National Assembly Debates

PROCEEDINGS AND DEBATES OF THE NATIONAL ASSEMBLY OF THE FIRST SESSION (2006-2008) OF THE NINTH PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA HELD IN THE PARLIAMENT CHAMBER, PUBLIC BUILDINGS, BRICKDAM, GEORGETOWN

Part I of II

62nd Sitting	14:03h	Thursday 16 October 2008

MEMBERS OF THE NATIONAL ASSEMBLY (70)

Speaker (1)

The Hon Hari N Ramkarran SC, MP - *(AOL)*

Speaker of the National Assembly

Members of the Government (41)

People's Progressive Party/Civic (40)

The United Force (1)

The Hon Samuel A A Hinds MP

(R# 10 - U Demerara/U Berbice)

Prime Minister and Minister of Public Works and Communications

The Hon Clement J Rohee MP

Minister of Home Affairs

The Hon Shaik K Z Baksh MP

Minister of Education

The Hon Dr Henry B Jeffrey MP

Minister of Foreign Trade and International Cooperation

The Hon Dr Leslie S Ramsammy MP

(R# 6 - E Berbice/Corentyne)

Minister of Health

The Hon Carolyn Rodrigues-Birkett MP
(R# 9 - U Takutu/U Esseq)
Minister of Amerindian Affairs
*The Hon Dr Ashni Singh MP
Minister of Finance
The Hon Harry Narine Nawbatt MP
Minister of Housing and Water
The Hon Robert M Persaud MP
(R# 6 - E Berbice/Corentyne)
Minister of Agriculture
The Hon Dr Jennifer R A Westford MP
(R#7 - Cuyuni/Mazaruni)
Minister of the Public Service
The Hon Kellawan Lall MP
Minister of Local Government and Regional Development
*The Hon Doodnauth Singh SC, MP
Attorney General and Minister of Legal Affairs
The Hon Dr Frank C S Anthony MP
Minister of Culture, Youth and Sport
The Hon B H Robeson Benn MP
Minister of Transport and Hydraulics
**The Hon Manzoor Nadir MP
Minister of Labour
The Hon Priya D Manickchand MP
(R# 5 - Mahaica/Berbice)
Minister of Human Services and Social Security
The Hon Dr Desrey Fox MP
Minister in the Ministry of Education
The Hon Bheri S Ramsaran MD, MP
Minister in the Ministry of Health

*Non-elected Minister **Elected Member from TUF

The Hon Jennifer I Webster MP
Minister in the Ministry of Finance
The Hon Manniram Prashad MP
Minister of Tourism, Industry and Commerce
*Mrs Pauline R Sukhai MP
Minister of Amerindian Affairs
Mr Donald Ramotar MP
The Hon Gail Teixeira MP
Mr Harripersaud Nokta MP
Mrs Indranie Chandarpal MP, Chief Whip
Ms Bibi S Shadick MP
(R# 3 – Essequibo Is/W Demerara)
Mr Mohamed Irfaan Ali MP
Mr Albert Atkinson JP, MP
(R# 8 - Potaro/Siparuni)
Mr Komal Chand CCH, JP, MP
(R# 3 - Essequibo Is/W Demerara)
Mr Bernard C DeSantos SC, MP
(R# 4 - Demerara/Mahaica)
Mrs Shirley V Edwards JP, MP - *(AOL)*
(R# 4 - Demerara/Mahaica)
Mr Mohamed F Khan JP, MP
(R# 2 - Pomeroon/Supenaam
Mr Odinga N Lumumba MP
Mr Moses V Nagamootoo JP, MP - *(AOL)*
Mr Mohabir A Nandlall MP
Mr Neendkumar JP, MP
(R# 4 - Demerara/Mahaica)
*** Mr Steve P Ninvalle MP
Parliamentary Sect. in the Min of Culture, Youth and Sport
Mr Parmanand P Persaud JP, MP

(R# 2 - Pomeroon/Supenaam)

Mrs Philomena Sahoye-Shury CCH, JP, MP

Parliamentary Sect. in the Ministry of Housing and Water

Mr Dharamkumar Seeraj MP

Mr Norman A Whittaker MP

(R# 1 - Barima/Waini)

***Non-elected Member

Members of the Opposition (28)

(i) People's National Congress Reform 1-Guyana (22)

Mr Robert HO Corbin

Leader of the Opposition

Mr Winston S Murray CCH, MP - *(AOL)*

Mrs Clarissa S Riehl MP

Deputy Speaker of the National Assembly

Mr E Lance Carberry MP - *(AOL)*

Chief Whip

Mrs. Deborah J. Backer MP

Mr Anthony Vieira - *(AOL)*

Mr Basil Williams MP

Dr George A Norton MP

Mrs Volda A Lawrence MP

Mr Keith Scott MP

Miss Amna Ally MP

Mr Dave Danny MP

(R# 4 - Demerara/Mahaica)

Mr Aubrey C Norton MP

(R# 4 - Demerara/Mahaica)

Mr Ernest B Elliot MP

(R# 4 - Demerara/Mahaica)

Miss Judith David-Blair MP

(R# 7 - Cuyuni/Mazaruni)

Mr Mervyn Williams MP
(Re# 3 - Essequibo Is/W Demerara)
Ms Africo Selman MP
Dr John Austin MP
(R# 6 - East Berbice/Corentyne)
Ms Jennifer Wade MP
(R# 5 - Mahaica/Berbice)
Ms Vanessa Kissoon MP
(R# 10 - U Demerara/U Berbice)
Mr Desmond Fernandes MP
(Region No 1 – Barima/Waini)
Mr James K McAllister MP - *(Absent)*

(ii) Alliance For Change (5)
Mr Raphael G Trotman MP
Mr Khemraj Ramjattan MP
Mrs Sheila VA Holder MP
Ms Latchmin B Punalall, MP
(R# 4 - Demerara/Mahaica)
Mr David Patterson MP

(iii) Guyana Action Party/Rise Organise and Rebuild (1)

Mr Everall N Franklin MP

OFFICERS
Mr Sherlock E Isaacs
Clerk of the National Assembly
Miss Hermina Gilgeours
Assistant Clerk of the National Assembly

14:10H

PRAYERS

*The Clerk reads the **Prayers***

ANNOUNCEMENTS BY THE SPEAKER

Welcome Back to Members

Honourable Members I should like to welcome all Members back from the recess and your vacation. I hope you had a restful vacation and I look forward to a productive year and the co-operation of all Members. Thank you.

PRESENTATION OF PAPERS AND REPORTS

The Speaker: Honourable Minister of Agriculture …

Hon Robert M Persaud: Mr Speaker, I wish to present the annual reports of the Ministry of Agriculture for the years 2004, 2005 and 2006, and in so doing, as we know today is World Food Day, I want to urge the National Assembly through you for continued support for the initiatives we as a country have been taking to ensure food security for all of our people. I Thank you.

The Speaker: Honourable Members I omitted during the Announcements to welcome back Honourable Member Mr Odinga Lumumba, who has been on extended leave from the National Assembly as a result of an accident in which he sustained serious injuries. I trust that the Honourable Member is now well recovered and is fit and has the capacity to make his usual excellent contribution to the business of the National Assembly. Thank you.

UESTIONS ON NOTICE

The Speaker: Honourable Members there are five questions on the Order Paper. Question Nos 1, 2 and 3 are for written reply. These questions are in the name of the Honourable Member Mrs Sheila Holder and, therefore, in accordance with our Standing Orders have been circulated. Question Nos 4 and 5 are for oral reply.

For Written Replies

The Speaker: Honourable Members there are five questions on the Order Paper. Questions Nos 1, 2 and 3 are for written replies. These questions are in the name of the Honourable Member Mrs Sheila Holder and therefore in accordance with our Standing Orders are being circulated.

Q - Mrs Sheila VA Holder:

1. **CRIMINAL APPEALS FILED IN THE HIGH COURT FROM 2005-2007**

How many criminal appeals filed in the High Court in 2005, 2006 and 2007 were disposed of by the Court of Appeal in each of the three years?

(Question Deferred at the request of the Attorney General and Minister of Legal Affairs)

2. **APPOINTMENT OF PERMANENT SECRETARIES AND DEPUTY PERMANENT SECRETARIES IN THE PUBLIC SERVICE**

(i) How many Permanent Secretaries in the Public Service are substantively appointed and how many are acting?

(ii) How many Deputy Permanent Secretaries are substantively appointed and how many are acting?

A - Hon Dr Jennifer RA Westford:

(i) There are thirteen (13) positions of Permanent Secretaries within the Public Service, ten (10) are substantively appointed and three (3) are acting.

(ii) There are six (6) positions of Deputy Permanent Secretaries within the Public Service, five (5) of the positions are filled, three (3) are substantively appointed and two (2) are acting.

3. MAINTENANCE OF THE LINDEN - ITUNI ROAD

Q - Mrs Sheila VA Holder:

The Linden - Ituni road used to be maintained by the Bauxite Company in Linden. Since BOSAI no longer operates a mine in Ituni, what arrangement is Government prepared to put in place to maintain this important road link to the Kwakwani community and the Intermediate Savannahs where Government is encouraging farming?

A - Hon BH Robeson Benn:

The Force Account Unit of the Ministry of Public Works and Communication in collaboration with the Regional Democratic Council, Region #10 is presently undertaking maintenance work on the Linden/Ituni Road. The total value of the works to be carried out in this phase is in the vicinity of G$32.2M.

The Linden Economic Advancement Programme (LEAP) is preparing designs and tender documents for upgrading the roadway to an all weather surface road from Linden to Ituni.

The works are scheduled to be out for tender later this year. After construction works are completed, it is envisaged that annual maintenance work will be done on a continuing basis for this stretch of road as well as to those leading to the Kwakwani Community.

For Oral Replies

The Speaker: Questions Nos 4 and 5 are for oral reply.

4. **ENHANCING CONDITIONS FOR THE DISABLED**

Q - Mrs Sheila VA Holder:

To the Hon Minister of Transport and Hydraulics ... Does the Government's commitment to enhancing conditions for the disabled extend to constructing ramps at major institutions, such as the Courts and Public Building currently without such facility?

A - Hon B H Robeson Benn:

I would like to thank the Honourable Member for her interest in these matters. The answer to the question is yes, the policy of our Government is to enhance conditions for the disabled and the physically challenged persons in relation to entering and leaving major institutions. In the case of new structures the relevant agencies, such as the Mayor and City Council; the Regional Democratic Council; the Neighbourhood Democratic Council; the Central Housing and Planning Authority are encouraging those who apply to construct major structures to take into consideration facilities for the disabled, for instance at the:

- CARICOM building
- The Guyana International Convention Centre and
- The Guyana National Stadium

Ramps have been constructed and elevators have been installed. In relation to CARIFESTA X which Guyana successfully hosted recently the sites at the National Park and the National Exhibition Centre at Sophia ramps were constructed to facilitate the disabled particularly for the sanitary facilities. In terms of existing structures the relevant agencies would need to examine these and see how best such facilities could be installed, taking

into consideration the cost and the aesthetics of the structure. In addition, I am advised that the revised building code would include provisions for enhancing conditions for the disabled. Work by the Guyana National Bureau of Standards in this regard is ongoing. Thank you.

Supplementary Question

Mrs Shelia Holder:

Mr Speaker, could the Hon Minister indicate specifically how soon we can expect to have these facilities functional specifically for the Court, the Police Station where the disabled are now at a major disadvantage?

The Speaker: Hon Minister …

A - Hon B H Robeson Benn:

Mr Speaker, I already indicated that the relevant agencies are being encouraged to construct these structures to take into consideration facilities for the disabled. Obviously, this is in relation to budgetary considerations which would have to be addressed so I would not now give a final indication in relation to the time but this is a matter of on-going interest for it is something that we have been addressing in other areas

particularly in relation to new buildings and the issues particularly in relation to the Courts and Police Stations as indicated by the Honourable Member will be addressed over the next two quarters.

The Speaker: Thank you Honourable Member; please ask your next question.

5 PRVISIONS OF TRAINED TEACHERS FOR MAHDIA

Q - Mrs Shelia Holder:

To the Honourable Minister of Education ... Several women from Campbelltown in Mahdia have bemoaned the fact that there are no trained teachers to prepare their children for CXC examinations. What considerations could the Minister extend to this community to satisfy their need for a higher level of education for their children?

A - Hon Shaik KZ Baksh:

Mahdia Secondary School was gazetted as a grade secondary school from 1 September 2007, the enrolment is now …

The Speaker: Could you speak up or bring the microphone a little closer.

Hon Shaik K Z Baksh:

… one-hundred and twelve. The teaching staff currently comprises six persons now of whom are trained, two teachers from Mahdia currently attended the University of Guyana and are in their third year, it is expected that they will return to the Mahdia Secondary School on completing their studies. One secondary trained teacher would be recruited in Mathematics and Business studies and will assume duties in January 2009, efforts are on-going to attract and recruit additional trained and graduate staff for the Mahdia Secondary School.

The Speaker: Honourable Member …

Supplementary Question

SQ 1 - Mrs Shelia Holder:

Mr Speaker, I would like to ask the Hon Minister if the AFC can source and supply trained teachers to the Mahdia School ... will we need your permission and will you grant permission?

SA 1 - Hon Shaik K Z Baksh:

Who wish to apply for teaching positions in secondary schools in the hinterland including Mahdia can do so.

The Speaker: Honourable Members now that we have finished the questions, I omitted to extend a warm welcome back to the National Assembly to the Honourable Member Mr Everall Franklin. *[Applause]* The reason for this omission is that Mr Franklin who was present at Parliamentary Business before the close of the recess, so I thought that he had attended a Session of the Parliament before that … I am advised that he did not. Mr Franklin as you know suffered from ill health recently but I think as you can see he has fully recovered and we expect that recovery will be permanent and that he will be in fit state to make his usually contributions to the business of the National Assembly. Thank you.

GOVERNMENT BUSINESS

BILLS – Second Reading

ITEM 1 - EVIDANCE (AMENDMENT) BILL 2008, Bill No 22/2008

Published on 7th August 2008

A Bill intituled AN ACT to amend the Evidence Act Read

Hon Doodnauth Singh: May it please you Mr Speaker ... Despite the fact that over the years steps have been taken to enhance the judicial process amendments have always to be made with respect to existing legislation. It is as a result of a review that it becomes necessary that we address these matters. There is an on going programme with the Justice Improvement Sector Programme which will seek to address several of the issues and areas of concern, but despite that situation we must take account of the innovation of technology and address by the legislative mechanism the necessary areas of concern.
As a practitioner, who has been a defense council for a number of years I am cognisant of the fact that there is a

recognition that accused persons have what is known as a right of confrontation. That right of confrontation is enshrined in constitutional instruments of some countries and what it means is that in a trial by jury the witness is required to be present in court so the accused can hear and see what that witness says, and as a result that is the scope of confrontation. I am aware of the fact that council for the defense would argue that it is important for an accused to have a fair trial, that the members of the jury must see the particular witness and hear the witness, specifically when that witness is being cross-examined because the nuances and various areas of concern can be established. I think it has been said that cross examination is the *an*gle whereby you test veracity.
Sir, we must be conscious also of the fact that witnesses can be afraid, can be threatened or there can be several areas of rational by witness who may not want to attend personally in court. It is to take account and to balance that kind of situation that amendments of this nature are considered by several jurisdictions and have been put in place.
The particular amendment which we seek to put in place here, if I may read Section 72(A), states and I want to express an opinion as well:

> *Notwithstanding anything in this Act, the Court may on its own motion or on the application of any party to any proceding whether Civil or Criminal order that oral evidence be taken from or submissions be made by a person by Audio Visual Link at the place outside*

the Court Room where the Court is sitting, whether that place be in or outside of Guyana.

Mr Speaker, this is a very telling Amendment, because it would mean that ... it could be argued that is not a trial within. That is a matter whether the legislators of a state want to take cognisance of innovation and want to take cognisance of space. I could recall a particular case in which I had a part in which a witness was being protected and immediately after that witness took it upon himself to come out of protection he was executed. It is to avoid that kind of situation that amendments of this nature have been considered by courts throughout the Commonwealth and wider a field.

Mr Speaker, there is also one aspect I had raised with the drafting department as well which concerned me and it was in relation to the inclusion of the words *for submissions be made by.* I construe that submissions can only be made by counsel and so that is what this amendment would permit ... I do not really rationalize how it would take place ... Counsel making submissions via this mechanism, Audio Visual Link ... but I suppose since it appears in legislation, particularly in Section 30 of the New Zealand Legislation ... and those of my colleagues who are familiar with the internet, I am sure, who having scoured the internet will reveal to us all the various nuances, but at the end of the day it is whether the legislators of the particular state feel it necessary, and I would hope that the argument would not be advanced as to whether you are on the Government side or on the Opposition side. It is whether

the mechanism which we seek to put in place would result in a fair hearing within a reasonable time which is the constitutional requirement of the citizen. With procedures set out and having dealt with the particular amendment, what you have is the safeguards, and then you have an order made under Sub-Section (1) maybe made subject, and it is subject to conditionality and safeguards as the court thinks fit, not limited to the physical presence of a person specified, payment of expenses, et cetera, and unless the court would make such an order, and unless the court is satisfied, and I suppose when the application would have been made by the necessary affidavit evidence or other requirements. The court would have to be satisfied ... I do not know if we would have those facilities immediately available, but it is thinking infatitura. The necessary Audio Visual Link facility are: the evidence cannot be more conveniently taking in a court room where the court is sitting, so you would have to satisfy the court that it is imperative that that evidence cannot be taken in what used to be the Victoria Law Courts. Any oral evidence given or submission made by a person outside the court room by using Audio Visual Link facilities pursuant to the Order made ... we deal with the evidence given or submissions made in the courtroom, where the court is sitting. I expect to hear my colleagues on both sides of the House speaking about submissions made.

Then we move on to *evidence should not be taken by Audio Visual Link unless the courtroom where the court is sitting, and the place where the evidence is given to the satisfaction of the court is equipped with Audio Visual Link facilities, et*

etera.
I have been involved in what has been known as Debineersa evidence and Debineersa evidence is where an application is made, the hearing officer is appointed to hear the evidence which may not be available at the relevant time but which is available at a particular time and counsel on both sides are present *examination in chief* and cross examination takes place and a record is made of that evidence and that evidence is subsequently usable at a hearing. A Audio Visual Link mechanism can be said to be a kind of Debineersa evidence and what it is doing is that you have the facility of seeing and hearing the person rather than in the old fashioned Debineersa evidence mechanism where all you would have had is the records of the proceeding.

Mr Speaker, my learned friend referred to it as depositions, I do not think that is quite accurate. Whatever appears in the Amendment is a mechanism to provide for Audio Visual Link. The necessary safeguards and it has been said in the explanatory memorandum that the use will reduce the risk of security involved in escorting, transporting of persons in custody; persons who would otherwise be required to appear in court … that is part of the rational. But that is not to my mind of importance, but it is a mechanism which you want to utilize for the purpose of advocating the necessity for the Amendment and reference is made in the explanatory memorandum as well.

The place of the special meeting of the Conference of Heads of Government on security matters. I am not one of those persons who is technology minded, I prefer the old system of everything. I see my friend, who said they had four computers and probably she utilizes all four … I cannot use one but it shows you the advancement but at the same time technology can be abused and misused. I would hope that the amendment, which we seek to put in place, will be utilized to ensure that there is a fair hearing, Sir, within a reasonable time. Whatever concerns we have as practitioners and whatever rights we feel to challenge, at the appropriate time challenges will be made.

I know that I expect my learned friend … unless there is an agreement with the necessity that we have these amendments and put them in place … and what we ought to do is to put procedures in place to ensure that they are utilized to ensure a fair hearing. My learned friend has circulated an amendment which I have not yet considered fully but which I will at the appropriate stage wish to deal with. I will at the relevant time move that this Bill be read for the Second time. I thank you.

The Speaker: Thank you Honourable Member. Honourable Members now is the time to so move and I accept that you have so moved. Honourable Member Mrs Clarissa Riehl …

Mrs Clarissa S Riehl: Thank you Mr Speaker. These amendments to the Evidence Act at first glance appear to be innocuous and intended only to bring our Justice system more in conformity with the technological age in which we live and the Hon Attorney General says that they are a part of the Justice Improvement Programme, and these are amendments for future legislation. The legislation stipulates that the court in or on its own Motion or at the request of any party to any proceeding, whether civil or criminal, may order that oral evidence or submissions be made by a person by Audio Visual Link at a place outside of the court room where the matter is being adjudicated, whether that place be in or out of Guyana. We have a bone of contention, and hence the amendment that we have circulated, with person being inside of Guyana and giving evidence in a Court of Law by Audio Visual Link.

Under this legislation speaks to any party to any proceeding, it is obviously intended substantially to benefit the state party in criminal proceeding. I agree with the learned Attorney General that Audio Visual Link would be helpful in obtaining evidence from people who are aboard. Witnesses who are resident abroad and they may not want to come back home to give evidence, in civil cases it happens a lot, and contributes to lots of delay and adjournment. Witnesses and experts whose non-availability may sometimes cause cases to be delayed; trials to be delayed both civil and criminal … In the interest of reducing delays and adjournments and guaranteeing that fair hearing within a reasonable time which

the Attorney General again spoke of … if these were the criteria then these amendments are to stop here in the area of trial with witnesses who are overseeing and even experts who are overseas and cannot be made available to us here, then we would have no hesitation in giving our wholehearted support for this Bill. When however, one looks at the definition of the word proceeding. The real thrust of these amendments is made clear; it covers the whole gamut of criminal matters and I wish to read what the definition of proceeding says, this is at Clause 8(b):

> *Proceeding - includes any proceeding relating to bail, that is our common bail application … a committal proceeding.*

And right after this Bill another Bill dealing with Paper Committal, a committal proceeding where a person previously had been remanded in custody, without any subsequent proceeding with respect to the remand of the person in custody for the same offence. That is what lawyers and magistrates refer to as *further remand* because the prisons cannot keep a remand prisoner more than seven days, he has to be further remanded, even if not before his own magistrate who is hearing the matter but some other magistrate.

The usual thing in Georgetown is for some magistrates to go to the Prison Officers' Club opposite the Georgetown Prison and the prisoners will be brought across and further remanded because the prison will divulge them after seven days. So this is your capital further remand. Then (iv) … *any interlocutory*

proceeding held in connection with any criminal proceeding ... I would like to think that might be a *voir dir* or some matter of that nature. Finally, (v) ... *a trial or a hearing of an appeal,* when you look at this definition section and marry it with Sub-Clause (4) of Clause of 73 (b) which says:

> ... *the courts may allow a person in custody to be produced before the courts by way of Audio Visual Link from the place of detention and such production or appearance of the person in custody before the court as required under any Law ...*

When you marry these two situations the combined effect of the whole gamut of criminal procedures that one could go through on behalf of an accused or a defendant, and I must pause to say that there is no additional definition clause of what a court is for the purposes of these Amendments but when you go to the original Evidence Act it states that the court there would be from a Magistrate's Court right up to the Appellate Court. I am not certain whether it includes the CCJ because it says a court in Guyana and I am not certain about that aspect, whether ... but to say that these procedures are to be carried on with Audio Visual Link in the Magistrate's Court right up to the Appellate Court and the combination ... the combined effect of these causes is that a prisoner can remain locked down in prison from the time that he first refused bail before a Magistrate and thereafter every proceeding involving his quest for freedom right up to the

Court of Appeal level may be done by Audio Visual Link; this is the worst case scenario.

If a prisoner wants, after his first appearance when the charge is read to him, to be confined in the prison and remain there for the entire duration of his time in prison without once coming out ... we might as well throw away the key. Technology he might not see the light of day again until the day of his final release or perhaps even his death because these days so many prisoners are dying at the hand of the prison authorities in the prisons ... I do not know at whose hands.

At every stage of his trail, whether the bail application, *voir dir* trail, he may be seated in a little room somewhere in the Georgetown Prison or some other prison in front of television set observing how his fate is being decided without any human contact. If there is any doubt that these charges are meant to be used perversely by the state one only needs to look again at the Explanatory Memorandum and I quote from paragraphs (3) and (4) of that Memorandum. It says here:

> *As part of the various reformatory measures being taken this Bill proposes provisions for facilitating appearance of detainees for obtaining bail, et cetera from the place of detention before the Courts by Audio Visual Link, the taking of evidence by Courts and making submissions before them by Audio Visual Link from a place in Guyana or outside subject to certain safeguards.*

And it goes on to say:

> *The use of Audio Visual Link technology will definitely reduce the risk of security involving escorting, transporting and holding in custody persons who would otherwise be required to appear in court.*

The persons … I suppose you can define who a person is but the original Evidence Act speaks about accused persons and speaks about witnesses and pure witnesses but these Amendments just speak about persons because in fact they include the accused.

It is evident from reading these paragraphs that the introduction of Audio Visual Link is not merely intended to expedite trails or even protect vulnerable witnesses as the learned Attorney General said but the state appears to want to opt out of its responsibility:

- To escort prisoner to court
- To have proper holding cells for them and
- To have responsible police escorts.

The state is already equipped with the necessary apparatus that is:

- Handcuffs
- Foot Chains *et cetera* for more factious prisoners

Why with all these safeguards should security of just carrying prisoners back and forth from a prison right within the area of court be such a major issue in this legislation and it says here … this is really where the thrust of the legislation is going. What about the flip side of this coin, the right of the prisoner … the prisoners are citizens of Guyana also whose civil rights may be temporarily suspended because they have committed some infraction of the law. Their human rights are never suspended … never; physiologist will tell you that a prisoner locked down twenty-four seven need some sort of release valve:

- A periodic visit to the court;
- A face to face interaction with the magistrate or a judge, however brief with the adjudicator and with relatives standing by.

It is that relief valve for the prisoner, that little bit of contact with the outside world no matter how brief helps to subside the stress of whatever it is that prisoners live by when you lock them down twenty-four-seven and you are not bringing them to court anymore and having them sit in a little room with a television set and not bringing them out.

So the other side of that coin is that if you do that to a prisoner, you make a hardened criminal with no interaction at all but that of his fellow prisoners and when he comes out he is more inclined when finally released to get back outside and for all of the time he is there and if he is a remand prisoner

and he is innocent and he is subjected to these conditions; his stress level and physiological well being seriously infringed.

Mr Speaker, United Kingdom twenty years ago by the Criminal Justice Act of 1988 introduced provisions by taking of evidence through TV link. Section 32 of that Act states that *a person other than the accused* and this is the important distinction with this Act which the UK have brought … working since 1988. A person other than the accused may give evidence through a live TV link and two situations when the witness or that person is outside the UK or if the witness is a child or another circumstance is if the witness has submitted some evidence by video because this is obviously a little bit fancier. If they had evidence by video and then had to be cross-examined he can also do it that way. So this is important destination where the UK Legislation differentiates between the accused and any other witness. These amendments do not … they are cart blanch provisions that permit and facilitate the heavy hand of the states to be brought to bear on whosoever, whenever it chooses.

In neighbouring Trinidad and Tobago evidence in civil matters through Audio Visual Link has been introduced more then three years ago and note what is said in the Explanatory Memorandum, and I consulted a friend from the law school who told me that they are indeed mulling using Audio Visual Link in criminal matters also and with special reference to sensitive witnesses. So they are already in their minds fashioning something that is not what we have that does not

run the whole gamut and only pertains to sensitive witnesses. The fly in the ointment in this particular piece of legislation here before us is that it is trapped; it entraps an accused person. That is the most important aspect and this is what the government knows fully well and this is their intention of bringing and crunching this legislation, these amendments as they are. No one is fooled … if you want to expedite matters on do what you say you want and have cases tried and do not have backlogs in the high court and all that sort of thing then you would agree that is the way to go to help to get foreign business, et cetera.

Hon Priya D Manickchand: ...and this is what the court in Henderson said,

> *... a video link is for all practical purposes very much the same as hearing the evidence in court. I agree that there are technical problems about it and it may be that it is marginally preferably and ... let me read that again; I agree that there are technical problems about it and it may be that it is marginally preferable that the evidence should be heard in court.*

We are in a time, Mr Speaker where presence as the Hon Attorney General was speaking of, as our general rule, our traditional rule that we know about, *presence in open court* takes on new meaning. We are in an era where present can

mean video linking and it does not take away from the rights of any of the parties involved especially an accused.

Mr Speaker, the Hon Attorney General was wondering how it was ... and the court in Henderson went on to say that courts should be *very low;* this was in 1999 when they did not have this piece of legislation that the court was calling for the same amendment that we are trying to put forward today. Courts should be very low so construe the statutory provisions relating to jurisdiction or so to exercise its power of the rules and to preclude the use of technological improvements which the law ought to be minded to accept wherever relevant. This is our neighbour, Jamaica in 1999 calling for the legislation that Guyana is bringing here today and this is a piece of legislation that we ought to be proud of.

This is a piece of legislation that we ought to support whole heartedly because of all that it will give to the people we have sworn to represent – the people of Guyana.

Mr Speaker, that is what we will be able to do. The Hon Attorney General was asking how it will work. While I am not an expert in the area research shows ... and the courts have ruled that, and the way it would work, it has to be that both sides, both parties - the person giving evidence as well as the person making a statement and the person receiving that statement must be able to see each other while that proceeding is going on. So there will have to be camera and screens in both places where this evidence is being received.

Mr Speaker I am not sure and I could not find quickly enough on the website on Google, what is the law that relates to England presently, but I am doubting, with the greatest of respect to the Honourable Member Mrs Riehl, and I am subject to correction, that England has since reformed their law. This is what was said regarding ... puisne crown court gets prison video link. This could be found on the public technology.net site. Puisne … Mr Speaker and I was able to find this. It is located at Russell Street, Middleburg Cleveland PS12AE England and the court's Minister Mr Christopher Leslie was saying that he was pleased that puisne family court will now benefit from the use of prison video link technology. It is one of thirty crown courts that were going to use this. He went on to say; as well as allowing courts to link to this equipment which will allow vulnerable and intimidated witnesses to give evidence from the locations inside and outside the court building that have the relevant technology. It also allows evidence to be presented electronically. This is just one facet of modernization that is taking place within the criminal justice system and it will bring many benefits such as:

- Reduced hearing delays
- Improve security
- Cut cost to the criminal justice system
- Lessen prisoner movements thereby requiring less prison staff time
- Reduced risk of absconding – Skinny

- Reduction in judicial time wasted waiting for remand prisoners to arrive at court
- More effective preliminary hearings as a result of the above.

What this suggests to me Mr Speaker is that clearly the law in England allows for the defendant or the accused to be a person giving evidence or using the video link system because it speaks of ... he thought the Honourable Court Minister that one of the benefits would be reducing the risk of absconding and reducing prisoner movements and reducing the time wasted for prisoners to arrive at court. So clearly somewhere in the UK legislation which I am sure somebody will be able to find before this session is over; the law provides for the defendant being someone or the accused being someone to use the video linking system.

Mr Speaker, this would allow in Guyana if we take it practically this piece of legislation would allow for the same benefits that that Court Minister – Christopher Lee spoke of. It would allow for... and we know only too well which is why I thought this would be a very welcomed piece of legislation, a welcomed amendment.

- We know only too well of the time wasted with courts waiting on prisoners to be brought from prison
- We know only too well the resources that have to be expended from our limited budget in a country that does not have much but is trying its best with what we

have. Of all the resources that have to be expended to transport prisoners only to be remanded again.

- We know only too well of the benefits we can get if we did not have to do that.

How is the prisoner, how is the person's right interfered with, Mr Speaker?

One of the purposes of the hearing ... I take objection and I am a little puzzled and worried that the Honourable Member Mrs Riehl, the greatest of respect to her because I do believe that she usually says things that she genuinely believes, but I do believe that my friend is misguided here. The purpose of a court appearance is to afford the person appearing, the accused or the defendant, an opportunity to be heard.

- It is not to allow him to see daylight
- It is not to allow him a break

If that argument is to be used that a person should not to be left in prison or should have to come out every now and then because the psychologist says so then we would never be able to sentence people to prison for life or for long periods.

So Mr Speaker, bringing a prisoner to court for a hearing cannot be seen as a break for that prisoner. It is and the only reason is to afford that person his/her constitutional right to a hearing before a court. That hearing can be had if the person does the video linking and the court system has the video linking that we are promulgating in this legislation.

Mr Speaker, let us not forget... and we must at some point trust the court. Let us not forget that this ... the court has discretion, the court must exercise its discretion under this piece of legislation as to whether the circumstances warrant video linking and whether there will be any unfairness caused to any of the parties involved in the matter. So it would be for the court to say whether or not this would cause any undue hardship or breach of an accused constitutional right. The worst case scenario that Mrs Riehl just spoke of is just that worst case, it is being a little paranoid and we can take care of that by applying to our constitutional court if any particular court seeks to breach such a constitutional right.

That is why I do not believe that the only argument which Mrs Riehl put forward being that prisoners need a break so that they should be able to come out and not use this system is one that should allow us to deny ourselves the benefit of this piece of legislation. We would be really doing ourselves a disservice if we did not introduce this into our lives and into the lives of our people.

Mr Speaker, I cannot support the amendment of the Honourable Member Mrs Riehl. I have had time unlike what the Hon Attorney General said simply because there were two speakers that came before me to read that amendment. The amendment seeks to allow us not to address the other issues that the Honourable Member Mrs Riehl made, but the amendment seeks to limit the legislation to allow for video

linking only if a witness is outside of Guyana. *[Interruption: "Like in the Jamaica case"]*

Mr Speaker, Jamaica has since moved forward ... this would not serve our people, this would not serve our children, this would not serve the witnesses who are so often intimidated by the very court surrounding.

During *Stamp It Out* consultations Mr Speaker which were consultations that sought ... a document in which proposals were made to strengthen protection against sexual violence and reform the law on sexual offences ... This was a proposal that we have special sex offences courts that will have special features like video linking and I do not recall one in any of those sixty consultations, in any of the five thousand persons that attended those consultations, that any person that attended did not want this. Particularly Mr Speaker this resonated with the school children, the young people, the future, Guyana's tomorrow. This resonated very well with them and they wanted this particularly because we know only too well, those of us who practice we know only too well of the child witness who would recall everything; graphic details in your chambers from colour to texture, to taste, to music that was playing in the background and would walk off into the court room and clam up, be unable to say anything because of the surroundings of the court room which sometimes are unfriendly although practitioners may be accustomed to it. Because of the presence of the accused person who performed this horrific act on that child. Mr

Speaker, if we go with the Honourable Member Mrs Riehl amendment which is proposed here what we would be doing is:

- Denying those children
- Denying those women
- Denying those vulnerable witnesses who are intimidated by the court and the matters that go on in the court the opportunity to get justice
- We would be sounding out the voices, we would be crushing the voices of all those persons across the ten regions of Guyana who said they wanted this in the legislation and we must not do that here today Mr Speaker.
- We must support this legislation wholeheartedly so that justice will be done between the parties.

Mr Speaker, I ask that we remember that at the end what this legislation does is it gives the court the opportunity; it gives the court the window to use this kind of evidence. A court would still have to exercise its discretion as to whether in the application that the Honourable Attorney General spoke of if that application has sufficient reason for the use and exercise of that discretion in the favour of using the video linking evidence.

Mrs Riehl also mentioned that she did not understand why we would want to do away with the ID parade in the way that we know it now and move to video linking. I can give a very

simple reason; we live in the same country. You walk into a place with an ID parade and the person sees who is coming to ID them and that becomes dangerous and risky to that person who is doing the identification. If the person is held in a room which is perhaps what the argument will be that person has friends and family downstairs. The video link ... *[Interruption: "No, you do not see the person identifying you, Mr Norton, so that is why it is not dangerous. You need to read the law. That is what is allowed now for you not to be able to ... that is what has been allowed in our law for many centuries."]*

- This a piece of legislation that is timely;
- It is a piece of legislation that is needed;
- It is a piece of legislation that Guyana has called for;

I support it fully and I commend these amendments to this Honourable House. I thank you. *[Applause]*

The Speaker: Thank you Honourable Member;

Honourable Member Mr Khemraj Ramjattan

Mr Khemraj Ramjattan: I just want to indicate up front that in view of the EXPLANATORY NOTE having what it says and in view of what was just stated by Ms Priya Manickchand who by the way had a stint in my chambers that is why I am surprised rather that she said what she did.

987 to render the continuance of that proceeding in his presence impracticable.

Presence obviously means he has to be in court and that is what our interpretation of this Constitution must mean. From time immemorial accused persons ... *[Interruption: 'We know of that']*

Very many times a preliminary inquiry cannot go on if indeed the accused is not present. Every preliminary inquiry, every trial the accused must be present and that constitutional provision is also supported by the other one that indicates ...

> *The accused person shall be committed to defend himself before the court.*

A person or by a legal representative of his choice; do you know what we see here Mr Speaker?

You will have the prisoner and the accused in prison and his lawyer will be in court and when you want the lawyer now to get a piece of information from the accused he might have to run to Camp Street and then come back to cross examine. It is ridiculous and we have here now coming to state that look; this thing is in accordance with the legal architecture, our supreme law which gives us certain rights – accused next to their lawyers and doing their cross examination. Now we might have senior council, junior council having to be a mile away because you cannot transport them to Berbice from Camp Street you will now have a video link with the person

inside there watching the proceedings going on and not being able to facilitate his defense council to cross-examine witness. What is that? Mr Speaker, I have indicated in the Court of Appeal Amendment Bill that has now gone to a Select Committee that what we are doing is a basic ad hockery. As a few they have just come up with a piece of legislation not in any way dealing... *[Interruption: "Yes that is what it is called."]* They just feel that because ... oh this is the problem, we will solve this problem by putting a Bill here in this Parliament and we are going to deal with that issue.

That is not how you deal with the criminal justice process. The criminal justice process has inherent rights about it because remember as I indicated the State is so powerful and the individual so powerless that that balance has to be drawn and the Constitution gives you all these rights. You have to be present in court either in person or by legal representative. Now they want you now to be outside of court. How are you going to... prosecution now brings up a brand new witness that the lawyer does not know about. How then will the lawyer communicate with the accused person one hundred miles away when he will need some information to do cross examination? It would obviously mean that that facility... by the way the Constitution says things about facility. What does it say?

> *It shall be the duty of the court to ascertain the truth and every person who is charged with a criminal offence shall be afforded all such facilities to examine*

> *in person or by his legal representative, the witness called for the prosecution.*

How are you going to have that facility if you are in the lock up and your lawyer is in court? That is physical distance apart. I am very disappointed her, very disappointed. I just want to read it back.

> *...and except with his consent the trial shall not take place in his absence unless he so conducts himself in a manner that his presence in court will be impracticable.*

Like if he is cussing up the judge, like if he is taking pens and paper and is pelting the judge well then you could remove him and put a little video camera there and deal with him. That is what you can do, but you cannot as I understand to save transportation of the prisoner; to save the facility of him talking to his lawyer in a court of law and especially when being an accused he has to be in the court. This was obviously over sighted because those are the actual facilities and rights granted to an accused person. Now to just merely take it away with a piece of legislation... If you want to take that right away then come with a Constitutional amendment not a statutory instrument or a Bill of this nature. This Article 144 has a special entrenched set of provisions governing it, you cannot change it by a simple majority here and you cannot it will be held unconstitutional. This is something that is from time immemorial. What my colleague has indicated is quoting from England;

- England has a Parliament which is supreme. Our Constitution, however, is supreme.
- England can make a man, the Parliament name it a woman.
- England can take away a law that was made yesterday and...
- England has that supremacy of its Parliament, but any law that is inconsistent with our Constitution is void to the extent of that inconsistency.

When you are reading the Constitution and it is saying that the man must be in court unless his behaviour so makes him not to be in court. How are you just going to come here with a piece of legislation and talk about what happens in England?

This is the problem that we are having; it is not with a maturity that they come here looking at all the aspects, repercussions and implications. They just come here because ... it is probably giving the motive of it, this fella Skinny. So we will take care of Skinny now so we leave him there and all the other accused now will be left here. Not because one person has done a mischief that you are now going to envelop the entire legal process or the criminal justice process with something that was trailing in this kind of way. That is not supposed to be the manner in which a Government ought to bring Bills here. It is quite clear. Apart from that this makes it wholly unconstitutional if indeed we are going to have accused stay in the lock ups and not be in the court.

I also have a couple of other criticisms because I want to make this quite clear. Like in the classic case that Ms Manickchand gave of where an old witness in an overseas country can testify to the truth; you need the visual connection it can happen. That is quite clear, technology must be utilised so that the truth in a court of law could emerge. That is quite clear, but not when you are going to whittle down and dilute rights of individuals and deny them the facilities that they will have with their lawyer next to them in a court of law. No! So do not get the impression that they will ask for change on whose behalf I speak here. It is indicating that we do not like the technological developments that must accompany the law obviously it must.

What we have here is not a very clinical pointed approach towards getting to the effects of the system so that we could remedy with the technology. What we have is a general sweep, sweeping everything down including the human rights of abused persons including delivery in respect of diluting the Constitution.

We have to understand that in that context then that is what our criticism is. I want to say it must be very limited, this use of visual technology and the limitations of it must be very direct and specific. It is not so in this because we do have what is called... and there are some confusing passages.

I probably am misinterpreting it, but the Attorney General could easily clear it up for me because at (73(a(i)) the very first section it says this proceeding whether civil or criminal

you could use audio visual links, but in the next... or in the same paragraph I think later down it describes proceedings to include only what I see as aspects of criminal trials. I am wondering why we do not include proceedings to mean all of that, but it is not limited to that. Proceedings include any proceeding relating to:

- Bail
- A committal proceeding
- A trial or
- A hearing on appeal.

Does that mean any trial? Well it is rather... because the entire set of Clauses are talking about criminal trials and I rather suspected... if you clear it in that sense and we are stating here because what we say here could be used to interpret it in the court of law well clear. *[Interruption: "... because you are talking about bail, committal proceedings and criminal proceedings I was thinking that it might very well ...because if you want to thrall you can say civil and criminal trials and or hearing an appeal and you can clarify it for me. Thank you very much."]*

Now the other aspect is the watering down of this... what we call ID parade. I had prosecuted for some years for the DPP chambers when I first came out of the law school and I used to remember that in a valid, as we call it. Mr Bernard De Santos used to give us big time trouble with this Identification Parade ... you only hold three persons and then the accused

ıd then you put them there. They say no, wait, you have to ¸et at least eight to twelve persons. Then is when it has to wait because you have a lot more people who resemble the person rather than three and then hit the floor. We used to have tremendous problems with that and I agreed because when you have somebody to test the verasity of a witness that has to now identify an accused, you only put two persons there he could very well identify. Now what we have here is just three persons you can have. I am wondering now if that is not diluting the weight that you can have from a certain witness who is to identify the suspect rather than the twelve and the ten that are put in this line up. It is obviously ... why only three? It is my proposition here that that is obviously diluting it. This is diluting the test, it is lots more than a number that we should have there so that the person who now on this video or visual mechanism has to make the selection will have to do so. I am urging however that the police in the enforcement sections ought to not rely heavily on this kind of thing, but with twelve persons there and generally it should be in real life because this is going to create a lot more mistaken identities and probably wrongful convictions.

I wish also to state the final concern and that has to do with the general aspect of ... are we economically or financially capable? We love to talk big with the technology and all of that, but where will we put the first court? We hardly have court buildings much less we want to put up now audio-visual links. I do not understand, you go to some courts, they do not have the necessities for a magistrate to write on, they do not

have proper fans for them and they want to put up video link in some of these courts now. Are we prepared because technologically as you advance you must have what is called the infrastructure or the capacity of infrastructure to go with it? Which court are we going to have here? *[Interruption: 'Gail seems to know the court.']* Are we going to have ... what is it? Magistrate Court One? The fans do not work there; the electricity wiring is falling apart, but we are going to put up audio-visual link.

I think we are so ill-prepared, but it is just because we want to show off a little we are going to go; yes we have video link mechanism. This is wholly outrageous; we support technology, not in this case where it is going to be unconstitutional and where... We are trying now to tell the European Union we do not have money; we want more development here, but we are going to go into video link up. That is all I have to say Mr Speaker. *[Applause]*

The Speaker: Thank you Honourable Member

Hon Member Clement Rohee ...

Hon Clement J Rohee: Mr Speaker, both of the persons who have spoken before me are legal luminaries in their own right beginning with the Attorney General who I think is silk and the other aspirant to silk. I believe that the basis that was laid by the distinguished Attorney General in introducing this

piece of legislation was well done and I congratulate him and his department, the drafting persons who are responsible for making this possible. ... *[Applause]* I am a little disappointed about the levels of contributions by the opposition benches. I will leave the distinguished Attorney General to put the cream on the cake so to speak in this debate.

Mr Speaker, the Attorney General used a word which I believe indeed is a reflection of the step which the administration is taking by virtue of this piece of legislation which I support very much which is innovative. This is indeed an innovative piece of legislation and I doubt whether any opposition MP in the soul of their conscious would be opposed to innovative steps, innovative measures being introduced in various endeavours of Government administration.

The question I would like to ask Mr Speaker in a kind of a rhetorical way is whether this legislation will enhance fair hearing within a reasonable time. My answer to that would be yes, it would contribute to that.

Whether this piece of legislation would assist and contribute, coincide with the interest of justice and reasonable and practicable in the Guyanese circumstances because we always have to look at legislation in the context of our circumstances. I think this is what has been missed in this debate. This is what has been missed, the Hon Member Manickchand sought to bring that out.

I would like to expand somewhat on it because I believe that having listened to the Honourable Member Riehl and other members on the opposition benches; they put a tremendous amount of emphasis not only on the criminal justice system, but on the prison and the prisoners who they claim would be deprived of what a court has deprived them of which is their freedom which is the fundamental depravation of a person who would have been charged and remanded to prison. *[Interruption: "They are no guilty as yet." "I know they are not guilty as yet, but I said remanded to prison; charged and remanded."]* The court is the fundamental institution that deprives you of that freedom. When you look at the criminal justice system in our country;

- the location of the courts;
- the frequency with which courts would meet, for example, in the interior of our country;
- the frequency with which magistrates would visit interior courts.
- the logistical difficulties that are connected with the transporting of prisoners let us say from the Mazaruni prison or from the New Amsterdam, Timehri or Lugisnan. When from time to time you would read in the newspapers that a prisoner has escaped either en route to court or en route back to the prison. *[Interruption: "Carelessness is what we might say, but that carelessness ... whether it is carelessness or*

whatever Mr Speaker we have to try to overcome the carelessness of the persons who are involved in the transporting of the prisoners"]

We have to try to overcome the difficulties we are having in respect to the means and the security of the transportation. If one of the ways we can do them is by introducing technology then let us do that. I have always said that the weakest factor within the security system is the human factor. This is the weakest factor because irrespective of many of the measures that you might put in place from a technological perspective if someone wants to make that technology not work it will be a person who will have to do that. The technology on its own will not fail. Mr Speaker, I was very against the support when I heard the Honourable Member Clarissa Riehl say that everyday prisoners are dying at the hands of the prison service. I wonder what the evidence is. Where is the evidence that everyday... I want to emphasise this for the benefit of the media who are here. Every day that is what the member said; every day at the hands of the Guyana Prison Service members are dying.

Mr Speaker, I want to submit that this is a gross misrepresentation of reality and it is certainly not the case. I think at some point in time the Honourable Member may wish to bring whatever statistics she has to prove that that is indeed so.

Mr Speaker, the Bill that is before us is addressing a number of deficiencies in the criminal justice system. If there are

deficiencies in the criminal justice system we have to find ways to address those deficiencies. If one of the ways in addressing the deficiency is by introducing the technological means to do so then I believe Mr Speaker this is something that we ought to support. I think the argument has been made and I would not spend too much time on this, as in many other jurisdictions this proceeding has been introduced. I want to... I also did some surfing of the internet and I found some very interesting information from the South African Law Commission. The South African Law Commission was given the task to evaluate and make recommendations with respect to the right of the accused to be present in court, the right to a public trial and also to examine the introduction of video conferencing. After lengthy discussions the South African Law Commission in their recommendations had this to say; this is in answer to what Mr Ramjattan and Honourable Member Riehl raised.

In its discussion on the document the Commission recommended that the Criminal Procedure Act 51of 1977 be amended to allow for the postponement of criminal cases against an accused person who is in custody awaiting trial can take place via the use of audio visual link and without the need for the prisoner to be physically present in court. The proposal did not affect the accused first appearance. The accused would still have to appear physically in court within forty-eight hours of his/her arrest. The postponements which would be affected by the proposal relate to postponements after a first appearance holding. It was further recommended

that the provisions be wide enough to include an application for bail while it should not include the actual hearing of evidence as part of a bail application.

So Mr Speaker, when the Honourable Member said that this proceeding by definition has a wide sweep and includes proceedings in relation to bail, a committal proceeding particularly … already in other jurisdictions these provisions are made for these proceedings to take place as we are seeking to do vis-à-vis our legislation.

I certainly do not support the view that audio visual video link contributes to further locking down of prisoners or a prisoner and denying that prisoner some constitutional right to be in and out of a prison environment. Mr Speaker, Section 73 (a)(i) of the Bill and I think this is important to emphasize this and I want to read this.

> *Not withstanding anything in this Act the court may of its own Motion or on the application of any party to any proceeding whether civil or criminal order that oral evidence be taken from or submission be made by a person by audio video link at a place outside the court room where the court is sitting.*

So this is not some whimsical decision that is being made by someone to deprive any prisoner of their right to appear in court. It is the court in its own deliberate judgement or any party to the proceeding that makes that decision. *[Interruption: "The DPP." "I am not so sure it is only the*

DPP because you have the accused and you have the defense in as part to the proceedings."]

So Mr Speaker, the fact of the matter is that the legislation makes provision for any party to any of the proceedings whether civil or criminal to on behalf of the court or together with the court order that oral evidence be taken. So when I hear arguments Mr Speaker that this legislation is seeking to deprive prisoners of their rights to sit with their Attorneys-At-Law in the court, the fact of the matter is that it is the court that will make this determination and any party to the proceedings will be part of that decision.

Mr Speaker, we heard that this legislation is repressive, but you know what tickled my imagination is you know whenever we on this side of the House bring a piece of legislation that we consider to be progressive we hear on the other side that it is repressive.

When we bring a piece of legislation and we say that it is forward looking the others on that side of the House say that it is backward looking. I wonder why these constant knee jerk responses to these legislations. Is it a mind set to simply sit... whenever we say something is progressive you say it is repressive.

When we say something is forward looking you say it is backward looking. Mr Speaker it seems as though there is some... for want of a better word, intention, there seems to be

some intention to keep Guyana in some type of Jurassic Park where for example;

- The introduction of innovation;
- The introduction of technology;
- The introduction of modern means of communication

should not happen here. I have seen and I have been on delegations with person when they visit these sites where such innovative steps have been introduced, do you know what they ask Mr Speaker? Why is it we cannot do like this in Guyana and now we are doing it in Guyana and they are opposing it. This is the type of mentality that we are constantly confronted, opposition for the sake of opposition and not recognizing something on the basis of its own objective reality and on the basis of the consistency with our national conditions here in Guyana.
Mr Speaker, Mr Ramjattan said that this Bill is unconstitutional. I have sat several times in this Honourable House and heard this accusation made almost ad nausium that we have brought many Bills in this House that are unconstitutional. I say Mr Speaker, if these Bills are unconstitutional take them to the court maybe you need a video link for them to be heard. Maybe they would have been heard if there was a video link, but we often hear this accusation. I am bewildered, am I to understand from those who are claiming that this is an unconstitutional Bill that the Attorney General, a distinguished Attorney-At-Law and the Chief Parliamentary Council have consciously... listen to this,

listen to the conspiracy; the Attorney General and the Chief qParliamentary Council have sat in their chambers in Carmichael Street and created an unconstitutional piece of legislation, brought it to this Honourable House and seek to have it passed. Is that what I am hearing? Oh my, Mr Speaker, how disappointing!

Mr Speaker, I want to support this Bill and I do so because as Minister of Home Affairs with oversight of the prisons and it is not true to say and I ask for the evidence once again. It is not true to say that prisoners in this country do not enjoy their basic fundamental rights whatever they may have under the prison system ... I know in the final analysis when this piece of legislation is implemented it will further lead:

- To the enhancement;
- To the modernisation of the criminal justice system; and
- To the justice improvement system in this country

Thank you very much.

The Speaker: Thank you Honourable Member

We can take the suspension now Honourable Members

16:05H - SUSPENSION OF SITTING

17:10H - RESUMPTION OF SITTING

The Speaker: Honourable Member Mrs Debbie Backer ...

Mrs Deborah J Backer: Thank you very much, Mr Speaker.

Mr Speaker, much has been said about this Bill which I entitled the Audiovisual Links Bill. Before I spend a few minutes on this Bill or what is left of it ... It is a fact that we have before us this afternoon three Bills, the Audiovisual Links Bill, a Bill to amend the Procedure for Preliminary Enquiries and a Bill to bring into law what is done to an extent informally - Plea Bargaining and Plea Agreements.

Sir the hallmark of this Government comes out in the way these Bills have been dealt with. These three Bills will have a direct and deep impact not only on citizens, but also on the legal profession, and on other groups in our society. And not once ... or even if it entered their minds, it left with the same haste that it went in ... Did it strike this Government that *perhaps we should have some consultation with the players. Let us sit the Magistrates down, the Judges together* with *members of the practicing Bar and the Government and look at these things, get suggestions from each other, learn from each other and perhaps bring to the House three Bills that would stand the test of scrutiny much easier,* because these bills would have been bought into at the initial stages, where buy-in must occur for them to be meaningful.

This Government likes to talk about consultations, and usually these consultations occur when there is a crisis like when we looked at the EPA, so we rushed to consultations ...

I see out of the side of my eye Minister Manickchand about to speak ... *[Interruption].* And that is true, I don't want to stamp out her *Stamp It Out* consultations ... But Sir, you know what ... consultation is not only consultation when it is under the glare of the media, and you have the photo opportunities ... Minister Manickchand meets this group, and this nice picture, meeting this group. Consultation ... and I am saying was good, but I am saying that consultations do not always have to be on that grandiose scale; it could be done quietly, and once it is genuine, the results may be just as effective as a countrywide consultation.

So I want to start with that backdrop, if you will Sir, that once again, the Government has missed a glorious opportunity to consult with the relevant stakeholders in Bills that would affect their everyday practice, the everyday lives and freedoms of the citizens of Guyana. So once again, the Government has squandered an opportunity.

Sir, you know, Sir, I had hoped this two-month recess would have removed the need to see some people. Sir, as I am on that, let me share ... let me say this very frankly. During the recess, some Members on the other side of the House including myself had a discussion. We said, you know, if this audiovisual link was to kick in in Parliament, there would be some MPs we would not need to see, Sir. Could you imagine how happy some of us would be? And Sir, I suspect, because of how your chair is positioned, you would benefit even more

than some of us, who can ignore certain people. But, Sir, I say no more.

Sir, Minister Rohee always speaks about conspiracy theory and all of that. But you know, my grandmother always said to me, if something looks like a duck, it walks like a duck, it swims like a duck, you can be quite sure it is a duck. And this is what this Audio Links thing is about. What Sir, is the essence of this Bill? I asked the HonourableAttorney General ... You know, the Hon Attorney General, it is not easy to be vexed with him, because he takes the easy path. He just speaks about the sections that he thinks should be there, and those sections that he thinks should not be there, he pretends they are not there. And I admire him for that. Because when he picked up this Bill, if you were not here, you would get the impression that all this Bill dealt with was criminal trials before a jury. That was all he spoke about ... If it was confined to that we may have been moved to think about supporting it. Mr Ramjattan, of course, took the other side. He revealed all the flaws of this Bill. Mrs Riehl, revealed the flaws but because of her kind nature she tried to give some support to the Government.

But Sir, I thought ... You know Sir, when I do research, I never only look at a Bill, I always look ... I never only look at an Act, I find a Bill, in fact, more useful, because there is an explanatory memorandum. And when I read this Bill, and then I read the explanatory memo, which is the order I usually do, I thought that it was a mistake, and this explanatory memo

came under the wrong bill. Because when one looks at the explanatory memo, it has little relationship to the content of this Bill. How, by all that we hold dear, Sir, can the use of audiovisual technology in the way we have heard it, enhance … hear what it says, this is Paragraph 2: *…hence it has become necessary to simplify the laws of evidence.* Well, I don't know how hearing it by visual link rather than in person will simplify the laws of evidence and procedure, but they say, *and to introduce available modern techniques in court proceedings.*

Well, up to now all the Government speakers and the AG are going to reply … the three of them have not told us if this modern technique is available. They have not told us how many audiovisual links they intend to bring in; how they are obtaining the money to get it in; how many they will put in the Georgetown prison, in the New Amsterdam prison, in Mazaruni; how many of the thirty something-odd Magistrate Courts will be equipped with it. They have not even given us a unit cost. But they said to us very glibly, Sir that available modern techniques, so that they can reduce delay at court, *ensure more efficient use of manpower, court time, lawyers' time*, and this is the part that I like … *and make available less expensive and speedy justice to the common man.* How is video audio link going to make a trial less expensive to the common man? And then it goes on; of course we heard about escorting, transporting and custody and all of that.

So Sir, when one looks at this Bill in isolation ... and I agree completely with Mr Ramjattan, we are talking about bringing in audiovisual links, and the poor Magistrates and Judges don't even have fans in the courts ... When Providence is Sitting, the court has to take a northern shift when the rain is falling. When there is too much sun, the court has to take a western shift, and by that I mean move the furniture, lest you think it is some technological thing I am speaking about.

The Magistrate is writing by hand, the Magistrate is writing by hand, not even printing, the Judges ... *[Interruption]*; well, that is true, but that is almost a *Roheean* statement ... I apologize ... the Magistrates write, the Judges have to write. When you are doing an indictable matter that is being taken summarily by virtue of the AJA, and Members over there who are practicing lawyers will know, you are served with statements, Sir, the statements are handwritten, and then they photocopy them to give you. And many times you can't even make out what is there. So before we even deal with the basic things like statements that are legible; with courtrooms where there is electronic taking of notes so the Magistrates and the Judges do not have to handwrite in longhand writing everything ... before we deal with that, we want to deal, this Government wants to deal with audio-visual links. Now we are not saying the technology is bad. In fact, technology is very good. We live in the information age. We had the Stone Age that some people know about ... we had the industrial age. I know about the Stone Age from history, from reading. I don't know why Gail is so sensitive about the Stone Age.

But we live in an information age. So information, we can't shut our minds to it ... nobody is saying that. But Sir, we have to make this audiovisual links Bill a real thing. I am a Magistrate in Mabaruma, or not me, because I want to be defense counsel. Mrs Riehl is the Magistrate in Mabaruma. My prisoner ... and I am using Members from this side; my prisoner Mr Corbin ... *[Interruption]* ... Sir, I used that name so that I could wake up the House. Now that the House is awakened, my prisoner, Mr Rohee, is charged; a bail application is before Magistrate Riehl in Mabaruma. He is in Camp Street ... Where am I the lawyer? Am I in Camp Street, in that room with the closed circuit with him? Or am I before Mrs Riehl?

If I am before Mrs Riehl, and the Prosecutor says something about which I had not been briefed by my client, how do I speak to my client without the court hearing? Where is the Prosecution? Is the Prosecution also with me if I choose to be in the prison? Or is the Prosecution in Mabaruma, talking to the Magistrate, and I in prison, and I can't hear what they are saying. Because an audiovisual link is not going to cover the entire courtroom, you know, Your Worship. It is not covering everything that is going to happen; sorry, Mr Speaker, it is going to cover who is speaking; it will cover who is speaking at the time. So you don't know what is going on there.

We have to look at very practical ways. Will that impact the fairness of the trial of the accused? Will that affect? ... Because Sir, while I agree completely with the Hon Attorney

General about speedy justice, I would like to commit this statement which we also have to balance:

> ... *fairness, and the fundamental rights of an accused person, must never be sacrificed in the quest to improve court efficiency.*

Fairness and fundamental rights of an accused must never be sacrificed. They are not saying there must not be court efficiency, or there must not be improvements, but not at the expense of the fundamental rights.

And when Mr Ramjattan spoke about Article 144 there was not even an acceptance on the Government side that he may have a point. There was this blasé attitude, oh, the Constitution, section in the Constitution. The Constitution binds us, and the point is not a point without merit, and it must be treated with respect, I respectfully say.

But Sir, what is the reason for this Act? If it is to improve the speed of trials, it is not going to work. I am sure it is not going to work. Nobody has told us, as I said, how much coming in, nobody is saying when it will come in. How many closed-circuit TVs are you going to have in the Georgetown prison? Because on any day, in different part of Guyana, you can have twenty, thirty, forty people, who the state may consider dangerous to move, in prison, needing to make bail applications. How many audiovisual links are you going to have there? Are they going to line up? And then they have to get in contact with the Magistrate. It is going to

be a logistical nightmare, and I am confident that the Government has not thought it through, because if they thought it through, they would come, and in real terms, show us how it would work.

But they just come and say yes ... Mr Rohee was almost caught, because he started to quote from the South African recommendations, and he read a little too far, because they had said it could be done with bail applications, but not in trials. But he did not realize that he said *not* ... he read on. But what he did not go on to say was that those recommendations have not been made into law in South Africa; he did not tell us that part. The England Act ... and I would say this, Hon Manickchand's point ... because our position is, let us start with this thing with people out of Guyana. So your 82-year-old lady, Hon Manickchand, will be covered with the proposed Amendment. We are saying, if the witness is out, if the witness ... *[Interruption]* ... I am coming to that ... If the witness is out of Guyana, we are saying, let us use it. The Hon Manickchand made what I considered a valid point about children. In fact, in 1988, when England brought their Act into force, it said the person must be out of England, *except*, and one of the exceptions was if it was a young child, or the nature of the case was such a violent one ... But you see, you all did not come with that.

Look at where England started, they built up a trust, they built up a trust among the citizens of Guyana, and then perhaps they moved in incremental steps. But you don't want to

move in incremental steps. You don't tell us how this thing is going to work. You just come. And when people say things, you say this is a worst-case scenario. But in looking at the Bill, you have to look at it critically, and say how could someone with a mind that is not pure use it? That is a legitimate way to look at a legislation. What is the best that could happen under this legislation? And at the same time, what is the worst that could happen under this legislation?

And this is what we are saying; the legislation is too wide; it does not even seek, as in other Bills recently brought, to tell you, to give you a schedule of offences where we may use it. It is a carte blanche thing for all matters, all matters in the Magistrate's Court and the High Court. It covers bail, it covers this, it covers everything. There are no safeguards. Although the AG, the learned Attorney General spoke about safeguards, in fact the explanatory notes speaks about safeguards:

... necessary safeguards are also being put in place. I am not sure what tense that is, I will have to confer with Mrs Riehl ... *are also being put in place ...*

Is this present? Is it future conditional? I don't know what it is, *so that a fair trial is in no way jeopardized.* So they are saying they will be put in place. You must tell us, if you want us to be on board. Having not consulted anybody, what are these safeguards?

But you come with a Bill, where it gives you the power, … And the point Mrs Riehl made, someone tried to make light of it, about someone being in prison, innocent until he or she is proven guilty, for seven or eight years, and not coming out of the prison. And people are making this glibly, so what, they don't have those rights, what is the big thing about? And that was implied in what Minister Rohee said, that was what was implied, It is important that they must come out, so people could see that they still have two legs … so people could see they still have two eyes. So it is important in the context of Guyana that they come out and be seen. Because when families go to see prisoners how do they feel? Have you ever gone to see a family who is a prisoner? You speak across about three little meshes, you can't even see them. The place is dark. I know, because I go. *[Interruption]* So what, a prison has to be dark? You are so backward. You live in darkness, Sir, with the greatest of respect.

So it is important for the family, and it is important … a hotel? Oh my dear, I am happy that I am in Parliament, Sir. The thing is we cannot make light of that right. That is also a right, to be brought periodically to the court. That is a right. That is a right, and not being brought there does not speed up the trial, because nobody on the other side has said to us, how a prisoner staying in there can speed up … Because what about the lawyers; we now have to go and sit down in the prison to wait. Because I might have a case in a court, at Sparendaam, where I am needed in person, because my person is not a prisoner, my client is not a prisoner; so I may

be needed there physically, but I have another client who is a prisoner, but I have to go to the prison for his bail application. So I am in Sparendaam, and then I have to run … *[Interruption]* … but that is different. In the same court, I have to go two or three places. So logistically, logistically, it is a nightmare, and the overriding thing is, no one has said to us how, or led us in the direction in a tangible way, not in an abstract way: You cannot just say it will save time; how will it save time? How will this thing enhance the fairness of a trial and reduce the time? No one, Sir, has told us that.

Sir, the ID parade. I was a bit disappointed with the Hon Manickchand about the bail, about the ID parade. Right now, it is usual that you have at least eight people on an ID parade. That is the norm. This Act seeks to halve it, by saying … *[Interruption]* … Sir, I keep hearing a little noise over there from … *[Interruption: … Oh dear, oh dear, I grieve for you, Sarah!']* But Sir, when the Act says, *at least three other people*, it seems as if, when the police hold an ID parade and there are four people, you cannot challenge it, because the law would have said they can have four people. If you are saying that they wouldn't do that, why wouldn't they only have four? Well, change it from four, from three and put seven, so it would be seven plus the accused; at least do that, and show you are bona fide. But you flippantly come and say … yes, it says at least … that does not mean they have to do it, but what it means, is that they can do it. And that, quite simply, look at words like *they can*? Why give them that power? Move it to seven, so it will be seven plus the accused.

So Sir, this Bill … If I had to bet, and I know the Gambling Act, the Casino Act, is not fully in place yet … but if I had to bet I would say that somewhere, in addition to the sinister motions moved … and I will get to that as I close … there is some grant waiting to be uplifted and so the Government has decided to go with this thing and so now they bring it in.

They talk about the Heads of Government meeting. When we had the Caricom, we had an Act, a model Act, which we all bought into. If the Heads of Government in April … I have no reason to disbelieve that they agreed on this thing … Why isn't there a model Act, a model Bill, so that all of them having agreed, all the Heads of State, could come together with a Bill that is largely unified and sign it? But Guyana rushes ahead always when it should not, and when it should, it never does. We seem to have things … and that is where the backwardness that Minister Rohee reminded us about comes from.

So Sir, it will not help the administration of justice. And if it does not, one has to ask, why do they want to rush it through? And we have a right to be suspicious. Because you gauge a person based on their track record, and the PPP's track record of contracting the human rights of its citizens is well-known, both in and out of Guyana. That is a fact. So we have a right to be suspicious, and that suspicion has been borne out, when you hear the reasons for this Bill. Because it is not going to do what it says it will do, but what it can do is keep people in prison for the longest while. When Mrs Riehl mentioned

about the prisoners dying every day, or something like that, of course metaphorically speaking, being a woman of the Bible, she is paraphrasing some parables. Yes, but Minister Rohee spoke, about all the prisoners who escaped, but he did not give any statistics about that; and every day hundreds of prisoners are moved around and throughout Guyana, and sometimes for months, none disappear; and in fact, many who disappear or get away are facilitated in their efforts to be released from custody.

So, don't make ... *[Interruption: ... 'Where is your evidence?' "Mr Rohee has my evidence."]* But the reality is, when you look at percentage, people getting out of custody, is not the major issue. I agree it is an issue, but the way to deal with it is not this. The way to deal with it is to have proper escorts. And that happens all over the world. So it's not a big issue. We don't have big criminals. We try to make big criminals out of little criminals, and then we end up with big criminals, and for the same reason, because we keep repressing the human rights of our citizens. And when you do that, you create monsters. And that is what this Government seems to want to do.

So, Sir, Mrs Riehl, at the appropriate time will move an Amendment. I support that Amendment, and if that Amendment is carried along with the Amendment that my colleague has tacitly agreed to amend - that is moving the three-plus, the defendants, up to seven-plus; if they agree to that, we will of course support that also.

Sir, with a child witness, I am saying that if you had a consultation, Madam, then those things would have come up, and in the same way … *[Interruption: ... 'No, no ... ']* … If you had consultations on these Bills … in the same way that England made special provisions for children, or if you want a special category, it could have been done, because you have done it in other Acts where you say that these people here in these schedules … these are the Acts that deal with terrorism, narcotics ... There is a list that Mr Rohee has put out, and other people have put out... so the Government had that option open to them. But no, you don't want that, you come with this carte blanche thing. So if you … I am saying that the child thing may have some merit. Take it away, put your restrictive clauses, so we can see the entire scope, because you see what we are doing, you have given us a pig in a bag, or they want a blank check … that is what you are doing. No, I am not asking for more time. No, no, no, we didn't ask for more time. You were unconstitutionally trying to sit during the recess. But luckily, the Speaker was onto you!

So Sir, in its present form, we cannot support this Bill. It will not do what it sets out to do. We are uncomfortable with how wide sweeping it is and for now, we feel that restricting it to people who are overseas, is a good way to start. Let us work with that, see how it works, and perhaps we can come back, with a restricted Act, with definite offences that this thing will relate to. I thank you, Sir. *[Applause]*

The Speaker: Thank you, Honourable Member.

Hon Attorney General …

Hon Doodnauth Singh: May it please you, Mr Speaker … I recall having a conversation, Sir, with a Ministerial colleague, with respect to a legal matter. And I was told by that colleague, that I was not a philosopher, nor a politician, but I was a mere lawyer. I accepted ...

The Speaker: What side of the aisle was that politician?

Hon Doodnauth Singh: I accept, Sir, that I am a mere lawyer, and with the greatest respect to my learned colleagues who have spoken I find their presentations wholly innocuous in that they did not seek to deal with what this Bill adverts.

Let us look, Sir, at Section 73, because the opening language of 73(a) states ... *notwithstanding anything in this Act the Court may on its own motion, or on an application* ... and there is an insertion after Section 73. 73 speaks of oral evidence, and it says:

> *oral evidence may be taken, set out in a Preliminary Inquiry, out of court, upon affidavit, upon commission, before an officer, and oral evidence taken in court must be taken according to the rules hereinafter contained, relating to the examination of witnesses.*

Thereafter you have the provision in Section 74. *A witness examined in court must first be examined in chief, then cross-examined, and then re-examined.* What the Amendment is

seeking to do, is to provide a mechanism for the taking of evidence, and it is subject to the scrutiny of the court. All the safeguards are in that provision, which makes it mandatory for an application to be made to the court before the process can be put in place. Notwithstanding anything in this Act, the court may … and there is a provision, where *the court, on its own motion, or on the application of any party to any proceedings, whether civil or criminal, order that oral evidence* ... And it is the taking of evidence by audiovisual link … thereafter appears all the safeguards. So that you have to make an application, and satisfy the courts that it is necessary that that evidence must be taken in that way.

I cannot understand this thing about the prisoner being there or not being there, being adverted to in this debate. The rationale is the taking of evidence. It has nothing to do with the prisoner, and it does not violate … This is why in my remarks I made mention of the fact that in some jurisdictions there is a requirement that you must have the Principle of Confrontation; and it is that Principle of Confrontation which can be challenged as being a constitutional entitlement. The prisoner has to be present and confront the witness, and that is why you have that principle of confrontation. We don't have such a principle in our Constitution. What we have is a Fair Hearing. And it is the fair hearing which the court will determine, whether audiovisual evidence should be led.

Mr Speaker I appreciate the point made with respect to the identification parade. If there is a view that it is insufficient

and my learned colleagues are aware of the fact that I have been practicing law for almost 50 years, and during that period of time, several trials and several identification parades have been the subject of challenge by me. It is difficult on occasions to have seven, eight or nine persons to be present at an ID parade. The result is that, the inquiry is delayed; the charge is instituted long after the period that it ought to have been instituted. And therefore, you have a provision, *not less than three persons to be present.* But ultimately, it is an application. What does the provision say?

> *Where a person is arrested on suspicion of a charge of committing an offence, and ... identification by any other individual is considered necessary for the purpose of investigation of such offence, the court, having jurisdiction, may at the request of the officer in charge, direct the person so arrested to be subject, himself, along with, that ...*

So that an application has to be made to the court, to satisfy the court that it is necessary in that investigation, that an ID parade be held with less than seven, eight or nine persons. Ultimately, what other safeguards than the discretion of the court to be exercised ...

Mr Speaker, as I said, Sir, I don't profess to be a politician or a philosopher, only a mere lawyer, but as a lawyer, I find that the arguments which have been advanced, to be totally innocuous and totally irrelevant. In the circumstances, Sir, I

have no alternative but to move that this Bill be read for the second time.

The Speaker: Honourable Members, I have already warned that if you keep beating that piece of wood on the desk, I will remove them. This is my last and final warning.

Honourable Members, the question is that the Bill be read a second time. Those in favour say "Aye", those against say "No". The Ayes have it. Let the Bill be read a second time, please.

Bill read the second time

The Speaker: Honourable Members, the House will now resolve itself into committee to consider the Bill stage by stage.

ASSEMBLY IN COMMITTEE

Are there any other Amendments other than the one proposed by the Honourable Member Mrs Riehl?

Honourable Members, I propose the question that Section 1 stands part of the Bill. Those in favour say "Aye", those against say "No". The Ayes have it.

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

Honourable Member Mrs Riehl, I think your Amendment is in relation to Section 2, and not Section 73 (a). So you propose the Amendment?

Mrs Clarissa S Riehl: Yes Sir, I propose the Amendment in my name.

The Speaker: Is there a seconder?

Mrs Clarissa S Riehl: I second it Sir.

The Speaker: A memo has been circulated with that Amendment?

Honourable Members, the question is that Section 2 be amended by deleting in paragraph (a)(i), the words, *"whether that place be in or not"* and substituting therefor the words *"providing that place be"*.

Those in favour of the Amendment say "Aye", those against say "No".

The Amendment is negatived.

I now put the question that Section 2 as it stands, stands part of the Bill. Those in favour say "Aye", those against say "No".

The Ayes have it. And that's it.

ASSEMBLY RESUMES

Hon Attorney General …

Hon Doodnauth Singh: Mr Speaker, I would like to report that the Bill was considered Clause by Clause, and passed without Amendment. I now request that it be read for the third time.

Question put and agreed to

Bill read the third time and passed as printed

ITEM 2 CONTINUATION OF CONSIDERATION OF THE CRIMINAL LAW PROCEDURES (AMENDMENT) BILL 2008, BILL NO. 20/2008.

A Bill intituled AN ACT to provide for the establishment of a system of plea bargaining and plea agreements in criminal procedure and for matters connected therewith.

The Speaker: Thank you, Honourable Members. Honourable Members, we will now proceed with the second Reading of the Criminal Law Procedures (Amendment) Bill 2008, Bill No. 20/2008, published on the 17 August 2008.

Hon Minister of Home Affairs …

Hon Clement J Rohee: Mr Speaker, this Bill follows a similar spirit of its predecessor, which we just passed in this HonourableHouse. It is consistent with the efforts to modernize and to initiate innovative proceedings in the conduct of, in this case, a Preliminary Inquiry. In many countries, in many jurisdictions around the world, Mr Speaker, Paper Committals have become a hallmark of Preliminary Inquiry proceedings. The reason for this is because, of what I have read, that there is a need to speed up proceedings at preliminary inquiries in order to ensure that the accused is, the matter or the trial of the accused, is not unnecessarily held up, and that a decision be made expeditiously whether he should be committed to stand trial.

When you look at this Bill, Mr Speaker, I think one can easily discern a good sense of balance between the rights of the accused and the authority of the DPP, because, in these proceedings, which are somewhat different from what obtains at this point in time, the prosecution has a major say. But on the other hand, in order to strike a balance between the role of the prosecution and the rights of the accused, the Bill is so structured to ensure that these interests are quite well balanced.

The holding of a Preliminary Inquiry where the Magistrate determines in the absence of the witness but with the prosecution and the accused …

We have, as I would want to mention in passing, Mr Speaker, an Amendment to this Bill which we will consider at the

appropriate stage, inserting the word *"accused"* in order, as I said, to strike that balance between the role of the Prosecutor and the rights of the accused. So that the submission of the statements, documents, writings and other articles tendered in the court, in the absence of witnesses is a matter which the Magistrate … and the Bill is aimed at vesting that responsibility in the Magistrate to determine whether the statements, documents, writings and other articles should be tendered in court in the absence of the witnesses …

The Bill, Mr Speaker, in the context of the Paper Committal proceedings, also gives power to the Magistrate to commit a person for trial on any indictable offense notwithstanding what, or notwithstanding any written law, but subject to Section 9 of the Criminal Law Procedures Act, which sets out the proceedings preliminary to trial, that is once the Magistrate has considered the statements, documents, and other articles admitted as evidence on the part of the Prosecutor. Clause 71(a)(iii), Mr Speaker, sets out the conditionality under which the Magistrate shall not commit an accused person for trial, in this instance where he is not represented by an Attorney-At-Law. And here again, *en passant,* Mr Speaker, an Amendment has been circulated to address a *lacuna* that appeared in this particular Clause, and which we felt necessary to correct.

Mr Speaker, the Bill also gives the Magistrate, or I should say, states the conditions under which the Magistrate may discharge the accused, and make void any recognizance taken

in respect of the charge against him. And that is clearly set out, Mr Speaker, in Clause 71(a)(iv). Cross-examination of the witness and the circumstances under which this cross-examination by any party in the proceedings is laid out in Clause 71(a)(v) of the Bill. And finally, Mr Speaker, in clause 71(a)(vi) it is to be determined whether the evidence given by the witness shall be considered, whether a *prima facie* case has been made out.

Mr Speaker, when we look at this Bill and the proceedings in respect of Paper Committals, in relation to the Criminal Law Procedure Act, we see that this new proceeding in respect of Paper Committals is consistent with the existing Act. And that is why Clause 71(a)(6) lays down the provision where, in the Principal Act, Sections 60 - 68, and Section 70 and Sections 72-74 , which treats with witnesses and proceedings at Preliminary Inquiries, questions in relation to discharge of power of the Director of Public Prosecutions to remit a case for committal, as the Bill says, shall *mutatis mutandis* apply in relation to the proceedings under this section.

Mr Speaker, Paper Committal proceedings is fast becoming the much frequently used proceeding in the modern court in other jurisdictions. It is only natural that in Guyana as a country that is fast modernizing in many areas of economic and social life the criminal justice system, the architecture of the fight against crime, all these things are going through changes and therefore it is only natural that we cannot stand still. We must recognize that steps have to be taken, lessons

have to be learnt from the experiences in other jurisdictions that paper committal proceedings would not be inconsistent with the existing Criminal Law Procedure Act that we have here in our country. It makes the system more efficient, and as the Bill says, Mr Speaker, the functions of the Court, and I would like to emphasize this, the functions of the Court will be substantially unaltered. So that, if anyone is of the view that Paper Committal proceedings will alter the functions of the Court, the Bill in its present form states that the functions of the court, contrary to what some may think, will be substantially unaltered.

Mr Speaker, as the explanatory memorandum states, written statements would obviate the need for witnesses to attend and recite evidence, and the court's time is saved. I think anyone who would have read the speeches in other jurisdictions on Paper Committals would recognize that this is one of the reasons they adopted Paper Committals as part of their proceedings in the courts, vis-a-vis the Criminal Law Procedures Act.

Mr Speaker, while we speak of Paper Committals, I think it is important to bear in mind that in the Bill, the Magistrates will still have that authority to require any witness to attend court. So it is not a situation where there would be a complete absence of witnesses; and that when the Magistrate would have satisfied himself on this aspect of the case, the Magistrate will determine what action the Court may take. Mr Speaker, every advantage has been designed in this Bill to

apply to both parties,- the prosecution as well as the accused. And therefore, while the prosecution may not have to seek for a particular witness(es) because of the paper committal proceedings, nevertheless, all efforts will have to be made to secure the presence of the or witness(es); and we all know that failure to secure such person(s), perhaps because of death of that individual(s), clears the way for the prosecution to seek to submit statements or writings to the Magistrate in respect of that matter(s) for the Court's consideration.

Mr Speaker, from the limited research that I have made on this matter, and I would like to quote from a publication entitled "Criminal justice in England and the United States" on the question of Paper Committals. This is what it says:

> *The vast majority of committal proceedings nowadays are Paper Committals. In a national study conducted in 1981, it was calculated that 92% of committal proceedings were Paper Committals", Jones, Carling and Venner, 1985. Though this figure apparently decreased to 87% in 1986, (Lord Chancellors's Department 1989), it rose to 93% in 1991 (...93/89).*

Mr Speaker, according to this publication, concerns have been raised about the effectiveness of Paper Committal proceedings as a filter, but a study that was conducted in 1981 found that 88% of full committals, and 99% of Paper Committals, resulted in the defendant being committed to stand trial. So Mr Speaker, we see from experience, that the Paper Committal proceedings, which are aimed at expediting

the proceedings at the Preliminary Inquiry, have had useful experiences; have been proven useful in a number of countries, and I have no doubt, Mr Speaker, that it will also prove useful in our jurisdiction. With those few words, Mr Speaker, I wish to move that the Bill be read a second time.

The Speaker: Honourable Member Mr Williams

Mr Basil Williams: If it pleases you Mr Speaker ... No seasoned practitioner in Guyana would object to the intention which underpins and underlies this Bill. Which lawyer who practices on the East Coast and had to take four to five years to complete a Preliminary Inquiry could argue about the usefulness of such a Bill before this Honourable House? The other situation that is present at preliminary inquiries is that of Shridat Sumner charged for an offence in 2004, and was committed in 2008. That is no guarantee that his deposition would reach the DPP within a year; and after it gets to the DPP, there is no guarantee that he will be ready for trial in the Assizes before another three to four years elapse. That is the situation of the Criminal Justice System in this country.

There are many hapless young men, Quincy Mc Clellman for example, charged for an offence in and around 2004. He would have been 16 years. He was committed this year, 2008, and his trial, we hope, will come soon. The point is that, he would have grown up in prison, even though he had or he has a presumption of innocence in his favor. He will be acquitted, and when he is acquitted, what will society have to say about that? All those years he has spent in that prison

without having a trial within the meaning of Article 144, within a reasonable time. There are scores of other young men in this country who suffered similar fates. I hope that this administration understands the situation and is preparing to deal with these people when they come out of the prison system, because they will come out, and you would not be surprised if they are not conforming to norms of society, having spent all their formative years in our prisons.

So no one who practices law in this country, and criminal law, could properly object to the passage of such a Bill before us. Mr Speaker, the overarching intention of Paper Committals is to reduce time spent by a person charged with a criminal offense, awaiting trial. In addition, it could make the administration of justice more efficient. But in Guyana, as it presently stands, the passage of this Bill really will not impact on the question of delay in trials in our criminal justice system. In other words, I am respectfully submitting that we pass this Bill today, and it merely transfers the problem of delay from the Magistrate's Court level to the High Court.

Because, even now in the High Court, we have two to three Judges attending every criminal Assizes, and they have lists; and no one Judge, completes one-third of the cases on the particular list that they have. No one Sir, .and that is in a situation where they are given a buffer of four to five years; by the Magistrate Court taking four to five years to complete a PI. Now when there is no buffer, these cases now go up to the High Court every day, so what is going to happen in the

High Court, for us to expedite jury trials? It is clear that in Guyana at this time, we lack the capacity, to deal with the additional, extra persons that would now be ready for trial in the Assizes? We have no capacity whatsoever; and I was hoping that the Hon Minister ... Debbie was saying it could have been the Attorney General, but maybe when the Attorney General speaks of this he would say whether they have in the immediate pipelines plans to build capacity in the High Court to take off the additional weight of the cases that will be before Judges of the High Court. I think that, after consultations, unofficially of course, with my colleague Mr De Santos over there, who was a great purveyor in this area of the law, we believe that ten Judges to take off this weight might not even be that adequate. But certainly, we must have a complement of no less than ten Judges in the Criminal Sessions if we are going to carry the burden of persons who are awaiting trial for offenses, indictable offenses, in the High Court. And as I said, we don't have that now.

One might be minded to say, look, wait until capacity is developed, and then pass this Bill. But then to us practicing, we cannot say that. Because for one, one good thing in passing this Bill at this stage will engender, is that it would not allow the Government to persecute and/or oppress persons who don't see eye to eye with them. What I mean by that? If you happen to fall foul of the Government, they would lock you up, whether you deserve to be locked up or not, and then the prosecution delays, you have delays ... in bringing this matter to trial. We are talking about passing a

PI, for example. You go to Court, it is common knowledge that in Guyana, the prosecution and the police believe that once you are charged with murder, they could throw away the key, and you can wait for however long, before they could start to look at your PI. On average, no PI, murder PI, starts before twelve months elapse, none! I am saying this, and I stand to be contradicted.

And in that scenario, you charge a man who you think does not see eye to eye with you, and he could languish in there. Every time the matter is called … prosecution not ready, prosecution not ready, the file with the DPP … the common thing … You go to court for six months, and then they … and after they tell you they are not ready, they then say the file is with the DPP; and that's another six months. So from whatever direction, Mr Speaker, you look at our system, it is putrid, it is putrid, it is …. and it makes a mockery of the presumption of innocence. It makes a mockery of those provisions in Article 144 of our Constitution, and we have to make a valiant effort to change it.

And to me this is just pouring more oil on troubled waters; passing this Bill, to carry up a wave of cases to two or three Judges in the Assizes. *[Interruption]* We don't have? Mr Speaker, it is important in this connection that we have timeframes, we must have timeframes; even if we have Paper Committals, we must have timeframes. What am I saying? We don't want persons to be charged, and then they stress him out in the same way saying they are not ready with the

statements, they are not ready with the statements, they are not ready with the, because you could also continue to oppress people even under a Paper Committal procedure. So we must have a timeframe, if you commit us. Then within a month, those statements, documents and other writings in accordance with the provisions of this Bill must be laid over with the Magistrate not later than one month. Because what could happen here is you have a Paper Committal, you stretch off a man again in the same old fashion, and you defeat the purpose of paper committal. And, as I said, this will still prevent the Government from really oppressing people in this long period of time that they are doing now. Then there must be a timeframe within which the Magistrate must make a determination on the consideration of these documents; a timeframe to get the statements to the Magistrate, and a timeframe within which the Magistrate must determine committal or discharge. In other words, it will make a mockery of the committal system.

What is also missing from the legislation; and I don't think these proposed Amendments can help, What is the procedure, what is the procedure that is contemplated? What does this Magistrate want? When the Magistrate is served a statement, would Defense Counsel be served a statement, or the accused be served a statement at the same time? That is timely.

Secondly, in what manner or form does the Magistrate make this consideration? Does the Magistrate read out the statement in open court, in the presence of the accused and their counsel? Or the Magistrate silently consider these statements, and then tell the accused or the accused's counsel the result of their considerations? And it is very important, because in that kind of system that we have, where the Honourable Member Rohee's legislation really has put members of the bench in a straitjacket or in a box, so to speak, it is important that we spell out these things. It is important that we show them the way home in relation to these matters, and the Bill is silent in this connection; it is silent. What do we do? At what stage, at what stage do we say we want to make submissions? Because if it is a silent consideration and committal, at what stage you know you want to make … you want to indicate to the court you want to make submissions. And in this connection, this is where I think our proposed legislation deviate from what obtains in the United Kingdom. In the United Kingdom, there is a straight paper committal; That is, the statements are laid over.

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The Magistrate considers the statements, writings, documents and those statements of course are laid over in the absence of the witnesses, because the whole thing is to save time. No defense witnesses could be leaned on nor could the defense tender evidence. That makes sense. What is the use you telling me you are saving time, but then the lawyer, could come and say, "I want to cross examine the witness."

And I think we missed the bus in this Bill … we missed the bus. Because what would happen, is that, we are going to get dragged back into this long drawn-out period of time before you complete. And there is no need, as this Amendment is suggesting here, in relation to 71(a)(1), after the word *"Prosecutor"* insert the words *"or the accused"* , that is unnecessary, because Paper Committals do not contemplate input from the side of the accused … in our system of jurisprudence the accused does not have to say anything in their defense. The accused does not have to say anything in his defense. In

fact, in most committals here in Guyana, I don't know, how many lawyers ever put the defendant in the box to give evidence. And therefore we genuinely want, Mr Speaker, to save time. I believe, I believe, we must have straight Paper Committals. We must have straight Paper Committals.

We as lawyers know, we as lawyers know, we would look at statements, and we would know whether it is a *prima facie* case or not. Now this legislation in England has "sufficient", and this legislation that was copied has "sufficient". And now they change to *prima facie.* Why? Because they are caught in the same trap, where they recognize if they put *prima facie,* if the defense now wants to lead evidence and witnesses that you have to go to the other standard of sufficiency, which is over all the evidence in the case. And my respectful submission is that, we must decide what we want. If we are going to follow the whole concept of Paper Committals, then we must apply it; and that is, Paper Committals, on consideration without the defense having to lead witnesses, or to lead evidence. And that is what is a straight paper committal. Yes, because this will speed up the process ... *[Interruption: ... 'Why are you interrupting me?']* You see a lot of confusion with respect to the CPC, I'm not sure if he drafted it, but you see some clear confusion when you look at this legislation. You amend 71 by including 71(a), and you are talking about leading evidence in the absence of a

witness, and you do the paper committal. Yet you retained 71. Yet you retain 71. So what are we to think? Is it that we could chose to go the route of 71, or choose to go the route of 71(a). And therefore, you see *[Interruption]* Don't get confused, this is law. I notice you don't come to CPA seminars, you don't come to any seminar anymore, where I am, because you discovered it is not like Parliament, after I finish speaking then you come after me, then I don't speak to rebut what you are saying. But in the CPA conference, when you realize that you are rebutted, you never came back.

So the point it, ... to speak after me in Parliament, but stay away from me in those forums where I could rebut you.

Now, Mr Speaker, Mr Speaker, it has to be clarified, it must be clarified, why we have retained Section 71 of the Criminal Procedure Act, if we are talking that we are going the way of Paper Committals. Why? Because the provisions is clear in this Bill; in the absence of the witness, you could get evidence, statements, documents or other writings or other things, and you could consider without having to bring the witness to give evidence, and I am happy with that. I am happy with that. The moment we go to a situation where you want to cross examine, and bring witnesses, we gone right back to the three, four, five years. You know why? Because not only the defense has that option, the prosecution is also given that option;

and so if the prosecution wants to harass people, they could still come and ask the Magistrate to allow them to call a witness. Now, why I am saying the whole thing is confusing, when you come to 71(3) dealing with – *prima facie case*, after you allow,... according to this hybrid system we seem to be putting up in this, they are talking now about *prima facie* case. How could you have a prima facie case when the defense leads a witness, and the defense gives evidence? Once the defense leads a defense, once the accused leads a defense, the standard has to be a *sufficiency standard*. And who knows that? You see, a lot of people practicing don't know that.

In a committal proceedings, there are two standards: One, the *prima facie* standard at the close of the prosecution case; and two, the standard of *sufficiency* at the end of the defense case, where the Magistrates is enjoined to look at all; the whole of the evidence,- prosecution and defense. Ss Mr speaker, we have to clearly determine what is it we want: in Paper Committals in order to save time; in order to save time, and in order to engender the wheels of the administration of justice, to get it running smoothly. And in that regard, Mr Speaker, my respectful submission is that we don't need to deal with those Amendments that are proposed.

Paper Committals ... it does not rule out *sub jure* proceedings. And as lawyers, tactically, we might look at the evidence and decide; look, this thing is borderline, but

it doesn't make sense I bringing a new witnesses here under the provisions as proposed, and so let the thing slide through; and know we could confidentially take up at the trial. The only problem we have there is the amount of years under the present system that we would have to wait to get our day in court.

We must have our day in court. Our day in court is imperative in this system of justice that we have. There is no way you could have a criminal trial in Guyana where the accused person is not supposed to be in the courtroom - a trial. The last Bill could only be speaking to witnesses being out of the courtroom. And we all know as practitioners only if the defendant makes it hard for the court to convene … if the defendant goes out of the courtroom. In that connection we would like to say that we would need to fine-tune this legislation so that we could be clear that we are going to a straight paper committal and we are not endangering the whole process, even though it comes under the guise of Paper Committals, where you could reopen a case, call witnesses and try to cross-examine them … And that, you know, could take another three or four years, as happens now.

So Mr Speaker, if those considerations are taken on board, the People's National Congress Reform would have no difficulty whatsoever in supporting this Bill. We recognize that the intention of the Bill is laudable, but the

mechanics ... we need to fine-tune the machinery. And we must be very clear, because in England, you have considerations ... and you have no consideration. Both situations ... clear committals, just by simply reading the documents, the statements, etc. that are before the court. With those few words Mr Speaker, I rest my case.

The Speaker: Thank you, Honourable Member.

Hon Attorney General ...

I did not call you, Honourable Member, I called the Attorney General.

Mr Khemraj Ramjattan: May it please you, Mr Speaker ... I rise to speak ...

The Speaker: I did not invite you to speak, Honourable Member. I invited the Hon Attorney General. He must decline. Are you declining, Hon Member?

The Hon Doodnauth Singh: Yes.

The Speaker: Okay.

Honourable Member Mr Khemraj Ramjattan ...

Mr Khemraj Ramjattan: Thank you, Mr Speaker. Mr Speaker, let me indicate again, from what I see here in this Bill, the big criticism that I have of it, and I speak here on behalf of the AFC, is that it has largely been, and

by the way, Mr Clement Rohee, I support it ... it has largely been ten years too late. I remember the many Senior Counsels that constituted themselves into a team that went to see Mr Jagdeo, His Excellency, some ten years ago, and indicated that Paper Committals ought to be the in-thing for purposes of ensuring expeditious Preliminary Inquires. Some ten years ago, the senior counsels all did a very lengthy document on judicial reform. At that time, I think I was Vice President of the Bar Association, and was very instrumental in getting it to His Excellency. And there it rested, although it was just a two-page document; and so many other accused persons have suffered the fate of having to wait very elongated periods for a Preliminary Inquiry to be completed. Some Preliminary Inquiries ... Had they been on Paper Committals they would have been quite clearly discharged, because of a lack of the evidence, or lack of sufficiency of evidence; but very many of them, as Basil Williams indicated, staying the course of three, four years waiting for witnesses to come, and then when all the witnesses have been led, the evidence not reaching that threshold ...

So indeed, the Alliance for Change supports this Bill, and supports it in its entirety. We feel that there, however, must be a response to that very important comment that Mr Williams made, that it is going to create what is called a bottleneck. We are now going to have a number of preliminary inquiries being completed quickly, but not

having the Judges of the High Court prepared to do the trials. I have given very many speeches in here, about what it is that is going to enhance the judicial process, especially the criminal jurisprudence; and it has to do with the Police Force; the Police Force, the Prosecutorial team and our prison system. This thing, this Bill, sorry, is indicative of the fact that we have to have professional policemen now; a category that is going to ensure that the statements and exhibits are typed out very quickly and sent to the Magistrate, and by virtue of that time line, too, it should also be served on the defense counsel; because what a committal proceeding is all about, is to let the accused know the case that is against him. That is what is the purpose. So this is not a case where only the Magistrate will see the statements and the exhibits and whatever other items The defense counsel must be able to see them, and then is when he is going to make his submission whether there is a *prima facie* case or not. But it is this bottleneck that will be created. On that score, I want to urge the Government, especially the President; because I have learnt that the Judicial Service Commission has made some appointments recently, but up to now we can't get the President, it would appear, to give the oath, so that those persons could take the oath, and we could have two or three more Judges. This has been going on for weeks now. Mr Holder, and I think some Diana Insanally, and the Land Court Judge, they have been appointed over six weeks ago, in the sense of being recommended by the judicial service commission.

But they have not been appointed. The President is back home, please let us get the appointments, because we don't have Judges in the Chambers; and it is important, it is important, because whatever it is, the appointment of these Judges will be in some way going toward, whatever, help in the determination and the adjudication of these cases.

It is very important to understand, that comment is very much supported on this side of the opposition benches, because indeed it is going to create that bottleneck. Lots of Magistrates now are sending it up. Even the lawyers might concede there is a sufficiency of evidence; it has to go up to the High Court. But then, rather than waiting for Preliminary Inquiries to be completed, you have to now wait years to get Judges to do the cases, and Prosecutors to want to do the cases, and policemen to come and testify. That is where this gridlock occurs in our criminal law justice system. So yes, it is all nice here, but now that you are quickening up one end, it is like a river now; you go to the other side of it, and there are huge blockages, and that can do damage to the system, that could then deter the purpose. It could be preventative of expeditious trials, trials within a reasonable time. But I want to make mention, and put on record, that the AFC wholly supports this. Thanks very much. *[Applause]*

The Speaker: Thank you, Honourable Member.

Honourable Member Mr Nandlall ...

Mr M Anil Nandlall: Thank you very much, Mr Speaker. Mr Speaker, I rise to speak on the Bill that is before this House, and to say, to congratulate the Honourable Minister of Home Affairs, for presenting to this National Assembly a very progressive piece of legislation, that will bring drastic reform and relief to the administration of criminal justice in Guyana.

Mr Speaker, the Bill that is before this House is of monumental importance. I say so, Mr Speaker, because it addresses in a frontal way the chronic and cancerous problem of delay that has afflicted our legal system for the last 25 years; manifesting itself especially, in a very fundamental way, in the administration of the criminal justice system, that invariably, involves the loss of liberty and the loss of freedom. Mr Speaker, this National Assembly has recognized repeatedly that Guyana, like many other jurisdictions, many other countries, is faced with a horrendous avalanche of criminal activities and criminal enterprises, ranging, Your Honour, from the most sophisticated to the most primitive, brutal and violent. And Mr Speaker, there is always a need to bring reform to the administration of criminal justice, both in the form of legislative measures, as well as advances in training and technological improvements. We have seen this Government doing it repeatedly in this National Assembly. The Bill that was passed earlier this evening, Mr Speaker, sought to introduce into our legal system for the first time, the capacity to listen, to admit into

evidence, the testimony of persons who are not required to be in the courtroom.

Mr Speaker, this Bill that is before the House is yet another mechanism where the Government continues its drive, not only to tackle crime and the level of criminality in our society, but at the same time, your Honour, to continue to modernize the administration of justice, and to bring improvements to the criminal justice system. Mr Speaker, it is important that we maintain that balance, because while this Government commits itself irreversibly to wage an unrelenting war against crime and those who participate in crime, we wish to do so in a manner that observes the fundamental rights of our people, and to ensure that the rule of law reigns supreme. Important in that scheme of fundamental rights and freedom, Mr Speaker, is the right of an accused person to a fair trial within a reasonable time. We have heard a lot about this right in the earlier debates, and we have heard about it again. This Bill Mr Speaker, is a mechanism, is a mechanism, is a safeguard to ensure that that constitutional right to a fair trial within a reasonable time is guaranteed, is realized, and is enjoyed by the people of this country.

Mr Speaker, for too long has the saying, *justice delayed is justice denied*, - for too long, that has formed a permanent place in our legal system, and this Bill seeks to bring reprieve to that situation. In a nutshell, Mr Speaker, this

Bill empowers a Magistrate to commit an accused person to stand trial in the High Court, based upon statements, documents, and other articles, without the need to take oral testimony at a Preliminary Inquiry. The present position is, if a person is charged with certain serious types of offences, including murder, treason, manslaughter, rape, or an attempt to commit any of those offenses, or aiding and abetting the commission of any of these offences, that person is mandated by our present law to undergo what is called a Preliminary Inquiry, which commences in the Magistrate Court.

The purpose of this Inquiry, Mr Speaker is not to determine the guilt or the innocence of the accused person, but merely, merely for the Magistrate to examine the evidence that the prosecution has and to determine whether there is a sufficiency of evidence, or in the language of the legislation, a *prima facie* case is made out against the accused person for that person to be committed to the High Court to stand trial before a Judge and a jury.

Mr Speaker, this procedure was conceived and designed as a filter mechanism, to ensure that persons do not stand trial, and therefore placed in the jeopardy of a conviction, and have to undergo the expenses, time, psychological and emotional rigors of a trial, unless there is a sufficiency of cogent evidence against him. Unfortunately, with the passage of time, and as a result of

the huge increase in criminal charges that are filed, due to the continuous rise in criminal activities of which I earlier spoke, this procedure has clearly outlived its usefulness. And indeed, it is practically contributing to the very problem it was designed to guard against; that is, to ensure not only that an accused person is guaranteed a fair trial within a reasonable time, but also to ensure that he is spared a trial when one is not required. I say so because the chronic delay that afflicts the criminal justice system causes a Preliminary Inquiry to take over two years to be concluded, while the trial, when it eventually takes place, normally lasts not more than a few weeks. In short, in short, the Preliminary Inquiry has become more protracted ... *[Interruption]* I will deal with that. The Preliminary Inquiry has become more protracted, and more expensive, than the trial itself. The Preliminary Inquiry has become a greater burden on the accused, as well as on the State. That was never, and could never have been the purpose and intention of a Preliminary Inquiry.

And now I come to Honourable Member Mrs Backer's issue. The net effect of all of this is that the accused person, the trial of the accused person is delayed longer, and the accused remains in prison for an unduly protracted period of time. This injustice is greatly exacerbated, if the accused person is charged with an offence like murder or treason, where bail cannot be granted in the Magistrate's Court, and is hardly ever

granted in the High Court. So that the accused person, who incidentally is presumed to be innocent, remains incarcerated until he is acquitted at his trial, a period which can amount to years in prison. Mr Williams spoke of the case where an accused person is languishing in prison for four years, awaiting the conclusion of his Preliminary Inquiry, and his eventual committal to the High Court. This constitutes a most flagrant breach of his Constitutional right to a fair trial within reasonable time; and certainly it makes a mockery of the constitutional doctrine of *presumption of innocence*.

It is incumbent upon me to point out in this equation, not only does the accused suffer an injustice, but the State endures the burden of financing this long process, whilst at the same time shoulders the financial burden of housing, feeding, and feeding the accused during this long period of incarceration. The justice that results, the justice that results, is perhaps most vividly illustrated when an accused person is charged for a non-bailable offence in the Northwest Magisterial districts, or the Rupununi Magisterial district, or the Essequibo Magisterial District. The Northwest Magisterial District has a Magistrate Court at Akeru, at Matthews Ridge, at Mabaruma. The Rupununi magisterial district has a Magistrate Court at Lethem, at Annai, at Monkey Mountain. The Essequibo Magisterial District has a Magistrate Court at Mahdia, at Enachu, at Kurupung, at Bartica, and Kamarang. I specifically named the courts to

give a sense of their diverse locations and their distance from Georgetown. Most importantly, most importantly, these Courts sit once per quarter, once a quarter; that means once every four months. During all this time,[Interruption] sorry, once every three months. During all of this time the accused person, who is constitutionally presumed to be innocent remains in prison. The horrendous injustice to the accused person must be combined with the high cost that the State shoulders to transport these accused persons and security personnel from Georgetown prisons, to the Court at every location, and at every occasion that the case is fixed.

All of this, Mr Speaker, must be taken against the backdrop, that after receiving instructions from his client, a reasonably competent lawyer ought to form the professional view that his client would be committed in any event, and in those circumstances, a Preliminary Inquiry becomes a very futile exercise.

Mr Speaker, the Bill, this Bill is certainly long overdue in Guyana. The United Kingdom has allowed for Paper Committals since 1967; and then in 1980, they reenacted it in a most elaborate fashion. Civil and Statutory Provisions have already been promulgated in Antigua in 1986; in Barbados in 1996; in Dominica in 1995; in Grenada in 1978; in St. Lucia in 2004; and; in Trinidad and Tobago in 2005. Indeed Mr Speaker, I recall some years ago the Registrar of the Supreme Court in Guyana

issued a public call that we should implement Paper Committal as a mechanism to reduce the backlog that presently confronts the system. So that, Mr Speaker, as Mr Williams, the Honourable Member said, there is no way that a practicing lawyer at the criminal Bar can seriously vote, or not vote against this Bill, or not support this Bill, because the idea behind it is to reduce the backlog of cases. But Mr Williams dealt with certain issues in his presentation, which I would like an opportunity to reply to.

For example, Mr Speaker, he spoke about; he doesn't understand how this will bring about a reduction in the delay that occurs. Well, I don't understand how he can arrive at that conclusion; because if it is that we are cutting out,... basically, this Bill allows an opportunity to almost reduce completely the procedure of the Preliminary Inquiry, that automatically cuts out the four-year period that he speaks about. And therefore, within a very short period of time, the accused person can be ready for his trial. The other issue that he has raised that there is going to be a clog up of cases now awaiting trial before the Judge and jury is indeed a valid one; and I agree that the necessary infrastructure and the necessary arrangements will have to be made to increase the capacity of the High Court in its present composition, to deal with the increase in traffic that will eventually go to the High Court.

We recognize that, Mr Speaker, we recognize that. But the point I am making is that the reform must begin at some place, and where else to begin it but at the bottom of the process? Had we begun the reform at the High Court, we would have been told by the Opposition that we should have started at the Magistrate's Court. Now we have started at the Magistrate Court, and the Opposition, whilst they support the Bill, they are saying that we should have started at the High Court. It is just ... *[Interruption]* Rather than stand up and speak on the Bill, and speak in support of the Bill, you stand up and find all kind of wish-wash criticisms All I am saying is that in the reform, there is a plan to modernize the judiciary; there is a plan to bring a reduction to the delay and the backlog; and the plan has to begin somewhere. This administration has chosen the Magistrate's Court in terms of the administration of criminal justice; and we are in Government, and we have the right to choose where to begin the reform process.

The other issue that Mr Williams expressed grave concern about, the other issue that Mr Williams raised grave concern about, is that this Bill; he does not agree with the Amendment, the proposed Amendment, because in his view, there is no need for the accused to have a Hearing at this truncated Preliminary Inquiry, which the Bill proposes. Well, Your Honour, that is a most unfortunate interpretation, or rather, statement coming from my learned friend at this high level of debate.

Because we have heard ... The whole of the evening, we have heard about Article 144, and we have heard about natural justice, and the right to a fair hearing before a tribunal, etc. We have heard all the arguments about the sanctity of that right, and everything that goes with it. And here is Mr Williams advocating before the National Assembly that we should deny the accused person of that right at the Preliminary Inquiry. That is unbelievable, that is unbelievable! Mr Speaker ...

Mr Basil Williams: Mr Speaker, on a Point of Order. It is an erroneous contention that the Honourable Member is making. And I can't be blamed for his level of interaction and the way he interpolates, but at least I could appeal to the Speaker, on a point of order, to get him to correct his erroneous contention. It is clear that the Honourable Member does not understand the basic underlying feature of a Paper Committal.

Mr M Anil Nandlall: Your Honour, I rise to continue exactly in the manner as I was saying. Mr Williams went on the Internet, and he read the position in England. He failed to comprehend that the position in England is based on an unwritten Constitution, where there is no fundamental scheme of rights that Mr Ramjattan spoke about, against which we must filter legislation that we pass in this House, to ensure that they do not collide, they do not collide with the fundamental Provisions of the Constitution. Mr Speaker, it is my humble and

considered view, if we did not include into this preliminary, into this Bill; if we did not include the opportunity for the accused to participate in this process, we would have collided with Article 144; because we are dealing with a Court of Law, and imagine a person has a right, before any tribunal, any tribunal, that concerns his rights and freedoms, much less a tribunal of law that is going to adjudicate on an offense, after which he can be deprived of his life. Mr Speaker, every facility must be extended to an accused person, to ensure that he gets every opportunity to challenge the case that is being presented against him.

And the inclusion, the inclusion into this Bill; the inclusion into this Bill of that mechanism, that allows the accused person to put in his statement; to allow the accused person to cross examine a witness if it is necessary; to allow the accused person to make a no-case submission if necessary, is a fundamental feature of the administration of justice, and an important cornerstone of the constitutional right of a fair trial. So that the argument advanced by Mr Williams is completely flawed and misconceived.

Mr Speaker, Mr Williams seems also confused, because based on his presentation, he seems unsure as to whether Section 1 still is applicable, Section 71 … Section 71. But, Mr Speaker, all that this Bill does is that it creates a mechanism which is alternative to the present position

which exists in respect of a Preliminary Inquiry. That is all that it does. It gives the accused person, it gives the accused person the opportunity to accelerate his own PI if he wishes; if he wishes to go the long drawn-out way, that is his right as well. So that this Bill, Mr Speaker, offers to the accused person an accelerated way of concluding his PI, so that he can get to his trial in a faster fashion; and whilst at the same time, it continues to reside in him the discretion and the freedom to choose whether he wishes to go the long way or the present way or the old way.

Mr Speaker, as Mr Williams himself said, any competent lawyer would recognize very early, whether or not his client will eventually be committed, long before the beginning of the Preliminary Inquiry, and long before expiration of the four years that he says normally elapses within that period. And this allows the lawyer to advise his client; look, take advantage of the accelerated way, so that we can go to trial early. That is what it does. So this is a benefit to the accused person, it is not a detriment.

Mr Sp , so to speak.

But be that as it may, Mr Speaker, I thank the Honourable Member Mr Ramjattan, who spoke on behalf of the AFC, and Mr Basil Williams, who spoke on behalf of the People's National Congress/Reform, for the expressions of support for this Bill, which he is seeking himself in his

capacity as a lawyer of long standing, a matter that has been around for quite some time.

Mr Speaker, whether the passage of this Bill will impact on the criminal justice system, I think, it is a little too early to pre-judge. I do agree, I do agree with the Honourable Member Mr Basil Williams, that there may be certain administrative measures which we will have to put in place. And I think it is also recognizable, on the part of both what Mr Ramjattan and Mr Williams pointed out that we have some issues, let me put it that way, within the judiciary and the Magistracy to improve on; that is where the improvement program, the improvement of the Criminal Justice Program, which I understand is going to be launched tomorrow at the Le Meridien Pegasus ... *[Interruption]* the program launching, the cocktail launching the program, where that program will contribute significantly to the enhancement of the Criminal Justice System, on precisely those issues that were raised this afternoon, Mr Speaker.

Mr Speaker, I agree we have to look at this question holistically, because, one, influencing one part of the system will obviously influence another part of the system. And I think it is generally recognized that there is a backlog of cases, at the level of the Magistracy, at the Magistrate Courts; and there is a backlog of cases at the level of the High Court as well. And the Attorney General has spoken from time to time in the budget

debates on this issue; and I think the issue is very much a matter that is before the administration. It is indeed, it has some merit, that the question of the capacity building and institutional strengthening of the Court system, I am in no real authority to speak on that, but I think, as a citizen of Guyana, we all recognize that these are issues that have to be addressed.

However, Mr Speaker, as Honourable Member Mr Nandlall pointed out, we have to start somewhere. And if in the judgment of the administration it is felt that the place to start is in the Magistrate's Court, then so be it; and it is in this respect that we have this Bill before us this evening, Mr Speaker, to introduce the question of Paper Committals as a part of the Criminal Procedure Act in this country, subsequently.

I do not believe that the delay in the Magistrate's Courts is intentional. I think it is systemic. I do not think that Magistrates intentionally, or even Attorneys-at-Law intentionally sit back and allow these cases to be delayed. It is a systemic issue, and I don't think it is peculiar to Guyana. Guyana is a developing country, Guyana is a country that lacks resources, and lacks the capacity in many areas, many developing countries face this challenge, and Guyana obviously … I mean when you read the magazine that is usually circulated to us, I think it is the Commonwealth Journal or something like that, you see the challenges with developing countries …

[Interruption: ... 'the Parliamentarian' "Thank you"] You see the problems and the challenges which other jurisdictions have in respect of the same problems that were raised here this afternoon.

Mr Speaker, the professionalization of the ... rather I should say the further professionalization, or the enhanced professionalism of the Guyana Police Force, is a matter which is under serious consideration, and has gone beyond the question of consideration. In fact, it is being aggressively pursued vis-a-vis the Citizens' Security Program, funded by the IDB, which has a component that requires the modernization of the Guyana Police Force.

So Mr Speaker, while all the procedures have not been spelt out, I think the Bill sets out the general principles under which Paper Committals ought to proceed; and I would wish to ask, Mr Speaker, that the Bill be read a second time. Thank you. *[Applause]*

The Speaker: Honourable Members, the question is that the Bill be read a second time. Those in favour say "Aye", those against say "No". The Ayes have it. Let the Bill be read a second time, please.

Bill read the second time

ASSEMBLY IN COMMITTEE

Honourable Members, I propose the question that Clause 1 stands part of the Bill. Those in favour say "Aye", those against say "No". The Ayes have it.

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

There is an **Amendment** to a proposal in relation to Clause 2, Sub-clause 1; that the words *or the accused* be inserted after the word "Prosecutor". Those in favour of the Amendment please say "Aye", those against say "No". The Ayes have it. The Amendment is carried.

> *In relation to Clause 2, Sub-Clause 2, an* ***Amendment*** *is proposed, deleting the word "sufficient", and substituting the words prima facie.*

Those in favour say "Aye", those against say "No". The Ayes have it.

> *In relation to clause 2, Sub-clause 3, it is proposed to add the following:*
>
> *or where he is represented by an Attorney-At-Law, if the Attorney-At-Law requests the Court to consider a submission, that the statement discloses insufficient evidence to put the accused on trial for the offense.*

Those in favour say "Aye", those against say "No". The Ayes have it. The Amendment is carried.

Honourable Members, I propose the question that Clause 2 as amended stands part of the Bill. Those in favour say "Aye", those against say "No". The Ayes have it.

ASSEMBLY RESUMES

Honourable Member Mr Rohee ...

Hon Clement J Rohee: Mr Speaker, I would like to report that the Bill, The Criminal Law Procedure (Amendment) Bill, was considered Clause by Clause, and Amendments made, and I would like to move that it be read a third time.

The Speaker: Honourable Members, the question is that the Bill be now read a third time, and passed as amended. Those in favour say "Aye", those against say "No". The Ayes have it. Let the Bill be read a third time please.

Bill read the third time and passed as amended.

The Speaker: Mr De Santos, you want to say something?

Mr Bernard De Santos: Mr Speaker, it seems to me that these things are useless, because I have been pressing these things for as long as I can remember, and nobody

was responding to it. I think there might have been little oversights which I wish to draw to the attention of the Hon Minister. In Subsection 2, it also has to reflect the change made by the Amendment. After the words …

The Speaker: Subsection 4?

Mr Bernard De Santos: No, Subsection 2, in the … after the word *"Prosecutor"* in the two lines before that subsection ends, it will have to reflect the change made in Subsection 1. Because it means that if this is correct, the committal can be made on what the people in the prosecution alone … and he must consider both. In other words, this is a consequential Amendment because of what has been done. It would have been right as it stood, before the Amendment.

The Speaker: I understand what you are saying, Honourable Member, but that is a matter between yourself and the Honourable Member who presented the Bill. That is not a matter for ...

Mr Bernard De Santos: My duty, Sir, is to draw it to the attention. I ...

The Speaker: If you are making an Amendment ...

Mr Bernard De Santos: I am sitting down.

The Speaker: If you are making an Amendment ...

Mr Bernard De Santos: I am going to sit down, please, Your Honour. The Minister has done it ... *[Interruption]* If he wants to make the Amendment, let him make it. If he does not make it, he does not make it. It will be left lopsided.

The Speaker: If anyone wants to say something please stand. I see the Prime Minister is ...

Hon Clement J Rohee: Mr Speaker, I have not had the chance to consider this proposed Amendment that my colleague is making, and I would like to ask for a couple of minutes to consult on this matter, so that I could consult on it and resume ...

The Speaker: While you are considering it, Honourable Member, please consider that we have already done the third Reading, and I don't ... I have to consider how it would be possible to return to the stage where we can make an Amendment. There is also an Amendment to Section 4 which was omitted and nobody noticed it.

Thank you, Honourable Members.

Mr Isaacs, did you read it, did you do the third Reading? You have not read it for the third time. Well, that is something to consider.

Honourable Members, we can start the next item while this matter is being considered.

Hon Clement J Rohee: Mr Speaker, if I may, could I request that this matter be recommitted so we make those Amendments?

The Speaker: You have to give me time to contemplate whether … what the rules are.

Hon Clement J Rohee: Very well, Sir.

The Speaker: We have to try and work out some thing, we have to try and work out some mechanism to bring the situation under control. Mr De Santos, you were saying something?

Mr Bernard De Santos: In your consideration of the matter, could I urge that you also take into account that this buzzer was being pressed before the Bill was read, Sir?

The Speaker: Mr De Santos, as a long-standing member of this House, you cannot have forgotten that I have repeatedly, and repeatedly, and repeatedly told Members of the House, please do not press your buzzer when you want to speak. Please stand. And I repeat that statement now. The buzzers sometimes do not work, and the buzzers sometimes are not seen by me, even if they work. So I repeat again for the umpteenth time, Members who want to speak, stand. And if I am not looking at you, shout and you will get my attention.

Mr Bernard DeSantos: I apologise for that. I did not think you were the person to do the looking. I thought there was somebody there put for that purpose … put for that purpose.

The Speaker: Mr Rohee … He was the person who finally identified that you wished ...

Mr Bernard DeSantos: Yes Mr Speaker, at that stage I was frantically pressing that buzzer ... *[Inaudible]*

The Speaker: If you were to get up and say "Mr Speaker" in your jury voice, not your normal voice, in your jury voice, I certainly would hear you.

Mr Bernard DeSantos: Sir I understand, but I merely put forward that point for you to take into consideration when you decide whether you can recommit the ... In other words, that an attempt to stop the third Reading had been made before it was stopped. Thank you very much.

The Speaker: We will try to work out something. *[Pause]* Yes, I think we have the power under the Sanding Order, I wouldn't bother to read it out, I saw it, and we have the power. Could you move Hon Member Mr Rohee, that the Bill be recommitted, please?

Hon Clement J Rohee: Mr Speaker, with your leave, may I move that the Bill that we have just considered, that this Bill be reconsidered, recommitted?

The Speaker: Honourable Members, the question is that the Bill be recommitted, - The Criminal Law Procedure (Amendment) 2008, be recommitted. Those in favour say "Aye", those against say "No". The Bill is recommitted.

Honourable Members, we will now go into committee stage to reconsider the Bill Clause by Clause.

ASSEMBLY IN COMMITTEE

Honourable Member, could you propose the Amendment, Mr DeSantos?

The Speaker: The Amendment is that in Clause 2, the words *or the accused* be inserted after the word "Prosecutor".

Mr Bernard De Santos: ... Prosecutor, yes

The Speaker: Honourable Members, the question is that the words *or the accused* be inserted after the word "Prosecutor".

Mr Bernard DeSantos: I would rather see it, Your Honour, to have the words *"and the accused"*, rather than *"or the accused"*. That would read: *"consideration of the statements, documents, writings and other articles admitted in evidence on the part of the Prosecutor and the accused"*.

The Speaker: The first Amendment was *"or"*.

Mr Bernard De Santos: I know, but there is a good reason why I ...

The Speaker: The proposal is that the Amendment be *"and the accused"*. Those in favour say "Aye", those against say "No". The "Ayes" have it. Honourable Members, we missed one. As we are here, we missed one in Clause 2, Sub-clause 4. I wish those who are responsible for these Amendments pay attention to them and ensure that all are done. It is proposed that the word *"sufficient"* be deleted in Clause 2, Sub-Clause 4, and the words *"prima facie"* be inserted instead. Those in favour say "Aye", those against say "No". The "Ayes" have it. The Amendment is carried.

Honourable Members, let the Assembly resume, please.

ASSEMBLY RESUMES

Honourable Member Mr Rohee ...

Hon Clement J Rohee: Mr Speaker, I wish to report that The Criminal Law Procedure (Amendment) Bill 2008 was considered in committee; there were a number of Amendments, and I would like ...

The Speaker: ... Clause by Clause, and amended, Honourable Member?

Hon Clement J Rohee: Yes.

The Speaker: And it is your wish that the Bill be read a third time as amended?

Hon Clement J Rohee: Yes.

The Speaker: Honourable Members, the question is that the Bill be read for a third time, and passed as amended. Those in favour say "Aye", those against say "No". The Ayes have it. Let the Bill be read a third time, please.

Bill read a third time and passed as amended.

The Speaker: Thank you, Honourable Members, for your support and cooperation. Honourable Members, it is now 7.25pm. We can suspend now for fifteen minutes, or break the debate that we are now to have on the Motion by Mr Norton, and then come back.

[We have another Bill, Sir?]

The Speaker: Oh yes, sorry, my apologies, there is a third Bill. We have about six speakers on that Bill, as well. Is it your wish that we take the break now for fifteen minutes and come back and do that?

Honourable Members, we shall take the adjournment now for fifteen minutes.

19:25H – SUSPENSION OF SITTING

19:48H – RESUMPTION OF SITTING

The Speaker: Thank you, Honourable Members. Please be seated.

ITEM 3 CRIMINAL PROCEDURES (PLEA BARGAINING AND PLEA AGREEMENT) BILL 2008, BILL NO. 21/2008 published on 7 August 2008

Honourable Members, we can now proceed with the second Reading of The Criminal Procedures (Plea Bargaining and Plea Agreement) Bill 2008, Bill No. 21/2008, published on 7 August 2008.

Hon Member Mr Rohee …

Hon Clement J Rohee: Mr Speaker, I think long before we came to this Honourable House, the debate on the efficacy of Plea Bargaining and its relevance to Guyana, was long discussed and settled in the public domain; and

that settlement, from what I understand, is of a positive nature, in the sense that large amounts of people out there support the attempt to introduce Plea Bargaining, and the resultant plea agreement, as part of our criminal procedures. I started out with that, Mr Speaker, because I believe there is a good basis for unanimity in this Honourable House, if it is indeed a true reflection of what obtains in the wider society. And if we are in touch with our various constituents; if we are in touch with persons who have been affected at one time or another by our Criminal Justice System, we would obviously support a Bill of this type.

Mr Speaker, this Bill is divided into four parts, and each part, I believe, tells a story, which results in a speedier and more participatory procedure to address the concerns of all the parties who are involved in the Court, be it the Prosecutor, the accused, the Attorneys-At-Law, and the Magistrate or the Judge, not to leave out the Registrar of the Court, etc. These are the key players, Mr Speaker, who in this Bill, would be interacting with each other in a Plea Bargaining Arrangement, and in a Plea Agreement reached.

Section 2 of the Bill, Mr Speaker: First of all, in terms of the application of Section 1, the Bill makes it very clear that the accused can plead guilty, and at the same time enter into a Plea Bargain Agreement. The two are not contradictory to each other. At the same time, while the

DPP has a particular role assigned to that Office under Article 187 of the Constitution, the Plea Bargaining and Plea Agreement proceedings do not in any way affect the powers assigned to the DPP under Article 187 of the Constitution. Those powers remain intact.

Mr Speaker, the Director of Public Prosecutions plays an important role in this arrangement, and may, at any time before judgment is passed, or before judgment is pronounced, enter into plea-bargaining with the Attorney-At-Law of the accused. In instances where the accused is not advised or guided by an Attorney-At-Law, the accused can enter directly into plea-bargaining with the Prosecutor, .and the objective of that would be to arrive at a Plea-Bargaining Agreement to dispose of any charge against the accused. I should point out however, that in that situation, some element of, what I would describe as, negotiations take place, but I will come to that at a later stage, Mr Speaker.

Mr Speaker, only a Prosecutor, who first obtains the written authorization of the DPP, and the Bill points out what *"Prosecutor"* means. *"Prosecutor"*, according to the interpretation part of the Bill, Mr Speaker, means: The DPP, an Attorney-At-Law in the offices of the DPP, a Police Prosecutor, or an Attorney-At-Law whom the DPP has authorized in writing to act on his behalf. I think it is referred to from time to time as the Special Prosecutor. These are the persons who have to first of all

obtain a written authorization from the DPP before they could enter into Plea Bargain Arrangement with an accused person, or the Attorney for that accused person.

Mr Speaker, Clause 5(1), (2) and (3) set out the penalties for using an improper inducement to encourage an accused person to participate in a Plea Bargaining. One can never underestimate the possibility of an inducement being used to encourage an accused person to participate in a Plea-Bargaining; and there are severe penalties for that which are spelt out in the Bill.

Mr Speaker, clause 6 (1) states that, in cases where an accused person is represented by an Attorney-At-Law, a Prosecutor may not enter directly into a Plea Bargaining with the accused. In other words, the Attorney-At-Law is the interlocutor for the accused in respect of the Plea-Bargaining situation. And it is important, according to the Bill, that the Prosecutor point out to the accused person, his right to representation by an Attorney-At-Law in Plea Bargaining, so that he has some,- for want of a better term, -some physical safeguards, lest he enters into that Plea Bargaining not knowing that he has a right to have an Attorney to represent him in that situation.

Mr Speaker, if the accused person cannot afford to retain an Attorney-At-Law, he may apply for Legal Aid to Assist. And now with so many Legal Aid centers mushrooming, owing to the activism of the Minister of Human Services, around the country; I think the objective

is to have one in each region, such assistance should not be difficult to come by, by persons who are desirous of having Legal Aid assistance in the context of Plea Bargaining.

There is another saving clause, Mr Speaker, at Clause 3, where the Judge, in the exercise of his jurisdiction, may appoint an Attorney-At-Law for the accused person. I have to emphasize, Mr Speaker, that the Bill states very clearly that there are prohibitions against Plea-Bargaining, and these are to be found in Clause 7 of the Bill where a Prosecutor is prohibited from engaging in Plea Bargaining that requires the accused person to plead guilty to an offence. A very important element or consideration in this Bill, Mr Speaker, is where the victim is to be consulted. And that is why I said that Plea-Bargaining is a very democratic or very participatory proceeding, with a view to arriving at an agreement, where everybody wins, so to speak, a win-win situation. The Prosecutor is allowed to obtain the views of the victim, or a relative of the victim, before concluding a Plea-Bargaining; and further, when a plea agreement is arrived at with the accused. And the Prosecutor is obliged to inform the accused, sorry, to inform the victim of the substance of, and the reason for the agreement, under which this Plea-Bargaining has been arrived at.

But at the same time, Mr Speaker, if that information, if the substance of that agreement could prove harmful, or

could bring serious harm to the accused or another person, then the Prosecutor is not authorized to disclose that information.

As regards the Plea Agreement, Mr Speaker, Clause 9 (1) of the Bill sets out the conditions under which a plea agreement is to be reached, and states that when a Prosecutor and the Attorney-At-Law for the accused, has reached an agreement, there is a prescribed form, which is found in the schedule of the Bill, that has to be completed. This schedule is filed with the Registrar or the Clerk of the Court. And in cases where a Plea Agreement has been concluded between the Prosecutor and the unrepresented accused; in the first instance, it is between the Prosecutor and the Attorney-At-Law. In the other instance, where it is between the Prosecutor and the unrepresented accused, such an agreement is to be also set out in a prescribed form which is found in the schedule. That agreement is to be signed by both parties; that is the Prosecutor and the unrepresented accused person, in the presence of a JP, and filed with the Registrar or Clerk of Courts. And when such an Agreement is filed, the Registrar or the Clerk of Court is to ensure that the matter is brought up for hearing before a Judge or a Magistrate.

Mr Speaker, there are instances where matters have to be heard in Chambers. In Clause 10 (1) of the Bill, there is what is called a Hearing in Chambers Proceeding, where

the Prosecutor discloses to the court, in the presence of the Attorney-At-Law for the accused or where the accused is unrepresented, the substance of, and reasons for the Plea Agreement, and whether any previous Plea Agreement has been disclosed to another Judge or Magistrate in connection with the same matter; and if so, the substance of that agreement. Those are issues that are heard in Chambers. And then, Mr Speaker, the Judge or the Magistrate, shall, in open court, before accepting the Plea Agreement, determine to his satisfaction, a certain number of matters under the same Clause 10(1). That is, that no improper inducement was made to the accused person to enter into an agreement; that the accused person understands the nature and substance and consequence of the agreement; and that the offense to which the agreement reflects the gravity of the provable conduct of the accused; unless in exceptional circumstances, the agreement is justifiable, in terms of the benefit that may accrue to the administration of justice, the protection of society, or the protection of the accused.

Mr Speaker, of interest to me when I examine this Bill carefully is the situation where the victim has the right to express a view in open court. The Magistrate or Judge must seek the view of the victim, or a relative of the victim, before recording the terms of the agreement, and passing sentence.

Mr Speaker, in Clause 12(1) of the Bill the accused offers to plead guilty, if other charges against him are dismissed. This is where the accused is more or less negotiating and he, the Prosecutor, agrees to accept the offer of the accused person. Mr Speaker, in this situation, two scenarios would apply. And in those two scenarios, found at Clause 12(1) of the Bill, Mr Speaker:

> *Where the Prosecutor agrees to accept the offer of the accused person, the matter shall be disposed of accordingly*

and secondly

> *Where the Prosecutor refuses to accept the offer of the accused person, the trial shall continue.*

These are the two scenarios that would emerge in that situation. There is provision, Mr Speaker, for the withdrawal from the agreement by the accused or the Prosecutor before sentencing, and those rights are to be found at Clause 13(1) of the Bill, Mr Speaker. The Prosecutor also has the right to withdraw from the agreement before sentencing, or to appeal against an acquittal, based on a Plea Agreement.

Mr Speaker, the Bill also sets out the framework under which appeal may be pursued by the DPP in a court of appeal and the DPP has the right to seek leave of the Court of Appeal, to have a Plea Agreement quashed or

dispensed with under Clause 15(1) of the Bill. Mr Speaker, I believe that this Plea-Bargaining and Plea Agreement Criminal Procedure Bill that is before this House is a landmark piece of legislation. It is a piece of legislation that I think would be welcome, would be welcomed in many quarters. In fact, I may even go so far to say that it resonates with the two previous Bills that we discussed. Because Mr Speaker, when you examine the evolving architecture of the Criminal Justice System, and you put your fingers on the various pieces of legislation that contribute to the building blocks of this changing architecture, you will obviously see, and you will obviously be convinced, that the efforts of the administration to ensure that the Criminal Justice System operates in a much more efficient manner, that best practices, experiences in other jurisdictions, legal systems, are transposed to our situation, and could be made workable, notwithstanding the challenges that were pointed out earlier by the Honourable Members Mr Ramjattan and Mr Basil Williams

But we cannot stand still, the world is moving at a rapid pace. The Criminal Justice Systems in many developing countries are going through tremendous changes. Many of our Judges, our Magistrates, practicing Attorneys-At-Law, are exposed to international experiences. They have access to the Internet. And they are reading about these proceedings; whether it has to do with Paper Committals,

whether it has to do with Plea Bargaining, whether it has to do with Audio Visual Link, and so forth.

So that, Mr Speaker, when we look at the situation holistically, we cannot but help accepting the fact that a sincere and dedicated effort is being made by the Administration to effect these changes; and not just pass laws for the sake of passing laws. We are not interested in establishing a track record relating to how many laws we have passed.

But Mr Speaker, I would wish at this point in time, since I will have another opportunity to come back once again to speak on this Bill, to ask that the Bill be read a second time. *[Applause]*

The Speaker: Honourable Member Mrs Backer …

Mrs Deborah J Backer: Thank you very much, Mr Speaker. I think it is opportune that the Criminal Procedures Plea-Bargaining and Plea Agreement Bill are before this House. And as I read it this morning in conjunction with my Kaieteur News, and I looked at the front page, *Don't wake me, I'm dreaming* with the PS of the Ministry of Labor trying in vain during the course of this address to get the Chief Labor Officer to wake up, while the Minister, my favorite Minister, Nadir spoke, most probably *ad nauseam.* But Mr Speaker, I would want to enter a plea on behalf of the Chief Labor Officer, that any efforts to remove him for this breach, hopefully I

can abate. Wasn't he aware that Mr Nadir had the ability to put so many people to sleep? I thought it was peculiar to me. But on a very serious note, I hope that in the spirit of Plea Bargaining, Minister, you don't transfer or dismiss the Chief Labor Officer. I am pleading on his behalf. He obviously was bored, and with good reason, I suspect.

Sir, now, that we have Plea-Bargaining in the context of how useful it can be, let me say at the outset that the People's National Congress Reform-1G has very little problems, if any at all, with the Bill presently before us, Bill No. 21/2008:

> *A Bill intituled Act to provide for the establishment of a system of Plea Bargaining and Plea Agreement in criminal procedures and/or matters connected therewith.*

Mr Speaker, when one hears the terms "Plea-Bargaining" and "plea agreement", one instinctively thinks of the United States of America. And with your permission Sir, I would read from the beginning of an article entitled *Plea Bargaining Triumph: A History of Plea-Bargaining in America,* and it starts thus, and I read:

> *The reality of modern-day criminal trials is that they are almost as rare as the spotted owl. While the idea of the adversarial trial, and in particular the idea of trial by jury, remains an iconic aspect*

> *of the American legal system, the sheer fact is that criminal jury trials, if not truly on the endangered species list, are nonetheless becoming ever less common with each passing year.*

And they go on to speak about the sensational crime trials that we see; we saw the infamous O.J. Simpson jury trial, I am talking about the first one, the murder. And we all remember Scott Peterson, and there are others. But the reality is that, that gives a false perception that trial by jury is the order of the day; whereas; what obtains in the States, as they say, it is now perhaps as rare as the spotted owl. And they go on to give some staggering statistics: They say, if we look at adjudicated federal criminal cases, 3,463 federal criminal defendants went on trial, while 72,000 entered pleas of guilty, 72,000 as against 3,463. And in fact, they went so far as to say that 95.4% of the people who were actually charged, chose to plea, and that is to say, they eventually entered into Plea Bargaining. So in the States, Plea Bargaining and Plea Agreements are the norm. And I suspect that is why perhaps Mr Odinga Lumumba is listed to speak after me, he having, I think, according to Mrs Holder, intimate knowledge of that jurisdiction, if one was to read her article on Sunday in context.

Sir, in the USA, Plea-Bargaining has not always had a smooth run. Plea-Bargaining in the States is well over 100 years, Sir, but it has not always had a smooth run.

And in fact, Sir, it has been constitutionally challenged in a series of cases. As the view was held, Sir, with some amount of reasons, that in entering a plea bargain, an accused person was in fact, waiving three important constitutional rights. And these rights, Sir, according to the Americans, the rights against self-incrimination, because here the person is saying, I am guilty. The second is his right to trial by jury. And the third is his right to confront and cross-examine one's accusers. And there were a host of cases in the States that eventually, more or less laid it out very clearly that, look, it is not a perfect system, but it is definitely not unconstitutional.

So, Plea Bargaining for us will not start with this Act, I think the Minister said that in another way; it goes on already. Many persons are charged for murder, and they enter a plea of manslaughter. Sometimes they are charged for dangerous driving, and they might indicate quietly that they are prepared to plead guilty to careless driving, and so on. But Sir, we need, as we embark on this new enterprise; we need to look at instances where perhaps some work can be done. And I was drawn, Sir, to the Narcotic Drugs and Psychotropic Substances Control Act, 1988, with the relevant Amendment. We have a situation where if someone is found with 15 grams or less than 15 grams of marijuana, under our present law, they invariably would be charged with possession. Over 15, they are likely to be charged with trafficking. But we have another system, I mean part of the law is this: If it is

5 or less grams, the Magistrate has a discretion, and invariably, because the discretion given to the Magistrate includes the discretion, *not to impose a custodial fine*, many persons who are found with 5 or less grams, they plead guilty, and they have this $10,000 fine, and then there is some hours of community work, which they never do, because there's no organized system of community service in our law, so it is kind of ad hoc.

But what happened is this: let us say, someone now is charged with possession of 6 grams of marijuana. Now, it is still possession like the person with 5; but because, between six and fifteen, even if you are found guilty, you have, there is a mandatory jail …imprisonment. There is no incentive to plead guilty. So we have a lot of young people, a lot of young first offenders, who have been charged with possession of between 6 to 15 grams clogging up our jails.

Now, this Plea Bargaining agreement will not help a Magistrate in this instance, because the sentencing policy under the Narcotics Act is fixed. So you see, I am saying in sunlight, we need to look at some of the laws. I am suggesting, what we should do, in a case like this, is to unfix it; unfix in the sense that, don't make it mandatory. If you were to change it, you could have Plea Bargaining coming in; a lot of people who are in possession of 8 or 9 grams, pleading guilty. Perhaps you can look at the situation where the Magistrate, rather than of having to

send them to three, there is a range. She can sentence them, he or she, to not less than one, but not more than 3. So when the person with 9 grams says, well, a year in prison, Mr Rohee's did say was no hotel, - but a year in prison, a prison year is eight months; that is not too bad, as opposed 24 months or three years. Perhaps we, I would think of pleading guilty, so there is an incentive, a real incentive.

So in Plea Bargaining, it is good, because it gives the Court flexibility. But if the law under which the person is charged does not allow the Magistrates flexibility in sentencing, it nullifies to that extent, the potency and the potential positiveness of Plea Bargaining. So I just draw that to the attention of the administration, not necessarily as a criticism, but as something else that we need to look on, or look into, as we embark on the road of Plea Bargaining.

Then Sir, there is also the question of the implications of criminal charges; let us say, for example with road traffic offences. You know, if you plead guilty to a road traffic offence; let us say you are charged; and again, the newspaper today is also relevant. There is a particular person who I understand may be charged for a six offences. The thing is, that person may want to plead guilty to some of them. But if that person plead guilty, as opposed to being found guilty, now under our system, and the person goes to the High Court. If I plea guilty to

careless driving, if I say I was guilty, the person who I may have injured could go to the High Court and use that guilty plea against me in civil proceedings. So what they have in the States ... and in the States as I said, this has been around long, and there is nothing with looking at jurisdictions that have a lot of history, and a lot of experience, and see how they dealt with it. I seem to have misplaced momentarily ... Oh, this is what it's called in the States ... *In cases such as car accidents, where there is a potential for civil liability against the defendant, the defendant may agree to plead no contest, or guilty, with a civil reservation.* He is saying, look, I am guilty of this criminal thing, but I reserve my guilt vis-à-vis any civil matter that may come after. We do not have that in the Act.

So I'm just drawing that as another way, another thing; because no legislation is perfect. Parliament makes mistakes, collectively or individually, and I personally see nothing wrong with mistakes. If you are human, you are going to make mistakes. The important thing is to listen to what is going on; yes, this may be a good idea, no, this may not be, sift it, and so on. There is another instance where ... The entire Parliament made a mistake recently with the Amendments to the statutory rape, the age and all that. I don't want to go into that, but there is history around the world where legislation is not perfect, and that is why we can come back. So I'm just drawing these two examples that my short research has brought to my

attention, as to things that we need to look at. No system, as I say, is perfect. An opponent to Plea Bargain highlights certain ... the downside; one is coercion, which the legislation seeks to deal with. It does not mean because it says you must not coerce, it would not happen; but at least the legislation recognizes that this is a downside, false plea; people may ... injustice for victims, injustice for victims What about a victim saying, man, this person do this, why they only get that? That is why the Act speaks about involving a victim. Some people are of the view that victims must not only be consulted, victims must also agree. But of course that may stymie the process. But there is a recognition in the Act that the views of the victim are important. There are some opponents who say the views should be more than views, they should be decisions, they should be made with the consent of the victim; and that is something that we have to look at.

Excessive leniency, people say it is soft on criminals, some of the opponents say that, and they say if you have Plea Bargaining, it may reduce the ... it may reduce people's fear of the law; because people may say I can do this, I enter into a plea bargain, couple years I out.

So Plea Bargaining, like any other system, is not perfect, and it will not be perfect, and they will have criticisms, and there will be critics of the system; but as I said at the

beginning, we support the legislation, and we do so wholeheartedly.

I want to just say that the Republic of Trinidad and Tobago passed this Act, a similar Act, since 1999; and I suspect, I may be wrong, I suspect that our Act benefitted. Our draftsperson benefitted rather heavily from the Trinidad legislation. There is nothing wrong with that. But the Bahamas are just ahead of us, because on Monday, 22 September, when they came out of their recess for this year, they began the debate. It was laid before the recess, as ours was, and the Bahamas began the debate on Plea Bargaining. And that is what the Minister said:

> *In moving the debate, Minister Desmond Bannister explained that the proposed legislation is modeled on similar Trinidad and Tobago legislation that was passed by their Parliament since 1999.*

Our Hon Minister was not as forthcoming as Minister Desmond Bannister, but as he did say, he has another opportunity to speak, so I am confident he will acknowledge the source from which this Bill came. And there is nothing wrong with that, it is a Caricom sister country, and I am confident that we have Bills and Acts in Guyana that other countries use as a precedent. There is nothing to hide and so on.

Before I sit, Sir, there are two small, very small, Amendments, and I have not put them on paper, so small are they, and so confident am I that they will be agreed on. And they can be found in Clauses 19 and 20. And these are the two Clauses that speak about ... 19 says:

> *Subject to negative resolution of the National Assembly, the Minister may by order amend the schedule*

and 20 says:

> *Subject to negative resolution of the National Assembly, etc.*

Sir, at the appropriate time, I will move that the phrase *"negative resolution"*, be changed, in fact, the word, "negative" be changed to "affirmative" in both Clauses 19 and 20, in keeping Sir, with more accountability, transparency. So the Parliament gets an opportunity before the schedule is enacted, before the regulations are made, to look at it, and have an input.

Sir, with these few words, I close as I began; one, by saying that, well, firstly by repeating my appeal to the Minister not to be too harsh on the Chief Labour Officer, and more importantly, Sir, to say that the PNC/ Reform/ One Guyana supports this Bill, and to make Mr Rohee fairly happy at this late hour, to say unreservedly, that it is one of the most progressive pieces of legislation that this

Government has passed in recent times. I thank you. *[Applause]*

The Speaker: Honourable Member Mr Odinga Lumumba.

Mr Odinga N Lumumba: .Mr Speaker, first of all, I want to thank you for your good words, some were earlier. I want to thank the Members of Parliament who visited me during my period when I was basically out of it. As you know, I was laid up for three months without moving, and I am glad to be back. Some of my friends on both sides of the House visited me, and Mr Speaker, it is important to note when I opened my eyes, I recognized that my good friend, Member of Parliament Mr Basil Williams, had constructed a lovely home not too far from mine. Of course I would have objected if I was able to, but in fact, it was all over with, I couldn't; I had to congratulate him on moving to such an excellent neighborhood. I always knew he wanted to live next to me, and Member of Parliament Backer, so we do welcome him.

Mr Speaker, for four years, I have been pushing this particular Bill, so I feel good that it is here today, and I want to congratulate Minister Rohee for having the courage to bring this Bill here. I also want to congratulate Minister, Member Parliament Backer; I said Minister, selling that she is coming over soon. I want to congratulate the Member of Parliament Backer for

supporting, for being so supportive. I think she is correct in dealing with the fact that once this Bill is passed, we have to look at the mandatory sentences, and see how we can make some adjustments. Because in America, and most of the countries in the world, most of the issues, most of the serious crimes, are placed before plea-bargaining, in particular if you want the witness, to support the prosecution, etc. etc. I could talk that Debbie knew me when I lived in Colorado, because I remember one Christmas day, Mr Speaker, I was going to the supermarket, and I had ham and pork chops in my back seat. I saw the flashing light of a policeman who pulled me over. Then I realized that I had four tickets, four traffic tickets.

He said: *You have to go to jail.*

I said: *Pork chops!*

He said: *Yes.*

Fortunately, in those societies, the Judge was working that day, so

I said: *Listen, I am a college student, what are you going to do?*

He said: *You have to get the Public Defender; you have to plead guilty with cause.*

I said: *What is that?*

Government has passed in recent times. I thank you. *[Applause]*

The Speaker: Honourable Member Mr Odinga Lumumba.

Mr Odinga N Lumumba: .Mr Speaker, first of all, I want to thank you for your good words, some were earlier. I want to thank the Members of Parliament who visited me during my period when I was basically out of it. As you know, I was laid up for three months without moving, and I am glad to be back. Some of my friends on both sides of the House visited me, and Mr Speaker, it is important to note when I opened my eyes, I recognized that my good friend, Member of Parliament Mr Basil Williams, had constructed a lovely home not too far from mine. Of course I would have objected if I was able to, but in fact, it was all over with, I couldn't; I had to congratulate him on moving to such an excellent neighborhood. I always knew he wanted to live next to me, and Member of Parliament Backer, so we do welcome him.

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fundamental, and it is in many ways, Mr Speaker, what the PPP Government is about; it is moving the country further towards a more democratic society. Even the little man now, Mr Speaker, has the opportunity to stand up.

Of course, it will hurt people like MP Nandlall, MP Williams, and MP Backer, because, the fees; they won't get access to the kind of court fees as before, but we understand that. They are humanistic; they can understand that, the millions they make, they can reduce a 10% in that case. Mr Speaker, this Bill allows, plea bargain allows for a speedy trial. You don't have to wait two or three years; we don't have to wait for someone to duck the court papers; we don't have to wait for the attorney who has six or seven cases; we don't have to wait for the Magistrate who is busy or who is ill. Mr Speaker, this can be resolved in days or weeks, so it allows a speedy trial, it relaxes the congestion problem in the jail.

Mr Speaker, it allows for young people in this country to be placed back into society after they have committed a wrong, and to be accepted back into society. And I speak today, Mr Speaker, not so much of the technical and legal aspects of the Bill, but what it can do for society, what it can do for humanity. It allows our youths from being condemned forever. A young man gets condemned, he spends time in jail, he can't get a job. And that is real in Guyana. We already have an unemployment problem.

He applies for a job, and someone says to the boss, I know him; he just spent three months in jail. That is the end of him ... that is the end of him. Whether it be a man or a woman, a male or female, that is the end. What Plea-Bargaining does in many instances, it allows a situation where his record can be cleaned up, or it allows a situation where by the conviction can sometimes be null and void. It creates a lot of the opportunities for that young person. He can get a job, he can get back into society; he does not have to be condemned to being a criminal.

Mr Speaker, there is also an economic issue here. Many of our poor ... there is a relationship, Mr Speaker, between poverty and economics. There is a relationship, and most of us know that. We don't have to be a Marxist or super Capitalist to know that. There is a relationship between wealth and freedom. If you go through the newspapers, people who are rich, most times, Mr Speaker, go to jail because they kill their wife, they kill their mother-in-law, or they run away with the bank. But if you are higher, as Debbie Backer, the Honourable Debbie Backer, Member of Parliament Backer, or Member of Parliament Williams, or even my friend MP Nandlall, they will probably walk, because they have money. But, I am not sure of the cases MP Ramjattan gets ... I am not sure, but he seems to be a formidable attorney. So what it does, Mr Speaker, it allows a person who is poor to get access to our justice system without

much money. He can work with a public defender, he can get justice, he can plead guilty, he can accept his faults, and he can be allowed to go back into society.

Mr Speaker, there are many young business people in this country, progressive business people in this country, who have had problems with the law, and because they had problems with the law, they can't get access to firearms to protect their business ventures. Plea bargain again is another example. It doesn't make sense, Mr Speaker, for you to give a young person an opportunity to do well in private enterprise, he employs hundreds of individuals, and he can't protect his property because he made a mistake when he was 17 and 18. If we had Plea Bargaining, then, Mr Speaker, those matters could have been resolved.

Mr Speaker, there are also instances where many so-called criminals, or people with these kinds of records, are discredited in court. They can be credible witness in many court cases, but because they did not have access to plea-bargaining in those days, the attorneys on both sides will say he is not a credible witness because he was or he is a criminal. Those are some of the advantages of Plea Bargaining.

Mr Speaker, I was able to have access to some information, and I recognize that there are some basic definitions of what plea-bargaining is. It says:

> *Plea-bargaining is an agreement in criminal cases whereby, the Prosecutor offers the defendant the opportunity to plea guilty, usually to a lesser charge, or to the original criminal charge, with a recommendation of a lighter than the maximum sentence.*

And what you should think, Mr Speaker, that's what we are doing here. I think Member of Parliament Backer referred to it … plea-bargaining is nothing new. This has been going on since the 18th century, just in different forms and different times. It has been going through all the time. Modern societies, for example the United States Supreme court, have recognized plea-bargaining both as an essential and desirable part of the criminal justice system. The benefits of Plea Bargaining are said to be obvious: the relief of court congestion, alleviation of the risk and uncertainties at trials, and its information gathering value. Major countries, Mr Speaker, such as India, have introduced plea-bargaining, Estonia, France, Italy, Poland, and several other countries.

Mr Speaker, you know as an attorney that trials can take weeks, sometimes months, while guilty pleas can often be arranged in minutes. Also Mr Speaker, the outcome of any given trial is usually unpredictable, but plea-bargaining provides both prosecution and defense with some control over the results; some control in that sense

that both parties are happy, or both parties accept the reality.

Mr Speaker, a discussion of the most common reason why defendants may want to enter plea-bargaining, for most defendants, Mr Speaker, the principal benefit of plea-bargaining is receiving a lighter sentence or less severe charge than may result from taking the case to trial and losing.

One last thing, Mr Speaker, one last comment: plea-bargaining and guilty pleas ... and this is an argument by Vince Imhoff, Attorney-At-Law, and he said:

> *Plea-bargaining and guilty pleas are critical elements of the criminal legal system. Plea-bargaining is a process in which defendants negotiate the terms of punishment in exchange for guilty plea or no contest plea. Many times the Prosecutor will offer to dismiss some criminal counts, or reduce the maximum punishment. There are different reasons why defendants decide to plea bargain, plead guilty or plead no contest to avoid going to trial.*

Mr Speaker, some of these reasons include lowering sentence, lack of evidence to support their case, less costly, and personal desire to confess guilt. Whatever the reasons are, Mr Speaker, the practice of plea-bargaining is very common. 94% of felony convictions nationwide,

in the United States, are obtained by guilty pleas. Even convictions, Mr Speaker, for more serious crimes, are practices of Plea Bargaining. Under the current structure of the criminal court system in the United States, it would be impossible to try every case that is filed. This raises fundamental concerns to ensure procedures that are necessary to make it sufficiently clear and accurate, to justify dispensing with the trial process.

Mr speaker, the reality is, in a country that is not very strong economically, a country that is now trying to develop as we want it to be; a country that is trying to bring fairness in the society, plea bargaining offers fairness to most of our people, and that is everyone; and it allows a young person who has made a mistake in life, to have an opportunity to correct those errors, and to move on to become a good person in our society. So on that basis, Mr Speaker, I support this Bill, and I thank Mrs Backer and the Opposition for supporting this Bill. Thank you. *[Applause]*

The Speaker: Thank you, Honourable Member.

Honourable Member Mr Ramjattan …

Mr Khemraj Ramjattan: Thank you very much Mr Speaker. Let me just state that I endorse fully the views of Debbie Backer on this side of the House, and some of the view of a very fully recovered Mr Odinga Lumumba! And on that score, I would just like to pass, because yes,

indeed, the AFC supports this Bill in its entirety here. Thank you very much.

The Speaker: Thank you, Honourable Member.

Honourable Member Mr Nandlall …

Hon M Anil Nandlall: Thank you very much. Mr Speaker, again, I wish to extend my sincere congratulations to the Hon Minister of Home Affairs for promulgating before this House another very progressive piece of legislation. Because this Bill, Mr Speaker, represents another attempt at another legislative initiative by the PPP Civic administration, to bring reform and rehabilitation; to bring improvement, and to modernize the system that administers justice to the people of this country.

I have outlined in my earlier presentation the undue delay that is so endemic and systemic in our administration of justice, especially in the area of criminal law. The injustice that results, Mr Speaker, from this delay is tremendous, and the Government has embarked upon a program,- the Justice Sector Improvement Program, where over US$25M is intended to be spent in overhauling the entire legal system in Guyana; and an entire segment of that program is dedicated towards bringing reform to criminal cases, both in terms of physical infrastructure, as well as legislative reform, in

order to modernize an antiquated Criminal Procedures and Rules.

The Mediation Process

This Bill, Mr Speaker, represents one of such reforms The Bill introduces for the first time, into the legislative fabric of this country, the concept of Plea Bargaining; and Mr Speaker, it may be apposite for me to mention, that in the area of civil law, a similar concept is being promoted, and in fact has now become entrenched as part of the administration of justice in the area of civil law; and the process to which I allude, Mr Speaker, is the Mediation Process. Many of my friends on the other side are trained mediators. Mrs Backer, in fact, is one of my favorite mediators, and the Mediation Center has been instructed by me that whenever one of my cases goes to mediation, by automatic choice as the mediator, is the Honourable Member Mrs Backer. That mediation program has been able to bring tremendous success, in terms of bringing to an end complicated civil cases.

My learned friend and Honourable Member Mr Ramjattan and I, were recently engaged in a very complex matrimonial property matter, which involved a vast volume of assets. A case like that, Mr Speaker, would have taken a minimum of about five years to be concluded in the High Court, and thereafter another five years for the appeal to be ventilated. Fortunately Mr Speaker, due to efforts on my part and on the part of my

Honourable Friend Mr Ramjattan, and the Mediation Center, we were able to bring that matter to a conclusion over a three-month period, thereby saving the litigants approximately 10 years of litigation.

Plea Bargaining

Mr Speaker, the Bill that is before this House concerns a similar jurisprudential and juridical context, but in the area of criminal law, that is, arriving at a consensual result, and a consensual conclusion of a case without a trial, thereby saving time, money, psychological agony, and the accompanying injustice which all of this brings, while at the same time arriving at a result that is fair to all and is in the best interest of justice. That is the purpose that plea-bargaining seeks to achieve

Plea Bargain has been defined by the academics as: *a practice whereby the accused person enters a plea of guilty, in return for which he is given some consideration that results in a sentence concession.* The concept of Plea Bargaining, Mr Speaker, is alien to the English common law, but as we have heard from my learned friend, it has formed a central part of the legal system of the United States for over 100 years; and presently it forms a prominent part of the legal system of France, India, Italy, Poland, Trinidad and Tobago, the United Kingdom, and now as we heard, as Mrs Backer accurately said, it is now engaging the Bahamian Parliament.

Mr Speaker, it is also important that I allude to the fact, as has been mentioned by both Mrs Backer and Honourable Member Mr Odinga Lumumba, Plea Bargaining has always been with us. Any person who practices in the High Court, and more especially in the Magistrate Court, would be aware of the concept of Plea-Bargaining being practiced on a regular basis, because Mrs Backer gave the excellent example of persons regularly entering a guilty plea to careless driving in respect of a charge of dangerous driving, by an agreement with the prosecution. What this Bill does is that it formalizes in a structured fashion, the concept of Plea-Bargaining.

Mr Speaker, Plea Bargaining brings several advantages. As I said before, it brings a tremendous reduction to the number of cases, criminal cases, at the Bar. And in my view, any measure that seeks to reduce the number of cases that has to be disposed off, without departing from our fundamental rules of justice and our sense of justice, is a measure, and is an initiative that I will always support. For example, under this Bill, the defense, before the commencement of a Preliminary Inquiry into a charge of murder in the Magistrate Court, can agree with the prosecution that a guilty plea of manslaughter be entered, an agreed term of reference, of sentence, sorry, be accepted, thereby concluding in a matter of days, a case whose trial would have taken at least five years to conclude; and I am not including the possibility of appeal which can take another five years.

The benefits that this brings to both the accused and the prosecution are simply immeasurable. The accused person is immediately saved the heavy financial and emotional burdens which are inexplicably bound to a trial, the outcome of which will be uncertain. Concomitantly, he is spared years of futile incarceration, since the years he spent in prison during the PI awaiting his trial, and/or awaiting the outcome of his appeal, may not be taken into account if he is found guilty of the lesser offence of manslaughter; or worse yet, if he is found guilty of murder, where the sentence is a mandatory one of imprisonment, so the time spent already is of absolutely no consequence.

For a person accused of murder, the cost to retain a competent counsel from the time the chrge is instituted until the appeal is concluded, including going to the Caribbean Court of Justice now, will certainly run into millions. This must be looked at against the background that the accused person remains in prison all this time and may have been the sole breadwinner of his family. The economic and financial effects of all of this can be ruinous. Invariably, marriages are broken, and families are destroyed in this process. The plea of Plea Bargaining offers an alternative to this disastrous situation. Mr Speaker, plea-bargaining, as Mr Odinga Lumumba, the Honourable Member, brings a degree of certainty as well, in respect of the outcome of the case. The accused person knows from the very commencement of the exercise, *well*

look, I will get ten years in prison, whereas if he is to throw himself at a trial, that degree of certainty is absent.

Mr Speaker, I have thus far only outlined some of the benefits that accrue to the accused person, and I now wish to deal with some of the benefits that will accrue to the State in respect of plea-bargaining. The prosecution, like the defense, would benefit from the speed that plea-bargaining brings to the conclusion of a case. The State is saved the tremendous expense, beginning from the Preliminary Inquiry, and concluding at the Appellate stage. The State is further spared the cost of keeping an accused person in prison, while he awaits the conclusion of his Preliminary Inquiry, his trial, and perhaps his appeal.

We must recognize, we must be cognizant of the regular complaints that we hear about overcrowding in the prison, especially in relation to the remand section. This is a most serious situation. Plea Bargaining can bring a direct result, in terms of reducing the prisoners on remand; and to facilitate persons whose cases have been concluded, to be sent off to prisons which are designed to accommodate persons serving longer sentences, for example the Mazaruni prison.

Mr Speaker, any dispassionate examination of our Criminal Justice System would recognize that there are several weaknesses which inhere in the Prosecutorial arm of the State, including a depleted Police Force, with

limited ... limited in their investigative and forensic capability; and a DPP Chamber that is not only short of staff, but also staffed with lawyers lacking experience. This is compounded by a heavy caseload, and the fact that at the defense Bar, these young prosecutors are faced with, faced against lawyers who have years of experience under their belts. My friend Mr Williams will obviously take credit as being one of such persons. What happens as a result, Mr Speaker, is that there is a mismatch when there is a trial. This is most pronounced in the Magistrate Court, where prosecutions are done by Police Officers. The ultimate consequence is that guilty persons are allowed to walk free, and there is a miscarriage of justice.

So that the reality in Guyana is that, we have an unacceptably high acquittal rate in a crime-infested society. Plea-bargaining, if used effectively, is a mechanism which can guarantee convictions, and will allow the State to keep dangerous criminals away from society for long periods. In other words, it may not yield the maximum penalty, but it certainly will yield sentences of imprisonment. At the end of the day, Mr Speaker, the reality is we are not getting these sentences imposed. Plea- Bargaining offers the opportunity for the State, with some degree of certainty, to secure convictions at the Assizes and in the Magistrate Court.

Another fundamental benefit of plea-bargaining, which accrues directly to the victims, their relatives and

witnesses to crime is that it saves them the ordeal of testifying in court, and reliving the very horrible experience that they would have undergone as victims of crime, or as witnesses of crime, experiences that they would wish to forget. Mr Speaker, the emotional consequences that result from the reliving those experiences, and subjecting themselves to cross-examination, can have devastating sociological and psychological consequences, especially in respect of rape victims and children.

Mr Speaker, I recognize that deterrent and punishment are two of the major functions of sanctions, and these are the sociological rationale for the imposition of a penalty for those who commit crimes. As a result, detractors of Plea-Bargaining have argued that it inevitably reduces the punishment that the person would have received for the commission of a crime, especially those that are excessively violent, and committed with extreme brutality. This may indeed be so. However in Clause 4 of the Bill resides the discretion to resort to Plea-Bargaining in the Director of Public Prosecutions; that is, in the hands of the prosecution or the State, and not the defense, so that, it is the State or the prosecution, who incidentally are the representatives of the public interest, who will determine eventually, what cases must go to Plea Bargaining.

In other words, it is not the case where an accused person, as the example given by Honourable Member Mrs Backer, that an accused person can say, look, I can continue to commit crimes, and receive a rap on the knuckles; I would be out of jail in another three years and I can continue my life of crime. This Bill does not function that way. This Bill resides in the Director of Public Prosecutions, the discretion or the power to make the decisions in terms of determining what types of cases we will take to Plea Bargaining. And that is a very, very important safety mechanism that Clause 4 of this Bill includes.

And Clause 5 of this Bill further protects that position, because it makes a criminal offense, it makes a criminal offence for a prosecution or a Police Officer or the Defense Counsel to abuse or misuse or induce a false Plea Bargaining. So that position is protected by Clause 4, and the offence that Clause 5 creates is a very serious one that carries imprisonment for a period of five years. It is Plea Bargaining:

> *Clause 6 prohibits the prosecution from engaging in Plea-Bargaining with the accused person in the absence of his lawyer, and is made mandatory for the prosecution to advise an unrepresented person of his right to seek a lawyer.*

So here again Mr Speaker is another mechanism that the Bill provides to protect the accused person. If he is

unrepresented, the prosecution cannot take advantage of that position. The prosecution is prohibited from entering into an arrangement with a person who doesn not have a lawyer and further, is mandated with the obligation of informing that person to retain a lawyer before a Plea-Bargain Arrangement can be arrived at. And indeed there is another mechanism that Clause 6 provides for, which allows a Judge, or the Courts, to advise the lawyer, the client, who is unrepresented, to seek Legal Aid, or the Judge can appoint a lawyer for that person.

Clause 7, Mr Speaker, creates a mechanism that provides, that protects both the accused person and the State. Firstly, it prohibits plea-bargaining in respect of an offence that is not disclosed in the evidence. In other words, Plea-Bargaining is confined only to offences disclosed by the evidence. This ensures that the accused pleads guilty to a lesser or related offense. Simultaneously, the Clause ensures that the offence to which the accused person is to plead guilty must bear some relationship to the gravity of the accused's conduct. Mr Speaker, this is an important safety mechanism, which prohibits a Plea Bargaining arrangement to be entered into with respect to an accused person who may have been charged with a serious offense; and it precludes the prosecution from entering into an arrangement with that person, for a type of offense that doesn't reflect the gravity of the offense which was committed. And that, Mr Speaker, is a very important mechanism.

Another important mechanism that the Bill provides for, is that it allows for the victim, and relatives of the victim, to have a say in the entire process. And this is very important, Mr Speaker, for the administration of justice, because it allows the victim to have a say. In fact, it obliges the prosecution to consult with the victim before an arrangement is entered into, and then, it obliges the prosecution to give to the victim and the relatives of the victim the reasons why the arrangement is arrived at, and the rationale behind the arrangement. And then it does not stop there … it does not stop there. When the matter is taken before the Court, the Court then invites the victim, to hear victim's views. Mr Speaker, in my humble view, that is a very, very important aspect of the Bill, in including the victim in the entire process.

And finally Mr Speaker, the other important aspect that the Bill allows, is that it allows for the prosecution, as well as the defense, to challenge the plea-bargaining process, so that all is not lost. If it is subsequently realized that the accused person, for example, misled the prosecution, or there was some material nondisclosure, or some impropriety, that they have induced the plea-bargaining arrangements to be concluded, well then the prosecution has a right to appeal, and to challenge the entire process. Mr Speaker that is another important aspect of the Bill.

Mr Speaker, therefore, I will take Mrs Backer's views into account, and congratulate the People's National Congress Reform and the Alliance for Change, for not only supporting this Bill, but recognizing that the Government is on an initiative, and has an agenda to bring reform to the administration of criminal justice. This Bill represents one of those reforms. I wish to thank them tremendously for the support that they have given to this Bill, and I commend this Bill, Mr Speaker, to the National Assembly for its unanimous support. Thank you very much. *[Applause]*

The Speaker: Honourable Member Mr Basil Williams …

Mr Basil Williams: Thank you Mr Speaker. If it pleases you ... This Bill, Mr Speaker, this Bill, represents another distraction in the PPP/Cs strategy, with recent legislation. The PPP/Cs strategy has been to bring a raft of Bills, largely repressive, but then they throw in the bundle, a Bill that nobody could find fault with, like this one. But make no mistake about the repressive one, and the PNCR would not be beguiled or hoodwinked by no, let us say some soft-impacting legislation, amidst a bunch of onerous and oppressive Bills that that they may try to slip past.

I disagree with the contention that this is in furtherance of the PPP/Cs progressive reform program, legislative reform program. It is not. It is not. Honourable Member Lumumba attempts to equate the effect of this Bill with

giving young people another chance to get another shot in life, so to speak. But I am not sure, because the entire basis of this Plea-Bargaining Bill, suggests that the agreement inexorably leads to a plea of guilty, and so, a person would have to spend some time in prison before they come out. And if you don't have a proper rehabilitation program for offenders whilst they are in prison, no matter how short the duration, it does not necessarily mean because it was a Plea-Bargaining arrangement, that when they come out, they have another shot in society. It does not mean that because you were absent you are not familiar with the Bill passed by the Honourable Member Rohee, which states that they don't want to change a 200-year-old law in this country; and it states that no matter what, whether you are a first offender, second offender, or what, you will be registered and you will have to visit the police station in your district when you come out. You were away. So don't be fooled.

Now, you said something about, if you stay in jail long, you can't get a job, because people say "you were in jail." Mr Lumumba, Honourable Member, people can't get jobs in this country who never went to jail, who were never charged; whose only fault is because they live in Bare Root or Buxton. They can't get a job, and apparently it appears to be institutionalized, that when people apply for jobs, and they hear that you are from Buxton or Bare

Root, it's "Buxton!! Bare Root!!" and that is the end of that.

So, we are not going to be distracted. We are going to Judge each Bill as it comes before this House on its own merit. And this one, we say it is laudable, it is a laudable Bill. But we must say that plea is not equivalent to rehabilitation.

In this scenario --- in this scenario, and I should have dealt with it earlier, in the previous Bill; the basic benefit of plea-bargaining is prison population reduction. You know that. The other spinoffs might be there, but the prison population reduction will be the primary benefit. Now, in my own opinion, respectful opinion Mr Speaker, I believe that the Bill is not bad, but I believe this Bill could have gone further; because I don't think this Bill takes into account established practice in this country in arriving at resolution of matters in the criminal arena, not to speak of a civil ... But which practitioner in this country does not know that we have situations where both sides agree that they are not offering evidence, and they go to the Court with that, and the Magistrate agrees, and that is the end of the matter. They probably put them sometimes on a bond to keep the peace. But it is not captured in here, because this is solely dealing with scenarios where you have to plead guilty, and then you make some other agreement with the prosecution, *quid pro quo*.

Now, what about a situation where a witness no longer holds the view that the person they had identified as the perpetrator of a crime is really the person? What happens there? The matter is before the Courts. Is it not the Defense Council that has to initiate? They have to approach the DPP and say, look, we understand that the main witness for the prosecution is no longer interested in giving evidence. This Act does not cater for that. In fact, this Act, only the DPP could initiate any kind of bargaining. I am respectfully submitting that this Bill ought to have gone further, because as I have said, there is a lot of mediation going on also in this country, in the criminal side of the practice; a lot of mediation, where you meet and you try to resolve it. There is a thin line between perverting the course of justice, and that. Essentially, one tries to get the DPP into the Act, and try to work out these things. We all know of the instances of sexual offences, compensation in lieu of ending the prosecution. Is this captured in the proposed Bill? And these are things that are very entrenched. I know in the Stamp It Out exercises they have set their faces against this particular one.

But Mr Speaker, we need to go past what we have here, and try to get some mediation interest in the system also.

Now the Bill itself ... What I find instructive is that, I see in Clause 14 (2), the DPP has power to appeal a plea agreement that has gone wrong in his opinion. But in this

instance, the DPP can only appeal with the leave of the Court of Appeal … can only appeal with the leave of the Courts of Appeal. And you recall there was a Proposed Court of Appeal (Amendment) Bill which passed, which was before this Honourable House recently, where the DPP was given *carte blanche* power to appeal, even a jury's verdict, without leave of the Court of Appeal. And in fact, that was a point that we had made. There should have been some kind of filtering system, if the DPP … what would have been an epoch-making decision to be able to appeal a jury's decision in this country, a jury verdict of acquittal. But in this Bill, it says that the DPP could appeal the agreement that went wrong, but they could only do so with the leave of the Court of Appeal, so it is instructive, Mr Speaker.

Then we have Legal Aid. A retired Judge of the High Court called me recently, and inquired of me whether I know that the Legal Aid in fact charges fees? I said I am not aware, I have not seen the chapter, but to me, if they are saying Legal Aid, it means Legal Aid, i.e. when a citizen goes there, the citizen does not expect to have to pay fees.

The Speaker: As a former Director, I can assure you that they do charge fees to those who can afford to pay. That is just for your information.

Mr Basil Williams: So the question with the Legal Aid here now that is proposed in this Bill, Mr Speaker, one

will have to then determine whether there should be a scale of fees, or some standard by which the Legal Aid would operate on, and that their fees do not reach $400,000, $500,000 figure. So in that type of scenario ...

The Speaker: Only people of your quality can pay that kind of fees ... and you won't go to Legal Aid.

Mr Basil Williams: I would not have any need, hopefully, to go to Legal Aid! But the point is, Legal Aid must not be illusory, especially the raft of Bills we see have been brought to this court, this Honourable House, where it is predicated on legal representation by the Legal Aid group. So those are some of the comments. I endorse and concur with the views expressed earlier by the Honourable Member Backer, Odinga Lumumba, and Anil Nandlall, except for those salutations that they were trying to create for that side of the House. It is a Bill, as I said, we could find no fault with, but which maybe in retrospect, we could have extended to the other popular areas, where we settle as lawyers, matters in the Courts in Guyana. And so, Sir this Bill has our support. Thank you.

The Speaker: Thank you, Honourable Member.

Hon Member Mr Rohee ...

Hon Clement J Rohee: Mr Speaker, I believe that one of the more superior parts of this legislation is that the

functions of the Courts are not usurped, and that at every stage in the process, the Court is in full control. And I think that is the most commendable part of this legislation.

Mr Speaker, I would not be too long. I know we have other pressing matters. Simply to say that I have taken note of what the Honourable Member Mrs Backer has said, in relation to the Narcotic Control and Psychotropic Substances Act, and Mrs Backer is aware that we have been discussing this matter at another forum; and nevertheless, I will be very happy to receive from her any suggestions that she might have on this matter, in addition to the Plea-Bargaining, in respect of road traffic accidents.

It does not matter really much, Mr Speaker, whether this Bill was based on Trinidad and Tobago model or the Bahamian model or whatever; I don't think that is a matter of great importance. What I think is important is that we have a Bill before us that we are all comfortable with. Mr Speaker, the Honourable Member Mr Basil Williams, I think by some sleight of hand, arranged, or by some sleight of hand way, sought to reflect, what is going on now in his Party. On the one hand, while Honourable Member Mrs Backer and others seem to be taking a much more moderate and temperate position which reflects a growing sentiment in the PNCR. On the other hand, Mr Basil Williams seems to be representing the radicals in

the PNCR, and that is an explanation for his outbursts, and the description of this Bill as another distraction; describing the other Bills as onerous and repressive. I think, politically ... politically, he obviously has to show his constituents that he is in a fighting mood. Wherever they might be and whoever they may be, he wants to show his constituents that he is in a fighting mood, and to keep the Party's presence in a very vibrant kind of situation. But we understand that, Mr Williams, we understand that. Simply to say, Mr Speaker, that I would like to again reiterate that we do not consider the Bills that were passed as onerous or repressive. I think they are helpful, and I think the current Bill that we have with us will contribute or reinforce the helpful nature of the reforms that we are trying to influence in the Criminal Justice System,

Just to say, Mr Speaker, that, Mr Williams said there are a lot of people out there who never went to jail but who cannot get a job. And I don't know for what reason he decided to stitch in references to Bare Root and Buxton. Well, Minister Robert Persaud, I think, is a frequent visitor to Buxton, dealing with the farmers; and from what I see in the newspapers and reports I have been receiving, it seems to me that the Buxtonian farmers seem to be making a tremendous amount of progress; and I hope that they have recorded that to the Honourable Leader of the Opposition.

Mr Speaker, I think it is important for us to recognize ... I think it was important for us to recognize, and this was published in the newspapers recently: The Central Recruitment and Manpower Agency, under the Ministry of Labour, has launched a very massive training program. And this is not like the previous, this is not like the previous employment bureau agencies, where you have to have a party card before you could get a job; and we know of that practice that existed in the past. This is an agency which advertises jobs, where all and sundry can walk in, make an application, without showing an application form, or without showing you are member of the Party, and be registered to be assigned one place or the other.

Mr Speaker, as I understand it, there are about 12,000 persons who have already gotten jobs. 1,200, about 1200 persons have already gotten jobs. And Mr Speaker, 301 of those persons who were enrolled in this program have already graduated. So there is a lot of potential here, and I think that while we talk, while we talk, and while we try to make political mileage of some of the deficiencies in this society, we must at the same time recognize that positive things are also happening, Mr Speaker ... positive things are also happening. And I think Minister Nadir will publish soon, the extent to which this program is reaching and impacting on the youth population. Mr Speaker. I understand in the next 24 months about 300 youths, about 300 youths will be trained in heavy duty

equipment and will be dispersed in various parts of the country.

Mr Speaker, I want to say that I again wish to thank the Honourable Members from the Alliance for Progress, the AF, the Alliance for Change, Alliance for Progress is in Peru, AFP in Peru, Alliance for Change in Guyana, as well as the members of the PNCR for supporting this Bill, which I believe, Mr Speaker, is a harbinger of other pieces of legislation of a progressive nature that are yet to come. With that, I wish to ask that the Bill be read a third time … a second time.

The Speaker: Honourable Members, the question is that the Bill be read a second time. Those in favour say "Aye", those against say "No". The "Ayes" have it. Let the Bill be read a second time, please.

Bill read the second time

The Speaker: The Assembly will resolve itself into committee to consider the Bill stage by stage.

ASSEMBLY IN COMMITTEE

Honourable Members, I put the question that Sections 1 to 20 of the Bill together with the schedules, form part of the Bill.

Yes, Mrs Backer …

Mrs Deborah J Backer: Mr Speaker, as I had indicated in my short presentation, I now move that the word "negative", as appears in Clauses 19 and 20, be changed to "affirmative" so that the Clauses will read, *"subject to affirmative resolution of the National Assembly"*, in both Clauses 19 and 20.

The Speaker: Okay, Honourable Members. Let me put c 1 to 18 first. Honourable Members, I put the question that Clauses 1 to 18 stand part of the Bill. Those in favour say "Aye", those against say "No". The "Ayes" have it. Clauses 1 to 18 should form part of the Bill.

I propose the question that Clause 19 forms part off the Bill.

Mrs Backer …

Mrs Deborah J Backer: Mr Speaker, I rise to move that the word "negative" appearing in Clause 19 be deleted and replaced by the word "affirmative".

The Speaker: Yes, a seconder, please. Yes, Honourable Members, the question is, the Amendment is that the word "negative" be deleted, and the word "positive" be substituted therefor; and the word "affirmative" be substituted therefor. Those in favour say "Aye", those against say "No". The "Nos" have it. The Amendment is negatized.

Honourable Members, I put the question that Clause 19 stands part of the Bill. Those in favour say "Aye", those against say "No". The "Ayes" have it.

Honourable Members, I propose the question that Clause 20 stands part of the Bill.

Mrs Backer …

Mrs Deborah J Backer: Mr Speaker, I rise once again to move that the word "negative", appearing in Clause 20 be deleted and replaced by the word "affirmative".

The Speaker: Honourable Members, I propose the *Amendment* that the word "negative" in Clause 20 be deleted, and the word "affirmative" … seconded by Mrs Riehl, and the word "affirmative" be substituted therefor. Those in favour say "Aye", those against say "No". The "Nos" have it. The Amendment is not carried.

Honourable Members, I now put the question that Clause 20, together with the schedules, stand part of the Bill. Those in favour say "Aye", those against say "No". The "Ayes" have it. Clause 20 shall stand part of the Bill. Let the Assembly resume, please.

ASSEMBLY RESUMES

Honourable Member Mr Rohee …

Hon Clement J Rohee: Mr Speaker, I wish to report that Bill No. 21 of 2008 was considered Clause by Clause in committee, and passed as printed. I now wish to move that the Bill be passed, be read a third time.

Question put put and agreed to

Bill read the third time and passed as printed

The Speaker: Thank you very much, Honourable Members. I understand that the other two matters will be put off for tomorrow.

Honourable Members, thank you very much. We can now adjourn until tomorrow.

Adjourned Accordingly At 21:30H