Official Report

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

131ST Sitting	Thursday, 14TH October, 2010

The Assembly convened at 2.15 p.m.

Prayers

[Mr. Speaker in the Chair]

ANNOUNCEMENTS BY THE SPEAKER

Welcome

Mr. Speaker: Hon. Members, I would like to take this opportunity to welcome you back from the recess, and I hope that you all have had a restful period and are now ready to resume our work with great vigour and enthusiasm. Thank you.

PRESENTATION OF PAPERS AND REPORTS

(i) The Audited Financial Statements for the Bauxite Industry Development Company Limited for the years ended 31st December, 2002 and 2003.

(ii) The Audited Financial Statements for the Aroaima Mining Company Limited for the years ended 31st December, 2002 to 2005 and for the period 1st January, 2006 to 31st March, 2006.

(iii) The Audited Financial Statements for the Linden Mining Enterprise Limited for the years ended 31st December, 2002 to 2003 and for the period 1st January, 2004 to 8th December, 2004.

(iv) The Audited Financial Statements for the Guyana Pharmaceutical Corporation for the year 31st December, 2002 and for the period 1st January, 2003 to 14th November, 2003.

(v) The Guyana National Newspapers Limited Annual Reports for the years ended 31st December, 2002 to 2006.

(vi) The Audited Financial Statements for the National Edible Oil Company Limited for the years ended 31st December, 2002 to 2006 and for the period 1st January, 2007 to 30th November, 2007.

(vii) The Audited Financial Statements for the Guyana Television Broadcasting Company Limited for the years ended 31st December, 2002 to 2003 and for the period 1st January, 2004 to 29th February, 2004.

(viii) The Guyana Oil Company Limited Annual Reports for the years ended 31st December, 2002 to 2009.

(ix) The Mid- Year Report 2010.

[Minister of Finance]

(2) The Anti-Money Laundering and Countering the Financing of Tourism Regulations 2010 – No. 4 of 2010. *[Attorney General and Minister of Legal Affairs]*

QUESTIONS ON NOTICE

[Written reply]

NON-RECEIPT OF GOVERNMENT SUBVENTION TO CERTAIN MUNICIPALITIES IN REGION NO. 6.

Dr. Austin: Could the Hon. Minister of Local Government and Regional Development inform this National Assembly why, as at 12th July, 2010, the following Municipalities did not receive their Government Subvention for latter part of 2009 and first part of 2010:

- The Municipality of New Amsterdam for the latter part of 2009 and the first part of 2010;
- The Municipalities of Rose Hall and Corriverton for the first part of 2010.

Minister of Local Government and Regional Development [Mr. Lall]: (1) The Municipality of New Amsterdam received a first tranche on its subvention of $10 million for 2009 in that same year. The final tranche was released in June 2010. The delay was due to the late submission by the Council of its financial statement to the Auditor General. The submission of the statement is a condition for releasing final payments.

(2) The Municipalities of Corriverton, Rose Hall and New Amsterdam received their releases for 2010 of $4M, $4M and $5M, respectively, in September of 2010.

INTRODUCTION OF BILLS AND FIRST READING

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

1. **JUDICIAL REVIEW BILL 2010 –BILL No. 16/2010**

   A Bill intituled:

   "AN ACT to provide for an application to the High Court of the Supreme Court of Judicature for relief by way of judicial review and for related matters."

2. **ALTRENATIVE DISPUTE BILL 2010 – Bill No. 18/2010.**

   A Bill intituled:

   "AN ACT to provide for mediation of disputes as an alternative to litigation."

3. **CONTEMPT OF COURT BILL 2010 – Bill No. 19/2010**

   A Bill intituled:

"AN ACT to define and regulate the law with respect to contempt of Court and related matters."

[Attorney General and Minister of Legal Affairs]

PUBLIC BUSINESS

GOVERNMENT BUSINESS

BILLS – SECOND AND THIRD READINGS

TRAINING SCHOOL (AMENDMENT) BILL 2010 – Bill No. 12/2010

A Bill intituled:

"AN ACT to amend the Training School Act." *[Minister of Home Affairs]*

Minister of Home Affairs [Mr. Rohee]: Mr. Speaker, I rise to move the second reading of this Training School (Amendment) Bill 2010 – Bill No. 12/2010.

I wish to point out, in so doing, that this Bill provides for an amendment to the Principal Act, the Training School Act. It also provides for the deletion of certain – what I would describe as archaic - provisions relating to the maintenance of persons detained at established institutions pursuant to the order of a Magistrate and to recall that section 20 (1) of the Principal Act provides *inter alia* as follows:

> "Any boy detained in a school who wilfully refuses or neglects to conform to the regulations thereof, may, for every offence, be ordered by the headmaster or the person in charge, to be whipped with such instrument as the Minister may prescribe, the punishment not to exceed six strokes, or to be kept in solitary confinement for a period not exceeding one day:"

This section is what we are seeking to amend by the way of the deletion of certain words to it, that is, "to be whipped with such instrument as the Minister may prescribe, the punishment not to exceed six strokes…" This deletion is necessary in this Act in order for it to be compatible with the amendment to paragraph (f) of section 19 of the Juvenile Offenders Act.

Further, the *proviso* which states as follows:

> "Provided for maintaining discipline in the schoolroom the person in charge of it with the approval of the headmaster, may inflict not more than three strokes with such an instrument as the Minister may prescribe."

That particular *proviso* is to be deleted.

Section 25 of the Principal Act is to be amended by way of this amendment, which is before us, by the deletion of the comma after the word "training" and the words "or permit him to be enrolled as a member of the Guyana Youth Corps…"

Further, section 26 and section 27, which deal with the maintenance of a person in school, are to be repealed. I may point out that section 26 states that:

> "When a person is detained in a school, the father of the person (and whether the person is legitimate or illegitimate child) shall, if able to do so, contribute to the maintenance and training of the person in the school a sum not exceeding three dollars a week; and where the father of the person is not able to do so, or where the father is able to pay a part only of that sum, then the mother, the guardian, everyone bound by law to contribute to the support of the person, and every male cohabiting with the mother of the person, shall, if able to do so, be bound *singuli in solidum* to contribute that sum to the maintenance of the person in the school, or the part thereof which the father cannot pay.

Section 27 deals with the mode of enforcing the maintenance liability of parents or guardian. I should emphasise that these modern days the State plays a major role not only in terms of the security of the nation through the Ministry of Home Affairs but it is also incumbent to provide adequate maintenance to those children who have been placed in training schools for failing to follow the law. We, on this side of the House, are very much aware of this role of providing maintenance, and it is with that responsibility in mind that the Ministry of Culture Youth and Sport has assumed the responsibility for maintenance of young persons held under these conditions.

It means, therefore, that two sections must be repealed, and since we are repealing sections 26 and 27 it has become necessary to repeal Forms 2, 3, 4, 5 and 6 of the schedule where the

Magistrate orders the maintenance of the person detained at the established institution under the Principal Act. In other words, we are removing the responsibility of parents or guardians to maintain these children who may be kept in these training institutions and placing that responsibility fully, and by law, within the realm of Government. We are, by virtue of these amendments, further repealing those archaic sections which allow for whipping and or flogging of children kept in these institutions.

I, therefore, commend this Bill, or this amendment, to the House because I find it as a modern piece of amended legislation which, I believe, would be welcome in a modern and enlightened society and Parliament, and, therefore, ought not to have any obstruction in its passage through this Hon. House.

Mrs. Backer: Thank you very much.

I would not make the same mistake, Sir, because I think if I make that mistake and call you Cde. President my predecessor in speaking may get up and leave, because he seemed to be very deflated after that *faux pas* or *pas faux* as he may say, but we know it is a *faux pas*.

Mr. Speaker, no enlightened people would be against the deletion of the archaic provision as the explanatory memorandum states to remove "whipping" from the legislation under review, the Training Schools (Amendment) Bill, which, like our forest, pristine, has stood untouched since 1972 and it comes here primarily to remove the power - for want of a better word - that the heads previously had to impose whipping, and we heard two other small amendments. But, Sir, the question is: How serious is this Government in moving towards modernising legislation when, firstly, it has resisted very rational calls for the establishment of a permanent Law Reform Commission which would have all these Bills, all the Acts in Parliament, under constant review so that we do not have to come in this *ad hoc* way? Mr. Ramjattan, my colleague, usually speaks about *control freakism.* I want to speak about legislation *ad hocism* [**Mr. Rohee:** Speak on the Bill.] I know you went to the training school and luckily there was flogging being done then. It does not seem to have helped you. Probably you were hit too many times.

But, Sir, how serious could this Government be, we support it, when I am advised, and if I am wrong I would hope my colleague, Minister Baksh, would correct me, that as I speak, heads of schools (where children go there, not for correctional purposes and to be taught, but to be taught

primarily. The Training Schools, the emphasis is two-fold) can still impose corporal punishment. So there is an inconsistency there that I think even Mr. Ramotar would see, Sir. I am selecting the Presidential candidate for special mentioned today, Sir, as the first sitting.

Sir, on a serious note, how could we be serious about removing corporal punishment from Training Schools, and it is going to come under the amendment of the Juvenile Offenders Act of corporal punishment, removing that for Juvenile offenders, very good; but where is the logics then, when in schools heads can still impose corporal punishment? That is what I mean, Sir, when I speak about *ad hoc* ways lurching from one Bill to another.

When one looks at these two Bills, the Training Schools Bill, the amendment proposed - I am speaking about the corporal punishment specifically - and the next Bill, the Juvenile Offender, one is tempted to assume that the purpose of removing flogging from these two Bills may be to make Guyana convention compliant or donor compliant. It may be, I do not know, but we might see in the next couple days some one of the Ministers collecting a hefty cheque from the United States Agency For International Development (USAID) or wherever as the Government… [**A Hon. Member:** It would be from the Norwegian] It would not be the Norwegian. The Norwegian is for a different thing. That is for our pristine forest. It is not for our pristine law. [**Ms. Teixeira:** Are you not proud of your country's achievements?] Are you?

So Sir, we are in favour of the removal of flogging but we say, and we say again, let us have comprehensive modernisation review of legislation so that there will be a level playing field and it would make sense in totality.

Sir, the deletion – this is clause 3 - if we are going to delete the words "Guyana Youth Corps" , and this is a bit, I say, Sir, I submit, of untidy drafting, in section 25 of the Principal Act, then we also have to amend the margin, because in Guyana the marginal note is part of the legislation. But the marginal note still reads:

> "Permission to reside away from school or to be enrolled in Guyana Youth Corps."

So we are removing that from the main section, section 25, and I respectfully submit, I do not think that anyone will have a quarrel with this – I see Mr. Dhurjon here; obviously it is an

oversight; he is over work, Sir – that the words "Guyana Youth Corps" be removed from the marginal note.

Also Sir when flogging of boys is now removed then the two subsections, the section which deals with that is section 20 (1) and the one which deals with girls is section 20 (2), as it can be seen under this Principal Act, girls cannot be flogged, so in fact we are bringing the boys in line with the girls, should be collapsed into each other because they are now implying the same thing. But there is a very untidy or ungainly piece of legislation which states:

> "Any boy detained in a school who wilfully refuses or neglects to conform to the regulations thereof, may, for every offence, be ordered by the headmaster or the person in charge, to be whipped with such instrument as the Minister may prescribe, the punishment not to exceed six strokes, or to be kept in solitary confinement for a period not exceeding one day:"

And then the next subsection:

> "Any girl detained in a school who wilfully refuses or neglects to conform to the regulations thereof, may, for every offence, be ordered by the headmaster to be kept in solitary confinement for a period not exceeding one day:"

They are saying exactly the same thing. They were separated originally because the boys had two punishments: flogging or solitary confinement for a period not exceeding one day. They both now have the same, so I am suggesting that for tidiness…, because this is our record and we want to be proud, as the Hon. Member Gail Teixeira said. So I hope my comments on those two bits of legislative untidiness would be seen in the spirit which is given. I, myself, worked in that Chambers for three years and I think that when I worked there, very, very long ago, Mr. Dhurjon was there. I know that he is experienced, and I am sure that the Attorney General, through him, will take our comments about the need to tidy those pieces.

Having said that, I just want to close by saying that we support the amendment and look forward to when that discretion that reposes in the heads is brought into conformity with this amendment and the amendment that will follow.

I thank you. [*Applause*]

Minister of Culture, Youth and Sports [Dr. Anthony]: Thank you Mr. Speaker, Hon. Members.

I rise to support the amendments to the Training Schools (Amendment) Bill 2010 as proposed by my honourable colleague Mr. Rohee. Most of these amendments are quite simple in my view, and also, perhaps, non contentious. However, the removal of the specific words in section 20 (1) might be controversial to some because the net effect is really the abolition of corporal punishment from the Training Schools' Act.

We know that internationally the use of corporal punishment remains controversial and the proponents of this practice usually cite plausible reasons. For example, some feel that it would serve as a deterrent to criminals and by so doing it would prevent future crimes. But many critics are not convinced that this is working and, perhaps, if we cast our mind in colonial Guyana, corporal punishment – flogging, whipping – would have seemed to be a favourite pastime of the plantation managers. In a book, which is coming out shortly, by Trevor Bernard, called *Hearing Slaves Speak,* documents the practices of planters. He, in that book pointed out:

> "Punishment records and the fiscal records indicate that in a six-month period one fifth of all slaves were given a punishment. The total number of punishments amounted to nearly seven thousand for a population of twenty thousand slaves. Of those punishments twenty per cent involved a whipping suggesting that approximately seven per cent of the male slaves were flogged in a typical six- month period."

This is just a snippet of that colonial period and it did not work then, and certainly it will not work in the future. But it is perhaps against this mind set of punishment, rather than rehabilitation, that a Training Schools Act was first enacted in 1907. This was done eighteen years after the establishment of the Essequibo Boy School, and it was done to give a legislative framework for the functioning of the school. As it can be deduced, the school was, therefore, established in 1879 and it had various names. In 1979, on the 1st of August, with the Belfield Girl School and the combination of the then Essequibo Training School, what was then called the New Opportunity Corp was created. So this Act primarily oversees or sets the legislative framework for the functioning of the New Opportunity Corp.

There is now a growing sense of international unease with corporal punishment. Globally, this is manifested in the formulation of various multilateral instruments that abhorred these practices. The United Nations General Assembly, resolution 4035 of the 29th of November, 1985, adopted US Standards Minimum Rules to the Administration of Juvenile Justice that is now referring to the Beijing Rules. This was followed by United Nations Rules for the Protection of Juveniles Deprived of their Liberty which was adopted by the General Assembly, by resolution 45113, on the 14th of December, 1990. Both of these documents have now become the foundations on which many countries are now constructing their own laws, or reviewing their laws, regarding juvenile justice.

2.45 p.m.

As was pointed out, currently in the Trading School Act, Section 21, there is allowed corporal punishment, but these two instruments that I referred to – the Beijing Rules – explicitly prohibit corporal punishment as expressed in Section 17, Article 3, which states that juveniles shall not be subjected to corporal punishment, or in Rules for Protection of Juveniles Deprived of Their Liberty in Section 67 that states:

> "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be prohibited, including corporal punishment."

This is also reinforced by the convention of the Rights of the Child which is expressed in Article 37(a), which states, "No cruel, inhumane or degrading treatment or punishment shall be meted out." Guyana, of course, ratified this convention in 1991.

Since our existing laws, the Training School Act and the one that we will do subsequently, the Juvenile Delinquency Act predates the U.N. standards. Amending Section 21 and the Juvenile Delinquency Act at Section 19 (f) will bring us in compliance with international norms. It would also reinforce the practice at the New Opportunity Corps (N.O.C.) which, since 2003 by administrative instructions, was prevented from administering corporal punishment.

We strongly believe that many of the juveniles at the New Opportunity Corps are really victims of circumstances. Some have been abused and exploited by adults. Some have been failed by their parents and community. We therefore have to teach them a different way. We have to give

them opportunities to develop skills such as reading, writing and counting; teach them things that can make them employable and get them involved in sports and culture to give them a holistic development. That is what we are currently providing at the N.O.C. – a chance for a better life. We feel that we are gaining some successes because less than 2% of those discharged from the institution are readmitted.

We have an ongoing reintegration programme with UNICEF in which many of these students are now assisted with job placements and further educational opportunities. These stories of successes can be read on UNICEF websites.

For all of these reasons, I therefore concur with the deletions proposed in Section 21.

Amendment to section 25 is also necessary. In 1966 a U.N. consultant, Robert F. Landor, was commissioned to study the issue of poverty and vocational training among young people in Guyana. One of the principle findings of that study was for the establishment of the Guyana Youth Corps. This was done on the 1st January, 1968 but was later absorbed as part of the Guyana National Service on the 1st October, 1974. Since the Guyana Youth Corps is extinct, it would be impossible to enroll as a member, so this redundancy should be removed.

Sections 26 and 27 deal with maintenance of persons in the school; it outlines the fees payable and from whom they should be collected. Since the establishment of the N.O.C. in 1979, no financial contributions were ever collected and we have tried to establish whether, under colonial government, financial contributions were collected. However, our records which date back to 1940 shows that there is no evidence that at any time, financial contributions were ever collected. Therefore, these sections were never implemented for more than 70 years. Again, I therefore concur that they should be deleted. With the deletions of these two sections, it would certainly make the forms obsolete so that these should be removed as well.

Mr. Speaker, Hon. Members, with these proposed changes to the Training School Amendment Bill 2010 we should have taken quite a significant step in the abolition of corporal punishment in the Training School Act. I think the Hon. Member Mrs. Backer referred to whipping in schools, but I am told that under the Education Act that whipping or flogging of students in schools is not permissible. [**Mrs. Backer:** Which Act?] …The Education Act. I think that you should note that.

We are working on the elimination of corporal punishment and, I think, in the Training School Act and in the Juvenile Delinquency Act, where there was a vestige of this in the law, we are now moving to remove it.

I would like to concur with the amendments and urge all of the Members to support these amendments. [*Applause*]

Mrs. Punalall: Thank you, Mr. Speaker. It is in the best interest of our youth in Guyana that such a training school exists in our country so that youths can be disciplined and educated, should they commit an offence. The Alliance for Change supports the amendment and the repeal for Sections 26 and 27. However, we would like to ask the Hon. Minister, when forms 2, 3, 4, 5 and 6 are deleted, what programme will be put in place to facilitate the continual training of the students and what reasons are given for the removal of these forms mentioned here?

The repeal of Sections 26 and 27 is aimed at removing the liabilities to maintain these youths at the school from the parents or guardians of these youths. This is a welcomed move when one considers the low incomes of many families. We hope that the young people will make good use of the opportunity afforded to them to be educated under the circumstances which brought them to these schools. They will be disciplined, educated and returned to society where they will be obligated to be good citizens of our beautiful country, Guyana.

In this very Parliament where we had Ms. Chantalle Smith as our last Member of Parliament, promoted the motion of removing corporal punishment. We had asked for the support of this motion to be considered in this Parliament. The P.P.P. and the Government had opposed it at that time. We are happy today to note that it has come back to the House where they are now accepting that we need to remove corporal punishment from the laws of Guyana. Thank you. [*Applause*]

Mr. Rohee (replying): Mr. Speaker, I thought that I would not have been encouraged to involve myself in political issues on a Bill that is quite straight forward as this one. When I heard the Hon. Member, Mrs. Backer, ask the question rather rhetorically, "How serious is this Government?" I asked a similar question, "How serious is the Hon. Member?"

Those of us who have sat in this House over the years would hardly deny the fact that in the modern history of this country since independence, there have not been so many pieces of legislation passed to improve and enhance the legislative architecture in this country in respect of the financial, security, housing and the agriculture sectors… I think that the records speak volumes of the track record of this Government with respect to its seriousness, with respect to the passage of legislation and amendments to Principle Acts to bring this country into a state of modernisation in all of the various sectors of economic, social and political life. I would dismiss that out of hand – about the seriousness of this Administration. I think it was a weak attempt to engage in some kind of political foray for the sake of making some political point.

Then the Hon. Member once again regaled us in respect of establishment of a comprehensive law reform commission. We have heard this request before about a comprehensive Law Reform Commission, but I want to ask the Hon. Member since we are in the asking mode: Is it not much more efficient and effective to amend laws in order to modernise the country as quickly as one can rather than engaging in a long unwieldy discussion? If one puts two lawyers together – I mean no disrespect to persons in the legal profession – I think that they will talk about it for a week without drawing a conclusion. We want to move and instead of a long drawn out process of a Law Reform Commission, I believe that the old adage that *"one, one dutty does build dam"* will make us arrive at the same objective by building pieces of legislation into the architecture.

Asking for consistency with what exists in this legislation with respect to corporal punishment in respect of the formal educational institution is totally illogical. It does not make sense because the children who end up in these institutions pass through the courts. The children who attend school do not. We do not have to send our children to court before they enroll at a school. I do not understand the point that you are making which says that because corporal punishment is abandoned or dismissed at the level of these training schools, equally speaking, that we must do the same in formal education sector.

I believe that this amendment is basically innocuous and should gain the support of any reasonable Member of Parliament without engaging in any political excursion that has no relevance whatsoever to the legislation that is being passed.

I would wish to propose and ask that the Bill, having been supported in this House, be read a second time.

Question put, and agreed to.

Bill read a second time

Assembly in Committee

[Clauses 1, 2, 3, 4 and 5 agreed to and ordered to stand part of the Bill.]

Assembly Resumed

Mr. Rohee: Mr. Speaker, I wish to report that the Training School Amendment Bill, Bill No. 12 of 2010 was considered at the Committee stage and passed without amendment. I therefore move that the Bill be read a third time.

Bill read the third time and passed as printed.

JUVENILE OFFENDERS (AMENDMENT) BILL 2010 - Bill No. 13/2010.

A Bill intituled:

"AN ACT to amend the Juvenile Offenders Act." *[Minister of Home Affairs]*

Mr. Rohee: Mr. Speaker, this Bill which we are about to move to its second reading seeks to amend Section 19 of the Juvenile Offenders Act by deletion of Paragraph (f). Section 19 of this Act states:

> "Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall not record conviction against him and may make one of the following orders not inconsistent with each other subject to such conditions as the court may deem necessary to ensure compliance with the orders made."

Paragraph (f) of this said Section 19 provides that:

> "In special cases, where having regard to the nature of the offence and to the character and antecedents of the offender, the court may consider it necessary to order the offender to be whipped."

As in the previous amendment, I consider it the duty of this Administration, of which I am part, to ensure that the archaic laws are expunged from our law books. It is noted that this law was enacted 70 years ago. One could only engage in the conjecture as to the state of mind of the law makers of that time when Guyana was a colony.

My colleague, Minister Anthony, referred to that epoch in respect to the previous amendment that we have just considered and passed. Having gained our independence as a nation, it is incumbent upon the current generation of law makers to set a different paradigm and have a different frame of mind in order to understand what occurs when a child or young person is detained or punished or when they are not detained and punished.

Detention in itself is a form of punishment. While that may be so, in this particular case where we are speaking about a child or young person and not necessarily in relation to persons who would have passed through the courts and have been committed to one of our penitentiary institutions, we need to take into consideration whether it is necessary to add to that form of punishment whipping as another form of punishment, in respect of children or young persons.

In the same way as we seek to rehabilitate persons who pass through the courts and who are deprived of their freedom of movement, we should adopt a similar attitude in respect of children or young persons who are detained at the appropriate training and educational institutions. I do not believe that this is a shortsighted approach or view. I believe that it is consistent with modern times and therefore the need to move this amendment.

There are several sections within this act which deal with the procedures for trial and punishment of the child or young persons. These are appropriate and sufficient in dealing with young offenders. Therefore, Paragraph (f) of Section 19 which calls for the punishment of whipping should be deleted from the act and it is in this spirit we move this amendment and commend it to this Hon. House. [*Applause*]

Mrs. Backer: Thank you very much, Mr. Speaker. I will be even less long than I was on the first Bill and basically, in saying that we come back to the old position of ad hoc amendments to our various pieces of legislation. We had a slight hope that if we kept plugging away at the Government that they would see the wisdom of law reform, but the Hon. Member has clearly

shut the door when he said, "Look. You do not want that. The way to go is *"one, one dutty build dam"*." without or without animals there on.

I just want to perhaps see if I can induce him to "google", or perhaps he may say "to goggle" the words "Law Reform Commission(s)" and he will see that Canada, Australia, New Zealand, India, Sri Lanka, Bangladesh and then we can go to the African continent with Nigeria and a few other counties – most Commonwealth countries. We can come nearer here – Trinidad and Barbados. They have law reform and despite this terrible reality that they are heavily populated by people with legal backgrounds, the reality is that these Law Reform Commissions work.

In some of those countries, the pace of legislation and the completeness of the modernisation of their legislation are the envy of many other countries in the world and should be to our envy to which we should aspire rather than speaking in the 21st century. I hope that the Hon. Member's donors are not listening, as in the 21st century a senior member of the ruling party is saying, "Do not worry with a Law Reform Commission. Let us go *"one, one dutty build dam."*" The only thing that could help us, Sir, is that they would not understand what that means. They may think that it has something to do with the miners who just come up. It is some kind of something and not what we know it to be.

It is the same thing that we are doing with our disciplined forces and our education system, to name two that I have some knowledge about. We are lurching from crisis to crisis rather than sitting back and looking at the whole picture.

In closing, I want to say to my colleague, Mr. Rohee, that when you are too near to the mountain all you end up doing is getting a stiff-neck. You need to stand back at times to get a panoramic view of where we are and where our legislation is. That is what law reform does. I am satisfied that I cannot convince him, but I am sure that there must be, apart from the Speaker, some other Members of the House, on that side, who understand what law reform is. I am almost tempted to say that Mr. Anil Nandlall does, but he was totally against it. He was also totally against law reform, Sir. It seems that there is a bug that has gotten to the P.P.P. but we hope that they could be debugged and hope that Law Reform Commission will be seriously contemplated. If not, we will have to wait until the next election to get it going. I thank you, Sir. We support the concept. We support the principle of removing flogging.

One last thing I should say, I have been again advised, Dr. Anthony, that Heads of schools in Georgetown and other Regions still have the discretion to inflict corporal punishment. It is something that, if you are saying is not true, you need to check. I see your Minister Kellawan Lall is agreeing with me, but you need to look at that. [*Applause*]

Dr. Anthony: Thank you, Mr. Speaker. I think in the previous presentation on why we should remove Section 20 from the Training School Act that presented the arguments as to why we are removing corporal punishment in its more severe form, as presented in that Bill, and similarly in the Juvenile Delinquency Act, at 19 (f), really allows magistrates to prescribe flogging. As such, by removing this clause, it brings consistency between the two pieces of legislation. I would like to recommend that we concur with the removal and deletion of these words so that we could move this process forward. I thank you and I urge Members to support this. [*Applause*]

3.15 p.m.

Mr. Ramjattan: Mr. Speaker I want to make a short presentation. Indeed the deletion of whipping by order of the magistrate under the Juvenile's Act as a penalty for those juveniles convicted for certain offences is an extremely modern and useful thing. This ought to have happened a long time ago. It is not as if this issue was not brought to the attention of this Parliament.

Our Alliance for Change (A.F.C.) Parliamentarian, Ms. Chantalle Smith, on the 20th November, 2006 proposed here in this Parliament, the motion that we must resolve in this National Assembly to abolish corporal punishment in schools. This is so because it violates the Rights of the Child Convention of the United Nations (U.N.). It also violates our Constitution. I would like to just to repeat for the record of this National Assembly what that motion stated because it now seems that the Hon. Minister of Home Affairs wants to take the kudos for Guyana becoming modern, without mentioning that an Alliance for Change parliamentarian was here arguing the same cause. Moreover, although the motion was presented there, she dealt heavily with the sociological reasoning as to why there must be an abolition of this kind of punishment to especially, juveniles, young people and training school attendees. This is what she had indicated:-

"And Whereas the Government of Guyana's report on the Committee of the Convention of the Rights of the Child on July 29, 2002 states: "Enhanced legislation… in this country's efforts to give tangible effect to the provisions of the CRC."

"And Whereas the Government of Guyana's Report on the Committee of the Convention of the Rights of the Child on July 29, 2002 further states: "The Constitutional Reform Commission acknowledged that the provisions of the Convention of the Rights of the Child should inform constitutional provisions to protect children's rights".

It then goes on to state that, "indeed this is consistent with these times,

BE IT RESOLVED that corporal punishment be abolished."

What happened then, apart from then substantiating this motion with the sociological reasoning and quoting from text writers which are a part of the Hansard, that set of parliamentarians in the People's Progressive Party Civic (P.P.P. /C.) in November 2006 vehemently opposed it stating that we were not ready for this and that. Indeed, the sociological reasoning that Ms. Chantalle Smith was quoting from textbooks might not be applicable to Guyana. I am happy to note now that at least the Hon. Members have been reading and they have been learning and to that extent they have now come to realise that, indeed, corporal punishment in the form of whipping of juveniles, in the form that was just deleted from the Training Schools (Amendment) Bill 2010…

Ms. Teixeira: Mr. Speaker, I rise on a Point of Order. Mr. Ramjattan seems to have forgotten that that the A.F.C. motion on corporal punishment to which he refers was amended by the Government and passed unanimously in this House

Mr. Ramjattan: The Government did not pass this Bill. It had to get its favourite Clauses inside. That is why up to today it is a discretion that school teachers have that they can perform corporal punishment on students at high schools and primary schools. This distinction that the Hon. Minister of Home Affairs is making that it will be deleted for those who are convicted of offences and those who are not convicted, they can suffer a whipping with the wild cane, is so illogical. It is without harmony. I do not understand why the Hon. Minister is making that argument in this August Assembly, especially in the context that corporal punishment is

something that never rehabilitates young people. The sociological studies have indicated all of that.

I just want to state that the kudos must not be taken now and the records reflected as if the arguments were not made by the Alliance For Change some four years ago – 20th November – that indeed we must go this way. I want to thank the Minister for having gone this way in relation to the Training Schools Act and the Juveniles Offenders Act. They must now go the full gamut and not the half a mile. They must go now to the Education Act and abolish corporal punishment. Delete that provision in the Education Act that has it. This will be consistent with, as the Hon. Member Ms. Gail Teixeira said the motion that was unanimously passed and consistent with going the half mile here. Let us go the full mile but also let the Alliance for Change get some kudos for having seen it four years ago and it is now being done. Thank you very much Mr. Speaker. [*Applause*]

Mr. Rohee (replying): Mr. Speaker I would like to dismiss Mr. Ramjattan's argument as spurious, without foundation and irrelevant. We are not discussing corporal punishment in the formal education sector. [**Mrs. Backer:** We are] You are free to do so, but we are duty bound to focus on the amendment that is before this House. If Hon. Members wish to cast their arguments as wide as Mr. Ramjattan did, they must be prepared to deal with the consequences in terms of the rebuttals to those arguments. I insist that his arguments are totally irrelevant to the amendment that is now before this Hon. House. To seek to introduce a case with respect to corporal punishment in the Education Sector and to draw parallel with what obtains with respect to persons who would have passed through the courts and sent to training schools of this type, I believe, is stretching the argument a little too far.

The argument was once again raised by the Hon. Member Mrs. Backer and I noticed that the Hon. Member Mr. Ramjattan did not even give it a modicum of support, about this highly exalted law reform commission. Am I to understand the Hon. Member to be saying to put the law reform commission in place and put a brake on any further or future amendments to legislations in this House? Am I to understand, from the Hon. Member's arguments, that the two are mutually exclusive? While one can speak *ad nauseam* about establishing law reforms commission, it does not take away the right and the responsibility of the government to bring

legislations to this House, notwithstanding the fact that there is not a law reform commission in place.

It appears as though the Hon. Member wants to replace the responsibility of the Government to bring amendments to legislation in place with the establishment of a Law Reform Commission. If that is what the Hon. Member is arguing, then it would seem that by dint of logic that she is also saying that the Government should be removed. I do not mean remove the Government by declaration because that is what the Hon. Member seems to be implying. The Government and Committees that have been set up by the National Assembly to address legislative issues, the amendment to laws and the making of new laws to come before this Hon. House should be removed.

The argument that the Hon. Member is putting forward is faulty to the core. I want to recommend that before Hon. Members pronounce on matters as serious as this, they think seriously about doing so because it does not seem to me that they have given much thought to these amendments. They stand up and speak, thinking on their feet.

The Hon. Member Mr. Ramjattan apparently has a short memory. I want to advise him that rather than relying on memory from the top of his head, it is important to go back to the archives and the Hansard. The Hon. Member sought to posit an argument, but he never quoted from any document. I would reduce what he basically said to mere "politicking" and I would not waste too much time answering those arguments. Hon. Member. Mrs. Deborah Backer, used examples like Australia, New Zealand, Canada and so many other countries. Those countries have reached a certain level of socio-economic development which we are seeking, as we lay these legislations. While we are striving to achieve that level of socio-economic development, we have to ensure that we put the necessary laws in place so as to allow us to achieve those objectives which were stated. This is apart from the other socio-economic measures which were there. I want to commend this Juvenile Offenders (Amendment) Bill 2010 – Bill No. 13/2010 to this Hon. House and beg that it be read a second time.

Question put, and agreed to.

Bill read a second time

Assembly in Committee

[Clauses 1 and 2 agreed to and ordered to stand part of the Bill.]

Assembly Resumed

Bill reported without amendments, read the third time and passed as printed.

CRIMINAL LAW (OFFENCES) (AMENDMENT) BILL 2010 – Bill No. 14/2010

A Bill intituled:

"An Act to amend the Criminal Law (Offences) Act." [*Attorney General and Minister of Legal Affairs*]

Attorney General and Minister of Legal Affairs [Mr. Ramson]: Cde. Speaker, this amendment or amended Bill, albeit, apparently of a very short character in relation to Section 100 of the Criminal Law Offences Act, that is the Principal Act. There are certain fundamental and significant changes by way of amendment that this House will be urged to consider. With your leave Cde. Speaker, I invite you to look at Clause 2 in relation to Section 100. In Clause 2, sub-section 1 (a), paragraph IV, there is a bit of surplusage in the fourth line from the bottom. Three words, "the murder of" appear after careful consideration to be surplusage. It is a repetition of what is in the *shapo* in paragraph A. With that caveat, I would proceed to lay the foundation for inviting this House to pass this Bill – this amendment to the Criminal Law (Offences) Act.

You will appreciate that we are in the year 2010- a far cry from the period when the original or Principal Act was given legislative *imprimatur*. This piece of legislation by way of amendment has its origin in and is in response to the pleas of the general community, the discourse of criminologists and the persuasive argumentation of the penologists. Of course, the sociology of the recent past, consequent upon the mandatory penalty of death for all forms of murder, has also not been lost on the P.P.P/C. Administration. The thrust of this amendment would be to identify certain areas that would normally attract, generically, the mandatory penalty of death.

It is hoped that by the end of this presentation, on both sides because, I expect that the Hon. Members of the Opposition while embracing the amendments, may give whatever spin they wish on the motive behind the passing of this piece of legislation at this stage. I can assure them that it

has nothing to do with any grant aid or foreign funds and as is widely appreciated that this is the only country in the Caribbean that can sustain itself by its revenue collection.

Cde. Robert Montgomery Persaud had to remind a certain organisation that in the interests of all the people of this country, whenever it is found necessary to expend moneys, especially if it is moneys garnered lawfully by the treasury, those moneys will be spent to ensure that the appropriate infrastructure is put in place for the benefit of all of the Guyanese people.

In short compass, I will venture to suggest that with the passage of this amendment, the prosecutorial agencies will find some comfort in the minimising of the burdens reposed on them in successfully presenting indictments for the crime of an unlawful killing. Generally and more quaintly speaking, murders are now classified as capital and non-capital murders as they impact on the penalties imposable. I referred to the sociology of the recent past to identify that area of concern which may have inspired, to some extent, the passing or the presentation of this amendment to the Principal Act.

Cde. Speaker, as a lawyer you would be well aware that there is the gravest difficulty in bringing a convicted murderer to the final place for the exaction of the penalty on the statute books. If my memory serves me correctly, it was I who prepared a warrant, at the request of the then president, for the execution by lawful means – the only lawful means available at the time – of the last person executed in this country, albeit immediately after I demitted office in 1996. I believe that person was the man who had killed a schoolboy for the sale of a bicycle somewhere at a Main Street School so that he could indulge in his narcotic activities. I do not believe that his mother was very interested in protracting the proceedings. It is my experience that since then, whenever warrants are read to condemn men, there would be more than willing attorneys who for one reason or the other, inspired by certain known organisations, would file applications to the court. I refer merely to one who is still languishing in prison. His partner in crime died in prison. He is blind and nearing death and yet he would not give the comfort to the victim's family by surrendering to the gallows. However, we followed due process and I do not propose to apologise for exacting the penalty after due process. It is part of the human psyche - *an eye for an eye and a tooth for a tooth*. I did not make that law; that is Moses' Law.

Sometime in the late 1950s while our beloved country was labouring under the yoke of colonialism, our erstwhile imperialist masters, based upon their sad experiences resulting from the irreversible consequences of the mandatory execution by hanging following the verdict of a jury, passed a Homicide Act abolishing this penalty with a reservation that this piece of legislation should be revisited after three years.

3.45 p.m.

We were still a colony at the time. No such legislative intervention was made in the then British Guiana for reasons which need no expatiation. I can assure you that what was not good for their fellow citizens in Britain was deemed to be good for our citizens, or those persons who lived in the colonies. Remember, they were still in charge of the country.

This opportunity presented itself once again when the 1966 Constitution was enacted, but the status quo remained un-impeached. To this day jurisprudential underpinnings of this departure have not been revisited in Britain. On the contrary it has become more of a moral and human rights issue, both there and here in Guyana, as is manifest from the plural international conventions sponsored by the United Nations, the European Union and other "reformationists".

In Guyana, which is now an independent country for more than 40 years, when a man or a woman would have reached that threshold of maturity, in recent years more particularly, calls have been made by an NGO of some dubious numerical support for the adoption of a position consistent with that which obtains in western Europe. I see that it may very well be a 'Quango' by now rather than an NGO. It has now been indulging in exercises outside of its reputed spheres of activity. It has branched out into the agriculture field dealing with canals. It is the most badly kept secret that that local outfit or other outfits of like nature, have been beneficiaries of the financial largess from a panoply of overseas organisations and governments committed to this kind of undisguised penal reform, however unjustifiable or impractical.

Cde. Speaker, make no mistake about it - and it is not lost on this Government - that their efforts at proselytizing have been less than subtle. And their sponsors, oft times represented by delegations, have sought to make AID funds dependent upon the reform of this sector. Let me state categorically, and unequivocally, that the policy of the PPP-C Government has been both consistent and practical in this respect. One need only pose the question rhetorically: Would the

current incidence of criminal homicide abate with the pre-emptory removal from our statute books of execution by hanging? I can assure you this is not the purpose of the amendment. I am persuaded and satisfied, that the Cabinet is absolutely correct and has been persuaded that this piece of legislation would address some of the anxieties and consequences arising from some forms of deviant conduct - as will be evident as I address this Honourable House - which though fatal are not premeditated. To use lawyers' language, it is without *malice aforethought or pre puce manufacture.*

Cde. Speaker, this piece of legislation has become necessary, and in spite of all that is happening in the recent past, it would do us well to consider and give our support on both sides of the House, to a rather practical approach, to the kind of response given when criminal activity of this kind takes place. As you will see from Clause 2, and the Explanatory Memorandum, albeit very concise in what it deems important, it says:

> "…it specifies the circumstances under which any person convicted of murder shall be sentenced in accordance with…"

When we have regard for the wording of the intended amendment it says:

> "Subject to subsection (3) every person who is convicted of murder committed in any of the following circumstances shall be sentenced in accordance with section 100A (1) (a)…"

Well, it will be necessary for us to go to that section so that it will give you an idea having regard to the fact that the mandatory penalty for murder is hanging until death. That is, the penalty of death must be imposed by the trial Judge. This amendment provides, not for the removal of the death penalty, but for the pre-emptory imposition of the death penalty without more. It provides an alternative of imprisonment to life with respect to certain identifiable classes of conduct when the offence of murder is committed. Those classes are identified in the amended Section 100 subsection (1) (a) where the murder is committed against:

> "(i) a member of the security forces acting in the execution of his duties or of a person assisting a member so acting;

(ii) a prison officer acting in the execution of his duties or of a person assisting a prison officer so acting;

(iii) a judicial or legal officer acting in the execution of his duties."

I suppose that relates to magistrates, the hangman and various other people, who in the course of their duties would be obliged to perform certain mandatory acts.

(iv) Any other person acting in the execution of his duties, being a person who, for the purpose of carrying out those duties, is vested under the provisions of any law in force for the time being with the same powers, authorities and privileges as are given by law to members of the special constabulary, or the murder of any such member of the security forces, prison officer, judicial or legal officer or person for any reason directly attributable to the nature of this occupation;

(b) the murder of any person for any reason directly attributable to –

(i) the status of that person as a witness or party in a pending or concluded civil cause or matter or in any criminal proceedings;

(ii) the service or past service of that person as a juror in any criminal trial

(c) any murder committed by a person in the course of furtherance of –

(i) robbery;

(ii) burglary or housebreaking'

(iii) arson in relation to a dwelling hours; or

(iv) any sexual offence.

Those of us who have been at the criminal bar would recognise that there is a concept known as "the felony murder rule" which is murder committed with clear intention, premeditated unlawful killing which amounts to murder, and the principles applicable to those various offences. The

commission of murder in the course of the commission of those other offences those intricate rules may not need to be applied in the light of this current amendment.

Further, any murder committed pursuant to an arrangement for the passing of money or something of value where it involves one of the parties or a third party. Or for some consideration where another man wants to eliminate somebody and a promise is made to someone else, or a third person, to cause or assist in the causing of death of that person.

Finally, where that murder is committed by a person in the course or furtherance of an act of violence - (According to some people it is "voilence", but the word is violence.) – by that person which by reason of his nature and extent is calculated to create a state of fear in the public or any section of the public. I believe that is generically regarded as acts of terrorism.

The penalty that is attaching or the penalty that is intended to be attached to that kind of activity, those various classes of deviant conduct leading to murder, shall be the sentence of death or imprisonment for life. As you will see that imprisonment for life does not mean, as it is generally understood to mean, eight to ten years as is the practice. Imprisonment for life, has by the common law generated the kind of time frame of eight to ten years but, this amendment, this piece of legislation, has now amended that generally regarded common law principle as you will see in Clause 3 of the Bill where the question of parole arises. I will draw to your attention what imprisonment for life is statutorily intended to mean.

So if I may recap what I have addressed you on, in relation to this aspect of the amendment, there are these classes of deviant conduct or criminal activity that would lead ultimately to the commission of the offence of murder. That attracts a certain kind of penalty, and that penalty is an either or situation. It gives the trial Judge a certain level of discretion based on the facts as he sees them, and based, of course, on the mitigating factors that will be advanced by the defence counsel.

In sub-clause (2):

> "Subject to subsection 3, every person convicted of murder other than a person convicted of murder in the circumstances specified in subsection (1) (a) to (e), (and I dealt with

subsection (1) (a) to (e) just before this reference) shall be sentenced in accordance with section 100A(1) (b)."

That paragraph says the sentence shall be:

"..,imprisonment for life or such other term as the court considers appropriate not being less than fifteen years."

So you see there is a major difference between the penalty imposable in relation to those classes I earlier referred to and any other class of case, albeit leading to murder, when only the imprisonment for life shall be the sentence or such other term of imprisonment as the court deems appropriate not being… *(Inaudible)* ...or fifteen years as a minimum. That is why I said earlier that the common law concept of what a life sentence is has now been abrogated to the extent that the statute has now prescribed the period for which a life sentence will be served, and gives the meaning, in a concise and understandable sense, of what a life sentence will be.

If you look at Clause 3 where Section 100 is being amended, it relates to the words that are to be used which seem to have a certain stigma. These words that are now to be used would remove the stigma that would normally be attached to the pronouncement by the Judge of the sentence of death. "Suffer death in the manner authorised by law" are the words the Judge would have to use rather than be guided by the words he would normally have to use as the law now stands. It is not a nice thing, even as a defence counsel or a person sitting at the bar table, to hear the pronouncement by the Judge, upon a finding of guilt by a jury, when the Judge is required, as the law stands now, to say to hang until death or words to that effect.

That provision also makes allowance for the person to be sentenced and confined to some safe place, separate and apart from the other inmates, and for the avoidance of doubt it says:

"…the sentence may be carried into execution as heretofore has been the practice."

Which means that you can still hang people if the Judge so decides. While it is not a pre-emptory or mandatory penalty, if the circumstances are so compelling, the discretion of the Judge would preclude any other penalty than that which now stands on the statute books. In other words, for the death penalty by hanging, there is no other form by which the execution of the convicted felon can lawfully be done. That is why that provision appears in paragraph (c).

In order to avoid any doubt as to what prison officer, legal officer, judicial or a member of the security forces mean, clause 2 amends Section 100 and include subsection 4 in Section 100 to identify the kind of officers to which reference was made or who would have become the prime targets of that unlawful activity.

As you know, I do not need to remind you, that we had a very sad experience in this country from 2002 when it became fashionable for persons who were bent on criminal activity, or targeting those very agencies that were designed to be populated by person's duty bound to serve and protect us. I cast no stone, I lay no blame, I identify no particular group, but it became a very sad episode in our history. It was virtually unprecedented in my 61 years of life for a systematic and programmatic attempt to decimate, by way of demoralization, the security forces of this Country. This amendment is calculated to give some comfort to the very same forces. And I don't believe you will find its parallel anywhere else unless of course… And I gather there is a new term in the IT vocabulary, "the *netizens*", those among us who gather their information by going to the net, [***Interruption***] I suppose that is what it means.)) or "the *googolians*".

4.15 p.m.

I make that only as an aside because I know that there is a current common tendency to visit the net, so it is appropriate to refer to those persons as *netizens*. I do not know if it is formalized in the language. Being one who is not proficient in that area, I would not be able to say, but gather that there is such a term, *netizens*.

If I may take you rather quickly to the parole section, in the Parole Act of Chapter 11:08, there were some provisions set out in Section 6, Subsection 1 – 4 which determined how the parole of a convicted person was to be determined. In Subsection 3 of Sect.100A, the intended amended sentence provision, it says, "in the case of a person convicted of murder, the following provision shall have effect with regard to that person's eligibility for parole". So whatever is the current position with the Parole Board and the Chancellor and theses people, this new provision overrides Section 6...

Mr. Speaker: Hon. Member I will have to stop you here. Your time is up, and we are long passed the suspension period.

Mr. Ramson: I would not be more than five minutes Sir.

Mr. Speaker: We will take the suspension at this time, and when we return you will conclude.

Mr. Ramson: As it pleases you.

Mr. Speaker: Hon. Members, there is a meeting of the Committee of Selection at this time. The Members are: The Hon. Prime Minister, Dr. Leslie Ramsammy, Mr. Donald Ramotar, Ms. Gail Teixeira, Ms. Indra Chandarpal, Mr. Neendkumar, Mrs. Clarissa Riehl, Mr. Lance Carberry, Ms. Africo Selman and Mr. Khemraj Ramjattan and myself. I called out the names because we usually have a very difficult time getting these meetings started on time. Thank you.

Sitting suspended at 4.20 p.m.

Sitting resumed at 5.27 p.m.

Mr. Speaker: Hon. Members if we can have a motion to extend the time of the Hon. Attorney General to allow him to continue.

Mrs. Rodrigues-Birkett: Mr. Speaker, I ask that the Attorney General be given an additional five minutes to conclude his presentation.

Motion put and agreed to.

Mr. Ramson: Thank you Comrade Speaker and thank you my friend and colleague for granting me this little indulgence. As I was about to say before we took the recess Cde Speaker, there is something I have to explain about the statutory interpretation given to the question of parole. This piece of legislation which amends the Criminal Law Offences Act also amends Section 6(1 - 4) of the Parole Act, Chapter 11:08. It was found necessary, since the question of imprisonment for life *personed* to Subsection 1(a); the question of imprisonment can only be considered after a period of imprisonment for no less than 20 years. Eligibility is dependent on that time frame. With respect to imprisonment for life under Subsection 1(b), that eligibility is reduced to a period of not less than fifteen years. For any other sentence of imprisonment the period of eligibility must be for not less than ten years.

Under the current law parole was governed by reference to other timeframes and it depends on the recommendation to the Minister. That is now circumscribed by this statutory defined period. I must say that one of the reasons why this enactment was found necessary is that there seems to be a sudden raise in offences which may be deemed *crime passionel* that is in French the classification of such a crime which makes the person accused to have acted immediately upon the raise of his passion. It is not that I condone it, but as a matter of practical jurisprudence, we need to adopt that bit of approach that the French thought it prudent to adopt many years ago. I do not wish it to be considered by all and sundry that it is a course to which I attach myself, or that I embrace or recommend. It is always necessary to recognize the sanctity of life. So, I do not want the general public to get the impression that this Government is giving a special consideration to that recent state of activity or spousal arrangements, whether legal or common-law. Those arrangements should be given the kind of respect if we wish the society to progress in an incremental fashion and not haphazardly.

I must say, finally, that Guyana is not singular in relation to the kinds of amendments that I have been advancing. I gather that Jamaica introduced legislation sometime in 1992; Belize in 1994 and Trinidad in 2000. Barbados I gather is accepting the recommendations of the I.C.H.R. (International Commission on Human Rights) which they have ratified. Their recommendation that there should be some kind of consideration to be given to persons who have been charged with murder rather than impose the penalty of death; some consideration should be given to the alternative period of sentencing which is embedded in this current amended legislation. I thank you Cde Speaker for your patience. [*Applause*]

Mrs. Riehl: Thank you Mr. Speaker. Before I commence my presentation, I wish to avert this Hon. House to one of the most inspirational stories of our times which took place here as it were, in our own backyard. I am referring of course to the Chilean miners-rescue which took place in Chile which is part of this South American continent, and which feet attest to the indefatigable nature of the human spirit and the worth of technology. The whole world watched, sir, as the miners were brought up, from as it were, the bowels of the earth to be reunited, and born again as some of them said, with their families and with the rest of us. I just wish to place on record that we applaud the Chilean people for this rescue.

This Bill which we are considering today, the Criminal Law (Amendment) Bill represents a partial abolition of the death penalty for the offence of murder in Guyana. For the purposes of this debate the amendment proposes two broad categories of murder.

Firstly, those that attract the death penalty, and secondly, those that do not.

In category one, first and foremost are the murders of security forces, prison officers, special constables, judicial and legal officers, all when acting the execution of their duties. Many countries in the world place the murder of their law enforcement officers on a higher plane than those of other types of murders. For instance, there are a number of jurisdictions which have abolished or partially abolished the death penalty for murders generally, while retaining it specifically for its law enforcement officers. I think the U.K. was like that until the E.U. forced their hand to abolish it completely. In Guyana however, the question may well be asked, "with so many rogue elements still to be uprooted from our security forces, whether we ought to place them in this category", the jury is out, and, whether it is not premature to put the murder of our security forces, because they are the ones in many cases doing some of it. From the number of cases you hear of policemen and ex-policemen getting involved in serious criminal matters in this country. I said that in passing, Sir.

The other groups in this category one are witnesses in criminal and civil cases; Jurors whether serving at the time of their murders or being murdered after they would have served and given verdict; murders committed during the course of other felonies – your classic *felony murder rule* that the Hon. Attorney General referred to; contract murders or murders for hire, where by arrangement someone is paid to murder someone else – that happens a lot in our society where you hear of murders taking place and you do not know for what reason. Someone pays someone to get rid of somebody – contract murders or murders for hire. Finally, murders calculated to cause fear in the public – that is terrorist type of murder.

These types of murder just enumerated will all attract the death penalty. For all other murders the penalty to be imposed will be life imprisonment or a term of imprisonment not less than fifteen years. Categorising types of murders in this manner cannot be a response to the violence which has enveloped our society, and spate of brutal murders including that of the young girl which took centre stage just a week or two ago. It must therefore be that this administration is giving a

partial response at least to international pressure and the clamour to abolish the death penalty. I know the Hon. Attorney General said 'nay' to this, but this categorising of serious and not so serious types of murders does not take into account what is happening in our society – the violence that is here. All these heinous murders resulting from domestic violence situations however premeditated and reprehensible these may be will fall into category two where there is life imprisonment or not less than fifteen years in prison. They are not in the upper echelon of the serious crimes which will attract the death penalty. (I do not see Ms. Manickchand here...) What is happening in our society, this law does not properly reflect that. [***Interruption***] ...I am not saying that,... too quick to jump the gun.

There are many situations, especially in domestic violence, where a man will poison his wife and all his children – premeditation. A man may lay in ambush for his wife with a sharpened cutlass and hack her to death, pursue here when she leaves to go her family or mother and sister or whoever is there and just hack them all up. This category of murder which society is suffering from – day after day you open the papers and you see it – ought to be in that upper echelon of crime that will attract the death penalty, if you want to keep the death penalty in that partially. That is why I am proposing that premeditated murders be added to that category-one line of murders, so that in addition to those already outlined, where you have your terrorist; your felony murders; your murders of jurors or witnesses to cases; murder of security people and legal people; in addition to those that you put in a category of premeditated murder.

I am also proposing that murder resulting from piracy and hijacking be included in the list of felony murders. Only in 2008, we passed in this Hon. House the Piracy and Hijacking Act. Section 7 of that Act states specifically that every person who murders a person on board a vessel that is under attack whether committing an offence of armed robbery, piracy or hijacking is liable on indictment to suffer death. That should be one of the offences along with the robbery burglary/house break in, arson, sexual offences, you should also have murder resulting from piracy.

According to the amendment, all the types of murders listed in this category-one will attract death penalty or life imprisonment. When imposing a sentence of life imprisonment, the Judge must further specify a period not being less than twenty years which must be served before the prisoner becomes eligible for parole. Normally parole of murder prisoners – an ordinary offence

under the Parole Act, once you have served one-third of your sentence, you are eligible for parole. In the aspect of the murder accused or people serving life imprisonment it is slightly different. It is a little higher than that. Still it does not reach the twenty year calendar that we have now put in place. They must now serve at least twenty years. When the Judge (he/she) is pronouncing the sentence in Court and that sentence happens to be life imprisonment as opposed to murder he/she will have to speak of life imprisonment and parole for a period not less than 20 years. That the person would serve a much longer time in prison.

I heard the Hon. Attorney General said earlier in his presentation about the common law and the calculation of time, so under the Parole Act people just serve a mere 10 years or so. These prison years that are stipulated here are years that will be interpreted by the prison authorities, and when remissions are given on most special days and various occasions, a prison year in fact pans out to be something like eight months. So, even though you have twenty years here, it is really 8 × 2 = 16 / 12 – that number, that is what you will get. It looks big on paper. Unless you stipulate it as twenty calendar years specifically, then the prison will perhaps ignore the remissions and ensure that the man is there for twenty years before he can apply to the Parole Board. All the other types of murders, when the sentence of life imprisonment is pronounced, your eligibility for parole will be after you would have served 15 years, but as I said, all these years are calculated on a prison year which is eight months.

No death penalty since August 1997 – the case was referred to by the Hon. Attorney General, and I expect this to continue although the penalty will remain on the Law books. I would feel that Judges and Lawyers who practise at the Bar will continue to advocate for life imprisonment. We all know that many of those people laying and sitting in death row would have their sentences commuted either by the Court of Appeal on some appeal or the Prerogative of Mercy, a committee of which the Hon. Attorney General should be the Chairman and should be able to tell us when that Committee is meeting or if it will ever meet, and if they have in fact commuted some of these murder accused sitting there for years vegetating whether they will commute the death penalty into life imprisonment. In fact that is how it has been panning out all years since 1997. What we have here really; you have you classic high calibre murders; death penalty or imprisonment for at least twenty years before you are eligible for parole – your Judges are supposed to tell you that; then you have other types of murders, which as I said, if domestic

violence murders are not lifted in that upper category will remain with the person who commits all of heinous domestic violence crimes against his family or children or wife or whoever will end up spending a mere fifteen prison years in the prison and then come out on the street while he would have whipped out his entire family.

There is another aspect to these *statutorisation* as it were of the penalty for murder that indicates that the Judge's discretion in sentencing is being fettered. All of these not less than twenty and fifteen years putting fetters on Judges who hitherto hath not been so fettered and apply their own discretion as the case before them warranted. This is an encroachment on the principle of Separation of Powers. The Constitution speaks to the independence of Judges. At first it was the Magistrates whose sentencing discretion was taken away from them, but they are creatures of statute anyhow, so we cannot quarrel much with that. What about our Judges who are by Constitution bound to be independent in the exercise of how they do their work, not to be hamstrung by us legislators here. Would it not have been better to have developed some sentencing guidelines for Judges rather than legislating for them? The Judges are up in arms for these things. We have been hitting at them all the time – Court of Appeal (Amendment) Bill – we have just been encroaching even more into that third arm of Government, the Judiciary. I can tell you that they are not happy with it.

Another issue that arises now is that capital offenders will be now held for longer periods in our prisons. The question arises: where will they be housed? The Georgetown Prison is bursting at its seams. It was built to accommodate 600, and to date the most recent statistics which I got shows that it now has over 1,000; between 1,025 and 1,038 prisoners in the Georgetown prison alone. Admittedly, the remand section is bulging thanks to our crop of young Magistrates, many of who have very little life experience and also very little legal experience. They are using the remand as a penalty, remanding left, right and centre. It got so bad that former Chancellor Kennard, the Head of the Police Complaint, authority spoke out about it, that Magistrates have to understand what is going on. They keep remanding persons for the most trivial matters, filling up the prisons. No matter what their Attorney says, as long the Police say that they are objecting to bail, that is it. The Magistrates are not using their discretion. I have said this time and time again. Prisons are filled to capacity. There are over 2,092 prisoners countrywide, and fifty murder accused in the system right now as we speak. These are statistics that I got just this week.

Much of the legislation that we pass in this Assembly does not appear to have the desired effect. I have seen all these laws that we have passed, like the use of cell phones while driving; I have seen people passing in front of Brickdam – the major Police Station – talking on cell phones; cars with music to the end decibel, wanting to shatter the glass of the car with the loud music at 2.00 a.m. 3.00 a.m. in the morning.

Government appears to be always looking to tighten up their hold on the criminal elements already in the system, so to speak, while short-changing the issues of crime prevention. All the gross negligence we hear of at Police Stations which we just hear about it on a one-off after a picture of the person murdered or something in the papers, and then you do not hear what happens to these people, whether any disciplinary actions are taken.

Our Policemen need to be better trained, not be given cars to drive around the city. I have some horror stories of corruption from Police especially in the deep rural parts where they take such gross disadvantage. Like I said, it is just hear-say from clients telling you of how Police extract money from them. They do not have to file any reports to anyone; they just do their own thing, and in these communities they penalize the people, they use one against the other and cream off money. It is really very bad. The Government should really look at training Police rather than giving them vehicles to just drive around the place. I feel very strongly against the lack of proper policing in our Country.

5.55 p.m.

Unless the Government seriously seeks to address the causes that speak to so much societal violence in this country, the inequities so prevalent here, where the greed and excesses of some are only matched by the increasing poverty and misery of others, where there is endemic corruption, where rampant drug trafficking and where this frightening upsurge of domestic violence and murders, child abuse, longer terms of imprisonment are not going to cure these maladies. As long as these conditions prevail we will continue to see violence escalating in our society. Part of a broader approach is that the police must to be trained and the issues of which cause the violence must be looked at - the root cause of the violence. It is not to attack it from the other end where heavier penalties are and where people have to spend longer terms of imprisonment.

I know the Government is trying, but, as I said, I think it is putting the cart before the horse, so to speak. I wish that this violence which makes our society sometimes unlivable for some persons will be curbed and we will have less of these murders occurring in our society, so that we would not have to be coming back here and amending laws to further penalise persons who are in the system.

Thank you very much Sir. [*Applause*]

Mr. Nandlall: Thank you very much Sir.

I rise to speak on the amendment which is before the House. The amendment seeks to alter section 100 of the Criminal Law Offences Act, an Act which was enacted one hundred and seventeen years ago, on the 1st of March, 1893.

Section 100 is very short and I would read it.

> "Everyone who commits murder shall be guilty of a felony and liable to suffer death as a felon."

In essence, this section prescribes a mandatory death penalty when a person is found guilty of the offence of murder. What this amendment seeks to do is, that in essence, to give the *sentencer* a power to impose a penalty of a term of imprisonment as an alternative to the death penalty. In other words, it retains the death penalty, but confers a discretion to impose a period of imprisonment in certain specified circumstances. That, in essence, is what this amendment is about.

I wish quickly to disagree with my learned friend Mrs. Clarissa Riehl who seems to think that this amendment stultifies the *sentencer's* powers. Well, the current position in the law is that the judge at this point and time has no discretion, whatsoever. That is the current position. When the jury announces a verdict of guilty, the judge, in a robotic fashion, must impose the death penalty. Now this amendment seeks to invest in that sentencing tribunal a discretion to do something other than to impose a death penalty. So how that can be regarded as narrowing the discretion of the *sentencer* is beyond me. For the record, I wish to submit that the argument advanced by my learned friend is completely wrong in that regard.

In my presentation I do not intend to deal with the specified circumstances as outlined in the Bill. I believe that they are adequately outlined and the Hon. Attorney General articulated them with great clarity and very expansively. What I prefer to deal with is to examine the philosophy, the thinking and the circumstances which inspired and engendered this amendment. When I read this amendment for the first time my mind went back to the philosophy of American Jurist Roscoe Pound who was a professor at Harvard University. Mr. Speaker would have read about it in legal philosophy in jurisprudence. Roscoe Pound postulated a theory in which he argued that the major function of law is social engineering. That the law must be used as an instrumentality to reconcile the competing interest which exists in a society to bring about peaceful co-existence with the minimum friction. To bring about a delicate balance between or amongst competing interest, according to Roscoe Pound, was the major function of the law.

When I read this amendment for the first time, in my humble view, it was social engineering as propounded by Roscoe Pound at work, because there is a conflict in our society today. What is that conflict? As I see it, we live in a society that unfortunately we are visited with an unusually high rate of crime, especially violent crimes, particularly murders. As an almost natural consequence we have a call from various strata of our society to execute the death penalty, because in the eyes and the views of many persons in this country carrying out the death penalty is an effective way to deal with the spiralling crime wave. And all the political parties here, in this National Assembly, if they want to be honest, will have to concede that when they go on the ground - when the go into the communities of this country, into the streets and into bottom houses - they are regularly met with the argument: Why are we not carrying out the death penalty in a society where the murder rate is rising out of control? That is one competing interest.

The other competing interest is, internationally, there is a global move away from the death penalty. Every major convention in the world, treating with human rights, expressly recognises and guarantees the right to life as a fundamental right and it also guarantees protection against cruel, inhuman and degrading punishment and treatment. Some expressly or by implication, or insinuation, either outlawed or frowned upon the death penalty. Some of these treaties include, and I will quote them quickly:

"The Universal Declaration of Human Rights, 1948

The American Declaration of Rights and Duties of Man, 1948

The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1953

The International Covenant on Civil and Political Rights, 1966."

Just to name a few. Then coming back to our Constitution, we have a Constitution predicated upon these very precepts which are contained in these declarations and treaties, because the fundamental rights section of our Constitution almost mirrors what is contained in these treaties. In addition to that, when we amended the Constitution in 2000 we included article 154, I believe it is, which enjoins us when we are interpreting our Constitution to pay regard and to read our Constitution in conformity with our obligation as enunciated in those treaties. The treaties to which I made reference to, in all of them, almost, Guyana is a signatory.

The matter is further compounded by the fact that again, internationally, there are many human rights based organisations in the world today which are powerful organisations and no democracy can disregard their sentiments and their views, and they are passionately protagonists for the abolition of the death penalty in all countries in the world. I speak of the human rights organisation, Amnesty International, etc. Locally, we have representatives of those organisations that clamour tenaciously and persistently for the abolition of the death penalty. Religious organisations as well have joined the campaign calling for the abolition of the death penalty.

So these are the competing interests which exist in our society, and it is against this background that this Bill must be viewed. What does a Government do in such a situation? A Government, in my humble view, is obliged to adopt the position propounded by Roscoe Pound. This Government has decided to do that, to use the law as a mechanism to find the most common ground as possible to bridge the gap against these competing interest; so that this Bill, on the one hand, whilst it retains the death penalty, it also gives the Court the power to impose a penalty alternative to the death penalty, whenever the situation, specified in the Bill, presents itself.

This dilemma is not unique to Guyana; it has been faced throughout the English-speaking Caribbean and, in fact, in the entire British Commonwealth, because we inherited a system from England where the common law required or mandated the death penalty as a mandatory penalty

to murder. The Hon. Attorney General pointed out to us that in 1957, Her Majesty Government enacted the Homicide Act and it abolished the death penalty. In the Commonwealth, the various Governments have had to struggle with the problem and they face an almost identical social situation as we are confronted, here, in this country. So Guyana is not unique at all. In fact, Sir, you would know, as a Constitutional lawyer, that there are cases reported in almost every corner of the British Commonwealth where the death penalty has been challenged and judges have devised various ways and means of arriving at a position to force Governments which do not wish to abolish the death penalty by their rulings into that position. Countries which retain the Privy Council as their final Court of Appeal, their Governments have continuously complained that it has almost pushed it down the throats of those countries. The Privy Council has gone, as far as in many cases when the Governments were refusing to enact legislation similar to this, to rule that the death penalty is in contravention of their Constitution, because their Constitution, like ours, protects their citizens from cruel and inhuman treatment. The Privy Council has ruled that death by hanging is a cruel and inhuman treatment, and it is in a law which is lower than the Constitution. When the lower law conflicts with the Constitution, which is the supreme law, it is unconstitutional. That has been a mechanism that the Privy Council has used to get around or to force Governments to enact legislation like this.

The matter which confronts countries like Guyana and the Caribbean was discussed in a case that I found when I was doing my research emanating out of St. Lucia and St Vincent and the Grenadines. There were two cases which were heard together by the Eastern Caribbean Court of Appeal. At that time, both of these countries were in our position, they had a similar section 100 and they did not yet change it. Those cases went all the way to the Privy Council. The Privy Council held that the death penalty was unconstitutional and ordered the matter to go back to the Eastern Caribbean Court of Appeal for sentencing. The issue was dealt with at length by Justice of Appeal Saunders. Coincidentally, Justice Saunders is a judge at the Caribbean Court of Appeal, our highest Court, in Guyana. Speaking about the same conflict that I am referring to, and what Justice Saunders said, I will quote at page 571 of the Report. The cases reported at *Two Law Report of the Commonwealth*, in the year 2002, at page 571. Justice Saunders had this to say:

> "Capital punishment is a topic that invariably illicit passionate comments. I think it is fair to characterise it as the subject that generates the most heated discussion in Commonwealth Caribbean jurisprudence. In part, this reflects the fact that internationally, particularly in the United States, capital punishment is a live issue.
>
> In the Commonwealth Caribbean countries the debate surrounding the death sentence has become particularly controversial. The general public in these countries…"

And this is the part that is even more important.

> "The general public in these countries cannot but be concerned with the growing callousness that accompanies rising homicide rates. In the face of this, leaders of Governments have frequently been quoted in the press voicing their emphatic support for retention of the death penalty, a position that is probably in keeping with the views of the vast majority of the Caribbean public.
>
> In the meantime, however undaunted adequately funded human rights bodies have been stepping up their campaigns against the death sentence. Challenges to the death penalty and to various facets of its application are usually grounded on human rights provisions contained in the written Constitutions of all of the independent English-speaking Caribbean territories. Eminent counsels are retained to argue the appeals of death row prisoners. Their legal submissions have become more and more subtle and refined. Against this background of public clamour, strong political comment, agitation by human rights bodies and very skilful legal arguments the justice system has come under pressure and tremendous scrutiny in the handling of death penalty cases.
>
> Over the last two decades new and challenging questions have been posed for determination by the Courts. Judges oblige to follow their conscious and their present understanding of the law and have been handing down decisions that underscore the view that they do not share a consistent approach to this area of the law. Nowhere is this more amply illustrated than in the judgement of our highest Court, the Judicial Committee of the Privy Council. Important decisions and crucial issues of life or death are departed from or expressly reversed with unsettling frequency."

This dictum of Justice Saunders can be transposed into our society, and it would be almost unfolded with the position which obtains in Guyana. This has been the situation that we have had to grapple with - counterbalancing these competing interests. A discourse of this nature must examine why has there been a clamour for the abolition of the death penalty? Is it purely on humanitarian grounds? If it is purely on humanitarian grounds, is the judicial system of all these countries puppet of humanitarian organisations? I submit not, and my position is that there is something fundamentally jurisprudentially wrong with the death penalty being a mandatory penalty. So that whilst there may be strong humanitarian basis for the abolition of it, or adding flexibility to it, there is also a legal argument against it and I will like to share that legal argument with this Hon. Assembly. I, again, Sir, wish to refer to Justice Saunders. At page 573, he dealt with some of them and he said this:

> "Before considering the matter it is useful constantly to bear in mind three pertinent observations. First of all, death is a punishment like no other. It differs from all other punishments not by degree, but rather by its very nature. It is completely irrevocable. It deprives the prisoner of the most fundamental constitutional right. Once this punishment is carried out all that remains of the prisoner is a memory of him.
>
> Secondly, murder is an offence for which the Court has no discretion to determine the appropriate sentence. In deciding the punishment for other offences the Court usually has a broad discretion and can pay regard to a wide variety of circumstances in arriving at a fit sentence. This is not the case upon a conviction of murder.
>
> Yet…"

And this is the third observation.

> "…murder is peculiarly a crime that admits of an enormous range, both in character and in culpability. It other words, the circumstances in which murder is committed and the personal background and the motive of the offender may vary radically from one accused person to another."

What is being postulated here, Sir, is that the ability of the Court to take into circumstances factors that can extenuate a situation and can temper justice and punishment with mercy are removed from the Court by the imposition of a mandatory death sentence for murder.

There is a final quote which I think sends home the point that I would like to share with this Assembly, again from Justice Saunders. And speaking of the death penalty in the two countries he said this:

> "The mandatory death penalty in these two countries, as presently applied, robs those upon whom the sentence is passed of any opportunity whatsoever to have the Court consider mitigating circumstances, even as an irrevocable punishment is meted out to them. The dignity of human life is reduced by a law that compels a Court to impose death by hanging indiscriminately upon all convicted murders, granting to none an opportunity to have the individual circumstances of his case considered by the Court that is to pronounce sentence.
>
> He might have been a tortured child, an ill-treated orphan, a jobless starveling, a badgered brother, a wounded son, a tragic person hardened by societal cruelty or vengeful justice. He might have been an angelic boy but thrown into mafia company, or inducted into dopes and drugs by parental neglect, or morally mentally retarded or disordered. The law says that none of this matter. He must be sentenced to death once he has been found guilty of murder. It is, and has always been considered a vital precept of just laws that the punishment should fit the crime. If the death penalty is appropriate for the worse cases of homicide then it must surely be excessive punishment for an offender convicted of murder whose case is far removed from the worst case.
>
> It is my view that where punishment so excessive, so disproportionate must be imposed upon such person, Courts of law are justified in concluding that the law requiring the imposition of same is inhuman. For all these reasons and upon the strength of the authorities presented to me, I am driven to the conclusion that their section 100 is unconstitutional."

The commentary of Justice Saunders is a commentary of the present law of this country, a law that is stagnant and removes that vital facet of flexibility with a *sentencer's* needs to impose a just and proper sentence in a case.

We have had our own type of case like this. The Hon. Attorney General referred to the case of the *State against Yassin and Thomas*. The Hon. Attorney General pointed out that after some twenty-five years, or perhaps thirty years… One of the gentlemen died in the prison and the other one is blind. I participated in the case that sought to stay the execution of Mr. Yassin and Mr. Thomas. The Attorney General appeared for the State. I went into the prisons myself - I went into the condemned section of the cell - to have those persons signed the affidavits. I saw the physical condition of those men. Mr. Yassin was already blind when I went there and... [**Mr. Franklin:** It is not a hotel...] I am not speaking about the facility. I am speaking about the physical condition of the prisoners. If the judge, at the time, had a power to impose a sentence other than the death sentence the situation there would have been different.

That very case in which I have made reference to - the *State against Yassin and Thomas* - went to the Court of Appeal and our own Senior Counsel Miles Fitzpatrick was appointed as a special judge to sit on that case. I am quoting. What is significant is that the quotation which I am going to read from Justice Miles Fitzpatrick, as he then was, is a quotation which was used by the Privy Council in the case of *R. Queen against Reazes*, a case emanating from Belize. So here there was the Privy Council quoting from the Guyana Court of Appeal, and this is what Justice Miles Fitzpatrick said:

> "Add to this, the notorious fact that in Guyana for some years, as a matter of executive policy, the death penalty is only implemented in some, not all cases of persons convicted of murder and the sifting out of those cases in which the offenders are found not to warrant the ultimately penalty is done by means of the exercise of a prerogative of mercy rather than by an amendment of the law relating to capital punishment."

6.25 p.m.

This was said in 1996. Since 1996, our Court of Appeal, in the case of the *State against Yassin and Thomas*, called for legislative intervention to pacify the harshness of section 100. We are late but it is better to be late than never.

As a result of everything that I have said, many countries – I have outlined the reasons why they went; some may have gone voluntarily and some may have gone by way of pressure – today, in the Caribbean and further afield, have injected, in their law, a power to impose…, while they retain the death penalty for the same reason that the public is clamouring for its retention. They, like us here, have met the situation halfway and they have added a similar innovation as we have done in this Bill. In Jamaica it has been done. Trinidad, St. Lucia, St. Vincent, Antigua, Barbuda, Dominica, Belize, India, South Africa, Sri Lanka and several African countries have gone this route.

The point I am making is that Guyana is not unique to this. We are not doing anything out of the ordinary. We are moving with the international trend. [**A Hon. Member:** It is breaking ground.] We are not breaking ground. We are doing what we should have done a long time ago.

For the reasons I have advanced I wish to extend my fullest support to this Bill and I wish to congratulate the Government for enacting such a visionary piece of legislative intervention.

Thank you very much. *[Applause]*

Mr. Ramjattan: Mr. Speaker, let me congratulate Mr. Anil Nandlall for making that presentation.

The history must go on the record that indeed, a while ago, yours truly had indicated to that subcommittee in the People's Progressive Party that this was the way we must go - since 1995. I intend to repeat that history here. [**A Hon. Member:** That is erased over there] They would not remember that. (I notice Mr. Ramotar walking away. He was a member of the committee.) Dr. Jagan, with tremendous efforts, lobbying internationally, regionally and nationally, urged that we sign up the Optional Protocol. The Optional Protocol gave us the right, in relation to cases where people have been sentenced to death, to go as a final resort for purposes of seeking justice in relation to human rights violations. One such right was the right to life; freedom of expression and right to associate, all of those rights, are also included. If the final Court of Appeal, like our Court of Appeal in Guyana at the time – it was not the Caribbean Court of Justice (CCJ) – had found and made a ruling that a person has to suffer the death penalty, that person could have gone to the Human Rights Commission. The *Essequiban* Mr. Salim Yassin had done exactly that because the great man had then signed on to the Optional Protocol. After

all, the Court of Appeal matters were heard and determined Mr. Salim Yassin was still found guilty and sentenced to death. He took his case to the Human Rights Commission, argued it successfully...By the way, the Government of Guyana put up one of the greatest fights to ensure that he was hanged. It rebutted, literally, every single argument of Mr. Salim Yassin. The Human Rights Commission ruled that he had an unfair trial and on that score he should go free. Under the Optional Protocol, those were mere recommendations, but so powerful were the recommendations of the United Nations Human Rights Commission that every other country, except North Korea, accepted those recommendations. Guyana did not. The State indicated that it was going to ensure that he be hanged. I think when the warrant was issued then it went back to the Court to argue the case whether the death penalty was unconstitutional.

When the time came in this National Assembly it was Mr. Clement Rohee, Hon. Minister of Home Affairs now, then Minister of Foreign Affairs, at the opportune moment, who came with a motion opting out of the Optional Protocol that the great Dr. Jagan wanted so badly for the citizens of this country. It was his task at that time. I was a Member sitting almost directly, at that time, behind Mr. Clement Rohee. [**Ms. Teixeira:** It was in my place] It was in your place probably. The Government of that time, with the exception of me, of course, denounced that provision of Right to Life from the Optional Protocol. I pleaded that it should not be done, and that our citizens should have the right in death penalty cases to take their cases to that very August Assembly made up of tremendous jurists. But "No," said Mr. Clement Rohee. He then said that this is not going to be a vote of conscience and that one has to vote in accordance with it. Then I pleaded with them that we must argue the case. They said alright we will argue the case at Freedom House.

I want to say this because the record must reflect it. The arguments put forward by my learned brother and colleague, Mr. Anil Nandlall, just now, largely were the same arguments that I put forward that we must never make this a mandatory death penalty. Then, if I may recall, I had the cause to write an article, *If We Cannot Walk the Talk Let Us Commute*. I was even chastised for that. The United Nations Human Rights Commission urged that people go free. They did not want him to go free. They wanted to hang him and I was pleading, "Commute the sentence of death." The passion with which Mr. Anil Nandlall just quoted Mr. Saunders...By the way, what Mr. Saunders quoted there was largely taken from Lord Denning who had argued that the death

penalty, as a sentence for murder, is not reviewable once there is not anywhere to go after the person was convicted and sentenced to death. There might have been fresh evidence, or new evidence, that could have proven a man not guilty… [**A Hon. Member:** It is DNA] DNA or whatever scientific evidence. That is what had happened in certain cases in England. They pressured the Government there, like the Birmingham six, the Tottenham four and so on.

In Guyana, the death penalty comes largely from cases where there is only confession evidence, confession statements, through the police – a police force that today is being chastised by one and all in this country, especially for the Tyrone Thomas incident. Confession statements could be the basis for convictions for murder, then a death sentence and then an execution. Then it could be the truth, thereafter, that those men were never involved. They were pressured into it by the burning of the genitalia. That was the argument being made. But "No," said the PPP then. Today I am very happy. Just like what happened with the whipping of training school attendees and juveniles that today, like Rip Van Winkle, they have awoken to the position that indeed they must go the halfway house, that is, to now state categorically and emphatically – as the Attorney General would state – that yes, we now have to ensure that it is not only the death penalty but the penalty of life imprisonment, and then all the other nuances and whatever procedures that will be followed in relation to whether it is a maximum sentence of life imprisonment, or twenty years 20 years, or fifteen years, parole, and all of that.

I just want to make it clear that those who sat then in that Committee, including Mr. Nokta, Mr. Clinton Collymore, Mr. Bernard DeSantos, Minister Rohee and Mr. Donald Ramotar, just could not understand the argument. I want to think that I was even clearer than Mr. Anil Nandlall. That brings me to this question: What has recently happened? The argument that was being made then was that Mr. Ramjattan… It is not the principle that is important; it is the popularity of the death penalty and we are all politicians. All the philosophical underpinnings and the arguments that I made indicating to them that the world is going this way... And of course, they said that is the imperialist world – Western Europe. For every argument they found a counter argument. It came down that it is popular.

We have to understand that reason always prevails. Today, indeed, it would appear that reason has prevailed over there, even only going the halfway stage – the halfway phase. It is commendable that today the PPP could do that. My question is, however, what recently

happened to have caused this stage to go there? Was there a recent survey as to the popularity of this thing? The Hon. Attorney General made it quite clear that it is not donor pressure. What then was the pressure? Was there an articulation from Mr. Anil Nandlall at Freedom House? [**Mr. Nandlall:** Yes] Was it that? Well, I commend you, Mr. Nandlall, for persuading them. I had failed. But I am very happy, even if it is Mr. Nandlall, that he has done a wonderful job. What it indicates to me... because we are not getting to the bottom of it. What is it that has created this motivation? What is the motive behind it? We must act on principle and not on pressure. We must know what is right and reasonable for our legislative purposes rather than taking cues and all of that, because of donor moneys. We must ensure that we do the right things because they are right and when the arguments are made that we are going to be guided by them so that we could then have our legislative agenda, and it is not like what Mr. Rohee had in that early part of the PPP/Civic's administration - that we would have none of it. We are going to denounce the Optional Protocol to the extent of the Right to Life section, notwithstanding all the pleadings.

Notwithstanding all of that, I wish to state that there must be more publicity out there too that, indeed, it is the People's Progressive Party that is now indicating that there is not a death penalty for all murders. I want it to go out there and state that as a matter of principle that we have argued and to play the speech of Mr. Nandlall, because it conveniently, at the bottom houses, will say, "What is causing this high crime rate is because they are blocking us from executing and hanging." In a very contorted and distorted way, it goes about telling the people at the bottom houses, "We want to hang them high but we are being blocked by the lawyers; we are being blocked by this; we are being blocked by Ramjattan's probability." I did not see this Bill reported in the *Guyana Chronicle* newspaper and stating the position it is stating here. Please, the PPP must do that. It must carry this Bill all across the country and let the people know that, indeed, there has been a tremendous transformation of its principle to the extent now that it is taking the position that, yes, it feels that it is right, as a matter of principle so that it would not lay the propaganda groundwork that other people are blocking it from executing murderers.

Mr. Nandlall has done a wonderful job.

I just want those to be on the record. This happened since, I think, 1995. Mr. Rohee would be in a better position to give the dates because I did not come here prepared with the dates. In any event [**Mr. Ramotar:** The PPP has done it.] Yes. I am glad, at least, as Mr. Ramotar just said,

the PPP has now done it because of the fact that it has ultimately seen reason prevailing. I want to still urge that in relation to this Bill, I still have my reservation because in all these categories of murders, people could still be convicted on flimsy confessional statement evidence. Although it will fit the category of the murder of a security force person, so that one will ultimately have to suffer the death penalty, it could very well be evidence extracted from involuntary situations. So, there ought to be, if there is need for *ad hocracy*, some other Bill that will come to state that this kind of evidence, that will only be confession statement evidence, should not be used as the basis of an execution. There has to be far more compelling, cogent evidence so that it is absolutely certain. But our judicial process might...I do not know what will happen to it. I have been constantly making those points.

The final point I wish to make - I have been constantly making those points - is that the crime situation in Guyana is not going to be solved by legislation like this. We have to have a strengthening of police investigative methods. If it requires the Scotland Yard superintendents coming here to infuse professionalism, forensics and the techniques in the lab, DNA testing, and all of that, they will train our police to make them a better police force for police investigation. Do not bring the argument that we do not want imperialists to superimpose their methods. The imperialists' money is liked, though.

In addition to that – that is one "p" – the other "p" is enhancing the prosecutorial team at the Director of Public Prosecution (DPP)'s office: better training of those officers, internationalising their continuing education, send them on trips abroad to ensure they become stronger prosecutors; fix their salaries better so that they can give a fuller breadth and measure of work to ensuring that there are convictions - police investigations, more successful conviction rates because of prosecution.

Also, the other one is the prison system. It must not be that when persons get convicted and go in the prison they could break out from it. We have seen that and remember what happened after the big breakout – Murder galore! It is important that those three be put along with, of course, as mentioned by my friend, Mrs. Riehl, we start going to the root causes of so much disharmony in this land that is causing the crimes of passion, causing the crimes against property that lead to crimes against persons. It is vital that we do that. That is not going to solve the problem because I know of no country which solved the murder problem, but at least it will take it to a more

manageable level. It is important for us to understand that, because we have to be realistic. Crime is rampant in the land and we have to ensure that we allow reason to prevail. Just like how it did not prevailed since the time I talked about...At least go that direction.

That is what I wish, at this stage, to place on the record. We, in the Alliance For Change, support the Bill. *[Applause]*

Mr. Rohee: Mr. Speaker, I will be very brief on this matter. I want to start out by thanking Mr. Ramjattan for reminding us of what the Attorney General (AG) reminded us about, which is that this Bill, when passed, will not end murders in our country because, as we were told, there are countries which have already gone this distance, but when the records are checked, the research is done, it will be found out that even though they have this piece of legislation in place there are still many murders being committed in those countries.

This brings us to the question that was raised by some of the speakers in respect of the crime situation in our country. As the Minister of Home Affairs, I, obviously, would have some concerns in respect of how this Bill, when passed and enacted, will play out within the general society. I found some of the issues which were raised somewhat contradictory. Take for example Mr. Ramjattan's view that with more successful prosecutions or convictions we will be performing better on the crime front. But there are many who argue, at the same time, that with more successful convictions the jails are filled. So we are in this vicious circle like the dog chasing its tail.

Then we end up with the ludicrous argument that, okay, have successful convictions – listen to the logic - fill the jails and then try to avoid jailbreaks as what occurred some years ago. What the Hon. Member was seeking to do was to spin a web of confusion and ended up with the whole argument that we are moving from crisis to crisis which we have heard so often. So, Mr. Speaker, we ask ourselves the question: How do we strike this balance in the criminal justice system and what the populace out there would like to see happen?

Mr. Ramjattan, throughout the entire discourse, sought to induce sinister motives in bringing this Bill to the National Assembly. He sought to induce sinister motives in the administration, through the Attorney General, bringing this Bill to the House. What was so laughable was that while inducing this, at the same times he ended up supporting it. Again, another web of

contradiction and confusion, Mr. Ramjattan! Where is he heading with those spurious arguments and presentation?

The Hon. Member was seeking to create a song and dance about the timing of this motion. Why are we bringing it now and creating doubts in the minds of people? At least he was trying to do so. I do not think he has succeeded in doing so. But he has been seeking to create doubts in the minds of people and at the same time imputing sinister motives as to why this amendment is before this House today.

6.55 p.m.

Mr. Speaker, the Hon. Member must know because he went down memory lane… [**Mrs. Backer:** He wants to go down in your mind] He would not have a shaft to bring him up back, though… and regaled us about the time he spent seeking to convince his erstwhile colleagues about the way to go, but never manage to do so. In the same way he has not managed to convince a single Member on the side of the House about the logics of his argument this afternoon. So he is back to square one. Every decision has its own time. What may have been applicable at that time was applicable within a certain context, and so when the Government moved, as he pointed out, to address this problem *vis-a-vis* the Optional Protocol, it is important to recall - I know that Mr. Ramjattan conveniently left this House because it did not support his argument - always the argument of convenient - we signed the Optional Protocol in order to allow citizens another opportunity to appeal their case under the Convention. They also had to show at the same time that they had exhausted all the various avenues in order to address their case.

Before the process could have been concluded certain individuals sought to intervene and forestall the process by approaching the United Nations. [**A Hon. Member:** They went after to the Court of Appeal] No Sir. What was sought after was to stymie the process. I do not think, as far as I could recall, that they did get very far with it. Some, I would say, comments were made with respect to the crime situation in this country and the murder rate. But I would wish to point out that the murder rate in Guyana - it may be always argued, persons are free to do so, as some do, that we are not concern about the murder rate in other countries, we are concern about the murder rate in Guyana, but comparative analysis is always very important - comparing to a number of other CARICOM countries is like comparing apples with mangoes. Most of the

murders committed in our country are disorderly murders - murders where people imbibe alcohol and somebody pick put a piece of wood, or pick up some other instrument, and kill another – disorderly murders. So when we come to talk about murders let us have a deeper analysis of the various types of murders which we are talking about.

I was happy to see in this Bill that the security forces have been singled out. I think this is sending a very strong signal to the security forces of the State's interest in their well-being. I think we ought to give great significance or recognition to this, where this amendment will now elevate the prominence of the security forces. Further, I was happy to see, in the respective to the parole process, that there are some equanimity in terms of the sentencing and some adjustments to Parole Act which will now be amended by the virtue of this Bill in order to make eligible persons applying for parole constant with, or consistent with, the new legislation in respect of murders committed and the death penalty.

I support this Bill, and I believe that in the wider society it will generate a lot of debate on the question of the death penalty. We are committed, as we have committed in the review that recently took place, to engaging, within a matter of two years, national discussion on the death penalty - to consult on the death penalty. I believe that this Bill will go a very far way, and I was happy to see it was approved and welcome by Members on the Opposition, on the one hand, enhancing and bringing Guyana into modern times in respect of law reform, as regards to criminal law offences.

Thank you Mr. Speaker. *[Applause]*

Mr. Ramson (replying): Cde. Speaker, after a long and winding road, it is commendable that the… Do you remember that there is a lovely song called *After a Long and Winding Road*? It appears that if each man wants to have his say. I will say it is either my way or the highway – learn it.

I merely wish to respond having regard to the concurrence, however convoluted the concurrence was arrived at,… I wish to repeat the very first sentence that I have made and I think that I have a reputation for having a limpid presentation – limpid in the sense that it is crystalline clear. These are the opening words of my presentation, and this is the only motive behind the present piece of amendment:

> "This piece legislation has its own origins in, and it is in response to the pleas of the general community, the discourse of criminologists and the persuasive argumentation of penologists. The sociology of the recent past, consequent upon the mandatory penalty of death for all forms of murder, has also not been lost on this administration."

That alone…If all of my colleagues have been listening carefully to whatever I was trying to say in that cryptic form, yet it ought to have been clear to them that this is the reason why we are, at this stage, attempting to seek the indulgence of this Hon. House to have the amendments pass, and as I gather, from all that I have heard, there is concurrence, but there are several roads that were used in order to arrive at the destination and I thank them for it.

I ask that this Bill be read a second time, Cde. Speaker.

Question put and carried.

Bill read a second time.

Assembly in Committee.

Mr. Chairman: Hon. Attorney General, you have indicated one clause which you wanted to… Just name the clause for me.

Mr. Ramson: It is clause 2, where it states, four line from the bottom, the first three words, "the murder of…", in subparagraph 4. Those words are surpluses.

Mr. Chairman: Okay, let me do the rest. Thank you.

Clause 1

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

Clause 2

Mr. Ramson: Cde. Chairman, I wish to report that the Bill was considered…

Mr. Chairman: No. You have to move the amendment.

Mr. Ramson: I would have thought that that would have been deleted in the clerical fashion.

Mr. Chairman: I did not get what it is, if could you remind me.

Mr. Ramson: It is four lines from the bottom, the words "the murder of". There was no need for an amendment. It is just a typographical error which is the responsibility of the Clerk.

Mr. Chairman: Okay, I am advised that we can do that.

Mr. Ramson: I know that Sir, the Standing Order states so.

Mr. Chairman: Crossing out of words is a normal typographical error.

Mrs. Riehl: I wish to propose an amendment to clause 2 (c), to add – there are four offences listed: robbery, burglary, housebreaking, any sexual offences – a fifth offence, the offence of hijacking and piracy. So it will read: "Any murder committed by a person in the course or furtherance of hijacking or piracy…"

Mr. Chairman: It is "hijacking and piracy."

Mrs. Riehl: Yes.

Mr. Chairman: Okay. Hon. Members, the proposal is that in clause 2 (c) a fifth item be added – the Roman numeral five (v) together with the words "Hijacking and Piracy". I propose that amendment to the House. At the proposal stage any Member can speak to the amendment. If there is no contribution, I now put the question of the amendment that (v) be added.

Mr. Ramson: If I may say I have been remained that that particular class of case is already provided for in independent legislation. There is a recent piece of legislation which addresses the concerns of the Hon. Member, and I do not think that there is need to be what is called *ex abundantia,* or what is called *redundant neoplastic*. I do not think that there is a need to have that amendment because if there is in existence legislation to that effect, adding that to this list is not going to improve the piece of legislation which this House is addressing.

Mr. Chairman: Thank you Hon. Member. Would you proceed with the amendment, Hon. Member?

Mrs. Riehl: His Honour, if you wish me to say a few words because I feel that the way it is listed in the Hijacking and Piracy Act is only the death penalty is there so that there would not be

the benefit, the alternate life in imprisonment, and that is why I was proposing to add it to the list. But if the House so feels to leave it there…

Amendment put and negatived.

Clause 2 and 3 agreed to and ordered to stand part of the Bill.

Assembly resumed

Bill reported without amendments, read a third time and passed.

INTOXICATING LIQUOR LICENSING (AMENDMENT) BILL 2010 –Bill No. 15/2010.

A Bill intituled:

> "AN ACT to amend the Intoxicating Liquor Licensing Act." *[Minister of Home Affairs]*

Mr. Rohee: Mr. Speaker, subsection (1) of section 50 of the Intoxicating Liquor Licensing Act states as follows:

> "The holder of a licence under this Act shall not allow nor shall any servant of his allow any person under the age of sixteen to be in any bar on the licensed premises.

At the same time subsection (4) of section 50 states clearly that:

> "If any person acts in contravention of this section he shall be liable in respect of each offence to a fine, in the case of the first offence, of fifteen dollars and, in the case of any subsequent offence, of thirty dollars."

That subsection was amended by an amendment of the said Act in 1992 whereby the fine of fifteen dollars was increased to one thousand dollars and the fine of thirty dollars was increased to three thousand dollars. Introspect, it is obvious that in today's circumstances these increases have no weight or merit and are much too small, bearing in mind the negligible values of the fines and the seriousness of the offences. I wish to submit that it is vital importance that the fines should be further increased to a figure that is not negligible but of a punitive nature in order to

curb the prevalence of allowing young persons under the age of sixteen to enter bars or licensed premises by a licensed holder, owner or manager of the bar.

The increase will be from one thousand dollars to five hundred thousand dollars for the first offence, and from three thousand dollars to one million dollars for any subsequent offence. In the case of the third offence the person will be liable to a fine of one million dollars and, in addition to that, the revocation of the licence.

Section 51 deals with the penalties for sale or supply of intoxicating liquor to young persons and subsection (1) of section 51 provides as follows:

> "The holder of a licence under this Act shall not knowing sell nor allow any one to sell, nor shall any servant of his knowingly sell, to be consumed on the premises, any intoxicating liquor to anyone under the age of eighteen years; and no one under the age of eighteen years shall purchase or attempt to purchase in any licensed premises any intoxicating liquor for his own consumption therein:"

There is a further paragraph in that subsection which refers to prevention of sale or preventing the sale, supply or purchase of certain specified products to persons under the age of sixteen.

Subsection (4) of section 51 states that:

> "Anyone who acts in contravention of this section shall be liable in respect of each offence to a fine, in the case of the first offence, of fifteen dollars and, in the case of any subsequent offence, of thirty dollars."

This said subsection (4) was also amended by the Intoxicating Liquor Licence (Amendment) Act of 1992 by increasing the fifteen dollars to one thousand dollars and increasing the thirty dollars to three thousand dollars.

With the proposed amendment of subsection (4) of section 50 the proposed increase would be from one thousand dollars to five hundred thousand dollars for the first offence, and from three thousand dollars to one million dollars for any subsequent offence. It also states that in the case of the third offence the person will be liable to a fine of one million dollars and to the revocation

of the licence. These increases in sections 50 (4) and 51 (4) are in consonance with the Protection of Children Act 2009. Subsection (1) of section 2 of the said Act states that a child *inter alia:*

> "Means a person under the age of eighteen years, whether born in or out of wedlock, who has never been married…"

Further, subsection (1) of section 50 Protection of Children Act states *inter alia:*

> "A person who sells, gives or causes to come into the possession of a child, including ingesting for the purpose of trafficking –
>
> …
>
> (e) intoxicating liquor or tobacco products,
>
> commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars, or to imprisonment for a period of six months."

The increases in the penalties are a reflection of the State's commitment to the protection of children from certain persons who would seek to prey on the vulnerability of our children just for the sake of profits. It is therefore necessary that these increases should be passed by the National Assembly without any major hurdles.

I, therefore, commend this Bill to the House, Mr. Speaker. [*Applause*]

Mrs. Backer: Thank you very much Speaker.

This Bill, this proposed amendment to the Intoxicating Liquor Licensing Bill or Act, I should say, is once again a classic example of *ad hocism* or as we can now call it the *Roheean* principle of reform which is *one one dutty build dam*. Sir, here we have before us an Intoxicating Liquor Licensing Act, enacted in1929, January 26th, in this House … [**A Hon. Member:** It was a Tuesday.] No. It was a Thursday, your 5th birthday. When one looks at the definition section one sees under it the word "comptroller", "means the Comptroller of Custom and Excise and includes…" and littered throughout this Act is reference to the Comptroller of Customs and Excise – a position that is no longer there, in Guyana - an office that is no longer there. That is what we mean when we speak about tunnel vision legislative reform.

This Bill is before the House for reform, what was to stop the Hon. Minister for also making amendments and changing that name to the correct name now – Mr. Murray gave me it, let me see if I have it – the Commissioner of Customs and Trade Administration? So we have an opportunity to amend an Act which is before the House, but we have tunnel vision, we only want to deal with children – I am going to come to the children soon - so we just deal with sections 50 and 51 and we leave out other glaring archaic provisions that are no longer relevant. Sir, once again, if we have comprehensive law reform these kinds of things will not keep occurring. But based upon the lack of success or the eventual success that Mr. Ramjattan had …Perhaps we will have to wait fifteen years, that is what the PPP may be saying, but we know, Sir, that it is going to be significantly less than that.

Sir, let us go to the actual amendments and there are other things. They speak about railway taverns and all those things which no longer exist. So rather than use the opportunity and go through this one Act and, at least, bring it up to date, we just pick out two sections and leave the rest, whether they are relevant or irrelevant, that is not our concern.

7.25 p.m.

If I or any reasonable man or woman had any doubt that these three amendments moved by the Hon. Minister of Home Affairs which all deal with young people were tied to donor funding, I am now absolutely sure that they must be tied to such. I will spend a few minutes developing that case.

The result of this proposed amendment will be a very lopsided, fine structure within the act. The Minister was correct. He said that in 1992 amendments were made to the Intoxicating Liquor Licensing Act, in Act 21 of 1992. Before that, the offences attracted fines of $15 and $30 and that was since the 1920s and 1930s. This Bill was assent to by Mr. H. D. Hoyte on the 22nd August, 1992, and this is what happened then: 37 Sections were amended to increase the fines. That is the kind of amendment one does. If one is to look at fines, you look through the entire act for which fines are realistic and which ones are not. One also looks at those that are found to be unrealistic and then one amends them all. However, this Government, thru the Hon. Minister of Home Affairs, picked out two of the 37 Sections that deal with fines. We now have two sections where, throughout the act and there are other serious offences within this act that I will touch on,

the fines are $15,000 and $30,000. You have two sections jumping out at you with $500,000 and $1 million. Well if that is not legislative madness, I do not know what it is, Sir! Somebody is saying that it is "donorlogically" motivated. There are a lot of words being coined in this National Assembly, which is good.

What the Minister should have prefaced this outrageous amendment with is this: he should have said to us – I presume this is the reason because he is going to say that it is not donor driven – "This $1,000 and $3,000 has not been a deterrent. We have been prosecuting shop owners like mad." Do you know what happens, Members of the National Assembly? They go and they pay their $1,000 and the next day they have young people who are either in the bar or who they are selling liquor to. As such, so this $1,000 and $3,000 have not proven to be effective. We have to have draconian fines but he does not come to say that. Do you know why? Because a very quick run I had with the court, there have been very few – I do not what to say none, I may have missed one or two in the thousands of cases – charges when the fine was $1,000 and $3,000.

The Hon. Minister must say to us that attached to this ridiculous 500 fold increase in fines, which brings it totally out of sync with the rest of the act in terms of a fine structure – an act must have a fine structure… of course he would say, *"We gon' do one one. We gon' take two today, next year we gon' bring two more and if we do that in 10 years we gon' do the 20-something sections."* There must be a structure.

We did not have prosecutions when the fine was $1,000 and $3,000. We did not charge people. Are we going to charge them now? I am hearing at the back that this is International Labour Organisation (I.L.O.) money that they are hoping to get for juveniles and the protection of juveniles. I do not know. [**Ms. Teixeira:** …Ramjattan.] No. I was speaking about the back from the P.P.P. side, Ms. Teixeira. Anyhow, when you get old you start to hear things out of different ears, so it may have been the right ear but it sounded like the left ear. We are all getting old; you and me, together.

How effective will these new fines be? The Minister must come with statistics or stats, as they say. He must say, "We have a terrible problem. Our intelligence said to us that so much young people are going into bars and being sold. This $1,000 and $3,000 is not going to help. Let us go for $500,000 and $1 million." He does not come with this. Who is going to police these liquor

restaurants? We have thousands of liquor restaurants in Region 4. Are we going to have undercover police? Are Ministers of the Government going to volunteer to be undercover police in liquor restaurants? Is this a Local Government issue? Will the Minister of Local Government get involved? These are just questions that I am asking. Guyanese have a way of making anything into a laughing matter. It is really very serious because I would want to bet that in the next couple of months when a question is posed to the Minister of how many people have been charged, how many liquor restaurant license have been revoked, do you know what he will say?- "none" This maybe so because his undercover agents either get too drunk or have not given the information or what have you. The reality is that we do not have people to police this.

Alcoholism in Guyana is a problem. I am sorry that Minister Ramsammy is not here. That is the truth. We are not talking now about young people. For a large section of the people excessive use of alcohol is a problem. Is that what we are beginning to address by this amendment? If that is so, the P.N.C. says, "This is not the way to go", by just taking out two sections dealing with juveniles. Let me share with the National Assembly an interesting section that I shared with, I think, Mr. Nandlall – I cannot remember. Hear what it says in 54; this is from the existing Act:

> "The holder of a license shall not permit drunkenness or any violent, quarrelsome or riotous conduct to take place on his premises nor sell any intoxicating liquor to a drunken person."

That is a problem. Every now and then you open the papers to see, *"Man's head almost severed during drunken brawl"* either in a bar or just outside the bar. There are instances of people obviously intoxicated, staggering towards the bar to buy more alcohol and they are sold it. Are we serious about trying to curb alcoholism and excessive use? Why has the fine for Section 54 not, as this happens every day… [**Mr. Ramjattan:** What is it now?] It was changed from $30 and $75 to $2,000 and $5,000 in 1992 and that is where it remains. The highest fine is $50,000 and that is for, I think, making liquor on the premises. We pick out two sections and move it from $1,000 and $3,000 to $500,000 and $1 million and then we are going to run to the donors and say, "We are interested in young people. Look what we have done." That is not going to fool the donor country. It is not going to fool us because while we are doing that we are not serious. If we are serious why did we not have an overall increase of the 37 Sections that were amended in

1992 under the P.N.C. Government? That at least was a holistic review, if not of all legislation, of this one piece. Even that we do not want to do.

If we are serious about alcoholism in Guyana, as we should be, we have to deal with not only the young people but the older people. We are saying that these young people must not be able to go into a bar but everybody's house is full of alcohol where children live, including houses that we live in. I do not mean everyone. We know that Ms. Teixeira leads the way. She does not drink and that is commendable. She has other vices, but she does not drink.

On a serious note, if we are talking about reducing this, we have to make alcoholism and alcoholics less sexy. You go and you see a big billboard with a very handsome man without clothes that says, "Guinness makes you…" You go down here… **[*Interruption*]** I look at men, you might look at women. Then we see rum – "Rum is macho", "Greatest rum in the world" – in big exotic looking advertisements. Are we serious about reducing this?

The point we are making is that they do not have to go to bars to have access to alcohol. Alcohol is all around them. They are seeing it. They smell it. Their parents are using it; aunty is using it and all kinds of things. Then we also have to look at the adults because they are encouraging. People are almost drunk and people are saying – I am just using the name – *"Man, Clement have another drink." "Man, Debbie have another drink."* I am about to collapse with alcohol and the culture in our country is somebody saying, *"Man, wuh wrong with you, have another drink. Fyah anoda one."* That is the culture – *"One for the road"* – and one is almost falling down with alcohol. I see, Sir, that that has caused you to rise up. On a serious note that is our culture – *"How ya mean ya cyan have anoda drink. Wuh wrong with yuh? Tek anoda drink." Drink is coming through your nose and ears – "Tek anoda drink." "Don't worry dat ya sick, tek anoda drink. We gon' bury yuh."* That is the culture.

If we are serious we have to start attacking. We have to take down those billboards. We have to make certain areas restricted so that you cannot have alcohol. Minister Benn could come down. I am sure he has his chainsaw in the car. He lives near to me. He could do that.

Again it comes back to the holistic approach that is missing in all of these things. Alcohol is a great social ill in this country. I am not saying to "ban alcohol", but I am saying that we need to deal with it responsibly and if we lead by example you would not have little children running

into shops and so forth. We are not saying to not have fines, but we are saying to keep the fines within the realms of reality, make them consistent with other fines in the Act and how, pray to heaven, are we going to police the thousands of rum shops that we have in Guyana? Even with the best interest of certain Ministers of Government, are we going to patrol it?

We have no problem with an increase, but we find this increase out of reality. It is ridiculous. It is not going to get to the mischief that it is intended to cure. As such, we will have to think before we vote on how we vote on this Bill. However, this in itself is not going to solve the problem that Minister Rohee thinks it will solve. I thank you, Sir. [*Applause*]

Minister of Tourism, Industry and Commerce [Mr. Prashad]: Mr. Speaker, I wish to place on record my full support for the amendment of the Intoxicating Liquor Licensing Bill 2010 which was presented by my colleague, Hon. Minister Clement Rohee. I have listened to Hon. Member Deborah Backer and I sense that she is very passionate about what she spoke on just now, about having a holistic view, but sometimes in life one has to go one at a time and maybe *"one, one dutty build dam."* We are addressing first of all children; we are starting from somewhere.

This is a simple amendment and it seeks to do two things:

1. To curb underage drinking;

2. To impose stricter penalties on bar owners for allowing children on their premises.

The Bill amends Sections 50 and 51 and, of course, it increases the fine. The fine was extremely low and had no effect and that is why we are now seeking to increase to $500,000 and $1 million and also the revocation of license. We have to start somewhere.

This amendment of these laws highlights the seriousness of the PPP/Civic Government in putting systems in place to protect our children and also putting serious measures in place to deal with anyone who may want to breach the laws.

Young people drinking at an early age also put themselves at risk for serious health problems and we must address these issues. Underage drinking also poses problems for law enforcement in that it contributes to disorderly behavior and violence among teens. However, the most

significant threat that underage drinking poses is serious bodily injuries and loss of life. I am sure Hon. Member Deborah Backer will support this Bill. There is no reason for her not to support this Bill, albeit she wanted more.

In closing, I would like to encourage all of the owners of restaurants, shops, bars and, in general, all my friends in the private sector to embrace this new amended Bill by the Government of Guyana. As citizens, we must put our country first and save the youths of today since they are the future of our beautiful country, Guyana. I urge the entire House to support this amendment. [*Applause*]

Mr. Ramjattan: Mr. Speaker, I will utilise the opportunity to make a couple of comments that I am certain Mr. Raphael Trotman would have made. On critique of the Bill, we would like to endorse that which was said earlier and that is that we must have – if alcoholism is the problem – a more comprehensive remedying of that problem and not simply emphasising an exaggerated increase of fines in relation to children in bars, who are drinking.

I want to believe that there is again a fear on the part of the Government to do this comprehensive approach to these problems. Why is it that there has not been a far greater emphasis on a policy that is first going to study the alcohol problem and then come with a solution that is holistic? We have seen over the couple of years since there has been what is called greater economic difficulties in this country, an establishment of a culture of bringing in these foreign bands with all manner of drinks and alcohol and all manner of other drugs that are ripping this country apart by way of its cultural stability, as well as bringing in almost a culture of staggering drunkenness. We cannot deny that. If one goes to the Providence Stadium these days, there are all manner of foreign artists coming in – and even local ones – doing all kinds of programmes and entertainment and the drinks are supplied "big time" at the bar. By the way, young children are there. They are sponsored by some elements over there (P.P.P); very many of them.

Does that coincide with what Mr. Manniram Prashad just mentioned? Why is it that we do not have a holistic approach? The Hon. Attorney General, before he left, made the statement "Especially the Alliance For Change and especially Mr. Ramjattan always have a sinister motive attached to Bills." The sinister motive automatically jumps out at you. Why, if alcoholism is a

big problem, are we only emphasising it on the 16-year-old to find a remedy? When the 16-year-old stays home and then their adult relatives come home and they see what happens, it is going to influence them. We must let our faculties be directed to what is called the more comprehensive approach. Otherwise, I will have to make the statement that indeed there is a sinister motive – you want people to drink all of the time. A lot of people can say it is like an opiate of the people, as Karl Marx had mentioned about religion – opiate of the society. You get the people to rather than coming out and being revolutionaries and demanding and becoming dissidents talking about the societal problems allow them by saying, "You can take your drinks, brother"; the opiate of the P.P.P. support basis, as it were. "Drink yourself."

We must understand that that could very well be a motive. That is why they do not want a holistic, comprehensive solution to the problem. *"Rum 'til I die"* all over the place.

I agree that we must not make this thing sexy. We must put a damper on it. We must make it disagreeable and then we are going to start solving the problem because alcoholism leads to domestic violence. It leads to violence generally, crime and criminality. It leads to instability at the school level and so many other places. It leads to a multiplicity of irregularities in our social order; traffic offences, innocent people getting knocked down because of the impairment that alcohol does to the drives. There are so many things and we do not want to create a comprehensive Bill that is going to take charge of remedying the situation rather than come with the piecemeal ad hoc position- partial solutions. This is where, indeed, one has to support the two provisions being amended, but again it is not the kind of support that we would have given had it been far more comprehensive and holistic. [*Applause*]

Mr. Rohee (replying): Thank you, Mr. Speaker. Once again we heard the mantra of Comprehensive Law Reform being necessary in respect of these amendments and I can only repeat what I said earlier in respect to that approach. There are various approaches to addressing social, economic and political problems. There is no one solution as I am hearing here this afternoon that the only way to address this problem is through Comprehensive Law Reform.

We have a problem in this country, and one of the problems we have is with respect to the young children under eighteen years old found in bars and nightclubs, off-license restaurants, etc. Am I to understand, from what I am hearing this evening, that put any movement on that problem on

hold until we address the problem through Comprehensive Law Reform? Is that what I am to understand from this debate? - The "Do nothing" approach. "Do no anything until you have put in place Comprehensive Law Reform and only after you have done that then you can begin moving." This is the illogic of the argument that we are hearing. We have the exigencies of the situation. The exigencies of the situation require us to act expeditiously. The State and the Government must show that it is capable of responding efficiently and effectively. This is the direction that we would wish to go.

We are being accused once again of moving in a piecemeal fashion but I am amazed, if not disappointed, by the lack of awareness by the persons who purport to be law makers who sit in this National Assembly and debate laws, who claim to be politicians moving around in society, but at the same time are oblivious to the social problems affecting the country.

The question is being asked, "Are we seeking to address alcoholism by virtue of bringing this amendment here?" My answer to that is the following: We passed a law in this House with respect to driving under the influence of alcohol – the breathalyzer test. We passed that law here in order to address the problem of alcoholism, consumption and driving under the influence of alcohol. Have you forgotten that?

In addition to that, the Ministry of Health has spoken *ad nauseam* about the programmes it is implementing and pursuing in respect of alcohol consumption. The Ministry of Health has spoken several times about the efforts it is making working with Non-Governmental Organisations (N.G.O.s) in order to address this problem.

The Ministry of Education also has specialised programmes to deal with the question of alcoholism in secondary schools, etc.

The Government works with the faith-based organisations to try to address this problem.

It is not that nothing is being done on the question of alcohol consumption in this country and therefore we are seeking surreptitiously to amend a law to address the alcohol problem. Why make this accusation about not taking holistic approaches when you seek to ignore the steps that the Government has taken through other Government Agencies and Departments to address this problem. You must be aware of that. That Ministry of Home Affairs has also been carrying a

campaign on this matter and so when we speak about holistic approaches let us take that into consideration.

Parliament is a lawmaking body. It is our duty and responsibility as a Government. In the same way as you spoke about what Mr. Hoyte did, may his soul rest in peace, as he brought an amendment at that time because they felt that it was necessary, at that time. We in a similar fashion feel that in these days it is necessary to bring this amendment to revise the law which was amended in 1992 to deal with the situation in a much more serious manner.

Incidentally, speaking about seriousness, the Hon. Member seems to give the impression that the P.N.C. is the only serious group of people in this country. She seems to convey that impression because she keeps asking and telling us, "If you are serious what about *"this"*", "If you are serious what about *"that"*", so are you the only one that is serious? Is this Government not serious?

It is because that seriousness which you purport to have, that you are where you are today. The P.N.C. Parliamentarians have this tradition of trivialising serious amendments that are being brought to this House and they inject a lot of humor and sarcasm in serious business.

7.55 p.m.

This Parliament is about serious business and not about making jokes about serious matters of this type. I can very well imagine what is going to happen in the next few weeks with the seriousness of ransacking the leadership of their party.

I was listening to all the ranting and ravings of the Hon. Member and I note that she did not say whether the Opposition benches, except for the Alliance for Change (A.F.C.), have supported this amendment. I take it that the Opposition benches expect the A.F.C., is not supporting this amendment. I would like it to be known publicly that they are in favour of the continuation of young children consuming alcohol at bars and places where they ought not to be seen. They are in favour of that; they are in favour of a continuation of that.

In addition, I want to submit that this hum drum about donor resources that is being created; that all of these amendments are being made simply because we are fishing for donor resources, is an attempt to make people believe that we cannot think things through for ourselves. This is what

they are seeking to do. It is precisely because we are able to think things through for ourselves that we are where we are today. It because we are able to think things through for ourselves that the economy, contrary to what Mr. Ramjattan has said, is more prosperous and, therefore, disposable income is much more than it was in the days before.

I want to commend this Bill to this House and to ask the P.N.C./R – 1G to revisit its position because I believe that like all of us in this House, the people and the electorate will judge and this is something that will probably come back to haunt them in the months to come.

Question put, and agreed to.

Bill read a second time

Assembly in Committee

[Clauses 1, 2 and 3 agreed to and ordered to stand part of the Bill.]

Assembly Resumed

Bill reported without amendments, read the third time and passed as printed.

MOTION

AFFIRMATION OF THE PUBLIC ELECTRICITY SUPPLY (AMENDMENT) REGULATIONS 2010 – NO. 3 OF 2010

"Be It Resolved:

> That this National Assembly, in accordance with Section 70 of the Electricity Sector Reform Act 1999, affirms the Public Electricity Supply (Amendment) Regulations 2010 – No. 3 of 2010, made under Section 70 of the Electricity Sector Reform Act 1999 and published in an Extraordinary Copy of the Official Gazette dated 3rd August, 2010. *[Minister of Transport and Hydraulics]*

Minister of Transport and Hydraulics [Mr. Benn]: Mr. Speaker I rise to move the motion to affirm the Public Electricity Supply (amendment) Regulations 2010 – No. 3 of 2010 on behalf of the Hon. Prime Minister. When we last visited the Electricity Sector Reform Act in July, we

passed amendments to this Act which sought to give strength to the Act and to make allowances for, particularly, such issues as prepaid meters, issues with respect to the proffering of suitable documentation to be able to access electricity supply from the electricity authority. We also sought to give greater facility to the electricity company to make collections, take certain steps out of discretion to be able to resolve problems between itself and its clients - to make it easier and also to have greater scrutiny as it relates to resolving a number of difficulties which are not unique only to our jurisdiction, but occurs in other jurisdictions as well.

We have situations whereby the bypassing of meters, theft, wastage and other issues in relation to the electricity supply, imperils the overall supply to everyone in the society and make it less economical for the provider of the electricity supply to run his/her business to make sure that there is a sustainable supply of electricity to all concerned and sundry.

These amendments to the regulations which are proposed go along, too, with the ability of the electricity supplier and also to the consumer to take steps which will allow for the conservation of electricity supply in terms of the use of prepaid meters and which helps to find a better balance, allows for a better relationship and, also, better choice in relation to those persons who may ultimately opt for prepaid meters.

In the first instance, in terms of the amendments, we have a number of 12 amendments to regulations - the citation and 11 other amendments as it relates to the Principal Regulations which were number 11 of 1999 of the Electricity Sector Reform Act.

In the first instance, the citation states:

> "These Regulations, which amend the Public Electricity Supply Regulations in the Third Schedule to the Electricity Sector Reform Act 1999, may be cited as the Public Electricity Supply (Amendment) Regulations 2010."

With respect to the first amendment, principally, the amendment or amendments which are introduced as a second amendment relates to Regulation 2.1 of the Principal Regulations and it introduces in the definition section:

(a) An insertion immediately after the words "for such a supply", the words "including prepaid meters and remote meters."

As I said, this is to allow for the adoption, inclusion, insertion in the regulations the use of, specifically and to make it absolutely clear and pellucid, that prepaid meters and remote meters are referred to.

At (b), there is a substitution for a full stop (.) at the end of paragraph (c), a semi colon (;) at (c) by inserting immediately after paragraph (c) the following paragraphs as paragraphs (d) and (e). Again for definition, it defines a prepaid meter as:

> "Any meter that is so configured as to require the consumer to pay in advance for the supply of electricity, through the purchase of a coded card, token or other device from the public supplier or its agent"

An agent in this case may be a person, an entity, a shop which has an arrangement through the electricity supplier to un-sell these tokens or other devices so as to allow their customers to purchase electricity supply by payment in advance. It is similar, as we all know, to topping up or prepaid cellular phone cards usage.

At "e", the definition of a remote meter means:

> "Any meter that is connect to the consumer's installation by a service line and not directly by the conductor within the meter box"

The second amendments to these regulations allows for the introduction of prepaid meters and the remote meters and gives specific definitions for those two devices.

The third amendment relates to regulation 4 of the Principal Regulations. At (a), is the substitution of the word "shall", for the word "may" which is discretionary. It allows the electricity supplier to adopt, at its own discretion, a greater number of documents so that persons may be able to access the electricity supply.

We have a situation in various communities, which arose out of the regulations as they exist, where persons must by way of documents that they proffer show that they are the legal title holder of the premises before they are able to access electricity supply. This is, indeed, a great problem in a number of communities and it leads to complications. The widening of the discretion by way of allowing the electricity supplier to either accept documents such a letters of

administration, certificates of titles - all documents which the supplier in its own discretion shall determine are satisfactory for the provision of electricity supply. This will, in effect, allow for the accessing of the electricity supply by a greater number of people and remove quite a bit of the complications that abound at the present time.

At (b), in sub regulation (1) (b), there is an insertion which is required immediately after the words "legal title to the premises". The insertion "including documentation not to be limited to an official title to the premises and may include any documentation that the public supplier concludes to be reliable as to the ownership of the premises," should be made.

At (c), by deleting the word "or" at the end of sub regulation (1) (c) (i) is to allow for proper continuity in respect of the insertion of the amendments in the Principal Regulation.

At (d) by substituting for the full stop (.) at the end of (1) (c) (ii), the word "or" and at (e) by submitting immediately after (1) (c) (ii), the following as sub regulation (1) (c) (iii):

> "(iii) Such other source that the public supplier considers reliable to the consumer's authorisation to occupy those premises"

This amendment to the regulation allows for the public supplier to have the discretion to conclude, on the documentation proffered that a client who may not be the legal title holder to a premise whether or not the documentation that is proffered is satisfactory to be able to allow for the supply of electricity. There may be a tenant or some other person occupying a premise and the public supplier would be in a position, based on either a tenancy agreement or any other suitable documentation such as rental receipts, to conclude that he/she can use that as a reliable basis to provide electricity.

I hope the Hon. Members are using the first supplement of their official Gazette as was issued on 3rd August, 2010. At (f) there is an insertion after sub regulation (1) (c), the following as sub regulations (1) (d) and (1) (e):

> "(d) In any case in which a consumer requires a supply of electricity for street or security lighting, documentation that such customer has is required authorisation for such lighting from the competent government authority."

"(e) In any case in which a supplier of electricity requested, documentation as to the identity of the person applying for such supply".

This takes care of a situation where a consumer may require street or security lighting that they are allowed to provide documentation, under this amendment, either from the Central Housing and Planning Authority (C.H&P.A.), the Guyana Electrical Inspectorate, the Neighbourhood Democratic Council (N.D.C.) or the Region as to authorisations to non objections to using such forms of electricity supply. Again, this is to give the electricity supplier the option to decide, on the basis of these documents, a reason to provide electricity.

At (g), there is an insertion in respect of the refusal.

"A public supplier shall refuse a supply of electricity where, in its sole discretion, it cannot in good faith conclude that the documentation provided by the consumer establishes the authorisation…

Fundamentally, it establishes the situation clearly that where the documentation is not satisfactory or where the identity of the person cannot be properly established the public supplier shall refuse to supply the electricity under those circumstances.

Mrs. Backer: Mr. Speaker on a Point of Order. Could the Hon. Minister share what page he is reading from so that we could follow him in our copies?

Mr. Benn: Mr. Speaker I think I referred to the fact that we are looking at the Gazette of Tuesday 3rd August, 2010. I was going through and I was at the amendment (3) (g). If it helps the Hon. Member it is on page 89 of the document.

At the beginning, I did too refer to the arrangement of the Regulations beginning from the citation to the number of amendments. I am going progressively by way of those amendments.

Regarding amendment 4, by substitution Regulation 14 of the Principal Regulations is amended. There is an insertion to generalise the amendment:

"(1) A public supplier shall give a the supply of electricity through, and measure the supply given by means of, an appropriate meter determined as to the type of meter and installed by the public supplier, and if the consumer refuses or fails to take his supply

through the appropriate meter prescribed by the public supplier, the public supplier may refuse to give or may discontinue the supply of electricity."

Again it gives a stronger hand to the electricity supplier to have eventually the installation and adoption of prepaid meters in any case where the consumer refuses or fails to take his/her supply through what is considered the appropriate meter as prescribed by the public supplier. [**Mr. M. Williams:** What does that mean?] It means that your supply could be refused or discontinued.

At (b), by inserting immediately after the word "Inspector" in sub-regulation (3) or as established in the regulations or the public supplier's terms and conditions. This is to specifically state in this amendment at (b) that the Guyana Electrical Inspectorate under the Guyana Power and Light's (G.P.L.) specific terms and conditions, under National Electronic Codes published by adopted as the supplier's standard terms and conditions will be those conditions under which electricity supply is taken.

At (c), by substituting for sub-regulation (7), the following as sub-regulation (7):

"Notwithstanding any provision of a supply contract, a public supplier may require the replacement, retrofitting or substitution of any meter installed where its replacing, retrofitting or substitution:

(a) is necessary to secure compliance with the Act… or a public supplier's Standard Terms and Conditions;

(b) is necessary for the public supplier to be satisfied that the meter is accurately registering all electricity consumption in the consumer's premises;

(c) is authorised under a plan approved by the Minister"

These amendments introduced at (a), (b) and (c) take care of issues of compliance in the first instance. At (b), in the case of loss, the inadequate or improper registering on the meter or at (c), where the Minister may determine, for a particular area, that the approved appropriate device maybe installed in that area.

"(d)…where the public supplier, in its sole discretion, due to its discovery of the alteration of the register of a meter or there has been the prevention of the meter from

registering, or there has an abstraction or diversion to a particular premises, regardless of whether the owner of such premise has as yet been charged with or convicted of any such unlawful act with regard to such premises;

(e)…is made because the consumer has failed to make or increase any security deposit required by the public supplier in accordance with these Regulations..."

The supply of electricity under these amendments can be interrupted or can be cut off, particularly too, if there is a failure by the consumer to make as agreed or increase the security deposit required by the public supplier.

At (f):

"… is otherwise reasonable or necessary under the circumstances"

This is to protect the interest of the electricity supplier.

At (d), the insertion at sub-regulation (8), for the "an officer or servant," the words "a duly authorised officer or servant," stressing on the words "duly authorised". We are aware that persons may appear and represent themselves to be duly authorised servants or officers of the electricity supplier, make alterations and then when the electricity supplier come or ask what happened, it is said that a G.P.L. employee did and it was properly done. That is why it has been done. It is discovered that the electricity has been bypassed; the meter is not recording properly and all of these things. This is to take care of such a situation.

Regulation (15) of the Principal Regulations relates to the supply, the provision of billings at regular intervals – either monthly or as determined. Monthly in the case, as we understand or should be in the case of GPL.

8.25 p.m.

The Amendment to Regulation 15, states except in the case of consumers who supply of electricity is through a pre-paid metre, every public utility. This takes care of a situation where you would have already paid for your electricity supply through pre-paid and therefore you are aware of what consumption you would have had over a particular period. It is similar to the case where you top up your cell phone and you know what your expenditure is. You are managing

that expenditure yourself in relation to top up. It is a similar situation translated in terms of the supply of electricity.

And (b) by inserting immediately after sub regulation (4), where we have injunctions in the High Court or the Commercial court requiring a public supplier to reconnect, or prohibiting it from disconnecting, a supply of electricity where there is a dispute at the High Court or the Commercial Court. If the consumer does not pay for subsequent supply after the period in which the dispute is underway or being attended to, the public supplier may disconnect the supply of electricity to the premises owned or occupied by such a person. There may be situations where, I think, there has been allowed for the continuation of electricity supply even though there has been a dispute over a particular past period in respect of that electricity supply. This takes care of this situation that the subsequent supply will be paid for even though the dispute awaits the decision of the High Court or the Commercial court.

At (4)(b) "A public supplier may adjust a consumers account due to an accounting error by the public supplier may adjust a consumers account due to an accounting error by the supplier for the shorter of three months and the date on which the accounting error began." This is in favour, particularly, for the consumer. It limits the public supplier to having only three months and the date on which the accounting error began-this is the accounting error by the public supplier, in our case G.P.L- to only adjust the accounting error to a period no greater than three months. They cannot go on for five, six or more months in the case of an accounting error and it also imposes on the electricity supplier to have sufficient due diligence to be able to care of all of its accounting issues with respect to errors in their system.

In (c) by inserting immediately after sub-regulation (5) an Amendment to provide consumers whose supplies may be given through pre-paid meters with a statement of sums paid by the consumer for the supply of electricity, according to the Standard Terms and Conditions or in the absence of any such provision as directed by the Commission. [**Mrs. Backer:** Help us. Excellent, excellent.] Mr. Speaker, I note the unabated heckling by some Members of this Honourable House, on one side, I hope when these regulations would come into force that in their inattention and their derisiveness, they will not discover that these same regulations will not come to bite them. I am not sure that any person on the other side has read these regulations or similarly as when we presented the Amendments of the Electricity Sector Reform Act. My

interest in simply not your interest but my interest on this side of the House is the public's interest because we do not want any member of the public who perceive themselves to be in certain connotations with G.P.L to have problems in respect to Amendments to these Regulations. That is why they are here in the detailed form that they are, and that is why we are taking trouble over them.

The sixth Amendment relates to Regulation 18(1). It allows for the provisions of the sub-regulation to be without prejudice to the right of a public supplier or it's Standard Terms and Conditions to disconnect the supply of electricity to any premises with regard to which a dispute as to any registering or reading of a meter, pending the resolution of such dispute by the Government Electric Inspector. This, fundamentally brings the Government Electrical Inspector into the process with respect to determining the nature, the causes and the findings of the disputes also under the Regulations in a new form.

Regulation 21 is also amended in the case that the public supplier concludes that the documents provided were fraudulent or that the consumer did not or no longer have the authorisation for any relevant street or security lightening. At (e) notwithstanding anything else in these Regulations, if the public supplier which in its sole discretion it deems reliable, that—

(i) Electricity is being, or has been abstracted, wasted, diverted, stolen, etcetera....

(ii) If the meter at such premises has been tampered with or it's accurate or proper registration has otherwise been altered....

(iii) An owner or occupant of such premises has, by any means, connected or restored the supply of electricity to the premises without the lawful permission of the public supplier or without paying electricity bills previously rendered by the public supplier.

Mr. Speaker, I have introduced the Amendments to the Regulations. I would press for their adoption by the National Assembly. I would leave the Hon. Manzoor Nadir to follow and to clear up some issues that may continue to arise out of the following or subsequent Amendments in the document continuing from nine. I want the Honourable House to note that there are some errors in the proposed Amendment due to mistakes in the printing of the official Gazette. I want to state

this erratum at the end, particularly, when we may want to adopt the Amendments. Thank you. [*Applause*]

Mr. Carberry: Mr. Speaker, the demonstration which we just had confirms my position that we set in this House Committees and bless them with some functions, then fail to use them. We have a Statutory Instruments Committee, and Standing Order 91 is very clear on what it should be doing. The fact is that in the case of these our formative Regulations. The Statutory Instruments Committee could simply have looked at these Regulations, of course it would have had to have been referred to it by the Government or by the House, and the Committee would simply have looked to see whether or not these Regulations are consistent with the Act and whether the violate any laws that would adversely affect consumers.

If you look at the Amendments to the original Bill which are Sections 24, 60 and 61, they impose conditions which did not exist before. Therefore those conditions need to be carefully examined. That is why we have a Statutory Instruments Committee but we have not done that. The Minister stands up and reads line by line what is written in the Motion but it does not help anyone because we have not benefitted from the examination which the Statutory Instruments Committee is set up to do. That is the problem and that is all I want to say. Thank you. [*Applause*]

Minister of Labour [Mr. Nadir]: Mr. Speaker, I stand in support to these Amendments to the Regulations. I feel very strongly that these Amendments will help with the problem that we have in terms of providing a good, reliable source of electricity to the people of this country. That is what we are addressing and it is being addressed in a very comprehensive way.

We had the two Amendments to the Principal Act of the PUC and the ESRA just before we broke for the recess. Now we are coming back immediately after the recess with these significant Amendments to the Regulations which will help those who are good clients of GPL, who are following the Rules and Regulations. There are two provisions in there that will help them. One it will make it easier for them to get, I think it is Regulation 3(c), a connection by getting a document from the Housing authority, by making a presentation to GPL and they can get an easy supply of legal electricity. The provision that my good colleague mentioned - Mr. Speaker, technical things tends to be a little tedious and I am pleased that he took the time to go through the changes clause by clause so that we all can have a clear indication of what these

Amendments are supposed to be - I want to come back to the other provision that will help the person who wants a legal connection. That is if an accounting error happens in terms of billing to a client, for example, Minister Benn, GPL can only go back for three months. This imposes a tremendous amount of responsibility on the public supplier to get his act together.

I mentioned during the debate that we just put in a multi-million dollar US billing system and we heard from GPL that that has moved towards making the billing just about one month instead of two, three and four months as in the past. Those are benefits the consumers and those who want to have a good reliable supply of electricity. The other issue is, the big problem with the leakages, the commercial losses and the technical losses. The technical losses-we are taking serious steps. GPL's CEO only a few weeks ago, announced a $1.5B purchase of transforms and connectors to deal with transmissions and distribution issues. For the Commercial losses, we got set a back last year with the murder- and this is how serious it is, of the Chief Security Officer of GPL. If we look at the record- and we just had the shareholders meeting of GPL and the annual report which has to be filed with the companies is going to be available, if not already, at the registrar of companies- when you examine that you will we in 2007 and 2008 we had almost 13,000 illegal disconnections. When we had the murder of the chief Security Officer it changed the picture. The electricity thieves have gotten serious and we cannot just jeopardise the lives and limbs of the workers in this country willy nilly. So we had to take a step back and look at the approach with respect to dealing with the commercial losses. If you examine last year, the illegal raids fell back by almost 8000 so commercial losses increased. In 2008 technical losses were 34%, last year it went up by 0.3% point. We have seen some cooperation, that is, in the courts. The amount of convictions we had last year with less raids had increased 100 times.

These regulations are going to further strengthen the utility. Those who want to steal will face harsher penalties and as Mrs. Deborah Backer said this is a total picture; it is the law, it is fixing transmission distribution, is redoing the shares of the company to make this a very viable, profitable, efficient service. These Regulations are going to support that and that is why I strongly support these Amendments. Thank you very much. [*Applause*]

Mr. Benn (replying): I would like to thank the Hon. Member Manzoor Nadir for his support in respect to these Amendments. I do not want to apologise for the fact that maybe Members of the Opposition are easily overloaded when it comes to these electricity issues. I again support the

Amendments and changes that are proposed. I want to point out the fact that in many other jurisdiction; in areas like the Unites States, in Ghana, South Africa and other areas where there has been the adoption of prepaid meters that the conservation has reached the 10 or more percentage points. Conservation is an important issue along with the issue as mentioned by the Hon. Manzoor Nadir regarding the protection of workers and to lead to the avoidance of tampering which also leads to people being electrocuted, I think there was an instance of a child. With that I would like to propose the Motion for adoption by the Hon. House.

Question put, and agreed to.

Motion carried.

Mr. Benn: Mr. Speaker, I did point out that there are a number of erratum, which I am advised are due to mistakes in the printing of the Gazette. I can present these to the Clerk for the appropriate insertions.

Mr. Speaker: Yes. You can have a conversation with the Clerk and those matters can be resolved.

ADJOURNMENT

Mr. Speaker: Thank you Hon. Members, this brings us to the end of our business for today.

Mr. Rohee: Mr. Speaker I would like to move that this Hon. House stand adjourned until next week Thursday 21st at 2 pm.

Adjourned accordingly at 8.46 p.m.