

T H E
P A R L I A M E N T A R Y D E B A T E S

O F F I C I A L R E P O R T S

VOLUME 10

PROCEEDINGS AND DEBATES OF THE THIRD SESSION (1983) OF THE NATIONAL ASSEMBLY OF THE FOURTH PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA

36th Sitting 14:00 hrs Monday, 1984-11-19

MEMBERS OF THE NATIONAL ASSEMBLY (74)

Speaker (1)

- * Cde. Sase Narain, O.R., J.P., M.P.,
Speaker of the National Assembly

Members of the Government - People's National Congress (61)

Prime Minister (1)

- Cde. H.D. Hoyte, S.C., M.P.,
Prime Minister

Other Vice-President and First Deputy Prime Minister (1)

- Cde. H. Green, M.P.,
Vice President, Social Infrastructure and
First Deputy Prime Minister

Other Vice-Presidents and Deputy Prime Ministers (2)

- * Cde. Dr. M. Shahabuddeen, O.R., S.C., M.P.,
Vice President, Deputy Prime Minister and
Attorney General
- Cde. R. Chandisingh, M.P.,
Vice President, National Development (Absent - on leave)
and Deputy Prime Minister

Other Deputy Prime Minister (1)

- * Cde. W.A.L.H. Parris, C.C.H., M.P.,
Deputy Prime Minister, Planning

Senior Ministers (8)

- * Cde. R.E. Jackson, M.P.,
Minister of Foreign Affairs
- * Cde. J.R. Thomas, M.P.,
Minister of Home Affairs
- Cde. R.H.O. Corbin, M.P.,
Minister of National Mobilisation
- Cde. H. Rashid, M.P.,
Minister of Energy and Mines
- * Cde. C.B. Greenidge, M.P.,
Minister of Finance

- * Non-elected Member

Cde. Sallahuddin, M.P.,
Minister of Forestry

Cde. Dr. R.A. Van West-Charles, M.P.,
Minister of Health and Public Welfare

* Cde. M.L. Parris, M.P.,
Minister of Education

Ministers (6)

Cde. Urmia Johnson, M.P.,
Minister within the Ministry of National Development (Absent – on leave)

Cde. Yvonne V. Harewood-Benn, M.P.,
Minister within the Ministry of Education (Absent – on leave)

* Cde. K.W.E. Denny, M.P.,
Minister of Manpower and Co-operatives

Cde. R.C. Fredericks, A.A., M.P.,
Minister of Youth and Sport within the Ministry of Education (Absent)

Cde. S. Prashad, M.P.,
Minister of Transport within the Vice-Presidency of Social Infrastructure (Absent – on leave)

* Cde. Dr. S.P. DaSilva, M.P.,
Minister within the Ministry of Agriculture

Ministers of State (2)

Cde. M. Corrica, M.P.,
Minister of State within the Ministry of Internal Trade and Consumer Protection (Absent – on leave)

Cde. H.L.B. Singh, M.S., M.P.,
Minister of State within the Ministry of Regional Development (Absent – on leave)

Parliamentary Secretaries (3)

Cde. Agnes W. Bend-Kirton-Holder, M.P.,
Parliamentary Secretary, Housing, within the Ministry of Health and Public Welfare

Cde. D.A.N. Ainsworth, M.P.,
Parliamentary Secretary, Youth

Cde. B. Bhaggan, M.P.,
Parliamentary Secretary, National Development

Government Chief Whip (1)

Cde. Bidiawattie Tiwari, M.P.,
Government Chief Whip

Other Members (24)

Cde. O.E. Clarke, M.P.

Cde. R.E. Williams, M.P.

Cde. J.P. Chowritmootoo, J.P., M.P. (Absent – on leave)

Cde. Philomena A. Rayman

Cde. J.B. Caldeira, M.P.

Cde. E.H.A. Fowler, M.P.

Cde. Joyce Gill-Mingo, M.P.

Cde. M. Ally, M.P.

Cde. M. Armogan, M.S., J.P., M.P.

* Non-elected Member

Cde. Bissoondai Beniprashad, M.P.
Cde. A.A. Chin, M.P. (Absent – on leave)
Cde. Elaine B. Davidson, M.P.
Cde. H. Doobay, M.P.
Cde. A.B. Felix, M.P.
Cde. Patricia Fredericks, M.P.
Cde. E.F. Gilbert, M.P.
Cde. A. McRae, M.P.
Cde. Joyce M. Munroe, J.P., M.P.
Cde. R.N. Primo, M.P.
Cde. C.G. Sharma, J.P., M.P.
Cde. C. Vandenburg, M.P.
Cde. Edwina Melville, M.P.
Cde. Y. Khan, M.P.
(One seat vacant)

Members from the National Congress of Local Democratic Organs (2)

Cde. R. Bishop, M.S., M.P.
Cde. Bhagmatee Latchminarayan, M.P.

Members from the Regional Democratic Councils (10)

Cde. Dianne Abraham, M.P. (Region No. 8 - Potaro/Siparuni) (Absent)
Cde. W. Bipat, J.P., M.P. (Region No. 4 - Demerara/Mahaica)
Cde. Nellie R. Charles, M.P. (Region No. 7 - Cuyuni/Mazaruni)
Cde. I. Chowritmootoo, M.P. (Region No. 6 - East Berbice/Corentyne)
Cde. D. Hinds, M.P. (Region No. 10 - Upper Demerara/Berbice)
Cde. K.V. Jairam, M.P. (Region No. 2 - Pomeroon/Supenaam)
Cde. K.N. Jones, M.P. (Region No. 1 - Barima/Waini)
Cde. H.I. London, M.S., M.P. (Region No. 5 - Mahaica/Berbice)
Cde. Cora A. Singh, M.P. (Region No. 3 - Essequibo Islands/West Demerara)
(Vacant) (Region No. 9 - Upper Takutu/Upper Essequibo)

Members of the Minority (12)

(i) People's Progressive Party (10)

Minority Leader (1)

Cde. Dr. C. Jagan, M.P.,
Minority Leader

Deputy Speaker (1)

Cde. Ram Karran, M.P.,
Deputy Speaker of the National Assembly

Other Members (8)

Cde. Janet Jagan, M.P.
Cde. Reepu Daman Persaud, J.P., M.P.,
Minority Chief Whip
Cde. N. Persaud, M.P.
Cde. C.C. Collymore, M.P.
Cde. S.F. Mohamed, M.P.
Cde. I. Basir, M.P.
Cde. C.C. Belgrave, M.P.
Cde. H. Nokta, M.P.

(ii) United Force (2)

Mr. M.F. Singh, C.C.H., J.P., M.P.
Mr. M.A. Abraham, M.P.

OFFICERS

Clerk of the National Assembly - Cde. F.A. Narain, M.A.

Deputy Clerk of the National Assembly - Cde. M.B. Henry

PRAYERS

1984-11-19

14:05 – 14:15 hrs.

National Assembly

14:05 hrs

ANNOUNCEMENTS BY THE SPEAKER

Leave to Members

The Speaker: Leave has been granted to Cdes. Chandisingh, Corrica and H.L.B. Singh for today's Sitting, to Cde. Harewood-Benn up to 1984-11-24, to Cde. Prashad up to 1984-11-28, and to Cde. J.P. Chowritmootoo up to 1984-11-30.

Birthday Congratulations

The Speaker: I also wish to take this opportunity of extending happy birthday greetings to Cde. Gill-Mingo.

Condolences

The Speaker: I wish also to extend on behalf of Members of Parliament condolences to Cde. Urmia Johnson who lost her father sometime last week.

PRESENTATION OF PAPERS AND REPORTS

The following Papers and Reports were laid:

- (1) Annual Report and Accounts of the Guyana Sugar Corporation Limited for the year 1983. [The Prime Minister]
- (2) Coasting and Passenger Trade (Amendment) Regulations 1984 (No. 12) made under section 25 of the Shipping Casualties (Investigation and Prevention) Act, Chapter 49:07, on 30th June, 1984, and published in the Gazette on 28th July, 1984. [The Vice-President, Social Infrastructure and First Deputy Prime Minister]
- (3)
 - (i) Financial Paper No. 2/1984 – Schedule of Supplementary Provision on the Current and Capital Estimates totaling \$27,106,865 for the period ended 13th November, 1984.
 - (ii) Financial Paper No. 3/1984 – Schedule of Supplementary Provision on the Current and Capital Estimates totaling \$100,000,000 for the period ended 13th November, 1984. [The Minister of Finance]

In terms of Standing Order No. 68(1), the Minister of Finance named Thursday, 1984-11-22 as the day for the consideration of the Financial Papers in Committee of Supply.

REQUESTS FOR LEAVE TO MOVE THE ADJOURNMENT OF THE ASSEMBLY ON

DEFINITE MATTERS OF URGENT IMPORTANCE

Seizure of Contraband and Uncustomed Goods

The Speaker: Cde. Minority Leader.

The Minority Leader: (Cde. Dr. C. Jagan): Cde. Speaker, I wrote you last Saturday in connection with a matter which I consider to be of urgent public importance to request the leave to move the adjournment of the Assembly. This matter has to do with the seizures which are taking place countrywide at the moment. However, after discussion with the Minister, it was agreed that the Government will be prepared to discuss a substantive Motion at the next Sitting of the Assembly on Thursday, 1984-11-22. I now beg for leave to withdraw that letter and to submit to you a copy of the Motion which I propose to move for debate on Thursday.

The Speaker: Leave is granted to withdraw the letter.

PUBLIC BUSINESS

MOTIONS

AFFIRMATION OF THE COASTING AND PASSENGER TRADE (AMENDMENT)

REGULATIONS 1984

"Be it resolved that this National Assembly, in terms of section 25 of the Shipping Casualties (Investigation and Prevention) Act, Chapter 49:07, affirm the Coasting and Passenger Trade (Amendment) Regulations, 1984 (No. 12), which were made on 30th June, 1984 and published in the Gazette on 28th July, 1984." /The Vice-President, Social Infrastructure and First Deputy Prime Minister./

The Speaker: Cde. Green.

The Vice President, Social Infrastructure and First Deputy Prime Minister: (Cde. Green):

Cde. Speaker, the Motion we have before us here is merely to confirm the Coasting and Passenger Trade (Amendment) Regulations No. 12 of this year. This is a fairly simple and routine matter and it relates to the laws of Guyana 49:07 which were made in June of this year and published on the 28th July, 1984.

Question put, and agreed to.

Motion carried.

INCREASES IN TONNAGE DUES, LIGHT DUES AND SHIPPING FEES

"Be it resolved that this National Assembly, in accordance with section 24(2) of the Transport and Harbours Act, Cap 49:04, approves of the increases in tonnage dues, light dues and shipping fees as set out hereunder in substitution for the dues and fees in the Third Schedule to the Act –

I.	TONNAGE DUES	G\$	U.S. \$
	All vessels	1.50	0.4 per ton
II.	LIGHT DUES		
	All vessels	.05	0.14 per ton
	Vessels between 10-20 tons	10.00	2.7
III.	SHIPPING FEES		
	(i) Upon the engagement of any seaman	7.50	2.00
	(ii) Upon the discharge of any seaman	7.50	2.00

“Be it further resolved that the dues and fees payable under the Third Schedule to the Act shall, in respect of vessels that are not registered in Guyana, be in United States of America dollars and in respect of other vessels in Guyana dollars.”/The Vice President, Social Infrastructure and First Deputy Prime Minister.]

The Speaker: Cde. Green.

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Cde. Green: Cde. Speaker, the Motion before us deals with an increase in tonnage dues, light dues and shipping fees for our fishing system in Guyana. Some parts of the regulations are administered by the Comptroller of Customs and include charges for the survey of vessels and the examination of the competence of the masters to control those vessels in and out of the Georgetown port. It also deals with charges for some of the work done by the Transport and Harbour Department by private surveyors who do that work on behalf of the agency, to wit, Transport and Harbour Department. The increases you see here reflect in some cases 90 and 100 percent, but I think it is important for us to make two observations. First, increases in these dues were not made for a number of years and, in any case, in so far as the examination of vessels is concerned, it is an annual affair and this will in no way affect the cost of living, as I anticipate an observation by my friends on the opposite bench.

The increases were last made in 1977. Part of the Bill is to ensure that ships that are not registered in Guyana, in other words, ships that are foreign-owned and collect their initial work in foreign exchange, pay to the agency here in U.S. dollars. What has been happening over the past few years is that the foreign-owned ships would come to port Georgetown and pay these fees after an interesting exchange of U.S. dollars which they have and which they normally would have paid over to the agency. With the new climate this no longer obtains and so we wish to introduce legislation which will enforce and ensure that the foreign vessels pay their fees in U.S. dollars. Further, instead of having to make adjustments on a daily basis based on the movement of the exchange rates, we are proposing an arrangement here where the fixed fees will always be identified as far as they are concerned in U.S. dollars. That in effect simplifies a matter which is routine and I do not expect we will have any difficulty with this.

I may add that even with these increases which we are proposing here we are not really compensating the harbours section because what has been happening recently is that a number of ships have been destroying...in a rather unusual manner. In addition, we have a ...of selfhelp by some of the fishermen who operate in that area and over the past few weeks we have ... and this creates a grave difficulty for us.

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NATIONAL ASSEMBLY

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(Cde. Green continues)

In fact only last week from the Pomeroon River was stolen. Also, Cde. Speaker, this really is to tidy up situation which we feel is long overdue and to increase the tonnage rates and light dues and shipping dues.

Motion proposed.

Cde. Basir: Mr. Speaker, listening to the Honourable Minister's presentation we on this side of the House are made to feel that this Bill has no controversy. Nevertheless, I would wish to say that it is a common practice in present day Guyana that whatever taxes or dues are put at the top automatically such increases are put on the small man at the bottom. Already you know Cde. Speaker, the smaller man at the bottom cannot take any more. I would like on behalf of the members of this side of the House to be given the assurance of the Honourable Minister that such increases ranging from \$90.00 to \$100.00 – you will agree is very high will not be posted on to the small man at the bottom so as to further increase their misery that they have to face every day. Thank you Cde. Speaker.

The Speaker: Cde. Green, do you wish to respond to that?

Cde. Green: Cde. Speaker, I believe in my initial note I dealt with this matter.

Question put and agreed to.

Motion carried.

BILL – SECOND READING

STATE LIABILITY AND PROCEEDINGS BILL 1984 – Bill No. 9/1984

A Bill intituled:

"An Act to amend the law relating to the civil liabilities and rights of the State and for matters connected therewith." [The Vice-President, Deputy Prime Minister and Attorney General]

The Speaker: Cde. Shahabuddeen.

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The Vice-President, Deputy Prime Minister and Attorney General (Cde. Shahabuddeen):
Cde. Speaker, now that we have with us in the House my friend Cde. Reepu Daman Persaud ---

The Speaker: I am sorry to interrupt you but there are certain errors that were printed.
Please correct these accordingly.

Cde. Shahabuddeen: Now that we have with us in the House my friend Cde. Reepu Daman Persaud it may be convenient for me to take leave now to move the second reading of the State Liability and Proceedings Bill 1984.

Your Honour, under the common law, inherited from the period of the administration of this country by the British Crown, the State has been immune from liability in respect of tortuous acts committed by its Officer and Agents. Outside of tort, the State could generally be sued but only with the consent of the responsible Minister of Justice.

Now, Cde. Speaker, as you know the inappropriateness of the situation has been widely recognised and criticised in modern circumstances and more particularly in view of the entry of the State in the commercial, industrial and economic activities. A question will naturally be asked why they have taken so long to come forward with the necessary corrective measures.

The answer I would offer is two-fold. First, though the need for change has been recognised, the change involved is of a fundamental character calling for careful thought. Second, unfortunately the Bill in question is only one of a number of pieces of law reform legislation calling equally for consideration. Our problem here, as is well known, is that for reasons connected with the availability of the necessary financial and professional resources, we have not yet been able to establish in Guyana a legal unit vested with responsibility to undertake and carry through law reform activities on a continuous and systematic basis. In some other countries there is a separately staffed law reform commission which has been established for those purposes alone. Here in Guyana we must try to integrate law reform exercises into the general drafting work falling to be undertaken from day to day by our hard-pressed Parliamentary Counsel.

Cde. Speaker, even so, we have not been entirely inactive. It is standing Government policy, for example, that Government should compensate in appropriate cases any person who becomes a victim of an accident involving a Government vehicle driven by a Government employee in the course of his duties. Because of administrative and budgetary difficulties, some delay has unfortunately occurred in making payment in some cases, but I desire to emphasize that action is being taken to resolve these problems as speedily as possible with a view to effecting payment in all cases where payment is due.

Reflecting the principle involved in this approach, the House may recall that the Accidental Deaths and Workmen's Injuries (Compensation) Act, Cap. 99:05, was amended last year by the Accidental Deaths and Workmen's Injuries (Compensation) (Amendment) Act 1983 (No. 13 of 1983). One of the amendments made by that enactment was the abolition of the doctrine of common employment. The amending Act also provided, and that is more relevant for the present occasion, that the liability of an employer for damages in respect of personal injury, or in respect of death resulting from injury, caused to his employee shall extend to the State in respect of persons employed by the State as if the State were a private person of full age and capacity.

Cde. Speaker, the Bill now before the House seeks to proceed further towards the abolition of the distinction between the State and a private citizen in the matter of liability for tort. Subject to the other provisions of the Bill, it seeks to make the State subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject

—

- (a) in respect of torts committed by its officers and agents;
- (b) liability in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
- (c) liability in respect of any breach of those duties attaching at common law to the ownership, occupation, possession or control of property.

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(The Vice-President, Deputy P.M. and Attorney General continues)

So far as the Bill itself is concerned, it is not proposed to make the State liable for the acts or omissions of a judicial officer discharging a judicial function or of any person discharging his responsibilities in connection with the execution of judicial process. This is because of the constitutionally separate and independent status of the courts.

The provisions of the Bill on this point, like every other provision in it, would, however, be subject to the provisions of the Constitution. Consequently, if a citizen can establish a right to redress under the Constitution itself in respect of a judicial act, nothing in the Bill would derogate from his constitutional right to litigate that particular issue.

The Bill also seeks to make the State liable, except in certain cases, for the infringement of a patent, trade mark or copyright by any officer or agent of the State if the infringement is committed with the authority of the State. The law relating to indemnity and contribution is also proposed to be made enforceable by or against the State in respect of any liability to which it is subject under the provisions of the Bill. Subject to specified exceptions, the distinction between a private citizen and the State in the application of the law relating to salvage claims is proposed to be removed.

The Bill further seeks to restrict the existing immunity from liability for death or personal injury caused by an act or omission of a member of the armed forces while on duty to another member of such forces. The immunity is proposed to be limited to cases where the member of the armed forces who suffered the injury or death was at that time on duty, or, though not on duty, was on military premises, and the Minister responsible for defence certifies that there is provision for granting a pension, gratuity or other allowance from the State in respect of such death or personal injury. I hope that will in some way answer the question raised by Cde. Ram Karran. The member of the armed forces who caused the death or injury will, however, not be exempt from personal liability in tort if the court is satisfied that the act or omission that caused the personal injury or death was not connected with the execution of his duties as a member of the armed forces.

Sections 38 to 45 of the High Court Act are proposed to be repealed, and modified provisions in regard to matters dealt with therein have been incorporated in Part III of the Bill. The main changes which the Assembly may wish to notice are the following-

- (1) the requirement for obtaining the consent of the Minister of Justice for the institution of suits for the enforcement of claims against the State is proposed to be taken away;
- (2) subject to the provisions of any written law made before the commencement of this Act, proceedings for the enforcement of any claim by or against the State shall be brought by or against the Attorney General and may be instituted in a magistrate's court if the amount or value of the claims is within the pecuniary limits of a magistrate's court, and in order cases in the High Court;
- (3) the State can be required by the court to make discovery of documents and answer interrogatories, but this power will be subject to any rule of law which requires or authorizes the withholding of any document for refusal to answer any question, by the State, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest;
- (4) subject to two limitations, the court may make against this State all such orders as it may make against a citizen. The first limitation is that the court shall not grant an injunction or make an order for specific performance against the State but may in lieu thereof make an order declaratory of the rights of the parties. The other limitation is that the court shall not make an order against the State for the recovery of land or the delivery of property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the State to the land or the property or the possession thereof.

These and other exceptions and savings, such as those, for example, relating to the prerogative powers, which embrace the sensitive areas of foreign affairs, and war and peace,

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reflect standard provisions in similar legislation enacted elsewhere, and in particular in our own region.

The exceptions and savings do not, in my respectful opinion, detract from the fact that the Bill has gone as far as it reasonably could go to equate the position of the Government with that of the citizen in our courts of law consistently work on Law in a Changing Society, Penguin edition, 1964, page 277, that:

"it is inherent in the very notion of government that it cannot in all respect as equal to the governed, because it has to govern."

That observation will, I believe, prove easy of understanding in a forum such as this. Balancing it against other considerations, I however invite the Assembly to hold that the structure of the Bill as it has emerged does endeavour to meet the fair right of the citizen to be able to ventilate his claims against the State in a court of law with the same freedom and facility with which he can litigate his claims against his fellow citizen.

And so, Cde Speaker, for these reasons, I beg once again to move the Second Reading of the Bill and to invite the support of the Assembly to the Bill.

Question proposed.

Cde. Reepu Daman Persaud: Cde. Speaker, this Bill is long overdue. In fact, as far as I can remember, there has been a persistent call for legislation of this type. Many private citizens have hitherto suffered.

There can be no doubt that the provisions of our current statute are a colonial hang-over. To be specific, section 39, Cap. 3:02, the High Court Act, requires the Minister's fiat before an action can be mounted in tort. What is more is that certain procedures have been done away with by that Act and so I think the person who has been wronged simply moves from the point of a statement of claim but then that statement of claim goes to the Minister who decides whether he must give the fiat or not. I am advised that in many instances the Minister has not given the fiat and thus many actions could not have been proceeded with.

The Cde. Vice-President alluded to the fact that those sections of the High Court Act are now being repealed as provided for in the Bill. Thus, I think citizens, in so far as Part II of the Bill is concerned, will now be able to mount an action, mount a claim once there is a cause of action despite the coming into being of this Bill.

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The Speaker: I don't follow that.

Cde. Reepu Daman Persaud: The Bill has a provision which says that in spite of this Bill an action can only be proceeded with if there is a cause of action. Once the cause of action is established then you can proceed to invoke the powers of this Bill to waive the fiat etc. and go to the Court. That, of course, is my humble interpretation and it looks to me to be right having heard the Cde. Vice-President:

"No proceeding shall lie against the State by virtue of subsection (1) (a) in respect of an act or omission of an officer or agent of the State unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that officer or agent or his estate."

I proceed simply for clarification. I am sure that the Cde. Vice-President will be disposed to remove any ambiguity if any exists in sub-clause (6) of clauses 3. To me it worded very widely when it talks about immunity of judicial officers. I know that if someone does not find favour with the judgment of the Court, then the process of appeal is open, but up to what category of officer does this particular clause extend?

"No proceedings shall lie against the State by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or any responsibilities which he has in connection with the execution of judicial process."

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14:35 - 14:45 hrs

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(Cde. Reepu Daman Persaud continues)

It does appear to me that the way it is framed that each can reach the martial or possibly below that. I think clarification of this particular Clause is necessary. One can well appreciate the Clause to protect judges of the court though I think modern-day thinking - and the Vice-President was alluding us to modern thinking - would be that even judgment would be questioned and debated in public. I think you would get better judgment thereafter and everyone would realise that public opinion is an important consideration in whatever he or she does. Thus, I do not think that we should allow any provision in any legislation to pass without ensuring that ^{it} is not so framed that it can really allow people to indulge in all kinds of wrongs and they can subsequently go and seek shelter under the provisions of the law.

In Clause 4, sub-clause 1, which clause I am not opposed, I would like clarification where it is stated ". . . with the authority of the State". That is, if an officer of any Government department or institution infringes anything in the Trademark Act wronging a person, that action can only subsist or be sustained if it is proven that that person acted with the authority of the State. That might be a very difficult element to prove. You know it is an officer who has done it but where do you get the proof. So I would like clarification on this.

Then, Cde. Speaker, I come to Clause 7(1) which deals with the armed forces. I would like to believe that these provisions, these clauses, these proposed legislations require deeper consideration bearing in mind our own system, our own small population and the fact that there has been incidence where the bullet of one soldier struck another soldier. There was no recourse in the courts of law as would be seen even now because that soldier would not be held liable not only when he acts in the course ^{of} his duty but once he is within the premises, in a vehicle.

I do not intend to cast aspersions, but I have in my possession an extract of the Crown Proceedings Act 1947. I have looked at it and corresponded it with the legislation which is being proposed in Parliament this afternoon. There has been a verbatim extraction of these provisions. I was attempted to say almost literally but it would be safe to remove almost. That being so, I would pose the question, what was the difficulty of doing that long ago. You picked up

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the 1947 British Act and you put it in the current legislation word for word. I would like to persuade the Cde. Vice President who has the necessary skills - no doubt about that at all - to probably examine the British Crown Proceedings Act 1947, use it as a basis, but form our legislation based on our peculiar conditions and circumstances. We are not a monarch, we are a Republic, we enjoy a Republic status, hence our legislation should be more advanced. I do not share the view that we should shelter under provisions of British laws particularly in circumstances of the kind which I am alluding the Assembly to at the moment. So what we have, as I said simply for emphasis, is a wholesale leaving from the Crown Proceedings Act 1947 to our Act. The poor soldier is at a disadvantage and I think we should have legislation to remove this disadvantage.

The other observation I would like to make with respect of this Clause is that once the soldier is acting in the execution of his duty even the private citizen is in difficulty to really . . . a successful action. I want to leave the drafting to the experts, to those who possess the skill. What I can do and I will try to do it as effectively as I can, is to allude to the necessity to legislate, to remove any indication or evidence where an injustice will be done. That is what I am concerned with and it is from that very humane premise that I offer my presentation to the Assembly this afternoon.

There are other provisions apart from the one which I alluded to that have been drawn from the Crown Proceedings Act of 1947. One of those provisions is in this Bill, Clause 8(1). I will trust that in time these provisions will be re-examined with a view of making provisions in our laws in keeping with what the Government normally advances. That is, we do not want a British Constitution, we have outlived it. We must have a Constitution keeping in line with our national ethos, our own morals. When you listen to this phrase there can be no doubt that it sounds well, but we want to see it translated into reality and not circumscribed to one Act. That is the presentation of the most sacred and supreme document, the Constitution. There must be an over-flow of that idea into our statute so that we will have in this Assembly what I would like to describe at this point in time, progressive legislation.

14:45 hrs

(Cde. Reepu Daman Persaud continues)

There is a clause, it would be 8 (2) it reads "Where, in any proceedings under this Act, it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the State, the Minister responsible for defence may, if satisfied that the act or omission was necessary for any purpose mentioned in subsection (1), issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matter so certified". . . . because beyond that he issues that certificate and that certificate. the Courts to say whether his judgement is right or wrong and the Judge must decide whether this is so or not and it ought not to be left to the Minister to simply issue a certificate based on his own individual judgement. These are all areas, as I said Cde. Speaker, for real concern and as I propose to make them this afternoon in presenting our point of view on this Bill.

I look at clause 14, it says "Wherever in any civil proceedings against the State judgement or order is given or made against the State, no execution shall issue thereon, but a copy of the judgement or order made under the seal of the High Court or certified by the clerk of the magistrate's court as the case may be, shall be transmitted by the Registrar of the High Court or the clerk of the magistrate's court, as the case may be, to the Minister responsible for finance, and if the judgement or order is for the payment of money, that Minister shall, by warrant under his hand, direct the amount awarded thereby to be paid and, in case if any other judgement or order, shall take all measures necessary to cause it to be carried into effect".

Simply for the record, I am sure the Cde. Vice President of Justice will be inclined this afternoon to allievate fears in so far as this provision is concerned because the Government when you want to have control and I dont think that we on this side of the House will be disposed to it but if the the private citizen's assessment and judgement is given against him, the private citizen he must pay and that judgement is not at all impeded. The State cannot escape. I can see some of the arguments but Cde. Speaker, even if that is going to be conceded is the assurance that when judgement is given - I have not looked at the interpretation at all but I will look at it to see if he must pay and must pay without delay and the latter part of the clause talks

of measures necessary to cause it to be carried into effect, whether or not the Court may be disposed to, there is nothing else I can do to ensure that the order of the court is effect, bearing in mind that the order if the Court might be . . . to a particular civil servant or public servant, the Minister must make sure that he does what the Court says he must do.

Subsection 16 (2) reads "shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest". Here again the Minister makes that decision whether that is so or not, the Court may be inclined to take an order requiring the publishing or presentation of certain documents something with respect to the Government and so he refuses to produce the document and These are areas which we must have responses on Cde. Speaker, so that hansard will be there for those who may find themselves in this position where they need documents to present a proper case and those documents are not available. In my opinion the Court will be the best judge and I am sure the Vice President will agree with me. This brings me to another provision which I do not expect to see. Indeed Cde. Speaker, we have moved out I believe from that and there should be no doubt that evidence could be produced to show instances where an injunction could be a relief. If we look at clause 16 (6) it reads "Where in any proceedings against the State any relief is sought as might in proceedings between citizens be granted by way of injunction or specific performance the court shall not grant an injunction or make an order for specific performance but may in lieu thereof make an order declaratory of the rights of the parties."

We do not want a simple declaration of the Court, we want evidence if the situation requires Cde. Speaker, and I argue the injunction against the Court as that against the State of the Judge who will then decide whether he must . . . or refuse the granting of the injunction of the State. In some instances the order of the Court or orders of the Court have not been carried out and I dont want to enter into that area. If you look at clause 16(7) it reads 'In any proceedings against the State for the recovery of land or property, the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the State to the land or property or to the possession thereof'.

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If the Court finds that there is a piece of land which the State claims to be its property, but that land is really not the State's property; it is the property of a private citizen, what is wrong if the Court makes an Order? Why should the Court simply make a declaration, "No. It is not the property of the State. It is the property of a private citizen." Why cannot the Court proceed to make an Order so that the Order can be effected in the normal judicial process?

Here again I see a clause which is objectionable and I hope the Cde. Vice-President will come back shortly, after deeper thought and consideration on this Bill, to repeal it as he has repealed some of the sections in the High Court Act.

The one with respect to costs -

18(2) Whenever parate or summary execution is hereafter issued, the defendant shall be notified that the amount due is payable within six days of the service of the process in execution upon him if he resides outside the boundaries of the City of Georgetown and within three days if he resides within the City of Georgetown."

May I say that some of these provision were on our Statute Book from colonial times. In fact, though it is said that from 35 to 45 - or whatever it is - had been repealed, some of these have been put back into this legislation. For instance, 41 is back there in the legislation in its entirety and this, in my view, is to the disadvantage of the private citizen.

I want to say that while there has been an answer to the long agitation and the representations made with respect to the removal of the Minister's fiat to allow the citizen to sue the state in any matter or instance of tort, we would expect that the Government would go further. We will accept that the Government will look progressively into these developments so that there will be found subsequently, not only innovations, but legislation that will be unique and progressive in the circumstances of our country and our conditions.

I welcome the legislation though it is late, but I do so at the same time

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reminding the Cde. Vice-President of my reservations with respect to other provisions of the Bill. I am sure that he will be disposed to clarify ambiguities and to give an assurance that there will be an early step to remove certain provisions which are patently British and drafted to suit more a monarchy than a Republic.

Mr. M.F. Singh: Mr. Speaker, I would like to congratulate the honourable Vice-President for at last bringing this kind of legislation to Parliament. It is long overdue. Since I entered Parliament in 1966 this kind of legislation has been called for and it really gives me pleasure to see that we now have legislation before the Assembly which will remedy the obvious injustices which took place in the past because there was no legislation of this kind. I give you one of the most common cases. A government vehicle hits down a private individual and he has no recourse. He is at the mercy of the Minister for an ex gratia payment. This will no longer happen. For that reason, I say I am very happy to see this piece of legislation before this honourable Assembly.

Fears have been expressed by the last speaker in respect of certain aspects of this legislation. I leave to my hon. Colleague the task of answering and allaying those fears. I must say that I do take into consideration, as the hon. Vice-President pointed out, that the State has a job to govern and therefore there must necessarily be limitations in respect of the State as against the private person. For example, there is the question of judicial officers where there must obviously be limitations, There is the question of state security where there must obviously be limitations. There is the question of levying against state property where there must obviously be limitations to prevent a man who has a judgment from levying on property which may be essential to the security of the state. I leave my hon. Colleague to answer and allay the fears expressed by the last speaker.

One must presume that the Government and its Ministers will always act

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expeditiously and in good faith as regards fulfilling judgments of the Court. One must presume that, but one must recognise that this has not always happened in the past. I therefore urge that the legislation which is now before this Assembly be carried out in such a way that there will be no cause for complaint. The whole object of this legislation is to remedy the ills that at present exist because of the present immunities which the State enjoys. If the Act is administered in good faith, looking at it as a lawyer, I can see that there should be no problems.

I note that this Bill has been on the Order Paper for a long time. I note that there is nothing which provides for retroactivity. I presume therefore that if a Government vehicle had hit down a private individual last week his cause of action would have arisen at that time.

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The Chairman: Hon. Member Mr. Singh, the Bill should have been debated earlier on but at the request of the Leader of the Minority an adjournment was granted about two weeks ago. So it has not been very long on the Order Paper without any action being taken.

Mr. M.F. Singh: I recognise what you are saying. In fact, I read it in the newspapers this morning. But I am making a point of fact. If last week a citizen was hit down by a Government vehicle, his cause of action would have arisen then and therefore he will not enjoy the privileges granted under this Bill. I merely make that as an observation. I do conclude by saying it gives me great pleasure to support this Bill and to compliment the hon. Vice President for bringing it to Parliament.

Cde. Shahabuddeen: Cde. Speaker, I am grateful for the welcome extended to the Bill by my colleague Mr. Feilden Singh. Some of the matters which concern him I shall try to deal with, as he suggested, in the course of my reply to Cde. Reepu Daman Persaud. I will merely say two things in response to the presentation by hon. Member Mr. Singh. He spoke of the desirability of the legislation being administered in good faith. I think that is an assumption we must all fairly make and until there is material to refute it I do not think there will be any justification for assuming that that assumption will not materialise. Implicit in what he said, however, is some understanding that the Government has a key role in administering this legislation. If that is the view which he holds, I would like respectfully to differ.

The vast difference between the law as proposed to be stated in this Bill and the law as it has been is that under this Bill it is the courts which will constitute the machinery for supervising administration of this branch of the law. The Government will have little or nothing to do with it. If a citizen has a claim against the Government and he has been advised by learned counsel that he should sue the Government, he just goes to the legislature and files his action against the Government and they will then go to court and make him answer. So there is no real need for any fear or hesitation or doubt as to whether the Bill will be administered fairly and in good faith. The administration is with the courts themselves.

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The second point which he alluded to and which draws some response from me is on the question of the retroactivity in relation to the time which has elapsed since this Bill was first published and introduced in the Assembly. I merely want to explain that that considerable time was deliberately allowed to run in order to allow for time, this being a fairly complicated legal measure, for those might have an interest in the reform of the law to advance in whatever convenient manner any comments they might have had on the Bill.

So far as the specific question as to whether a cause of action which arose before the commencement of the Bill might be covered by the procedures prescribed by the Bill, I think we should all have the humility to leave that one to the judgment of the courts. I do not think I should be expected to pronounce on every fearful interpretation which will arise. A case of that kind would not be caught by the Bill for the reason that there has to be a cut-off point. It must commence at some time and if you draw a line at the time then the reasonable inference is that some cases will be within the Bill and some cases will be outside of the Bill. It cannot go back to the time of Noah.

Now I come to the observations of my friend Cde. Reepu Daman Persaud and I think it really was worth waiting on him to come back from wherever he was. It would be my regret that reluctantly I would not be able to comply with what he has said. It affords me an opportunity of making clarification of aspects which may be bothering some other people. True enough, I did have to wait until the very end of the presentation to hear that he was really welcoming the Bill. It is worth welcoming this Bill, it is a good Bill.

One of the first things he said was that one of the problems in the past has been that fiat was not granted in relation to cases brought in court. I would like to agree with him. But that is so because of this legal reason that a case in tort could not be brought against the Government with or without the Minister's consent. Even if the Minister consented that consent would not validate the bringing of an action in tort against the executive. If you would look at the provisions to which he refers, slightly contorted, as I would like to say in most legal cases, Section 13, paragraph 2, Chapter 3:02, you will see that the kinds of action which it contemplated being brought against the Government were those of claims against the state which are of the state nature as claims which might before the 26th May, 1966 have been brought against the Attorney General on behalf of the state by petition, manifestation or plea of right.

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So that tortuous cases were never within the machinery of Section 38 and there was nothing the Minister could do even if he granted his consent to make the kind of claim a tenable one. That explains the statement made by my friend Cde. Reepu Daman Persaud. He is doing a very good job but he could have done with some legal assistance. If on reflection he accepts what I said.....the Minister in the past deliberately did not function in consciously refusing to grant his consent. In all proper cases where the Minister's consent is required, that consent I can stand here and say was given. The cases in which it was not given were the cases in which it could not have been given.

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(Cde. Dr. Shahabuddeen continues):

I now turn to Clause 3, paragraph 6 of the Bill which reads:

"No proceedings shall lie against the State by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or any responsibilities which he has in connection with the execution of judicial process".

I want to make a general remark here. It is fashionable, it is good, it is a good bit of . . . when criticizing legislation of this kind and so it is only . . . something somebody else has to say. I think Learned Members of the Minority benches will note that we are not single on this which the legal system of such countries have already made use of and that is why if you turn to the legislation on this subject in Trinidad or Barbados you will see the very clause and the legislation which we are now proposing here but I would like to say that we have in framing this measure all over, not only of the Crown Proceedings Act of the United Kingdom.. The Judge is not personally liable for the way he analyses the case. I shall allude to a more recent case. It is a very interesting position, controversial in some respect and one which you will have to consider. We have left it completely open, we have not sought to permit the issue.

A very interesting note was said by Cde. Persaud. I don't know why he said it because I think it was common ground and then the judgement of the court should be open to any debate. Every judgement of the court in this country should be open to debate publicly and I have always thought this was so and when I read some of the weekly newspapers I have a feeling and there is only one case actually and the one is that public debate must observe these elements which and the importance of public discussions of matters which if not carefully exploited could reflect adversely on people which by reason of the Constitution they hold.

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I dont think we will ever want to be and to ensure that this does not occur in that part of the law relating to this little matter of contempt of court. People have always been free under the law of Guyana but debate publicly and of the courts.

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Cde. Persaud referred to clause 4 (1) relating to patent rights. The authority of the State was referred to. Perhaps I had better arm myself with that provision. It is 4 (1). There is a reference in that clause which attracted his attention. It is a reference to a case where the infringement is committed with the authority of the State and he raised, quite properly, a question of construction relating to the words "with the authority of the State." May I endeavour to explain that while it is true that questions of construction can be raised over that issue, they can, of course, be raised over any other provisions of this Bill. The real answer to that is that this reference to the authority of the State - to an act being committed with the authority of the State - is not in my understanding a reference which is likely to give the Courts a great deal of difficulty for the reason that it is very synonymous with a whole range of principles applicable in the law relating to employer/employee. There are things which^{are} done by an employee and somebody gets hurt and wants to saddle the employer with the responsibility. Then a question tends to arise in the law of contract and in the law of tort as to whether that thing that was done by that employee was committed within the scope of his employment. There are very close affinities between this phrase and the concepts involved in that other field and the Courts are well schooled in this discipline and should not have a great deal of difficulty in coming to grips with the language employed here.

Cde. Persaud referred to the clause 7 (1) (b) concerning the position of the armed forces and members of it who had committed acts resulting in damage and injury to others. This clause 7 (1) (b) states that

"the Minister responsible for defence certified that the suffering of that thing by that other person has been or will be treated as

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attributable to service for the purpose of entitlement to a pension, gratuity, award or other benefit from the State."

I see what is passing through my colleague's mind. What this is saying really is this: That normally if a member of the armed forces causes injury to another member of the armed forces there should be a right of action save in the case specified. You see the Minister may be able to say, "Private A has injured Private B, but, look here, that matter is completely and adequately provided for by our superannuation arrangements. He is going to get adequate compensation from whatever fund there may be in respect of that category of activity." So, what the legislation is saying is that where injury of that kind occurs and that injury can be compensated in that statutory manner, then there is no point in suing one another if they are both members of the armed forces. It looks to me as if it is a decent domestic arrangement for fellow members of the same organisation to subscribe to. Perhaps Cde. Persaud may care to look -

[Cde. Ram Karran: "Malice."] - at the following provision, 7 (2), which Cde. Ram Karran might have cared to look at before he said what he just said. The provision says:

"Subsection (1) does not exempt a member of the armed forces of the State from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of duties as a member of those forces."

This provision makes it quite clear that that immunity section has no application where Private A injures Private B but does so totally outside the scope of their official relationship. Let us take malice, for example. A very good point was raised there. If malice were to be proved that would tend to take the case outside of the scope of the official relationship and perhaps take it outside of the exemption granted in section 7 (1).

Cde. Persaud spoke very interestingly about the prerogative. I am not quite sure whether he actually used the full phrase "royal prerogative" in order to suppose offensiveness in the prerogative. There is nothing really offensive about the prerogative. Let me explain. There are certain powers in every

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country over which the Executive is conceded by Parliament a certain unquestionable control. Parliament does not normally interfere with those very sensitive powers. Those powers comprehend inter alia the conduct of foreign affairs and the power to declare war and peace. Those are among the prerogative powers in any country that I know of. You may call it by a different name but those very powers exist, for example, in the United States of America, which is a republic. They are prerogative powers. Those powers exist in Trinidad and Tobago, which is a republic. They exist in the Commonwealth of Dominica. Japan is a republic also and they exist there. They have nothing to do with royalty or feudalism or feudal barons or anything like that. They have to do with the need for that basic and irreducible minimum substratum of power which is absolutely essential to the maintenance of the state, whatever that state is. So that is all that provision is referring to. There is nothing really so very draconian about it.

Of course, you will bear in mind my general remark that, so far as I am aware, not one of the various provisions which have been critically commented on is singular to Guyana. They all have counterparts in the legislation of Trinidad, Barbados, Jamaica and the United Kingdom, with a little variation here and there. Each draftsman, as those of us who are professional men will know, while he respects something produced by his colleague 40, 50 years ago, in another jurisdiction, and would only vary from him for good cause, does reserve to himself a modicum of discretion to differ from that colleague - especially if he does not know the fellow - on a point or two. And so you get variation of language as between the legislation enacted in one country and the legislation enacted in another.

We come to clause 8 (2):

"Where in any proceedings under this Act, it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the State"

Once you have the concept of the "prerogative" right some power to the black magic has disappeared. Obviously -

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"the Minister responsible for defence may, if satisfied that the act or omission was necessary for any purpose mentioned in subsection (1) issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matter so certified."

Once you have the concept of the prerogative right, there is nothing wrong and everything right if the Minister in a particular case issues a certificate to facilitate the work of the Court by saying, "Look, this is a prerogative matter. Such and such is the position." I do not think you will find anything so very retrogressive about that at all. As I said, you will find counterpart provisions in other legislation. I will not weary the Assembly by repetitively referring to legislation on specific aspects from other jurisdictions.

Clause 14 gave my very good friend a great deal of trouble. It says that the Court must not, as it were, levy execution on the State but must only issue declarations. I will stop there in capsulating what was said. Let me see if I can be of any help. Why is it that not only this proposed legislation but all the legislation I know of on this subject is cast in this form? I do not think Cde. Persaud denies that this formulation is common to the legislation on the subject in England and he can take it from me that it is common to the legislation on the subject in other countries. Why is it that all these countries, good democracies, have this provision in their law? The reason, I offer with great respect, is this: One has to look at the machinery of execution. What is the machinery by which a judgment in a Court is executed? If you look at it you will find that after a certain point is reached in the unfolding of the judicial measures, the State inevitably comes into the sequence of steps which have to be taken. The State eventually comes in as a party to the physical or other acts of levying execution so if you have a law which says execution may be levied against the State, ultimately what you are saying is that the State must levy against the State. It is a bit of a conundrum, I think we will all recognise, not easily soluble by mere words. One has to look at the reality of the thing and then, if you did that, you would find the reason for

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this legislation being cast in this way in all the territories with which I am familiar. What the various jurisdictions have done is to say, "It is nonsense for the State to levy execution against the State." One day somebody may come and take away that microphone from in front of you and say it is being levied on by Citizen A against the State or somebody may levy on the Speaker's chair and say that it is being levied on in satisfaction of a judgment given by Citizen A against the State.

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(Cde. Shahabuddeen continues)

Now, really, that is not wearable, it is not at all. So what we have done is to proceed on this basis. The legislation proceeds on the basis that (a) there is a separation of powers under the Constitution, judicial powers as separate from executive powers and separate from legislative powers and (b) trying to reconcile these three sets of powers by implication of..... If you try to apply one principle and reconcile its operation with the other you get very much the kind of situation adumbrated by this Bill. You see, it is not worth it really to levy against the goods and assets of the state but the court will make a declaration and it is the duty of the state to respect a declaration. If the state had any intention of disrespecting any order made by the court, I do not think you would have seen this Bill in the Assembly this afternoon.

Cde. Reepu Daman Persaud raised a point on Clause 16(2). The answer is that if you look at those immediate matters which go to the maintenance and integrity of the state, whether here or anywhere else, then there should be the response of All that provision seeks to do is to express that principle and to provide machinery for its operation. I fear I may not have answered every point of detail raised by Cde. Reepu Daman Persaud.

The same applies in relation on injunction. Injunction ultimately involves appeals really. It can be associated with procedures for contempt and things like that. It is not workable to think of applying penal measures against the state because the people who will carry out the punishment happen to be the state. So it is for these reasons that none of the legislation on this subject here or in the other countries will have provision where the court can grant an injunction against the state. If I get an injunction by the court against you stopping you from doing something which you are doing and something I do not like, and the court does not like and you do not go by the injunction, sooner or later you find yourself in jail. It is a little difficult to construct a big enough jail to hold the whole state. It is for these reasons that legislation of this kind, whether enacted here or elsewhere, does not provide for a court to grant an injunction against the state. They do the honourable thing, they say if the court holds against the state it says

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so in a formal declaration and it is for the state to respect the judgment of the court and I will say so far as I know this has not given rise to any.....

The fact that we have the Bill is earnestness of the commitment of the Government to respect the obligation of the Bill as specified in its various provisions. If I have not neglected to offer a comment on some other point, those will be my concluding comments.

Question put, and agreed to.

Bill read Second time.

Assembly in Committee.

Clauses 1 to 23 agreed to and ordered to stand part of the Bill.

Clause 24.

Cde. Reepu Daman Persaud: I have one short question on 7(1). This is just for information. I have not been able to check anything to see whether the National Service and the People's Militia are brought under this. The National Service and People's Militia are generally spoken of as para-military. Will they be categorised? I want to know what are their status. I omitted to raise the matter during the debate but I thought it would be an interesting point to raise.

Cde. Shahabuddeen: Legislation relating to the National Service is under preparation and when it is brought to the Assembly it will result in the operation of that branch of the service being caught by the operation of this Act.

Cde. Reepu Daman Persaud: I assume that National Service is not under. I raised it simply for clarity.

Cde. Shahabuddeen: Well I am glad you offered this second opportunity to clarify that. Regardless of the statutory position, the Government accepts that the National Service is a branch of the general administration and if any acts occur in relation to or done by or to Members of the National Service, then we would wish those acts to have the benefit afforded by this Bill.

Clause 24 agreed to and ordered to stand part of the Estimates.

Question put and agreed to.

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Assembly resumed.

Bill reported to the Assembly, read the Third time and passed.

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MOTION

ITEM 4 – ADOPTION AND RATIFICATION OF I.L.O. CONVENTIONS AND
RECOMMENDATIONS

WHEREAS as a member State of the International Labour Organisation Guyana is obligated to examine Conventions and Recommendations adopted by the International Labour Conference in according with Article 19 of the Constitution of the International Labour Organisation;

And whereas Article 19 states that all Conventions and Recommendations adopted by the International Labour Conference must be submitted to the competent Authority of member States whether ratification of such Convention is contemplated or not;

And whereas the submission of Conventions and Recommendations adopted at sessions of that Conference should always be accompanied or followed by a statement or proposals setting out the Government's views as to the action to be taken on the instruments;

And whereas Guyana adheres to the Constitution of the International Labour Organisation of which it is a member since 1966;

And whereas the Guyana Government always as an aim of policy, makes proposals at the time of submission on the applicability of the Conventions and Recommendations adopted from time to time at sessions of the International Labour Conference;

And whereas the Government of Guyana always takes steps to ratify those Conventions which are in keeping with the social philosophy of the Guyana society;

Be it resolved that this National Assembly adopt the following Conventions and Recommendations adopted at the 67th and 68th Sessions of the International Labour Conference held in Geneva in June, 1981 and June, 1982, respectively, and laid in the National Assembly on 2nd November, 1984:-

A. 67th Session, June 1981

- (i) Collective Bargaining Convention, 1981 (No. 154);
- (ii) Collective Bargaining Recommendation, 1981 (No. 163);
- (iii) Occupational Safety and Health Convention, 1981 (No. 155);
- (iv) Occupational Safety and Health Recommendation, 1981 (No. 164);
- (v) Workers with Family Responsibilities Convention, 1981 (No. 156);
- (vi) Workers with Family Responsibilities Recommendations 1981 (No. 165).

B. 68th Session, June 1981

- (i) Termination of Employment Convention, 1982 (No. 158);
- (ii) Maintenance of Social Security Rights Convention, 1982 (No. 157);

And be it further resolved that this National Assembly note the Protocol adopted by the 1982 International Labour Assembly amending the Plantations Convention, 1958 (No. 110);

And be it further resolved that this National Assembly ratify the following convention:

- (i) Collective Bargaining Convention 1981 (No. 154);

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And be it further resolved that the decisions of this National Assembly be conveyed to the Director General of the International Labour Organisation and to the Worker's and Employer's Organisations and other interested groups in Guyana. /The Minister of Manpower and Cooperatives/.

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The Minister of Manpower and Cooperatives: (Cde. Denny): Cde. Speaker, with regard to the motion on the Adoption of the ILO Convention and recommendations. I just want to indicate that in accordance with Article 19 of the Constitution and the International Labour Organisation, members states are obligated to submit to their respective Parliament instruments as convention and recommendations adopted by the ILO. This motion is before this House to bring to the attention of this National Assembly the following instruments. The first one deals with Collective Bargaining Convention, No. 154; Collective Bargaining Recommendation, No. 163; Occupational Safety and Health Convention No. 155; Occupational Safety and Health Recommendation, No. 164; the whole question of termination of employment No. 158; termination of Employment recommendations No. 166 and also Cde. Chairman, the Protocol that deals with Plantations.

Cde. Chairman, it has to be noted that in many areas in this country the mechanism of collective bargaining is a reality ----

The Speaker: Before you proceed, what about 166 and 165.

Cde. Denny: Surely Cde. Speaker, they are included. We have different collective bargaining at the factory including individual Trade Union and we have moved in this country to centralise bargaining in the case of wages and salaries. There is the view point that there is a ... of collective bargaining. Cde. Speaker, as negotiations between....one or more employer's organisation on the other hand and one or more workers Organisations on the other. With regard Cde. Speaker, to Occupational Health Safety, this Government of the People's National Congress has this year as part of Health Week observed occupational health and safety – this is an indication of the importance that we place on Occupational Health and Safety of the worker as one of the main and higher levels of production and productivity in industry and in the work environment.

It has to be recognised Cde. Chairman, that the whole question of occupational health is important. Workers health does not merely mean.....this includes.....when we talk of.....health we do not want it to be confused with.....

Cde. Speaker, on the question of workers with Family Responsibilities, the aim of that convention and recommendation is to enable persons with responsibilities to exercise their right, to engage in movement without being able to.....and that is why we have free education in this country from nursery to University. We are as a Government prepared to do this and we have been doing this.....of workers, primarily those with responsibility. We provide for them educational guides and training so that they can become truly integrated into the society and if possible to.....the Labour Force after they would have left the Labour Force and so Cde. Speaker, these recommendations set out clearly the question of employment, the question of termination and conditions of employment which would speak about hours of work, part-time employment, child care and family services, social security and health and the exercise of family responsibilities. Cde. Speaker, on the question of termination of employment, we believe that a contract of service – we have to establish always that there is an employer/employee relationship. We believe that when termination in certain situations do happen that there must be necessary provisions to take care of the termination because termination can occur when there is retrenchment, when there is re-organisation and this is the type of thing that we as a Government go along with in keeping with the termination of employment Convention and the Termination of Employment Recommendation.

On the other aspect Cde. Speaker, of Maintenance of Social Security Rights Convention, we believe that these Rights – Maintenance of Social Security should be there to make sure that certain benefits that workers derive and we have the NIS to cater for these so this is in place at present.

The Protocol of the Plantation Convention No. 110 – the purpose of this Convention is to widen the scope.....that is it basically Cde. Chairman, and I am saying that we are submitting this to the Parliament, this National Assembly because they were discussed and adopted at ILO Conference of June 1981 and June 1982.

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(Cde. Denny continues)

Barbados has taken 35, Bolivia 39, Venezuela 46, the Soviet Union 43, the U.S.A. 7, India 34, Jamaica 25. I do this not for the purpose of comparison, but merely to say that we as a government are not merely going to adopt Conventions for adoption's sake, but we are adopting them because we are convinced that we do intend at all levels to honour them and not at all to honour them in the breach, because there is no occasion that our friends on the other side can refer to any honouring of these Conventions in the breach. They will recognise that in truth and in fact this Government of the People's National Congress is committed to the perpetuation of the system of collective bargaining which is the bedrock of industrial relations in this country.

I therefore commend these Conventions to this National Assembly for unanimous support. [Applause.]

Cde. Ram Karran: I have no intention, if the hon. Minister thought otherwise, to oppose the notification and ratification of the I.L.O. Conventions which are presented before this Assembly.

Let me first of all say that the I.L.O. Conventions are decided on by that body after discussion by all the members and labour conditions in several of the countries might not be as advanced as they are in some other countries. In some agricultural countries, for instance, there are very few factories and the conditions requiring Conventions applicable to factories might not affect those countries. These Conventions that are prepared and laid down by the I.L.O. are not necessarily the ideal in all countries. That is why my friend said that the Soviet Union – I am not here to defend the Soviet Union – has ratified only 43; we have ratified 40 and the United States seven. I am not here for comparison but this does not mean anything because in some countries where the social conditions are advanced far beyond what the I.L.O. offers, it is not necessary for ratification by local parliaments.

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My friend seemed to wax very warm about the Convention dealing with collective bargaining. I want to remind him that despite the fact that we have had collective bargaining by tradition in this country, because of the loopholes in the law as it existed in the United States of America, the ability of the workers to proceed through collective bargaining arrangement has been frustrated for several years. A thousand women are walking the streets because of the loopholes. I do not know if the hon. Attorney General has amended that provision whereby clever lawyers can go by way of injunction, as they did the other day and now a thousand women from Lysons are still walking on the road. I do not want to refer to the details of that because I understand that the procedure is still going on. I do not know how long these clever lawyers and these wicked employers are going to continue.

My friend talks about the facility and the ability for collective bargaining. He talked at the same time about plantations. If you go on the East Coast you will see literally hundreds of people, women and children, walking on the road in the vicinity of Plantation Hope, hoping to get some coconut oil and hoping to buy a packet of cigarettes. That is the collective bargaining that my friend ratifying here today. Lysons give the girls oversized panties and oversized brassieres for sale at the Regent Street store in lieu of benefits which they earned during the year. I hope that what is happening at Lysons, what they attempted to do at Lysons and what they are doing now at Hope Estate, will be discontinued. Let us have real collective bargaining as it should be carried out under the Conventions and under the law.

My friend talks about collective bargaining. The union won its right from GUYSSUCO and this Government has the temerity to take that matter to the Court and this Parliament is a court and it is superior to all courts – and so frustrates the people's will. What a shame and disgrace it is for my friend to come here and tell us that this is collective bargaining: This is fried rice: /Laughter./

The Speaker: Cde. Ram Karran, you are part of this Court, so you cannot complain. You are a strong part of it. You are the Deputy Speaker.

Cde. Belgrave: Cde. Speaker, as my colleague earlier mentioned, our position on the ratification of these Conventions and Recommendations is this: This Assembly is not divided

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upon the issue of ratifying I.L.O. Conventions but we are divided on the point that the Minister raised in his presentation when he thumped his chest while speaking on the honouring of these Conventions.

The Speaker: Cde. Belgrave, as far as I understand, this Motion is merely to accept the Conventions, not to say whether they are being effectively carried out or not. It is a simple question: The I.L.O. made these Recommendations. Are we accepting the Recommendations or not? As to whether they are being effectively adopted, that is not for us to determine now.

Cde. Belgrave: Some of these Recommendations also form part of our law as, for example, the Collective Bargaining Recommendations and Conventions. For instance, we accepted Recommendations 87 some years ago on collective bargaining and so far it has not been honoured. It has been honoured in the breach.

The Speaker: This Motion does not deal with the question of whether we are honouring it or not.

Cde. Belgrave: But the Minister –

The Speaker: Just a minute, if you don't mind. We are asking this Parliament whether we are going to accept the Recommendations and that is the end of the matter. If you want to go into the question of whether the Government is honouring these Recommendations, that is something else. You have to come by some other Motion or some other device.

Cde. Belgrave: Cde. Speaker, what I am saying is that we have no quarrel or we are not divided upon the Recommendations before this Assembly, but we are asking the hon. Minister that when this Assembly is in full agreement with the Recommendations, the Government must not only voice them but must also respect the Recommendations that come before this Assembly.

The Speaker: The Minister said so.

Cde. Belgrave: He said so, but I would like to point out –

The Speaker: That is why I am not going into any debate. Either you accept the Recommendations of the I.L.O or you do not accept them.

Cde Belgrave: Could I not ask the Minister --

The Speaker: You will have to go outside and ask him.

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Cde. Denny, do you want to say anything in response to Cde. Ram Karran?

The Speaker: Cde. Denny, would you like to say anything?

Cde. Denny: Just quickly, in the first instance, the reason that I referred to other countries is that he –

The Speaker: That is not an issue.

Cde. Denny: Secondly, he speaks of a thousand women walking the streets. Is it not the truth that during the ... of the Labour Amendment Act which I piloted through this very Assembly that the arbitration has been set up? Cde. Ram Karran is not au fait with these things. Finally, it has to be recognised that the fact that GAWU can be engaged in ... is evidence that collective bargaining is in force.

Question put, and agreed to.

Motion carried.

ADJOURNMENT

Resolved, “That this Assembly do now adjourn to Thursday, 1985-11-22, at 14:00 hrs.

Adjourned according at 16:10 hrs.