and open-tray waste collection.
3. Boost its public awareness approach by public notification of the days of garbage collection via the newspaper, social media and public address system. Thank you.

Sen. Mark: Madam President, through you, could the hon. Minister indicate at this time whether the pile up that was there before and those measures that you have taken, through the Diego Martin Regional Corporation, have resulted in the garbage pile up being addressed as we speak on the Haig Street area?

Sen. The Hon. K. Hosein: Thank you very much, Madam President, for the supplemental question. I was there up to an hour ago, before I came to Parliament and to the Senate. The dumpsters that are placed there, normally if the contractor does not come out on a Friday the garbage would pile up from Friday over the whole weekend. But since that, things have been put in place and I want to give you the assurance that it will continue.

Sen. Ramdeen: Madam President, through you, to the hon. Minister. Minister, having regard to your answer that two additional contractors had to be contracted by the Ministry to deal with this matter, are any steps being taken against the

original contractor for the fees that are being spent on these two additional contractors that the Ministry has had to retain to do the garbage work?

Sen. The Hon. K. Hosein: Thank you very much, Madam President, Sen. Ramdeen. The Ministry is currently involved in reviewing all contractual arrangements throughout the country. The process has been completed about two weeks ago, before it was put in place and the cost would be taken up with the Diego Martin Regional Corporation for the two additional contractors. It is on an interim basis that they are using them.

Sen. Mark: I will be guided by Madam President on this particular question. In light of the clean-up campaign that you have embarked upon, people have been asked to put their garbage outside on certain days. Are you aware, hon. Minister, that garbage pile up continues in different parts of the Diego Martin region after that particular exercise?

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

Sen. Mark: Okay.

Sen. Ameen: Madam President, the provisions within the municipal corporations allow for payments to contractors to be paid based on percentage of service rendered and where there is dissatisfaction with the service, for the corporation to not pay the full amount, to ensure that the State gets value for money.

Can the Minister indicate whether these steps are being put in place to ensure that the errant contractors are not collecting 100 per cent of the money and then having the additional contractors collect more money, bringing a further burden to the State and poor service being given within the region for scavenging?

Sen. The Hon. K. Hosein: Thank you very much, Madam President. I want to totally agree. I have looked at this situation. When we have to hire additional contractors, it brings a burden on the State. That situation up there was, the

contractor who was employed up there got the contract and he was not able to supply all the vehicles to do the work up there. That is how the back-up happens in Diego Martin because I did a thorough investigation into it. Hence the reason why we had to employ these contractors. If we do not pick up the garbage it would cause an epidemic up there. When I was there just a while ago—[*Interruption*]

Sen. Ameen: You have to take out the amount paid to him.

Sen. The Hon. K. Hosein: Yes, a letter was written by the Permanent Secretary to the CEO to ensure that that happens and I will follow it up and I could give you a feedback.

Increased Retirement Age
(Details of)

58. Sen. Khadijah Ameen asked the hon. Minister of Finance:

Does the Minister intend to have consultation with the national community to consider raising the retirement age to 65 years?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you. Madam President, this matter is being carefully studied by the Ministry of Finance at this time and an appropriate submission will be made to the Government in due course. If a decision is made to proceed further, there will be appropriate consultation with all stakeholders and the national community at large. Thank you.

Prison Canteens
(Details of)

59. Sen. Khadijah Ameen asked the hon. Minister of National Security:

In light of reports of financial irregularities at the three Prison Canteens, can the Minister indicate why same was not uncovered by the Ministry's Internal Audit Unit?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President. Hon. Members are advised that the prison canteens are operated through the Prison Service Sports Club and are funded by contributions from the prison officers. As such, no funding from the Ministry is allocated to prison canteens.

There is therefore, no requirement for the Internal Audit Unit of the Ministry of National Security to conduct audit checks on the operations of prison canteens. The issue, therefore, of the Ministry of National Security Internal Audit Unit not being able to uncover irregularities does not arise, Madam President.

ANSWERS TO QUESTIONS

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Madam President, I crave your indulgence. Whilst the Government has been able to answer all of the oral questions on the Order Paper today, I seek now, on behalf of the Government, the deferral of question No. 53, a written question posed to the Minister of National Security.

Madam President: Question No. 53 is deferred for two weeks, 14 days.

JOINT SELECT COMMITTEE
(Appointment to)

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Madam President, I beg to move following Motion:*Be it resolved* that this Senate agree to the appointment of Miss Ayanna Lewis in lieu of Miss Nadine Stewart on the following committees: the Parliamentary Broadcasting Committee and the Joint Select Committee on Social Services and Public Administration.

Question put and agreed to.

MISCELLANEOUS PROVISIONS
(TRIAL BY JUDGE ALONE) BILL, 2017

Order for second reading read.

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

That a Bill to amend the Offences Against the Persons Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02 and for related matters, be now read a second time.

Madam President, Trinidad and Tobago finds itself in the grips of serious circumstances. We are battling, as country, a plight and a difficulty which has been with us for quite some time and that is, of course, the scourge of criminality.

If one were to measure, by way of statistical information, where we stand as a country in this battle against crime, it seems as if the Trinidadian adage, the Trinidadian example of spinning a top in mud sometimes can be applied.

Why do I say that Madam President? The most serious of examples of crime, obviously, the barometer of crime in this country, really is to be found in an appreciation of murder statistics. When we look at the situation with murder, the citizens of this country are gripped with a feeling, openly stated at times, that there appears to be no alleviation from the scourge of crime.

There appears to be, Madam President, a position where we see time and time again that persons commit crime, heinous or otherwise and the gap between an allegation of crime or the report of a crime seems to be never met with a conviction or a position.When we looked at the instance of murder, let us look at the position of 2013, January as a month, there were 38 murders in January 2013. There were 48 murders in January 2014. In January 2016, we find ourselves really not much better, 49 murders in January 2016. Look at 2014, at 48. Look at 2016 at 49. Has there been a move or a difference? One is certainly one too much but a figure of one, in terms of the barometer of murder, spanning between two successive governments appears to be no different a situation. Look at the position

with general crimes. In 2013, for quarter one, there were 3,657 crimes, including murder. In 2016, we see a figure of 3,305, albeit a drop between 2016 to 2013; perhaps it is not good enough.

Madam President, I have started off with the barometer of crime because the aim of this legislation, the aim of the Bill before us now is tied in to the rubric of the aim that stands behind several other pieces of law. There is in fact before the Parliament right now, a package of legislation to deal with the criminal justice system. We are looking at this Bill, which is a Bill which seeks to have an accused have the option to elect a judge-only trial.

We have the Bill which is before us without breaching the rules of anticipated debate, that which is before the House of Representatives to deal with the abolition of preliminary enquiries, the Bill which is intended to deal with plea bargaining in a more successful manner, the Bill which is intended to deal with ease of access to bail to treat with the situation of remandees, the Bill which is associated with this standing as well as a good measure is that which stands on the Senate Order Paper now to deal with amendments to the Motor Vehicles and Road Traffic legislation, to free up manpower time.

There is an anti-crime package that will be meeting the Parliament's agenda. That anti-crime package is put in a more tight frame of being an anti-corruption package. We have an anti-terrorism package. We have a sharper and better-focused method to deal with the registration of land, which stands on the Parliament Paper now and which would be amplified by further Bills to come. But all of these things put together, stand at dealing with closing the gap between the allegation of a commission of a crime and somebody doing the time or paying the consequences for their crimes.

Madam President, when we look to Trinidad and Tobago's statistical output we see, if we use the litmus test that the prisons population can provide, a useful point of analysis.

Currently as at March 09, 2017, we are seeing the convicted together with remand population stand at 3,634. We are seeing in that, when we look at four prisons where the bulk of remandees stand, the remand population looks at 2,159. But, of that we see that 839 people have been granted bail but are still incarcerated because they cannot access bail. We see that 331 cannot have bail given because the courts have said that they are not suitable for that purpose. But over 1,000-plus stand there on trial for murder, which is a non-bailable offence. What do we do in those circumstances? The sum of 2,159 remandees 1,000-plus of them there for murder. What we have to do, in looking at that starting point of the prison population, is to understand the passage through the criminal justice system. And, obviously trials have to be put under examination to understand whether a conviction, as a deterrent to the commission of a crime, is really truly a deterrent, because if there is no conviction over a long length of time, is somebody going to think twice about the commission of a crime?

The High Court tells us, the Court of Appeal, the Judiciary, the Supreme Court, as they stand, we are told that the statistical information at the registry for matters at the criminal end of the High Court, that there are 2,337 cases pending at present, 2,337 cases.

This Bill recognizes that trial by jury is a feature of our criminal procedure, so contained in the criminal procedure laws that we have, section 37 in particular of Chap. 12:02, which says that if you enter a plea of not guilty, you are put upon trial before a judge and jury. This law seeks to allow for an accused to elect a

judge-only trial. But look at that figure, 2,337 cases, 58 per cent of them in the Port of Spain courts alone. Sixty-four per cent of matters, of the 1,354 pending in Port of Spain, are pending for 15-plus years, 15-plus years, 58 per cent of the figure standing at Port of Spain alone for over 15 years.

Let us look now, as we seek this Bill into the context of Trinidad and Tobago, to the number of indictments filed for capital and non-capital matters and we will see that the six-year average, taken in the period 2010 to 2016, demonstrates that there is a total of 226 indictments standing. That is the average. Sometimes as high as 279, sometimes as low as 177, average taken, 226 over that six-year period; average for capital matters, 45 per year; average for non-capital matters, 181 per year. But in that six-year average of 226 indictments filed, a jury is required.

Let us look, Madam President, further. Criminal indictments disposed of, 226 being filed on average per year. The disposal average over six years is 111. That means 49 per cent of matters actually get dealt with in the time frame. Capital average of matters disposed, 19; that is for murder I refer to; non-capital matters disposed of, out of that number of 111 dispositions, 92 non-capital.

Madam President, when we look to the clearance rate, as I pointed out, 111 matters, those are indictments, being cleared against the 226 average, shows us that we only have 49 per cent success rate. But where do we go, further? Let us drill a little bit deeper into the statistics.

2.30 p.m.

The number of accused identified on an indictment whose matters were listed for hearing—because the number of persons versus the number of indictments is to be separated—226 indictments equal on average to roughly 2,010

people caught in that system. The number of people are: 601 for murder and the number of people for non-murder, non-capital matters, is 1,409 people who have their matters listed for hearing.

When we look at the six-year average for disposition in the period 2010 to 2016, the six-year average shows that 118 people out of 2,010 people are the beneficiaries of a disposed matter, meaning the matter is finished either by way of guilt or innocence or retrial. That number equals to 5.8 per cent of the total number of people who are affected by this and that is the accused only. For the capital, it is 3.8 per cent or 23 people out of 601 people; for the non-capital, it is 6.7 per cent or 95 out of 1,409 people.

Let us look a little bit further. Our system has resulted in retrials of matters, and this system of retrialing comes about on the criminal side of the equation because when a court is invited to consider the decision which is made, and the Court of Appeal or Privy Council offers a retrial, the two entities which are involved in the trial: one of them is the jury, who in the process of trial must determine the facts—if I put it very simply—come up with determination of facts; and the second entity is the judge who must, of course, consider the law and give directions and then invite the jury to come up with a verdict. But when we look to the retrial averages, we are seeing roughly 54 retrials per year: 25 on the murder side, capital; 29 on the non-capital side.

But, Madam President, those figures really have to be put against what stands on this Bill. You see, the Judiciary tells us further that when we are looking at how a jury works in this system, the jury is comprised, if it is a capital matter, murder or treason of 12 jurors; if it is a non-capital matter, of nine jurors. There may be alternates on standby in case people fall apart. So you have different

numbers of persons to serve as jurors in different circumstances, but the average length of time where a jury is impanelled—be they 12 or nine or some other number to take care of alternatives—the average length of time for a jury to sit, aberrations aside, is 15 days. There are, of course, well-known examples. Sen. Sturge would know, for instance, of the Dana Seetahal matter which took over a year. There are a number of matters which are exceptions to the rule because of complexity or number of accused, et cetera. So the average time is 15 days.

When we look to the fact that the list of jurors, 2016, for instance, we say 8,600 jurors summoned—1,170 applications for exemptions were presented—1,095 were granted; 75 were refused—but it is not that 8,600 jurors are impanelled because at best you are getting—if you take the larger number which is an averaging out now of 111 matters disposed of, when you are looking at 111 matters disposed of and you calculate some of the man hours spent for 12 jurors or for nine jurors at 15 days per juror sitting for the number of trials which result into dispositions, and you begin to extrapolate the costs, if we were to take the number of man hours spent in these matters at very conservative numbers—let us look at, for instance, where indictments of 225 were filed in 2011; in 2012 there was 289; in 2013, 217; 2014, 174; 2015, 266; and 2016, so far the final figure yet to be confirmed, 236.

When we look to the number of indictments filed and we calculate the time spent for on average of 10 jurors taking nine and 12 jurors between capital and non-capital or non-capital and capital—take 10 as a rough number, multiply that by the number of matters. Let us take 139 matters that are actually dealt with—let us take an average out—let us multiply it by the five hours per day that they might sit between the hours of nine and the hours of two in the afternoon, let us multiply it

further by the 15 days and let us take just a minimum wage average. A minimum wage average for the number of people involved is roughly about $1.5 million. If you take the time frame for the 15 days to sit and you take an average of the costs that lawyers charge—junior lawyers at somewhere around $2,500 per hour; senior lawyers at close to $4,000 per hour; average it out—let us take $2,500 per hour—the man hour cost translated to legal fees is $260,625,000.

The Judiciary has confirmed, for two years only—because they are working on the numbers—that we have sequestered juries for the 2011/2012, they have not come forward yet—the cost so far is roughly $320,000 for sequestration alone. The cost expended on jury service for 2011, 2012, 2013, 2014 and 2015, direct cost—not the indirect cost I have just referred to—totalled so far to roughly $10.3 million.

So when you are adding up in the round, the cost of jury aspects—and mind you that is only one side of the coin, because there may be a benefit to it which is worth the cost, because there are arguments for and against this whole issue of juries—we see, take your direct expenditure of $10.3 million, add it on to roughly an average of about $250,000 per year on cost of sequestration; add up minimum wage cost—and, obviously, jurors do not come with minimum wage cost to their employers—take another $1.5 million and add it; add legal fees—you come up with another $260 million-odd—we are crossing into the hundreds of millions of dollars and that is only for a five-year period so far.

Let us look at it further. There is a benefit. There are arguments for and against, but those costs and those time frames—sequestration, average time, cost of fees—those are but the general averages. As a matter of fact, the Vindra Naipaul case took over a year. The costs estimated in the Vindra Naipaul case were

somewhere close to—as estimated by Ramesh Lawrence Maharaj as quoted in the *Trinidad Guardian* newspaper on the 18th of June 2016—the estimated cost for that trial was put somewhere close to $60 million, by the time we average all of the costs out. So there are exceptions to enlarge the number.

But where are we now that we appreciate the snapshot picture? We are definitely in the position where the criminal justice system shows a heavy backlog; a poor disposition rate; remandees in the prison system for upwards of 15 years, some of them; 17 years, some of them; and no closure of the gap between allegation for charge and conviction. So what has the Government done on this occasion?

The Government has had a look at the positions of recommendation which have stood on the books for many years. It is safe to say that the laws which we are attempting to treat with are, definitely starting with, quite archaic. We are really dealing with the reflection on one law; that is the Jury Act. The Jury Act really came from an ordinance in 1844. If you take from 1844 come forward, we are now 173 years later from the introduction of jury systems. The Jury Act itself was passed in 1922. We are seeking to amend, by these laws: the Offences Against the Person Act and the Criminal Procedure Act, both of which came about in 1925, and now stand some 92 years old. But when we look to these laws there has been reflection on these laws over the years and, indeed, there have been very heartfelt points of view expressed by proponents for and against the removal or maintenance of trial by jury.

On the arguments for, we certainly see that on the one hand people alleged that the dispensation of justice must include the man on the street; that the man on the street is better positioned to reflect a democratic view because it is not going to

be a sort of an elitist view. There is an allegation that judges sit in ivory towers and they are removed from the context. A very strong advocate for the maintenance of jury system is a very well-known senior counsel, Mr. Israel Khan, who says that Trinidad and Tobago's polarity in ethnic terms sometimes can be viewed to cause and, in his view, causes an effect which is not to be desired if a judge alone sits. They are very heartfelt views. But the views expressed so far, in particular, coming from the Judiciary and in coming from eminent jurists and, certainly, the current conversation is that if the system is not being improved that there should be a move away from jury trials.

The allegations are pegged in the pace of the criminal justice system; the time that it takes to empanel juries; move them back and forth; the cost involved in that and the cost involved in sequestration. Indeed, eminent jurists say that judges invented the reasonable man test so why should a judge not be in charge of a trial itself? Indeed, the argument goes further when matters are dealt with at the Summary Courts which handle the vast majority of the criminal justice system, heavy penalties are applied and jail terms are applied by a magistrate sitting without a jury.

The international experience in the Commonwealth where 22 countries have let go of jury trials tells us that whether it is a hybrid approach where they maintain jury trials for some matters or a complete removal that certainly other jurisdictions have had a conversation to that effect. The civil law jurisdictions like the Netherlands and right here in the Caricom neck, Suriname or Aruba, have an experience where that have never had trials by juries and that there is success in that approach. They say that judges are not necessarily people who are born with gold or silver spoons in their mouths and that certainly they have the ability to have

proper mind when considering matters.

They say, importantly, that a judge is required to give written reasons on facts and on the law, and those written reasons take one to a better position because juries when they come up with their determinations are not required to say why they came up with it; in what fashion they came up with; and what they considered by way of positive statement because obviously they do not have to deal with written reasons.

Further, the arguments are posited to say that there can be jury intimidation; there can be jury interference; that the jurors may trip over matters which they ought not to have consideration of. For instance, research on the Internet or exposure to publicity which can affect the mindset of the juror called upon to take a decision. Those are some of the arguments against.

But what I found quite compelling was the reflection of the hon. Chief Justice in his speech at the opening of the law term in September for the year 2015/2016. That was Wednesday 16th September 2015. And on that day the hon. Chief Justice sought to look at, at page 8, he stated on the process side that about 15 to 20 per cent of sitting time is lost owing to jury management such as illness, exams, family funerals, lateness, et cetera and that does not include time spent taking them in and out, et cetera.

He then went on to say: "What is common sense telling us here?" He went even further to the 2016 statements that he made, again on the 16th of September, 2016 at the opening of the 2016/2017 law term, at page 22 of the hon. Chief Justice's contribution, he reflected again upon the jury system and he had this to say:

"Simply put, THE JURY SYSTEM IS NOT WORKING!!!

> I don't know how many times I have to make the point to those who have no understanding of how it works that if matters are heard by a judge alone he/she has to make a decision one way or the other that is definitive and subject to appeal based on a consideration of transparent written reasons, none of which applies to juries. If the current inefficient and ineffective system is what the country wants to have, then fine. But don't blame me for the consequences!"

He went further to reflect:

> "The fact is that for 90 odd percent of persons in this society, the criminal justice system remains at the level of the Magistrates' Court and they get a very decent level of justice. You can't let some of the profession hijack this debate."

Not my words, the Chief Justice. He goes on further to say:

> "Read your Constitution. There is no right to a jury trial; there is a right to a public and fair trial before an independent and impartial tribunal. This is one area in which I will continue to hammer away!"

But the Chief Justice is not alone on those reflections.

The hon. Mr. Justice Wit as a judge—Jacob Wit—is a judge speaking in 2013 at the Third Distinguished Jurist Lecture, 2013, in that continuing relevance of the jury system in the English-speaking Caribbean, the hon. judge of the CCJ reflected upon Trinidad and Tobago and said:

> "Now, having lived in Trinidad for the last eight years and seeing how the jury system works, or actually doesn't work, I feel very often like Alice, not the moderator"—because Alice Yorke-Soo Hon was the moderator—"but Alice in Wonderland. I find myself asking, how on earth can people put up

> with a criminal justice system that is, if I may throw in my name, at its wit's end and that is totally unworkable and unsustainable? And how, for heaven's sake, is it possible that there are still people in this country and other countries in the Commonwealth Caribbean who are willing to defend an undefensible system? But, as I have learned, it is possible and it happens."

He went on again to make reflections on the lack of constitutionality entrenchment for this concept of a jury trial, but he went further, the hon. judge, to note that:

> There is a—"position in Trinidad and Tobago…amazingly, your constitution does not require…that…trial should be held within a reasonable time. I think you"—should note—"that there is talk about this."

So he was referring to the fact of what the Constitution really says about reasonable time, and that people do not seem to be gripping the need to move cases as fast as they do.

He and Madam Justice Yorke-Soo Hon reflected upon then Attorney General Anand Ramlogan's discussion—the then Government's discussion, the UNC Government's discussion—to abolish jury trials, and they reflected that as Madam Justice Yorke-Soo Hon said:

> "In Trinidad and Tobago, the discussion to abolish jury trials has begun. The Honourable Attorney General, Senator Anand Ramlogan, is reported to have said that his proposal is to abolish jury trials for violent and 'blood' crimes. This, he said, he would ensure that hurdles in"—the—"criminal"—justice—"cases, such as hung juries"—et cetera—"would be things of the past. His proposal met with immediate opposition from certain quarters…"

So, we do know that the last Government contemplated this, but we do know that a central argument which has arisen certainly in the public domain is whether the

move to deal with a juryless trial by way of election of the accused as is proposed now is something which, in fact, ought to trouble a Parliament in terms of looking to see whether a section 13 of the Constitution is required and that is, of course, whether it is a right in section 4 or 5 of the Constitution that there has to be a jury trial for us to consider. When we look at that, let me start with the fact that our Constitution does, indeed, reflect certain entrenched rights in section 4. In 4(a) there is, of course, the reflection on due process of law.

Section 5(e), you cannot be:

(e) deprived of a right to a fair hearing in accordance with principles of fundamental justice and for determination of his rights and obligations;

(f) a deprived person charged with a criminal offence has the right—

(i) to be presumed innocent until proven guilty…

(ii) a right to a fair and public hearing by an independent and impartial tribunal;

(iii) a right to reasonable bail...

And 5(h) reflects upon procedural provisions necessary to give birth or give life to the rights and freedoms, but there is no direct reference to a trial by jury.

Now, what I find interesting is some of the reflection that this perhaps ought to concern us and indeed the Opposition in trying to build up a straw man to beat it down again on the allegation of three-fifths majority is being required have gone into the public domain, as I have observed, and alleged that there is a requirement for three-fifths majority. So, let us look a little bit further into this: Is the fact true? Should we look at it? Yes, I think it is something we should look at. We should examine the position.

I have reflected on the Constitution, but I have also looked to the dicta of the Privy Council and there is, in fact, almost a case on point arising out of the Privy Council, one which has remained well established for many years. It is a decision of the Privy Council *Trevor Stone v the Queen* from the Court of Appeal of Jamaica, 4th March 1980. And albeit that there may be reflections, et cetera, from time to time on judgments which are now passed, Lord Diplock, Lord Salmon, well-known jurists, certainly stepped forward and examined the Jamaican Constitution on two fronts: whether in the removal of jury trials in the Gun Court in Jamaica there was going to be something which should not stand because there was no special majority observed in the Jamaican context as applied to Trinidad now, or whether in fact, there was a consideration of a saved law concept. What the judges said very plainly in those circumstances and in that case was:

1. that there is no entrenched right to a trial by jury;
2. that the removal of jury trial was supposed to be reflected upon by way of a procedural reflection and not by way of substantive law; and
3. that it was an artificial argument to allege that the law was saved.

Perhaps those arguments can be dealt with on this Parliament floor. Indeed, I propose to reply to them as no doubt some of the Senators may reflect upon them. But the Government's position is certainly that this Bill does not require a three-fifths majority.

I wish to put on record that the comments coming from the Judiciary; comments coming from a well-known member of the criminal bar, Rajiv Persad, who served as a judge from time to time; comments coming from the criminal justice advisor to the British Government and the Canadian Government; comments coming from another well-known member of the criminal bar, Mr. Ravi

Rajcoomar, and many other practitioners have all reflected on the specific terms of this Bill, and not a soul has said that the Bill requires a three-fifths majority or, in fact, is unconstitutional.

Madam President, such a short time to deal with a Bill like this, so perhaps, I really ought to deal with the Bill. The Bill before us, Madam President, is really quite simple. We are amending two substantive pieces of law: the Offences Against the Person Act and the Criminal Procedure Act. We are setting out to allow the jury to be removed from the equation to facilitate a judge-only trial, specifically upon the election of the accused at the point of arraignment, and so the Bill reflects the amendment to that.

There are safeguards put into place, which say you can only have this election given life by the judge—that is a judge-only trial—if the accused has had independent legal advice; if the accused is not one where co-accused stand accused with that person and the co-accused do not so elect or if that we are reflecting upon the position where—and let me pull the exact clause for you—we are looking for all charges in fact being charges which can be considered that way. That is to be found by the amendments to the Criminal Procedure Act in clause 4 of the Bill.

But what we are doing further is, we are making sure that the jurisdiction of the judge is repeated in the same fashion in which the jurisdiction of the judge and jury was repeated, but we are requiring the judge, very important element of this Bill, by putting in a new section 4(2)(a) into the Criminal Procedure Act as we see in clause 4(c) of the Bill—clause 4(d) of the Bill, sorry. We are asking the judge to give written reasons for the decision and that is a first in this country. Indeed, it has been advocated that persons stand a better chance where the reasons are transparent, unlike the jury system.

Further, we are proposing that two very important aspects are dealt with not by a jury again. The current law as it stands, and as this Bill seeks to amend, says that the issue of pregnancy is to be determined by a jury. And what we say in this Bill is that it is by far a better and more efficient and more reliable method to have two medical doctors certify the issue of pregnancy. We say, similarly, that the issue of insanity upon arraignment is something which the jury ought not to consider and we say instead, in simple terms, that two medical practitioners are better qualified and better suited in today's modern environment to be troubled by that process.

The Bill also requires consequential amendments to make sure that we keep, in any other written law, the position of wherever "judge and jury" is referred to that it also refers to the fact that the judge is referred to. And, very specifically, we propose by way of transition that, number one, it does not affect any matters in the past and, secondly—and this is associated with transition but not quite, so I would just wrap it into here—we say specifically that once you have elected for a judge-only trial, you cannot change your mind and once you have elected for a judge and jury trial, you cannot change your mind. The reason is, of course, on the cost of the administration of justice and any embarrassment to the administration of justice.

Madam President, in very simple terms, what this Bill does is that it takes one step forward towards providing Trinidad and Tobago with the ability to determine statistical positions. You see, before, the argument was complete abolition of trial by jury. This Bill does not seek to do that. This Bill seeks to take a step in the right direction to allow for the election so that we can have a comparator for statistical purposes for the first time, because Prof. Ramesh Deosaran, a man who is well schooled and lettered on the issue of juries, has

recommended, in particular, at this Eminent Jurist Lecture, that Trinidad and Tobago really needs to have some statistics. Well, what this Bill allows us by taking a partial step towards judge-only issues; partial step towards removal of trial by jury, it allows for consideration of statistics.

More importantly, Madam President, when you add what we are doing on this Bill, the aim of this Bill, you add it with what is to come by way of plea bargaining; you add it with what is to come by way of prosecutorial management; you add it with the reforms at the DPP's Office; you add it with the reforms in the police service that conduct 95 per cent of trials—you remove 63,000 motor vehicle cases from the court to free up judicial time; you articulate it with the criminal procedure rules—you are looking, therefore, to an improvement in the pace of justice. If I say so, Madam President, this must be the key point to be borne in mind that this Bill articulates with the several other operational and legislative measures which are going ahead.

You see, Madam President, when we look to crime, it is all well good and good to talk about statistics and numbers, et cetera, but a rape is a rape is a rape; a murder is a murder is a murder; savagery is savagery. That must have some consequence. There must be some consequence to criminality, and if the system is not working, if the system is broken, if the system has not moved for umpteen years, then clearly there has to be a change of approach.

3.00 p.m.

Certainly it is hard to find unanimity of voice on many issues, but a responsible step in the right direction is definitely to advance the progress of your criminal justice system by applying a multiple-pronged approach to dealing with the scourge of crime, and this Bill is just one of them.

Madam President, I look forward to the animate debates which are no doubt expected on today's sitting. I look forward to hearing what hon. Senators have to say. We sit with an open mind. This is certainly something which is quite straightforward and which has received the blessing of very eminent elements of our society, and I should add very eminent and independent elements of our society because the Judiciary is no light entity.

Sen. Mark: Hon. Attorney General, may I disturb for a minute?

Hon. F. Al-Rawi: I think I have one minute, Senator. Madam President, how much time do I have left?

Madam President: Six minutes.

Hon. F. Al-Rawi: Please.

Sen. Mark: Through you, hon. Madam President, I wanted to ask the hon. Attorney General, in terms of consultations, could you tell us for instance whether the Law Association, the Criminal Bar Association and other stakeholders were directly consulted on this matter?

Hon. F. Al-Rawi: Madam President, I am very pleased to say that we have had significant consultations. The members of the Criminal Bar Association were certainly approached. I can tell you that the team that actually sits in the sector to deal with the criminal justice reform—that is, the round table— comprises the Chief Justice, judges of appeal, judges of the High Court, the leader of the Criminal Bar, Mrs. Elder, the criminal justice advisor from the Canadian and UK-sponsored ends of government, the Ministry of National Security, the Office of the Attorney General and, indeed all of those persons at the round table were invited into these discussions. I have had one-on-one discussions and consultations with Mr. Israel Khan, with Mr. Rajkumar, Mr. Persad, with others that I have referred

to. Certainly, Madam President, we did also have a look at the work which the last Government was considering at their LRC table and the travaux préparatoires, or working papers, of the last Government.

I have to say that the amendments to trial by jury are not new. What is different on this occasion is that we do not seek to completely abolish trial by jury. What we seek to do is to take a halfway-house approach and to deal with the election methodology, so that we can at least establish some comparators.

You see, Madam President, it is very important to recognize that whilst we have been engaging in an analysis of what the true backlog is, we have also been building up the resources to facilitate the fast-tracking of matters. And what we have done at the same time as well is to ensure that the laws which were left by the last Government, which were not operationalized, are being operationalized, and in particular I refer you to the DNA legislation and I refer you to the electronic monitoring legislation. The DNA legislation is really the one that perhaps stands out the most; Act passed in Parliament in 2012, amended, further reflected on in 2014, all of those pieces of law have been left unoperationalized. But that means serious impact for victims of rape.

If a rape can be conclusively determined by having DNA profile evidence available on a database where a swab can be compared, that is that. The 99.8 per cent accuracy is there. So this means a lot to victims, which is why we have taken a bifurcated approach in making sure we operationalize what has been left which has not been done and also think outside the legislative box.

Madam President, I look forward to contributions of hon. Members. We certainly expect, as I said before, a lively debate, and I beg to move.

Question proposed.

Sen. Gerald Ramdeen: Madam President, it is my pleasure to join this debate this afternoon, and to reply to the hon. Attorney General on behalf of the Opposition with respect to the debate on the Miscellaneous Provisions (Trial by Jury Alone) Bill, 2017.

When I listened to the hon. Attorney General, it is quite clear to me as to why Trinidad and Tobago finds itself in the position that it finds itself in today, [*Desk thumping*] because Trinidad and Tobago finds itself in a position where in 73 days we have had over 100 murders for the year. We find ourselves in a position where since the People's National Movement has taken charge and was elected by the people of this country to run this country, we have had the record of 467 murders in the first year and 100-plus in 71 days.

The Attorney General started off his contribution by going through a number of statistics—a number of statistics about how many indictments there are and how many trials there are and how many capital matters there are. Madam President, those statistics are irrelevant to the debate before this House today, because I will demonstrate that what we are embarking upon today, in debating this particular piece of legislation, is going to add absolutely nothing to the criminal justice system. [*Desk thumping*]

I will demonstrate, perhaps something that has never been done in the Parliament of this country before by an Attorney General, that the hon. Attorney General today is asking this Senate to pass a piece of legislation and to amend a piece of legislation that has been already—and I want to put this slowly, so the people of Trinidad and Tobago can understand where we are—that the Attorney General of Trinidad and Tobago is asking this Senate to amend a piece of legislation that has been struck down as unconstitutional by the High Court. [*Desk*

thumping]

You realize, Madam President, that it was very alarming to me to listen to the Attorney General and not hear about "proportionality" and hear about "legitimate aim" today, because the one thing that is clear on this piece of legislation is that there is no legitimate aim in this piece of legislation. And there is no proportionality in it either, because this piece of legislation that seeks to give an option to an accused person who is tried in an indictment is really not a proportionate response to anything. It is not a proportionate response to anything.

I will take and answer each and every statement by the Attorney General in this matter, because I want to start off by voicing a bit of concern. The concern that I have is this: this is a piece of legislation that affects a central core of the criminal justice system, the right to trial by jury. No one is alleging that it is to take away the right to trial by jury, but as the law presently stands, the right to trial by jury in this country is an absolute right to anyone who is tried on indictment. Any interference with that absolute right, whether it is to give an option, to abolish, to amend or whatever, it is a matter of grave concern to every single citizen of this country.

To come to this Parliament and to give the other side, the Opposition and the Independents, less than one week's notice to debate a matter of this kind of importance to the people and to the democracy of this country cannot be satisfactory on any stand. [*Desk thumping*] That became a very real concern because when you start to dig and you start to read the material throughout the Commonwealth on this particular issue about interfering with the right to trial by jury, one can understand that a week's notice to debate a matter like this could never be sufficient. But what I want to say is that in that week there will be no

ambush of this Opposition. This Opposition is ready to debate and this Opposition is ready to debate to protect the rights of the citizens of this country. [*Desk thumping*]

I am sure that my friends, both on the Opposition and on the Independent Benches, will talk about the origin of the right to trial by jury. I am not going to stay long on that because there are many important issues I want to deal with. I just want to say that some people consider the right to trial by jury as having its genesis in Magna Carta—that is, 1215—802 years ago. Some jurists consider that it comes from the Code of Hammurabi which is 500 BC. Whichever one you take, what you cannot deny is that the right to trial by jury is a right that existed for centuries and is enjoyed by the people of this Republic.

The Attorney General made a number of points, and I want to start off my contribution by making three. The Attorney General referred to a number of jurists, and that is in support of his arguments. I too want to refer to the quotations for a number of jurists. The first jurist I want to refer to is Paul Mendelle QC. He is the Chairman of the Criminal Bar of the United Kingdom. On the 1st of April, 2010 in *The Times*—the date of his statement is very important, in 2010 in April, because at that time what had transpired is that the United Kingdom had just completed its first judge-alone trial, and there were many commentators who had started to commentate, make comments, about the effect of what had transpired in that first judge- alone trial in the United Kingdom.

This is what the Chairman of the Criminal Bar of the United Kingdom had to say on this matter:

Some values of a democratic society are beyond price.

Listening to the Attorney General this afternoon, I want to pay particular attention

to the second quote of the head of the Criminal Bar:

> Some values in a democratic society are beyond price. We would not countenance restriction of the right to vote because elections were too costly, nor should we remove the right to jury trial on the grounds of cost when the costs cannot be capable of scrutiny.

I am surprised that the Attorney General in piloting this piece of legislation would refer to lawyers and hourly rates in the criminal justice system.

I am not a criminal lawyer, and anyone who has any idea of how the criminal justice system in this country operates, understands that the majority of the people—the numbers that the Attorney General said, the prison population is 3,634; 2,159 on remand—will understand, and my friend Sen. Sturge will confirm, that almost 80 or 90 per cent of the people on remand who have to go to the criminal courts of this country cannot afford proper legal representation. They depend on people to assist them or they depend on the broken legal aid system that we have right now. So to sit down and calculate that the price is $260 million on an hourly rate really shows that the Government is out of touch with what they have to govern in this country. They have no idea, they have no plan and that is why we find ourselves in this position. [*Desk thumping*]

The second quote that I want to go to will go to the intention of any government and any Attorney General that seeks to take action like this. One of the most popular pieces of literature on this topic is the Hamlyn Lectures and Lord Devlin in 1956, *Trial by Jury*, infamous. Let me just take a few lines out of lord Devlin about what he says about removing trial by jury. Listen carefully to what Lord Devlin said, one of the most well-respected Lords:

Each jury is a little Parliament. The jury sense is the parliamentary sense. I

cannot see one dying and the other surviving.

And then, listen to this, Madam President:

> The first object of any tyrant, of any tyrant in Whitehall would be to make Parliament utterly subservient to his will; and next to overthrow or diminish trial by jury, for no tyrant could afford to leave a subject's freedom in the hands of 12 of his companions.

From time immemorial, the jury system has been tested and has been proven to be, as Lord Devlin's famous words said, the lamp that shows that freedom lives. It has been an institution that has held the criminal justice system together, and it has been the pillar upon which citizens in any democratic society build their confidence in the criminal justice system. Because the citizens participate in the criminal justice system by way of jury trial, the advancement of the confidence in the criminal justice system is always supported by trial by jury.

The third quote that I want to quote is from Shami Chakrabarti. She is the Director of the international human rights organization Liberty, who fights day by day. You see, I am happy that the Attorney General has quoted many different jurists from our jurisdiction, from the Criminal Bar, from the Chief Justice, but I prefer to rely on people whose profession has been built on helping advance the rights of human rights, whether it be here or otherwise. [*Desk thumping*]

Those jurists that the Attorney General is talking about, let them tell you how many jury trials they have done. Let them tell you what has been their fight for those people who cannot fight for themselves. Those people rely every day on people like Mr. Sturge and I, who cannot afford proper representation and go to court pro bono. Sacrifice your practice for what? To make sure that at the end of the day people who are entitled to a fair trial get a fair trial. That people who are

entitled to the rights that are guaranteed to them under the Constitution by sections 4 and 5, they are entitled to that and they get that. Not because the State provides it to them, because those rights are enforceable against the State. It is the State that breaches those rights, and it is up to the common man to find a way to enforce those rights against the State.

The Director of Liberty, this is what she said:

> Without jury trial the professional classes appear to sit in permanent judgment of ordinary people. [*Desk thumping*]

Madam President, the Attorney General has said there are views on either side. The Attorney General has referred to Justice Wit in the Third Distinguished Jurist Lecture 2013. He has referred to the statements of Chief Justice Archie in his statements. But what I find little bit disturbing is how the Attorney General has cherry-picked the statements that support trial by jury. In that same debate, that lecture, the Third Distinguished Jurist Lecture 2013, I found it strange that the Attorney General did not refer to any statements by the person who delivered the distinguished lecture, the Chief Justice of Barbados, Sir Marston Gibson. I find it strange.

So, since the Attorney General did not do it, I will. So at page 26—in piloting this Bill the Attorney General failed to let the Parliament know that—I want to quote from the Chief Justice of Barbados, and this is what he said—and all of us here should listen carefully:

> The criminal justice system of the Commonwealth Caribbean operates sluggishly in many parts, constrained by delays at all stages. Many of the problems facing it do not lie and are not caused by the jury system.

That is not the Opposition. That is not the Opposition, you know; that is not

Ramdeen. That is the Chief Justice of Barbados.

> Many of the problems facing it do not lie and are not caused by the jury system, but by limited resources, administrative inefficiency and at times corruption. While it may be tempting and politically lucrative to call for its abolition, removal of trial by jury will not act as a panacea that will cure all ills of the judicial system, and it is necessary to restrain ourselves from regarding it as such.

It is necessary to restrain ourselves from regarding it as such.

> It must be recalled that a jury trial is not the most common method of determining guilt or innocence; it is only used for a small proportion of all cases.

That is the Chief Justice of Barbados telling you in the same lecture that the jury system is not responsible for the delays in the criminal justice system. So why do you not fix what is responsible for the delays? That brings into question the bona fides of the Government in bringing these pieces of legislation.

We on this side are of the view that these pieces of legislation—the piece of legislation to abolish preliminary enquiries in the other place—and this piece of legislation, are simply public relations exercises by the Government to shield, to hide and to mask their failure to properly govern and provide safety and security for the people of this country. That is what it is. [*Desk thumping*] The Chief Justice of Barbados, Sir Gibson, this is what the man says. We are here debating this Bill and this is what the Chief Justice of Barbados said.

The second thing I want to advocate, and I want to join Prof. Deosaran and Her Worship Magistrate Nalini Singh in this, is that we need research—we need research. We cannot propose any kind of reform of the jury system, whether it is

with a view to abolition, whether it is a view to simply changing the form in which it operates, without research. Our problem is that we have a bad habit of blundering, of wandering into things without being informed at the level we need to be informed at. And my view is that this is where the marriage of the social scientist and the lawyer is best served.

If you are a responsible government and if you are a responsible Attorney General, then if you bring legislation like this, it cannot be. I cannot stand here and think that the Attorney General did not read this. I cannot stand here and think that the Attorney General would not have read the lecture that was given by the Chief Justice of Barbados where he said we need research. I am coming to the Chief Justice of Trinidad—"ah coming to dat". [*Interruption*]

Madam President: Sen. Sturge, please. Let us listen to Sen. Ramdeen in silence, and if one feels the need to be saying anything across the floor, please, please do it in much lower tones. Sen. Ramdeen.

Sen. G. Ramdeen: I am obliged; thank you, Madam President.

All of us in this House—all of us—want to improve the criminal justice system. All of us want to provide a solution to crime. All of us think that one murder is too much, but when you hear the Government talk about one murder being too much, one adds to one, adds to one, but one has turned into 100; 100 has turned into 567; and what has the Government done?

I am glad the Attorney General started off with crime and went through all of the statistics on crime, but in the last debate, the last presentation by the Minister of Finance, we heard about a Border Protection Agency. We heard that $10 billion was spent on the Ministry of National Security, and the Government that wants to do it together and wants to solve crime, out of $10 billion, they spend $500,000 on

the Border Protection Agency. And every time you hear the Minister of National Security talk, the Attorney General, the Commissioner of Police, they tell you the way to solve crime is to guard the porous borders. But to guard the porous borders this Government—it is in the budget documents—has allocated $500,000—$500,000—to guard our porous borders.

It was the Leader of the Opposition that met—at the invitation of the Leader of the Opposition—with the Prime Minister. I heard the Attorney General say, in response to a press conference that the Opposition held, and I am reading from the *Daily Express*, Monday, the 13th of March, 2017, and I quote:

> This recent allegation of theirs that the Government must consult the Opposition, since when is that a feature of our Parliamentary practice?
>
> Al-Rawi said he recalled the former government only consulting with the then opposition only when the matter reached Joint Select Committee.

I was shocked when I heard that, because on the 2nd of September, I was present in the crime talks that the Government had with the Opposition, and I heard when the hon. Prime Minister, Dr. Keith Christopher Rowley, indicated to the Leader of the Opposition that the way forward for the Opposition and the Government was that they would meet, that the Government would send legislation to the Opposition before it is brought to Parliament and we would find a way forward so that when we reach here we can have a collaborative effort with these important pieces of crime legislation. I was there. I do not know how the Attorney General could forget that, and talk about consultation.

There was no consultation with the piece of legislation that is before the other place. There was no consultation with this piece of legislation. I do not know, perhaps it may have well been that the Attorney General is upset that the hon.

Prime Minister appointed Mr. Young on behalf of the Government and not the Attorney General.

But, the Attorney General did not make any reference at all—at all—to the amendments to be made to the Offences Against the Person Act—none. Madam President, this Bill proposes to make amendments to the Offences Against the Person Act. What the Bill proposes to do is to amend or proposes to amend section 4A(6) and 4A(7). Those are the amendments that the Attorney General has brought. I do not think that there has ever been an Attorney General in this country that has asked a Parliament to amend laws that have been struck down as unconstitutional—as unconstitutional.

I want to bring to the attention of this Senate, that in a case CV 2007. 04514, the constitutionality of section 4A(7) of the Offences Against the Person Act was challenged. I want to bring to the attention of this Senate that in a written judgment by Mr. Justice Gregory Smith, as he then was, Mr. Justice Gregory Smith, in determining the constitutionality of section 4A(7) of the Offences Against the Person Act said this:

> Another matter that arises here concerns the provisions of section 4A(7) of the Act—that is the Offences Against the Person Act—Section 4A(7) provides that after an Order for the detention of an accused person pursuant to section 4A(6)—and it quotes the provisions of the Act:
>
> The Court shall as soon as practicable, report the finding of the jury and the detention of the person to the President who shall order the person to be dealt with as a mentally ill person in accordance with the laws governing the care and treatment of such persons or in any other manner he may think necessary.

3.30 p.m.

Madam President, I want to read into the *Hansard* that in *Gilbert Evelyn v the Attorney General*, CV 2007, 04514. This is what the High Court had to say:

> Unlike the case with section 4A(6)—which we are also being asked to amend—the whole of section 4A(7) is invalid. The raison d'être of section 4A(7) is to provide for the manner and length of the detention of persons like the claimant. An amendment would not cure this defective provision. I therefore declare section 4A(7) to be invalid.

This is the piece of legislation that the Attorney General is asking Parliament and this Senate to amend. A piece of legislation that the High Court has declared to be unconstitutional.

Hon. Al-Rawi: That is your big point?

Sen. G. Ramdeen: Madam President, if an attorney general could tell me in a debate if that is my big point, it clearly shows the intelligence of the Attorney General who is piloting this Bill.

Madam President: Sen. Ramdeen, no. Please rephrase what you just said. Okay!

Sen. G. Ramdeen: It clearly shows that the Attorney General who is piloting this Bill did not even research the section that he is asking this Parliament to amend. [*Desk thumping*] I do not think that the public understands that we have an Attorney General who has brought a piece of unconstitutional legislation and is telling the Senate, amend it.

Hon. Al-Rawi: How is it unconstitutional?

Sen. G. Ramdeen: He asks how is it unconstitutional? Well, let me explain how it is unconstitutional, Madam President. Because that is my duty, the Attorney General did not do it. It is unconstitutional because it takes the liberty of the

subject who is tried before the High Court and has to be sentenced under this Offences Against the Person Act and places it in the hands of the Executive. That is why it is unconstitutional.

And the Attorney General could sit down and say, it is unconstitutional. How is it unconstitutional? Madam President, this was declared unconstitutional in Belize, it was declared unconstitutional in Barbados. By the Privy Council in Belize in *Brown*; in *Griffith* in Barbados. It was declared unconstitutional by the Privy Council in Trinidad and Tobago in *Seepersad v Panchoo*. In Trinidad and Tobago it was declared unconstitutional, so let us get this in perspective, the Attorney General brings section 4A(6), that is unconstitutional; he brings 4A(7), that was struck down. Not struck down once, you know; struck down twice. 2009 CV 00409. It hard to do this, Madam President. It is hard. Paragraph 48 of the judgment of Mr. Justice Kokaram:

> …the claimant's sentence should therefore be modified to read at the court's pleasure.

So, that is 4(6), you could modify that? "It eh modify. He bring it in that form, ain't ask for no change." In this way the section is sanitized from the elements of unconstitutionality, that is 6.

> On the other hand, however, section 4A(7) of the Offences Against the Person Act is wholly unnecessary and is in conflict with the constitutional principles discussed. This section purports in its entirety to deal with the manner and the length of the client's detention. It usurps the judicial function of sentencing and is unconstitutional. There is no useful purpose to be served in modifying the section, and it is struck down all together. [*Desk thumping*]

Madam President, I do not know how an attorney general could purport to do something like this. I do not know how an attorney general could sit and advise a Cabinet, advise a Government, and then bring legislation to Parliament that is unconstitutional. If you just read the cases they will tell you that. The lawmaking process is something serious, you know. The governance of a country is something that is serious. This is not a joke, that you come to ask Parliament to sanction the amendment of unconstitutional laws, and you are supposed to be the guardian of the public interest. You know what this demonstrates, Madam President? The hon. Attorney General does not even know what is the interest he is the guardian of.

Madam President, the Attorney General should do the right thing, he should apologize to his Cabinet colleagues, because he is their advisor; he should apologize to Parliament, because he is piloting this legislation; and he should apologize to the country for doing this and bringing unconstitutional legislation, and after he apologizes he should then do the decent thing and resign. [*Desk thumping and laughter*]

Madam President, it "cyar" be, it just cannot be that every single debate that we have on a piece of legislation in this Senate we must go on about why it is wrong. There must come a time when enough is enough. How long are we going to put up with this?

Hon. Al-Rawi: After prison.

Sen. G. Ramdeen: I know you want to talk about prisongate, but the point about this, this is legislation gate, this is not prison-gate. [*Interruption*] That is a serious matter.

This piece of legislation, Madam President, the Bill essentials in this matter sets out what the position is in Australia, what the position is in the United

Kingdom, what the position is in New Zealand. You have come to the Parliament and told the Parliament, well, I am giving the option to an accused person to ask for a trial by judge alone. Madam President, the Attorney General is not a criminal lawyer, he is not a constitutional lawyer. Sometimes I wonder what kind of lawyer he is. But I can tell you this, as a public lawyer, and my client being the prisoner, there is no prisoner who is going to sit in this day and age and ask for a judge-alone trial. [*Desk thumping*] This piece of legislation adds zero, zero, zero to the administration of justice. [*Desk thumping*] The exact pieces of legislation that the Parliament has placed before this Senate in the Bill essentials demonstrates, that if you want to bring legislation like this, it must have some kind of legitimate aim.

In the United Kingdom, legislation like this is brought to deal with jury tampering, it is brought to deal with complex fraud trials. The Legislature in England understood that they had a problem, so that they designed legislation that allowed a judge-alone trial in very limited circumstances. Very, very limited circumstances.

Madam President, those limited circumstance are to be found nowhere in this Bill. So, you know what the effect of this legislation is? You have a defendant who will never opt for a judge-alone trial. That is to start off with. So, you are achieving nothing to start off with. If a trial judge has a complex fraud trial, this Bill does not give the trial judge any power to even engage the parties on having a judge-alone trial.

So, with respect to that, it is out. If it is that the trial judge or the prosecution comes to the realization that there is some type of jury tampering, that is out. Because there is no power in the prosecution, or in the trial judge of his own motion, to even make any attempt at having a judge-alone trial. So, what is the aim

of this legislation? There is none that is why the Attorney General could not give us one when he was piloting the Bill.

Madam President, this morning the Attorney General referred to Senior Counsel, Mr. Israel Khan. This morning Mr. Israel Khan delivered a lecture, this morning. [*Interruption*] I will give it to you if you want it. It is not a problem, I have it hear. "I does read, you know. On this side we does read. It right here." If the Attorney General wants to borrow it, Madam President, I have it here. But, I find it very interesting, the statement by the Attorney General, about the statement by the Chief Justice about how long jury trials take and the delay in the system. I want to see—

Hon. Senator: "Don't blame me".

Sen. G. Ramdeen: "Doh blame me". You are right, he said, "doh blame me". I do not want to blame anybody—

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

Sen. G. Ramdeen: Thank you, Madam President. I do not want to blame anybody, but I must bring to the attention of the Senate, facts. I am here to deal with facts. The Chief Justice said, abolish jury trials. He said that in the opening of the law term.

God bless her soul, the late Senior Counsel, Dana Seetahal, on the 14th of October, 2013, Dana Seetahal wrote to the hon. Ivor Archie, Chief Justice:

> I appear for the State in the matters at captioned which are all capital matters, and were variously heard by the Court of Appeal—Gerald Wilson, Lester Pitman, David Donald. Judgment reserved in Gerald Wilson, November 2009; March 4th 2010; July 3rd 2012.
>
> These are capital matters "eh", capital matters. People sit down in the

condemned, you know, while this going on. In each case judgment was reserved:

> Despite—this is the late Dana Seetahal—my several telephone calls to the registry of the Court of Appeal enquiring as to when judgment is to be expected in each case, and letters in the case of Pitman, I have not had the courtesy of a letter of acknowledgement.

There is no doubt that a delay of over a year in delivering a judgment in a capital case is unconscionable. Far more in the case of Wilson and Pitman where the delay is over three years. Three years a man is sitting down.

Hon. Senator: It has no jury in criminal case.

Sen. G. Ramdeen: It has no jury there. You know who was the president of the court in Wilson? The Chief Justice. You know who was the president of the court in Pitman? The Chief Justice. You know who was the president of the court in David Donald? The Chief Justice.

I am singly responsible for writing the letters and giving the advice in these matters, where the former Prime Minister, the hon. Kamla Persad-Bissessar as Prime Minister, was written to and asked to take action against the Chief Justice, because you had people sitting, in capital matters, for more than three years waiting on the Appeal Court to deliver judgment, and "he want to talk about delay in the system, doh blame me". There is a separation of powers in this democracy that has been recognized by the Constitution and the court, and the Judiciary must know its place. [*Desk thumping*] The Executive must know their place, and the Legislature must know its place. [*Desk thumping*] It is absolutely wrong for any head of a Judiciary to give directions to the Legislature as to how laws could be passed. [*Desk thumping*]

Madam President: Sen. Ramdeen, I would like you to be aware of the Standing

Orders. You have made reference to certain matters, and I have allowed you to make your references, but be very careful in your commentary at this stage.

Sen. G. Ramdeen: I am obliged, Ma'am. Madam President, this Opposition is prepared to protect the rights of the citizens of this country despite what anybody says. [*Desk thumping*] Madam President, how much time do I have left, can I ask?

Madam President: Two minutes.

Sen. G. Ramdeen: Madam President, I want to end my contribution with the cover page [*Holds up book*] of the debate. The Attorney General did not say it, so I will end with it, the cover page of the debate. I think he must have read it. I hope so:

> The jury should not be maintained out of sentimental value or nostalgia, or because this is what we are used to, or because this is what other countries are doing, and so we should do so too. But trial by jury should also not be abolished for equally nebulous or sentimental reasons. It should remain only if we, as individual societies in the Caribbean, consider it necessary and worthwhile to have the innocence or guilty of a person charged with serious crimes determined in this matter.

And while I have the time, Madam President, in the last minute, I would like to quote Justice of Appeal, Jamadhar, a judge who I have the greatest respect for, who in this lecture had the following to say about trial by jury:

> I believe of the Judiciary, at this time, that no decision should be made without proper research, without proper analysis, without meaningful dialogue, and without sufficient discussion.
>
> Those are the words of a judge of experience.

Madam President: Sen. Ramdeen your time is up.

Sen. G. Ramdeen: I am obliged, Madam President. [*Desk thumping*]

Sen. Sophia Chote SC: Thank you very much, Madam President. May I say that I view my contribution to the debate this afternoon with a certain measure of trepidation, because in my analysis of the law, as it is proposed, I am bound to tread on some toes, and I apologizefor that in advance, I do not mean it maliciously, it is simply part of my analysis of this particular issue.

The hon. Attorney General, who has proposed this piece of legislation has urged us as Senators to look at the Constitution of Trinidad and Tobago, and he referred to a statement by the hon. Chief Justice, Ivor Archie, who also suggested that we do the same thing. So, when I heard that suggestion I thought that that sounded like good sense, so I went to the Constitution of the Republic of Trinidad and Tobago, and in particular subsection (c). It says:

"Whereas the people of Trinidad and Tobago—

> have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;"

—and it continues:

> "Now, therefore the following provisions shall have effect as the Constitution of the Republic of Trinidad and Tobago:"

So, what the Constitution tells us is that, in its interpretation what we ought to try to ensure is that members of the public should be able to play a part in civic and in civil life, and the way in which the average person is entitled or is permitted by law to do that is by performing jury service. Now, I am not alone in thinking of it in that way, because last year in the committee which I chaired we were looking at the issue of case-flow management in the High Court, and one of the

stakeholders who came to give evidence before our committee was the hon. Director of Public Prosecutions, Mr. Roger Gaspard, Senior Counsel. And on the 18th of March, 2016 when Mr. Gaspard gave his testimony before our committee, he had this to say. He said:

> Some people are of the view that a large part of the delay is because we have jury systems. "I am not of that view. I am of the view that in this system there must be a certain degree of nexus and connectivity between the man in the street and the dispensing of justice."

He went on to speak about not wanting to sever what he described as the umbilical connection between the man in the street and the dispensers of justice.

Now, Mr. Gaspard is someone who holds a position which is extremely important, which is constitutionally protected, and if anyone knows about what ails the criminal justice system from this side of the prosecution, I think there is no better person than Mr. Roger Gaspard, Senior Counsel. [*Desk thumping*] And he has gone on record before a parliamentary committee to make it clear that this is his position.

Now, I take this a little further, because essentially what we are saying is that one of the things we value as a democracy is not only our right to cast a vote when the time comes, but one of the other things that we value in a democracy is the discharge of our civic duties as citizens. [*Desk thumping*] In fact, the Constitution to which I just referred says that a citizen has a right to sit as a juror. That is how seriously our democracy or the drafters of our Constitution viewed the role of the juror and the juror's participation in the democratic process, which includes participation in the criminal justice process. Now, whenever I hear people giving a lot of numbers, I try to write them down very quickly, because I am not

good at numbers, so that I could take my time afterwards and see if I can make sense of them.

So, the hon. Attorney General provided us with a lot of numbers but, regretfully, I have to say that I did not get very far. I am sure that it is all my fault, and it is not that his numbers did not make sense. I would like us to look at another set of numbers. Now, we are told about how many hundreds of pending matters there are in the High Courts and this kind of thing, so I did a quick search and what I found is that our Judiciary has nine spaces for judges who sit in the criminal assize. Nine. Now, perhaps I will not quote what someone said, I have just concluded a matter in the Port of Spain Assizes, but there is certainly one of those courts that appears to be unoccupied since the start of the year when I began my trial. So, let us say between January and March we were down to eight. Okay. One of those spaces cannot be filled because the particular judge is on study leave aboard. So, we have hundreds of cases, hundreds of indictments, murder trials waiting to be heard, and we are basically down to seven. The lucky seven, who have to battle with these hundreds of cases.

Now, is this law going to help this lucky seven accomplish what we are hoping that they can? I do not know. I do not see how anyone sitting here today can know. Look at how people approach it. Before the English changed their law, I think it was in the year 2003, after much heated debate all over the place, there had been a commission of inquiry, a commission of inquiry to investigate, to collect the views of stakeholders, and then to make recommendations. Not all of the recommendations were accepted. The upper chamber, the House of Lords, decided that they were not going to support the recommendation, that there should only be trial by judge. A White Paper was promulgated, and out of that came the 2003

legislation, which basically allowed for judge-only trials in cases where there was jury tampering.

Well, you would say that sounds good, at least there is something that we can do there, and certainly jury tampering is a problem which we encounter here. It is certainly a live issue. The difficulty with that piece of legislation is, the cases based on the legislation make it clear how difficult it is to have it work if it can work at all. Because, evidentially, if you have evidence of jury tampering in a case, this is something which you bring—the prosecutor brings to the attention of the trial judge. The accused person and his attorney do not know, for obvious reasons, what is going on. Certain steps are taken, not only to ensure the security of the persons involved in the trial, but steps are taken to ensure that the integrity of the trial process remains untouched.

Now in a judge-only trial, that, of course, posed a problem because the judge was part of the process of receiving the information, and the judge had to be the one to make the necessary orders. So, the cases—and there are just a few—which followed that bit of legislation essentially show that when you deal with matters such as these, with all of the modern-day complexities of a criminal trial you must do your homework, you must do your studies, [*Desk thumping*] you must do your research. And, I have to say I am not the first person to suggest this. When I was looking at the comments of some members of our criminal bar, I mean long standing members of our criminal bar, I see that Mr. Ramesh Lawrence Maharaj, Senior Counsel, former Attorney General, had said in 2013 that studies should be held, or studies should be introduced to determine if judges were able to dispose of matters in a more expedited fashion than judge and jury trials. And that had been his suggestion in 2013. But we have not had any studies as far as I know.

Unfortunately, as often happens in this country, we have opinions voiced and voiced very loudly, but sometimes with not much thought behind it, and sometimes [*Desk thumping*] without much knowledge of the subject area.

Now, I ought to say that both Mr. Osborne Charles, Senior Counsel, Mr. Israel Khan, Senior Counsel, who have been at the criminal bar much longer than I have, and I am approaching my third decade, they have both said that when you look at what afflicts jury trials in the High Court, the big problem is not the jury. The juries do not make a problem for us in the dispensation of justice. [*Desk thumping*] Juries are called on the first day, first working day of each month. Usually before that date those who wish to be exempted have been exempted. There may be a few on that first day who have applications based on recent developments, and those are quickly dealt with. The roll is called, and if a case is able to go on, then a jury panel is selected. If the judge is going to hear legal arguments, as is often the case, the judge sends the jury away back to their workplaces, and the judge asks them to return on a date when the case is likely to continue. So, you do not have this massive loss of manpower hours that you are talking about. [*Desk thumping*]

4.00p.m.

Judges and attorneys, to those listening, we do have common sense, sometimes, and the juries are sent back to their duties to continue their jobs until they can continue in the trial. The hon. Attorney General has referred to two instances where juries were sequestered in 2011 and 2012. Well, you cannot use the exception to prove the rule and that is, with all due respect, what the hon. Attorney General has done. Because it is not common practice for jurors to be sequestered in criminal trials and even in high profile criminal trials in this

country. So whatever the cost was in 2011 I do not see that that, six years later, is a good indicator to us as to how much value we should place on that dollar figure.

Now, I must say that I really did not quite get the point about how much money is spent paying lawyers and so on, in all of this. Just as an example, the matter which I just concluded in the Assizes, this is 2017, my client was charged in 2007. I came into the matter towards the end of 2008. So if I were to really sit down and calculate it, it is either I worked for less than minimum wage or perhaps I paid the client to represent him. [*Desk thumping*] So this massive amount of money and dollar figures that we think that we will be saving, really, that is unrealistic, it does not reflect the true position and can you imagine what is the position with an attorney who had been doing this matter under the legal aid system, because there is a fee which is fixed and sometimes it is altered by the judges and sometimes it is altered by the director of the legal aid.

Now, I know that the director of the legal aid has said that attorneys on the panel, the younger attorneys must understand it is part of giving back to the country. Well, obviously you are giving back to the country because you are working for much less than you should be paid. So I do not know if the Director of Legal Aid is of the view that attorneys should treat legal aid as pro bono work. Let me put on the record, in any event that I do not know of any criminal practitioner who does not do pro bono work. [*Desk thumping*]

Now, I have to say that I do not know who are all these stakeholders who have expressed these views in support of the abolition of jury trial or at least partial abolition, because we have the Inspector of Prisons, who himself is a criminal practitioner, going on record to say that if jury trials are abolished he intends to withdraw from all the matters in which he represents persons, in protest. [*Desk*

thumping]

Now, I apologize for jumping back a bit, but it is not always easy to read my handwriting. When I had made the point about what the hon. Director of Public Prosecutions had said, the director had made another very valuable point and it was not only about having citizens participate in civic society, but the director was pointing out that even in a society as small as ours, the persons who tend to hold the judicial office are persons who tend to come from similar backgrounds, go to similar schools, go to, you know, similar universities and that kind of thing. And when you look at it, when I applied this to the persons who now hold these positions, I think to some extent the horse has bolted, with all due respect to the hon. Attorney General, because the persons who hold positions in the Assizes, by the very nature of their backgrounds would not encourage any person or any right thinking attorney to suggest that they should easily give up trial by jury. [*Desk thumping*]

The most, let me count them, one, two, three—there are four males and four females. The most senior judge at the Criminal Assizes was a former DPP in another jurisdiction. In fact, another senior judge was an acting DPP in this jurisdiction; another judge was a former DPP in another Caribbean jurisdiction and an adviser to a former Attorney General; another judge was a former DPP in another jurisdiction; another judge was a senior state attorney in this jurisdiction and a prosecutor in an international criminal court; another judge was a prosecutor at the office of the DPP and a prosecutor at the international court; another judge was a prosecutor at the office of the DPP. One judge has or had a practice which included years spent both at the public and private bar.

So one out of seven judges, you can say, has had a bird's-eye view of what it

looks like to the person in the dock from both sides of the bar table. One of the important things about justice is that we must not only have justice done but we must make sure that justice is seen to be done. [*Desk thumping*] To make this change in the law and then to have a judiciary coming or judges coming primarily from the prosecution side of things is certainly going to make your law, and whatever benefits you hope to achieve or accomplish by it, useless. Because nobody, as I say, in their right minds will say, listen, in these circumstances I am giving up these 12 people or these nine people with whom I may have things in common, they are my peers, I am giving that up to be tried by one person with whom I have very little in common if anything at all. [*Desk thumping*]

There is nothing to suggest, if one knows how a criminal trial operates now, that overloading a single judge is going to expedite the criminal justice system. [*Desk thumping*] The hon. Chief Justice, under the powers conferred under the Supreme Court of Judicature Act, the Rules Committee has put together a set, a very detailed body of Criminal Procedure Rules and these rules I think have already been gazetted even though they have not officially been used. Some judges are using them or using parts of them to see how they can make the existing system move more quickly. But what happens is that these rules require the judge to engage in a case management process which is very often not concluded in one sitting. So there is a lot of detailed information which the judge has to make sure is in place before the judge says, okay, I am now going to hear this case.

A judge in a criminal trial now has to consider, apart from case management, the judge will have to consider submissions on disclosure; the judge will have to consider public interest immunity; the judge may have to consider jury vetting; the judge may have to consider admissibility of practically every piece of evidence,

hearsay, confession statement, bad character, evidence, admissibility of documentary evidence, the judge is going to have to consider and rule on all of these matters.

In addition to that, the judge is going to have to keep on the ball with respect to the evidence, because once a criminal trial comes to an end, it is not like a civil trial because people are either in custody or they are on bail. So once the trial comes to an end as it is, the jury goes in, the jury has four hours to deliberate and then the jury if it reaches a verdict comes out and gives its verdict. And this is after the judge has had enough time to prepare his or her summing up. Now, that preparation exercise is not what it used to be long time. The preparation exercise that a judge now goes through, with respect to directing a jury, is in-depth, it is focused on breaking down complicated legal principles and it is intended to ensure that justice is evenly balanced.

Now in addition to that, the judge is doing his or her summing up. The jury decides, the judge gives a sigh of relief depending on how it goes and then if the person appeals it goes to the Court of Appeal. But you can imagine what will happen now in the criminal justice system, because instead of just being able to sum up and direct a jury in accordance with guidelines which are clearly set out in this jurisdiction and others, a judge is now going to have to sit down and say, I admitted the confession statement because of X, Y, Z. But I did not pay attention to that part of it because of X, Y, Z. There is absolutely no way that any reasonable judge can give a judgment, in a matter where a person may be in custody awaiting decision, within a short space of time, and I think it is a fundamental part of criminal justice. This is where we have fallen down, we charge people and by the time they come round to their trial, there is a loss of connection between what it is

that it is alleged that they did and the trial before the court.

So, punishment is so far away from the actual charge that you wonder what is the point of it anymore. What you are now going to do in an overloaded system is you are going to have a judge take a considerable period of time to write a judgment in a criminal matter.

Now the judge could do it two ways. The judge could give his or her decision and say reasons to follow. But, of course, when you have matters, such as, capital matters and so on, there are certain timelines that all parties are sensitive to. So, in addition to his or her daily list of cases which are not going to go away, this judge now has to sit down and write this judgment and there is no time frame within this legislation to say when that must be.

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

Sen. S. Chote SC: Time passes when you are having fun. [*Laughter*] Quite frankly, this will simply be too much for our seven judges. They are running to standstill, they are trying to do their best and the change in the law which would allow someone to choose trial by judge will be very difficult for them to deal with.

There are two points I would like to make before I close. Now we have spoken about trial by judge, perhaps being more appropriate for matters such as corruption matters and so on. Well, I would have thought so, except that when I did my research into what has occurred in Nigeria which has a common law system, a former colonial system, just like ours, they have found themselves facing a great deal of difficulty because now they are facing allegations when persons elect trials before certain judges there are now allegations that these judges are corrupt. So it has created a new problem for the Nigerian judicial system with respect to this kind of case. In any event our Jury Act already makes provision for

special juries [*Desk thumping*] to be drawn in cases where you would require a particular expertise, let us say, auditing, accounting, that kind of thing.

So I was thinking about it and I was thinking that, you know, this is actually, there is one category of case that I think would work and that is where you have young persons under the age of 18 who are charged with an offence. And if they can go very quickly before a judge and have their matters heard then certainly, by all means, that would be excellent. But unfortunately our system provides for young people who are under 18 to remain in custody for the same length of time. So you might be charged when you are 17 and you may come to trial when you are 26 or 27, as occurred with another client of mine, two years ago. It does not happen in other territories because I know that in Grenada and so on, young persons who are charged with offences are brought before the court as children and that is amazing to me and I cannot understand why we, perhaps, cannot use this legislation in that way.

So, Madam President, thank you for the opportunity to speak on this piece of proposed legislation. I hope I have not stepped on too many toes, but, regretfully, I cannot support it. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you for permitting me to join this debate at this time. Madam President, I proceed with even more trepidation than my colleague, Sen. Chote because I am sure Sen. Sturge is waiting to point out that I have absolutely not practised at the criminal bar. [*Laughter*]

Sen. Sturge: I would not do you that.

Sen. The Hon. C. Rambharat: And that, and that alone makes me as eminently qualified to join this debate as any other. Madam President, with due regard to my

two colleagues who have preceded me, we spent a fair amount of time hearing what this Bill is not about. This Bill is not about the abolition of jury trials. [*Desk thumping*] Notwithstanding the data that I myself will share, this Bill will not impact matters in which the trial by indictment have already begun. So this Bill is not intended to deal with trials which have already begun.

But, Madam President, what this Bill is, this Bill is a part of a series of measures which the Opposition, the Independent and the country have called for. [*Desk thumping*] And these measures are legislative, some are policy, some are administrative changes and some deal with the Judiciary on the whole and some deal with the issue of the criminal justice system, criminal conduct, criminal activity and criminal behaviour, specifically. Even, when at some stage, Madam President, and I am sure you and certainly me and Mr. Sturge, when we went off to the University of the West Indies to study law and we got to that section of criminal law one, criminal law procedure one, we were all told to pay little regard to the part dealing with preliminary enquiries, because they were to be abolished soon. And up to today that lies in front of us somewhere. But even when that time comes and this Parliament eventually abolishes criminal preliminary enquiries, not even that would impact those trials which are already underway; those PIs which are already being conducted and those PIs which have closed, but the trials have not started in the High Court.

So, Madam President, what the Attorney General has brought before us today is part of the legislative suite, as he likes to describe it, dealing with the issue of the criminal justice system and this one does not seek to abolish jury trials but introduces the option for the accused to determine whether in the mind of the accused a trial without jury is the preferred course for that accused.

Let me just go back, Madam President, to some of the points made by my colleague, Sen. Ramdeen. And the first thing I would like to say is, and I am sure I could be corrected. On looking at the laws as they are currently published, my understanding of it is that the current laws that are published, 2014 version, the 2011 version, deal with the legislation as it is presented for amendment in this Bill. And if it is that, and I am not saying that Sen. Ramdeen is correct, but at a minimum, if it is that the laws as they are currently stated in the 2011 version and the 2014 version are incorrectly set out then that is a matter for the UNC administration and the UNC Attorney General who had conduct of the matter.

But on the high end, Madam President, on the high end of the argument, if it is that Sen. Ramdeen is right, in particular, if he is right on the proposed amendment to section 4A(7) then I would say that those provisions what has been proposed are consequential amendments and it would not, that is assuming he is right on the high end of the argument, it does not affect the core of the amendment that has been proposed in this Bill. I know the Attorney General will deal, Madam President, with the cases which have been referred, I know the Attorney General will deal with that.

Madam President, let me refer to a few other things, points raised by Mr. Ramdeen.

Sen. Mark: Senator, Senator.

Sen. The Hon. C. Rambharat: Sen. Ramdeen. Thank you very much for the correction, Sen. Mark. The first is, as I often have to point out, there is so much contradiction in what Sen. Ramdeen put forward here today. [*Desk thumping*] On the one hand he opened, as he is entitled to, with the view that this Bill will do nothing and he closed with the view that this Bill represents a grave interference

with the absolute right to trial by jury. So I am not sure on what leg he wants to stand today. It is either, it represents a grave interference, which it does not or it will do nothing which is a matter left to be seen because it would have impact in the future.

Madam President: Hon. Senators, at this stage we will suspend and we will come back at 5.00 p.m. Minister, you have used up eight minutes already. So we will suspend until 5.00 p.m.

4.30p.m.: *Sitting suspended.*

5.00p.m.: *Sitting resumed.*

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

Mr. Vice-President: The Minister of Agriculture, Land and Fisheries. [*Desk thumping*]

Sen. The Hon. C. Rambharat: Mr.Vice-President, as I was saying before the break, I was addressing the contradictions of my colleague, Sen. Ramdeen, and I made the point that on the one hand, Sen. Ramdeen was saying that the Bill will do nothing—and he is entitled to that view—but then he also goes on later in his contribution to talk about the Bill being a grave interference with the absolute right to trial by jury. And that, Mr. Vice-President, is the fundamental misconception in the argument. This Bill does not take away any aspect of what Sen. Ramdeen describes as the right to a trial by jury. This Bill, in fact, does something more. It adds the option, and the option is that the election of the accused to a trial without jury. And that is the fundamental misconception of the argument. Nothing in this Bill, Mr. Vice-President, disentitles an accused to a trial by jury.

The other contradiction—and there were quite a few—Sen. Ramdeen opened by dismissing the data and the statistics presented by the hon. Attorney General, saying that it was—to sum it up in my own words—there was absolutely no need for it, and then later on calls for research, and data, and information, and statistics in order to support the Bill that has been proposed by the hon. Attorney General.

The other part about Sen. Ramdeen's contribution is that with while he holds this right to trial by jury to be absolute, I was very happy towards the end, when he got to his suggestions, to hear from Sen. Ramdeen that there are opportunities, or there could be opportunities, for trials of a criminal nature to proceed without a jury, and he referred to the possibility following other jurisdictions, of legislation being brought to the Parliament, for the parties to opt for judge-only trial in certain circumstances, in addition to which he suggested that where there is a case of jury tampering a trial may proceed as a judge-only trial.

So that even in advocating and going back to 800 years ago to Magna Carta, and 500 years ago and all of that, and holding this trial by jury, which does not and ought not to form part of this debate so sacred to be absolute, in another breath Sen. Ramdeen puts forward the circumstances in which our jurisdiction can introduce legislation which allows parties in criminal trials to proceed by judge-only trial.

In relation to Sen. Chote, I will just make two points which is similar to what I said at the start. With all due respect, Sen. Chote's arguments—and I

anticipate a lot of what we will hear in relation to this Bill—argues for everything that is not in this Bill. To that extent, Mr. Vice-President, a lot of what Sen. Chote has said would find favour with us. When Sen. Chote—and I will come back to it—refers to that Joint Select Committee on Finance and Legal Affairs and it its treatment of issues relating to the criminal justice system, I was a member of that committee, as was Sen. Sturge, and we all contributed to the final report, and I accept that there was a submission from the DPP in relation to trials by jury. But as I said before, Mr. Vice-President, the time to address this issue of the abolition of trials by jury has not arrived, and none of us could say whether it will arrive.

But what we know is that this Bill intends and seeks to add the option for a criminal accused to seek a trial by judge only, and that is simply what it does. And this Bill, among the other measures that I referred to in my opening, those relating to legislative measures, some of which are already before the Parliament and some of which will come here, policy changes and administrative changes all seek to deal with this issue of crime, as we have grown to understand it in this country. And we have all accepted, whether it was Sen. Sturge a few weeks ago in his Motion dealing with the issue of crime, whether it is the Joint Select Committee, Finance and Legal Affairs, dealing with the issue of the criminal justice system or whether it is in the Opposition, when they sat in government and when they sit here now, we have all accepted one fact, and that is, in dealing with this thing we call the problem of crime, there are a number of things that have to be done; several different things at different stages.

We have all accepted, as a society, that Trinidad and Tobago is not what it was even in the early 1990s. This has become a changed society. In fact, a few weeks ago when Sen. Sturge proposed his Motion, he identified in relation to murders, for example—he gave us—he laid out this problem of murders in six or eight different categories, and it was very interesting. In fact, as he ended, I thanked him for what was unusually a very interesting contribution. And the six that he listed, or the eight that he listed in relation to murders, tell us that in 2017 Trinidad and Tobago has become a far different society as it was 10 and as it was 20 years ago. And let me see if I could go back to my notes, Mr. Vice-President, with your permission. And in those broad categories that Sen. Sturge set out in relation to murders, he spoke to those murders which are strictly drug-related. He spoke to an existing turf war between Muslims and Rasta City, and these turf wars are still relatively new to us in this country. He spoke about Muslims versus a smaller group of Muslims referred to as the unruly ISIS, gang wars, paid assassinations, and then some of the things we have grown to know, killings as part of robbery or home invasion, domestic killings and other confrontations that result in killing.

The point I am making is that we have all accepted that this is a different society we are dealing with, different complications and complexities and the measures that are to be taken, including legislative measures, are going to be far different in some cases from what we have done before. We have also accepted, as a society and I believe as a Parliament, that the Trinidad and Tobago Police

Service in its current modus operandi, is unworkable.

Mr. Vice-President, I, myself, my previous life as a columnist, wrote on several occasions about crime, about the criminal justice system, about the Trinidad and Tobago Police Service, and one of the things I highlighted—or two of the things I highlighted was, one, in relation to the decision to appoint Mr.Gibbs as the Commissioner. I made the point that Mr.Gibbs had come from the Edmonton Police Service. He was part of the third layer of that organization and his primary responsibility in the Edmonton Police Service related to human resource matters. I also made the point that in that city of Edmonton, that January in which Mr.Gibbs arrived in Trinidad, the murders in Edmonton for the entire year before, was the same number as the murders in Trinidad and Tobago for that one month of January. In fact, for the year before, the murders in the city of Edmonton was 22. In the first three weeks of January it was 22 already in Trinidad. And I had said in my experience, not one police officer in the whole of Canada has ever gone to work and found on his or her desk over 1,400 unsolved murders to deal with. And on that basis, and that basis alone, I had written off Mr.Gibbs, through no fault of his, simply because nothing in his experience, and exposure, and expertise would have prepared him for the challenge in this country. And as it turned out, Mr.Gibbs came and he has left us.

We had a debate in this Parliament on the issue of the selection of a police commissioner, but absolutely nothing convinces us that the Trinidad and Tobago Police Service, in its current form, can tackle this issue of crime, in particular

murders and the solving of murders and the solving of crime. When you look, Mr. Vice-President—I also wrote previously on the fact that we have never done—and the police service has never undertaken—a manpower audit as the Government has commissioned now, to determine what should be the strength of the police service. Whatever that strength ends up being, we are confronted still with the fact that about one-third of the officers who hold positions in the Trinidad and Tobago Police Service are not available for work because of either sick leave, study leave or some other thing that takes them out of the police service. In fact, I have made the point that the Trinidad and Tobago Police Service ranks with many major global corporations in terms of the amount of lawyers in that police service, and that is simply because police officers—and we should not deny any citizen of this country the opportunity to uplift and upgrade themselves. But police officers have been able to use their leave and use various mechanisms to go through the degree programme and go through law school, and all of that, at the expense, on many occasions, of the policing that is required in our country.

And that is only the police service. And when we get to the Judiciary, Sen. Chote is right, every judge that is not sitting on a bench and every judge that is not expeditiously delivering judgments, creates a problem for our ability in this country to deal with crime. And what we need to do, as we have pointed out in that JSC report from the Finance and Legal Affairs committee, is to deal with a series of things, including legislation, case management, time management and resource allocation to the Judiciary. And as we do that, Mr. Vice-President, the reality, and

some of what the Attorney General touched on—the reality is that the backlogs which once faced the Judiciary and were once seemingly on the road to being cleared, continue to exist, and what the data shows us is that they will continue to grow and grow.

And this Bill, if it is only to create the prospect, and if it is only to create the smallest prospect, that in relation to new matters coming down the pipeline, this Bill may—may—assist the Judiciary in dealing with criminal trials in a more expeditious manner. It is something new and the fact that we are dealing with something new does not make it unworkable if we give it an opportunity [*Desk thumping*] to be put to the use of the judicial system.

And what is the context of the Judiciary and what is the context of the backlog, Mr. Vice-President? I am going to just quickly go through to talk about unless tackled, unless managed, we are really fooling ourselves as a country. Unless we confront the numbers and deal with it in a variety of ways, we are really going to find ourselves constantly dealing with an increased backlog which eventually becomes insurmountable. And I will just give you some examples.

In terms of the Magistracy, where a lot of our matters, while we focus on the High Court and the Court of Appeal, the fact is a lot of the activities in relation to the criminal justice system is taking place in the Magistracy, and one point that has never escaped me since I read it in an annual report of the Judiciary, is a point made in the 2013 report of the Judiciary, and something that I do not think that a lot of us appreciate. But the fact is, when you talk about the Magistrates' Court, we

add to the caseload of the Magistrates' Court about 50,000 new motor vehicle matters every year. It is as simple as that. And that Bill that has been laid in the Parliament to deal with motor vehicle offences, intends to deal with that number—50,000—and in some way reduce the need to go into the court, and reduce the time and the way it is dealt with in the court.

That simple measure, if we can take that category of matter off the Magistracy, it would free up a lot of judicial resources to deal with the more serious matters which are dealt with in the Judiciary. And the caseload—for example, on an average daily basis, Mr. Vice-President, on the high end you have a court like the St.George West Magistrates' Court where a lot of criminal matters go to the court, you have a caseload of 612 in the court, meaning that every single day the court sits there are 600 and something matters to be dealt with. In places like Arima, it is 307, on average; Chaguanas, 167. And the only court that deals with a caseload under 50 on a daily basis is my home town of Mayaro, Mr. Vice-President. And in a place like Mayaro, 50 matters a day is a long day. And that is the average for Mayaro, not to speak of Rio Claro, 33 matters per day.

Mr. Vice-President, when you look at the Judiciary on the whole—and I am going to talk now on the civil side—the fact is when I came out to practise in the 1990s the issue of a backlog in civil trials had already been existing, and we knew it was taking, in civil matters, about 10 years to have a trial go through the process, or a case go through the process of trial. And in every court for every year—and I am reading from the annual report of the Judiciary for the period 2014/2015,

between 2009 and 2015, with the exception of two years, 2011 and 2012, every year in that period there were more civil matters added to the court list than those which were disposed of. And if you are adding more than you are removing, inevitably you get yourself to a point where there is a backlog and there is catching up to do. And while this Bill deals with criminal matters, the fact is that where judicial resources are required in the Magistrates' Court or the Civil Court, we have fewer resources available for the criminal court which is at the heart of dealing with the issue of crime in Trinidad and Tobago.

That report also made a very interesting point, Mr. Vice-President, and I am using 2014/2015, knowing that there has been no significant change since then, and if anything, it has gotten worse. The fact is, by 2014/2015 in the Judiciary, even though there were fewer matters being filed on the civil side, even fewer matters were being disposed.. So the fact that we had fewer matters being filed did not help the situation. The problem was that the matters were not being disposed as quickly as the Judiciary would have liked it to.

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

Sen. The Hon. C. Rambharat: Thank you, Mr. Vice-President. I need no more than that.

Mr. Vice-President, in relation to murders, which was the piece of data we always cite, if I go back to Sen. Sturge's contribution on his Motion, he made the point—he gave us some data going back to 1994. Of course, he made the point to show that somehow under the PNM the murders were more, and that is a very

difficult argument to maintain. But what I use the information he gave to do is to say, cumulatively, from 1994 to 2015, there were more than 6,000 murders in this country. And for no country—for no island with a population over 1.2 million people, that figure is acceptable. But more importantly, what the Judiciary tells us in its 2014/2015 report is that between 2009 and 2015, in that six-year period, there were a total of 105 murder trials—in that six-year period.

So let us look at it, Mr. Vice-President, because as I said, I had written extensively on this matter. Let us say this country averaged 500 murders a year, we have been told and we understand from the police data that the detection rate is 15 per cent, so it means that out of every average 500 murders a year, the detection rate, or the number of arrests made in relation to those murders are going to be about 75 a year. We also know that the success rate of the prosecution in relation to murders in Trinidad, is under 15 per cent. So what we are dealing with as a country is the accumulation of persons incarcerated on capital charges in the prison, and those awaiting trial number more than 900 right now.

We have a problem with the pace at which trials are conducted. And even the Judiciary points to the fact that there is a very small pool of criminal lawyers—lawyers operating at the Criminal Bar—who are selected or who are chosen by the accused for trials, and in some cases where a trial, for example like the Vindra Naipaul murder trial—and Sen. Sturge is back, he was in that trial—where a trial like that is proceeding in Port of Spain, murder trials around the country, or different criminal trials, have to be postponed on account of that.

So it is not just the growing number of capital and non-capital criminal law cases we face as a country, it is also the time it takes to complete trials; the issue of the access to lawyers and the way in which that impacts it. There is the issue of the cumbersome nature of a criminal trial. I have myself never done any, but I know the cumbersome nature of it. And those on the other side have also suggested ways in which we can deal with the way criminal trials are conducted as we retain the system of the jury.

But the point is, Mr. Vice-President, consistent with what a lot of us have been saying, the issue of crime has to be dealt with using a series of measures, some of which are legislative measures. We may not always agree on the word-for-word content of every Bill that is presented in this Senate. We may not always agree. But I think if it is one thing we agree as a responsible Senate and we agree as a country, that we need to deal with this thing we call the issue of crime, because not one of us—not one of us as individuals—can deal with it. We have to deal with it collectively, and this legislation, all it does is add to what we accept in our system as criminal matters being tried by juries. It adds an option for an accused to determine or to decide that that accused believes that instead of a trial by jury, the accused wishes to proceed by trial by judge alone.

And that is all this Bill seeks to do. Another day will come, Mr. Vice-President—we may or may not be here—when this Parliament, this Senate, will come to consider the issue of jury trials, the issue of dealing with the conduct of criminal trials and other matters relating to the criminal justice system. Today

we are here for the simple reason—and I do not think there are many people who are going to speak on this Bill who are going to be able to attack what this Bill intends to do. If we listen carefully we would be hearing arguments around what else should be done to rid this country of this issue of crime.

I thank you very much. [*Desk thumping*]

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

Sen. Sean Sobers: Thank you, hon. Vice-President, hon. Members all. Having listened to Sen. The Hon. Clarence Rambharat in his contribution, he has basically, really and truly, outlined what the real problem is, and not once in that entire contribution in terms of addressing the problems that he has spoken about, has he ever mentioned the term "jury". So why are we here to deal with a Bill that interferes with the jury?

Sen. Sturge: When the jury is not the problem.

Sen. S. Sobers: To sober up the mindset of persons inside the Senate today and for the listening public, the jury system of a trial is an essential element of the democratic process. The importance of the jury system is measured be continued public confidence in the role in criminal trials. The present trial by jury lends comfort to the population that the democratic process is alive and well, [*Desk thumping*] and is working in the interest of justice and to the public's benefit.

I think it is also important to punctuate that opening with some further quotations by some established jurists as well. William Blackstone, the acclaimed English Jurist, judge and politician of the 18th Century stated:

> "Trial by jury is a privilege of the highest and most beneficial nature…our most important guardian both of public and private liberty. The liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from all open attacks,…but also from all secret machinations, which may sap and undermine it."

Charles Rembar, an American lawyer and jurist, a Harvard graduate, stated:

> "Three features mark the Anglo-American system as different from all others. One is the extent to which our law is formed in litigation. Another feature is the way we conduct these cases: we pit antagonists against each other, to cast up from their struggles the material of decisions. A third—and largest in the public consciousness—is the trial by jury." [*Desk thumping*]

John Henry Wigmore, also an American jurist and lawyer and Harvard graduate stated:

> "The popular attitude toward the administration of justice should be one of respect and confidence. Bureaucratic, purely official justice, can never receive such confidence. The one way to secure it is to give the citizen-body itself a share in the administration of justice. And that is what jury trial does."

5.30 p.m.

Last but not least, Winston Churchill, an honorary citizen of the United States, a Noble Prize winner, an officer in the British Army and Prime Minister of the United Kingdom, during a horrendous passage of time called World War II, he said:

> "...we must never cease to proclaim in fearless tones the great principles of freedom and the rights of man which are the joint inheritance of the English-speaking world and which through Magna Carta, the Bill of rights, the Habeas Corpus, trial by jury, and the English common law find their most famous expression in the American Declaration of Independence." [*Desk thumping*]

These are fellas who are giving some serious dicta here about situations that have occurred before our time. We were not even an iota of existence, or a thought of conception, when these people tried to protect that which this Government is trying to tear down [*Desk thumping*] by the simple flick of a pen.

I mentioned these quotes to this honourable Senate because I think them extremely important, that they should be at the forefront of everyone's mind going forward in this debate. It is my humble submission that the Government has come here today to try to impress upon this honourable Senate and the people of Trinidad and Tobago, that this particular piece of legislation has been engineered to cure the ailment that has stricken the criminal justice system that Sen. the Hon. Clarence Rambharat has "eloquated" before, that the ailment, really and truly, is delay, that justice delayed is justice denied. We have been hearing for quite some time that the criminal justice system has been quite inefficient and ineffective from all corners of this country, from the prisoners and defendants locked in the system, to the members of the Judiciary, to the practitioners who operate within the confines of this system on the daily basis.

Having said that, the State's response, or provision of a solution, is to introduce legislation that, in my humble opinion, secretly and in a most clandestine way interferes with the sanctity of the jury system, [*Desk thumping*] that eventually

their diabolical plot would be to slowly erode the jury system and singularly replace it with trial by judge only. The hon. Attorney General himself said that it was a step in another direction. [*Desk thumping*] Where is that step going? I am not clairvoyant, nor am I prophesying to be, but my intention later on in my submissions would clearly paint a picture of this horrendous path that the Government intends to carry the people of this country on. [*Desk thumping*]

I would like to briefly touch on some of the arguments raised in favour of trial by judge and the jurisdictions in which they operate, and in so doing I would also delve into the plethora of disadvantages of such a system and conversely the advantages of trial by jury. One must recognize that judges come from very different backgrounds, different financial backgrounds, they are educated differently, they possess different value systems and different life experiences. You ask the normal man on the street what you think about a judge, where did he go to school. He has never attended any of the institutions that the normal men would really attend. These are persons who would have gone to prestigious schools; persons who would have been brought up in nuclear families, having a mother and a father; they know the value of studying. These are things that most persons sometimes, based upon very harsh circumstances, cannot relate to. So why would one person want to put their life and their liberty in someone's hands like that? [*Desk thumping*]

An accused person may still need to overcome certain biases or prejudices which may be secretly held by a judge. Judicial biases may include prejudices based on issues of race, class, status, gender and, in Trinidad and Tobago in the 21st Century, sexual orientation. [*Desk thumping*]

Sen. Sturge: You hear that? Feel that. But she is a man trapped in a woman's

body.

Sen. S. Sobers: The human nature of a judge as well—[*Interruption*]

Mr. Vice-President: Sen. Sobers—[*Interruption*]

Sen. Baptiste-Primus: Thank you, Mr. Vice-President. Ask him to withdraw that statement.

Sen. Sturge: Withdrawn.

Mr. Vice-President: Thank you.

Sen. S. Sobers: The nature of trial by jury is such that—[*Interruption*]

Mr. Vice-President: Hon. Members, I just want to remind you to allow the hon. Member to make his contribution in silence. It is his maiden contribution and we should respect that and allow him to make it in silence. [*Desk thumping*]

Sen. S. Sobers: The nature of trial by jury is such that juries are prevented, by the rules of evidence or by the use in criminal proceedings of the voir dire, from hearing about matters deemed inadmissible or prejudicial. Matters such as the previous criminal history of an accused which the hon. Senior Counsel Chote, spoke about. A judge, however, who must also sit as the arbiter of law will be aware of such inadmissible or prejudicial evidence. It may be very difficult for a judge to fully disabuse his mind of these matters when he comes to determine matters of fact.

One must also consider that judges may encounter difficulties when they are required to determine matters concerning political, or rich well-connected accused persons. [*Desk thumping*] These are the same persons that a judge may go to a country club with. He might go and play golf instead of attending the people's affairs in the Judiciary. [*Desk thumping*] A judge may find it difficult to imagine that a person of similar standing, wealth and status as himself, could commit such

serious offences and may harbour a subconscious bias in favour of the innocence or such an accused person.

The plethora of reasons, or disadvantages of trial by judge, there are so many that to even consider, or even as a competent counsel, or any counsel to consider to give advice to an accused person, your client, to go before a judge alone is madness. It will not happen. [*Desk thumping*] It is very unthinkable to concede that anybody who practises in our jurisdictions would give such advice. But speaking upon the disadvantages of trial by judge only, now I must conversely speak about the advantages of a trial by jury, a system that as I have touched on before, and that Sen. Ramdeen and Sen. Sturge and others would touch on, has been created since before time itself, since before any of us have been brought into existence, the Magna Carta which was around in 1215 by one of those kings in England.

The public acceptability of jury trials. Due to their historical significance and centuries of usage, trial by jury is culturally accepted by society in general as being a proper manner of deciding the guilt or innocence of persons accused of crimes. Trial by jury amounts to what is call a trial by peers in which persons accused of crimes can be judged by their fellow countrymen as opposed to members of an elite body, which many considered judges to be unaware of the hardships and realities of happen life from which a person accused of a crime can come from. When you are dealing with a trial by jury, you must also consider the elimination of biases and prejudices. It is felt that the system of a trial by jury eliminates or lessens the possibility of individual bias. A jury is comprised of many persons who come from many different backgrounds and it is felt that any individual biases or prejudices can be cancelled out by the collective reasoning of the jury.

In this particular piece of legislation the Government has raised two most salient points, which in their opinion has influenced the decision in drafting this legislation and bringing it to this honourable Senate. The first which they have repeatedly talked about ad nauseam is the possibility of jury tampering and contamination of the jury. The second is complexity of issues that a jury may not be able to understand. The Government has made mention that these issues have largely influenced a series of jurisdictions and in their elimination of trials by juries.

Hon. Members, I would like to take this opportunity to probe into these matters. I would like now to deal with countries and jurisdictions that have totally abolished jury systems; to one, show you on one length of the situation how different we are here as a demographic from those countries, and then I will get to the countries that were listed in the Bill, in the Bill Essentials, sorry, the UK, Canada and New Zealand. Trial by jury has been abolished in India and the reason for that situation is due to the demographic of India, the cultural make up of India, the caste system at large. We do not have that here. Might I have to remind Members that we still live in sweet, sweet T&T?

In Papua New Guinea, trial by jury was also abolished there due to a very tribal nature that exists in the demographic and in the cultural society of Papua New Guinea. Again, we do not have that existing here in Trinidad and Tobago. We are all sitting down next to each other, people of different racial and ethnic backgrounds, people of different religious persuasions, and nobody getting up and murdering anybody here. We are living and working in harmony. Trial by jury was also abolished in South Africa where the racial apartheid was rampant in the day, and it was obvious that no one could have gotten a fair trial by a jury there. We do

not have that here. Sometimes some persons would want to accuse others of that, but at the end of the day, collectively, we come and we do what we need to do to advance the society.

Trial by jury was also abolished in Belize in a particular way. In that country there was a murder that occurred in front of the steps of the Magistrates' Court. A reputed gangster by the name of Andre Trapp, who led a gang called the Southside Gangsters, he was murdered in front the steps of the Magistracy and it was very difficult at that stage for the Judiciary to pool a jury that would be willing to sit to deal with that matter. Crime is out of control, but we "eh dat" bad yet and that does not exist here.

But when we deal with the issues or the countries that the Government has raised, the UK, Canada and New Zealand, these countries tend to have what one might consider a hybrid situation, where the accused is allowed to elect. They are allowed to elect whether or not they want a trial by a judge, or trial by jury, which is what the Government is proposing in this piece of legislation, and in those particular situations there are three fundamental issues that are raised. The Government spoke about two, contamination and tampering, and complexities of issues. In those situations—there are actually three. Pre-trial publicity is the third one.

In terms of contamination and tampering of juries, I must say that in this jurisdiction—and I will touch on other, because of my vintage I do not have that amount of experience to touch properly on it, but I have spoken to other practitioners before the criminal court, that there is no evidence to support, or statistics as the hon. Attorney General would like to point out—there is no evidence or statistics to support any type of contamination, or tampering of a jury

in this jurisdiction. Senior Counsel Israel Khan delivered a speech to the law school today and this is what he said:

> I can find no empirical evidence to show that in Trinidad and Tobago that there has even been jury tampering which has resulted in a perverse verdict of guilty or not guilty. In my 38 years of practice at the criminal bar, I am totally unaware of a single case in which jury tampering resulted in an acquittal or conviction. I am suspicious that one or two jurors or even more held out for an acquittal in the face of Cogan and compelling credible evidence in proof of guilt in murder and other serious offences and the result were hung juries.

But there is no evidence, in his experience, to suggest that any jury, or any juror who served in the courts in this country, was ever tampering with or contaminated.

One would want to follow up on that to say that it is much easier, obviously, to tamper with one judge, either by him or by his family, or to contaminate that one judicial officer than 12 men and women, or nine men and women, [*Desk thumping*] and to go a step further there is evidence. There have been scenarios in this country where a judicial officer, albeit in the Magistrates' Court, was in fact tampered with. He accepted a bribe. Any law student who goes to the law school will know of that individual because he comes there and he lectures, Mr. Jaggassar.

Mr. Vice-President: Senator? Senator, I would just ask you to be very careful especially imputing improper motives on members of the Judiciary. Just be very careful.

Sen. S. Sobers: Grateful please. Grateful, grateful. He is no longer a member, yes. When one also looks at the complexities of the issues that the other side would raise, my friends on the other side, as it pertains to the reason why one might prefer

a trial by judge, because the jurors may not be able to understand the nature of particular proceedings. A proper example was fraud cases.

In our jurisdiction there exists legislation that treats with that, or makes provision to deal with complicated cases. Senior Counsel Sophia Chote, the hon. Member, touched on that as well too. Under section 8 of the Jury Act of Trinidad and Tobago there is legislation for special jurors. [*Desk thumping*] And as I said—

Sen. Sturge: "Is we pass that."

Sen. S. Sobers: And it was this administration—the Opposition when they were in administration, they were the ones who dealt with that issue. [*Desk thumping*] It is a matter on public record. I said I would go a step further because they fell short which they normally do, pre-trial publicity which was not raised. Pre-trial publicity often affects a case, and most accused persons tend to think that they are not going to get a fair trial because jurors would have been contaminated, or by reading material that would be on the Internet, that would have been publicized by different media and whatnot, but in our jurisdiction, again, there are cures for that.

A judge can give directions to the jury, warning them not to consider those media articles. A judge can also sequester a jury, which is what the hon. Attorney General spoke of as well too, and a trial can also be abated for a particular period of time, a cooling off period, so that these pre-trial publicities could be subsided and the trial itself can go on. But in none of those issues, in terms of dealing with juries and problems with juries, and affliction to juries, that are dealt with in the UK, and in Canada, and in New Zealand, none of those issues occur here in Trinidad and Tobago. Why come here to sully the good name of the country? [*Desk thumping*]

So hon. Members, if the issues raised about the jury are not founded and

actually do not exist, that there is no scintilla of evidence to support it, our demographic rejects it, there is evidence actually to the contrary of it. Why bring legislation here for that? Is it an attempt to mask or hide the real problem affecting the criminal justice system, to hoodwink the public of Trinidad and Tobago? What is the real issue? Well before my contribution, the hon. Senator Clarence Rambharat touched on that, the real delay is before the High Courts. It exists in the Magistrates' Courts, it exists when someone is charged and their matters take five to 10 years to be dealt with in the Magistrates' Court before it even reaches the High Court. And after being committed to stand proceedings in the Magistrates' Court you take another two to five years before your matter is indicted for you to go upstairs to the High Court, and then it stays in for a year and something, or two years in some cases, on the cause list and then on the trial list, and then you go to trial. But when you actually go to trial and then you are dealing with the jury, or the jury situation, a matter of weeks, in some cases a matter of months your case is finished. Wherein in the pre-trial issues from being charged to coming up to the High Court is the term "jury" even mentioned? "If it eh broke, doh fix it." Leave it alone. [*Desk thumping*] Leave it alone.

I would have spoken on a couple occasions with different members of the society and it is a young boy who spoke to me about this example. What the Government is really trying to do is that you have a maxi-taxi, you are going down the road in the maxi-taxi, the driver of the maxi-taxi driving, he pick up 12 passages and while he going down the road he see the light blinking for gas, it blinking, it blinking for gas, but what the Government telling you to do is to take out the 12 members from the maxi-taxi and the maxi-taxi go still drive. The maxi-taxi calling for gas you know, but he telling "yuh" take out the 12 members of the

maxi-taxi. [*Desk thumping and laughter*] "Da'is what dey telling yuh to do." That cannot be right. And after we talk to them about it today they will come back and tell you take out the engine in the maxi-taxi now, "it go drive", or paint over the maxi-taxi and it will drive, or change the wheels and the tyres and put on some rims and thing and it will drive, but they are not putting the gas. [*Desk thumping*] Put the gas. Put the gas.

The hon. Attorney General also spoke about consultation, that he had consultation with various different bodies and whatnot and whatnot, and he spoke to different people about this Bill and what they want, and what they feel, and all sorts of stuff. He called different persons names, but he presented no documentation to show what these people said. [*Desk thumping*] You could consult from now till thy kingdom come, but you are not telling us what they said in the consultation. He mentioned Senior Counsel Pamela Elder, and I want to touch and say that she said in an article that she would rather burn her robes than practise in a juryless system, [*Desk thumping*] and that is how I am more than certain most reasonable members of the Criminal Bar would feel.

As it pertains to consultation, I am a practising criminal attorney and I am a member of the law association. I received no email concerning this, no call to come to caucus, no call to listen, to talk about what we feel about this Bill. I am a Member of the Criminal Bar, I received no such notice. So I was not consulted, or else I would have said what I am saying now so that it would not have to reach this stage. [*Desk thumping*] And I will tell you something else about that consultation, "eh". I felt hurt that that is the position that was adopted by another fellow attorney, who is supposed to be the titular head of the bar, that he would bring a Bill here today without getting proper consultation. That I, albeit very junior in my

call, was not consulted, that no one wanted to hear what I thought about this situation. I had to receive a phone call—and it is not any partisan situation—from another senior practicing criminal attorney in San Fernando to tell me, this is madness. You ever get any call on this thing? You received any email? We get emails all the time from the Southern Assembly to come to the High Court on different areas of law, things affecting the country, and this which you bring and you lay in the Parliament, we "ain't" get any consultation on that.

We were not called to spoke about this.

Mr. Vice-President: Address the Chair.

Sen. S. Sobers: I do apologize, hon. Vice-President. We were not called to speak about this and it was very hurtful; very, very, hurtful.

I must also say that also in the paper presented today, this morning at the Hugh Wooding Law School by Senior Counsel Israel Khan, who led the team of prosecuting attorneys in the Naipaul Coleman matter, he went a bit further than Senior Counsel Elder and said that:

> "…only 'a dictator or a fool'…would support the abolition of jury trials in this country." [*Desk thumping*]

And that is what is happening here today, that the Government is advancing a position that we cannot sit right with. We cannot sit right with that.

It cannot be right for the State to propose any solution to the admitted problem of the criminal justice system to propose instead of fixing the system for which it was meant to exist in a manner envisioned, that we must idly watch as all they coming to the House to do is to patch a pothole; that the obvious solution should be to have an effective functioning criminal justice system that can dispose of the horrendous backlog of murder and other serious crimes within the

framework of the right to a fair trial before a judge and jury within a reasonable time; that to propose any other legislation, especially in this ad hoc manner, that would appear to suggest that the jury system does not work, or that it contributes to the backlog and delay, it is a farce. Being a member of the society, the law association and also the Criminal Bar, it is something that we cannot support. This Government should not bring legislation that is clearly a situation where they are actually putting the cart before the horse, but you deal with a plethora of issues first that contribute to the real delay.

On Sunday gone, it was mentioned in a press conference by the good Sen. Ramdeen that sometime last year the Leader of the Opposition, in her wisdom, thought it best to meet with the Prime Minister and to offer up strategies and options of things that could be put in place to treat with this issue, things that should be done first to try to dispense with the delay that exist in the criminal justice system.

Sen. Sturge: Low-hanging fruit.

Sen. S. Sobers: Low-hanging fruit, a series of low-hanging fruit that the Opposition worked tirelessly on, that the Opposition itself consulted with several persons on, and these are things that do not require any legislation whatsoever. Simple things were put forward to the Government, that they should have increased the complement of judges appointed, [*Desk thumping*] that they should have increased the staff of attorneys at the DPP's office—right now from 34, the man calling for 104 give him the 104. [*Desk thumping*]—that they should appoint and train more police officers especially as it pertains to crime detection so that that aspect of people getting arrested and the charges actually sticking when they go to court—it would work—that they should triple the budget for legal aid, or in

some case quadruple it; that they should deal with the backlog at the Forensic Science Centre [*Desk thumping*] that they should have real time recording systems in the court. I practise in San Fernando Magistrates' Court and we still have to wait for them to write the notes.

These are some of the proposals that were already given to this Government over six months ago and nothing has been done. They accept everything and nothing has been done. So to come here today and to propose this Bill, shows a lack of commitment and seriousness on their part and that cannot be the answer. [*Desk thumping*]

Margaret DeMerieux in her book, *Fundamental Rights in Commonwealth Caribbean Constitutions*, she said that:

> The absence of a right to a jury trial may well rob the West Indian States of a constitutional based protection from possible attempts of Government to bring unfounded charges in order to eliminate political enemies from judicial personages, to responsive, to the voice of higher authority and from corrupt or overzealous prosecution.

They are attempting to remove that. Remove something so sacred that has been here for so long, with a flick of a pen. We have to vote against that. There is no other way. [*Desk thumping*] Thank you.

Thank you, hon. Vice-President, for giving me this opportunity to make my maiden contribution this afternoon. [*Desk thumping*]

Mr. Vice-President: Hon. Members, at this time I just wish to congratulate Sen. Sobers on his maiden contribution in this august House. [*Desk thumping*]

Sen. H.R. Ian Roach: Thank you, Mr. Vice-President. My only purpose for contributing in today's debate is with the hope of adding to a matter of great

concern some value to our citizenry. Heraclitus, one of the most important great philosophers, who was active round 500 BC, is best known for his doctrine that things are constantly changing and has been quoted as saying:

> The only thing that is constant is change and everything flows and nothing abides. Everything flows, everything gives way to change and nothing stays fixed. Cool things become warm, warm goes cool, the moist dry, parched becomes moist. It is in changing that things find repose.
>
> He said:
>
> "…life is like a river. The peaks and troughs, pits and swirls, are all part of their ride.
>
> Everything is constantly shifting, changing, and becoming something other"—than—"what it was before."

The relevance of this observation, Mr. Vice-President, is most apposite today in our society, particularly at this time when clearly society is calling out and demanding significant institutional, political, environmental, economic, legal and regulatory change, which is necessary if they are to reconstruct and evolve into a society we want and so desperately need to be;

a society that has respect for the rule of law where justice is swift and certain for infractions of the law, where there is equity and equality of treatment for all and is a safe and secure place to live in; a society that is non-racist, non-sexist, where freedom of expression and associations are valued and respected, and a society where, as a people, we can all live in harmony and peace while eking out a reasonable living come what may. To achieve this noble imperative of an enlightened and progressive society, Mr. Vice-President, change is not only necessary but inevitable. Ironically, change is an aspect of life that most people

dread even if it may help them to live a better life. This is where strong leadership is needed to persuade people who may be apprehensive of such change that it is all right to embrace same.

6.00 p.m.

Mr. Vice-President, in this regard, it is up to us as legislators to explain to the public why change may be needed at this time as regards modifying or abolishing the need for jury trials in a criminal justice system as it exists today and replace same with a more efficient system, perhaps of trial by judge alone or some other arrangement. One that is particularly sensitive to our circumstances in Trinidad and Tobago, just like we invented the steel pan. So too, we can be the leaders in prescribing an alternative to jury trials that we inherited from our colonial masters and courageously derived an appropriate criminal trial that meets our local needs.

In the *Sunday Express* on Sunday the 12th of March, 2017, at page 11, prominent jurist justice warns Caribbean people:

"…jealously guard…the Rule of Law"

This was the remarks coming from none other than Justice Adrian Saunders of the Caribbean Courts of Justice. Among other things he had to say, mental slavery.

> "Justice Saunders said that remnants of self-mutilation can still be seen among post-colonial Caribbean peoples.
>
> 'A major challenge we still face, as one of our most famous artistes (Bob Marley) has said is to emancipate ourselves from mental slavery, to imbue ourselves with the confidence as every responsible adult who must stand

on his (her)…feet. Yes, at times, we may wish to emulate or draw on the experiences of others if the example is useful and suitable to our unique circumstances but we need to be firmly aware that we do possess the ability to harness the intellect and we are actually best placed to interrogate our own societies and to determine for ourselves the optimum measures that must be taken to improve it,' he said.

If I had to sum up our principal responsibility in this age, I would say that it is to maintain and enhance the Rule of Law. To my mind, that is an essential platform for achieving and maximizing social and economic progress."

[MADAM PRESIDENT *in the Chair*]

The criminal justice system, Madam President, is comprised of the following elements: the police whose function it is to investigate and charge persons for breaking the law; the Director of Public Prosecutions whose duty it is to prosecute persons for breaking the law in proceedings before the court and also to advise the police on criminal law; the defence attorneys who provide legal advice and defence to persons charged with breaching the law; the Judiciary made up of the magistrates in the Magistracy, the Assizes and the Supreme Court that try our all adjudicated criminal matters brought before them. As independent arbitrators, they are to ensure that persons are given a fair trial when determining their guilt or innocence accordingly based on the evidence adduced and the application of the law. And next is the prison supervised by the correction or prison officers who are responsible for the safekeeping of the inmates or prisoners for the duration of their sentence in

humane conditions.

Madam President, if we are honest with ourselves and the public, we have to admit that our criminal justice system, as it exists today, may be in need of change. There are a number of things that one can identify, some of which have been identified by my fellow Senators concerning the criminal justice system, and as I said, it is a system as opposed to a procedure, a particular aspect of it. There are a number of things. And along the spectrum or within the system, there are a number of flaws, there are a number of things that could be improved. Today's debate concerning one of which may be an attempt to bring some sort of amelioration, some sort of a relief to the system as it exists today, be that not necessarily the elimination of trial by jury but the introduction of an option of trial by a judge alone.

As we have heard from a number of other contributions from Senators, that in a number of the Commonwealth jurisdictions, trial by jury has been instituted with different levels and measures of success to suit their peculiar circumstances. South Africa, from which most of you all here know that I have spent quite a bit of time working and in part of their legal system, they abolished the jury system since 1969. And yes, as Sen. Sobers, I think, said a while ago, it had to do with prejudice. There was a difficulty in getting an impartial jury because of race and a number of other complexities that would have attended the particular circumstances. Today, South Africa has a judicial system in the criminal system where you have a judge assisted by what you call assessors and they are basically somewhat like the jury. They will be the judge of the facts. They assist the judge in determining the case but they can overrule the judge on

the facts but they cannot overrule the judge on the law. The judge remains the sole arbiter and authority in those instances.

Perhaps, the time has come in Trinidad and Tobago where, like many other things we had been looking at in recent times in this Parliament of the laws that we have had on our statute which may not necessarily be addressing the dynamics that we have evolved to in our circumstances. Unfortunately, it seems for this year, it seems to be from one Act to the next Act, very controversial, very emotional, a lot at stake and perhaps, if we can for the moment, in doing the discourse, that we can become less emotional and more clinical and rational in dealing with what we are hoping to either convince or to educate the public that it is probably a good thing to do, we will probably serve our purpose here, I think, much more fruitfully.

Sen. Ramdeen, in his early contribution, made reference to one of our current and leading judicial officers in the Caribbean which is Sir Marston Gibson. Sir Marston Gibson, I had the privilege to be a student at the time when he was a lecturer at the University of the West Indies, Cave Hill Campus, and I can tell you he was a very astute and highly gifted and had an highly intelligent legal mind. He rose to the stature of Chief Justice of Barbados from a humble working class background, very familiar with the struggles of the ordinary man, not only in Barbados but in the wider English-speaking Caribbean. I am proud of his success and congratulate him for his most distinguished achievements.

I say all that to say as to lay the foundation of my contribution as I would like to quote from his address generously today. His research has captured most, if not all, that can be said on this topic. Sen. Ramdeen did read the cover of the

presentation by Sir Marston Gibson, K.A. which was the Distinguished Jurist Lecture in 2013. I think it was on the 11th of July 2013, which I have here. And his topic of address was that the jury should not be maintained out of the sentimental value or nostalgia or because this is what we are used to or because this is what other countries are doing and so we should do so too. But trial by jury should also not be abolished for equally nebulous or sentimental reasons. It should remain only if we as individual societies, in the Caribbean, consider it necessary and worthwhile to have the innocence or guilt of a person charged with serious crimes determined by this manner.

I hasten to come to the topic. In this topic, he said, on page 2 of 19 of my print:

> "…the topic on which I have been asked to speak today is not…"—as—"in part because of its age, as well as considerable attention, it has consistently received, like Lord Devlin many years before me, I fear that this subject is not one on which 'it is possible to say anything very novel or very profound'".

It has been talked of and discussed ad nauseam. Trial by jury that is. He was asked to look at the continued relevance of it in the Commonwealth Caribbean. He said trial by jury:

> "…is one manner of determining the guilt or innocence of a person accused of an offence. Its history precedes both the European discovery of our islands and the political independence that most of us subsequently obtained."

He gave what is a jury. He said the jury is:

> "… (in common law tradition to which we belong) to a body of ordinary persons, usually twelve in number for capital offences and fewer in number for less serious offences, who are selected from a larger number summoned by the state and entrusted with the duty of inquiring into matters of fact in a particular trial in order to return a verdict solely based on the evidence that has been properly admitted before them."

I hasten to add, the jury, we would have heard speaking about today, a lot of peers, the word peers, P-E-E-R-S, which is a Latin word coming from *pār* which means on the same level, and being on the same level, it means therefore if I was charged and brought before a court for a criminal offence, my peers ought to be similarly circumstanced persons: lawyers, persons educated probably in my same social or economic strata. But what exists today, that is not, in fact, so. Peers remain the ordinary man and woman in the street.

Peers, as it exists today, when it was envisaged or peers that existed when it first started in the English criminal system, were people who were localized in a community, who were very familiar with the persons who they were coming to make judgment against and in most instances, they would have been aware of what transpired, and will have had some understanding, some prior knowledge. This is quite contrary to what exists, what it has evolved to today. Your peers are supposed the jurors that are totally ignorant of any of the circumstances that they are called upon to make a deliberation in terms of the facts and bring back a verdict of innocence or guilt.

The difficulty which was also pointed out, I think, in Sir Marston Gibson's address, quoting from another distinguished juror, is that in today's

evolution in terms of media, in terms of access to cell phones, access to YouTube, Google and these different search media, it is difficult when you empanel a jury and give directions by a judge; gives direction that you are not to pay any attention to anything, you are not to read the papers and so forth to secure and make certain that that is not going to take place.

And he gave an example, which may be a bit lengthy to give here, of an English case where in a jury trial where this woman was given directions; an educated person. She was, I think, a psychologist, a university lecturer and she was given the normal directions by a criminal judge: you are not to discuss this matter with anybody, you are not to read, so forth. But she went ahead in her quiet moment in the privacy of her house and google the case and found out a bit about it. So much so, she was so much excited or probably of her discovery that she came to the rest of her jurors and she started to discuss this with them, one of which reported it to the usher and the usher reported it to the judge. She was subsequently found in contempt of court and properly jailed.

And the reason that was brought up was to show the whole essence, the whole basis of a jury system as it existed then to now does cause for us to rethink, given the different dynamics that are now taking place that was not present at that point in time. So apart from it, very—I mean, it is a debate that has always brought quite passionate comments on both sides, for and against, but I think in today's context for Trinidad, we must realize that we have a runaway situation in terms of crime, and be it the Government, the Opposition, we as Independents, Members of the Senate, the public themselves, we all have a duty to try to make our country better, to make our country a safer place. We

are charged as legislators to introduce measures that we believe will meet some of these difficulties where the country, at this point in time, feels quite concerned and insecure for crime.

I am not at this point in time attempting to fashion a particular response to the Government's proposal. It is an attempt, as I have seen, to go somewhere in-between. It is not taking away the right to jury trial. It is not compelling that a judge alone—jury by a judge alone is mandatory. It is giving an option to the defendant to make that choice. And as we are on that aspect of the judge, I think it is not necessarily true to say, from my perspective, what I have heard just recently being said about judges live in Eiffel Towers. I think that thing is a thing of the past. I do not think that is represented in this modern day society, especially in Trinidad and Tobago.

If you look around here, the number of lawyers in here, we are all coming from a different background. We all congregate and lime and socialize in certain environments. A judge, by his very nature, in a small society, sometimes must exercise some level of circumspection in who "he limes or she limes" with because tomorrow morning, you might find that person coming before you and you may be compromised. But it does not necessarily take away from the fact that the judge is isolated from society and what goes on in society. That is far from the truth. That is very far from the truth.

Another aspect that brings about in terms of people being insecure about a judge alone, in the civil proceedings, a judge determines—the civil practice which I practise most in, they, on a frequent basis, determine questions of facts and questions of law, and they have to give reasons for the decision, which is

something that is absent and has been said before, and if one is being totally honest, which is absence in a jury case, a jury can give a decision based on the facts, set somebody free without giving an iota of a reason and they are not compelled to, and there is nothing could be done about it.

So, therefore, a judge who is constitutionally protected, a judge who is charged generally in dealing with matters in the civil arena of which I am accustomed to, more frequent than I did. At one point in time, I had a practise in the criminal court. When I left the jurisdiction, I decided I would not continue significantly in the practise in the criminal arena. But more so, in Magistrates' Court where anybody will tell you, any of the criminal lawyers present here or elsewhere will tell you, most of the criminal matters are dealt with in a magistrates' court and a magistrate deals with both law and facts and makes a determination and a magistrate can impose significant sentences against a person.

The safeguard for all of these in all of these incidents I am speaking about here is the fact that they can be appeal. They are supervised by a superior court to the fullest extent. So therefore, in an instance where you may have a judge dealing with a matter alone, he or she must give reasons for his determination or her determination which can be supervised by a higher court. Not so in the case when a deliberation and a decision is being made and brought back by a jury trial in a criminal matter.

I am saying this that we cannot—we must look at things in a very objective way and in a balanced way in order to arrive at a solution that is best suited and palatable for our community at this point in time because we all have

to live here. We all have to engage—when we leave here, we all going to homes, we all going to our families, we all going to be walking on streets or traversing some part of the environment before we get from here to our homes and we want to be safe. We want to know when we reach home, those who we have left there, we are going back to meet them and they are subject or a victim of a crime.

So there is merit for introducing and giving to me another option that if it can assist—it is not a solution, a total solution for what has happen. To me, we need better trained police officers, we need better resources. I think the cars and so, for police, seems to be a waste of time because I can travel sometimes on the road and not see a police car in sight hours or a policeman walking the beat for hours. Before we even get to the judge making a determination, whether judge and jury or judge alone, if the evidence is not properly collected that can suffice scrutiny by a court, it makes no sense in the system. So we have the element, we have that aspect to deal with, with better training for our police officers, a better equipped police officer. We have the problem with the DPP department. The DPP department apparently has been for a very long time understaffed, undermanned. They are only, at this point in time, able to attract lawyers that are not very well experienced to deal with very complex matters and certainly puts the prosecution at an advantage.

And then we have the very court system as well. We have the court system that is overburdened. Probably given the litigious nature that Trinidad has now evolved to, probably we need a lot more judges, much more physical space for judges as well, probably more time for the judges as well. And then

we have the defence counsel. As you heard, I do not know how true it is, I have not seen the stats so I do not want to repeat something that may be in error but I stand to be corrected, that of over 2,500 attorneys-at-law that were called to the Bar or received their licences, their practising certificate last year, out of 2,500, there are only 20 lawyers at the Criminal Bar. That is woefully inadequate in terms of providing defence for the public. That is woefully inadequate if that so and therefore, that again, is a problem.

What can be done to assist in making that—I mean, certainly a shortage of defence counsels will certainly impact upon the trials, how quickly trials can go. It is probably the time to have a public defender. The legal aid system, we have heard, it is inadequate at this point in time. I remember before I left to go overseas to practice, eight years after being in South Africa, I got a cheque from legal aid for a criminal matter I did for $300. I could not remember, I mean, eight years after. So imagine you are living on legal aid work as a young attorney, you would not survive. So these things need to look at.

So I think there are a number of things have to be addressed in trying to bring about some solution that is favourable and will take us to the position where we want to be, which is to have a more efficient judicial system, generally speaking, which will assist us in having a more secure environment. Because if crimes are committed with the ease in which they are and the frequency and the detection rate and the prosecution rate and the conviction rate are not certain, I guess we are treading a very dangerous—we are on dangerous grounds, and unless we can put our heads together and not our emotions and try and fashion what is best at this point in time for us, we will be here just arguing

and exchanging unnecessary insults in some instances rather than trying to build a future and build a base and lay a foundation, that we all can be proud of.

I mean, a good example that just came out of the FATCA Bill is the role that the Opposition played in helping to fashion a Bill that was palatable to everybody at the end of the day. I mean, it was not a perfect Bill. I mean, we could never get perfect law coming out of here but we always have to strive to have a perfect—as perfect as it can be given the resources, given the circumstances.

And Madam President, as the learned Chief Justice of Barbados said, there is little novel contributions or things you can say about the particular argument. It is one of policy, it is one of social engineering and probably, as he also said, that you know, one would—sociological and criminological study was done by Prof. Deosaran who is well respected in our jurisdiction, in the Commonwealth Caribbean, that probably it is time to do another one so that we can have better facts as to where we ought to go and what exactly would suit our particular need as a cosmopolitan, multi-ethnic, multi-religion type of environment or society.

With that, I will urge that the Government, I will urge my fellow Senators, that we try and come up with something that we believe that may make sense. This may be the beginning of something else. I mean, I do not know what was the selection process in bringing this as opposed to something dealing with the police or something dealing with a number of other things in the system, but we need to look at it in a comprehensive way at the end of the day and therefore, advance the common cause and the common objective of the

people, which is to have system, a criminal justice system that is properly oiled and that will deliver justice in a timely manner and in a reliable manner. And as is the saying, justice must not only be done but may be seen to be done and I hope this is what—whatever conclusion we come to at the end of the day, we would have achieved that in this debate.

I thank you very much. [*Desk thumping*]

Sen. W. Michael Coppin: Thank you, Madam President, for the opportunity to contribution to this debate. The Attorney General began his contribution by outlining these substantial amendments that this Bill seeks to effect and he commenced by speaking to the two pieces of legislation, those namely being the Offences Against the Person Act and the Criminal Procedure Act. These are two pieces of legislation that have been on this country's book for a number of years. So, Madam President, it is quite admirable that the Attorney General has not—and if I may be permitted to use a word—to rest on his laurels but has instead taken the bull by the horn, recognizing the situation, the unfavourable situation as it relates to crime and criminality in this country. And he has looked far and wide to different jurisdictions as has been communicated by the Bill Essentials, to Canada, to New Zealand, to United Kingdom, and we have before us today, a piece of legislation, which, having regard for all the comparative pieces of legislation, seeks to amend these two pieces of legislation.

6.30p.m.

Now, Madam President, much has been said in this debate by eminent lawyers/attorneys about the merits of the jury trial, and I would like to begin firstly by pointing out that this debate is not an indictment on. It does not seek to remove.

It does not seek to interfere with jury trial. It speaks nothing about removing the right to jury trial. But in fact, and I do not think anyone who has read the Bill can deny, it is an undeniable fact, that this Bill adds rather than takes away. [*Desk thumping*]

And I have much respect for my learned friend, Sen. Chote, who is Senior Counsel and is in fact the Chairman of a committee on which Sen. Sturge sits and Sen. Rambharat sits, and we were all very, very concerned when we commenced an enquiry and the criminal case flow management system in Trinidad and Tobago. And it is during this committee that a number of persons, eminent jurists, the DPP was invited. Unfortunately, we were unable to get the submissions of the Judiciary because they recognized the separation of powers and there was a degree of tension between the parties as to whether or not the committee should be subjected to an enquiry process of that nature. So we were unable to get the full views of the Judiciary. But, Madam President, what we do have, and I know Sen. Chote will agree, is statistics. I would come back to that point a little later.

But what we do have is statistics given by none other than the Chief Justice, the head of the Judiciary who is in charge of the administration of justice, and we have his speeches, 2012, 2013, 2014. And like a recorder stuck on repeat— [*Interruption*]

Sen. Sturge: A recurring decimal.

Sen. W. M. Coppin:—a recurring decimal, thank you, he says the same thing every single year about a number of things, one of them being the jury system and the impact it has on the case flow management and the delays it may cause.

Now, Madam President, I want to deal with that point because the Chief Justice is very clear in his 2015 speech made at the beginning of the law term

about the impact that jury trials have. One thing that stuck out to me, while I sat in the audience listening, it is not the issue of constitutionality but he gave particular examples of the ways the jury system has impacted on the criminal case flow and the delays it causes in our jurisdiction.

Madam President, one thing that stuck out, it is not the only thing, was he spoke to the issue of hung trials and he expressly stated that 41 per cent of trials are recycled into the system as a consequence of hung trials. So, if we understand and if we take the Chief Justice at his word, hung trials are a problem. Juries have problems coming together and coming to a conclusive unanimous verdict, and as a consequence, it leads to a number of recycling back into the system of matters and that is a concrete undeniable fact as stated by the head of the Judiciary of Trinidad and Tobago.

So, Madam President, I believe it was, well, I know for a fact because I have it in the *Hansard* and I heard with own two ears that Sen. Ramdeen does not believe that this is a matter of the removal of jury trials. So for any of his colleagues to come afterward and to say otherwise would be in stark contradiction to what Sen. Ramdeen has said. He said—it is on *Hansard*: I do not believe that this is a matter for the removal of trial. He says about interference but he says this is not a matter of the removal of jury trials. Sothat is on the record. So I do not expect tonight or whenever—[*Interruption*]

Sen. Mark: But you cannot speak for the Opposition.

Sen. W. M. Coppin: Well, it would be inconsistent of the Opposition. It would be inconsistent of the Opposition, Madam President.

Madam President: Sen. Mark, you do remember earlier when I asked Sen. Sturge to desist from the commentary? Can you also abide by that ruling, please?

Continue, Sen. Coppin.

Sen. W. M. Coppin: Madam President, thank you for your protection. I did not want to go into this debate because this issue is much too serious for the politicization of this issue. It is just too—it is just—Madam President, I did not want to do it. But, Madam President, the United National Congress, the Opposition, they have a way of saying one thing today and something totally different the other day. [*Desk thumping*] And they would have the country believe that they are somehow a legitimate party that cares about the interest of the people of Trinidad and Tobago. Madam President, I wanted to believe them because I had faith in people to change. I really wanted to believe that they—

Madam President, in doing my research, I realize that there was a Bill. This Bill had been on the agenda of the United National Congress in 2015. And I found an article dated September17, 2013, and the hon. Opposition Leader, as she was then the Prime Minister of Trinidad and Tobago, is quoted as saying—

Madam President: Sen. Coppin, when you are quoting an article, can you give, is it a newspaper, please identify the newspaper, the date.

Sen. W. M. Coppin: I am guided, Madam President. This is *Newsday*, Tuesday, September17, 2013, and it speaks to the United National Congress, Government at that time, plans to deal with jury systems and it says here in that article:

> "Prime Minister Kamla Persad-Bissessar yesterday disclosed that legislation to treat with the issue of trials without a jury was being drafted to"—with—"similar legislation for plea bargaining..."

And that is what the hon. Kamla Persad-Bissessar had to say.

> "In the High Court, trial by judge alone has always been an option, although rarely exercised...

> The conventional argument is that juries are much more in touch with life on the ground and that somehow this translates to a truer verdict. In my experience where the issue is the determination of a legal issue of guilt or innocence based on the assessment, the weight of the reliability and complex evidence for which jurors are not trained..."

But, Madam President, they would come here and have us believe somehow that this concept is novel to them. It is new. It is not and I think that is shameful, Madam President. I think each one of them should hang their head in collective shame. They cannot come now and say otherwise. This is not an issue about constitutionality and I saw the press conference of Sen. Sturge and Sen. Ramdeen and I was perturbed. It had me up all night long, all night long, all night long.

Madam President, I know Sen. Sturge is going to get up and speak about constitutionality, but the Parliament, Madam President, they provided us with the Bill Essentials. And in those Bill Essentials, it spoke to a number of cases. One being *R v Turpin*, which is a Canadian case, and that case spoke about the Canadian legislation allowing persons to waive their right for jury trial, and the Canadian court expressly said that such an allowance for persons to waive their right for a jury trial is not unconstitutional. It does not affect the right to a fair trial.

Sen. Ramdeen, in his contribution, he got up and he also spoke to issues of constitutionality. He said he took no comfort from the Chief Justice speaking about issues of human rights and that he would rather persons who are human right activists to speak to issues of the constitutionality of those issues.

Madam President, I found that quite interesting, because there was a judgment in 2010, in the United Kingdom, that related to the first trial by judge alone in a number of years. I think it was 400 years. The defendants in that matter,

they took their case as far as to the European Court of Human Rights (ECHR).

Madam President, it is interesting that in that judgment, the court is clear, pellucidly clear, when they say that there is nothing, there is no violation of the right to a fair trial, per se, by trial by judge alone. It is clear. So when you speak about cherry-picking, when the hon. Sen. Ramdeen, Madam President, speaks about cherry-picking, he appears to be a master of the art, because in one breath he asked for human rights activists and persons who are authorities on human rights to pronounce on such matters and yet the very case to which he refers was taken to the highest court that deals with human rights and his argument was totally annihilated.

Madam President, for the benefit of Sen. Ramdeen, and I know he knows, you know. Well, I believe he knows, because I believe he is a competent attorney. I know he knows. He refers to the case. It is a Bill Essentials, so he must know because he has taken the opportunity to go to our local laws to deal with a point about the constitutionality of particular sections of the Offences Against the Person Act. So he is a man that appears to be very trained in the art of legal research.

But, Madam President, he appears to have gotten that one wrong as well. Sen. Ramdeen, perhaps, he and Sen. Sturge decided to caucus and then they realized that really he got it wrong. There is no issue of constitutionality. So how can we grab the headlines? How can we grab the front pages in tomorrow's newspaper? So they decided to hold up for us something which is totally inaccurate.

Madam President, I had the opportunity to look at this case that was held up by Sen. Ramdeen, Gilbert Evelyn and the Attorney General, 2007. It is right here.

Sen. Sturge: He cannot even pronounce right. Get the pronunciation first.

Sen. W. M. Coppin: "Doh" not worry about the pronunciation. It is the contents. What is contained herein is important, and he spoke about this matter of section 4A(6) being taken all the way to the Privy Council and all that stuff. He referred to some cases in particular.

Sen. Ramdeen: If the learned Senator is quoting me, I never said that Gilbert Evelyn was taken to the Privy Council.

Madam President: On a point of order, please, please. That is not a point of order. Continue, Sen. Coppin.

Sen. W. M. Coppin: Madam President—[*Interruption*]

Madam President: Just a moment. Sen. Ramdeen, please. Okay.Please. Desist from what I am hearing and seeing. Okay? Sen. Coppin, continue.

Sen. W. M. Coppin: Thank you, Madam President. Now, Madam President, we all gave the hon. Senator the opportunity to speak to what appears to be inaccuracies and we allowed him. So I would ask for your protection. I would ask that, through you, Madam President, the hon. Senator give me the opportunity to respond. We are in Parliament.

Madam President, he spoke to a case by the name of Ian Seepersad and Roodal Panchoo the appellant and he claimed that this particular judgment of the Privy Council spoke to section 4A(6) and 4A(7) of the Offences Against the Person Act. Madam President, I have traversed this judgment and I do not find one word that speaks to the Offences Against the Person Act. In fact, this judgment speaks to the Children Act, not 2012 but the previous, quite previous, 2012. So I do not understand how the hon. Sen. Ramdeen could come to this honourable Senate, being learned as he is, and try to—I do not want to say hoodwink because that might be unparliamentary. But I would say that it was clearly an effort to grab the

headlines, to obfuscate, to divert attention from the failure of the other side to come to this honourable Senate and to deal with the matter of this Bill, Madam President.

Sen. Ramdeen: Madam President, 42(9).

Madam President: Well, you are being premature with 42(9). When Sen. Coppin is finished, I would allow you to raise the Standing Order at that point. Okay?

Sen. W. M. Coppin: Madam President, the hon. Senator is a very skilled attorney-at-law and must understand the importance of giving the other sidethe opportunity to present its case. He is an experienced criminal attorney and I do not expect that he will continually interrupt me. I beg of him, through you.

So, Madam President, I have looked at the case, the Privy Council judgment on Ian Seepersad, and I do not see anything mentioned about the Offences Against the Person Act. So it appears he got that absolutely wrong again. It is meant to distract. And I have looked at the—I had the opportunity to look at the published versions of the Acts of Parliament, published by the Law Review Commission, whose job it is to constantly revise the laws, and in this published version, the said section refers to the unreported judgment of Gilbert Evelyn was in fact repeated in 2011 and 2014. So the Attorney General is not to blame. In fact, he is not responsible for the publication of Bills, and Acts of Parliament, and if he were, Sen. Ramdeen and Sen. Sturge may ask the question: Why did the hon. Attorney General, Anand Ramlogan, or any of the other Attorneys General, during their time, allow for this travesty to continue year after year after year? No answer.

Who was government in 2011 and 2014? If the case is published in 2007, then you allowed it to be published—and in 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, until you were unceremoniously removed from government by the

People's National Movement. [*Desk thumping*] As the hon. Minister of Finance always says, you can ask yourself, you can ask yourself.

Madam President, I looked at the Offences Against the Person Act and the amendments that ought to have been placed is the removal of "at the President's pleasure" or "with the courts' pleasure". That is a very minor, minor amendment. And if the court has given pronouncements on how it is to be interpreted, there is no reason for us to come here and make a big hullabaloo about it. It really, it is undisturbed. It is inconsequential.

Madam President: Sen. Coppin, hon. Attorney General, please.

Sen. W. M. Coppin: Madam President, I looked again also at section 4A(7), which Sen. Ramdeen said was struck out and it was not. What happened was a number of words were added. The words "or the judge as the case may be". So, I really do not understand why the hon. Sen. Ramdeen would come here and perpetuate a lot of half-truths to this honourable Parliament, to create a sensational storm in a teacup, Madam President.

So, I think I have significantly—I spent a lot of my contribution focusing on Sen. Ramdeen, and I really did not intend to come here and speak to those matters, but he raised it and I thought it would be remiss of me to allow such untruths to remain on the *Hansard*, Madam President.

Madam President: Sen. Coppin, please find another way to present, to put forward your arguments. Talking about untruths, that is unparliamentary. Okay?

Sen. W. M. Coppin: I am guided, Madam President. Madam President, I want to return to the real Bill, the real issues in this Bill, and it was said that there was no legitimate aim by several commentators on the other side and I believe that that is incorrect. There are in fact several legitimate aims to be found in this piece of

legislation.

Madam President, perhaps, the most obvious of those legitimate aims has to deal with the delays in the judicial systems, which some commentators in this Parliament doubt will be affected by the reform. But I say I beg to differ on that point. And there is the other issue, which the Attorney General would have spoken very briefly to, the issue of remandees, or the condition of remandees at the prisons in Trinidad and Tobago.

Now, Madam President, Sen. Sturge and Sen. Rambharat, as well as the Chairman of the Finance and Legal Committee, Sen. Chote SC, rightfully SC, would have had the opportunity to hear the Commissioner of Prisons give certain statistics about the number of persons held in remand and the conditions under which those individuals live.

Madam President, what stuck out to me is that this mantra was repeated not only by the Commissioner of Prisons but also the Inspector of Prisons and the Inspector of Prisons would have spoken to the remandees being a bit more violent than the average prisoner, and that they would have stopped at a certain amount of psychological issues by virtue of their sentence, their conviction, the time spent, not being known to them what their—the actual conviction was not there, so they did not know how long they were going to be in prison for, and that played a great much on the minds of those remandees.

In 2016, November, we published a report and it was laid in Parliament and it spoke to the conditions of the remandees. I just want to read a bit from that report at section 4.5(7) at page 29, in which the Commissioner of Prisons submits that there is an issue in remandees of managing and separating gang members, effectively managing and controlling inmates. There is a challenge of

overcrowding. There is a challenge in finding and conducting rehabilitative programmes in prisons. There is overcrowding and it has given the propensity for conflicts and this has caused a combustible situation in the Remand.

I know Sen. Sturge is very passionate about this issue because each time we have discussions in the Finance and Legal Committee, he always raises the issue of remandees and it is always at the top of his agenda. So he must know that anything we can do as a Parliament to eliminate or to ease up the numbers in Remand Yard is in fact a legitimate aim that should be pursued by this honourable Senate.

Madam President, this particular legislation is not retroactive but what it would do, if it is effective, is that it would allow persons who are charged to say to the court I understand the situation in Remand because I have been told about it. I understand that persons are there for 15 years, we were told. I know that persons there are suffering. They have psychological issues. There is an issue of violence. I am a rational individual. I understand that if I could be tried and if I am innocent I have no problem submitting myself to a judge alone. And a rational individual—there have been a number of psychological assessment and studies that were done on this issue.

In fact, the English, in 1998, published a series of statistics on the conditions or the factors in which persons electing a mode of trial take into consideration, the factors, Madam President, and one of those is whether or not they believe they have a better chance of being acquitted by a judge or a jury. And, Madam President, those are the types of issues that we as a Parliament must be focusing on in this Bill, because this Bill, Madam President, it does not eliminate jury trial; it simply gives the defendant or the charged, the ability to elect whether or not he will be judged by a judge and a jury or a judge alone. So we must ask ourselves:

What would a person charged, fully aware of the conditions in Remand Yard, how will he approach this question? What are the factors he will consider? If he is innocent, he will say I have no problem being judged by a judge alone, notwithstanding the fact, Madam President, that statistics have shown that there is a higher chance that a judge or a magistrate alone will find someone guilty than a jury.

The rate of acquittal for juries is higher. I think the rate is 40 per cent. I could be corrected, but there are a lot of studies that have been done on it, and I hope that Sen. Sturge or whoever or a number of the Independents, in fact Sen. Shrikissoon or anyone who has a liking for statistics, would do a study of the mountains of literature that exist on the topic of jury trials and judge-alone trials.

Madam President, a lot was said about the Magna Carta and the sanctity of jury trials and a lot of persons, a lot of commentators, a lot of Senators in this House have made as if jury trials have also been a right. Now, Madam President, this is not a debate about jury trials, but since the argument has been made, I would like to touch on that point very briefly. Because the Home Office, the Parliament of the United Kingdom, in the year 1999 to 2000, when they were considering the amendment of the jury trials mode of trial to allow judge-alone trials in the United Kingdom, there was a report in 1999 to 2000 that dealt with that and it was published by the Parliament, if you allow me to find it. But in any event, that report, Madam President, it gave a history of jury trials and it spoke to the Magna Carta.

7.00 p.m.

It was very interesting that in that paper they would have spoken to a number of commentators who themselves referred to the history of jury trials and

the statute, for instance, of Westminster. The statute of Westminster, Madam President, for those of us who are interested in history, spoke to jury trials not as a right, but it spoke to the fact that if a defendant did not choose a jury trial, he would be subjected to the most inhumane punishment. So, in fact, the jury trial was a system that was not natural to us at first, but it was imposed upon the criminal justice system.

Madam President, I have a quotation here. It spoke to—the statute of Westminster provided that felons who refused jury trials should be committed to a hard and strong prison, prison forte et dure. Walker notes that the words "prison forte et dure" became transformed into "peine forte et dure" a form of torture whereby in the 16th Century the prisoner was placed between two boards on which increasingly heavy weights were placed until he consented to trial by jury or died.

So, if we know our history, Madam President, we would know that not everybody wanted jury trials. It is something that evolved over time and, in fact, in the 19th Century, the mid-19th Century, Madam President, we had the evolution and the introduction of trial by magistrate alone. If anyone understands that this debate is about the mode of trials, the election of—[*Interruption*]

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

Sen. W. M. Coppin: If we understand that this debate is about the mode of trial, then a good place to look would be at either-way offences in this country and how persons exercise their right to a jury trial alone, to jury and a judge or a trial by judge alone and the Chief Justice made the point. We have over 90 per cent of all criminal cases being tried by magistrate alone. There has been no song and dance about it. No one gets up and questions the fairness of the trials to either-way offences when the defendant elects to be tried by a magistrate alone. Nobody

questions it.

But all of a sudden, Madam President, we have a proposal that says to a defendant you can choose to be judged by a judge alone, not only for those offences that are identified in the Summary Courts Act, which speaks to those offences which can be tried either way but, in fact, you have the power, the power is in your hands to make a rational decision as to where you believe you will be best placed to get justice in this system, Madam President. So the power is in the hands of the accused.

So it is mind boggling to me, it is unfathomable that anyone, knowing that the mode of trial exists for certain offences, to come where the Government proposes and to do something which has been shown in Canada not to be unconstitutional; has been shown by the European Court of Human Rights as not being unconstitutional; has been shown in Jamaica, Madam President, and the Attorney General would have referred to it—a case that dealt with the Gun Court and the constitutionality of having grave crimes dealt with by a judge alone. It was fully ventilated by the Privy Council, and yet we have eminent jurists like Sen. Sturge—well, Sen. Sturge has not spoken yet—Sen. Ramdeen coming and speaking about constitutionality, Madam President. He should know better.

So, Madam President, I think that this is really an issue that any right- thinking citizen who takes the material that the Parliament has compiled, the Bill Essentials, has taken a little time to go and do some research, who has gone to the Home Office website, has gone to the Parliament of England and Wales and has researched similar proposals—and Sen. Ramdeen is right, this is not a Bill that seeks to deal—and I think Sen. Sobers spoke about witness tampering. This is not about witness tampering. This is much more than that. There are several legitimate aims that can be had in this Bill. The right is in

the hands of the accused and that could never be wrong. If the accused, Madam President, is given the power to choose whether or not he wants his trial to be conducted by a judge alone or a jury and a judge, Madam President, I say, power to the people. I thank you, Madam President. [*Desk thumping*] [*Sen. Ramdeen on his feet*]

Madam President: You have two minutes.

Sen. Ramdeen: Madam President, I do wish to correct the *Hansard* where Sen. Coppin indicated that I said that the Evelyn matter had gone to the Privy Council. That could not be possible, Madam President, because I was counsel in the Evelyn matter and, therefore, I would know that the matter completed at the High Court.

> But he also said that I made reference to the fact that I quoted a case with Seepersad and Panchoo that I did say went to the Privy Council and it dealt with the Children Act and that I made reference to the fact that in my contribution I said that it dealt with the Offences Against the Person Act. That also cannot be correct, Madam President, because I argued Seepersad and Panchoo in the High Court and in the Court of Appeal. [*Desk thumping*] And then he went further to make reference to the fact that I misquoted a case that dealt with the Children Act in making reference to the unconstitutionality of the Offences Against the Person Act. Well, that also cannot be correct, Madam President, because I also did Mukesh Maharaj in which I was counsel and Justice Kokaram to quote him at paragraph 22 said:The alleged distinction between the Children Act and the Offences Against the Person Act that requires a detention of an individual to be at the pleasure of the President is in my view esoteric.

So I was correct in all of the quotations that I made, and I was not misquoting or misleading the Parliament. Thank you, Madam President, for the opportunity. [*Desk thumping*]

Sen. Khadijah Ameen: Madam President, I rise to contribute to this debate on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017. I have listened to the submission of the Attorney General and several of my colleagues on various sides of the Senate. Madam President, there is a premise that if you put a frog suddenly into boiling water, it will jump out immediately, but if you put it in a pot of cold water which is brought to boil slowly, it will not perceive the danger until it is too late, and the frog by then will be cooked because it will not be able to jump out of the pot. [*Desk thumping*] Madam President, this story is often used as a metaphor for the inability or unwillingness of people to react to or be aware of threats that arise gradually.

Madam President, it is my view that as I contribute to this debate that we must be mindful of a number of other measures taken by this Government which can be argued undermines the rights of citizens and the sovereignty of our democracy in Trinidad and Tobago, albeit in small measures, small apparently harmless measures. Members on the other side indicated, this is just an option, it does not remove trial by jury, this is an addition and this is a choice; small, apparently well-meaning measures that undermine gradually, raising the temperature under the pot with the frog.

The argument comes from the other side that this is reasonable,particularly in the face of rising crime and violent crime and murders, in particular. The Attorney General quoted some statistics of the murders. I know his Government cannot be proud of the number of murders as it spirals out of control in Trinidad and Tobago. But it is important for us to remember that it is incumbent on the Government of the country to deal with crime, to deal with justice, to ensure the safety and security of our citizens and to ensure that in the case where we are facing such an

alarming murder rate and alarming statistics where violent crime is concerned, that our citizens are not backed into a corner where any measure in their desperation seems like deliverance.

And that, Madam President, is what this Government appears to be doing, backing the citizens into a corner because they have not been able to deal with crime and violence and murder in our country, and putting our citizens into a position where they are so desperate that they are willing to give up their rights to have their safety. [*Desk thumping*]

Madam President, relatively recently in this very Senate, you had the debate on the SSA Bill which was a classic example. In the public domain as well as here in the Parliament, there was the argument of the citizens' constitutional right to privacy and, of course, the Attorney General indicating that in his opinion he did not believe that there was an absolute right to privacy by our citizens. But in the public domain where we who sit in Parliament, perhaps not in this House, but we who sit in Parliament are judged by the public.

In the public domain there were many who were of the opinion that things are so bad that they were willing to give up one of their rights protected in the Constitution to ensure the safety of their families and their own safety and security in the face of violent crimes. A lot of it, Madam President, comes back to the inability of the Government to make citizens feel comfortable that they can adequately deal with crime.

I also must mention, as the Attorney General did, even though it is not yet before us, it is before the other House, the removal of the preliminary enquiries and, of course, because that will be expected to come here, I would not go into that, Madam President, but certainly it is one thing that we must also consider. We

must consider as well the fact that very recently it was in the Miscellaneous Provisions (Marriage) Bill, 2016 that by a decision of a simple majority, the protective requirement for a three-fifths majority was removed. Madam President, in the words of Michael Harris, in the *Express* column, January 22, 2017, speaking of the Attorney General's utterances after this situation in the Senate, Michael Harris said and I quote:

> "What is worse is his justification, indeed his boast, that he did so for 'tactical' reasons so that the support of the Opposition would not be needed for the bill's passage when it reaches the House of Representatives."

Madam President, in my view, the action taken in that debate— [*Interruption*]

Madam President: Senator. Sen. Ameen, that debate has concluded here. You have made reference to it, but I do not want you to be revisiting the debate. Okay?

Sen. K. Ameen: Thank you, Madam President. I had no such intention, but I thank you for your guidance. Madam President, I mentioned the situation and the utterance of the Attorney General interpreted by the columnist as a boast, as an act that undermines the protections set out in our Constitution and in our system of governance, that undermines the role of the Opposition where a three-fifths or a special majority is required for any measures that it normally would be required for. The clear indication is that the Attorney General is prepared to just toss those things aside.

Madam President, the role of the Attorney General as a Member of Government, you know, there are two separate roles, of course—and he has the responsibility to represent the Government in certain legal matters. But, more than that, the sacred part—of course, representing the Government and so on can be

interpreted as the political part of his duties, but another key element of the role of the Attorney General is to be the guardian of the public interest. [*Desk thumping*]

And Madam President, when the Attorney General makes utterances like these, it clearly brings into question whether his intent is to guard the public's interest and I would ask the question: is it not dangerous for an Attorney General to undermine the rights of citizens or the role of the Opposition in our democracy in that manner? I think it is very important for the Attorney—[*Interruption*]

Sen. Gopee-Scoon: Madam President, on a point of order, 46(6).

Madam President: Yes. Sen. Ameen, present your arguments a little differently. You are imputing improper motives.

Sen. K. Ameen: Thank you, Madam President. Madam President, I will end that section just to indicate that the population ought to be wary of an Attorney General who would make a boast of that nature.

Madam President, in my opinion, this Bill really sort of gets the public to accept certain things gradually that could take us down a very slippery and dangerous slope. It is my opinion that this Bill really sort of tests public opinion and gives the public the opportunity to accept the removal of juries in trials and indicates that, you know, well it is a choice, it is a harmless choice. In a society where public opinion and public acceptance determines political power, in our democratic society, the Government is limited or restricted based on public opinion from simply being a runaway horse, but that does not restrict a Government from being deceptive towards the population. [*Desk thumping*]

Madam President, it is my opinion that the very appearance of being harmless is the danger in this piece of legislation brought, [*Desk thumping*] considering that later on, depending on the direction that the Government or the

Attorney General wishes to take the country or the Parliament, other measures can be brought. The holder of the office may not be the same individual, but the fact is that our Parliament and our Attorney General, as the guardian of the public interest, must ensure that we do not begin to go down this slope and that is where this Government is taking us.

I repeat, again, Madam President, that at this time, citizens of our country, many are feeling a lot of desperation because of the crime situation and because of the fact that this Government has been able to offer the population no hope that they will get crime under control. [*Desk thumping*]

Madam President, it is a well-established principle that the mere appearance of bias is sufficient to overturn a judicial decision. It also brought into the common parlance the often-quoted—mentioned by previous speakers, I believe—not only must justice be done, it must also be seen to be done. Madam President, the question will be asked: How does this measure improve justice or the appearance of justice being done in Trinidad and Tobago?

A fair trial is certainly the best means of separating the guilty from the innocent and protecting against injustice. In our country, at this time, given the challenges faced by the Judiciary, I would expect that the Government would bring measures to strengthen and allow the Judiciary to be more efficient, including better resources.

I want to mention that I know that one of the plans of the previous Government was to construct that judicial complex in the Trincity area. At the time, I was the Chairman of Tunapuna/Piarco region when those plans were drafted and, of course, part of the rationale was that the proximity of the prison to reduce the cost of prisoner transport; to provide more areas and more courts and to

speed up the efficiency. Perhaps the Government should consider the fact that many courtrooms operate in less than satisfactory conditions. If you want to look at the efficiency of the justice system and to give the Judiciary that support, those are areas you should look at, bringing before your Cabinet to ensure that they are well funded.

Madam President, I spoke about the right to a fair trial and without that right, the rule of law and the public's faith in the justice system will collapse, and by not funding and not equipping our Judiciary, a Government could undermine the justice system. The right to a fair trial, Madam President, is one of the cornerstones of a just society. And, again, I ask: Does giving the option of trial by judge alone, as outlined in the Bill before this Senate, improve the fairness and efficiency of the justice system?

There are numerous—I mentioned numerous ways that the Government should be supporting the Judiciary and, perhaps, if the Attorney General could have the information in his wrapping-up, just a brief mention to indicate what, if any, are the plans with regard to the complex, that judicial complex that was proposed in that Trincity area.

Madam President, many of my colleagues questioned the right of the accused to a fair trial. They questioned the right of the victim to speedy justice. This morning I had a call from a member of the public—a businessman, a well-educated person, a previous holder of public office—and he expressed that he was most upset by what he saw as the Government giving the criminal a right to choose: do you want burger or do you want fries? I had to remind him that people who are before the courts are presumed innocent until they are proven guilty, but with the frustration with the low rate of detection by the police, and even when

they go to court because of the length of time some trials take, the fact is, the reality is, that once a person is accused, in the public perception they are considered guilty.

So it is important for us to ensure that if we want to preserve that innocent until proven guilty principle that we ensure that the delivery of justice is swift and efficient. But that is the type of frustration that law-abiding citizens who contribute to the well-being of this country, that is how they feel sometimes.

But what we also must look at, Madam President, is the right of the citizen to participate in the justice system by being a juror. [*Desk thumping*] The jury represents the collective conscience of our society. In the United States, as late as 1942, only 28 states had laws which allowed women to serve as jurors. The Civil Rights Act of 1957 gave women the right to serve on federal juries, but it was not until 1973 that women could serve on juries in all 50 states.

In the United Kingdom, where Trinidad and Tobago inherits our systems of governance, the Sex Disqualification (Removal) Act, 1919 enabled women to serve on juries, but their interventions were restricted to "post-verdict fact-finding of a feminist nature". So the questions that they really had to answer were things like: is the women pregnant? As opposed to whether the person was guilty or not. So even for the fact that the role of the jury and the citizens' right to sit on a jury did not come about easily and, as such, should not be so easily dismissed. Any dismissal, Madam President, even by giving a choice, in my opinion, undermines a well-established right of the citizen to participate in the justice system. In Trinidad and Tobago, the right to be a part of the jury comes alongside the right to vote and should be treated with the same sanctity. [*Desk thumping*]

I congratulate young Sen. Sobers on his contribution [*Desk thumping*] during

which he mentioned several countries where trial by jury had been removed, namely India; and he spoke about the caste system and the challenges that presented and South Africa where because of apartheid it was difficult to have a jury of your own peers.

Conversely, in Trinidad and Tobago, the very cosmopolitan nature of our country strengthens the argument for the need to ensure that juries remain intact. The right to a fair trial in a place like Trinidad and Tobago where we have so many different races, religious practices and cultures: what are the possibilities when there are crimes committed where the accused may have been influenced by his cultural background and his sincere belief that what he was doing was right? What are the possibilities that the judge may be able to identify with it?

7.30p.m.

Madam President, I really do not think it is necessary for us to go into justifying those arguments that have been had in several places all over the world with regard to the possibility that a judge may have the same educational background, the same socialization, the same psyche or way of thinking as the accused.

Sen. Roach in his contribution advances even another argument in support of the value of keeping the jury system intact, and that is our small population. He indicated, and I will just paraphrase, that a judge must be circumspect with regard to who he socializes with in case one of those persons he "limes" with, appears in front of him as an accused. That is why we have a 12-member or a nine-member jury to insulate situations like that and to buffer, because in our small society, in our small country, our population, it is very likely that we would have interacted with people. But it is ironic that no one mentioned that the association is not often

between the judge and the accused.

Very often a person who is a judge and in the legal fraternity would socialize, go to the same schools, play golf, be part of the social circles as attorneys and very prominent attorneys who represent accused persons, and therein you would have had in the past that perception that a judge could be biased, not towards the accused but towards the attorney who might be his partner or somehow related. There could be a perception in this country that justice works better for moneyed people. [*Desk thumping*] There are a number of cases on record where the decision of the judge was so skewed that the judgment had to be turned down. I would mention Sonia Farfan, Brad Boyce, Vijay Narinesingh, and the fact is that while the facility to appeal and go to the Privy Council exists, the number of years it takes to reach there, again justice delayed is justice denied.

Sen. Sophia Chote, Senior Counsel, also touched on the background of some judges in terms of their experience and, again, speaking to their perception and the way they would look at things. All of these, Madam President, I think are strong arguments to just leave the thing alone. There are so many other things to be dealt with, but the Government will reiterate that this measure is simply a provision of a choice and, again, the danger is in the very appearance of this being harmless.

As I wrap up, you know, every time I come to this Parliament and I sit here to serve and to speak, when the UNC Senators speak, when the Opposition Senators speak, we do not speak on behalf of 300-and-something thousand people who voted for the UNC; [*Desk thumping*] we speak on behalf of the entire country as a means of a check and balance against the Government. So I cannot contribute to this debate without bringing the question into this House as to the relevance of this entire debate to the average citizen.

You know, Madam President, there is a lot of cynicism, not only in Trinidad and Tobago, but throughout the world with regard to the attitude towards politicians. There are many people in this country who believe that this Parliament and this Government and politicians talk and waste a lot of time. Today, you have the Government bringing a Bill before us, and they are saying, "Oh, this is a harmless measure", and then we are asking what is the real difference you are trying to make here? And the answer is really none, and the truth is that this time could be better used dealing with measures that could reduce crime, reduce violence and bring about efficiency in the justice system.

Madam President, I call on this Government to stop the PR and get down to the real work of running this country. There is no empirical evidence that the dangers that are outlined in the arguments to remove juries and so on, exist in this country. This is a PR exercise, an exercise in public relations by the Attorney General, by this Government, to give the impression that they are dealing with crime, when they have no clue how to deal with the issue and how to deal with the matter.

Madam President, I do not regret having the opportunity to speak in this Parliament, but I want to remind every Member on the Government, Opposition and Independent Benches, that whatever we do here must be relevant to the people of Trinidad and Tobago. It is very easy to think about political agenda and so on, and of course we belong to political parties and that is how you get power, by having popularity and so on. But when you come to the House and you set your policies, you set your programmes, I urge you, let the best interest and the welfare of the people of Trinidad and Tobago take foremost importance.

I thank you.

Sen. John Heath: Madam President, I crave your indulgence as I make my maiden contribution, coming as it were at the back end of the line-up. A lot of what has been said I had hoped to say myself, so I am not going to traverse and go over what my fellow Senators have said. But suffice it to say, Madam President, the criminal justice system is on the verge of collapse. It is frightening; it is getting worse, and as a practitioner who started in 2005 I am almost lost to see how we can rescue it before things go really bad.

I sat here today and one thing came to mind, that the persons who sit here in the Senate are persons who were considered highly by persons who felt that they had the competence to sit here today. I think that if we come together and there is a meeting of the minds between the Government and the Opposition, with the assistance of the Independent Senators, we can make meaningful contributions from this end, to rescue our country from peril. [*Desk thumping*]

It is no joke—and I would give some of my personal experience, then I will touch on the Bill at hand—that I have had clients of mine who have died, three in one year, while in prison awaiting trial. I have had a client who, having been acquitted, died three months later after having his trial after waiting for eight years. This is real. The accused person who sits and waits and oscillates between hope and despair, hope that one day his trial would come up and the despair every time he gets to court and it does not, is left a broken man, or woman, as the case may be. So that we must find ways, we cannot give up hope, to rescue our country in these dark times. I do not know if this Bill is the answer. I do not know if it represents the small prospect that Sen. Rambharat advocates that it might, but we cannot do nothing. We have to keep plodding away and trying to do something to rescue our system. [*Desk thumping*]

Now, just to bring it back to the Bill at hand. The jury system is the only system I have known and, certainly, I cannot imagine life without it, not that the Bill as I understand it, proposes to do that.

I was given a book, as I came to Parliament, by a colleague of mine, *Fair Trial Rights*, by Richard Clayton, Hugh Tomlinson. I just want to read briefly from it.

PROCEDURAL MOTION

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the contribution by Sen. Heath.

Question put and agreed to.

MISCELLANEOUS PROVISIONS
(TRIAL BY JUDGE ALONE) BILL, 2017

Sen. J. Heath: Madam President, I am much obliged. I will just read briefly at page 56 of the book under the rubric "The Right to Jury Trial":

> The right to trial by jury is often regarded as central to the rights of criminal defendants and has been described as a constitutional right. To many commentators, it is the most important fair trial right of all.

Lord Devlin's well-known words:

> "…trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives.

Perhaps more powerful words could not be spoken with respect to the retention of trial by jury. But as I understand the Bill, it does not seek in any way to abolish trial by jury. [*Desk thumping*] But what I do understand, even though on the face of it, it does not seem to do, there are within the contents of the Bill which I would

get to, it may very well have that desired effect, thereby raising constitutional issues. So I say on the face of it I do not see a Bill which intends to give an option to an accused person the right to have trial by jury or to have trial by judge alone, as trampling his constitutional rights at all. There are two instances in here which I think that might actually be the case, and I will get to that.

The reality is, and I think I speak on behalf of myself and a lot of practitioners with whom I would have sought counsel, that if the Bill comes to light, an accused person is given an election, I do not know who will advise that accused man, and that accused man would take the advice of counsel. The experience is in the Magistrates' Court where there is a hybrid type offence and there is the option of having your trial at the Magistrates' Court or before a judge and jury, the accused person takes the advice of his counsel. I do not know any lawyer who would advise that they go before a judge alone.

Now this is not, and I speak for myself, an indictment on the ability of our judges to be impartial. Certainly that is not my experience, but there are far many other reasons they would be advised to take trial by jury. That begs the question: what would be the effect of the intended legislation if it is it does not have the effect of having this alternative mode of trial by judge utilized? I suspect that may not be the case, but in my field I am trained not to speculate, so I can speculate it would not, but I do not in fact know that it will not. So that the answer is I do not know, I can only give my experience on the ground.

But certainly one can argue that if an option is created there is no harm in it, and certainly it does not hurt anybody if such a Bill were to come to fruition. It may very well be "Crapaud in de pot", as Sen. Ameen has stated, but I cannot speculate as to that. So we can only deal with what is before this honourable

House.

If I may touch in my limited time on some of the contents of the Bill which cause me some consternation, which I think would have to be addressed. One, because it raises fair trial rights and possibly constitutional rights, and one because of experience when judicial officers have to write reasons, what we the practitioners know to be the case.

So for instance, Madam President, if you were to look at the proposed Bill in relation to the amendment to the Criminal Procedure Act, whereby it is proposed to insert after section 42A of that Act a section 42B(1) which reads:

> "When the case on both sides is closed, the Judge shall give a written judgment stating the reasons for the conviction or acquittal of the accused person at the time of conviction or acquittal, or as soon as reasonably practicable thereafter."

I have a concern from where you get the disjunctive "or" "as soon as reasonably practicable thereafter"; because what we do know is that the magistrates who are creatures of statutes and who are guided by section 130B of the Summary Courts Act, and who are mandated to provide reasons within 60 days of the notice of appeal. The reality is, notwithstanding these creatures of statute, seeing black and white that reasons have to be provided within a particular time, the experience is when we get to the Court of Appeal there is a want for reasons, and it has happened far too often to go unnoticed.

So that I fear a judge who has an inherent jurisdiction sees "as soon as reasonably practicable thereafter", which might very well be a subjective element for that particular judge. So I think with regard to that there should be a timeline, because if there is a judge alone, he certainly does not have to sum up to himself.

So that summation function which he performs where there is a jury, he does not have to do that, and that time can be used, whether he takes a day before giving his verdict, can be used to have a preliminary draft of his reasons. I do not put it beyond some judges to perfect their reasons and give it immediately, as the first part of the intended Bill suggests, or shortly thereafter. I propose that a timeline be given for that, be it seven days I think, which is ample time in my view, bearing in mind the judge alone does not have to engage in a summing up, which he would normally do where there is a jury. The summing up of course is an analysis of the evidence that would have gone and the legal directions in law to the jury, so the summing up in my view is a lot more.

My other cause for consternation has to do with the clause 4(e) where it proposes to amend the Criminal Procedure Act, section 62. Let me just read what the current Act says. As it stands, the current Act, section 62(2) states:

> "Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the Court before whom a woman is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by a jury."

It is an exercise for the jury as a matter of fact, to make the determination as to if this woman convicted is pregnant. Therefore, the sentence of death cannot be passed on her.

The proposed Bill seeks in subsection (2) to delete the words "a jury" and substituting the words "a Judge". Subsection (2) goes on to treat with all the other sections which deal with the function of a jury as it currently obtains, so that you can find yourself choosing the mode of trial by judge and jury, yet in the circumstances of a pregnant woman who has been convicted, finding the judge

making certain pronouncements, whereas before it would have been a function of the jury.

Similarly, when you go to section 64 of the Criminal Procedure Act, which deals with insane persons—well, whether or not a person is insane as it currently obtains, it is the function of the jury, and one would think that if insanity is raised the only way it can possibly be proven is by the relative medical evidence, even if it is the jury having to make that determination on what is presented.

What is proposed is:

> "If any accused person appears, on arraignment, to be insane, the Judge on written or oral evidence of at least two medical practitioners may, find whether such person is or is not insane and unfit to take his trial."

So I am just simply saying it seeks to switch the roles. It is not consistent with the other parts of the Bill which essentially consistently throughout creates the option of judge and jury or judge alone. When you read down further from that at (h), you see it comes back to judge and jury. So the Bill itself does not seem to be in conformity with itself. That, in my respectful view, must be addressed or tidied up as it were. That is what I had to say with respect to the Bill itself.

But let me say that while I am temporary, in the true sense—I certainly do not know how long I would be here—if this Bill is something which the movers of the Bill are simply trying with a genuine hope of making, even if not a significant, some dent in the criminal justice system, then even if it does not work the intent is good and it is a start. While there may be scepticism, even on my part, as to what significant dent this can make or, in the order of priority, what should have come before this, I am saying it is something that is being done.

The intent behind it may vary from person to person. I certainly am too

young in the game, having just come lately, literally johnny-come-lately, to get into intents in persons and what lies behind their minds and what their real designs are, certainly with matter like these. But just to come back to where I started, because a lot has been debated upon with respect to the Bill. A lot has been said; a lot of which I do not agree with; a lot of which I do agree with. But what you do have here is you are impacting a piece of legislation in an area which in my view the delays are not really significant in the area of the trial by jury. So, I know the hon. Attorney General would have alluded to that. Even if one were to accept that there is some delay with respect to the whole jury system, on the continuum of causes for delay, the jury will be one end and there are a lot other factors which precede it which are more inimical to the delays that we experience.

Just to say that our problem in the criminal justice system is multifaceted, and unless we approach it from all different angles, unless the resources, human and facilities are put in place to supplement any piece of legislation that is about to pass, including if this one were to pass and the ones to come, we would find ourselves, as someone said today, spinning top in mud. All the stakeholders have expressed grave concern, and I am one to believe that that genuine concern is met equally with people putting their best foot forward to try to rescue our criminal justice system. One stakeholder cannot do it alone. It has to be a concerted effort on all our parts to try to arrest a situation which has gotten worse, and getting worse by the day.

We have a system where the practitioners at the Criminal Bar cannot do the amount of criminal cases that come before the courts. We have a legal aid system which is undersubscribed by attorneys who simply do not wish to put themselves up on the panel to be selected to do legal aid matters. So what you find is the same

pool of attorneys getting several legal aid briefs, and their names are calling in several courts simultaneously, and the system cannot keep on like that.

In one instance when the Vindra Naipaul-Coolman case was going on, most of the attorneys there were Legal Aid, if not all. So that what you had in all their other matters had to have a standstill for a while waiting, because there were simply no other attorneys to accept the brief. So there is a part that we as citizens have to give back. We have to change our attitude. We have to learn that we exist in a system for which each citizen, even if they were to contribute an iota of their time towards rescuing it, will present a world of difference in how we approach this problem.

So I ask you as I depart—and I am not sure as to when I would ever return or if I would ever return, to band together to banter with each other, to speak outside the caucus of the Senate, to exchange ideas in a real and meaningful way, to give Jack his jacket when something is brought before which presents a good idea; to challenge it when it is not, to criticize it, to be constructive, but at the end of the day we are all citizens of Trinidad and Tobago. We have a unique country; we love it. We are seeing it—I mean, the crime has spread across governments, so it really does not matter anymore when one comes in and one goes out. We cannot seem to get a handle on crime. It does not bode well for the Opposition, save and except if they want to get back in government, if the crime rate is skyrocketing, because that may very well happen, but they will meet the problem when they come in.

So similarly, the Government must present ideas from a genuine standpoint; must come clean, must keep working at it, and I urge my fellow Senators to put your best feet forward in trying to salvage a situation which, as I say, and I cannot

say it enough, is getting worse.

Madam President, that is the extent of my contribution.

Madam President: Hon. Senators, I think we should all congratulate Sen. Heath on his maiden contribution.

ADJOURNMENT

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Madam President, I beg to move that this Senate do now adjourn to March 21, 2017 at 1.30 p.m., when we will continue the debate on the Bill, an Act to amend the Offences Against the Person Act. Time permitting, we will move to the Bill entitled an Act to amend the Motor Vehicles and Road Traffic Act, Chap. 48:50, et cetera. Thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.01 p.m.