

National Assembly Debates

**PROCEEDINGS AND DEBATES OF THE NATIONAL ASSEMBLY OF
THE FIRST SESSION (2001-2002) OF THE EIGHTH PARLIAMENT OF
GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE
REPUBLIC OF GUYANA**

31ST SITTING

2.00 PM

Thursday, 26th Sept, 2002

MEMBERS OF THE NATIONAL ASSEMBLY (68)

Speaker (1)

The Hon. Hari N. Ramkarran, S. C., M. P. - *Speaker of the National Assembly*

Members of the Government - People's Progressive Party/Civic (34)

The Hon. Samuel A.A. Hinds, M.P.	- <i>Prime Minister and Minister of Public Works and Communications</i>
The Hon. Reepu Daman Persaud, O.R., J.P., M.P.	- <i>Minister of Parliamentary Affairs</i>
The Hon. Clement J. Rohee, M.P.	- <i>Minister of Foreign Trade and International Co-operation (AOL)</i>
The Hon. Harripersaud Nokta, M.P.	- <i>Minister of Local Government and Regional Development</i>
The Hon. Gail Teixeira, M.P.	- <i>Minister of Culture, Youth and Sport</i>
The Hon. Dr. Henry B. Jeffrey, M.P.	- <i>Minister of Education (Abs)</i>
The Hon. Saisnarine Kowlessar, M.P.	- <i>Minister of Finance (Abs)</i>
The Hon. Shaik K.Z. Baksh, M.P.	- <i>Minister of Housing and Water</i>
The Hon. Navindranauth O. Chandrapal, M.P.	- <i>Minister of Agriculture (Region No. 4-Demerara/Mahaica)</i>
The Hon. J. Ronald Gajraj, M.P.	- <i>Minister of Home Affairs (Region No. 3-Essequibo Islands/West Demerara)</i>
The Hon. Rev. Dr. Ramnauth D.A. Bisnauth, M.P.	- <i>Minister of Labour, Human Services and Social Security</i>
The Hon. Clinton C. Collymore, M.P.	- <i>Minister in the Ministry of Local Government and Regional Development</i>

The Hon. Satyadeow Sawh, M.P.	- Minister of Fisheries, Other Crops and Livestock (Region No. 5 - Mahaica/Berbice)
*The Hon. S. Rudolph Insanally, O.R., C.C.H., M.P.	- Minister in the Office of the President with responsibility for Foreign Affairs (Abs)
*The Hon. Doodnauth Singh, S.C., M.P.	- Attorney General and Minister of Legal Affairs
The Hon. Dr. Jennifer R.A. Westford, M.P.	- Minister of the Public Service
The Hon. C. Anthony Xavier, M.P.	- Minister of Transport and Hydraulics
The Hon. Bibi S. Shadick, M.P.	- Minister in the Ministry of Labour, Human Services and Social Security (Region No. 3 - Essequibo Islands/ West Demerara)
**The Hon. Manzoor Nadir, M.P.	- Minister of Tourism, Industry and Commerce
The Hon. Carolyn Rodrigues, M.P.	- Minister of Amerindian Affairs
The Hon. Dr. Leslie S. Ramsammy, M.P.	- Minister of Health (AOL)
Mr S. Feroze Mohamed, M.P.	- Chief Whip
Mr Cyril C. Belgrave, C.C.H., J.P., M.P.	- (Region No. 4 - Demerara/Mahaica)
Mr. Donald R. Ramotar, M.P.	- (Region No. 7 - Cuyuni/Mazaruni)
Mr Husman Alli, M.P.	
Mr. Komal Chand, C.C.H., J.P., M.P.	
Mrs Indranie Chandarpal, M.P.	
Mr Bernard C. DeSantos, S.C., M.P.	- (Region No. 4 - Demerara/ Mahaica)
Mrs Shirley V. Edwards, J.P. M.P.	
Mr Odinga N. Lumumba, M.P.	
Mr Heeralall Mohan, M.P.	- (Region No. 2 - Pomeroon Supernaam)
Mr Ramesh C. Rajkumar, M.P.	- (Region No. 6 - East Berbice Corentyne)
Mr Kumkaran Ramdas, M.P.	
Mr Kheinraj Ramjattan, M.P.	- (Region No. 6 - East Berbice/ Corentyne)
Dr Bheri S. Ramsaran, M.D., M.P.	
Mrs Philomena Sahoye-Shury, C.C.H., J.P., M.P.	- Parliamentary Secretary, Ministry of Housing and Water
Mrs Pauline R. Sukhai, M.P.	- (Region No. 1 - Barima/Waini)

* Non-Elected Minister

** Elected Member from The United Force

Members of the Opposition (30)
(i) People's National Congress/Reform (27)

Mr. Hugh Desmond Hoyte, S.C., M.P.	- <i>Leader of the Opposition (Abs)</i>
Mr. Robert H. O. Corbin, M.P.	- (AOL)
Mr. Winston S. Murray, C.C.H., M.P.	- (AOL)
Mrs Clarissa S. Riehl, M.P.	- <i>Deputy Speaker of the National Assembly (Abs)</i>
Mr E. Lance Carberry, M.P.	- <i>Chief Whip (Abs)</i>
Mr Ivor Allen, M.P.	- (Region No. 2 - Pomeroon Supenaam) (Abs)
Mrs. Deborah J. Backer, M.P.	(AOL)
Mr. Deryck M.A. Bernard, M.P.	(AOL)
Mr. C. Stanley Ming, M.P.	(AOL)
Mr. Raphael G. C. Trotman, M.P.	(AOL)
Mr Vincent L. Alexander, M.P.	- (Region No. 4 - Demerara/Mahaica) (Abs)
Mr. Andy Goveia, M.P.	- (AOL)
Mrs. Volda A. Lawrence, M.P.	(AOL)
Dr Dalgleish Joseph, M.D., M.P.	(AOL)
Miss Amna Ally, M.P.	- (Region No. 5 - Mahaica/Berbice) (Abs)
Miss Sandra M. Adams, M.P.	- (Region No. 10 - Upper Demerara/Berbice) (AOL)
Mr. Jerome Khan, M.P.	(AOL)
Dr George A. Norton, M.P.	(AOL)
Miss Myrna E. N. Peterkin, M.P.	- (Region No. 4 - Demerara/Mahaica) (Abs)
Mr. James K. McAllister, M.P.	- (Region No. 3 - Essequibo Islands West Demerara) (AOL)
Miss Lurlene A. Nestor, M.P.	- (Region No. 4 - Demerara/Mahaica) (Abs)
Mr Abdul Kadir, J.P., M.P.	- (Region No. 10 - Upper Demerara/Berbice) (AOL)
Mr Ricky Khan, M.P.	- (Region No. 1 - Barima/Waini) (Abs)
Mrs. R. Bancroft, M.P.	- (Region No. 8 - Potaro/Siparuni) (Abs)
Mr Nasir Ally, J.P., M.P.	- (Region No. 6 - East Berbice/Corentyne) (AOL)
Miss Judith David, M.P.	- (Region No. 7 - Cuyuni/Mazaruni) (Abs)
Miss Genevieve Allen, M.P.	- (Region No. 4 - Demerara/Mahaica) (AOL)

(ii) Guyana Action Party/Working People's Alliance Party (2)

Mrs Sheila V.A. Holder, M.P.	- (AOL)
Mrs Shirley J. Melville, M.P.	- (Upper Takutu/Upper Essequibo)

(iii) Rise, Organise and Rebuild Party (1)

Mr Ravindra Dev, M.P.

OFFICERS

Mr Sherlock E. Isaacs - *Clerk of the National Assembly*

Mrs Lilawtie Coonjah - *Deputy Clerk of the National Assembly.*

PRAYERS

The Clerk read the Prayer

ANNOUNCEMENTS BY THE SPEAKER

Leave

Hon Members, leave has been granted to the Hon. Clement Rohee, Hon Anthony Xavier and the Hon Dr Leslie Ramsammy for today's sitting. The Hon. Members Mr Desmond Hoyte, Mr Lance Carberry, Mr Ivor Allen, Mrs Deborah Backer, Mr Deryck Bernard, Dr Dalglish Joseph, Miss Amna Ally, Miss Myrna Peterkin, Mr Ricky Khan, Mrs Rajcoomarie Bancroft and Miss Genevieve Allen up to the 31st October, Mr Nazir Ally for today's sitting, Miss Judith David up to the 15th November and Miss Sandra Adams up to the 31st December.

STATEMENT BY MINISTERS

The Speaker: The Minister of Home Affairs

Hon. R. Ronald Gajraj: Thank you, Mr Speaker. Mr Speaker, I wish to make a statement to this Honourable House with particular reference to the incident that transpired last evening in Georgetown and generally with respect to the crime situation in this country.

Mr Speaker, I take this opportunity to bring to the attention of this National Assembly and to the Nation, two grave and grievous incidents, which occurred yesterday, September 25, 2002, in the evening.

Even in the midst of the upsurge in criminal activities triggered off after the widely known prison-escape of February of this year, yesterday's incidents were particularly callous, daring in their commitment and represent utter disregard for the human rights and lives of our citizens going about their normal business and social activities. The violence of

yesterday, indeed, all the incidents, especially during this period, have stirred in our nation, feelings of anger and well-founded calls for firmer actions by the appropriate authorities and in which law abiding citizens from all walks of life show a willingness to assist.

On the evening of Wednesday, 25th September, preliminary reports indicate that a vehicle drove up to the home of a Craig Street, Campbellville resident. At that location persons from the vehicle sought to force a man into the vehicle who resisted and, in the process, was shot and killed. The vehicle involved in this incident was reportedly next seen, very shortly afterwards, at the scene of another crime committed at a business premises on Lamaha and Pike Streets, Kitty. Reports suggest that another vehicle was also involved. Several men entered the business premises where patrons were at the same time and opened gunfire, apparently indiscriminately. Four persons including a female were fatally shot while several others, including the Director of Public Prosecutions and two law enforcement ranks were seriously wounded. This is undoubtedly one of the more serious of incidents experienced since February and has heightened the fear and anxiety of our law abiding citizens in particularly certain geographical areas and communities of our country.

I feel constrained to point out that such terror against Guyanese cannot be divorced from the climate created by the constant attacks directed against our principal law-enforcement agency, the Police Force. These attacks from several quarters, no doubt, often prompted by narrow self-interests are deliberately orchestrated and calculated to demoralize our law enforcement agencies so as to adversely affect their effectiveness and embolden the criminals.

In these trying times, the Government has not shirked its responsibility to meet the challenges in the security domain. In fact, a range of measures have been and are being put in place to face up to this menacing development in our society. They include substantial additional financial inputs, training and retraining projects, provision of more vehicles and other equipment, addressing welfare aspects of the Police Force,

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strengthening of community policing groups, including the wide cross section of our population - the church, the business community and political interests. There have been country-wide consultations on the crime situation to enhance policing service, restructuring programmes of the Police Force with the collaboration of friendly overseas agencies as well as the Guyana Defence Force.

I feel sure, Mr Speaker, that we all recognise that we are going through extra-ordinary times in the field of law and order. This certainly requires from us more than the usual and tested methods of law-enforcement. Today, this National Assembly will be considering Bills that are not only relevant, but germane to the critical criminal situation which confronts our citizens and our nation and which are intended to be yet another step to contain crime and assure citizens that we will act responsibly, we will leave no stone unturned in our quest to contain, if not eliminate this scourge from our midst.

I take this opportunity, Mr Speaker, to thank those numerous countrymen and women who have selflessly come out to assist in these efforts. I also take this opportunity to call on all law abiding Guyanese to join in the efforts to genuinely fight crime.

I express the optimism, Mr Speaker, that with our collective and national efforts, we will overcome the crime menace and the painful period which has raised its ugly head in our midst. I take this opportunity to also express my and the Government's condolences to those who have lost their loved ones as a result of yesterday's heinous criminal acts.

PUBLIC BUSINESS

BILLS - Second Reading

1. CRIMINAL LAW (OFFENCES) (AMENDMENT) BILL 2002 - Bill No 9/2002

Published 2002-08-30

A Bill intituled, An Act to amend the Criminal Law (Offences) Act.

The Speaker: Hon. Members, we will now proceed with the second reading of the Criminal Law (Offences) (Amendment) Bill 2002.

The Minister of Home Affairs

Hon. J. Ronald Gajraj: Mr Speaker, I rise to present the Criminal Law (Offences) (Amendment) Bill 2002 for its second reading in this Honourable House.

Mr Speaker, over the past weeks and in particular over the past couple of days there have been much criticisms levelled against the proposed implementation of certain laws to deal with situations that are extant in our society. There have been much misrepresentation, in my humble opinion, by those who are expected to know, with the apparent intention to create among the citizenry of this country some uneasiness. Whatever might be their objectives, Mr Speaker, it cannot auger well for the good of this country and, therefore the purpose of this Bill as is to create the specific offence of the commission of a terrorist act. This Bill is necessary in view of the mounting violence in which our country is engulfed. It is hoped that this measure would serve as a deterrent to those who are inclined to commit acts of violence including destruction of property. The provisions of this Bill, Mr Speaker, which I will go into is nothing new and ought not to take anyone by surprise. Our Criminal Law Offences Act has been in existence since the 19th century, as a matter of fact since the 1st January, 1895 and within the provisions of that piece of legislation, there are provisions for riotous behaviour, destruction of property, and certain penalties have been imposed for the commission of those offences. In particular, Mr Speaker, if I may, with your leave, refer to our Criminal Law Offences Act Chapter 8:01 Part 4 Title 19 that deals with offences against public order and the administration of justice, which deals with riot and unlawful assembly; it deals with making proclamation to rioters to disperse, the duty if rioters do not disperse and more importantly, Mr Speaker, Section 3 of that Act deals

with rioters, demolition of buildings, Section 3:10 deals with the rioters damage to building and that Act goes on to deal with that kind of situation. Section 3:09 specifically states that if any person unlawfully or riotously or tumultuously assemble together to the disturbance of the public peace unlawfully and with force demolish, pull down or destroy or begin to demolish, pull down or destroy any church, chapel, meeting house or other place of Devine worship or any house, stable, coach house, outhouse, warehouse, office, shop, store, megas or other logie, mill, boiling house, curing house, still house, it goes down the line and we can see, Mr Speaker, I mentioned that far to show how wide and all-embracing that legislation has been with respect to riotous behaviour. That Act as it is does not say anything at all against the lawful Assembly of people. What it deals with is the purpose of the Assembly and that is what makes it a criminal offence, if at all. Any person who is found guilty of committing any of those acts would be guilty of a felony and liable to imprisonment for life.

However, what the Criminal Law Offences Act did not go on to deal with is what might be considered terrorist act or terrorist behaviour, and all this amendment seeks to do is to define a terrorist act, that is all it does. It does not criminalise anybody who might assemble for a lawful purpose, it does not infringe on any fundamental rights or civil liberties of the subject. As a matter of fact it seeks to assure those civil rights and liberties to subjects and that those civil rights and liberties are protected. The degree of the protection that those civil rights and liberties receive, Mr Speaker, can be measured by the penalty clause that has been put out in this Bill. As I said, Mr Speaker, this Bill merely seeks to define what constitutes a terrorist act. It is an amendment to the Criminal Law Offences Act, in particular Section 3:09, that is the Section I just read a part of, to show the spirit and intent of the legislation since then, what it intended to capture and the mischief that it sought to deal with. But over the years, Mr Speaker, times have changed, societies have changed and activities have changed and as such legislation can never be static, it must be able to keep pace with the dynamics of the society and to address the ills and mischiefs which might manifest themselves concomitant with the development of our society.

Mr Speaker, what the legislation seeks to capture here, in the form of this Bill, is whoever or any person whatsoever with the intent to threaten the security or sovereignty of Guyana or to strike terror in the people or any section of the people, does any acts or things by using bombs, dynamites or other explosive substances or flammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substance whether biological or otherwise having a hazardous nature or by other means whatsoever in such a manner as to cause or likely to cause death of or injury to any person or persons or loss of or damage to or destruction of property or destruction of any supplies or services essential to the life of the community or cause damage or destruction of any property or equipment used or intended to be used for the defence of Guyana or in connection with any other purpose of the Government of Guyana or any of its agencies or detains any persons or threatens to kill or injure such persons in order to compel the Government or any other person to do or abstain from doing any act constitutes a terrorist act and therefore a criminal offence. It has spelt out very clearly, Mr Speaker, what constitutes a terrorist act, it does not in any way seek to infringe on any fundamental right guaranteed by the Constitution and that is enjoyed by the citizens of this country.

There has been some criticisms levelled against the right to free movement, the right to expression, the right to assemble. All these are rights enshrined in our Constitution, Mr Speaker, but they are not absolute rights in that in as much as you have the freedom of expression, you are contained in your expression to the extent that you do not unjustifiably scandal any person's character or good name and if you were to do so, you do so to your prejudice and detriment. So while you have a right to freedom of expression, Mr Speaker, there are certain limitations and the same is applicable to freedom of movement. While the Constitution guarantees freedom of movement, the fact or by virtue of law you are required to acquire a passport in order to travel. That does not infringe your constitutional right to freedom of movement. Similarly with the freedom to assemble, the only time the freedom of assembly becomes affected is if you assemble for an unlawful purpose.

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This definition, Mr Speaker, is not singular to Guyana. As a matter of fact several countries in the Caribbean, in the Commonwealth, Hong Kong has introduced similar legislation and so too has Great Britain and America and all the democracies, India, among the leading democracies. So the purpose of this Bill, Mr Speaker, is to protect the sovereignty and territorial integrity, unity and national security of Guyana and the Guyanese people. The expression or reporting of opinion will not be criminalised unless it indicates or incites to others to levy war or use of force or other serious offences for sedition.

This Bill, Mr Speaker, as I said, would not undermine in any way the existing human rights and civil liberties enjoyed by Guyanese people, nor will our existing ways of life be affected. As a matter of fact one of the purposes of the Bill is to enhance our Guyanese way of life and our quality of life.

Mr Speaker, what the Bill goes on to say, in terms of the penalty clause, is where any of these acts might be perpetrated and death results in the course, that offence attracts the death penalty, which is nothing new. That offence attracts the death penalty as well as a fine of not less than one million five hundred thousand dollars (\$1,500,000). There has been some question asked, Mr Speaker, how is it you would be able to impose the death penalty on somebody found guilty and yet fine that person? What is the means you are going to have that fine honoured? The clear and simple answer to that, Mr Speaker, is that there might be instances where a perpetrator or perpetrators might be beneficially entitled to certain estates and that fine can be made good from the estate of the perpetrators. So they are not inconsistent even though they might appear to be so. There is nothing to say that a fine imposed on an individual cannot be extracted from the estate of that individual, but that is in the case where death results in the frustration of one of those Acts that have been defined to constitute a terrorist act. In any other case, Mr Speaker, there is a fine of five hundred thousand dollars (\$500,000) and imprisonment for a period not less than ten years or more than fifteen years, that hopefully, Mr Speaker, would be sufficiently a deterrent to the would-be perpetrator of terrorist acts and activities in this country.

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Mr Speaker, like I said, a number of countries have enacted similar legislation to deal with the changing society. In the Commonwealth countries, Mr Speaker, terrorist acts have been defined as meaning an act or omission which constitutes an offence within the scope of counter terrorism convention or an ample threat of action which involves serious bodily harm to persons, serious damage to property, endangering a person's life, create a serious risk to the health or safety of the public or a section of the public, involves the use of firearm or explosives, involves releasing into the environment or any other part thereof for distributing or exposing the public to any part thereof, any dangerous, hazardous radio active or harmful substance, any toxic chemical, any micro-biological or other biological agent or toxin that is designed or intended to disrupt any computer system, or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services, involves prejudice to national security or public safety and as intended or by its nature and contents may reasonably be regarded as being intended to intimidate the public or a section of the public or compel a government or an international organisation to do or refrain from doing any act. That is what, in effect, has been embodied in our definition section as set out in this Bill, Mr Speaker.

With respect to India, Mr Speaker, the definition of a terrorist act has been an act with intent to threaten the unity, integrity, security and sovereignty of the country or to strike terror in the people or any other section of the people does not act or think by using bombs, dynamites or other explosive substances or inflammable substances or firearms or other lethal weapon or poisons or noxious gases or other chemical or by any other substances and it goes on along the same lines.

In the United Kingdom, there is a terrorism act of 2000, and that act defines terrorism as the use or threat of action where the use of threat is designed to influence the government or to intimidate the public or a section of the public, the use of threat is made for the purpose of advancing a political, religious or ideological cause or it involves serious violence

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against the person, it involves serious damage to property, endangers a person's life other than that of the person committing the action, creates a serious risk to the health or safety of the public or a section of the public or it is designed seriously to interfere with or seriously to disrupt some electronic system, and it goes on all along the same line, Mr Speaker.

I mention these very briefly, Mr Speaker, to point out that the Bill that is before this Honourable House is not being plucked out of the blue by Guyana with the intention of targetting any particular group or persons or activities that are within the confines of the law. This same piece of legislation, this same definition obtains throughout the world and I mentioned those countries clearly to show that all we are doing is keeping in conformity with our constitution which requires us to recognise the international convention and to enact domestic legislation in accordance with those conventions. That is all we seek to do in this Bill, Mr Speaker.

Mr Speaker, in addition to the definition section, as set out in Section 309 A (1), in Section 309 A (2) it talks about the conspiracy or attempts to commit or advocate: *aids and abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act commits an offence and shall be punishable as if he had been a principal offender.* All of that it seeks to do, Mr Speaker; it does not make advocacy a crime, not at all. What is the crime, if at all, is what you are advocating and what is the purpose of the advocacy? Obviously, if you were to go there and in your advocacy seek to incite people, to commit certain criminal offences, then it is not an advocacy without moral any longer. It is an advocacy that has been adulterated, and what is important is that it is not a strict liability offence, it requires mensrea because the Bill clearly states, *whoever conspires or attempts to commit or advocates, aids and abets, advises or incites or knowingly facilitates the commission of...* so you must have that guilty mind and it is the intent that makes the offence, Mr Speaker.

So in all the circumstances, I would respectfully ask all the Hon. Members of this House to support this Bill. Thank you, Mr Speaker.
[Applause]

The Speaker: The Hon. Member, Mrs Sheila Holder.

Mrs Sheila V.A. Holder: Mr Speaker, the Criminal Law (Offences)(Amendment) Bill No. 9/2002 is perhaps one of the most controversial of the four bills that are before this Honourable House today, because we have been advised by highly respected Guyanese and Caribbean Jurists that this Bill makes a crime retroactive with the use of the past tense phrase *has resulted*. This phrase exists in Section 309A Subsection (b) (i), and for the first time in our jurisprudence it seeks to make acts of preparation of an offence punishable by death, as if a person was guilty as a principal offender. It is necessary to state that the drafting of this Bill as well as the others on today's Order Paper leave a lot to be desired and falls short of the precise standard required in the drafting of criminal legislation. It may be argued that even though the present Government may provide assurances that it will not ride rough-shot over citizens' rights and will not seek to employ the amendments as a political weapon, in the absence of safeguards, their assurances become meaningless.

As the horror of racial violence, wanton acts of destruction and a hitherto unknown type of banditry were unleashed on citizens of all walks of life in this country, we saw the need for new legislation to serve as a deterrent to these heinous acts and we maintain this view today. At no time at all, however, do we envisage legislation that would seek to trample the rights of citizens and embody an open-ended definition of the term *terrorist*, that could lead to higher levels of insecurity in some sections of our society. That is not to say, Mr Speaker, that we do not recognise the duty of the Government to seek to correct the ills of society as they surface, because we do indeed.

However, we have a duty to caution that once enacted this piece of legislation bodes ill for the people of this country as it opens up the possibility of its use as a political weapon to be applied if not by this administration by another possessing no scruples.

I want to believe, Mr Speaker, that the Government given thought

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to the fact that in this talk, in this life, in this world, there is one indisputable constant, the fact of change. This Bill describes ad the Criminal Law (Offences)(Amendment) Bill would not have seen the light of day. The statement coined after September 11, 2001 at the United Nations Conference on terrorism and human rights and highlighted in the Guyana Human Rights Association's critique of this Bill brings to the fore the problems confronting the world on the issue of terrorism, and I quote:

One man's terrorist is another man's freedom fighter.

This saying, Mr Speaker, hits at the root of the controversy surrounding this Bill, which seeks to create a specific offence, the commission of a terrorist act. It is said in the Explanatory Memorandum attached to the Bill that the insertion of this new section, Section 309 A in the Principal Act is necessary as a deterrent to those in our society who are inclined to commit acts of violence and wanton destruction of property. Who, in their right minds, Mr Speaker, could object to that? But the Bar Association also agrees that Section 309 A Subsection (1) (a) facilitates the conviction and sentence to death of a person who never possessed the intention to kill or cause grievous bodily harm or intention to commit a felony. The Bar Association goes on to express the view and I quote:

If a person only intends to cause property damage, but the damage results in death, he can now be sentenced to death even if there was no intention to kill or cause grievous bodily injury or commit a felony.

This Section now makes the mandatory death sentence the sentence for offences which were previously classified as manslaughter or lesser offences.

The United States, Mr Speaker, has gone the route of enacting terrorist legislation and is now facing serious challenges to such legislation from civil liberties' advocates who have had successful results in that area. Here in Guyana, the Minister of Home Affairs in whose name this

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Bill was laid in the House feels obliged to explain to us why the existing laws for murder, manslaughter, robbery under arms and violence were found to be inadequate in order to justify the introduction of this Bill.

Given the fledgling state of our democracy, Mr Speaker, and the overwhelming opposition to this Bill, it is truly short-sighted of the Government to forge ahead with such controversial legislation under the guise of dealing with escalating criminal activities being unleashed on citizens. The Minister must tell us how this Bill or any of the others before this House (for that matter) is going to deliver to our distraught and terrorised citizens a police cause that would respond to their complaints, cries for help, catch the bandits who are marauding in their communities and deliver swift justice as a deterrent to others who might want to choose a life of criminality.

The fact of the matter, Mr Speaker, is that enforcement of laws already on the statute books falls far short of an adequate standard in Guyana, adding these new pieces of legislation to that list makes no sense to the Guyanese public leading them to believe that these Bills are being introduced for reasons other than those stated. There have been very strong feelings expressed in the society about this Bill, for Government to merely respond with expressions of determined intent to proceed as if all is well with the most inappropriate and would retard the creation of a genuine democratic environment. It would appear, Mr Speaker, from the comments made by Dr Luncheon, Head of the Presidential Secretariat, that Government's idea of effective consultation is to consult and give greater weight to the opinions of their own Cabinet Members, their own party officials and ignore the technical, constructive and balanced views of the Guyana Bar Association and the Guyana Human Rights Association, while totally excluding the misgivings of the political parties. The comments by Dr Luncheon on the matter of law proved to be more provocative than helpful and should ideally be made by the Attorney General or someone designated by him.

In closing, Mr Speaker, it is our belief that this Bill should be sent to a Select Committee for further review and for resolving some of the

contentious issues it has raised.

Thank you, Mr Speaker.

The Speaker: Thank you Hon Member.

The Attorney General and Minister of Legal Affairs

Hon. Doodnauth Singh: Mr Speaker, before I respond to some of the statements made by the Hon. Member Mrs Sheila Holder, I wish to put on record, Sir, that there was a meeting between the Hon. Minister of Parliamentary Affairs and myself and Mr Lance Carberry, M.P. and Opposition Chief Whip of the PNC/Reform, which took place the day before yesterday and at which meeting we discussed the implications of the various pieces of legislation. At that meeting I gave to the Member of Parliament copies of similar legislations that exist in other parts of the Commonwealth and the Caribbean.

In response, Sir, Mr Carberry wrote a letter dated 25th September to the Hon. Minister of Parliamentary Affairs which was copied to myself and to you, Sir, and to Mr Dev and Mrs Sheila Holder. I wish to put on record, Sir, that letter which was received by the Minister at 9.55 a.m. today. After referring to the meeting and what had transpired, Mr Carberry in his final paragraph of that letter stated as follows:

In response to the suggestion from the Hon. Attorney General that the teams could meet today, I wish to repeat that this is impractical since the time of our meeting was yesterday. The Members of the PNC/R's Legal Team will only receive these documents this morning and will obviously need reasonable time for due professional consideration thereof and so I repeat that my undertaking is that we will try to have a meeting with your team as early as is practicably and reasonably possible.

Sir, in response the Minister of Parliamentary Affairs wrote Mr Carberry in which he stated as follows in one of the paragraphs of that

letter:

As a result, you will undertake to have a meeting with our Legal Team as is practicably and reasonably possible. My instructions are to urge you to attend the Parliamentary Sitting which is being rescheduled from Monday to Thursday, with the limited purpose of debating the Bills suggesting possible amendments, which amendments the Government would be prepared to consider before enacting into law .

I hope that your party will consider the serious condition of the country which demands the enactment of the relevant legislation.

Mr Speaker, I bring that to the attention of this House to indicate the Government's position even at this last moment to have a debate, not the rhetoric which has been spoken about this Bill by the Bar Association and by this eminent jurist in the Caribbean. I have been practising for forty-odd years in Guyana and throughout the Caribbean and I challenge this eminent jurist to debate the contents of this Bill. *[Applause]*

Mr Speaker, I don't respond to rhetoric. I examined the legality of the provisions of the law in minutia to determine its validity, legality or constitutionality. Let us examine what has been described as a terrorist activity. Those of us who are familiar with terrorism, we are appreciative the fact that there is a universal model legislation dealing with terrorism and all that has happened is that we have extracted a minor part of that legislation to be inserted in our legislation. Some of the concerns expressed by the Bar Association show that they are not appreciative of the language of the legislation. My learned friend, the Hon. Minister of Home Affairs, referred to the legislation, but I want to address certain aspects of it.

Whoever, with intent to threaten the unity, integrity, security or sovereignty of Guyana -

is there an objection to defining that as a criminal offence? Who could wish to seek to say that a person who falls in that category ought

not to be criminalised? That is one aspect of it - it doesn't end there.

- or to strike terror in the people, or in any section of the people does any act or thing which by using bombs, dynamite or other explosives substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of Guyana or in connection with any other purposes of the Government of Guyana or any of its agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any, act commits a terrorist act.

I wish to challenge any person who could seek to say that any of what we have defined there as a terrorist act ought not to be called a terrorist act, and with the greatest respect this is almost identical to the definition which is in the greatest democracy in the world, the Union of India.

Perhaps I ought to explain for the benefit of some of my colleagues that the mechanism which is put in place before the Attorney General's Chambers embarks on any legislation is that instructions are given and the first thing that is done by the Attorney General's Chambers is to inquire whether legislation exists either in the Caribbean or wider afield, and it is only after such a search is made (and in the day of the internet, it is easily accessible) we have been able to determine and identify parallel legislation and then we would look at the parallel legislation (some people say that all our draftsmen do is cut and paste. I don't agree with that

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statement, but that is what they are saying). So we look at legislation which exist wider afield and then we compare that legislation, then our draftsmen seek to identify aspects of it which ought to be implemented in our legislation. We do not reinvent the wheel, Sir, we follow its traditional formation. *[Applause]*

Sir, statements have been made by the Bar Association about people marching and there has been a breach in their fundamental rights. So we have the first aspect of the definition which no one can complain ought not to be defined as a terrorist act. It is not only if you bring down the twin towers, that it is a terrorist act, Sir, if you burn down Regent Street, in the case of protesting with influencing the Government, that is a terrorist act *[Applause]* and must be defined as such.

Let us look at Subsection (2):

Whoever conspires or attempts to commit, or advocates, aids and abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, commits an offence and shall be punishable for the offence as if he had been guilty as a principal offender.

That is as normal criminal conspiracy, it exists in our laws at the moment. So that, Sir, as I said before, this is a timely piece of legislation, it fills a void in our legislation at the moment and for those who say that it collides with fundamental rights, then there is always the judicial system. Don't let some known jurist or somebody give you some opinion. Let him come in court, let him institute proceedings and we will defend and show that this legislation does not collide in any way whatsoever with any of those known persons that you refer to. Thank you, Sir. *[Applause]*

The Speaker: The Hon. Member Mr Ravi Dev.

Mr Ravi Dev: Mr Speaker, I rise to make my contribution to this Bill, the Criminal Law (Offences) (Amendment) Bill, Bill No. 9/2002. Let

me just begin by saying that there is a number of issues which should be addressed as we discuss this Bill, first and foremost being whether a government is entitled to pass legislation for the protection of public safety I think all of us would accept that every government not only has to but has a duty to pass such legislation.

A second question which must be answered, is the need for a bill on terrorism and I wish on behalf of my party to state unequivocally that there is a need and there has been a need for a bill on this activity because terrorism, while it may appear to be something in the air after September 11, for us in Guyana it is not a new phenomenon. As we go back to our history in the 1960s, we will see the words *terrorist* and *terrorism* flying fast and furious between the various parties, between the Government of the day, the Opposition, the Governor, the Colonial Office and all the institutions. So Guyana has a very long experience with this thing called terrorism, and it is because of that that we cannot ignore the implications for Guyana, and the need to address terrorism on its merit. As we understand it while many of the actions or all of the actions that are now proscribed as terroristic are on the books, what is new about putting it under the rubric of terrorism is that it now combines with a motive to coerce a government or a section of the population to do or not to do something. This is why in our estimation, there is a need for such a law because there is no such law in the books with such an intent. It becomes even more meaningful, Mr Speaker, to introduce such a law, because unlike in the 1960s when, in order to coerce a government, there were bricks, stones, bottle bombs and pipe bombs being used, today there are weapons and we use words like mass destruction, but the events of just last night remind us that in a country as small as ours, mass destruction does not need much more than the pipe bombs or the guns that we had in the 1960s and those are so freely available in our country. Therefore in this modern world and in Guyana, certainly it is possible for small groups of people who do not believe that the Government or a section of the population is acting in accordance with how they see things, may choose this route and our party firmly believes that such behaviour must be proscribed. Especially, Mr Speaker, because of our circumstances, legislation neither falls full blown from the brows of Zeus nor does in

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drop into a society, that is theoretical. Guyana is a society that is very severely divided and when we speak of terrorism, that there is a nexus between people doing violent acts in order to influence a government, it invariably means that that is a political act because that is what politics is all about, to try to influence a government. The danger of course is multiplied tremendously in the society as divided as ours and divided ethnically that such frustration with the government, if allowed to take a violent form can quickly spread as it did in the 1960s and lead to civil war as it did then, but today rather than 176 deaths, we can have half of our population or more wiped out very easily.

Mr Speaker, therefore, on the second question that I posed as to whether there is need for legislation on this action called terrorism, our Party answers in the affirmative and very strongly so.

The third issue that we have to then consider if there is need for terrorism act or the law to prescribe this action as any government would empower the law, we have to ensure that it is cut out of a cloth that does not unduly infringe upon freedoms that we may enjoy and this we should do with all legislation, but especially so with a piece of legislation that has the ultimate sanction of death. Therefore we have to look at such legislation from a number of standpoints:

Firstly, is it adequate to deal with the phenomenon that it seeks to eradicate or to prohibit. In our estimation, Mr Speaker, the ROAR Organisation feels, and we have been public about this since April, that the legislation that we believe has to be put on the books to be much more comprehensive than the one we have here which simply defines the Act, offers a penalty and talks about, as the Attorney General did, accessories before the fact for those who may conspire. We feel that as there have been criticisms, there are laws on the books, and yet there are murders being committed. That is part of the problem in Guyana, that the wherewithal to ensure that such laws are carried out may not be there or may not be sufficient or may not have the will to do so. We, therefore, felt and still feel that this Act should present us with an opportunity to look as to not only define the Act, but as other countries

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have done to talk about mechanisms, to go after terrorism or for example, to look at ambiguities as to whether the Army may or may not be used in or out of a state of emergency. England for example has looked at this since the 1970s as they grapple with the terrorists from Ireland. This was an opportunity we feel for us to address such ambiguities as we hear bandied about, as to why the Army may or may not do some things.

There is also the opportunity for us to talk about the possibility of creating a specific force to address such a contingency. We have heard of criticisms of other forces such as the Black Clothes Unit. Well, this may be an opportunity for the government and all of the parties that are involved in the formulation of the laws of Guyana to get behind a complete look at the situation and to say, well, how do we now eradicate this sport?

It also presents us with an opportunity since we have now defined terrorism which by law has to affect large sections of the population that we should then introduce into such legislation compensation for the victims of such barbarity because, Mr Speaker, as we heard, the essence governing this offence is that groups are trying to influence the government and so you may have innocent people who will suffer and should not the survivors or maybe those who survive not be compensated? Such an Act, we feel, should have addressed all of that.

We hear of training facilities in Guyana for terrorist. All of these need to be addressed, Mr Speaker. In some, the ROAR Organisation feels that the legislation suffers from lack of comprehensiveness in dealing with the legality of the problems confronting us, and we recommend for this (if nothing else), and we will talk about some other recommendations, that this piece of legislation be deferred to a Select Committee to look at this wider role that the bill can play.

Mr Speaker, in addition to comprehensiveness, we said that a bill must, of course, satisfy the constitutional requirements because, after all, the supreme law of the land governs and it cannot class, so we have to look at such tests as to whether the law might be too vague, it might be

overly broad or, as the Attorney General said, it might have implications in terms of certain fundamental rights.

There is one area, Mr Speaker, from this perspective, that we feel the law may be overly broad when it says in Section 309 A, *destruction of any property or equipment used or intended to be used for the defence of Guyana*, and this is the part here *or in connection with any other purpose of the Government of Guyana*. We feel that this is too broad and casts too wide a net and we would like to propose that it be changed to something like *such damage should create a risk of serious bodily injury through such destruction of property*. In a sense, it gives a nexus not only to the damage but to the implications of the damage that it must be serious and why, which is the whole point about the terrorist act and the nexus, I think, we seek to do. So I believe that this is a bit of broadness which needs to be rectified and it would be one that I would recommend to our Minister of Legal Affairs.

The other ambiguity in our humblest midst that we see is in 309A (2) as read by the Hon. Home Affairs Minister, when he spoke about the intent, that is necessary for others to be brought into this web, and he read very clearly, very distinctly, *whoever conspires or attempts to commit or advocates, aids and abets or incites or knowingly facilitates...* the *or* comes at that point, so the *knowingly* in our estimation, Sir, only refers to knowledge to facilitate the commission or any act preparatory. To save any such ambiguity, we would like to recommend that after *or*, it would say that *advises or incites or otherwise knowingly facilitates*, therefore implying that all that preceded it also need the criteria of knowledge.

Mr Speaker, we feel that another factor has to be brought into play and that is whether when the legislature passes a law and there is no question that it is within our competence to protect the government and our citizens from coercive acts, but that when we pass a law, such laws have wide acceptance so that those who commit the criminal acts will be in a sense ostracized. We cannot be oblivious to the situation that exists in our country today, Mr Speaker, and the ROAR Guyana Movement is

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of the view that the Government should have with this piece of legislation, to use the colloquial, *gone on the road* much more strenuously and widely and much more in a timely fashion to make the population aware as to why such a Bill was necessary and is necessary and what it seeks to prescribe and also the actions on how they may impinge on our fundamental freedoms.

I am particularly perturbed, Mr Speaker, that in a climate where we are talking of seeking to go forward on government of inclusivity that the Government does not find it necessary even after having printed this Bill on the 30th August, to have made it available to the Parliamentary Parties - at least our party - until two weeks later. We feel that in the spirit of good faith, if the Government is serious about building a consensus on contentious issues, then, it will have to reach out and to show that it intends to bring in a wider circle of Guyanese within the ambit of creating laws. With all of that in mind, Mr Speaker, again our party would like to recommend that this particular Bill, while we fully endorse the principle of a Bill to address this scourge of terrorism, that we defer it to a Select Committee to make it more comprehensive, to clear up ambiguities, and to give the Government time to explain its position and to give parties such as mine time to explain our position.

In closing, I would like to say that on Tuesday night I went to Berbice and discussed the Bill. There was a tremendous amount of comment and I would like to say that in that spirit, we think that this should be taken on the road. I thank you, Mr Speaker.

The Speaker: Thank you, Hon. Member.

The Hon. Member Mr DeSantos.

Hon. Bernard C. DeSantos: Mr Speaker, I rise to support the Criminal Law (Offences) (Amendment) Bill 2002 and I feel a little humble because I sat here and listened to my colleague and friend the Hon. Attorney General give a dissertation which I feel was second to none.

That notwithstanding, Mr Speaker, I shall attempt to throw in my

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contribution and I want to say, from the beginning, that this Bill is really a very simple piece of legislation. It has three distinct parts:

The first part of the Bill defines what is being touted as a new offence called a terrorist act - terrorism. It is a word which seems, maybe because of the enormity of the American experience of September 11, to drive fear into people's minds, and it seems to me that it has driven so much fear into the minds of those on the other side that it has paralysed their brains.

Mr Speaker, these are trying times, they are dangerous times, they are extraordinary times, and dangerous, extraordinary and trying times call for extreme measures. The extremity or extremeness is not in the act of terrorism itself, the language of terrorism, but in the penalty. I will submit later on that those who put the life and limbs of our citizens at stake have qualified to forfeit their own. Now, it must be a very poor physician who would prescribe a simple cough remedy for tuberculosis and in the case of my colleague on the other side, the Hon. Member, Mr Dev, he, like a certain gentleman of old, would wish to keep fiddling while Guyana burns. We cannot afford to fiddle. Too much hurt is being done, and before it escalates, this Government has a responsibility, indeed, a duty which the Hon. Member Mrs Holder recognises to prescribe the treatment to deal with the malady.

Mr Speaker, when law enforcement agencies or the law enforcement arm of the State finds itself besieged, when citizens of this country cannot relax without being brutally gunned down, when guns and explosives are used with impunity by persons unlicensed and not entitled to have them, when the citizenry of this country cry out for protection from marauders and murderers, our Government cannot remain idle. The Government has been horribly tolerant, but now is the time for action: now is not the time to keep fiddling and, you know, I am glad that the Hon. Member Mr Dev, like myself, had some legal training, because he at least recognises that you can test this legislation in a very important way. Is it necessary? He conceives that it is. Is it constitutional? It seems he has a slight problem. But let me just refer to one provision

which seemed to have escaped not only his notice but the other brains which seemed to have been paralysed (some of them are called eminent in the wider Caribbean) and it is Article 148 (3) of our Constitution:

Every Government has the right in their duty to bring forward legislation for the protection of the existing of the State and indeed of the citizenry.

Article 148 (3) having given this great right of freedom of movement, no person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Guyana, the right to reside in any part of Guyana, the right to enter, the right to leave Guyana, and immunity of expulsion from Guyana. That is our right, but as my learned friend the Hon. Minister of Home Affairs pointed out, it is not an absolute right; as an absolute right it would lead to chaos. What would happen to one-way streets? What would happen to your character when the freedom of speech is used to malign and defame people? Live and let live - there must be a balancing of rights, that is what the laws are doing. They seek to co-exist in such a way that the citizenry is able to extract the benefits in a manner which is consistent with the enjoyment by all.

But I did mention Sub-article (3) and maybe it is good that I tell you what Sub-article (2) says, having granted what appears to be an ultimate freedom; it says:

any restriction of a person's freedom of movement that is involved in his lawful attention shall not be held to be inconsistent with or in contravention of this article.

Clearly therefore when a man is put in jail for an offence after due conviction, you restrict his liberty, but that restriction is lawful, it is not offensive to the freedom of movement which the Article appears to give initially. For the purposes of this Bill, it is Sub-article (3) which, I submit, is relevant and I will read it very slowly for my colleague Mr Dev:

Nothing contained in ...

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and I am sure with his legal training, he will be able to say as he walks out of the corridor this evening that he is satisfied as to the constitutionality of this Bill, because as long as it passed those two tests, this House has done its duty. It remains now for the judiciary to interpret it, for the law enforcement people to enforce it, but that is really not our business here. We must express our intention in such a way that the interpretation of it achieves Parliament's purpose. But let me not keep Mr Dev waiting too long.

Noting contained in or done under the authority of any law ...

This here, when it passes and is assented to, becomes the law ...

shall be held to be inconsistent with or in contravention of this article to the extent that the law in question ...

when it makes provision, for what?

(a) For the imposition of restrictions on the movement or residence within Guyana of any persons that are reasonably required in the interest of the offence, public safety and public order, or for the preventing of the subversion of democratic institutions.

(b) For the imposition of the restriction and movements of any class of persons that are reasonably required in the interest of defence, public safety, public order, public morality, public health ..

That is why you can't go and poison a stream which is used for public purposes - it would be a terrorist act for the purpose of presenting the subversion of democratic institutions.

So the law, it seems to me, passes on the ground of its necessity. Mr Dev is quite clear on that. I don't think the younger Member, Mrs Holder has a problem with that, but they get into a nit-picking exercise which says, look, you know you should have dealt with the victims and I agree that that is a matter which must be addressed at some time, but, as I said, the damage is being done now and we can't afford to get

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caught into side streams and rivulets when we are faced with what is essentially a crisis situation.

Mr Speaker, I adopt the language of the Hon. Attorney General when he said, he dares all these eminent people who remained un-named to come, not to sit outside or in the corners in here and babble, but come to the courts and challenge the legislation. Let us put in the crucible of judicial scrutiny and then let us see whether it is offensive in the way in which we are told it may be.

Now, I want to assure the Hon. Member Mrs Holder on the question of retroactivity, and that is why, I commended ... you will notice that Mr Dev did not raise that because legally trend, he knows that penal legislation is construed prospectively. That is the rule - the rule of construction - prospectively, and if it is to have retrospective effect, the enactment must expressly say so, because the answer is simple. These are simple truths. If I am to exercise my rights as a citizen, I am expected to know what the law is. They say *ignorantia judicium neminem excusata*, because ignorance is no excuse, we are presumed to know the law and we are presumed to act in accordance with what is the present state of the law. Now, you can't tell me that removing that chair is lawful today and then when I do it today, tomorrow you pass a law which says that removing the chair is an offence. When I did it, I didn't have, as my learned friend called it the *mens rea*, the guilty right which is an essential ingredient of all common law offences not necessarily so for statutes, but the fact is that this legislation does not make any pretence in my respectful opinion to have retroactive effect.

We are told that it tramples on rights. Well, rights made in a general statement have not been defined, so I can't respond to that, that since they are going to involve, yes, and imprisonment, I would have thought that the right to life is enshrined in our Constitution, and the right to movement which will be infringed if you lock up a man, is what she is talking about. If you look at the right to life she would know that in Article 141, I think it says that nothing that is lawful - a penalty that was lawful - when the constitution took effect can never be held to be

unconstitutional, and that is why our Courts have no difficulty to reject the arguments - I am not going to say who made them initially - that the death penalty is not constitutional, that is, unconstitutional. They rejected it, that is a non-issue now because our constitution says so. There is no question of the death penalty here and since we can pass laws to restrict people under its sentence, as I told you under Sub-article (2), the question of unconstitutional, for that purpose, doesn't seem to arise.

Now, I am trying to deal with the matters raised by my two colleagues on the other side. Before I go into my own little presentation, things like whether the Army can be used, whether you should have a specific force, compensation for victims, these are matters which I call ancillary matters. These are not matters of pith and substance and therefore these matters can even be the subject of a Private Member's Bill at the instance of Mr Dev. A right in my ten years in this Parliament, has never once been exercised by the people who sit and mule, puke and criticise. Never one day have they dared to come and say, you know this thing you have here is wrong, this is what we would say is right. Criticism can be constructive, criticism for criticism sake is destructive, criticism for minor political advantage is destructive, for those to try who run with the hares yet hunt with the hounds will find that a time will come, these are not the days when the Hansard is not written, it is written now and those words will come back to haunt you - words will come back to haunt you. *[Applause]* The citizens of this country one day will speak to you and say when we were hurting, you stood up and tried to frustrate the efforts of the Government to put right a situation which called forth for a remedy.

Mr Speaker, when criminal conduct is glorified, when criminals are termed heroes, when our heroes are debased in that way, when certain individuals and groups openly advocate attacks on the stability of our country and undermine the authority of the State, you need to pass legislation to prevent a further erosion of the powers of the Government. This act is past to prevent that kind of conduct. I see it as a preemptive strike. I don't think our Government wants to execute anybody for terrorism. I think our Government wants to put a deterrent, and says look you must not do these things, but, if you do them you must know

what risk you run.

This Bill does no more than respond to a need which has arisen from the developments over the past two years in particular which are getting progressively worse, progressively barbaric and brutal, and sometimes in open defiance of the forces of law and order. This Bill, Mr Speaker, has not, and I agree with the other side, met with universal approval. Whimperings have been heard here and there, bleatings have been heard here and there. These criticise the Government for sponsoring this Bill for reasons which do not attack the Bill itself, as we heard. The attacks which we heard here are either half baked or attacks not on the Bill itself, not on the content of the Bill, except one little observation that says something might be capable of too wide a construction. That is what we have a Judiciary for. I trust our Judiciary. I have been in the system not years not for fifty (50), only thirty-eight (38) years and I have had some hard and rough times but I trust our Judiciary to give this Bill a true and honest interpretation whenever the time comes.

It is not surprising where some of the noises should have come from when some of the most vocal opponents are persons and organisations which have created the conditions for the upsurge of violence which has gripped our country - the very people. Others, mere political or other opportunists, will stand condemned - I have said that before but I want to repeat it - by people who want this country to return to its peace so that they can carry on their normal lives - to go and have a lime in the afternoon without fear of hearing the rattle of machine guns. Those who would put their objections on the Hansard would be well advised to note that that writing will come back to haunt them particularly when the citizenry would be required to express its will. We know, that for reasons which I do not want to get into, the recording of the speeches in this House were at one time not made. This Government has the plus sign to its name for having restored that so that the public can know *[Applause]* who is who, as we say, and who said what. So you can't come back and doubt that you did not stand there sounding pious when you know that your 'brethren' and 'sisteren' are being hounded, when you know the institutions of Government are being undermined. You see

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the spoken word flies very quick, but the writings, the recording, will be there in silent testimony. Decent, peaceful and well meaning people, people who want to carry on their lives without fear of wanton shootists, incendiaries, bombers and others of their ilk, whose only aim is the brutal destruction of people and of this country. These decent people, I want you to know, I want this House to recognise, are in the majority in this country. *[Applause]* They would not raise their voices against this Bill. They are hurting, crying out for help. They know that they need have no fear of its provisions. Those who fear this Bill must be those who either directly or indirectly advocate or facilitate the commission of the acts contemplated by the criminals. *[Applause]*

The Guyana Human Rights Association has commented on the Bill. They didn't say we shouldn't have this Bill so we passed on the question of need if only they stood silent on the question. But they said we should be careful how we define terrorism. The learned Attorney General went through, as we say here, clause by clause in that Section which defines the several acts and omissions and he asked the question which of you will stand up to face this nation and say this is not an act of terrorism. If he were to say that at a public forum, anyone who would stand needed to have his head examined because he would not be a sane Guyanese. There are a few of them.

Mr Speaker, they say we should attach importance to the causal factors, we should practice genuine democracy and good human rights practices. We have been trying to do this. But with their jaundiced reports they have sought to besmirch us. They say we can reduce the incidence of terrorism. This Bill seeks to reduce the incidence by its deterrent effect. There may be other ways in which terrorists acts can be reduced. For the last ten years this Government has been trying with every sinew at its command to bring about a situation in this country which would have its citizens behave in a decent manner, but there are others who are hell bent on having it otherwise. They have said so and they have proclaimed it in language which is unmistakable clear and unambiguous. We, nevertheless, take heed of those things to which the Human Rights have exhorted us. I notice Mrs Holder took from them

the famous phrase 'one man's terrorist may be the other man's freedom fighter'. Well, I can conjure up a situation in which there may be a blurred line between those two, but I am not dealing with generalities, I am dealing with specifics. Is the act of an escapee in murdering people, in thieving their property, in destroying things, the act of a freedom fighter? Whose freedom is he fighting for? We must be very careful that we do not use things like cliches without having them apply to our particular facts. It is a dangerous exercise as all lawyers know. I say that the acts which we have specified clearly exclude any appellation of freedom fighter. The acts which are proscribed by this Bill and hopefully to become an act are pellucidly clear - as a certain gentleman would want to say. They connote anti-social behaviour of an extremely high and dangerous nature. There can be no mistaking as to whether there is any semblance of freedom fighting in the doing of those acts.

Mr Speaker, I have also had the benefit of seeing the comments of the Guyana Bar Association. My colleagues who cobble together those comments, again, I think, paid little regard to Article 148 (2 & 3). They paid little regard to the power of the State to enact legislation for the good order and safety of the communities and of the state itself. As I understand their opinion it raises, more or less, technical objection to what I call the legality of the various aspects of the Bill. Their main contention is that it violates several entrenched freedoms guaranteed by the Constitution. I would respectfully beg to differ on that score. You know there is always the Court to vindicate that idea which they have. If at any time guaranteed rights are alleged to be infringed we should be extremely careful. I was one of those who hastily, I must admit, expressed some doubt as to some aspects of this Bill. Happily I attended a meeting in which we thoroughly discussed the matter, and we did not need ten weeks to do it, in one evening we went through it. We had distinguished Counsels of Guyanese nationality, but who practice all over the place, in and out of the Caribbean, and we say with confidence to you, Mr Speaker, that in our respectful opinion this Bill does not infringe any provision that we are aware of. I have already dealt with the question of their objection to a mandatory sentence of death. I am alarmed that they should say that by putting a mandatory sentence of death we are taking

the Judiciary's right to sentence. Well, I wonder why somebody never argued that under Article 141 because once you are convicted of murder the Judge's hand is tied. It is not like in India where they have provisions to hold a sort of hearing to determine whether in a particular type of murder the circumstances warrant death or otherwise. Our Judges, as everybody knows, the moment the jury unanimously says guilty of murder, has no option but to say I sentence you to death. So the mandatory sentence of death is there. It has been unquestionably there for a long time and nobody has ever seen fit to challenge it. Now it seems to me that some kind of meat challenge for challenging same is being made. I reject it as being without merit. I feel satisfied that my own anxieties have been unfounded and that this Parliament, Mr Speaker, has the authority to pass the legislation which this Government now seeks to pass.

Therefore, having passed the test of necessity, having passed the test of constitutionality, having proscribed the types of conduct which we wish to proscribe in language which, I dare say, is clear, there is nothing else that can be said in a negative way of this Bill.

Any legislation, Mr Speaker, is likely to attract the criticism that the government will use it for purposes other than for which it was designed. Well, the only thing I can say is that I will never sit idly by and see this or any legislation misused by any Government of which I form a part. Because this is a collective responsibility not only in Cabinet but in this House. As I said before, I trust the Judiciary as a whole (I want to make that clear. I want to go on record as saying that my trust is absolute, as a whole. Those who know me know what I am talking about.) to construe this legislation when it comes before it in a manner consistent with what I consider to be the intentions this Government has and that is to curb the wave of violence, to stop the hurting of its people, to preserve its democracy, its institutions and to ensure that when there are infractions that those who choose to do so must suffer the penalties prescribed by the law.

Thank you. *[Applause]*

The Speaker: Hon Member Mr Nadir.

Hon Manzoor Nadir: Mr Speaker, having sat and listened to the distinguished presentations by two of our most eminent lawyers my task is very short today. On behalf of my Party I want to say that we fully support this amendment. Perhaps what is causing so much contention is the simple and unambiguous manner of this particular piece of legislation. We know for some time we have been speaking about acts of terrorism and this particular legislation in its simplest of forms has captured that and right now we can say we have a piece of legislation, captured under the criminal law that deals specifically with acts of terrorism.

I listened to Mr Dev when he spoke of being comprehensive and that the legislation had a broad approach. If we want to convict we will have to use the castnet or dragnet approach. There is no doubt about it. When he speaks of comprehensiveness he speaks of intensiveness and extensiveness. So I was detecting a note of him wanting to fully jump behind the presentation and wanting to be opposing for opposing sake. This legislation is very simple, unambiguous, and my Party has no reservation in lending its support to this piece of legislation.

Thank you. *[Applause]*

The Speaker: Thank you Hon Member.

Hon Minister Mr Ronald Gajraj if you are going to take more than three minutes then I think this would be an appropriate time to take the suspension. Could you indicate, please, whether you would take about ten (10) minutes or so?

Hon. J. Ronald Gajraj: Mr Speaker, I rather suspect I would not take as long as three (3) minutes on this Bill.

The Speaker: Thank you. Well, proceed.

Hon J Ronald Gajraj: Mr Speaker, I wish to thank my colleagues for their presentations and support of the Bill. As a matter of fact as a result

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of what my colleagues have covered in their presentations I hardly think I should reply at all. I would wish however to express the hope that the fears of my colleagues on the other side might have been allayed. It shows the importance of having the debate in the House. Not to go solo on a television screen and to give your own, probably thwarted interpretation, whether wittingly or unwittingly, with any desired purpose that might be inimical to the interest of the country. Here is where the debate should be had, and here is where we should ventilate the issues of the Bill so that the Guyanese public can be made aware as to the purpose, the scope, the intent and the effect of the Bill that is intended to become legislation. *[Applause]*

Mr Speaker, with respect to the acts of preparation with respect to the Bill being used as a political weapon, very often I have been approached and told *you know what, if the PNC were in Government this could not have been done and that could not have been done; they would have done this and they would have done that.* I said, *fine, did we complain about it being wrong? Yes, we did. So why should we do it now?* But as my learned friends, my colleagues pointed out the Bill is clear as to its purpose and its intent and the Courts are always there to protect the rights of the citizens.

In the circumstances, Mr Speaker, again I wish to thank my colleagues and again express the hope that their minds have been disabused of the misconceptions that they might have harboured and ask that the Bill be put for adoption. *[Applause]*

The Speaker: Thank you Hon Members.

Question put and agreed to.

Bill read the second time.

Suspension of Assembly at 16:00 H

Resumption of Assembly at 16:30 H

The Speaker: The Assembly will now resolve itself into Committee.

In Committee

The Chairman:

Clause 1

I propose the question that Clause 1 stands part of the Bill.

Hon. J. Ronald Gajraj: May it please you Mr Chairman?

The Chairman: Yes Hon Member.

Hon. J. Ronald Gajraj: Mr Chairman, with respect to Clause 1 B(1) on the second line after the words *fine of* that the words not less than be inserted so that...

The Chairman: No Hon Member. Your amendment relates to Clause 2. Isn't that so? So let us conclude Clause 1 first.

Hon. J. Ronald Gajraj: Very well, Mr Chairman.

Clause 1, as printed, agreed to and ordered to stand part of the Bill.

The Chairman:

Clause 2

I propose the question that Clause 2 stands part of the Bill.

Hon Member Mr Gajraj.

Hon. J. Ronald Gajraj: Thank you, Mr Chairman. With respect to Section 309A 1(b), (i) please, Mr Chairman, that the words *not less than* be inserted between the words of and one in line two thereof to read - *if such act has resulted in the death of any person, be punishable with a fine of not less than one million five hundred*

thousand dollars together with death.

With respect to (ii), Mr Chairman.

The Chairman: Yes, Clause 2 (b)(ii).

Hon J Ronald Gajraj: Yes, 2(b)(ii). Thank you Mr Chairman. The words not less than be inserted between the words *of* and *five* in the second line thereof. And secondly, Mr Chairman, the words *and imprisonment for fifteen years* be deleted and the words *together with imprisonment for not less than ten nor more than fifteen years* be substituted therefor.

The Chairman: Thank you Hon Member. Hon Members let us deal firstly with the amendment proposed in relation to Clause 2(b)(i).

Amendment - that the words

not less than be inserted between the words of and one in line two thereof to read - if such act has resulted in the death of any person, be punishable with a fine of not less than one million five hundred thousand dollars together with death

put and carried.

The Chairman: I will now put the amendment in relation to Clause 2(b)(ii)

Amendment -that the words

not less than be inserted between the words of and five in the second line thereof.

And secondly, Mr Chairman, the words

and imprisonment for fifteen years

be deleted and the words

together with imprisonment for not less than ten nor more than fifteen years

be substituted therefor

put and carried.

Clause 2 as amended, agreed to and ordered to stand part of the Bill.

Assembly Resumes

Bill reported with amendments, as amended; read the Third time, and passed with amendments.

2. PREVENTION OF CRIMES (AMENDMENT) BILL 2002, NO. 10/2002 PUBLISHED 2002/08/30

The Speaker: Hon Members we will now proceed with the second reading of the Prevention of Crimes (Amendment) Bill 2002, Bill No. 10/2002.

Hon Minister of Home Affairs.

Hon. J. Ronald Gajraj: Thank you Mr Speaker. I respectfully ask that the Prevention of Crimes (Amendment) Bill 2002 be read the second time.

This Bill seeks to introduce legislation that allows the Guyanese convicted of certain offences in a certain state and who are deported to Guyana to be effectively monitored by the Police. As the law now stands only Guyanese who are convicted of offences within Guyana may be subject to Police supervision. The amendment proposes to make it possible for certain classes of deportees to Guyana and even persons

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who have elected to return to Guyana in lieu of deportation to be subject to Police supervision. The amendment also proposes, Mr Speaker, to allow the court in dealing with such an individual, for offences committed in Guyana, to receive as evidence his foreign criminal record.

Within recent times, Mr Speaker, we have had a number of Guyanese return to this country from various parts of the world, in particular, the United States of America, Canada, some countries in the Caribbean and even Europe. These individuals come to this country with varying qualifications as a result of which we have had much importation of undesirable expertise particularly as it relates to crime and criminal activities. We have had, Mr Speaker, Guyanese who have spent the major part of their lives outside of Guyana but for the fact that they did not seek to make themselves citizens of those questions and they have run afoul of the law they have been sent back to Guyana. Some of these individuals, Mr Speaker, by hook or by crook, return from whence they came. There are those who are reunited with their family members in this country while there are yet others who have been torn away from their family ties and other relationships that they would have established in a foreign country over the years and are posted back to this country unceremoniously. They form unholy alliances- some of them among themselves, and some of them among themselves as well as with the local chapters. We have reason to believe, Mr Speaker, that many of them have been involved in certain kinds of activities that do not auger well for the country.

Under our existing law, Mr Speaker, in particular the Prevention of Crimes Act which has been there since 1885, there is provision for certain classes of persons to be subject to Police supervision. It relates in particular to those criminals who have been convicted on indictment, that is for felonies. Under our existing law, Mr Speaker, where a person has been convicted before a court for an indictable offence and it is proven that he had at least on one occasion prior thereto, been convicted of a criminal offence on indictment, the Court is entitled to subject such a person to Police supervision. Where, of course, more than one previous convictions might have been proven against him he can also be subject

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to Police supervision, the difference being the duration of time that he can be so subject to the supervision. In the case of one previous conviction, Mr Speaker, that period of supervision should not exceed one year. Whereas in the case of two or more previous convictions the period of supervision should not exceed three years. This, however, does preclude an application being made for an extension of that time, if the circumstances so warrant.

With respect to the supervision, Mr Speaker, among other things, that individual will be required to report his address to the Commanding Officer of the Guyana Police Force of the Division in which he resides. And if he changes address, albeit within the same Division, he is obliged to report that change of address as well. In circumstances where his change of address takes him into another Police Division then he is obliged to report to the Divisional Headquarters of the departing Division as well as to the Divisional Headquarters of his arriving Division. If within forty-eight hours he fails to do so, unless he can show very good reasons why he has not been able to comply with the law, then he is liable to be charged and placed before the court and the Magistrate is entitled to sentence him to a term of imprisonment. But you would appreciate, Mr Speaker, that that takes into consideration persons who are within Guyana and who might have sustained those convictions within the State of Guyana.

What this Bill seeks to do is to add to that set of people this category of Guyanese that might have sustained a criminal conviction outside of Guyana. Not just any willy nilly conviction, but a conviction that carries a sentence of not less than two years. The Bill seeks to establish what might be considered specified offences and it makes the circumstances surrounding the commission of the act, or the omission that constitutes the offence, comparable to what obtains in Guyana. This is a relatively small group of person, Mr Speaker, and at the moment amounts to far less than a thousand persons who have officially come back to this country but does not necessarily mean that that full number is still in this country. It is a small group of persons that this Bill seeks to target and to give the Police greater authority with respect to the supervision of those persons - their movements, their whereabouts, their activities et cetera. And it

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even seeks to impose certain restrictions where it is considered necessary so to do... all, Mr Speaker, having regard to public safety, public security and public order.

In this Bill, Mr Speaker, there is the definition section. Of particular importance is the deportation order, which means

an order however styled made by an authority of a foreign state which requires the person subject to the order to leave and remain outside of that state.

Then it talks about the specified offence where it defines specified offence as meaning

an offence constituted by an act or omission which if it took place in Guyana or in the case of an extra-territorial offence in corresponding circumstances outside of Guyana would constitute an offence specified in the schedule and would be punishable under the Law of Guyana with imprisonment for a term of two years or any greater punishment.

Against that background, Mr Speaker, what this Bill seeks to do is to allow the Commissioner of Police to make an application to a Judge of the High Court for a permission or a licence, for an order to be made, specifying what restrictions, if any, might be applicable to the particular case. It is not an en bloc application that would be made, Mr Speaker, but each case will be dealt with on its particular merits.

The Bill goes on to say, Mr Speaker, that

subject to Sub-section 2, which I shall come to in a while, the Minister may by order upon application by the Commissioner, meaning the Commissioner of Police and upon being satisfied that it is necessary so to do, in the interest of public safety or public order, designate as subject to police supervision any Guyanese citizen

(a) who has been convicted of a specified offence in a foreign state

(b) who is the subject of a deportation order made in a foreign state or who has elected to return to Guyana from that state in lieu of deportation.

So we see basically we have three categories there, Mr Speaker,

- a person who has been convicted of a specified offence in a foreign state,

- a person who has been the subject of a deportation order made in a foreign state or,

- a person who has chosen or elected to return to Guyana in lieu of a deportation order.

So while we have those three categories we have an omnibus clause now to contend with and that is,

whose conduct and activities have been of such a nature that he may be reasonably regarded as constituting a threat to the public safety or public order of Guyana.

These are all safeguards that are there to ensure that applications are not made willy nilly to have a person subjected to police supervision. This, of course, too, must be seen in the light of the fact that the only applicant in this case is the Commissioner of Police. I emphasize that point, Mr Speaker, to point out that one must appreciate, having regard to the exigencies of that Office and the responsibilities that go along with that Office, one would reasonably expect that any application would have been given mature consideration before a decision is arrived at to make such an application and there would have been justifiable grounds on which such an application would have been made.

The Commissioner before making the application under Sub-section 1, to the Minister for the Order to be made, Mr Speaker, is required to

apply by way of an ex-parte application to a judge of the High Court for permission to make the application and he must give the reasons therefor. So it is not just an ex-parte application that is being made, Mr Speaker, it must be accompanied by the reasons that will justify that application.

Sub-section 3, Mr Speaker, allows the Judge to consider the application and only if the Judge is satisfied, in the circumstances, the Judge will issue a certificate to that effect. So we are looking at the checks and balances as we go, all of which have been incorporated in this Bill, with a view to having the rights of the citizens protected and not trampled upon. The High Court is incorporated. A Judge of the High Court must first satisfy himself on the basis of the reasons advanced by the Commissioner that there is indeed cause for concern with respect to the public order and public safety. Only when the Judge is satisfied that the Judge will issue the certificate to the Commissioner. Upon receipt of the certificate, the Commissioner then applies to the Minister for the order to be made, and accompanying that application must be the certificate issued by the Judge. So if the Judge refuses to grant the certificate, that is the end of the matter, it goes no further. But where the Judge is satisfied and grants a certificate the Commissioner of Police moves on with an application to the Minister for the order to be made. I wish, Mr Speaker, to advert attention back to 3A(1) which is the start of that section.

Subject to Sub-section (2), the Minister may, by order, upon application by the Commissioner and upon being satisfied that it is necessary so to do in the interest of public safety or public order, designate as subject to police supervision...

What I wish to point out here, Mr Speaker, is the extent of the protection the subject receives. The Hon Judge of the High Court must first be satisfied and after the certificate has been issued and an application has been made to the Minister, the Minister must also be satisfied. So the question of the rights of the individual receives, at least, a double indemnity before any such order is made. The order that the Minister is

entitled to make may, and I wish to emphasize the use of the word may, having regard to its discretionary nature. The provision imposes on the Minister a discretion to impose restrictions as to residence reporting to the police, registration, the use or possession of firearms or other weapons or otherwise as the Minister may deem to be necessary in the interest of public order and public safety. While these have been expressly mentioned in this provision, Mr Speaker, they are clearly not exhaustive and in the discretion of the Minister certain conditions, certain provisions, certain restrictions may be imposed bearing in mind at all times public order and public safety. The restriction referred to in Sub-section 5 shall be in force for such period not exceeding one year as the order may specify. So here again, Mr Speaker, in conformity with existing legislation as it relates to the local subject, if you would permit me that phrase, similarly the order is not allowed to roam wild and can never offend against the rule of perpetuity. A time frame of one year has been allotted. And while you do not necessarily have to go the full year - you can go for any period you feel within that year - you are precluded from exceeding that year. If for the purpose of the discussion the order were to purport to exceed that year then clearly it is open to the subject to challenge the validity of that order having regard to the provision of this Bill which, hopefully, will become the law. For the purpose of this Section a certificate under the hands of the Commissioner to the effect that a person was deported to Guyana from another state, or elected to return to Guyana in lieu of deportation shall be prima facie evidence of the fact. Again, Mr Speaker, the certificate issued by the Commissioner with respect to deportation, with respect to the conviction, with respect to the election to return in lieu of deportation is merely prima facie, it is not conclusive. And if at any time it is felt that the certificate has an error on the face of it, it is open again to the subject to challenge the certificate and consequentially the order.

What is significant, Mr Speaker, is that the provision as embodied in 6A (1), (that is the issue of a first offender) is important because where someone is a first offender, is convicted before a court of law, the question of a suspended sentence can be considered. But where the person would have had previous convictions he may well not fall within the scope and

ambit of those provisions and as such may necessarily have to go through a term of imprisonment as a form of punishment.

Under our Rehabilitation of Offenders Act, Mr Speaker, there are certain provisions there that would allow a conviction to be spent with the effluxion of time. Again, consideration has to be given under that law to whether a person is a first offender or not. That law expressly provides for someone who is a subject of a conviction outside of Guyana to be not treated as a first offender in Guyana. In other words, his conviction outside of Guyana is taken into account in determining his fate.

Similarly with this Bill, Mr Speaker, a person who is a subject of a conviction outside, when he comes to Guyana whether by way of deportation or by way of electing to come in lieu of a deportation order, that conviction will be taken into consideration in determining his fate.

Section 6A(1 & 2) of the Bill, Mr Speaker, speaks to sentencing. It says (2):

In sentencing a person referred to in Sub-section (1) for a crime committed in Guyana, a court shall receive as evidence circumstances of the person's deportation or return to Guyana and shall give it the same weight and effect as a local criminal record.

The Bill goes on in the Schedule, Mr Speaker, to talk about the categories of offences that fall within the specified offence. As I said earlier, the act or the omission together with the circumstances under which the act or omission was committed will be taken into consideration and be compared with the Guyana situation in order to determine whether that specified offence falls within the scope and ambit of this legislation.

Very briefly, Mr Speaker, with respect to the specified offences, we talk about felonies - all indictable offences involving injury to person or malicious damage to property, offences contrary to the Narcotics and Psychotropic Substances Act, offences involving arms and ammunition. The rest of the Bill, Mr Speaker, goes on to say the frequency with which the person who is subject to police supervision might be required

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to report to the police. The departure here is under the existing legislation with respect to somebody who can be considered a local in the monthly report but this Bill has expressly stated that every week, at least once a week,

or at such other intervals as may be specified report himself at the time specified by the Commissioner of Police to the police authorities of the police division where he resides.

These are the details of the order that are within the province of the Minister on the advice of the Commissioner of Police to set out in the order. Notwithstanding that provision, Mr Speaker, what it says here is that,

a person liable to police supervision by virtue of an order made under Section 3A who contravenes the provisions of any other order under Section 3A commits an offence and is liable on summary conviction to a fine not less than ten thousand dollars nor more than fifteen thousand dollars..

and it goes on to deal with a second or subsequent conviction. So it is clear, Mr Speaker, that while a person might be deported to Guyana, and as a deportee he had been convicted of a specified offence, if he commits an offence in Guyana those factors are taken into consideration in determining what punishment should be meted out to him.

Mr Speaker, I wish to point out that again like the Bill that was dealt with earlier this Bill is not singular to Guyana. And as the Hon Attorney General has pointed out before these bills are drafted a search is made to see what parallel legislation might obtain within the Caribbean and further afield. Jamaica, Mr Speaker, has legislation that is almost identical to what we have enacted in this Bill. The Jamaican position, of course, does not provide the safeguard as the Guyana Bill has provided. While there is provision for an ex-parte application to be made to the court, that is to a Judge, all it says is that the Commissioner shall by way

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of ex-parte proceedings notify the Supreme Court of its intention to make the application and the reasons therefor. So all the Jamaican Commissioner of Police has to do is merely to notify the court by way of ex-parte proceedings that he intends to make that application. We have gone further. As I have pointed out the Bill requires that a Judge of the High Court be satisfied based on the reasons advanced by the Commissioner that a certificate should be issued and only upon being so satisfied that that certificate is issued.

Mr Speaker, we have had several instances where pressure has been brought to bear on this administration because of what might have been perceived to be a position taken against the dumping of deportees in this country. I wish to hasten to say that while the term deportee might be somewhat stigmatised it does not necessarily mean, and I do not intend it to mean, that all who might have been the subject of a deportation order might have had criminal antecedence. There might be situations where, for example, a Guyanese person might barely have overstayed his permitted time in another country and as a result of which he has been deported. By no stretch of the imagination would you want to classify him or categorise him with those who might have been deported as a result of any gun-running offences or narcotic offences and who might have served protracted periods of imprisonment on possibly more than one occasion or so. They stand in different categories or classes altogether and I am hard pressed to see, Mr Speaker, that any such person who, albeit subject to a deportation order because of an immigration breach, might be a treat to public order and public safety and therefore be subject of an application for police supervision. We need to recognise, however, that the scope of this Bill is limited only to those persons who fall within the three categories that I made mention of and of whom there is reason, ground to believe pose a treat to national security, public safety and public order. It is not wide and covers the entire Guyanese population. There is a certain class of people and a comparatively very small number of people.

Mr Speaker, against that background I wish to comment this Bill to the consideration of this Honourable House and ask that it be accepted

and be read a second time. *[Applause]*

The Speaker: Thank you Hon Member.

The motion is proposed. Hon Member Mrs Sheila Holder.

Mrs Sheila Holder: Mr Speaker, once again we acknowledge that it is the duty of the Government to enact legislation to correct the ills that become evident in our society. By the same token Government should acknowledge its responsibility under Article 13 of the Guyana Constitution which aims for an inclusionary democracy through the involvement of citizens in the decision making process in order to guide the society toward a safe, secure environment that would lead ultimately to the goal of peace and harmony in our society.

For most of this year Guyanese have experienced a level of criminal activity few in the country could have predicted. Crimes have escalated to the point where every facet of society has felt its terrifying impact bringing with it a level of brutality, insecurity and fear never before experienced by those of us who have lived in this country all our lives. There has been many anecdotal analyses, private and public speculations, but regrettably no serious and scientific study of this phenomenon to inform the public about the causes, who the perpetrators generally are and the kinds of solutions that might be suitable to arrest the descent of society into the general breakdown of law and order that appears to be so evident.

Because of this state of affairs our Party is on public record as having recommended an approach that would be inclusive and would display a unified national approach to tackling the scourge of crime. Instead the Administration has taken the unilateral position that the extreme extent of the criminal activity being unleashed on the Guyanese public calls for the extreme measures contained in this Bill before us. How much justification could be given to Section 3A (1) of this Bill that violates fundamental freedoms prescribed in Articles 146 and 148 of our Constitution which violates the basic principle of our laws and indeed

fairness in applying the ex-parte process to put into effect supervision of a whole of person subject to deportation orders? How fair could such a Bill be when it introduces discriminatory treatment between persons convicted of similar types of crimes out of the jurisdiction and within the jurisdiction?

It is, Mr Speaker, a Bill that also seeks to punish a person who did not commit an offence in Guyana without attempting to hinder what might very well be, in the opinion of the Commissioner of Police, a possible urgent risk to the public that might necessitate an ex-parte permission from the High Court. I believe that concerns relating to the proposed amendments as contained in Section 3A (2) of this Bill should not be dismissed lightly. I say this in the context of the inherent injustice contained in the ex-parte application process and hold the view that a person subject to a supervision order should have the right to challenge such an order. It is through the introduction of such fair and reasonable provisions that we stand more assuredly to build the kind of democratic society Guyanese desire.

Surely, Government has a duty to demonstrate, by example, respect for our Constitution and should do nothing to cause it to be violated. That is not to say that we aim to obstruct Government in its duty to introduce appropriate measures to deal condignly with hardened criminals being dumped on our nation, being dumped callously and unjustly. What we are saying is that Government must fulfill its mandate without falling into the trap of applying measures that are undemocratic, excessive and alien to our local jurisprudence, as well as being in breach of our Constitution. Our unease with Section 3A (2) resides in the lack of ministerial accountability to citizens that our electoral system engenders in this country. In Guyana because citizens vote for a political Party and not necessarily individuals or a particular Minister citizens have no control over the appointment of a Minister who might use his office injudiciously. Because of this reality, Guyanese have for many years been very uneasy with the propensity of successive governments to assign wide discretionary powers to one individual. In these circumstances the introduction of checks and balances should be imperative.

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Having been in office for the last decade Government should be aware of the distrust spawned among large sections of our society. It is therefore reasonable to conclude that to engage in the perfunctory consultation exercise that excluded parliamentary Parties is to quote a new wave of rancour that the society can ill afford at this time. Why, I must ask, if you would have us believe that you are a Government desirous of seeking peace and harmony would you fail to give meaning to the consultation process in relation to this Bill. It is our view, Mr Speaker, that the Minister of Home Affairs should present to this Hon Assembly actual statistics and convincing argument to show to what extent deportees were found to be engaged in criminal activity upon their return to this country. In the absence of definitive data, I believe that Government is engaged in an exercise of blindly enacting legislation in the hope that it would hit the right target - a strategy that is inherently flawed and could fall foul of the Rehabilitation and Offenders Act as pointed out in the submission by the Guyana Human Rights Association. Even if there are financial constraints facing the country some attempts should be made to put in place a rehabilitation programme to ensure that the deportees become acclimatized to the Guyanese ethos and given the opportunity to become integrated productively into the society. That is, Mr Speaker, what a caring Government would seek to do as it should be doing for the thousands of unemployed youths languishing in communities across the length and breadth of our country. I sense that, should the Government see the wisdom in responding in a more humane manner to the problem of the deportee being dumped on our nation the result would exceed the benefits envisaged in the legislation before us.

In closing, Mr Speaker, I leave with you the thought that the benefits to be derived from attempting to resolve these and other concerns expressed about this Bill and others far outweigh the negative fall-out should Government choose to ignore the unease being expressed generally in the society. Further, a government that has no positive response tradition to the concerns raised by its citizens must realise that it is heading for an unmanageable level of frustration and discontent among its people. It is your duty as a government to alleviate these .

I thank you.

The Speaker: Thank you Hon Member.

Hon Member Mr Doodnauth Singh

Hon. Doodnauth Singh: May it please you, Mr Speaker. It is not unusual in the United States of America in lieu of imprisonment for persons to be put on parole. Whenever a parole order is made such a person is subject to electronic surveillance. It is not appreciated that the category of persons whose application will be heard by a Judge is conditional and the condition is irrespective of which category that person falls into that the condition must exist. And the condition is clearly stated in Sub-section (c),

whose conduct and activities have been of such a nature that he may be reasonably regarded as constituting a threat to the public safety or public order of Guyana.

That condition must be satisfied by evidence which has to be produced when the ex-parte application is made to the court. And perhaps, Mrs Holder is not familiar with the fact that ex-parte application is the order of the day in Guyana and it does not prevent anyone against whom an ex-parte order has been made to have such an order set aside. I would wish to bring to the attention of the House... and it has been told that our jurisprudence, I suppose, is unlike the Caribbean jurisprudence, but the Jamaica legislation has been in existence since 1994. What does it state? It says,

(a) who has been convicted of a specified offence in a foreign state.

Our legislation is identical.

(b) who is the subject of a deportation order made in the foreign state or who has elected to return to Jamaica from that state in lieu of deportation.

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So we have identified, identically, the three categories that have been identified in Jamaica since 1994. Finally,

(c) whose conduct and activities have been of such a nature that he may be reasonably regarded as constituting a threat to the public safety or public order of Jamaica.

Mr Speaker, I do not wish to reply to rhetoric and illegality. I deal with the legal aspects of a matter and you have to convince me of the unconstitutionality of the threat to democracy in the legislation itself.

Significantly, the Human Rights Organisation responded to the request that I had submitted to them when the Bill had been sent to them and they made a recommendation which the Hon Minister will deal with and which we have accepted. They pointed out that in the legislation that is being proposed there was no time limit for the making of the application. As a result we have considered that recommendation which has been made by the Human Rights Organisation and which my learned friend, the Hon Minister of Home Affairs, will ask this court, at the appropriate stage, to have that amendment included in this Bill.

I thank you, Sir. *[Applause]*

The Speaker: Thank you Hon Member.

Hon Member Mr Dev.

Mr Ravi Dev: Mr Speaker, I rise once again to make my contribution on Prevention of Crimes (Amendment) Bill No. 10/2002. As a prefatory remark I would like to say that it is obvious that we are facing powerless times. I notice in some of the previous speakers of the Government benches, in their tone, indicated that in these times we can't dilly dally, we can't examine too closely, we must press ahead and rush because of what is all around us. Well, I hold the view that especially in times of crisis when we may be tempted to act with haste and to act in a manner that we may later regret it is in such times that we must be very, very careful and look even closer to what we intend to solve. Because I

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caution the Hon Members who spoke that we must plow ahead notwithstanding whatever we see on the sideways, in the streams and the rivulets. I caution them that what might seem to be a shield today can become a sword tomorrow.

I was also amazed at the comments of Hon Mr Manzoor Nadir that we should seek to enact laws in the form of a dragnet. The Hon Mr De Santos spoke in a similar vein when he said that the courts will clean up after the legislative branch. So if one fails here the court is there to, in a sense clean up one's mess. Well, I would like to say this, that is not for the legislation to cast the net so wide as to capture any and all possibilities hoping that the court will then step into that net and then take out, and who should be there and who should not be there. It is the duty of the legislative branch to be cognisant of the fundamental rights of citizens and to cut the cloth, as I cautioned before, as close as we can and not to be so cavalier as to how we treat the rights of our citizens. In terms of this specific Bill I do believe, and our Party does so, that there is some need and there is a need for deportees in the specified categories to have some kind of monitoring because we cannot escape from the realities of our situation in Guyana as we have said. However our concern is that the Commissioner of Police, in this case, appears to be both judge and jury as to who ought to be and who ought not to be selected, to be chosen, to be under surveillance. For example it says under Section 3A(2) that

the Commissioner may make an application... to the Judge...

So again we have the Commissioner choosing as to who he will choose to have under surveillance. We note that it is not all of the individuals within the classification, it is specific individuals who the Commissioner will choose.

Also, going up to 3A(7)

For the purpose of this Section a certificate under the hand of

the Commissioner... shall be prima facie evidence...

that this person was deported. In that sense it is again the Commissioner deciding whether this person was a deportee and which specific persons ought to be coming under surveillance. So we find that it is a very great and grave danger based again on our experience in Guyana of a potential for abuse by an individual because of impartial criteria not being set. In the case of 3 A (7) we would have thought that deportees are sent back to Guyana with the papers that explain the reasons why they were deported and the orders under which they came back and as to what offences they would have created and the details of the conviction that such papers would have been filed at the High Court so that there will be no need for this aspect, which is a very simple clerical aspect, to be given to the Commissioner.

Again, we will like to say that in general we will repeat our caution that when we seek to plug these holes we hope that we are not casting too wide a net that we have to then subject citizens to unnecessary trials and tribulations because we know in Guyana it is not so easy. Well, then you can go to the court and get redress. There are instances of people who have spent six, seven years and have not been able to get their matters heard. So I think we in the legislative branch ought to be most careful as to how we craft our legislation so that the net is not too wide.

I thank you.

The Speaker: Thank you Hon Member.

Hon Member Mr Rajkumar.

Mr Ramesh C. Rajkumar: Thank you, Mr Speaker. I rise to support the Bill presented by the Honourable Minister of Home Affairs. This Bill is a welcome one and it recognises the legitimate expectations for the responsibility from the Government to protect the citizens as a whole. It is at this juncture that I find it very difficult to understand the Hon Member Ravi Dev's comments. I find it to be what we may call spurious, a total misinterpretation of the Bill which was gone through very tediously by

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the Hon Minister of Home Affairs in the interpretation and explanation of Section by Section, and also by the Hon Attorney General. But I will deal with some of his comments at a later stage when I come to addressing this Honourable House on the fundamental rights which have been enshrined in our Constitution and whether there has been a breach on those fundamental rights by the sections in this Bill. The more that I think about the fundamental rights enshrined in our constitution and the sections of this Bill I find that the strength of this Bill lies in Article 139 of our Constitution. So before going further I would just like to read the Article,

No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases that is to say,

(a) in execution of a sentence or order of the court.

This is where the strength of the Bill lies because before the Hon Minister could act on a request of the Commissioner of Police, the Commissioner of Police has to seek an order of the court albeit an ex-parte one. But the Bill in itself derives its strength from this very provision.

It goes on to say when it speaks of the order of Court, whether established for Guyana or some other country.

So we see the wide jurisdiction of this very Article in our Constitution which empowers the provision in the Bill and that is why we have to seek an order of court albeit, as I said, ex-parte.

Now, Mr Speaker, I think that ought to put some enlightenment to the Hon Member Ravi Dev's spurious statements.

This Bill is introduced at a time when our country is experiencing new forms of criminal activities and these activities are changing the face of our society. There is no doubt that with such a state of society Government is expected to act for the benefit of its citizens. The benefit of the citizens here is in the protection of public safety and public order. That is also what the Bill speaks about, protection of public safety,

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protection of public order. The Constitution empowers the Parliament to make laws, to enact laws for public safety and public order. Mr Speaker, this Government is concerned with the protection of its citizens and has so far spared no effort and resource toward the public safety and public order of its citizens. One American Jurist, Lewellyn stated,

the basic functions of the law are to make group survival possible, to quest for justice, efficiency and a richer life. The disposition of troubled cases and preventive channeling, the reorientation of conduct and expectations to avoid trouble.

Mr Speaker, when this new form of crime began in our country our critics hastily called for interventions and strong actions from the part of the Government in its fight against crime. But when we began to act seriously, when we are acting seriously we could see them vacillate. That reminds me of the Hon Members on the opposing side, condemning, criticising and bringing to the fore the effects of fundamental rights and need for consultations. Mr Speaker, they may propound to represent civil society or certain sections of the masses. But, my question would be which civil society? Certainly not in the Region where I come from. But I may dare to say that it may be some of the vociferous minority. But, Mr Speaker, this Government has remained resolute. Can we, or the society, or the public at large wait while they procrastinate and idle and criticise, they being not the moral conscience of society? I dare say that they are the crusaders of doom, Mr Speaker, they perhaps subscribe to the thought that it is better for an innocent life to be lost and a guilty person to go free.

Mr Speaker, this Bill has proven its relevance ipso facto and does not infringe on the fundamental rights of any constitution because, as I said before, it is important to note that the words in the Bill and those in the Constitution 'public safety' or 'public order. The protection of the freedom of assembly and association has, as stated in the Constitution, set out a part from' that no person shall be hindered in his enjoyment of freedom of assembly and association'. It goes on to state in Sub-Article 2

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nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision (a) that it is reasonably required in the interest of defence, public safety, public order, public morality or public health. Or is reasonably required for the purpose of protecting the rights or freedoms of other persons. '

So as other speakers previously stated these fundamental rights, provisions are not absolute. There are certain provisos which have to be read thoroughly and must be brought to the public at large because of the kind of misguidance being given by various associations. In the other provision, likewise Article 148, which provides for the freedom of movement (and this is where the Bill speaks of restraint and restraining or restricting a person where they may reside and that is the same qualification that they have that any restrictions on a person's freedom of movement that is involved in it) lawful detention shall not be held to be inconsistent with or in contravention of this Article.

Mr Speaker, Article 138 also gives the protection of the right to life. No one is deprived of his life intentionally save in the execution of a sentence of court. That is why we find between Articles 138 and 139, 147 and 148 spelled out in provisos what actions can be taken by Parliament in the protection of public safety and public order. Mr Speaker, I ask the question where is the violent collision with this Constitution? That is the phrase which seems to be used nearly every day in the press. Where is the violent collision with this Constitution? We have heard the Hon Members on the opposing side speak of discriminatory practices by the Hon Minister but, Mr Speaker, the safeguard to all of this lies in its first procedure and that is in Section 3A which states that

the Commissioner shall before making an application under Sub section 1 apply to a judge of the High Court ex-parte for permission to make the application giving the reasons therefore.

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Mr Speaker, I would not go deeper into the section of the Bill which have been dealt with thoroughly by the Minister of Home Affairs and our Attorney General. They speak very clearly and unambiguously as to the procedure adopted before a person could be put under scrutiny or supervision or restricted.

We could find in our own jurisdiction analogies with other bills which were tend at some time where persons have referred to it as draconian and which has taken away the rights of persons and which has taken away the pre-trial liberties of persons, that is in the Narcotic Drugs and Psychotropic Substances Control Act of 1988. But why was this Act passed at that time? This is where we come to the society. The society demanded at that time that Parliament enact legislation to deal with drug trafficking and drug possession. Similarly, we have instances where the Firearms Act has been amended in 1991 to make it mandatory for persons found guilty of illegal possession of firearms and ammunition to serve a mandatory term of imprisonment on summary conviction to not less than one year and indictably to seven years.

Mr Speaker, this indeed brings justice within the circumstances for this Bill to show that it is relevant, it is necessary and within the confines of our law, our Constitution. I would hasten to add that when the Hon Member Ravi Dev stated that the Commissioner of Police shall be judge and jury what he failed to understand is that the Commissioner is a law enforcement officer and whenever he acts he will be exercising his discretion under reasonable suspicion. He is not the judge and jury but there is reasonable suspicion so he ought to act and police officers do that. A complaint is made or they have any reasonable suspicion on any offence whatsoever - they are bound by duty to act.

Mr Speaker, this Act as I indicated earlier, comes at a time when society is crying our for a need for our Parliament to act. This we have done. And as I said also the Bill is just, relevant, necessary and within the confines of the Constitution. I, once again, support the Bill as presented. *[Applause]*

The Speaker: Thank you Hon Member.

In Committee

The Chairman:

Clause 1

Clause 1 as printed, agreed to and ordered to stand part of the Bill.

Clause 2

Clause 2 as printed, agreed to and ordered to stand part of the Bill.

Clause 3

I propose the question that Clause 3 stands part of the Bill.

Hon J Ronald Gajraj: Mr Chairman.

The Chairman: Yes Hon Member Mr Gajraj

Hon J Ronald Gajraj: Mr Chairman, I beg to propose an amendment standing in my name. In Clause 3 of the Bill after Sub-Clause 7, I ask that a Sub-section numbered 8 be inserted in the Bill. The Sub-Section reads, Mr Chairman,

The application referred to in the opening part of Sub-Section (1) shall be made by the Commissioner within two years of the arrival of any person referred to in paragraphs (a), (b) and (c) of that subsection, but the Commissioner may on good and sufficient grounds be permitted by the Court to make the application after the expiration of two years.

Amendment that -

after Sub-Clause 7, that a subsection numbered 8 be inserted in the Bill and to read,

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The application referred to in the opening part of Sub-Section (1) shall be made by the Commissioner within two years of the arrival of any person referred to in paragraphs (a), (b) and (c) of that Sub-section, but the Commissioner may on good and sufficient grounds be permitted by the Court to make the application after the expiration of two years.

put and carried.

The Chairman: Clause 3 as amended, agreed to and ordered to stand part of the Estimates.

Do you want to say something, Hon Member?

Hon. J. Ronald Gajraj: Just some clarifications, please, Mr Chairman. In respect of 6A(1) which is part of Clause 3, an amendment, please, on the second line. The words *a person deported to Guyana from another state* to be deleted and be replaced by the words *a Guyanese citizen convicted of a specified offence in a foreign state and deported to Guyana from that State*. And with respect to...

The Chairman: What section is that?

Hon. J. Ronald Gajraj: Mr Chairman, there seems to be a misunderstanding. I beg to withdraw my most recent application, please. Thank you.

Schedule

Schedule as proposed, agreed to and ordered to stand part of the Bill.

Assembly Resumes

Bill reported with amendments, as amended read the Third time, and passed with amendments.

**3. RACIAL HOSTILITY (AMENDMENT BILL) - BILL NO.
11/2002 PUBLISHED 2002/08/23**

The Speaker: Hon Minister of Home Affairs.

Hon. J. Ronald Gajraj: Thank you, Mr Speaker. I hope not to be long in addressing this Hon House with respect to this Bill.

The principal act was promulgated on 28th November, 1964 and in Section 2, Sub-Section 5 record was defined. It was, having regard to today's context, a very limited definition that was ascribed to record. Then it was defined as meaning any disk, tape, perforated roll or other device in which sounds are embodied so as to be capable with or without the aid of some other instrument of being automatically reproduced therefrom. Having regard to the technological advancement that we are witnessing today, Mr Speaker, and the leaps and bounds that information technology has made globally, the definition as reflected in the 1964 act in respect of record has long been outlived. This Bill therefore proposes to take cognisance of what obtains currently and to expand the definition of the word record.

At the same time, having regard to the fiscal changes that have taken place over the years, this Bill seeks to address the penalties so as to make it commensurate with today's society. As such the Bill seeks to increase penalties for offences committed under this Act. It widens the definition of record to include a number of things among which are films, negatives, tapes or other devices so that the person who commits an offence under the Act by publication in any film, negative or tape may be found guilty therefor. The scope and ambit of the definition as obtains in the Bill at present, Mr Speaker, would cast a wider net than that which obtains in the parent Act. In this regard the penalty as set out in Section 2 of the principal act is sought to be amended. From \$500 the penalty has been increased to \$62,500 and the term of imprisonment which used to be two (2) years is sought to be increased to seven (7) years. The definition of records or record now seeks to accommodate,

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(i) any disc, tape, sound track, perforated roll or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other instrument) of being automatically reproduced therefrom;

(ii) any film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

So, what it seeks to do, Mr Speaker is to take into consideration the television age, the electronic age, that we are now confronted with and to allow for materials which hitherto were outside the scope and ambit of the principal Act to be caught within this definition section as record and could therefore be used as evidence in a court of law.

The other provision of the Bill, Mr Speaker, again seeks to amend the penalty clause by increasing the existing penalty by a substantial amount with the hope that it will be more of a deterrent to would-be perpetrators of any offence under this act. While that might address more the criminal aspect of the acts or omissions that could possibly constitute offences under this Act, the Bill seeks to go further by allowing any individual, any person who might have been affected under the provisions of the Racial Hostility Act to seek redress in a civil court of law. So the remedy is not confined only to the criminal branch, Mr Speaker, but any person who feels himself aggrieved will now be at liberty to approach the civil courts. The reason is simple, because under the criminal law the standard of proof that is required is beyond reasonable doubt to establish the case, whereas in the civil law, generally it is on the balance of probabilities, and one may not have to look far to recall, for example, the O.J. Simpson's case. While he was able to get off on the criminal prosecution because of the standard of proof in a civil court he was found liable albeit for a different kind of offence. I just mentioned that to illustrate the different standards of proof that have to be satisfied in order to get redress out of the same set of circumstances and facts. For those circumstances, Mr Speaker, we feel that the time is right, and perhaps might have been right

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some time ago, for this amendment to be enacted by this Hon House so that it can allow our citizens who feel themselves offended to get redress in a court of law.

In the circumstances, Mr Speaker, I commend the Bill to this Hon House and ask that it be considered and accepted.

Thank you, Mr Speaker. *[Applause]*

The Speaker: Thank you, Hon Member. The motion is proposed.

Question put and agreed to.

Bill read the Second time.

In Committee

The Chairman:

Clause 1

Clause 1 as printed, agreed to and ordered to stand part of the Bill.

Clause 2

I propose the question that Clause 2 stands part of the Bill.

Hon. J. Ronald Gajraj: I beg to have an amendment effected to Clause 2(a) of the Bill, to wit, for the words *sixty-five thousand thousand dollars* (\$65,000) substitute the words *one thousand dollars* (\$1,000).

Amendment that -

for words 'sixty-five thousand dollars' (\$65,000) substitute the words 'one thousand dollars' (\$1,000)

put and carried.

Clause 2 as amended, agreed to and ordered to stand part of the Bill.

The Chairman:

Clause 3

I propose the question that Clause 3 stands part of the Bill.

Hon. J. Ronald Gajraj: Mr Chairman, I seek to have an amendment to Clause 3 (a) of the Bil, to wit, for the words *thirty-two thousand five hundred dollar* (\$32,500) substitute the words *five hundred dollars* (\$500).

Amendment that -

for the words 'thirty-two thousand five hundred dollars' (\$32,500) substitute the words 'five hundred dollars (\$500)'

put and carried.

The Chairman:

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

Clause 4

Clause 4 as printed, agreed to and ordered to stand part of the Bill.

Assembly Resumes

Bill reported with amendments, as amended; read the Third time, and passed with amendments.

4. EVIDENCE (AMENDMENT) BILL 2002 - BILL NO. 12/2002 PUBLISHED 2002/08/30

The Speaker: Hon Attorney General and Minister of Legal Affairs.

Hon. Doodnauth Singh: May it please you, Mr Speaker. I wish to

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remind this Honourable House that in the Election Petition case which was heard by Justice Claudette Singh that the Report of the Elections was admitted in evidence and that I remember it was Page 29 of that Report which was erroneous. The Chairman of the Commission, Justice Ulric Cross, had sent to the political parties and all the respective stake holders a faxed transmission correcting that erroneous page 29 and there was an attempt by us to have that faxed transmission admitted in evidence in the case. The learned Justice held that the law did not permit the admissibility of faxed transmission. As a result that case was determined on one of the erroneous factors which substantially contributed to the unjust decision of that case. In moving the second reading of the Evidence (Amendment) Bill I wish to state that the parties concerned and the organisations that have been consulted all stated unanimously that the Evidence Act ought to be amended. Their objection, however, was that the Act should be amended after a review by a Revision Committee and ought not to be done in a piecemeal fashion. So that, at the end, there is no substantial objection to this amendment. Mr Speaker, in the course of the consultations the Barbice Bar Association had made certain representations to me and as a result of those representations which I had taken into account, an amendment was done to Section 28. At a later stage, Sir, I will ask that certain amendments be done. But, at this point in time, substantially what I wish to state is that the amendment to the law seeks to take account of the technological advancement permeating the entire universe. It seeks to make admissible faxed transmission, computer data evidence and other technological aspects. So since there is no objection, Sir, without any further ado, I ask that the Bill be read the second time. *[Applause]*

The Speaker: Hon Members the motion is proposed.

Hon Member Mrs Sheila Holder.

Mrs Sheila Holder: I rise, Mr Speaker, to seek clarification on three points regarding the Evidence Bill.

One is the insertion of Clause B under Section 29 (1). It reads,

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that the procuration, power, or letter of attorney, contract, or agreement, or other instrument in writing is attested by the signature and seal of the diplomatic agent or consular officer before whom it is, or purports to be, executed.

This, from my understanding, is a new clause that would make it rather easy for persons residing in non-Commonwealth countries to be able to acquire the legal instrument, like a power of attorney.

Mr Speaker, I have already expressed to this Honourable House my concerns relating to the abuse of the use of the power of attorney. It seems to me that if this position proceeds as is, it will open the flood gates to further abuse and use by confidence tricksters to get assets and properties of people who reside in Guyana and to some extent put our financial institutions in the line of such fraud and abuse.

The second point I want to make relates to Item 90(1) Sub-Section 2 (a & b). It seems, here, Mr Speaker, that what these two new clauses do is to actually reduce the level of proof required for giving evidence. It says,

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

(b) notwithstanding that the original document is not produced, if in lieu thereof, there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

It seems unduly to be reducing the level of proof to which we have become accustomed over the years.

Finally, Section 5 of this Bill appears to have been copied without adaptation being made to our local jurisprudence. I have been advised that the Bill refers in one instance to several proceedings but in this Section

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refers to proceedings with a jury. I don't know if there is any merit to these suggestions but I lay them before the House for consideration.

Thank you.

The Speaker: Thank you, Hon Member.

Hon Member Mr Singh.

Hon. Doodnauth Singh: I did indicate earlier that there would be an amendment to Section 29, that that new clause would be deleted. It is due to the fact that, as I had said earlier that representations had been made by the Barbice Bar for the inclusion of this new section and that is why it was being done. But since then representations have been made, as quite correctly pointed out, that it is likely that it can be abused and as a result it will be deleted.

In relation to the document you will see that it says that it is subject to the decision of the court. It says,

...in any civil proceedings, et cetera, shall be admissible in evidence or may, without any such order having been made, admit such evidence notwithstanding that the maker...

So it is to avoid undue delay and expense. Of course, there is always an overriding discretion in the court to reject evidence if even that evidence is legally permissible. So there ought to be no fear that in any way this section can be abused.

Question put and agreed to.

Bill read the Second time.

In Committee

The Chairman:

Clause 1

I propose the question that Clause 1 stands part of the Bill.

Hon. Doodnauth Singh: Mr Chairman, may I be permitted to address you? We have submitted and circulated a number of amendments and I would suggest that perhaps we consider all those amendments at one point in time and whether the amendments could be accepted in the form in which they have been circulated.

The Chairman: We will deal with the amendments one at a time. That is the known procedure.

Hon. Doodnauth Singh: Very well, Sir.

Clause 1 as printed, agreed to and ordered to stand part of the Bill.

The Chairman:

Clause 2

I propose the question that Clause 2 stands part of the Bill.

Yes, Hon Member Singh.

Hon. Doodnauth Singh: ... that it be amended. Section 28 (b) is hereby amended by the deletion of the words beginning with the word 'and' and ending with the word 'officer'

Amendment that -

*the words beginning with the word and and ending with
the word officer be deleted*

put and agreed to.

The Chairman: Clause 2 as amended, agreed to and ordered to stand part of the Bill.

Clause 3

I propose the question that Clause 3 stands part of the Bill.

Hon. Doodnauth Singh: I request, Sir, that that clause be deleted.

Amendment that -

Clause 3 be deleted

put and agreed to.

Clause 3 deleted.

The Chairman:

Clause 4

I propose the question that Clause 4 stands parts of the Bill.

Hon. Doodnauth Singh: I beg to move the amendment, Sir, for the words 89 to 94. Where those words occur for the second time substitute the words 89 to 94A.

Amendment that -

for the words '89 to 94.' Where those words occur for the second time substitute the words '89 to 94A'

put and carried.

The Chairman: Clause 4 as amended, agreed to and ordered to stand part of the Bill.

Mr Singh do you wish to propose the amendment to Clause 4 standing in your name? Do you wish to move that?

Hon. Doodnauth Singh: Yes, Sir.

The Chairman: Could you please move?

Hon. Doodnauth Singh: I move the amendment standing in my name to Clause 4 as follows.

The Chairman: Thank you.

Hon Members I think you have a copy of the amendment which Mr Singh has proposed so rather than Mr Singh reading out the entire document, you have it before you.

Amendment that -

The inserted Section 89(b)(iv) be deleted.

The inserted Section 92:-

(i) renumber Sub-Section (3) as Sub-Section (5) and

(ii) insert immediately after Sub-Section (2) the following Sub-Sections as Sub-Sections (3) and (4),

(3) Nothing in this Section shall render admissible as evidence any statement made by a person interested at that time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purpose of this Section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised

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by him in writing as one for the accuracy of which he is responsible.

put and agreed to.

The Chairman: Clause 4 as amended, agreed to and ordered to stand part of the Bill.

Clause 5

I propose the question that Clause 5 stands part of the Bill.

Yes, Mr Singh.

Hon. Doodnauth Singh: I move that that be deleted, Sir. *[Pause]*

The Chairman: Thank you, Mr Singh.

Amendment that -

Clause 5 be deleted

put and agreed to.

Clause 5 deleted.

The Chairman: Are there any more amendments, Mr Singh?

Hon. Doodnauth Singh: Sir, Section 92 has to be inserted.

The Chairman: Section 94A.

Hon. Doodnauth Singh: No. no.

The Chairman: You are proposing, I gather that, under Clause 4 in place of Clause 5, Section 94A be inserted. Am I correct?

Hon. Doodnauth Singh: Yes. That is 94A(1), (2), (3).

The Chairman: Section 94 A comprises (1), (2), (3). So you propose the amendment?

Hon. Doodnauth Singh: Yes, Sir.

Amendment that -

the following section be inserted as section 94A under Clause 4 in place of Clause 5.

94A(1) In any legal proceedings ,

(a) an electronic signature incorporated into or logically associated with a particular electronic communication or particular electronic data; and

(b) the certification by any person of such a signature,

shall each be admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data.

94A(2) For the purposes of this section an electronic signature is so much of anything in electronic form as -

(a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and

(b) purports to be so incorporated or associated for the purposes of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both.

94A(3) For the purposes of this section an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person (whether before or after the making of the communication) has made a statement confirming that -

(a) the signature;

(b) a means of producing, communicating or verifying the signature; or

(c) a procedure applied to the signature, is (either alone or in combination with other factors) a valid means of establishing the authenticity of the communication or data, the integrity of the communication or data, or both

put and agreed to.

The Chairman: Clause 94A inserted as part of the Bill.

Assembly Resumes

Bill reported with amendments, as amended, read the Third time, and passed as amended.

ADJOURNMENT

The Speaker: Hon Members, this concludes our business for today.

Hon Minister of Parliamentary Affairs.

Hon. Reepu Daman Persaud: Mr Speaker, I wish to move that the National Assembly stands adjourned to a date to be fixed.

The Speaker: The National Assembly shall stand adjourned to a date to be fixed.

Adjourned accordingly at 18:34 H