

Official Report

PROCEEDINGS AND DEBATES OF THE NATIONAL ASSEMBLY OF THE FIRST SESSION (2006-2010) OF THE NINTH PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA HELD IN THE PARLIAMENT CHAMBER, PUBLIC BUILDINGS, BRICKDAM, GEORGETOWN

128TH Sitting

Thursday, 29TH July, 2010

The Assembly convened at 2.10 p.m.

Prayers

[Presiding Member in Chair]

ELECTION OF A PRESIDING MEMBER

The Clerk: I wish to inform you that His Honour, the Speaker and the Hon. Deputy Speaker are absent. As both the Speaker and the Deputy Speaker are absent the Assembly will have to elect a Member not being a Minister or a Parliamentary Secretary to preside at this sitting. I accordingly invite nominations.

Mr. Hinds: Mr. Clerk, I would like to nominate the Hon. Member Ms. Bibi Shadick to be our Presiding Member for this sitting.

The Clerk: Is there a seconder?

Ms. Teixeira: I second.

The Clerk: Is there any other nominations? Since there is no seconder, I declare the Hon. Member...

Mrs. Backer: There is no second nomination.

The Clerk: I am sorry. Since there is no other nomination, I declare that the Hon. Member Ms. Bibi Safora Shadick as the duly elected Member to preside at this sitting.

Ms. Bibi Safora Shadick assumed Chair.

ANNOUNCEMENTS BY THE SPEAKER

Presiding Member [Ms. Shadick]: Hon. Members, I take this opportunity this afternoon with great humility, and hope that I will have the cooperation of all Members so that we can get through with the business of the day without too much interruption. Thank you very much.

PRESENTATION OF PAPERS AND REPORTS

The following Reports were laid:

- (i) Financial Paper No. 1/2010 – Supplementary Estimates (Current and Capital) totalling \$155,278,916 for the period 2010-06-01 to 2010-12-31.
- (ii) Financial Paper No. 2/2010 – Supplementary Estimates (Current and Capital) totalling \$2,271,191,161 for the period 2010-12-31.

[Minister of Finance]

The Minister named Thursday, 5th August, 2010 as the day for consideration of Financial Papers in Committee of Supply.

- (2) The Guyana Rice Development Board Annual Report for the Year 2009.

[Minister of Agriculture]

REPORTS FROM COMMITTEES

The following Reports were laid:

1. Tenth Report of the Committee on Appointments in relation to the Appointment of Members of the Police Service Commission. *[Ms. Gail Teixeira - Chairperson of the Committee on Appointments]*

2. The Report of the Special Select Committee on the Maritime Zones Bill 2009 – Bill No. 36/2009. [*Minister of Foreign Affairs – Chairperson of the Special Select Committee on the Maritime Zones Bill 2009*]

The following Report was deferred to the next sitting:

The Second Periodic Report of the Parliamentary Sectoral Committee on Natural Resources. [*Mr. E. Lance Carberry – Vice Chairperson of the Parliamentary Sectoral Committee on Natural Resources*]

QUESTION ON NOTICE

Written Reply

1. EXPORT OF ACTIVATED CARBON/CHARCOAL

Mr. Franklin:

1. Will the Hon. Prime Minister state what quantity of spent activated charcoal (activated carbon) was exported by Omai Gold Mining Ltd., during the last ten years of its operation here in Guyana?
2. Please name companies to which the activated carbon/charcoal was sent for regeneration?
3. Is the Government in possession of any reports of the regeneration process undertaken by these companies?

Prime Minister and Minister of Public Works and Communication [Mr. Hinds]:

- (i) Bearing in mind that the company's operations ended in 2005, five years ago, and it operated for twelve (12) years, the company is still trying to locate the information on how much activated charcoal was re-exported (for smelting) as against being imported over the last ten (10) years of its operation.
- (ii) The activated charcoal was regenerated at site in a small rotary calciner which can be seen in the equipment yard at Christianburg.

In being, the undersize activated carbon/charcoal was sent to Asarco and later on to Noranda, not for regeneration but for smelting to strip any gold retained in these “fines” which could be no longer be used.

(iii) As stated above, those companies did not generate the charcoal but smelted the ‘fines’ to recover any gold remaining in the charcoal.

INTRODUCTION OF BILLS AND FIRST READING

The following Bills were introduced and read for the first time:

1. PUBLIC UTILITIES COMMISSION (AMENDMENT) BILL 2010 – BILL No. 10/2010.

A Bill intituled:

“An Act to amend the Public Utilities Commission Act 1999.”

2. ELECTRICITY SECTOR REFORM (AMENDMENT) BILL 2010 – BILL No. 11/2010.

A Bill intituled:

“An Act to amend the Electricity Sector Reform Act 1999.”

*[Prime Minister and Minister of
Public Works and Communications]*

PUBLIC BUSINESS

(i) GOVERNMENT BUSINESS

BILL – SECOND READING AND THIRD READINGS

RICE FACTORIES (AMENDMENT) BILL 2010 – Bill No. 8/2010

A Bill intituled:

“An Act to amend the Rice Factories Act 1998.” *[Minister of Agriculture]*

Minister of Agriculture [Mr. Persaud]: Presiding Member, I wish to defer the consideration of the Rice Factories (Amendment) Bill 2010 until a further date.

The second reading of Bill is deferred.

(ii) PRIVATE MEMBERS' BUSINESS

MOTION

CRIMINAL RESPONSIBILITY OF HIV INFECTED INDIVIDUALS

WHEREAS the first fight against HIV and AIDS has been relentless especially during the past 15 years;

AND WHEREAS some success has been recorded throughout the country in reducing the instances of infection and transmission of HIV and AIDS;

AND WHEREAS educating the population is of utmost importance in the arsenal of weapons and/or measures required to combat this dreaded disease;

AND WHEREAS despite the best efforts of health care officials, religious organisations and NGOs in educating the population with respect to AIDS and HIV, infection rates are still disappointingly high;

AND WHEREAS persons, some knowingly, still infect others with the Human Immune Deficiency Virus, causing immense suffering and pain to the infected persons, their families, community at large along with increased cost to the health care system;

AND WHEREAS persons are not held responsible by law for knowingly transmitting this deadly virus to innocent victims;

AND WHEREAS the confidentiality and non-discriminatory laws in place which protect persons affected with HIV and AIDS prevent disclosure of their identity, these persons are free to have unprotected sex with unsuspecting partners, thus further spreading the disease,

“NOW THEREFORE, BE IT RESOLVED:

That the criminal laws of Guyana under all relevant sections be amended, to make it an indictable offence for any person to transmit the virus to any other person, when they would have had prior knowledge of their infected status;

BE IT FURTHER RESOLVED:

That non-disclosure laws or guidelines be so amended to allow information to be used by the prosecution if so required;

BE IT FURTHER RESOLVED:

That all agencies, clinics, hospitals which have the results of tests and other vital information be bound by law to release such information to any court engaged in a matter; and

BE IT FURTHER RESOLVED:

That the charge of attempted murder be instituted against any individual found to have endangered the life of another in the manner described above.”

[Mr. Franklin]

Mr. Franklin: Thank you Presiding Member. It has been around two years since I was approached by a number of individuals who shared concerns about their personal well-being and the well-being of their loved ones who they felt were unfairly treated. The whole debate between individual rights and public health is one that is ongoing, but not often enough is the issue of individual duty or responsibility, not to a faceless John public, but to an individual – someone with flesh and blood, someone with a life, with hopes and aspirations. The attacks on civil liberties of persons living with AIDS and HIV over the years have decreased significantly as compared to the 1980s. No doubt, there is still a lot of room for improvement, as the stigma propelled by ignorance, once, and still is attached to this dreaded disease.

I think the stigma is dying, but much too slowly. That we understand. In the 1980s, this disease was attached to the homosexual population as well as those intravenous drugs users and at that time, in most countries and jurisdictions, both of these conditions were crimes. But we only get involved and affected when we ourselves and the larger population are confronted with the

problem. Sadly, it is only when it is at our own doorsteps that care and attention are mobilised - when it becomes an “us” and not just a “them” problem. This prejudice, during the infant years of the disease, is responsible for the slothfulness of many Governments and institutions of public health. Now we are harvesting the bitter fruit of that inaction.

The intention of this motion, I thought, was very clear. But allow me to remove any lingering doubts about the intention of this particular motion. What this motion does not do is to seek to remove or dilute or weakening any existing law or guidelines which protect the rights of infected individuals and their families. It does not seek to do that. It merely seeks to tie certain obligations to individuals who enjoy those rights and are protected under those very laws.

Guyana has done well to enact laws protecting women and children and other non-discriminatory laws in public and private workplaces. For that we can be proud; but that in no way can remove the obligations that one citizen has towards another. Just as the laws protect a HIV infected person from discrimination, so should the law protect uninfected individuals from willful infection, and at this point in history - a certain death sentence.

Case 1: A wife of twenty-five years is now HIV- positive and pregnant with her seventh child, infected by her husband who had sex with an individual who is HIV- positive and is undergoing counselling and treatment for over seven years. Is the wife to be blamed for not protecting herself? Is the husband at fault? I think he certainly is for being unfaithful, and stupid enough for not protecting himself and his wife. But a person who is HIV- positive and on treatment, being counselled, year after year, also has a responsibility to inform his or her sexual partners of his or her status. That is what I am saying.

Case 2: A nurse being raped by a patient, HIV- positive, and being told, “I hope you catch it”

Case 3: Women returning to their clinic, year after year, HIV- positive, pregnant in 2006, pregnant again in 2007, and pregnant in 2008. Each pregnancy caused by another father. There, one can see where, exponentially, these cases would spiral. In addition to that, we make sure that each child – which is good, the children are not at fault – is supplied with milk for eighteen months. So we are enabling that behaviour. Reoccurring cases like those, when we speak to the health professionals, are very distressing.

This motion acknowledges clearly the work of our health care professionals and other organisations efforts in combating the disease. But this fight is much, if not more, about behaviour of individuals as it is about the disease itself, because the propagation of the virus is supported by uninformed, ignorance and reckless behaviour. It is, therefore, the duty of the State to curb dangerous behaviour - behaviour injurious to public safety and the welfare if its citizens. The law, in any form, is an important expression of social and cultural values and, therefore, can be used to change values. So the law has a role to play.

The HIV and development programme issued a paper entitled, *The Role of Law in HIV and AIDS Policy* by a very busy Julie Hamblin. One can find Julie Hamblin in all the literature one can think about dealing with the law and AIDS. We in this country agreed on speed limits on our roads. We must also agree on limits on sexual activity which may result in sickness and even death. If we have agreed that one can be charged for driving under the influence of alcohol, although no accident occurred, what makes risky sexual behaviour different? The one, nothing happened, but could have happened. The other one, something will certainly happen and we throw our hands into the air and say, “we have to wait until people change their attitudes.” I do not think so. Is it not reasonable to propose that a person who knows his or her HIV- positive status, as in WHEREAS clause 5, be held criminally responsible for using his or her sexual organs along with his or her fluids as a deadly weapon - much the same as a piece of wood, a fist, cutlass or a gun?

The *UNAIDS Policy Brief: Criminalization and HIV Transmission* states as follow: (This is the United Nations AIDS policy and it had dealt with the criminalisation of HIV transmission. Hear what it says in part.)

“In some countries, criminal law is being applied to those who transmit or expose others to HIV infection...”

Note!

“There are no data indicating that the broad application of criminal law to HIV transmission will achieve either criminal justice or prevent HIV transmission. Rather, such application risks undermining public health and human rights. Because of these concerns, UNAIDS urges governments to limit criminalization

to cases of intentional transmission, i.e. where the person knows his or her HIV positive status acts, with the intention to transmit HIV and does in fact transmit it. ... Where a violent offence (e.g. rape, other sexual assault, or defilement) has also resulted in transmission of HIV or created a significant risk of transmission, the HIV-positive status of the offender may legitimately be considered an aggravating factor in sentencing only if the person knew he or she was HIV positive at the time of committing the offence.”

The motion before this House says exactly that. We are dealing with the willful exposure of other human beings who also have rights to a sickness which, up to now, we have had conquered, and, therefore, it is incumbent on the State to protect those citizens.

Of course, the scientists, medical professionals and the legal luminaries will have to ably define the area where risk infection is high due to sexual intercourse. “Sexual intercourse itself would have to be defined”, said Bill Clinton, in the context of transmission of this virus. Justice Edwin Cameron, Constitutional Court of South Africa, in his public lecture hosted by a Canadian HIV-AIDS legal network, had this to say:

“When we talk about criminalisation of HIV, we mean in both enacting laws specifically directed to punish behaviour that may transmit HIV and the application of general laws in a way that targets those with HIV who have acted that way”.

This is the essential thrust of this motion. I could not understand the commotion over it.

Justice Cameron, however, advanced many arguments and cases to show how difficult it is to prove, in some cases, intent as well as misuse of the law which, if not carefully applied, would have the opposite effect. With that, we agree. We do not have an argument with that. One glaring example is the case of that homeless man who resisted arrest and bit the arresting officer - this was a case in Texas - and he had been charged with harassing a public servant with a deadly weapon. Because of that bite, it was said that the deadly weapon was his saliva. I submit that our law must be premised on available scientific knowledge and data. The saliva case was ridiculous since there is no evidence, no information to date, that I am aware of, suggesting that the virus can be transmitted via that route. That, we understand. So we are not just here to willy-nilly copy

what somebody else has done. The science, which is available to us, must be used in crafting our laws. That is the sensible approach.

In 2009, a Mr. Azeeka in Canada became the first person, apparently, anywhere in the world, to be convicted of first-degree murder for sexual transmission of HIV. This man reportedly had unprotected sex with thirteen women after he knew of his status and seven of those women later tested positive, themselves. Two of the women subsequently died from AIDS-related cancers. The women alleged that Mr. Azeeka had infected them with the virus, that he had not disclosed his status to them before they had unprotected sex and, in some cases, he had actively deceived them.

The argument is that each of us has the onus to protect ourselves, but what protection is available? **[Mrs. Lawrence:** It is safe sex]. Safe sex is no sex. Do you practise safe sex? We know the condom offers a large percentage or degree of protection, but it is not foolproof. There are many, probably in here, who came into this world because of a mistake or a damaged condom. **[Interruption]** It is not foolproof.

A jury found Mr. Azeeka guilty on two counts of first-degree murder and several others of aggravating sexual assault. Quite rightly so! The gentleman expressed not to give too much of his opinion because this case is still subject to an appeal. But if there was a case to illustrate the need to punish some people for reckless behaviour, this case is one of those. Believe me, we do not have to go to Canada to find reckless behaviour. There are countless stories right in our midst. Almost eighty per cent of the people in this National Assembly will have acquaintances with people who have confided in them of their plight. So this is not airy-fairy. It is not sexy to talk about punishment for abhorring sexual behaviour. It is not in vogue. It is not going to bring more funding which, I suspect, is a key issue in some of the policies which are adopting. But we have to do what is right for our people, and what is right for ourselves. Do not feel that it cannot touch us. Of course it can.

If we go on the ground and investigate the spread of HIV, we will find that in many areas there are a few infected persons wantonly spreading the disease to a wide range of persons, especially in the fastest growing HIV and AIDS affected population group – the 15 to 19-year group. That is what we should be protecting. If we go on like this..., and all the figures which I will present

are low end figures because there are some difficulties in accessing actual numbers. Some estimates have to be made. The numbers which I will give are low numbers.

A few countries have already enacted legislation to sanction willful transmission of or exposure to HIV. They are Australia and United States of America – the largest funder of AIDS programme in Guyana. There is something which is very strange: they have enacted laws but their consultants will come here to tell you what the best practice is. How you are supposed to behave. “Do not criminalise it because people are going to stop coming to be tested.” That this is such poppycock, if that is Parliamentary. Nonsense! Because someone who is willfully going around infecting others is not the one who is going to walk in to the testing board and say, “please test me, I am HIV-positive”.

I quote the following passage from page 117 of the *National Assessment of HIV-AIDS: Law, Ethics and Human Rights* which was prepared by a Guyanese, Mr. Arif Bulkan, on July the 21st 2004:

“In 1998, Canadian Supreme Court decided unanimously that an HIV-positive person could be found guilty of assault for non-disclosure of his or her HIV status before engaging in unprotected sexual activity. Overruling the lower Courts and departing from the long-established common law authority, the Canadian Supreme Court found the failure to disclose HIV status constitutes fraudulent conduct that vitiates consent to sex.”

2.40 p.m.

The reluctance to criminalise “willful HIV transmission”, according to Dr. Arif Bulkan is due to the practical difficulties in creating such an offense and the general policy against using the coercive approach. I think that that is more of the problem. It is my opinion that these are matters for the court to decide; on the guilt or innocence of any person so accused. We have a duty to protect those who are not infected just as we have a duty to protect persons suffering with this dreaded disease. Though it may be difficult to prove this in a court of law it must be considered seriously; people’s lives are at stake.

When we talk about best practice, the figures are disappointingly high and the low estimate, if I just call from a few countries, in Barbados it is around 785/100,000, Haiti approximately 14,000, Jamaica 971/100,000, Trinidad just about 1,100, Brazil; our neighbor, 384/100,000, Suriname is very high at 1,400 and Guyana is at 1,700/100,000. This is the low figure. I will leave it up to the Hon. Minister to give the more accurate figures to this House and it is going to be more than 1,700/100,000. Cuba I have left for last. This Government has worked so closely with Cuba but Cuba's AIDS policy and what they have done to contain AIDS, which some may say is drastic, but they are not giving any money for this thing so we cannot adopt the best practice of Cuba. We have to adopt the best practice of the countries that are giving us money. These figures that I called are for 2007. Cuba is at 54/100,000. Now if you want best practice, I suggest that half of the health workers dealing with AIDS should go to Cuba. There one would find best practice because the bottom line is less people are infected and there is control because we know who is infected.

The state demands a certain type of behavior from these people who are infected. They are looked after, they are fed and Cuba did this when they did not have the use of anti-retrovirals. They were struggling and they achieved that. I would like to see... [Mr. Neendkumar: The Human Rights Association will come in.] When your child is affected you will talk about human rights. Let us talk about human rights when you personally are affected. That is the human right we have to protect. The right to life is one that we have to protect.

This is a significant figure for Cuba because they had an integrated approach that treated the disease as a national health problem and took measures... [Mr. Neendkumar: They isolated them.] Yes, they took measures to curb it and at first it was involuntary, "If you have AIDS we are going to cordon off." Now they have both voluntary and involuntary. The figures, 54/100,000, are what you should concentrate on; 54, not 1,700 and more. Those are results and they did not do it with fancy "AIDS money".

The information available on HIV and AIDS, I dare say, is no longer privileged information. Barring mental disability or extreme remoteness, very few individuals are not aware of the very basics and details surrounding the disease although it has been brought to my attention quite recently that a number of hinterland areas, due to problems relating to accessibility and probably the remoteness, need a lot of help. Therefore we must rethink the strategies employed by

Government and Non-Governmental Organisations whose fancy offices are far removed from where the real problem lies – in the mines, on the grants, interior and other urban areas of high unemployment and poverty. That is where they should set up their offices. That is where we should put resources. We should not be visiting every three months. It would be great if the Minister could say how much money has come in to fight AIDS compared with other diseases like tuberculosis (TB) and diabetes.

For those who are aware and who have been diagnosed and treated for HIV/AIDS and know the inherent dangers presented to others and themselves when engaging in unprotected sex must be made accountable. That is all this motion is saying. How are you going to do it? Well the legal people will do some work and earn their pay, not just on conveyance and on divorce. They really have to think. Persons who, never the less, continue to behave in such a reckless manner can only be described – and I say it guardedly but I say it never the less – as sanctioned serial killers. Hopefully after the passing of this motion the process to curb such callus behavior would have begun and the reign of silent terror will soon be confronted with dire consequences.

Many still argue that to criminalise the transmission of HIV would drive infected persons underground and prevent treatment and interventions by public health officials. That is one of the central arguments against criminalisation. This may ring true for a very tiny section of the affected but in a country where certified mad men and women are put before the court and charged criminally that argument is void of any substance. I am no means advocating the foolish prosecution of infected persons for spitting or biting, which has no scientific backing as being a transmission route. The law must be guided by accepted science. If we are to reduce the transmission of the virus all available measures, all, must be used to do so.

I further submit to this House that we must find our own way to deal with the behavior which is totally unacceptable and dangerous. The hands of the health professionals are tied by non-disclosure laws which in some cases constitute the withholding of information which could be used to save countless lives. In other instances, the withholding of information is punishable under our law but not when dealing with HIV and AIDS.

Another disturbing fact is, due to the non-disclosure rules being applied, children often cannot benefit from the voucher program that the Government set up because for them to benefit you

would have to disclose the reason and they cannot do so. The children suffer...
[Mr. Neendkumar: Vulture.] Vulture is at home in your backyard. This frustrates the healthcare professionals who really would want to help but cannot. There is a milk voucher program so if people die from AIDS... you should find out later on.

I tested the help line six days ago and attempted to give the operator information about a fictitious person who was spreading the virus to numerous individuals in my village. The operator quite correctly stated that such information could not be taken and I commend her for that. We declare HIV and AIDS to be a national health crisis and the figures prove that it is a national health crisis, but we tie our own hands when confronted with the reality and fail to make hard decisions. To fight AIDS and the spread and transmission of it we have to make hard decisions. They may be unpopular but we have to see that they are effective. What we have done so far is if we use the amount of money that was spent fighting this disease, but we have failed miserably.

The data will certainly prove that the vast majority of persons tested and found to be positive are not people who decided to check their status voluntarily. However, there are persons who indirectly are informed due to other medical interventions such as pregnancy, TB and other ailments where medical personnel suspect that there may be a possibility of HIV infection and recommend such tests. That is where the bulk of people come from. They are not those who come off the road to voluntarily say, "hey, test me." That has increased, I agree, but it is not the majority of people. So the argument of criminalising certain behavior that it would prevent people from going to get tested voluntarily is not true.

I do believe, Presiding Member, that best practices must yield tangible results. The sums of money spent on HIV/AIDS throughout the Government and by Non-Governmental Agencies have been significant and I would really like to hear some figures on that.

This motion was lambasted on the news by an international public servant and I responded a few days after and I felt that we should be consistent in our approach. When business comes before this House, it is the people's business. I believe that international public servants must understand that the business must first come here before they open their mouth and pronounce on it. It is out of place, in bad taste and we should all condemn that kind of behavior.

I look forward to support on this motion because if we sample the people out there, they too would support this motion. If we want best practice, let us use the best practice that our people support. That is best practice because that is the population which we need to help us in this fight against a dreaded disease. *[Comment from floor]* I do not believe that some people were born with the full faculty of a brain, but nevertheless, I look forward to support on this motion because I do believe that it is important for us to have the tools to deal with the problems of HIV transmission.

I look forward to listening to the other speakers on this side as well as the other side. I think such a motion should be decided as individuals in this House. Your party cannot protect you. This has to be an individual conscious vote because there is not politics in this. The only politics in this is how much money we are getting from UN AIDS and wherever, but it has not proven that it can deliver for us. Presiding Member, thank you. [Applause]

Mrs. Lawrence: Thank you. Presiding Member, first let me congratulate you on being the Speaker for today's session of Parliament. It is always good to see women at the helm of any organisation. **[Mrs. Backer:** They could have put me.] Do not be worried. When you get there you will get your congratulations too.

Presiding Member, Hon. Members of the House, I wish to respond to the motion tabled by the Hon. Everall Franklin, which seeks to amend the Criminal Laws of Guyana so that criminal charges could be brought against those persons who knowingly spread HIV to unsuspecting individuals. He seeks to amend the laws governing the non-disclosure of personal data so that hospitals, agencies and clinics would have to release information on affected persons; this information being admissible in court for the purpose of indicting to the said individuals.

In as much as this motion, from a humanistic point of view, aims to legally accommodate and protect the rights of individuals from the indiscriminating web of HIV affected persons. I wish to bring to the attention of this Hon. House the following issues, namely, the Resolve Clause. It is true that under the present Criminal Laws of Guyana there is no provision for a person knowingly affected by HIV to be indicted if he/ she were to spread the virus to another individual. It is therefore apparent that a law would have to be drafted to deal specifically with

this situation. However, my contention can be formulated in the following questions: To what end would such a law be meaningful and what would its creation accomplish?

The mover of the motion has already intimated that punitive laws have been introduced in many parts of the world. I want to submit that criminal procedures have indeed been implemented, but contrary to expectations, they have not had the intended success. What the mover forgot to tell us when he mentioned about all of the countries which have instituted punitive laws for HIV infected persons is that the majority of them have had to pass laws to ensure that all persons must get tested. You have to give up your right, whether you wanted to be tested or not.

Permit me to refer to the article published on World AIDS Day of November, 2009. The article is entitled: *Punitive Laws Threaten HIV Progress*:

“In many parts of the world legislation effectively criminalises populations living with HIV or vulnerable to HIV infection, such as sex workers, drug users and men who have sex with men. These laws fuel stigma and discrimination, increase barriers to HIV information and treatment and contribute to the spread of the disease.”

That is from the Human Rights Watch.

“Elsewhere, laws criminalizing HIV transmission discourage HIV testing potentially subjecting those who know their HIV status to criminal penalties while exempting those who are unaware of their infection.”

Allow me also to quote from another article dated October, 2009, entitled: *Uganda Anti-Homosexuality Bill Threatens Liberties and Human Rights Defenders*:

“This Bill would criminalise the legitimate work of national and international activists and organisations working for the defence and promotion of human rights in Uganda. It would also put major barriers in the path of effective HIV prevention efforts. Discrimination and punitive laws like this, aimed at marginalized groups and at those often among the most affected by HIV, drives people underground and does nothing to help slow down the AIDS epidemic.”

That is Daniel Molokele, African Programme Officer at the World AIDS Campaign.

Further, an article published by the Canadian HIV Legal Network – do mind, Presiding Member, that Canada is one of those countries which has punitive laws – proposes the following, and I quote what the Legal Network put forward:

1. “Stop HIVcriminal laws.
2. Countries should remove any law that makes it more difficult for people to access HIV prevention and treatment.”

That is exactly the impact of criminalising HIV transmission. Instead, countries should adapt laws to protect people living with HIV from discrimination, coercion and monitoring in their private lives.

3. “Criminalising HIV transmission will backfire and harm the very people it is intended to protect. The most vulnerable will surely be prosecuted, especially women who are routinely blamed for bringing HIV into sexual relationships.”

Applying criminal law broadly to HIV transmission may result in women being disproportionately prosecuted. Studies have revealed that women often learn that they are HIV positive long before their male partners because they are more likely to access health services. Consequently, they are accused and blamed for bringing HIV into the relationship. For many women, it is also either difficult or impossible to negotiate safer sex or to disclose their status to a partner for fear of violence, abandonment or other negative retaliatory consequences. Women may face prosecution as a result of their failure to disclose for valid reasons. This is a sure case for miscarriage of justice in the case of women who suffer such fate.

Prosecutions and convictions are likely to be disproportionately applied to members of marginalised groups such as sex workers, men who have sex with men and people who use drugs. These groups are often blamed for transmitting HIV as well. In fact, such a law, to my mind, would act as a deterrent to all the initiatives that have hitherto been established to deal effectively with the spread of HIV.

I cannot foresee individuals taking a decision not to be apprised of their status and we all can well imagine what consequences of such a decision will bring about.

RESOLVED clause 2: The mover of the motion proposes that the law on non-disclosure be amended so that information can be revealed on one's status. Such an amendment would constitute an infringement on one's privacy and may well infringe on one's human rights. The presenter, in other words, is asking individuals to incriminate themselves and by virtue of their status being known face violence, discrimination or abandonment. The very issues that attempts at all levels are being made to resolve. Is this the intension of the mover?

I heard it mentioned that in the Sexual Offences Act of 2010 there is a clause for disclosure, but may I be entertained to just read what it says? At clause 85 it says, "Where an accused is convicted of an offence under this Act..." not any other Act "...in addition to passing sentence, the court may..." and I would like to quote (b) 4, "...where the offence for which the accused has been convicted suggests risk of HIV transmission to the complainant an HIV testing order and disclosure of the results to the court and complainant."

I hope that the mover of the motion is not inferring that this can be used in the case in which he is asking us to do.

I now move to RESOLVED clause 3: It is a known fact that in almost every sphere of life there exists client confidentiality agreement laws which protect the information between patient and doctor, client and lawyer, client and accountant and client and councilor, to name a few. Is the mover of this motion thereby asking that this sacrosanct confidentiality clause, entrenched for centuries, be broken to accommodate the incarceration of already ill persons?

3.10 p.m.

Further, there is growing concern at the moment that people's privacy is being invaded by dissemination of their personal information and much legal measures are being implemented to stem this practice, the world over. What then is the mover of the motion envisaging if agencies, hospitals and clinics are forced to breach this bond of trust and release this information and to whom?

In RESOLVED clause Four: The mover of the motion seeks to have HIV perpetrators indicted on a charge of attempted murder. Herein lays an issue of immeasurable proportions. In the majority of cases, given the development of retroviral drugs, ongoing research and testing,

individuals have been enjoying a longer life span after being diagnosed. How can this attempted murder be proven given the aforementioned situations? Both perpetrators and victims have access to drugs and, moreover, they would have heard repeatedly the emphasis in numerous educational programs for each individual to be responsible and protect him/herself.

The burden of proof, therefore, is overwhelming from the accused perspective. Case in point: What happens in the case of a couple where one person is HIV positive and the other is not? They are in the heat of an oral sex act and decide to go all the way, the HIV positive one reminds the negative one that they do not have any condoms and that person at the point of no return says, "I do not care. I can use one of your tablets." Some time after, however, the negative partner accuses the positive partner of transmitting HIV to him/her. Where is the witness for the positive partner?

A second case: What about our sex workers? They do not walk around with contracts for their clients to sign when they insist on having sex without a condom even though they are told of the sex worker's positive status. The argument is that proof and prosecution can be difficult since the offender may have died or be very ill by the time of prosecution given the backlog in our courts, and proof that it is he/she who caused the infection may be almost impossible.

Moreover, I wish to point out that under the present Criminal Law Offences Act, a person charged for attempted murder shall be guilty of a felony and liable to imprisonment for life. Given this, I wonder whether the mover of the motion thought of a few things and whether he is proposing that in small economies such as ours, we have the medical capacity to monitor and treat incarcerated HIV infected persons on a large scale.

Do we have the financial capability to quarantine HIV perpetrators in our prisons? Are we in a position to segregate the HIV infected persons from the general population thereby containing the spread of HIV infection?

In conclusion, I wish to make an appeal on moral grounds and that is that we seek to protect the human rights of both people living with HIV and those who are HIV negative. In my opinion, the debate about whether such an act should be made punishable under the law should be revisited because creating a criminal offence may send out the wrong message that the law can protect people from contracting HIV. Legislation can also be counter-productive since it can divert

attention from underlying problems by creating the impression that decisive action is being taken while, in fact, it is hindering the implementation of constructive solutions.

As I wind down, let me refer to an article in the Trinidadian Guardian in October 2009 entitled *Criminalisation of HIV Around the World*:

“Public health experts warn that criminal prosecution will act as a deterrent to HIV prevention. The fear of prosecution for intentionally transmitting HIV could discourage people from getting tested and finding out their HIV status as lack of knowledge of one’s status could be the best defense in a criminal lawsuit. In places that criminalise HIV transmission, HIV service providers may be coerced into disclosing confidential information about their patients’ HIV status to law enforcement officials.”

Mauritius – an African country – recently rejected HIV specific criminal laws and decided to put its resources where they are most likely to have a positive impact on reducing the spread of HIV. They sought to put their money in areas to increase HIV testing and counseling and for evidence, reformed prevention measures.

We of the People’s National Congress Reform – 1 Guyana propose that there are much more productive ways that we, as a House, can address HIV rather than passing criminal laws. We propose that the House should focus on empowering people to seek HIV testing, disclose their status and above all, practice safe sex without fear of stigma and discrimination. We also propose that it will be beneficial, since this particular topic has sparked a lot of debate in our society, to have this motion sent to a Select Committee. No group should be made to face the stigma and discrimination. We of the PNCR1-G say absolutely no one! [Applause]

Presiding Member: Hon. Members I have just be informed and guided by the Clerk that because this motion was not submitted by a Minister, it needed a seconder. The motion was submitted and signed by Mrs. Punalall, as a seconder. Nevertheless, I am advised that for our purposes in this House, the motion should be seconded orally in the House.

Mrs. Punalall: I stand in seconding this motion – Criminal responsibility of HIV infected individuals.

Minister of Health [Dr. Ramsammy]: Presiding Member, I would like to add my words of congratulations on your being elected to Chair this session of the National Assembly. As I stand this afternoon to participate in this debate, I have a heavy heart. It is heavy because even as I listened to the Hon. Members Everall Franklin and Mrs. Volda Lawrence, I see the agony that we go through in thinking about what is right and what do we need to do. I do not think it is politics and I do not think that we stand or sit in this House looking at this issue from a political perspective. I think that this is something which comes home to each one of us. I believe that we need to think through what we do at every step.

I deliberated on this subject for the last two weeks, spent a lot of hours thinking about what we should do and over the last decade thinking about this issue. I do come today, though in the House, thinking that we do have an opportunity because there is a possibility for a comprehensive national dialogue on this matter. I believe that this National Assembly should lead this dialogue. In fact, I want to thank you Hon. Member through the Presiding Member, for bringing this here so that we can in fact have this national dialogue in the House. It will be the first time in the region of CARICOM that a National Assembly, not as a side event, but as part of our work, would have discussed this. I want to thank you.

I wish to assert first and foremost that as the Hon. Member Mrs. Volda Lawrence has said and as Mr. Franklin himself acknowledged, criminalisation of HIV has not been proven to prevent the spread of HIV anywhere. It merely encourages individuals not to get tested, and increases the stigma and discrimination against those who are positive. This in turn can lead to an increase in the spread of HIV from those who do not know their status. We should all be reminded that stigma and discrimination have proven to be the most powerful drivers of the HIV epidemic. Even the Hon. Member, Mr. Franklin confessed to that. It would be remiss of me if I were not to remind all of us that most people living with HIV, who know their status, take measures to protect themselves and to protect others. I am opposed to any effort that broadly seeks to criminalise HIV transmission.

Mr. Franklin was very careful that that is not what he is talking about. He is not talking about a broad effort to criminalise HIV Any motion for setting criminal penalties for HIV transmission and to force public disclosure of a person's status is counter to the objectives of public health. The fact is that there are no data indicating that the broad application of criminal law to HIV

transmission will achieve either criminal justice or prevent HIV transmission. The fact is that criminalisation of HIV exposure risks undermining public health and human rights. I state as clearly as I can that criminalisation of HIV transmission is not a solution.

Criminalisation of HIV transmission increases stigma and discrimination which drives transmission. This motion to criminalise HIV transmission if accepted as is will cause us to lose ground we have already gained. Nevertheless, if this motion's sole purpose is to determine what action Guyana must take as a nation to deal with those rare incidences where a person willfully transmits HIV with intent to cause harm, then the subject matter deserves dialogue.

As such, I would support such a matter being the subject for deliberation by a Special Select Committee of the National Assembly. In fact, I have tabled an amendment to this motion to give effect to the setting up of a Special Select Committee to discuss this matter. Guyana has always taken an approach of building an empowering environment to deal with the challenges of HIV I know that the Hon. Member probably does not know that Guyana was among the first countries in the region that recognised HIV as a reportable disease when we amended the Public Health Ordinance Section 22, through an Amendment Act 1989. This Amendment enabled public health practitioners then, enables us and other authorities now to pursue certain avenues to limit behavior that increases the likelihood of HIV transmission. We have that power now. We can quarantine people; we can lock up people and put them away now under that amendment.

We should note too, that Guyana was among the first countries to publish a national AIDS Policy that generally guides us in the development of interventions and in respecting the fundamental rights of our citizens – those living with HIV and those not living with HIV We published this national policy in 1998 and we revised it in 2003 and 2006. It can be found on the website and I believe the National AIDS Committee has distributed copies to all Members of Parliament.

As part of the regulations under the Medical Practitioner's Act 1991, in 1998 we published the code of conduct and the Standards of Practice for physicians was published in November 2008 in the **Official Gazette**. This code also addressed policy directives as they relate to confidentiality and how information must be handled and caters for the disclosure of HIV status under extenuating circumstances. There is no such thing in Guyana that the HIV status of a person cannot be shared when under certain circumstances. The code describes the circumstances. We

have this already. The National AIDS Policy, the Code of Conduct and other guidelines and policies recognise that the only effect of public disclosure of the identity of HIV infected persons is to augment the attitudes of scorn and discrimination they already face on a daily basis in all environments due to prejudice and ignorance.

The clinical guidelines for HIV diagnosis and treatment and guidelines for Voluntary Counseling and Testing (VCT) and Prevention of Mother to Child Transmission (PMTCT) also provide directions and how personal information must be treated. The Sexual Offences Act also caters for disclosure of HIV status and even caters for the determination of that status. I believe the Hon. Member Mr. Franklin to be meaningful in his call to apply criminal law to HIV transmission. I believe that he is genuinely driven by a well intentioned wish to protect people and to contribute to the acceleration of the prevention and control of HIV transmission in Guyana. However, I believe that this proposal as is before us today, is misguided and misdirected in relation to the proven dynamics of the epidemic. Also, it will be a terrible mistake to carry this motion as it is before us any further.

Legislating the criminalisation of exposure or transmission of HIV in Guyana risks setting a process in motion that will actually increase transmission. I concede and think of what all of us believe about this: It is a matter that is intellectually intriguing. I believe that as Judge Edwin Cameron said that it is a matter that is “socially pressing” and indeed, it is a matter that is politically fraught as we see in discussing this.

My contention still is that this motion is totally misdirected. At the end of today, I wish and anticipate that we will stand firm as a Parliament and whatever we do with this well intentioned but misguided motion, we will not criminalise HIV exposure and transmission and we will not needlessly force disclosure of HIV status and reduce the rigidity of existing disclosure policies. I am hoping that we will stand together as colleagues with our hearts open to the struggles of those living with HIV to declare that we, like all of our brothers and sisters want justice and wisdom in addressing HIV.

Comrades we must reject totally a strategy of punishment and retribution. It is not a workable strategy. I reiterate that I will therefore support any move to have further dialogue on this matter and I would hope that we would agree to have the issue of willful transmission of HIV with the

intent to cause harm be comprehensively discussed in this House. A Special Select Committee is the place to have this dialogue and to invite the public and technical agencies to come and participate in this discussion.

Mr. Franklin, I know you said that you read a little part of Dr. Arif Bulkan's Report, but that report after consultation with many people was taken out of that Report. The National AIDS Committee was in charge of this. At the end of the day, the Guyanese people – all those who attended those consultations – concluded that the way forward is not to criminalise HIV. Indeed there is a draft legislation that at the time of the fire at the Ministry of Health was ready to come forward, but we never got to it and that did not criminalise HIV. It catered for the things that the Hon. Member Mrs. Volda Lawrence talked about – ensuring access, making sure that we have ways of dealing with the disclosure and making certain that we empower people. I hope that at some point we will have agreement on that legislation. There are still things that we are not agreeing to.

Colleagues, the fact is that the world needs to do more to decriminalise certain laws, regulations and policies that contribute towards the spread of HIV. Guyana has made progress as a leader in this fight and we must not seek to have more laws to criminalise HIV exposure. In fact, I find strong resonance with the call from UNAIDS that there is need to remove certain punitive laws, policies and practices and eliminate stigma and discrimination that block effective responses to AIDS.

Sadly, for example, there are 52 countries in the world that still have laws that impose restrictions on entry, stay and residence of HIV people based solely on their HIV status. I am glad that the United States removed those restrictions in May of this year. There are 106 countries which report having laws, regulations and policies that present obstacles to accessing HIV services by key populations. Yet none of these countries have shown that criminalisation and restriction have done anything to decrease the transmission of HIV among their populace.

In a research study done by Lazarin and et al and published in the *Journal of Law, Medicine and Ethics in 2002*, these authors failed to show any evidence that HIV related laws can explicitly regulate the sexual conduct of people living with HIV or moderate risk behavior. We do not have to go too far. We have had a law in this country for all my life and the lives of everyone in here

that prostitution is a crime. I hope that none of you have been to a prostitute recently. It is not stopping us from having commercial sex workers. It is not preventing people from going to them. We have to be careful. The UN Rapporteur on health reviewed the global context of the HIV epidemic and the application of criminal law and found no benefit but the potential for alienation, stigmatisation and fear. The premise of the motion is that a criminalisation approach is necessary because the present one has failed to stem the tide of the epidemic. I can see the confusion. At one point, the mover said that we have done well and at another point he said that we have failed miserably. The mover needs to make up his mind.

The fact is that on the contrary, our approach to fighting the HIV/AIDS epidemic which includes a well informed citizenry with education and awareness at all levels throughout Guyana, prevention of HIV transmission, prevention of mother to child transmission, treatment and care of persons living with HIV and pursuing policies and strategies for eliminating and reducing stigma and discrimination has worked.

3.40 p.m.

That information about 13,000, you and I and the persons who said that, let us go and find them. For pregnant women in this country sometimes do not come within the first three months but by the end of the second trimester, we know all the pregnant women in this country.

At the end of 2009 the prevalence among pregnant women was 1.1%, I still do not accept that as good. In 1995 it was 3.5%, in 1997 it was 7.1%, and in 2000 it was 5.6% now it is 1.1%. The programme has worked. In the year 2000 there were 850 pregnant women who gave birth to babies who tested positive for HIV. In 2009, there were 130 a massive reduction, in the year 2000 just over 200 babies were born with HIV in Guyana. There was no way then to prevent a pregnant woman from passing the virus to her baby; testing was limited and we were not yet treating the women.

In 2009 there were only 8 babies that were born with HIV because now we test every pregnant woman and 98% of pregnant women in Guyana accept voluntary testing. Each one of them gets tested before they deliver their baby because if they did not get treated 35% of them would pass the virus to their baby. That has been reduced to 4%. When you look at the overall population, the one that you say is 1700 per 100,000, when you do the computation.... **[Interruption]**

I know where you got those numbers. From people who are not listening; the same people who you said should stay out of our business. We have the data because before 2000 the prevalence was between 3 and 5% in the general population. Now it is between 1 to 1.5% of the adult population, depending on who you want to believe.

Last year during the National Testing week in November, 32000 Guyanese in all ten Regions were tested. The prevalence among those 32,000 was 0.6%. Our efforts are working and working well.

In terms of the progression of HIV to AIDS, before 2002 annually we would get more than 500 cases progressing from HIV positive to AIDS cases. In 2009 we had 43 cases, indicating that the medicine is working. Our treatment programme with Anti-retroviral medicine is working comrades; working well at preventing the progression from HIV to AIDS. In terms of mortality due to AIDS, before the year 2002, 9.7% of all deaths in Guyana were due to AIDS. In 2008 - we have not yet verified the 2009 figure - 4.3% of all deaths were due to AIDS.

There is currently an aggressive prevention programme, and I do not want to go into details. The fact, however, is that we have engaged all stakeholders in our robust prevention programme. The prevention programme included the promotion of voluntary testing throughout Guyana as we ask Guyanese to know their status. I would hope that each one of us in this room knows our status. Last year people responded to us, 105,000 Guyanese came forward to know their status and we spent \$400 million in testing Guyanese.

We are testing across this country, these are expensive things. We should note that last year, also, 8000 persons showed up to donate blood and among the prospective blood donors the prevalence rate of HIV was 0.17%. Those who tested positive were immediately referred to a treatment and care centre. This would have been missed had they not showed up. Somewhere along I thought I heard Mr. Everall Franklyn saying that people were coming for something else so it was by pure accident that we found out. Okay, you do not know but the truth is for most person in Guyana who we've found out their HIV status was people coming to our voluntary testing programmes; voluntarily coming to check their status. It is not because they were deadly sickened that we found out; we did find some out that way. That use to be the case at one time when testing was widely available but today most of the cases are from the opportunistic testing that the Ministry

of Health, the Non Governmental Organisations and the Private sector conduct across this country-most of the cases.

In terms of our treatment, with expensive Anti-retroviral treatment, more than 3000 Guyanese are on Anti-retroviral treatment and 1500 of our sisters and brothers who are HIV positive are in our management programme, some of whom doctors have not yet recommended the use of Anti-retroviral treatment. 1000 of these persons are being treated not only in our clinics but through an innovative home based programme.

Presiding Member we have improved the efficacy of the criminal justice system in investigating and prosecuting sexual offences against women and children. This is one of the things we need to do. We are supporting women's equality and economic independence through concrete legislation, programmes and services; some of which have been discussed in this House recently. Legal actions that we need to strengthen and enforce laws such as those against rape inside and outside of marriage and to recognise and punish other acts of violence against women and children are the kinds of laws that should be on any legislative agenda and these are the ones that we have brought forward. It is not just addressing the social issue, it is taking into consideration all of the problems such as HIV.

I ask myself what might have driven the Hon. Member to seek solution; he said lots of people have been talking to him, within the ambit of criminal laws.

Presiding Member: Hon. Member your time is up.

Mr. Hinds: I propose that the Hon. Member be given another fifteen minutes to conclude his presentation.

Dr. Ramsammy: What might have driven the Hon. Member? The criminalisation movement has two reasons really: one is to punish harmful conduct by imposing criminal penalties and to prevent HIV transmission by deterring or changing risk behaviour. The haste in some jurisdictions to favour criminalisation over effective public health and human rights response is bad policy and demonstrates a failure to implement good prevention and care programmes. Framing the problem of HIV's spread in terms of criminal behaviour does nothing to stop the epidemic. It does a great deal, in fact, to muddy the prevention messages and undermine the

supportive social environment needed to stop HIV. Instead of criminalisation attention should be linked. And I repeat some of the things that Hon. Member Volda Lawrence talked about; implementing positive strategies that reduce stigma and discrimination, that increases access to testing and counselling, that provides universal coverage for prevention, treating care and support and the elimination of mother to child transmission. We should focus on policies that protect women and children. We should protect women and children from violence and sexual abuse. We must create better access to credit and employment to women and other vulnerable groups.

Nothing I have argued so far, would mean not to punish a person if that person knows that he or she is HIV positive, acts with intent to transmit HIV and does transmit HIV. In such circumstances punishment is justified and, therefore, we must concede that criminal laws have useful and legitimate roles to play in public health emergencies but persons who wilfully transmit HIV with the intent to harm should legitimately... [Mr. Franklyn: Thank you very much. I rest my case.] Do not go so fast, face prosecution. We have the cases; you talked about Johnson Azega, we know the case of Gaiton Dugal, patient zero who after having sex with his sexual partner would put on the light and pointing to his corpus sarcoma region says I have gay cancer I will die and so will you. That is wilful, that is reckless and should be punished. Nobody is saying no. However, it is my contention that we do not need an HIV specific law that would have all of the drawbacks talked about. The existing laws can deal with it. Trinidad in 1998, added HIV to their criminal offence law. How many people have they prosecuted? The fact is that our criminal laws can deal with the situation as it is arises. The truth is, all the cases that the Hon. Member referred to could have been dealt with by the regular laws of the country. When you rape someone a specific HIV law is not needed. We can deal with it.

In the overwhelming majority of cases - and this is an important point - the virus is spread when two persons have consensual sex neither of them knowing their HIV status. That is where the problem is. The problem in every country is where two people have consensual sex, neither of them knowing. The answer is not to criminalise HIV. The answer is to make sure they have access to services so they can know their status.

Applying criminal laws undermines our prevention efforts. Some persons from the criminalisation movement argue that criminalisation laws on HIV, and I heard the Hon. Member

say that, protect women and girls from being infected with HIV by unfaithful partners through sexual violence. Instead of providing justice to women applying criminal law to HIV exposure endangers and further oppresses them. Such laws do nothing to address the epidemic of gender based violence or deep rooted economic, political and social inequality. Go to the countries that did few prosecutions like Africa; it is the women who are charged because of fear of disclosure and so on. Be careful when implementing such laws because a woman, who knows she is HIV positive and becomes pregnant and then passes it on to her baby, is that wilful?

I have serious reservations regarding the notion that we need an HIV specific law to address the issue of wilful spreading of HIV in our country. There are behaviours that need to be subjected to punitive laws for certain. However, the existing criminal laws provides a good basis for criminalising wilful kinds of behaviour that leads to the spread of HIV or anything else that would leave you vulnerable to serious illness and death. What about the man who comes in with tuberculosis, knows that he has TB, ignores the health workers and goes back to work in the mines? People who contract TB can die too you know.

I end, therefore, Presiding Member by stating my case. It is prevention efforts that will end the scourge of HIV Not a counterproductive approach of punishment and retribution. We must demonstrate the energy and the daring to bequeath a future that is hopeful. To do this we must not fear to be ambitious. Prevention works. I am inspired by the words of Robert Kennedy:

“It is from the numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope and crossing each other from a million different centres of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance.”

Retribution and punishment is taking us down the wrong road. We must be stakeholders of change, comrades. The change we need will be difficult. Pursuing the preventions options that we have will be a difficult road; has proven to be a difficult road but we must pursue it. Not because it is difficult it means we will seek for some simple thing like a law to stop it. Being difficult is no reason for us not to pursue it. John Kennedy when, the other Kennedy, they wanted

to go to the moon and people said it was too expensive and too difficult reminded his sisters and brothers in America

“We choose to go to the moon in this decade and do the other things. Not because they are easy, but because they are hard.”

Because that goal will serve to organise and measure the best of our energy and skills; because that challenge is one that we are willing to accept, one we are unwilling to postpone and one which we intend to win. That is what we are doing in the Ministry of Health with our partners the NGOs etc. We intend to win this battle. In 2020, with the new HIV strategy, we hope that we could look back and that we could see in 2020 that our people do not have to worry about HIV anymore. So I call on all of you to join us. Join us so that we can win this battle against HIV. We have won many battles; the war still has to be won and I believe we can win. Today as we debate this Motion and as we agree to go to a Special Select Committee so that we can have a comprehensive conversation and dialogue. I ask that we acknowledge the work that the health workers and all those working form the NGOs in the fight against HIV have done. We have done a remarkable job in Guyana. However we got to where we did at one time, we are reversing the trend; we have reduced it by more than half. Guyana has met the 2015 United Nation’s Millennium Development Goals 2015 more than two years ago. We have reduced by more than half; we have halted and reversed the epidemic. It is still a long road to travel. As long as there is one child being born with HIV in our country none of us should rest. We will not win this battle if we give up the option of good prevention strategies and good public health response and instead seek a strategy of retribution and punishment. That will fail. Thank you. [Applause]

Assembly suspended at 4.01 p.m.

Assembly resumed at 4.54 p.m.

Mrs. Punalall: The Motion presented by Hon. Everall Franklin before this National Assembly deals with the criminal responsibility of HIV infected persons. I stand in support of this motion and call on all other Members of this House to allow their conscience to be their guide and support this motion.

Presiding Member, I refer to the fifth WHEREAS clause which states and I quote:

“AND WHEREAS persons, some knowingly, still infect others with the Human Immune Deficiency virus, causing immense suffering and pain to the infected persons, their families, community at large, along with increased cost to the health-care system.”

Considering the fact that we have a declining population of less than one million in a vast country of 83,000 square miles, and considering the fact that few from other countries will like to immigrate here, and still considering the fact that our human resource is our most valuable asset, we must do whatever we can to protect, preserve and prolong the lives of our citizens.

If a person is HIV positive, preventing others from contracting the virus which they carry should be a primary concern. Unfortunately all HIV positive people do not take the precautions they should. There are some who use needles or other implements to intentionally infect others with the HIV virus. There are others who live recklessly in pursuit of their sexual gratification and this deadly virus is passed on recklessly. It has therefore become crucial that we pass legislation to penalise those who live this way.

In animal husbandry, if an animal in a flock is carrying a deadly transmissible disease it is removed from the flock so that the disease does not spread. In crop husbandry, if a plant is infected with a deadly transmittable disease it is quickly removed and destroyed. Unfortunately, we cannot apply this principle to HIV positive persons since they are neither plants nor animals. However, if it is so important to fight the spread of plant and animal diseases, we must admit it is even more important that we do all we possibly can to fight the spread of diseases among humans – in this case the deadly HIV. When persons know there is a stiff penalty awaiting them such as a charge of attempted murder they will think twice to intentionally pass on this deadly virus.

There are many countries across the world where people are being punished for willfully and recklessly transmitting the AIDs virus. I cite the following four cases:

1. In Louisiana, USA, in 1998 Dr. Richard J. Schmidt was sentenced to 50 years for willfully injecting a nurse with HIV infected blood.
2. France - in June, 2004 Christopher Morat was sentenced to 6 years for poisoning two women with the HIV virus.

3. Thailand - in November, 2004 Hans Otto Schiemann, a German living in Thailand, infected 100 Thai women. He was sentenced to 2 months and deported.
4. United Kingdom – in March, 2005 Mohammed Dika, a Kenyan who lived in the UK infected two women and was sentenced to four and one half years.

It is time that Guyana updates its laws in this area. According to article 2 of the Convention of the Protection of Human Rights and Fundamental Freedom, I quote:

“Everyone’s right to live shall be protected by law.”

The AFC stands for the sanctity of human life. We believe that all human beings, at any or every stage of life, are to be perceived as persons of equal and immeasurable worth, and of unchangeable dignity, and, therefore, must be treated in a manner equal with this status.

Presiding Member, the willful transmission of the HIV/AIDS virus by a sexual act came up for discussion in the Special Select Committee on the Sexual Offences Bill. If I could remember correctly it was the Hon. Dr. Frank Anthony who made this proposal. The AG’s Chambers sent us a draft clause, upon request from the Members of the Committee, to be inserted into an appropriate section of the Sexual Offences Bill. I will just like to read the first clause that was sent to us,

“A person (the accused) commits the offence of intentionally, or recklessly expose of another (the complainant) to infection with HIV through a sexual act, if,

- (a) the accused knows or ought reasonably to know that the accused is HIV positive;
- (b) engage in a sexual act with the complainant which,
 - i. involves contact between any part of the body of the accused and any part of the body of the complainant, whether or not the complainant is the spouse of the accused or consents to the act; and
 - ii. is capable of exposing any part of the body of the complainant to a bodily fluid of the accused in a manner that could result in the transmission of HIV;
- (c) before the accused does the act the accused does not inform the complainant that he/she accused has HIV.”

One Member of the Committee on the opposition side commented that because this issue was not consulted on by the wider cross-section at the time of the ‘Stamp It Out’ consultation it should not be included. Anyway, the Chairperson of the Committee, Hon. Priya Manickchand, informed the Members that an amendment can be made and debated in this House so that the Clause can be added to the Bill. This motion is simply seeking to have this issue brought to a finality and does not need to be delayed. The AFC agrees that it be taken to a select committee.

When someone intentionally infects another person with the HIV/AIDS virus, that person must be held responsible for his or her action.

In the Holy Bible the books of Psalms 103 verses 2 to 4 says, I quote:

“Bless the Lord, oh my soul, and forget not all his benefits, which redeemeth thy life from destruction, who crowneth thee with loving kindness and tender mercies.”

It is God’s will that man’s life be saved from destruction, and we must so live as human beings.

Thank you Presiding Member. [Applause]

Ms. Teixeira: Presiding Member, I want to congratulate you on occupying the seat today.

This is, I think, a really interesting debate we are having because in the National Assembly few times do we have the opportunity to debate an issue where we are not taking the usual stance, trying to out-manoeuvre each other, for our own interests obviously – we are politicians. This is an issue that I think has called forth in us something much more profound, and that is our desire as a group of people to deal with something that is extremely complex, controversial, and one in which we have to try to find answers.

The Hon. Member Mr. Franklin has put forth his proposal. Certainly the issue of how society treats persons who would willfully, knowingly, transmit a deadly disease to another must be dealt with, a way has been found in which it will be dealt with. We do not agree, on this side of the House, with the resolution that refers to it being called attempted murder, or that anybody found to be doing this be charged with murder. We do believe that it is important for us, as Members of Parliament, to sit and examine what are the experiences in other countries, examine what our laws say and do provide for, because there are different views on that too. There are

views by persons that our laws allow, and would allow, for persons to be charged for willfully transmitting HIV/AIDS. There are those who disagree. There are some laws in other countries that have changed and criminalised the willful or knowing transmission of HIV/AIDS; there are others that haven't.

The issue of the success rate and whether it has helped or not is highly debatable, therefore, Presiding Member, I think in this House the amendment that has been proposed by the Government, that we go to a special select committee, will allow us to take time, and we can solicit the views of the people, we can call on experts as well to advise us, so at the end of it all we do not have a knee-jerk reaction, a reactionary reaction, but a well thought out view on what is the best way to go forward.

When one looks at all of the literature – and I will not repeat, because I think Mrs. Lawrence and Dr. Ramsammy made good presentations in terms of highlighting the complexities and the reasons why one should not go in that direction - I also believe that we have to find a balance. We have to, as a society, find a way to say this is not acceptable. How it is to be done has to be determined. An open debate on the floor in this House is not going to enlighten us better than what we already have. Therefore, in a special select committee, we can review this in greater detail.

To support some of the arguments already made. I will go to the case referred to of Canada's Basega. He was tried for murder, because in Canadian law aggravated sexual assault leading to death is murder. They then determined that knowing transmission of HIV/AIDS is aggravated sexual assault. There was no statute of limitation on attempted murder, or murder, resulting from sexual assault. Therefore it was not that they went automatically to charge him on that. Two of the thirteen victims died of HIV/AIDS.

But there are also the banal kind of cases, where it becomes so broad to make an absurdity of the whole issue of trying to prevent or restrict people from even thinking of going in that direction of willfully transmitting. There is a bizarre case of a 42 year old Texan who was imprisoned for 35 years for harassing a public servant with a deadly weapon, after he spat in the face of a police officer who was arresting him for public intoxication in 2006. None of the police officers who arrested him became infected with HIV/AIDS, but nevertheless he was made to serve his

sentence because they said, that because he was HIV positive, because he had the virus, he was therefore a risk and should not have spat in anybody's face. This case has taken a lot of examination by learned judges in different parts of the world. One South African judge stated,

“It stunned the mind that someone who has not actually harmed anyone, who has not actually damaged any property or otherwise spoiled the world, could be locked away in these circumstances for 35 years. The inference that his HIV/AIDS status played a pivotal role in sending him away for so long is unavoidable. In short, the man was punished not for what he did, but for the fact he had a virus he carried.”

We have to be very careful when we talk about regulating and legislating human behaviour, particularly in cases like this where there are individual rights - the rights of those who are virus free and the rights of those infected. It is a delicate balance that we in Guyana have to find. We can choose the model of other countries, such as some of the West African countries where transmission is so broadly defined, that due to mother to child transmission the mother can be charged and sentenced. I believe that is the point Mrs. Lawrence was referring to, that legislating and criminalising this type of action can lead to women and vulnerable groups of people being targeted.

There is another bizarre case – just to give you another example - in a Swiss Federal Court which judged a man criminally liable for passing on HIV/AIDS to his partner despite the fact that he had not been tested for HIV at the time of having sex. But since he had a history of unprotected sex, and had been aware of the HIV positive diagnosis of another previous partner, the court decided that he should have suspected he was HIV positive and his behaviour was risky. He was therefore made criminally liable and as I said sentenced.

There is one last case I want to refer to which is important to one of the points I want to make here. Again in Switzerland, a man was charged and sentenced for exposing a woman to HIV/AIDS without disclosing his status. He was imprisoned in 2008. The public prosecutor appealed the case in the court of justice calling for the case to be dropped. The reason being that the viral load of the man was undetectable, in other words, because he had received effective ARV treatment he had minimised the risk of onward transmission during unprotected sex. Based

on the testimony that his viral load was one in 100,000 the risk of onward transmission was minimal. Therefore, the man's prison sentence was overturned.

The reason why I am giving these court cases is to say to this House, and to Hon. Member Franklin, that the issue is not easy. It is not easy in the court to prove willful transmission. It is not easy, as Minister Ramsammy asked: will the person who is infected be able to point a finger to the person in particular who they last had sex with. The testing to deduce that there is some similarity or probability is all that can be done because there are different strains of HIV/AIDS. A person can become infected by one partner, sleep with two other partners in a month, and then think it is the last partner they had sex with that made them positive. Therefore, I think we need as a House to study this more and recognise that we have a responsibility to try to find the best answer and wisdom we can find.

I will quote from the document; *“Ten Reasons to Oppose Criminalisation of HIV Exposure/Transmission”*, under the heading “The Likelihood of Conviction Without Sufficient Evidence”:

“Proving that an accused person was HIV positive at the time of the alleged offence as well as proving who infected whom and when is a serious challenge. In a sexual relationship the one blamed for transmitting HIV will most likely be the one who first learnt of his or her status, not necessarily the one who was first infected. Even if the accused person infected first it could have been a third person who actually infected his or her sexual partner. To prove guilt scientific evidence of transmission by the accused person is required. In recent years where transmission exists prosecutors handling cases of HIV transmission increasingly resorted to phylogenetic testing which seeks to establish a genetic relationship between the HIV viruses of the two parties. However, such evidence only indicates similarities in the viruses and does not prove beyond a reasonable doubt the source of the virus. Such technical evidence and its limitations are not well understood by police, prosecutors, defence lawyers, courts, media or people living with HIV or HIV organisations.” **[Interruption]**

I am quoting this from a document. I knew you were quiet for too long Mrs. Backer. I knew it was not possible for you to keep quiet for so long. I told you I would speak for three hours.

“Phylogenetic testing is also very expensive to apply and thus unaffordable in many low resource countries. As a result of these factors there is considerable potential for conviction without sufficient evidence.”

This is just one of the areas of complexity on this issue.

Mrs. Lawrence and Minister Ramsammy have dealt a lot with the rights issues, the risks and the fact that it does not succeed. Many of these interventions have not succeeded. In Scotland and those countries where they have introduced what was quite serious legislation, they have had in the last eight years four such cases. Just four! Therefore the point that both speakers before raised, that the transmission by persons willfully, knowingly, is a miniscule minority - and they have to be dealt with - but the majority of the transmission is by unprotected sex, mostly by persons who do not even know that they are HIV positive because they have not yet been tested. I think Minister Ramsammy gave some figures for that. Therefore the rule-of thumb for the 21st century youth is to not have unprotected sex. I think both speakers referred to that.

[Interruption] Well, that is your option. If you are happy with that Mrs. Backer go ahead. Sorry, Presiding Member, but I think she should speak for herself. There is a whole movement on that issue too, Mrs. Backer, that has to do with abstinence, but I will leave you to lead that struggle.

I just want to remind this House that 200 or 100 years ago syphilis and gonorrhoea, words only some of the older people would remember - venereal diseases, now called sexually transmitted diseases - were the HIV/AIDS of those centuries. There was no testing, no cure; lots of people died and horribly because those are horrible diseases.

The 21st century is marked by one of the new diseases in front of us and that is HIV/AIDS. In ten or 20 years time there will be vaccines, there will be cures, in our public health laws. Therefore, we have to be careful in a period where human behaviour is so difficult to change. I think Minister Ramsammy debunked the argument that there isn't a reduction in the cases. Hence the issue in many countries, of choosing the legal pathway of decriminalising out of a

feeling of hopelessness, is not relevant here. I think we have to as a group, as a House, be able to sit and look at what would do best in our case, what will work in our situation.

When we looked at the Sexual Offences Act we made it irrelevant to the case to refer to past or present sexual partners. This motion is calling for disclosure of what is treated as confidential, private information of a patient. Therefore we always have to look at access to information issues between the different legislation we brought to protect persons, whether they are victims or accused. I think we also have to be careful that we not get into the view that because someone is infected that that status of being infected is enough to put them in a situation where they could be charged.

My fear is this - one of the cases I was going to refer to where women have become pregnant and have breast fed their babies - that in many countries where there are no testing facilities - that there are laws to charge those women for knowingly infecting their children with breast milk. In countries where there is such great poverty, where breast milk is probably the only thing a mother has to offer her child, you are asking me as a woman to figure out what I will do in that case. I don't know if the culture we are in and the status of our development as a world right now, which is getting into this nanny culture, that we have to legislate every single action to prevent every single action, regulate everybody's lives. People do have to make choices and some are not the right ones, but we cannot, for example... If this motion is to go as is, whilst the discussion has mainly been on sexual transmission, the actual motion as drafted leaves it in a way that any kind of transmission with bodily fluid etc. would be part of the proposal that Mr. Franklin has put before us. That would be untenable and unacceptable.

I also want to ask what is going to happen with tuberculosis. Are we are going to come back to this House... Tuberculosis is the old disease which in 1987 the World Health Organisation thought it had cured it. The Ministers of Health decided to close all the TB sanatoriums' in the world, they were not needed; TB was on its way out. It was a disease of the past. In 2010 tuberculosis is a raging, dangerous disease in many advanced countries of the world where TB had been controlled.

Tuberculosis is not transmitted by sex. I can get tuberculosis from drinking out of a glass that someone else did not wash properly who had TB; from kissing... **[Interruption]** Do you

want to continue Lance? Go on. Mr. Carberry has got the picture. So are we going to then on the tuberculosis issue come back wanting to criminalise this? Under the public health laws of Guyana that exists right now, in 1987 HIV/AIDS was added and it was made an offence to not report it and to transmit it. The fine is small but it is there.

5.24 p.m.

As a former Minister, right up to this Minister of Health, not one case has been brought. I will confess in this House that I did deal with a case – not when I was Minister, after – of a woman who we felt very strongly had been knowingly infected. We were encouraging lawyers to use that part of the public health act. Of course it was a five thousand dollars fine, but it was to try to make the horror of that particular individual case known to society and unacceptable to our society. That was just one case in many years.

I think that this House and the members before it are very capable of sitting and going through all the various aspects, hearing all the various arguments, inviting the public, inviting experts and be able to come up with our best judgment and come back to the House, to say whether we want some amendment to a law, or that we are not going to have any, or what we are going to do and what kind of emphasis.

Regardless of whether we come back with an amendment to a law or not, it will not preclude, prevent or inhibit what is presently being done. That is, to continue encouraging people to have protected sex even with their partners, husbands or wives, **[Mr. Carberry: Abstain.]**

I do not go that far. The days of the 1970's of free love and hippy culture are over. Those days are over. Those of us who came through the 70^s; the young people of today will never have the days that we had. There was no HIV/AIDS in those days. There is HIV/AIDS now. We have to make sure that we are able to educate people, test people, and continue to put money into the anti-retroviral treatment; the Prevention of Mother to Child Transmission Programme where we are seeing successes, and continue to encourage our people to have protected sex.

In some countries the law says that if you have unprotected sex at all it is a criminal offence. One would hope one does not go down that road. Nevertheless, I believe in this House, it is an issue that as a country we need to find answers. I do not think we need to go into draconian measures;

we do not need to hurt people's rights or endanger people who are infected. I believe we have to find an answer that we are content with and can live with, and that we can sell to the people of this country.

The fact in today's Parliament that we have been able to reach agreement on this approach to go to Select Committee although it has not been tabled as yet is an indication of the level of maturity from the mover himself, Mr. Franklin, as well as the Opposition and the Government. I think this bodes well for us being men and women of reason and conscience. Between all of us we can find answers that we will be able to find comfort in and to protect the victims of both the virus and victims who are victims of persons who knowingly transmitted it. Thank you very much. [Applause]

Mr. Franklin (replying): Thank you Presiding Member. This motion is going to Select Committee. We have agreed on that approach. Therefore there is not much that needs to be said at this time. [Mrs. Backer: Nothing needs to be said.] We are not talking about sex now, Mrs. Backer. What we need to understand is that this motion was brought in good faith to this House. I am happy to see the mature approach which we have taken on this particular issue. There were some arguments which I myself made which limited the use of the law in dealing with this particular issue. I was very specific when I spoke about the wilful transmission, which limits the use of the law. Then, some speakers, Ms. Lawrence the Hon. Member in particular, started to speak about the use of broad applications of law. I did not deal with that. We had a specific issue being dealt with. In the case of disclosure, it specifically stated that when a Court so orders, this would be done. We went on along on a long discussion, but missed that particular point.

One of the issues that we are facing with – and I am glad it is going to Select Committee, because Members will have the opportunity to hear from health professionals themselves, people who have been affected by the disease on all sides, and they can then make deliberate judgement. One of the age groups which the infection rate is fast growing is the 10-15 year olds in this country. We know this due to the high incidents of teenage pregnancies and those who are testing positive. The 10-15 year-olds are not being infected by 10-15 year-olds. That is the reality that we have to look at.

Hon. Teixeira spoke about Tuberculosis, which is broadening the debate, but may I remind the House that the resurgent of Tuberculosis had a direct correlation to the high incidents of AIDS/HIV. Let us put it in perspective. One perpetuates the other. It is incumbent upon us to find a solution no matter how difficult it is. Apparently our lawyers are not so inclined to do some real work, but I hope that we will find a few of them.

I look forward to the deliberations in a Select Committee, and I move that the Motion be accepted with the amendment proposed by the Government. Thank you. [Applause]

Presiding Member: The amendment that has been proposed has been circulated and everyone has read it. I think we will put the amendment first to vote on that. So, I will put the question that the amendment as proposed by the Hon. Leslie Ramsammy that the matter be sent to a Special Select Committee.

Question put and agreed to.

Amendment Carried.

I now put the question that the motion as amended is sent to a Special Select Committee.

Question put and agreed to.

Motion carried as amended

COMMITTEES BUSINESS

MOTION

ADOPTION OF THE EIGHTH REPORT OF THE STANDING COMMITTEE ON APPOINTMENTS TO ADDRESS MATTERS RELATING TO THE NOMINATION AND APPOINTMENT OF MEMBER OF THE INDIGENOUS PEOPLES' COMMISSION

WHEREAS, Article 212S of the Constitution provides for the establishment of an Indigenous Peoples' Commission;

AND WHEREAS, in accordance with Article 212S (2)(a)(b)(c) of the Constitution, the Indigenous Peoples' Commission shall consist of –

- (a) “not more than ten Members, nominated by entities, by a consensual mechanism determined by the National Assembly, after the entities are determined by the votes of not less than two-thirds of all elected Members of the National Assembly;
- (b) Three persons, at least one being a woman nominated by the Tushaos Council and two persons including one woman nominated by Amerindian organizations determined by the votes of not less than two-thirds of all elected Members of the National Assembly; and
- (c) A member who shall be a nominee, without the right to vote, chosen by and from each of the following Commissions: the Human Rights Commission, Ethnic Relations Commission, Women and Gender Equality Commission and the Rights of the Child Commission.”

AND WHEREAS, the Committee on Appointments, in keeping with Resolution No. 118 of March 18, 2010, consulted with the approved list of entities for nominations to the Indigenous Peoples' Commission;

AND WHEREAS, all the approved entities were invited to submit and responded with their nominees between May and June, 2010;

AND WHEREAS, the National Assembly approved the members of the Indigenous Peoples' Commission in accordance with Article 212 S(2)(b), and Resolution No. 118 of March 18, 2010.

BE IT RESOLVED:

“That this National Assembly now approves the following twelve persons as members of the Indigenous Peoples' Commission established under the Constitution and signify to the President that:

Toushao Yvonne Pearson

Toushao Morco J. De Souza

Toushao Doreen Jacobis

Mr. David James

Ms. Matilda Saigo

Ms. Patricia Singh

Mr. George Simon

Captain Gerald Gouveia

Mr. Damian Fernandes

Mr. James Singh

Reverend Father Malcolm Rodrigues

Mr. Norman Whittaker, M.P.

Have been nominated in accordance with Resolution No. 118 of March 18, 2010 and Article 212 S(2)(a)(b) of the Constitution to be appointed Members of the Indigenous Peoples' Commission; and

BE IT FURTHER RESOLVED:

“That this National Assembly adopts the Eighth Report of the Standing Committee on Appointments to address matters relating to the nomination and appointment of Members of the Indigenous Peoples' Commission”

[Ms. Gail Teixeira - Chairperson of the Standing Committee on Appointments]

Ms. Teixeira: The report has been in circulation for about two weeks I believe, and Members have had the opportunity to read it. This report signals the completion of the nomination process in relation to the Indigenous Peoples' Commission. I am therefore pleased to lay the report and call for its adoption. Thank you.

Dr. Norton: If it pleases you Presiding Member, I rise to contribute to the motion before this Hon. House to adopt the eight report of the Standing Committee on Appointments, to address matters relating to the nomination and appointment of members of the Indigenous Peoples' Commission.

We, the members of the PNCR were practically in full support of the previous report resulting in Resolution No. 118, for we had no difficulties with the nominees from the National Toshiou's Council and the Indigenous NGOs for these nominees to be appointed to the Indigenous Peoples' Commission.

We of the PNCR neither have any difficulty with the entities to be consulted with to submit their nominees in accordance with Article 212 S(2)(a) of the Constitution. Unfortunately, the same cannot be said for this report which is now before this House. The main Opposition Party in this House, the PNCR, cannot support this report, for we have objections to one of the names submitted by a particular entity in this report. I would like to point out clearly that this objection was unambiguously raised during the meetings of the Committee since June 29, 2010. We therefore cannot be accused of waiting until we came before this Hon. House to raise objections. As a matter of fact we did reiterate our objections in a meeting of July 2010.

The members of the Opposition parties of this Committee support the nominees submitted, save and except the nomination by the Ministry of Labour, Human Services and Social Security of Mr. James Singh (Commissioner of Forestry).

I will explain why all the members of the Opposition objected to this nomination. Those who find it funny might laugh, but we do consider it as serious business. It is certainly not a game of bat and ball as some of us might want to compare it to. After a period of approximately 20 months, from October 2007 to May 2009, and 21 meetings, this Committee, after long hours of deliberations, arguments and negotiations, unanimously agreed on seven of the fourteen entities identified to nominate members to the Indigenous Peoples' Commission. Each of these entities were considered separately and in detail before they were accepted; the Minister of Labour, Human Services and Social Security being no different. The mission statement of this Ministry clearly states, and I quote:

“To contribute to economic and social development by maintaining a stable industrial relations climate, formulating policies and providing integrated employment, training, social and welfare services”

Particularly with respect to “social services”, I quote:

“Strive to enhance both social and economic circumstances and opportunities of all Guyanese through the provision of an array of services which addresses the needs of all.”

It was with this in mind that we the members of the PNCR agreed to vote in favour of this Ministry as an entity. Low and behold, after being selected that Ministry went ahead and selected someone who is not from that Ministry; exactly the same scenario as was played out in the Kwame Mc Coy Rights of the Child Commission, *saga* by the same Ministry, which led to protest action including picketing exercise in front of this Hon. House.

This Ministry selected Mr. James Singh (Commissioner of Forestry). I repeat, fourteen entities were put forward, of which seven were chosen. But, not even in the fourteen was the Forestry Commission mentioned. The PPP/C could have advanced it, i.e. the Forestry Commission, as an entity, instead of the Ministry. For that matter, in place of any of the other eight entities that they named, and with the majority in the Committee, would have easily succeeded in having it as an entity, but they did not. One infectively used the different arguments of the expertise of Mr. Singh all in his favour. The PNCR has nothing against Mr. Singh as an individual, or as Commissioner of Forestry, but he does not operate within the ambit of the services that this Ministry provides, in keeping with its mission statement.

Presiding Member, I would just like to repeat a statement from a member of an Indigenous Community in Region 9, in the Rupununi, about how important the provisions of social services are to them that are provided by the Ministry. This was in the daily press of July 16th, I quote,

“What must be borne in mind by the powers that be of this regime is that all pensioners in all regions rely on their pension to help feed and clothe themselves. When there is an inefficient cog in the wheel that deals with social service, people, especially old poor people, suffer and die.”

We of the PNCR thought that having someone from this Ministry on the Indigenous Peoples' Commission would allay such fears of the indigenous people. This nomination was best described by the Hon. Ms. Holder, a member of the Committee, as a breach of faith. While it is in fact that the consultation calls for entities to nominate persons and not necessarily representatives of the entities. To do the contrary is, as was described by Hon. Member Ms. Backer, against the spirit of the Constitution.

Please do not tell us take the Constitution back to Parliament to get it changed as was suggested before. This report calmly pointed out that the Constitution is silent on the issue of nationality of a person sitting on any of the Commissions. Yet the University of Guyana was written to expressing concerns regarding the status of its nominee in Guyana. Likewise, could we not accept the silence of the Constitution with respect to whether or not the nominee must be a representative from the entity? Thank you very much. [Applause]

Mrs. Holder: Thank you very much Presiding Member. On occasions like these, I must say they leave me with a very bad taste for the kind of politics being played by the members on the PPP/Civic benches. Two Thursdays ago, when we deliberated on the Committee on Appointment's Report dealing with the appointment of members to the Public Service Commission, Hon. Member Ms. Gail Teixeira thanked me for my support. On this occasion, as we consider the long awaited establishment of the Indigenous Peoples' Commission, I can provide a guarantee that she will have no such reason to thank me for what I will say. The reason being is that the Indigenous Peoples Commission has been in the making for some nine years. The reason being is that the Alliance for Change's position is as stated in the report, in paragraph 11.4. It is our firm opinion that the appointment of the Indigenous Peoples' Commission to that Commission by Mr. James Singh (Commissioner of Forestry) as the representative of the Ministry of Labour Human Services and Social Security is a serious breach of trust as far as we are concerned.

Of course, as stated in paragraph 11.5, the Government's side will continue to argue that the Constitution calls for persons nominated by entities, not representatives of entities, thereby opening the door for Mr. James Singh's appointment to be made. However, that is not the whole truth, but only part of it which led, in the first place, to the Ministry of Human Services being included in the list of entities able to nominate a person to serve on the IPC (Indigenous Peoples'

Commission). As stated in paragraph 9.4, this issue of selection of the Ministry of Human Services was considered since in December 2007 – the report says so – by the Committee of Appointments. The rationale for the Committee doing so then bears no resemblance to the reasons now being advanced by the members of the PPP/Civic.

It was I who had argued then that the Ministry's inclusion on the list of entities was necessary. I did so upon the basis that it was desirable to thrive for synergy between the Rights Commissions and Specific Government Ministries and entities, to allow for the IPC access to their expertise. It was simple bizarre for me to listen to the members of the PPP/Civic argue that Mr. James Singh's years of expertise in the forestry sector had somehow or the other vested upon him the expertise of those obtained by the professionals who studied many years and now work in Ministry of Human Services.

What the appointment of the Commissioner of Forestry does is not only denying the IPC the expertise and skills of the professionals in the Ministry of Human Services, but puts him on the IPC through the back door. A course of action that they on that side have told us over the years was an abomination to them.

Let me make it quite clear; this issue is not about the Commissioner of Forestry, but about a breach of trust that serves to further sully the political environment that is already badly sullied and fractured in this House.

Further, the decision unwittingly casts aspersions on the expertise of the social workers in the Ministry of Human Services. Are we to believe that there is no one in that Ministry worthy to serve on the IPC? It has to be noted that the Ministry of Human Services is being used in this way for a second time.

The first being the appointment of Mr. Kwame Mc Coy as the Ministry's representative to serve on the Rights of the Child Commission. 'Oh, my God'.

Presiding Member, now I have to ask a very pertinent question. What exactly is the PPP up to by pushing the Opposition's button to the point of including the name of Mr. James Singh, despite our approval at the level of the Appointive Committee? What are they really up to given that Article 212 S(2) of the Constitution stipulates the need of two-thirds majority for the IPC to be

established today? Are they hoping that the Opposition will do their dirty work by killing the establishment of the IPC today? I ask the Hon. Member/Chairman of the Committee on Appointments this specific question: is there no limit to the price the Guyanese people must pay to satisfy this Government's hegemonic appetite?

Let me make it very clear. We will not give this Government more ammunition, or any ammunition to go and spread more propaganda in the Indigenous People's Communities. You are doing your *darn-est* already. We will not do you dirty work. We will support the establishment of the establishment of the IPC with the reservations noted that we object strongly to what you have done. [Applause]

Ms. Teixeira (replying): I wish the Opposition would be as quiet as they were for Mrs. Sheila Holder, so that I can be heard and can hear myself. We are guided, as much as they cast aspersions on me personally, it does not really work. The Hon. Member quotes the Bible. I deal with myself. The bigger book that we follow in this National Assembly is the Constitution. The book that we follow in this House – we can quote all the other books – is the Constitution. The Constitution was not written by Ms. Gail Teixeira. It was written by this House, by a Constitution Reform Commission. It had many imperfections. This Constitution was framed by a bi-partisan movement in this House with civil society. The Constitution Reform Commission made compromises on a number of issues. I was not part of that, but I remember some of the luminaries, including our Speaker Mr. Ralph Ramkarran, and a number of legal luminaries of this country, and politicians; Mr. Moses Nagamootoo was also another legal luminary, they drafted this Constitution. Until we in this House amend it, the Constitution is our guide.

First of all, Article 212G talks about the creation of the Human Right bodies, and that the Commissions must be fair, independent and transparent.

“A Commission shall be independent, impartial and shall discharge its functions fairly.”

The onus in the Constitution is on the Commission; the entire body of people who make up the Commission who are expected to function fairly. It does not talk about the Commissioners being independent, it talks about the Commission. I think we are all speaking English here.

5.54 p.m.

The second issue is that in the construction of the Human Rights Commission the language used in the Constitution placed emphasis on the process and not the end result. The process was that, first of all, in the Committee one had to be able to reach some consensus to bring a two-thirds majority on the list of entities. The Constitution is not so concerned about who the persons were, but the list of entities. That is why the onus is put on the House of getting two-thirds majority on the list of entities. The agreement had to be reached on the list of entities. It then says that the nominations would go by majority. The Committee of Appointment is there to facilitate the process and to be able ensure the process is fair.

I have chaired the first Committee in 2003. I remember in 2003 when we started the setting up of the Commissions and, if I were to listen with an evil eye or an evil ear, if it was left to the Opposition it did not want any of these Commissions being set up. None of these Commissions must be set up as far as it was concerned. When we came with the Women and Gender Commission (2005), it was knocked out. We did not get the two-thirds majority. When we came with the Ethnic Relations Commission (2007), it was knocked out and is still knocked out, up to now. When we came and got a victory on the Rights of the Child Commission, the list of nominees, the Opposition had a problem with an individual. As you know, it is a lucky thing that this is the National Assembly that you all can *take your eyes to pass* a person who has no right to reply to you in this House... **[Interruption]** ...because it shows how dangerous you are. It shows it. You can pick any individual - Mr. Tom Jones, Mr. Brown, Mr. ABC, Mr. Persaud - and you can sit in this National Assembly and destroy his name and the person has no right to recourse, because you are protected by the privileges of this House, and you do that shamefully. But you complained about the Rights of the Child Commission. **[Mr. M. Williams:** The President sent him to Lethem.] By the way, I do not know about a Mr. Tom Jones, Brown or Persaud. But if you know what is good for you...

The Constitution talks about persons nominated by entities. When all the luminaries and bi-partisan persons - the Luncheons', Parris' and the Rupert Roopnarines' - sat and brokered at these agreements, drafted them, and everything else, they used the word "nominated" - "nominated by entities." That is what the words say in the text. It does not say representatives. When we write to these entities we are asking them to choose a person. The letter which was sent

out says, “A person who is competent to contribute positively to the work of the Commission and who is committed to devoting energy and time to ensuring that it discharges all of its functions. The person must also have earned public respect and be of unquestionable honesty and integrity.” At no point did it say the word “representative.” Therefore, an entity can, it is in the realm of possibility, name someone outside. In fact, it happened already. So the issue of the breach of faith is not an argument which holds. [Mrs. Backer: It breaks the spirit of the Constitution.] If you want to deal with the spirits you can go outside and deal with them. I do not deal with spirits. What do I have to do with spirits in here? [Mrs. Backer: That is to show how ignorant you are.] I do not deal with spirits. You can go for some spirits afterwards, if you like. So that is one issue, that there is nothing improper, illegal or inappropriate on the nomination of Mr. James Singh by an agency such as the Ministry of Human Services and Social Security.

The second issue I want to deal with is what Dr. Norton pointed out. Dr. Norton pointed out that the issue of the Ministry of Human Services and Social Security not having an actual being from it would undermine or erode the capacity of the Indigenous Peoples’ Commission. I want to say this, that these Commissions do not take the place of Ministries. There is a Ministry of Human Services and Social Security. There is a Ministry of Amerindian Affairs. These Commissions do something else. So to try and convey to this House that persons in the interior locations with pension problems and social services issues will now not have a forum to go to is a misrepresentation to this House. Because the Commission’s mandate is very clear: Promote and Protect the Rights of Indigenous Peoples, raise awareness, promote empowerment, make recommendations on the economic and educational policies to advance the interest, make recommendations for the protection and preservation and promulgation, promote consultation and cooperation, recommend and promote training... [Interruption] I like this gallery. Come on, let us go. This is a good gallery. “Educate employers and the public and monitor the needs”. It does not talk about what Dr. Norton was referring to. It does not refer to that. I know what Dr. Norton was trying to say, but he was misinformed. I like Dr. Norton a lot. It is Mrs. Backer who keeps confusing Dr. Norton. It is Mrs. Backer who is doing this.

One other thing I want to refer to is that if we go to the Constitution... [Mrs. Backer: Is that again?] Yes, I like this book a lot. Under article 212 N, in the Constitution, the Leader of the

Opposition provides the President with six names, not unacceptable to him, to name as the Chairperson. It is this particular article... [Mrs. Backer: It has nothing to do with this.] The Opposition has no problem with this. Does it? [Interruption] Do you have a problem with this article in the Constitution? I thought not. I thought you would not have a problem with it because the President has to choose from six names you give to him. He cannot choose his own; he has to choose from what you give to him. As in the Committee, when the entities give us their names we do not choose we bring them to this House. [Mrs. Backer: So why did you choose Mr. James Singh over the nominee from the University of Guyana?] I will answer you. I am not aware that in a Committee a decision is being made and you are deciding to turn it around in the House is a good idea. But as you have done it, let us go for it. Let us go for it since you have done this, because we took a decision in Committee which you have now broken. So let us go with it.

A person was nominated by an entity who is not a Guyanese, not a resident or a person with a work permit. The person was not a non-resident Guyanese in Guyana, but a non-Guyanese, non-resident with a work permit. Therefore, the opportunism of this (comment by DB) is really something now that has given me a door to open, because the Committee, which is made up of Opposition and Government Members, said that it decided...

Presiding Member: Hon. Member Mrs. Backer, could you please tone it down a little?

Ms. Teixeira: I do not know why her party did not put her to speak. Thank you Presiding Member. The Committee discussed this issue. It was pointed out that the Constitution does not say that the person had to be a Guyanese on a human rights commission. That is true. But we also felt that the person was not a non-Guyanese living in Guyana; he was a non-Guyanese working here for a year or two years with a work permit which will be expired in January next year: was it to correct to put him on a Commission, this year, for a three-year Commission? The grounds of the Committee - not Ms. Gail Teixeira - was that it would ask the University of Guyana, which was the entity which put forward the nomination, to reconsider the matter and if it so wished it could send it another name. The University Of Guyana sent us a new name of a Guyanese, and one of the Members of the Opposition, at the time that this was being discussed, said that how could the University of Guyana put X person when this other person who was a Guyanese Amerindian in that unit was not nominated by it. Now the Opposition Members are

coming to this House to try to make it look as if this is some sham. They are dishonest. **[Interruption]** ...So you are right. But, as you know, it was a Committee decision which we raised with the entity asking it to consider the matter. If that entity had come back with the same name we would have had to come to this House and seek the guidance of it.

The issue of this Report, as the Chairperson, persons can talk about hegemony and all sorts of things. The problem with having the *airy-fairness* of accusing persons of hegemony is that they have never had to sit in the seat and make decisions on the moment. So it is a luxury of sitting at the back all the time and watching other persons do things and judge them. But when one is sitting in the driving seat one has to take responsibility for what one does. I am taking it. As the Chairperson of this Committee, we had discussed these matters and the only problem the PNC and the AFC Members had was the nomination of Mr. James Singh. But they did not have a problem with him, as in his integrity or his person; it was that he was not the right person who was going there. Now I leave it to them to decide who is the right person to go on this Commission, because I, as a Chairperson and a Member of that Committee, am not aware that I can tell any agency it has to give me this person or not. Whoever that agency gives to the Committee it has to take, unless that person is mentally insane, has been charged with some major crime and is in prison, or something like that, which the Constitutions talks about that makes a person ineligible to be in a Parliament, and would make that person ineligible to be on a Commission.

It is unfortunate that having gone through this long road, from 2003-2010, seven years, to now get the third human rights commission done... And which is the one the Opposition is quarrelling about? Which is the one it is upset about? Is the Indigenous Peoples' Commission? **[Interruption]** Are you not ashamed of yourselves? There are twelve members of this Commission. Let me read their name because they are all Honourable men and women. I believe that they will represent the rights of indigenous peoples and they will do their best as the Rights of the Child Commission is now doing; as the Women and Gender Equality Commission is now doing, despite the objection to one of the persons on the human rights commission that person is working and the Members are working well together.

I, am, therefore calling on the National Assembly to adopt the Report and to lend its support to the following twelve persons being the members of the Indigenous Peoples' Commission:

- Toushao Yvonne Pearson
- Toushao Marco J. DeSouza
- Toushao Doreen Jacobis
- Mr. David James
- Ms. Matilda Saigo
- Ms. Patricia Singh
- Mr. George Simon
- Captain Gerald Gouveia
- Mr. Damian Fernandes
- Mr. James Singh
- Reverend Father Malcolm Rodrigues
- Mr. Norman Whittaker, M.P.

I would hope that when this Commission is appointed and the Leader of the Opposition gets his letter inviting him to submit six names, “not unacceptable to the President”, by the end of this year we will be able to select the Chairman of the Human Rights Commission and be able to have it be established. In the mean, time all that has been done, I assume, but that is a different issue.

I, therefore, after a long road of seven years, am delighted at the achievement of the Committee of Appointments, regardless if the Members of the Opposition do not think that it is an achievement, I do, that it has come this far, and the Indigenous Peoples’ Commission nominees will go to the President for his appointment. Thank you. [Applause]

Question put and carried.

Report adopted.

Presiding Member: This concludes our business for today, but before I ask the Hon. Prime Minister to speak I would like to recognise those ladies, in our midst, who are reminding us that this is our last meeting before Emancipation Day, and when I listened to all the things which were happening here, just now, I think that we are fully emancipated. On Sunday and Monday

which will be a National Holiday we can celebrate that emancipation as Guyanese - one nation.
So a very Happy Emancipation Day to you.

ADJOURNMENT

Mr. Hinds: Presiding Member, I would like to join you in extending a Happy Emancipation Day to all the Members of the House. I move that the House be adjourned until next Thursday, 5th August, 2010.

Presiding Member: The Assembly is now adjourned to next Thursday, 5th August, 2010.

Adjourned accordingly at 6.12 p.m.