

# National Assembly Debates

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

---

63<sup>RD</sup> Sitting

14:03h

Friday 17 October 2008

---

## ***MEMBERS OF THE NATIONAL ASSEMBLY (70)***

### ***Speaker (1)***

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

*Speaker of the National Assembly*

### **Members of the Government (41)**

#### **People's Progressive Party/Civic (40)**

#### **The United Force (1)**

The Hon Samuel A A Hinds MP

*(R# 10 - U Demerara/U Berbice)*

*Prime Minister and Minister of Public Works and Communications*

The Hon Clement J Rohee MP

*Minister of Home Affairs*

The Hon Shaik K Z Baksh MP

*Minister of Education*

The Hon Dr Henry B Jeffrey MP

*Minister of Foreign Trade and International Cooperation*

The Hon Dr Leslie S Ramsammy MP

*(R# 6 - E Berbice/Corentyne)*

*Minister of Health*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

The Hon Carolyn Rodrigues-Birkett MP

*(R# 9 - U Takutu/U Esseq)*

*Minister of Amerindian Affairs*

\*The Hon Dr Ashni Singh MP

*Minister of Finance*

The Hon Harry Narine Nawbatt MP

*Minister of Housing and Water*

The Hon Robert M Persaud MP - (AOL)

*(R# 6 - E Berbice/Corentyne)*

*Minister of Agriculture*

The Hon Dr Jennifer R A Westford MP

*(R#7 - Cuyuni/Mazaruni)*

*Minister of the Public Service*

The Hon Kellawan Lall MP

*Minister of Local Government and Regional Development*

\*The Hon Doodnauth Singh SC, MP

*Attorney General and Minister of Legal Affairs*

The Hon Dr Frank C S Anthony MP

*Minister of Culture, Youth and Sport*

The Hon B H Robeson Benn MP

*Minister of Transport and Hydraulics*

\*\*The Hon Manzoor Nadir MP

*Minister of Labour*

The Hon Priya D Manickchand MP

*(R# 5 - Mahaica/Berbice)*

*Minister of Human Services and Social Security*

The Hon Dr Desrey Fox MP - (AOL)

*Minister in the Ministry of Education*

The Hon Bheri S Ramsaran MD, MP

*Minister in the Ministry of Health*

\*Non-elected Minister \*\*Elected Member from TUF

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

The Hon Jennifer I Webster MP

*Minister in the Ministry of Finance*

The Hon Manniram Prashad MP

*Minister of Tourism, Industry and Commerce*

\*Mrs Pauline R Sukhai MP

*Minister of Amerindian Affairs*

Mr Donald Ramotar MP

The Hon Gail Teixeira MP

Mr Harripersaud Nokta MP

Mrs Indranie Chandarpal MP, Chief Whip

Ms Bibi S Shadick MP

*(R# 3 – Essequibo Is/W Demerara)*

Mr Mohamed Irfaan Ali MP

Mr Albert Atkinson JP, MP

*(R# 8 - Potaro/Siparuni)*

Mr Komal Chand CCH, JP, MP

*(R# 3 - Essequibo Is/W Demerara)*

Mr Bernard C DeSantos SC, MP

*(R# 4 - Demerara/Mahaica)*

Mrs Shirley V Edwards JP, MP - (AOL)

*(R# 4 - Demerara/Mahaica)*

Mr Mohamed F Khan JP, MP

*(R# 2 - Pomeroon/Supenaam)*

Mr Odinga N Lumumba MP

Mr Moses V Nagamootoo JP, MP - (AOL)

Mr Mohabir A Nandlall MP

Mr Neendkumar JP, MP

*(R# 4 - Demerara/Mahaica)*

\*\*\* Mr Steve P Ninvalle MP

*Parliamentary Secretary in the Ministry of Culture, Youth and Sport*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Mr Parmanand P Persaud JP, MP

*(R# 2 - Pomeroon/Supenaam)*

Mrs Philomena Sahoye-Shury CCH, JP, MP - (AOL)

*Parliamentary Secretary in the Ministry of Housing and Water*

\*\*\*Non-elected Member

Mr Dharamkumar Seeraj MP

Mr Norman A Whittaker MP

*(R# 1 - Barima/Waini)*

**Members of the Opposition (28)**

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

Mr Robert HO Corbin

*Leader of the Opposition*

Mr Winston S Murray CCH, MP - (AOL)

Mrs Clarissa S Riehl MP

*Deputy Speaker of the National Assembly*

Mr E Lance Carberry MP - (AOL)

*Chief Whip*

Mrs. Deborah J. Backer MP

Mr Anthony Vieira - (AOL)

Mr Basil Williams MP

Dr George A Norton MP

Mrs Volda A Lawrence MP

Mr Keith Scott MP

Miss Amna Ally MP

Mr Dave Danny MP

*(R# 4 - Demerara/Mahaica)*

Mr Aubrey C Norton MP

*(R# 4 - Demerara/Mahaica)*

Mr Ernest B Elliot MP

*(R# 4 - Demerara/Mahaica)*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Miss Judith David-Blair MP

*(R# 7 - Cuyuni/Mazaruni)*

Mr Mervyn Williams MP

*(Re# 3 - Essequibo Is/W Demerara)*

Ms Africo Selman MP

Dr John Austin MP

*(R# 6 - East Berbice/Corentyne)*

Ms Jennifer Wade MP

*(R# 5 - Mahaica/Berbice)*

Ms Vanessa Kissoon MP

*(R# 10 - U Demerara/U Berbice)*

Mr Desmond Fernandes MP

*(Region No 1 – Barima/Waini)*

Mr James K McAllister MP

- (AOL)

**(ii) Alliance For Change (5)**

Mr Raphael G Trotman MP

Mr Khemraj Ramjattan MP

Mrs Sheila VA Holder MP

Ms Latchmin B Punalall, MP

*(R# 4 - Demerara/Mahaica)*

Mr David Patterson MP

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

Mr Everall N Franklin MP

**OFFICERS**

Mr Sherlock E Isaacs

*Clerk of the National Assembly*

Miss Hermina Gilgeours

*Assistant Clerk of the National Assembly*

## PRAYERS

*The Clerk reads the Prayers*

## QUESTIONS ON NOTICE

**The Speaker:** There are two questions on the Order Paper; these questions are for oral replies.

Mrs Holder. *[Pause]* Mrs Holder is not here.

**Mr Raphael GC Trotman:** Sir, if it pleases you, is it permitted to... *[Interruption]*

**The Speaker:** Yes, proceed Honourable Member on the assumption that you have Mrs Holder's permission.

**Mr Raphael GC Trotman:** Well I do.

**The Speaker:** And you are asking the question on her behalf.

**Mr Raphael GC Trotman:** Sir, I crave your indulgence for a Minute so I could get the Order Paper with the question. *[Pause]* Thank you. This would pertain to the appointment of the Permanent Secretary's position; is that it, Sir?

**The Speaker:** I cannot tell you - Page 2 of the Order Paper. *[Pause]*

**Mr Raphael GC Trotman:** I really do crave your

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

indulgence this afternoon, very well. Sir, with your permission I would like to ask the question about:

**1. COMMUNITY WELFARE OFFICER FOR MAHDIA**

The question is directed through you Sir to the Minister of Human Services and Social Security and the question as I am instructed to ask is:

Since Court is held every three months in Mahdia and there is no Welfare Officer in place in Madhia, incarcerated persons are often held in custody for extended periods. Would the Minister promise to correct this situation by making available to the community a Welfare Officer? Thank you:

**The Speaker:** Honourable Minister

**Hon Priya D Manickchand:** May it please you Mr Speaker, the question that Mrs Holder poses and I had a chat with her, seems to link persons being incarcerated with the availability of a Welfare Officer. I do not know that those two things can be linked and Mrs Holder herself while she was attempting to explain to me how they could be, I do not believe they are linked.

I can answer though the second part and that is that as of October of this year, a resident Social Service Officer will be in Mahdia, Region 8 as well as Region 9. This will fulfil two promises made by the People's Progressive Party/Civic in its Manifesto of 2006. Before the end of

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

the year we will have resident Social Service Officers in Region 1 as well as Region 7. Thank you.

**Mr Raphael GC Trotman:** I thank the Minister for the answer and I am glad that the Alliance For Change has compelled the PPP/C to keep its Manifesto promises.

**2. DEEDS REGISTRY ACT**

The second question is addressed to the Honourable Minister of Legal Affairs and Attorney General of Guyana. I do not know if there is anyone to answer for him.

**The Speaker:** He is here. *[Pause]*

**Mr Raphael GC Trotman:** I think I can proceed, please, Sir. The question to the Honourable Attorney General and Minister of Legal Affairs Sir is:

When will the Minister bring into effect the Deeds Registry Act No. 2/1999?

**Hon Doodnauth Singh:** May it please you, Sir, in view of the fact that I am unprepared to answer that question I will be grateful for a deferment.

*[Question Deferred].*

**STATEMENTS BY MINISTERS, INCLUDING  
POLICY STATEMENTS**

**The Detention of the ‘Lady Chandra 1’ by the  
Surinamese Authorities**



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

**The Speaker:** Honourable Minister of Foreign Affairs

**Hon Carolyn Rodrigues-Birkett:** I rise to update the Members of this Honourable House on the incident that took place at around 13:30H on 14 October 2008 on the Corentyne River when several Surinamese naval vessels intercepted, boarded, seized and transported a Guyanese vessel - the Lady Chandra 1 to a Surinamese Port in Nickerie.

The vessel was on its way to the Springlands Warf in Guyana to uplift and transport a shipment of bulk sugar for export. Mr Speaker, Guyana's reaction to this latest provocation by Suriname was swift, but peaceful. Guyana despatched a note for bale to the Surinamese Ministry of Foreign Affairs protesting the illegal and unwarranted detention of the vessel. We reminded Suriname of the fact that the tribunal that dealt with the Maritime Boundary dispute had stated clearly that the use of force is to be eschewed and had condemned Suriname's naval actions back in 2002.

In addition Mr Speaker, Guyana has also written to the Secretary General of CARICOM informing him of this latest action by Suriname and also asking for our sister CARICOM countries to be informed.

The Secretary General of the United Nations has also been apprised of the threats to the peace, which is posed by Suriname's penchant for the utilisation of its military forces to pursue its ambitions in the Corentyne River. I

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

also met with the Surinamese Ambassador to Guyana and expressed our deep concern on this latest incident and reminded that Guyana received no response to its last communication on a similar incident.

Mr Speaker, Guyana's long held position that both Guyana and Suriname have equal rights to the use of the river is a position that is based on international law. The Honourable Members of this House would be aware of the fact that the Corentyne River forms the frontier between Guyana and Suriname. Guyana's contention has always been that since the river is an international boundary, it has all the attributes of such rivers in international law; meaning that until and unless it is mutually agreed otherwise by definitive delimitation both States have equal rights to its use. Members of this House may also be aware that in the Arbitral Award of 1899 that settled the boundary with Venezuela, the tribunal ruled that the boundary in the:

- Mururuma
- Amakura
- Wenamu and
- Cotinga

Rivers would be mid-stream.

In the award delimiting the boundary between Guyana and Brazil in 1904, it was ruled that and I quote:

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*The frontier along the rivers Ireng and Takatu remains fixed by the Toweg and the said rivers will be open to free navigation of the two States bordering on it.*

Mr Speaker, these are pertinent precedents in that they indicate a conscious and consistent application of dual rights on Boundary Rivers. Indeed they indicate clear jurisprudence on the matter of rights to Boundary Rivers.

Mr Speaker, the unlawful and unwarranted detention of the Lady Chandra 1 and her crew represents a direct threat to the economic interest of Guyana. Sugar remains one of the key contributors to Guyana's economy and development. Suriname must be aware that that act has constituted a direct threat to Guyana's economic well-being.

His Excellency President Bharrat Jagdeo is on record as stating that Guyana is committed to resolving all disputes by peaceful means, but Guyana will take all the necessary measures to safeguard its interest. The Government of Guyana will therefore pursue this matter vigorously. I thank you.

**PUBLIC BUSINESS**

**(i) GOVERNMENT BUSINESS**

**BILLS - Second Readings**

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**  
**ITEM1 - TELECOMMUNICATIONS**  
**(AMENDMENT) BILL 2008 - Bill No. 18/2008**

**published on 7 August 2008**

*A Bill intituled an Act to amend the  
Telecommunications Act 1990*

**The Speaker:** Honourable Members we will now proceed with the Second reading of the Telecommunications Amendment Bill No.18 of 2008.

The Honourable Prime Minister

**Hon Samuel AA Hinds:** Mr Speaker, Honourable Members, I rise to move the Second reading of the Telecommunications (Amendment) Bill 2008.

Mr Speaker, Honourable Members, on many occasions and festivals during the year we confirm that good will overcome evil. That is very reassuring, but in our affirmation perhaps over thousand of years that good will overcome evil it is implied that evil will never be vanquished, but there will always be tendency to evil, to crime, as society calls much evil. While good will overcome evil, our people, society, the State have to fight evil. We have to battle with crime; if people went around with a big sign on themselves saying that they were criminals and if they used facilities and resources different from what we as lawful citizens use in our daily lives, battling crime would be so much easier; battling crime would not bring the necessity of limiting or

compromising the activities of lawful citizens.

The reality is that criminals put to their criminal use the same facilities, which we lawful people use. We cannot know before hand maybe indeed we are not permitted to know before hand who is criminal and which activities are criminal. We cannot anticipate criminality, but we can set up systems so that we would have data/information which would allow us:

- To check back;
- To monitor;
- To root out; and
- To identify criminal and criminal activities.

Mr Speaker and Honourable Members, this is what this amendment to the Telecommunications Act seeks to do particularly in the case of the use of cell phones.

Up to about 1990, less than twenty years ago, there were only landlines in Guyana, no cell phones. Indeed, cell phones were still relatively new and not very widespread around the world. Since then, it is well recognised that the use of cellular phones have become increasingly prevalent in our society. They are so popular that the number of cellular phones in use today outweighs the number of landlines in use by an approximate ratio of about five to one. I think that while the various telephone companies may not want to reveal their internal business,

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

one has a feeling that we have about 600,000 cell phones in Guyana; about 120,000 landlines. Cellular phones are convenient, mobile and as of now in a predominantly pre-paid market, they are effectively anonymous. With ownership of a prepaid cellular phone as they are frequently and easily resold, given as gifts and transferred from one person to another. They can be no denying that cellular phones have created exciting new social and economic fervour in our society. That should certainly be viewed and is viewed as a good thing, but those among our society, who fall prey to temptations, have found ways to utilise the positive attributes of the cellular phone for nefarious purposes. There can be no doubt that cellular phones are also used as integral tools in planning, facilitation an commission of serious crimes and these crimes as we know from our recent media reports ranged from:

- Capital offenses of: murder and treason;
- Kidnapping;
- Trafficking in narcotics;
- Trafficking in persons;
- Larceny of cellular phones themselves; and
- Any serious crime.

Given this state of Affairs, it has become evident to our police, security forces and to this administration that an

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

essential element of being able to investigate and solve such crimes has to do with the ability to track the ownership and use of cellular phones and to identify the persons in possession of the cellular phones that are used in such crimes. It is therefore considered necessary by this administration to ensure that there are ways and means to so track the use of cellular phones and ascertain the identity of the users. This has led to the amendments that are proposed for enactment today in this Telecommunications (Amendment) Bill and while this ensures that there is the data, the next Bill that we will proceed to debate - The Interception of Communications Bill 2008, rests on the information that is required to be stored on the basis of this Telecommunications (Amendment) Bill.

It should be noted Mr Speaker and Honourable Members that with respect to landline services there are in place already provisions and practices that allow and enable the recording of subscriber registration data and for making available of such information to the police and security forces where required.

We recognise at this time that while we are addressing largely if not only cell phones in this Amendment here that similar provisions as those proposed here have to be extended to internet based transmissions such as e-mail and other types of communications such as SMS, short messaging systems and so many other features that are being developed and are emerging almost daily.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

The Government proposes to keep such matters under review. At this point, however, we propose to start with the services and devices that are very popular and which as we have seen, been used in criminal activity. We will certainly keep e-mails and other ways of communicating under review and as the technology emerges and as other people who may be more able than us technologically in many matters as they develop the laws, regulations, practices to monitor those new areas we will follow suite; we will learn from their experience and follow suit. The provisions before this House at this time are designed to ensure among other things the registration data of subscribers and users on the systems and network of the cellular system licensee as well as the SIM card details and the phone detail, the call details report of transmission date of all calls carried by the cellular phones that operate on the cellular systems or networks in Guyana that these are all recorded and stored. Stored at the cost of the licensee and we thought about how long they should be stored. They could be for a year, three years, five, seven and out of the discussions and balancing of discussions with the telephone company operators and discussions with the security forces; out of those discussions, we settled for a compromise of five years that seems sufficient for the normal policing work, but not too onerous and too demanding on the telephone operators. Dealers or other persons transferring a SIM card or a cellular phone to another person are also required to get the data with the cellular licensee suitable



recorded and stored or changed and updated.

However, in a practical way, we have exempted from this requirement instances of persons transferring SIM cards or cellular phones to Members of his/her family living with him/her. This is but a very practical accommodation. Once they are living in the same home then we do not see too much to lose in not requiring a transfer to be registered with the telephone company.

In an effort to ensure that there is full understanding of the intent and import of the Bill and to facilitate compliance with the requirements of the Bill, the Government undertook extensive consultation with certain key stakeholders over a period of several months. As you know, the telecoms sector has been judged of such importance to our overall development that it has been retained by our President so that he could give it his personal attention. Nevertheless, I have been kept informed and I can speak of the several meetings which the Office of the President held with the licensees - Digicel and GT&T.

The Bill requires that the licensee of a cellular system shall not activate or re-activate the SIM card or cellular phone unless the particulars of:

- (i) The SIM card subscriber identity module;
- (ii) The cellular phone itself;
- (iii) The registration details of the person requesting

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

the activation or re-activation of a SIM card;  
and

- (iv) The CDRs are recorded and stored by the licensee.

The Bill sets out the details that have to be recorded and how it can be verified. It also sets out that the licensee shall ensure that the process of collecting the data, the facility where the information is stored and the information itself are secure and only accessible to persons authorised by it and to the police on request. A dealer of SIM cards or cellular phones, this is a dealer as distinct from the telephone company itself; is also required to obtain similar registration information when he sells or transfers a SIM card or cellular phone when he purchase. Also, a customer who sells or transfers a SIM card or cellular phone to any person other than their family member living with them is also required to take similar action. They are required to transmit such information to the licensee who is required to update his records related to SIM cards, cellular phones or users on his system or network.

The Bill provides Mr Speaker that where a SIM card or cellular phone is lost or stolen, the matter should be reported to the licensee and to the Police Station. We will have to report any loss of our SIM cards or cell phones, because there is a chance that they could be utilised for a short period by persons intent on criminal activities.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

The Bill further provides that the telecom system licensees shall comply with the provisions of the Act with respect to recording and storing the information on SIM cards, cellular phones and registration data within twelve months of enactment.

Mr Speaker, this Clause is required, because as I have alluded to earlier there is not much known or let me put it the other way. There are many cellular phones in the system for which not much is known. Indeed, in the competition to provide phones and we have all seen it over the last year, phones have been sold more or less without any data being kept. So this was one of the issues that came up in the discussions between the Office of the President and the telephone operators. What is to be done about the large number of phones already sold and in the system to which no data has been recorded? So there is a section there that requires that within twelve months of this coming into law the data should be up to date. They can do it in that incoming on the system if it needs additional maybe circuitry, network, but oncoming on the system there could be checks to see whether the phone in use is in the register and if it is not in their register then they may signal it to the users and request them to come in and have an information updated and in good time if he does not come in, then it is expected that service will be withheld.

Mr Speaker, Honourable Members, once the lot of this use of information from cellular phone systems and

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

records would be utilised in the average run-of-the-mill crime, we are very painfully aware of very serious crimes, horrific crimes and crimes which it is only understanding that persons who get involved in resolution of these crimes feel that they could become threatened. So there is a Section that has taken account of the perceived need of technical people who may be required to unravel and use data for anonymity there is in one of the Sections taking benefit of laws that we passed yesterday; there is provision for such technical experts of a licensee to give evidence by methods which would protect them.

Mr Speaker, Honourable Members, I want to allude now to the two Amendments which have been submitted in my name. The first amendment or the key amendments to the Bill, these two amendments to the Bill have been designed to ensure that the Bill is geared to achieve its objectives of providing a way and means of assisting in solving crimes involving the use of cellular phones and indeed to deter the commissions of crimes involving the use of cellular phones; and indeed to deter the commission of crimes involving such devices.

The first Amendment makes provisions for the Minister to determine or provide by regulations an alternative to the requirement in the Bill for the recording and storing of the:

- Full name;
- Age;

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- National identity number or Passport number; and
- Residential business and postal address of the person requesting a SIM card or a cellular phone.

What we have taken account of here in discussions again with the telephone operators is that particularly many of the young people who is a large portion of the customers utilising cell phones that many of them in our Guyana today may not have some of the things that we older people who come from a more orderly time and I am thinking here of before independence. I am not thinking of the 1970s and 1980s, I am thinking those of us who come from an orderly time, we think of having many of these things that are required, but the younger people might not have things like ID cards, passports and so on. So this amendment makes provision for the Minister to define other sets of data that may be utilised instead. The aim here is a matter of serving the purpose for identification of the one who should be responsible for the phone and therefore responsible for the use of the phone. This amendment is proposed to pave the way for workable alternatives in the event that the provision results in a severe constriction of the cellular service sector or seriously affects its access to the cellular service sector by certain persons.

The Second Amendment is proposed to ensure

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

compliance by certain major players impacted by the Bill:

- The cellular licensees;
- The dealers; and
- The transfers of cellular phones or SIM cards.

You know, we could say that to do such and such a thing is an offence or not to do such and such a thing is an offence, but I have been told by the legal people that saying it is an offence is not enough that one needs to set out some penalties. In fact I think, they said just saying it is an offence is toothless and there is need for teeth. So this Amendment sets out the penalties applicable to non-compliance with material provisions of the Bill.

The Amendment provides that a licensee who fails to comply with major clauses of the Bill shall be liable on summary conviction to a fine of \$1 million and imprisonment for six months. Penalties are also proposed in respect of failure to comply with the provisions of the Bill by a dealer and other persons.

So Mr Speaker, Honourable Members I do hope that no Honorary Member in this House can see any problems in giving support to this Bill. It has been well thought out; it has received consultations with some of the people who are involved. We did not hold consultation Mr Speaker, with maybe an important stakeholder - those who may be inclined to criminal activity. I submit Mr Speaker; we did not hold any consultations with them.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

I hope as I have said and I look forward to all Members of this Honourable House giving this Bill their unanimous support and I move that it be read a Second time. Thank you. *[Applause]*

**The Speaker:** Thank you Honourable Member

The Honourable Member Mr Corbin

**Mr Robert HO Corbin:** Mr Speaker, listening to the Prime Minister a few moments ago, provided an opportunity, I believe, for the public to understand the full implications of Bill No.18 of 2008, before this House. I cannot disagree or contend that his explanations were not in keeping with the provisions of the Bill.

However, it is interesting that unless my information is incorrect, the entire opposition perhaps has been deemed to be inclined to criminal activity. If according to his presentation the only person the Government did not consult with were those who were inclined to criminal activity. I do not know if it was discussed at Cabinet and I do not know if the AFC benefitted from this consultation. What the Prime Minister did not also say was whether the Bill - this and the one we are to deal with next and the Amendments which he just identified faithfully reflected the results of those consultations with whomever he consulted. Generally speaking, I do not think that this Bill taken by itself would pose any difficulty in any well ordered society. Indeed, the SIM card and the cell phone are only technological advancements of the

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

telecommunication system that started with various means in the past, landlines, et cetera and at that time it was not unusual for anyone applying for a telephone to provide all the details with the telecommunications provider. In fact there is a telephone directory in which all the details of those who own landlines are published except for someone who wishes their phone to have ex-directory classification for avoidance of any nuisance calls, et cetera, those telephone numbers are made public, but they are not secret to the telecommunications provider, who would have a record of all those persons who have applied for landline. This is simply an advancement of registering the new technology so taken in isolation as I have said one would have no problem with the registration of the:

- Owners of Telephones;
- Owners of SIM cards; and
- Owners of cell phones

However, in the context in which the Prime Minister has introduced this Bill and reading the EXPLANATORY MEMORANDUM and all that he has said including his last remarks about not consulting with criminals, suggests that these pieces of legislation - this Bill and the one to follow, have nothing to do with the regular orderly management of the telecommunication system, but really is geared, I think, Minister Rohee yesterday was speaking about the new architecture of the law. But this is part of



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

the architecture to support the machinery of the repressive State that is developing in Guyana today. It is in that context that we must see this particularly the Bill that follows as well. Because if indeed the Government was concerned with cell phones and crimes and monitoring one wonders why some three years ago when there was discovery of interception equipment, which we were told is equipment that is only sold to Governments was found in the hands of criminals. Nothing at all was done over these years to really move in this direction to register phones at a time when the society was plagued with a high level of crime and violent crimes as well. So we are told three years after we are told that this Bill is intended to curd crime, not to regulate the telecommunications network according to him. It is really the criminal objectives which need to be satisfied. But Mr Speaker, the very Act that this Bill attempts to amend Chapter 47:02 I think it is the Telecommunications Act of 1990 now in the laws as Chapter 47:02. It has many provisions, which could have enabled the Government to regulate the telecommunications network a long time ago without having to come with this new Bill for registration of cell phones. One must ask the Government whether they are serious about regulating the telecommunications network of this country or really only taking steps to affect more political control to ensure repression continues in this country. *[Applause]*

The Bill itself speaks of amending an Act; this Act has

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

been in existence since 1990. Section 3 of the Act states that there shall be a Director of Telecommunications whose Office shall be a public office; the Director shall be provided with such staff as may be required for the performance of his functions under this Act.

Section 4 goes on to identify the powers of the Minister *vis-à-vis* the Director of Telecommunications. The Prime Minister has failed to tell us whether he was speaking in the capacity of Minister of Communications, I do not know, I was told it was the Prime Minister. We read that it was arbitrarily switched to Office of the President and he moved on to speak about consultation being held by the President and the Telecommunications Company, but we have heard nothing about this Director of Telecommunications, who should be provided with staff that will be required for the performance of his functions under the Act. The Act specifies the functions of that Director of Telecommunications. So one has to ask the question why is there is no Director of Telecommunications; if there is whether the Prime Minister can tell us who that person is; where the staff is located and what have they been doing to ensure compliance with the provisions of this Act, some of which are being honoured in the breach. So we have some anarchy in the operations of the telecommunications network in this country right at this moment. And why is it only the President or the Office of the President is in charge of these matters? It falls within

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

the general framework then that there is need for political control of what is happening in this country. That is the worrying part of this Act.

The Bill requires that everyone provides their particulars; I do not think anyone will quarrel with that. One concern which I had for this Bill has been addressed by the Prime Minister. I think one of the telecommunication providers, who was consulted, pointed out to the Government that based on their own experiences many young people were not going to be provided with cell phones and the onerous requirements which they will have to produce for identification. In that context many of them will fall by the wayside like some persons who want electricity at the moment and cannot get GPL to hook up electricity to their homes, because of some of these very onerous provisions of identification that GPL is imposing so that people cannot get connection of electricity - all kinds of documents - transport, lease agreement, tenancy agreement, all kinds of provisions. I was in Bare Root last Monday afternoon and the residents complained bitterly about the kind of harassment which they have been having at GPL and GUYWA sometimes to have connections. So what has been happening here is that this Bill would have been imposing the same kind of problems which those persons are experiencing to get electricity and water to having a cell phone. We have absolutely no problem with this Bill in isolation. As I said Mr Speaker, one wonders whether there will be any

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

penalties and even though there is information here on this Bill as to the use of this information; one wonders whether there will be any penalties for officials of the State who obtain this information and use it improperly. Like the Office of the President that the Court, I believe, attempted to suggest ... I have not read the full judgement; it is immune from acts of the court for anything he does under the caption of President. So you have the President as Telecommunications Minister, we passed a law that this record must be kept at the telecommunications company; the dealers and the providers that it should only be used in some specific matters. You do not have a Director of Telecommunications, so no one would have any redress when this information is used for other purposes - for political purposes. I would like the Prime Minister to provide some explanation to this Parliament about the functioning of the telecommunication sector under this Act in the absence of a Director of Telecommunications. Because there was nothing to prevent in this existing Act the Director of Telecommunications issuing as an extension to the licence of the various providers the provisions which are now coming here as a special Bill. So in the context of the other Bill while we have no problem with registering cell phones, we are concerned of its political manipulation and the possible misuse which the Government proposes or is likely to use this Bill for. But as it is Mr Speaker, we can have no reasonable objections to this Bill in isolation. So I will reserve my other comments to the following

Bill. Thank you. *[Applause]*

**The Speaker:** Thank you Honourable Member

The Honourable Minister of Local Government and Regional Development

**Hon Kellawan Lall:** Mr Speaker, I rise to support the Bill proposed by the Honourable Prime Minister. I think the Prime Minister has done a very good job in presenting the Bill which seemingly seems to be a very confusing piece of legislation. I think it is made very simple for the ordinary folks to understand.

I think this piece of legislation must be seen in light of the other pieces of legislation dealing with crime, criminality and the improvement of the Administration of Justice over the past few months. Some of the other pieces of legislations which are likely to come before this House, I think, Mr Corbin happily descried how Minister Rohee sees this matter that is refurbishing the entire architecture of the area of administration of justice.

I want to deal with some of the suspicions raised by the Honourable Leader of the Opposition. First of all, I think that this side of the House we are very glad to have the support of the opposition, at least the PNCR-1G on this Bill.

I want to refer to what the Prime Minister described as the main purpose or the sole purpose of the Bill. The sole purpose of this Bill is to assist the security forces in

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

dealing with criminal activities and criminals.

The reference to the use of the Bill for ulterior motives by the State; to talking about a repressive State; to talking about politicians using information for ulterior motives, I think these are suspicions without any basis, absolutely none whatsoever.

I think that all of us are aware that over the past period that the use of cellular phones has been on the increase in terms of the committing of crimes. I think that is what propelled the administration in dealing with this matter at this point in time.

There is also quite a number of persons in the system, who have cell phones that are not registered. I think Mr Corbin is right, we should have noted these matters quite some time ago and dealt with them earlier, but I think Minister Rohee has his own schedule of how he is dealing with these matters and one should respect that. As I have said, over a period of time we have seen quite a number of pieces of legislation coming to this Parliament.

I also think Mr Corbin puts it very quite simple; this is just an extension of the information that is required for landlines. So it is actually no big thing, the kind of information that we are asking for the telecommunication sector or the telecommunication owners and the other providers to store this information in a manner that can be accessible to experts at the behest of the security forces.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

I do not think that there is any big problem with that. Where the problem comes in is where there is a political interpretation of the motives and intentions of this Bill. I would like to assure Mr Corbin and all Members of this House that this has been something that the security forces themselves have been asking for us to deal with and that they would feel a bit far more comfortable in dealing with the complexities and sophistication of crime in these times.

So Mr Speaker, I fully support this Bill and I ask others in this House to do so. Thank you.

**The Speaker:** Thank you Honourable Member

The Honourable Member Mr Trotman

**Mr Raphael GC Trotman:** If it pleases you Mr Speaker, I rise to make a contribution on this Bill. Oh... *[Interruption]* Did you hear that Mr Speaker?

**The Speaker:** No.

**Mr Raphael GC Trotman:** Anyway, Mr Speaker, through you, I believe indeed this Bill as it stands alone appears somewhat innocuous. Indeed, there should be administrative and regulatory management of the telecommunications sector. In fact, as far as I am aware, whether you are a pre-paid or a post-paid holder of a SIM card or a GSM cell phone, your identification card is photocopied and your particulars are already taken from you. It is therefore surprising to note that the Government

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

is now insisting that the service providers and licensees under the Telecommunications Act should go back or rather within twelve months of the date of the enactment of this Bill, I do not know whether it will make it to law, should at their own expense deliver this information in such a form as to be easily accessible by the police or the subject Minister.

Mr Speaker, we have already at a press conference held on Wednesday last stated our objection to this Bill. We objected to it on two grounds -

I have said that the first is the responsibility being placed on service providers and licensees of telecommunication services is too onerous. I have no doubt that within the twelve months required that some of them inadvertently or because of lack of capacity, will be unable to comply with all of the strict requirements of this Bill. What that then does is criminalise them, because it says that if you fail as against if you refuse; I refer you, Mr Speaker, I believe to the amendment that the Honourable Prime Minister spoke about. If you fail to comply then you shall be liable to a fine of \$1 million and a term of imprisonment. It ought to have said that if you refuse to comply. And I anticipate as I have said that there are going to be some failures not because there is a deliberate intent not to comply, but because it is just not possible within twelve months to document not only the 600,000 existing subscribers in the form required, but the movement within that subscription list. Mr Speaker, that



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

is the jeopardy that these companies and the persons who are on Regent Street and in the markets and so are going to be faced with.

The second difficulty we have is the one that affects the person - the citizen of Guyana. We are seeing the building blocks in our view being erected for what we term a Police State in Guyana. We were told last year that there was going to be a national registration system set up where there is going to be some kind of super card produced; a linking of databases between different Ministries and the GRA and different places. Now again, you are asking the private sector to do a whole new process on your behalf. What happened to that system which we are told hundreds of millions of dollars have already been spent on NIS; GRA; Home Affairs; the Police; Immigration and so fourth?

So Mr Speaker, we have a problem with that and we have heard nothing that sounds reasonable or rational this afternoon from the Honourable representative from Region 10 as to why this new layer of information is required.

The other one that bothers me is the one that says that if you exchange, giveaway or what have you, or even lend your SIM card or phone to another person for an extended period of time without causing the registration to be done, you are committing an offence. Mr Speaker, it says if you reside in the home of the person you are exempt. I had a

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

friend who came into the country only yesterday, he left today to attend a wedding. He came to Guyana, but he has gone to a wedding in Barbados. He registered a cell phone card and has left it with me. I do not know whether he is coming back to Guyana for the next two or four years. It tells me that I am... unless by Monday, I take these particulars in, I do not know that I necessarily want to have another cell phone registered in my name, but it says that I am committing an offence. So it needs not in my view be limited to those who reside in one's household. We have a situation in Guyana where our society operates differently. We have extended families, we have friendships, people exchange cell phones and if the Honourable Prime Minister and representative of Region 10 were aware of how young people operated, he would know that the exchange and movement of cell phones and bluetoothing go on almost on a twenty four hour basis. So one can easily again at age seventeen or eighteen find themselves in the hands of the police simply because he or she has lent out, borrowed, used, transferred or has in one's possession the cell phone of another friend or distant relative. It is too onerous a responsibility on our young people and I believe we are condemning our youth by the thousands to being criminals; the type of condemnation that the Honourable Member Mr Lumumba spoke about yesterday; the criminalisation of our young people unnecessarily. So for those reasons on this Bill alone and because for me, the third reason and perhaps the most serious, this Bill is

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

really the precursor for the next without this you cannot go on to intercept and wire tap and when one looks at it and weaves those three strands together one:

- (i) The onerous responsibility on the companies;
- (ii) The responsibility on the individual; and
- (iii) The fact that really it is setting up as I have said and acting as a building block for something more horrendous that is to come.

The Alliance For Change cannot in any way support this Bill.

Mr Speaker, I believe I need to say that the Honourable Prime Minister and representative of Region 10 said that when he began that evil always triumphs over good and then he made a second comment indeed that evil... this is a time when good rather triumphs over evil, my apologies.

Then he went on to speak about those who were consulted; suggesting that those who were not consulted hung on the balance on the criminal side.

Mr Speaker, I have no apologies for saying that I do not care if my objection to this Bill is deemed criminal or evil, my conscience and my God will support me. Thank you. *[Applause]*

**The Speaker:** Thank you Honourable Member

The Honourable Minister of Home Affairs

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

**Hon Clement J Rohee:** Mr Speaker, I rise to support the Telecommunications (Amendment) Bill that has been presented by the Honourable Prime Minister.

From what I have heard the Prime Minister said is that the telecommunications company and the Government have worked well together in ensuring that the provisions in this legislation are to their benefit and not to their detriment.

In addition to that, I understand that efforts were made to consult with the IPOs, but nevertheless those consultations did not reap the kind of benefits that comparable speaking that came from the telephone companies. It is true what the Honourable Members have said and the Prime Minister himself has said that the Telecommunications (Amendment) Bill and the Interception of Communications Bill must be read in conjunction with each other. I was happy to see the Honourable Leader of the Opposition was able to make a distinction between the two and for the purposes of supporting this Bill, was able to compartmentalise it and see its importance in a particular context.

Mr Speaker, I believe that had the two telephone companies not recognise the national security implications that this Bill sought to achieve. Had they not recognised that, I do not believe this Bill would have been before this House today. The fact that these two companies recognised that there are serious national

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

security implications that are being pursued in advancing this Bill, I believe that the support that they give is recognition of the fact that this Bill is before this House today.

Mr Speaker, it is therefore from this perspective that the national security implications are critical in terms of the registration records and the transmission data must be seen, which this Bill seeks to address. That is why it was important to put the legal framework in place in order to facilitate the ability to obtain registration records and transmission data. The telephone companies having stored that information for a period of five years and being able to retrieve that information whenever it is required by the respective authorities.

Mr Speaker, I believe that traceability which this Bill seeks to attain is extremely important. Experience in the last few months, in the saga to hunt down the criminal gangs led by Rawlins demonstrated that there has been established linkages between the use of the telephone, particularly in this case, the cell phones and the criminal gangs; and other persons who were a part of the criminal enterprise or network. It was clear that had they not had access to a phone or phones or had they not been able to switch SIM cards, that they would have been able to last so long and to out manoeuvre the security forces in this country. So these linkages have long been experienced and acknowledged between the criminal gang and the communication system and their ability to use the

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

communication system and the elements of the communication system such as the cell phone and the SIM card to their advantage.

Mr Speaker, as we stand here today, I think it has to be recognised that there is quite a number, hundreds if possible thousands cell phones and SIM cards out there, which are not traceable. That is why it is difficult for example if we receive a complaint from a woman, who would say that she has been abused, she is constantly harassed on the phone; she has constantly received a lot of phone calls that she is not willing to accept and when you try to trace that number it is almost impossible to do so and it makes the investigating capacity of the law enforcement agency almost un-accomplishable. We have many instances like this today, where because of the gaps that exist in the traceability of cell phones and SIM cards. The law enforcement agencies are unable to:

- Trace who has this cell phone;
- Who purchase this cell phone;
- Who purchase this SIM card; and
- Where is this SIM card at a certain point in time

That is precisely why it is important to have this legislation in place.

This piece of legislation is aimed at bringing a better sense of regulation. We speak constantly about putting

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

regulatory frameworks in place. This is not so much a question of control or a repressive measure; it is more of a regulatory nature. That is what has to happen, even in the wake of the current financial crisis, we see attempts to put regulatory measures in place to deal with it.

We, at this point in time, in the context of this regulation, are seeking not necessarily to control or to repress, but to put more regulations in place in the context of the telecommunication sector in order to bring greater order within the system. That is precisely what this Bill is aimed at achieving.

Mr Speaker we cannot continue... the Honourable Member Mr Corbin used the word *anarchy*. I would not like to introduce that word in what I would like to say at this point in time, but I believe that we have to bring about a greater sense of orderliness in the various sectors. The telecommunication sector is a sector that poses one of the greatest challenges in the twenty first century. Anyone that does not recognise that is burying their heads in the sand. Anyone that does not recognise all developing countries, even the more industrialised countries face the challenge of the telecommunication sector. It is for this reason that we have to put the regulatory framework in place to address traceless; lawless; and unregulated situations that we have in place

That is the gist of the matter that is before us in this House. Too often we have a lot of lawlessness

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

individualistically taking place in this country. People are taking action on their own without due regard to the law in order to fulfil either political or individualistic or egotistic ambitions. We have to be able to bring an end to this type of behaviour by putting more regulations in place.

Mr Speaker, I believe that the Administration would be seen as irresponsible - we would be seen as irresponsible - if we were to recognise there is a problem and not seek to address the problem. We cannot take the care free ... we cannot take the approach where we recognise a problem and say we will deal with it another day. So I believe that in the final analysis this Bill is aimed at enhancing the assurances of the private and law abiding citizens in this country.

Mr Speaker, every where you go in Guyana - everywhere you go in this country and even outside of Guyana - people will tell you that the criminals are taking advantage of technology to advance their deviant and their nefarious activities. This is a general statement that people make wherever you may go, inside or outside of Guyana. Then they turn to you and ask you if this is so, what are you prepared to do about it - what are you doing about it? If the criminals are taking advantage of improved technology, whatever form, shape or fashion it may take; the question that comes right to the face of those of us in the Administration is what we are doing about it? We cannot take the do-nothing approach,



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

because that will be highly irresponsible on our part. So Mr Speaker, it is this proactive... we have to be proactive on every front in order to address these challenges as they arise from time to time. It is true that the legislation is indeed an ambitious piece of legislation and we have to be ambitious. Mr Norton would tell you that:

- It is not because you are from a developing nation;
- It is not because you are faced with so many challenges that you are going to be overwhelmed by these challenges and you are going to take the position that you cannot do anything about it.

We know as a matter of fact that small nations are some of these very nations who have made their mark on the global platform.

Finland, a small player in Europe introduced the Nokia telephone, which is now a major competitor among the cell phone industries around the world. [*Interruption: 'What that has to do with this'*] "The point I am making for you who do not understand and I cannot help you if you do not understand, I cannot help you, you have to help yourself. The point I am making, I am trying to lecture and educate you to make you understand that small developing countries faced with challenges have to confront the challenges and have to put laws and regulations in place to deal with it. [*Applause*]

Mr Speaker, yesterday this matter was raised again and I

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

noticed the Honourable Member Mr Corbin again made reference to repressive machinery - that this piece of legislation is aimed at buttressing some imaginative or abstract repressive machinery that is somewhere out there in someone's imagination. I noticed my friend Mr Trotman is slowly coming around to the position and will keep my powder dry for the next piece of legislation when we come to deal with the question of police State - the question of whether or not we are moving towards a police State in Guyana. I reject outright this claim that this is a move to enhance attempts to establish a repressive machinery in this country. I believe those who speak, those who do not know the history of this country are in no position to comment on these matters, because if we want we can open all the cupboards and let all the skeletons come out. So if that is the way, I want to caution, Mr Speaker, that this is a very slippery path we are approaching and for the benefit of the public out there, for the benefit of this House we had better be careful how we are going down or how we are approaching that path much less going down that path; because there are many skeletons in the cupboards when we talk about police State and repressive machinery that we can talk about this afternoon.

Mr Speaker, I do not agree that this Bill seeks to criminalise the companies and others who fail to comply. I do not accept one iota that this Bill seeks to criminalise the companies and others who fail to comply. It seems as

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

though certain words, once they are introduced into the lexicon of the politicians, they become trendy to bandy these words around so:

- Criminalisation;
- Marginalisation;
- Discrimination;
- Victimisation;

These are the words that are being bandied around for some reason and most of the times it is out of context. Mr Speaker, I do not support the view that this Bill is aimed at criminalising the companies or individuals. Again, I asked the question as I did yesterday; am I to understand that I am hearing voices from the other side of the House saying:

- That there are persons sitting in the AG's Chamber;
- That there are persons sitting in the Drafting Council;
- That there are persons in the Legal Drafting Department of the AG's Council sitting quietly plotting and concocting laws.

Am I to understand from this House that I am hearing people saying that this is what is happening in the distinguished and hallowed Chambers of the AG's

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Chamber? Mr Speaker, I am astonished. I want to say that this claim that our families operate differently and we are not taking into consideration this peculiar way in which our families operate.

Mr Speaker, I think here again what the Honourable Member Mr Trotman was seeking to do was to perhaps give us a snapshot of the traditional Guyanese family and how they operate in any situation and therefore we must recognise how the traditional Guyanese family operates and not put regulations... not regulate the family - but not put regulations in place for which the family should respect and fall in. I think this is an excuse that is being used not to put regulations in place.

Finally, I have listened very carefully to what I am hearing from the opposition benches and I hear accusations that this piece of legislation is aimed at criminalising our young people and putting onerous responsibilities on our young people. This is merely a political argument that is being used to advance one's political interest to show that we are representing the young people here. *[Interruption: 'That is the reality; you do not have young children. You really ain't experience anything.']* Mr Speaker, I do not know whether the Honourable Member knows what I have in my family so I would wish her to desist from saying I do not have children.

Mr Speaker, I am asking that the Honourable Member

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

desist from getting involved in a matter in which is clearly private and has no place in this Honourable House. That is in respect of whether I have children, whether my children are in Guyana or out of Guyana. That is no business of the Honourable Member - no business whatsoever. *[Interruption]*

**The Speaker:** Honourable Members, please respect....Mrs Backer, you are out of order Madame. I am speaking...

**Mrs Deborah J Backer:** Sorry Sir!

**The Speaker:** ... and the same thing I am talking about. Honourable Members, please respect the dignity of the House.

**Hon Clement J Rohee:** Mr Speaker, as I was saying, this claim that this Bill is putting pressure or will criminalise our young people and it is going to make it onerous for our young people to own a phone or a SIM card. It is totally irrelevant; it has no relevance whatsoever to this Bill, but it is being used for a political purpose so that people will get the impression that the PNCR-1G and AFC are speaking on the behalf and representing young people in the Parliament.

Mr Speaker, I wish therefore to say that the Bill presented by the Honourable Prime Minister is one that is worth or worthy of commendation to this Honourable House and I wish to support it fully as I do and therefore call upon all

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Members of this House to support it in a similar fashion.  
Thank you. *[Applause]*

**The Speaker:** Thank you Honourable Member

The Honourable Prime Minister

**Hon Samuel AA Hinds:** Mr Speaker, Honourable Members, I want to thank the Members on my side who spoke in favour of this Bill. I want also to extend appreciation to Honourable Member Corbin and the Members of the PNCR-1G, who at least see no problem in this Bill in itself and also I would like to try and respond to some of the concerns of Honourable Member Mr Raphael Trotman and maybe help to put his concerns to rest.

Mr Speaker, Mr Corbin said that this Bill is not about regulation of the telecoms sector in that he is correct that this Bill is about:

- Law and Order;
- Enabling us - the State; and
- Enabling the good people in society to struggle and battle with those who may have yielded to the temptation to go along evil ways.

I would like to point out that this Bill was with us - Members of the House - I think even before we had the recess so we had quite some time to study it and to think about it and to become familiar with it. I would have

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

always been available and Members on this side are always available for any consultation that any Member from the other side would like to raise with us.

I would like to assure the Honourable Member Mr Corbin, who raised the question and also the Honourable Member Trotman, who seems to be fully persuaded; I want to assure them both that this Bill is not about repression. This Bill is not a repressive Bill, but his is a Bill to protect the lawful, decent members of our society.  
*[Applause]*

There were some questions... Mr Speaker, Honourable Members, there is a number of asides, which I do not know; I am inclined to respond briefly to them even though they were asides and not very germane to this particular Bill.

The question was raised about some cell phone or interception equipment, which was held some time ago. I would like to recall that there was some discussion in the media about this unit. I want to recall too that it was said that this sort of equipment normally would have required a Government permission to be sold, but this Government did not. There is no one saying or can attest that this Government in any way initiated the purchase or supported the purpose of that equipment. So I would like to clear that off the table in this Honourable House.

On the question of the need to bring this specific piece of law here and whether it could not have been done just as

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

well utilising Clauses that are already in the Telecommunications Law. I think that we chose this way deliberately so that everyone could see what is being done; to be explicit and to be transparent, this is why we have this special Bill. So, maybe to take away from the lawyers, the cases they may have had in arguing whether they were doing it properly or not under some of the existing provisions in the law. So, we are saying here very explicitly, very openly and transparency what we are setting out to achieve in this law - the registration and maintenance of registers of enough to do with cell phones and SIM cards so that they could be tracked and followed.

On the question that was raised about whether there is a Director of Communications, I do not want to go into this, because this is a very long story, but basically what happened when this new situation was reached when the telephone operations in Guyana was privatised towards the end of the 1980s. The law was written with an eye on the English law, but the agreements and licences to GT&T were written with the eye on the American system. So we have a PUC which was common in the American system and we have a Director of Telecommunications and there was quite a bit of overlap. I think that that was discerned, because the previous administrations did not proceed to put in place a Director of Telecommunications. I know that the Chairman of the PUC Commission in those days argued that there would be a lot of overlap in having the two together. However,



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

we did hold out that way, but eventually to achieve certain things, we did appoint a Director of Telecommunications in the last two years or so..

Just to assure Honourable Member Mr Corbin and other Members of this House, we have in place drafts for the development of the telecommunication sector, draft laws for competitive system as soon as we would have reached that point.

So Mr Speaker, I want to say finally in responding to something Honourable Member Mr Raphael Trotman was saying; a question about criminalising people - the telecommunication operators and the people who may have exchanged phones. There is no such intention, but what we had to make effective is that once you have a phone registered in your name, you are responsible.

We have an instance already in the case of the phone in which the media reports that Mr Arokium was very surprised that a certain phone that he had given to his son had been used even after that unfortunate, horrific event in Lindo Creek. We had the explanation later that someone in Linden found it - a boy or somebody; youth found it and put the SIM card in another phone and put it into use and there was a generated presumably a bill that signalled to Mr Arokium that this phone had been in use.

So this Bill, I think clearly sets out to address something that has occurred, something very significant and something that has occurred in our society. So

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Honourable Member Mr Trotman, the intention of registration is not to criminalise anybody, but to bring home to every one of us our responsibility with respect to cell phones and the accompanying SIM card.

So Mr Speaker, Honourable Members, I rest my presentation here. I still look for support from the Honourable Members from the AFC and I beg that the Bill be read a Second time. *[Applause]*

**The Speaker:** Thank you Honourable Member.

**Question put and agreed to**

**Bill read a Second time**

**IN COMMITTEE**

**Clause 1**

**Question put and agreed to.**

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

**Clause 2**

**The Chairman:** Honourable Prime Minister, I see that you have a Section to be amended at 9 (A). There is no 9 (a), there is a Section (2).

**Hon Samuel AA Hinds:** Yes Sir.

**Question proposed**

**The Chairman:** The Honourable Prime Minister.

**Hon Samuel AA Hinds:** Mr Speaker, I propose that 9(A) 2 (c) be amended.

**The Chairman:** No, Honourable Member. You proposed that Section (2)...

**Hon Samuel AA Hinds:** Clause (2) sub section (c)...

**The Chairman:** Where really do you want to amend? The Clause is Clause (2) it is not Clause 9.

**Hon Samuel AA Hinds:** Sorry, Clause (2)... Section 9A (2) (c) be amended as submitted in my name. *[Pause]*

**The Chairman:** Yes proceed.

**Hon Samuel AA Hinds:** Mr Chairman...

**The Chairman:** In Clause (ii) you are amending the added Section 9(A) (2) (c).

**Hon Samuel AA Hinds:** Yes Mr Speaker. *[Pause]*

**The Chairman:** Honourable Prime Minister, you are asking that the words used *with a SIM card and* be deleted.

**Hon Samuel AA Hinds:** Yes Sir and substituted with...

**The Chairman:** You are asking that it be substituted with the words *used with a SIM card*.

**Hon Samuel AA Hinds:** Yes.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

**The Chairman:** Provided that the Minister *may determine or may by regulations provide an alternative to any of the prescribed requirements; and...*

**Hon Samuel AA Hinds:** Yes Sir.

**Amendment -**

Section 9(A) (2) (c) for the words "*used with a SIM-card*"; and substitute the following words *used with a SIM card*;

*Provided that the Minister may determine or may by regulations provided an alternation to any of the specified requirements; and*

**Amendment proposed, put and agreed to.**

**Amendment carried.**

**Clause 2 as amended**

**Put and agreed to and ordered to stand part of the Bill.**

**Clause 3**

**Question proposed.**

**The Chairman:** There is an amendment here as well

**Hon Samuel AA Hinds:** Yes. Mr Chairman, I propose that the Amendment standing in my name.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

I propose this amendment... [*Pause*] and it replaces... 33(A). Substituting for what is being introduced as 33(a) in the original Bill, we are substituting a new 33(A) as printed on the amendment.

**Amendment -**

Insert immediately after Section 33:

33 A (1) A Licensee who fails to comply with Section 9A (1), (2), (3), (4) and Sections 9B and 9C commits an offence and is liable on summary conviction to a fine of one million dollars and imprisonment for six months.

**Amendment put and agreed to.**

**Clause 3 as amended**

**Put and agreed to and ordered to stand part of the Bill.**

**ASSEMBLY RESUMED**

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

**The Speaker:** Thank you Honourable Members

Honourable Members, it is now five minutes to four o'

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

clock according to our clock. I think that we can take the suspension now and resume a little bit early. Thank you very much.

**15:55H - SUSPENSION OF SITTING**

**17:00H - RESUMPTION OF SITTING**

Honourable Members, we can now proceed with the next item on the Order Paper..

**ITEM 2 - INTERCEPTION OF COMMUNICATIONS  
BILL 2008 - Bill No. 19/2008**

**published on 7 August 2008**

*A Bill intituled, an Act to make provision for the interception of communications, the acquisition and disclosure of data relating to communications and the acquisition of the means by which protected communications may be accessed and placed in an intelligible form and for connected purposes*

The Honourable Minister of Home Affairs

**Hon Clement J Rohee:** Mr Speaker, because of the complex nature of this Bill; because of the serious implications which a Bill of this nature would have and the ramifications a Bill of this nature would have not only

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

from a security perspective, but from the welfare of the general society at large. I believe that it is important for us to take our time so to speak to deal with this at the beginning.

It has generated a tremendous amount of interest within the wider society and many have commented on it. The last comment that I saw was coming at a press conference by the Honourable Member Mr Trotman, but there have been several others prior to that.

Mr Speaker, I would like to take a different approach in dealing with this Bill and to start out by referring to the applicable offences that the process of interception from beginning to end because these applicable offences are the bedrock on which this Bill is founded. I would not wish to negate the importance and the significance of the Telecommunications Amendment Bill with respect to this particular Bill, but when you look at the number of offences:

- Murder;
- Treason;

and we have amended it to include:

- Terrorism;
- Trafficking in persons;
- Kidnapping or abduction;

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- Money laundering;
- Drugs - both producing and manufacturing as well as trafficking;
- Importation of fire arms;
- Manufacture of or dealing in fire arms;
- Illegal possession of a weapon;
- Arson;
- Aiding and abetting and conspiring to commit an offence or
- Any of the offences above.

I think to bring home the need, the necessity and the importance of this Bill, we must recognise that in these applicable offences, there are two types of persons; one who would be engaged in plotting, conspiring and perpetrating the offence against those who would be suffering and victims the offence.

Sometimes when we argue these matters, we argue more in favour of the perpetrators rather than a balance approach vis-à-vis the perpetrators and those who have been affected. These applicable offences to which the Interception Communications Bill will be applied; looking at them, we recognise that they all can cause severe negative and the implications and they can all have severe and negative impacts on our own national security



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

as well as the quality of life of our people. I believe it is only when persons are affected personally either by a murder or kidnapping or abduction or any one of these offences then we begin to realise how serious it is. But

- When we read it in the newspapers;
- When we see it on television;
- When we hear about it

We take it as another incident or another offence, but:

- If it is to affect our own personal lives;
- If it is to affect our own families;
- If it is to affect our village;

I saw how the Honourable Member Mr Corbin recognised the importance of village life, when he walked around recently in Vryheids Lust and spoke to a gardener and told him how important he recognised his garden activity was. His description of village life in Vryheids Lust to the person to whom he spoke, I think, was a very good description, because he recognised the close knitted relationship of villagers, and if anything is to happen in that village; if anyone of these offences were to happen in that village, I am sure Mr Corbin would agree with me that it will shatter the fabric and the solidarity among the villagers. Is that not so Sir? [*Interruption: 'What that got to do with tapping the man's phone.'*] And that is why I am making the point. I am starting out with the applicable

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

offences to which this law will be applied in order for us to understand the significance. Usually we start from the beginning; I prefer to start at the end.

Criminal activities are now being carried out in a highly sophisticated manner. With every improvement and I am saying this and it sounds as though I am repeating myself, but I am saying this in the context of this particular Bill. Every time there is an improvement, there is advancement in technology, there are people out there who seek to take advantage of that advancement and that improvement to accumulate wealth by ill-gotten means. The high sophistication with which criminals operate nowadays must be met equally by applicability of technology to achieve a higher sophistication to match the sophistication which is being used by persons who engage either in:

- Money laundering;
- Producing of drugs;
- Trafficking of drugs;
- Trafficking of weapons;
- Producing of weapons; and these things.

In the early days when we did not have the advantage of technology at our disposal:

- We would use a runner;

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- We would use what you hear people call a druggier;
- We would use a messenger;
- Some would use a dove to take a message

But in these days, I would not disqualify those means even in today's context, because it is better for someone to walk from Vryheid's Lust to Sophia to whisper something in someone's ears rather than to say it on a telephone, because he stands the chance of being heard, but if he is to go directly from Vryheid's Lust to Sophia and whisper it in the ears of the percipient of that news; it is only one person who would hear that. So we should not eliminate that either.

Mr Speaker, our law enforcement agency... I should put it in a more general way, the law enforcement agencies around the world must be in a position... I just attended a few weeks ago, the first meeting of National Security Ministers of the Hemisphere in Mexico City, where all the Ministers of national security from the United States; Canada; Latin America; Central America; and the Caribbean met for the first time to discuss the challenges that they face in fighting crime and all manifestations of criminal activity.

One thing came out very clearly and that is that they must be in a position... this found common resonance among all the participants at the meeting, they must be in a

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

position to maintain the pace with which technology is used today for criminal activities by criminal elements. We need to reverse the trend, the word *backward* was bandied about quite flippantly in the debate yesterday. We would be in a backward position if we were to know, not that we do not have the knowledge; we have the knowledge that this is a methodology that is used for the gathering of intelligence information and to not take advantage and use of it.

We know it is available; we know it could be done; we know it could be made applicable to our society and the criminal activities that we identify. Once we have that information, we have to face the challenge to establish how it could be done. This brings me to the Bill.

First and foremost, the Bill that is before us establishes certain cardinal principles. One of the cardinal principles is that the service provider that is the provider of the telecommunication service is obligated by law to ensure that a disclosure order by the judge is executed. We know who the service providers are and they have their own legal standing in the country; they operate on the basis of certain regulatory activities and the Prime Minister referred to that *vis-à-vis* the Telecommunications Act and the PUC and so forth.

Secondly, I believe this is equally important is that every action irrespective of who is executing that action is predicated on a warrant from the court save for the

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

powers of the Minister to be exercised in an emergency situation.

Another cardinal feature of the Bill is that the Commissioner of Police and the Chief-of-Staff of the Guyana Defence Force are identified by law to take action following the issuance of a disclosure order by a judge.

Furthermore, confidentiality is maintained at all stages of the process and this is extremely important, because here as is stated in one section of the Bill, evidence presented in court is deemed sensitive information or communication.

Finally, communication intercepted cannot be used other than as evidence in a court of law. It is illegal to use intercepted communication in any other manner or in any other place other than in a court of law. So the akie of this entire piece of legislation is premised on a legal basis and the exercise of the court as the institution that directs what action has to be taken at every stage of the process.

Mr Speaker, the Bill has a number of amendments which I believe has been circulated. One of those amendments addresses a concern that I saw that was raised in the media by a stakeholder and I believe it is important for me to highlight this from the very inception, because this has to do with protecting the identity of technical experts who are associated or technical experts who work with a firm that has been identified by a order would not be

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

exposed unnecessarily. That is why that amendment states that the evidence given by a technical expert in a court of law on behalf of a person who provides a telecommunication service shall be heard in camera to protect the identity of the technical expert. So I would like to put to rest the claim by some who fear that the fact that technical experts will be called upon to assist those who have been granted a disclosure order by the judge will be put at jeopardy by virtue of the need for them to access the information that is required.

Mr Speaker, interception has been defined as monitoring, recording of transmissions conveyed by fibre optic cable or any other form of:

- Wire line;
- By wireless telegraphy;
- Voice over internet protocol (VOIP);
- Internet;
- Satellite; and
- All other forms of electro magnetic and electro chemical communication to or from apparatus comprising the system;

This is the definition of intercept.

When we come to the question of national security, the Bill defines national security as being construed to

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

include, but not limited to the protection of Guyana from threats to:

- Public order; or of:
- Espionage;
- Sabotage;
- Terrorism; or
- Subversion.

For interception to take place, a warrant has to be issued by a judge and anyone who violates or breaches the issuance of a warrant by the judge, in other words anyone who goes about seeking to intercept any one of these pieces of technology or information communication coming across from any one of this piece of technology that I refer to, is liable on a summary conviction to a fine of not exceeding \$5 million and to imprisonment for a term of not exceeding three years. But if a person legally engages in interception that person would not be committing an offence if the communication is intercepted in obedience to a warrant issued by a judge and the communication is not intercepted in obedience to a warrant issued by a judge under Section 6, but on the authority of the designated officer in case of a national emergency or in responding to a case where approval for a warrant is impractical having regard to the urgency of the case. So there are two cases or there are two situations under which such action can take place.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- (i) As a result of a warrant issued under the hand of a judge; or
- (ii) In a situation where in case of a national emergency where the security of the State is threatened

Actions in those two conditions are justiceable.

Mr Speaker, if anyone breaches the law, the court has the authority to forfeit the device, which was used for the purpose of intercepting illegally. The Bill sets out quite clearly what are the steps that should be taken as regards application for warrant interception and it is all clearly spelt out here. There is a number of steps and I think when we talk about transparency, I do not think we can go much deeper or much clearer or much more profoundly in respect of the transparent nature of the steps that have to be taken in a situation where an application for a warrant is sought after by an authorised person from the judge.

One of the issues which I believe persons who are desirous of reading through the line could imply political motive or political interference is where the Bill states in Section 4 (2) (b) where a warrant is applied for on the grounds of national security, a written authorisation signed by the Minister responsible for national security authorising the application on that ground. People might very well impugn that this is a question of political interference, but the Telecommunications Act of 1990,



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

which was assented to by former President Hoyte on the 12 July, 1990. A very significant year, which I think Mr Corbin would remember what happened in July 1990. It states in Section 5 Clause 50 (1):

*The Minister may after consultation with a person to whom this Section applies, give to that person such directions of a general character as appeared to the Minister to be requisite or expedient in the interest of national security or relations with the Government of a country or territory outside of Guyana.*

The same Section 5 (50) (2) states:

*If it appears to the Minister to be requisite or expedient to do so in the interest of national security or relations with the Government of a country or territory outside of Guyana, he may after consultation with the person to whom this Section applies give to that person a direction requiring him according to the circumstances of the case, to do or not to do a particular thing specified in that direction.*

That is how this question of Ministerial involvement in national security matters using telecommunications as a means to access sensitive information was addressed in

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

the National Security Act. I have heard on the grapevine that some have questioned the constitutionality of this Bill as they are prone to do on so many occasions.

Mr Speaker, the Constitution while on the one hand Article 146 (1) protects the freedom of expression and it reads:

*Except with his own consent, no person shall be hindered in his enjoyment of his freedom of expression that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference; and freedom from interference with his correspondence*

And then it goes on:

(2) *Nothing contained in or done under the authority of any law shall be held in consistence with or in contravention of this article to the extent that the Bill in question which is the law...*

The Bill that we are dealing with right now.

*... in question makes provision -*

(a) *that is reasonably required in the interests of defence, public*

*safety; public order; public morality or public health;*

*(b) that it is reasonably acquired for the purpose of protecting the reputations, rights and freedoms of other persons ...*

And so it goes on, Mr Speaker.

The point I am seeking to make here is that the Constitution in this matter is very balanced. On the one hand it states very clearly protection of the rights and freedom of expression of the individual, but at the same time it recognises that there may be cases where the action will have to be taken provided that it is within the context of the law as we are seeking to make now for measures to be taken in order that it should not be either inconsistent or in contravention to Article 146 of the Constitution.

So it seems to me that insofar as the constitutionality and I thought I should establish this from the very beginning, because I would not be too surprised and I have not been too pre-emptive here. I would not be surprised if this matter of constitutionality and threading on the constitutional rights of individuals is raised here as a result of what this law or what this Bill is seeking to achieve.

Confidentiality of records acquired as a result of intercept

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

is clearly spelt out in the Bill and it states at Section 4(iv) that the records relating to every application for a warrant or the renewal of modification or modification thereof shall be sealed until otherwise decided by the court. At every stage of the process the court has a handle and a firm grip on the process. There is no space save and except for the instance that I have pointed out earlier in the case of national security where there is some deviation from the other procedures.

Mr Speaker, there are several examples in the Bill which points to the manner in which the warrant is to be issued. One example is to be found at Section 5 (2) (iii) where it states:

*Where the applicant intends to seek the assistance of any person or entity in implementing the warrant, the judge shall on the applicant's request direct appropriate persons or entities to furnish information, facilities or technical assistance necessary to accomplish the interception.*

One of the key elements in the Bill had to do with the address, the location of where the action, where the intercept action is to take place and in this regard, address for the purpose of this Bill includes:

- A Location;

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- E-mail Address;
- Telephone Number; or
- Other number or designation used for the purpose of identifying the telecommunication system or apparatus.

The warrant issued by the judge has a life of a particular timeframe and this is where we come to speak about the duration of the warrant. I noticed that some questions have been raised in other quarters about the duration of the warrant, but again the duration of the warrant is a matter that the judge decides in his own deliberate judgement having read the application made by the persons who are duly authorised to make such a purchase to the judge. After consideration of this application on the prescribed form, the judge determines whether this person needs:

- One month;
- Two months;
- Three months or whatever

Because on the question of intercept, you may not necessarily get the information you are looking for this week, but you may have to wait until next week when they begin to communicate with each other or the further week, because we know that the best way that criminals use to throw people off track is by not setting a pattern of

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

communication - not setting a communication pattern that could easily be picked up. That is why sometimes the duration of the warrant has to be varied and in some cases renewed, because after the expiration of the warrant the person may very well have to go back to the judge for renewal of that warrant.

Mr Speaker, it is unlawful for anyone to disclose the existence of a warrant; it is unlawful for anyone to disclose that a warrant exists. We know in our society... *[Interruption: 'You going through paragraph ...']* ... I am not going through paragraph by paragraph and even if I go through paragraph by paragraph, it is important that I do so for the benefit of the records, because this Bill from the speakers that I have seen here, is going to be questioned to a large extent.

Mr Speaker, I am saying that it is unlawful for anyone to disclose that there exists a warrant so that if there may be a leak; if someone seeking to achieve some monetary ends or property and to give a signal that, look boy, a warrant is out for a particular matter, we have to ensure that a penalty is there in the law in order to penalise anyone who may have been found disclosing or unlawfully disclosing the existence of a warrant for the purpose of intercept. That penalty as is stipulated here is \$5 million and a term not exceeding three years. I have had some consultations with some people on this matter and they told me that this is too small a penalty. Yes, some people have told me this is too small a penalty - \$5

million.

The Bill, as I have said, there are several instances under which these warrants can be issued. In the case of renewing the warrant, again an approach has to be made to the judge. This is not a political action; a warrant has to be re-issued on the basis of an approach to a judge and the steps that have to be taken are explained in the Bill. There could, however, be exceptional circumstances under which this renewal of the warrant could take place.

Then there is the revocation of the warrant as well. A warrant could be revoked by the judge, if the judge in his judgement feels that the reasons for which it was issued are no longer justifiable.

There is also the question of oral application, where a judge may dispense with the requirements for a written application and an affidavit and proceed to hear an oral application for a warrant. So that the judge dispensing with the paper work can listen to the authorised person on the basis of oral information and determine that a warrant ought to be issued.

There is also a Clause in the Bill, which states that if the seventy-two hours for which a warrant is issued is breached then the judge could review the decision in respect to the warrant. If that person to whom the seventy-two hour warrant was issued do not return to the judge in time, because he has to return to the judge for a renewal of the warrant and if he does not return in time

then the judge could very well revoke that warrant.

There is also a Clause that dealing with modification of warrants, where a judge may modify a warrant at any time after hearing representation from a authorised officer. If the judge is satisfied, not the politicians, if the judge is satisfied that there is any need for change, which constituted grounds for the issue of the renewed warrants then he could proceed to do so.

Now, a very important aspect of this legislation ... I spoke earlier about the protection of the identity of the technical persons working in the telecommunication sector where if they are to be questioned or if the judge needs to question them that is done in camera. There is another saving Clause to address this matter, which has to do with protection of the authorised officers. It says:

*An authorised officer shall not be liable for any act done by him in good faith pursuant to the provisions of the Act.*

In other words, once the authorised officer is acting in the context of the provision of the law. He cannot in any way be accused of carrying out an illegal act or he cannot be deemed liable in any subsequent situation for any act done by him, because he would have done so, he would have carried out that act in good faith pursuant to the provisions of the Act because he would have been acting legally.



## NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008

There is also a number of duties a person providing assistance on telecommunication services. The Bill clearly states what these duties are. There is a new Section that has been inserted - Section 5 - which addresses the question that I mentioned earlier as an Amendment - Protection of the identity of the technical expert.

Now that the process has reached a stage where the intercepted communication is in the hands of the authorised person... *[Interruption]*

**The Speaker:** Your time is up Honourable Member.

**Hon Samuel AA Hinds:** Mr Speaker, I move that the Honourable Member be given another fifteen minutes to continue his presentation.

**Question put and agreed to.**

**Hon Clement J Rohee:** Mr Speaker, assuming that we are at a stage where the communication intercepted is now in the hands of the authorised person, the question of the confidentiality of the intercepted communication arises and the Bill at Clause 11 (1) states, what arrangements are to be put in place to safeguard and to protect the confidentiality of information or communication that has been intercepted. There may be instances, where the information or the intercepted communication cannot be used unless there is a key to the information that is so encrypted, that it is difficult to

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

understand what the information that was being transmitted was. The law also imposes the responsibility on the person to whom the order or the warrant had been issued to provide the key to the communication that has been intercepted so that we do not have intercepted communication in your hands that you do not use. What is the point in having intercepted communication in your hands that is useless unless you have the key to decipher what that intercepted communication is actually saying. The law takes that into consideration; the Bill takes that into consideration so that when you intercept this communication and you find that it is useless unless you have the key to decipher what this information is all about, you can go and return to that person; and the judge once again has a role to play in this respect.

Mr Speaker, the judge has to take into consideration the following in granting disclosure orders and they are spelt out in Section 12 (4) of the Bill. This is quite an extensive Section and I believe that the framers of this Bill; recognising that a disclosure order is one of the critical steps between the judge and the authorised person. Therefore for that disclosure order to be issued there are certain conditions I believe for want of a better word that has to be taken into account. To my mind in reading this Bill, this is one of the more extensive Sections of the Bill, because as I said of the nature of granting the disclosure order.

There are also certain restrictions with respect to persons

associated with an order.

There are also certain conditions associated with persons who in one way or another are associated with that order. Disclosure order cannot be made known to a person who has nothing to do with it.

There are certain penalties that are associated with that as well.

There are certain obligations with respect to the disclosure order issued to a particular address. There is provision made in the Bill, where there may be, as I said, in a case of national emergency or in responding to a case where approval for a warrant is impractical having regard to the urgency of the situation. I believe the political pundits could spin this in any direction they may want to spin it. They may wish to spin this or to interpret this ... *[Interruption: 'Which Section 4?']* . . . to mean... because I want to refer to a recent experience in the United States, where in July this year, the United States Senate approved a Bill to put new rules in place for intelligence gathering and eaves dropping. The Bill is known as the No-warrant wire tapping Bill. In other words, this is a Bill that does not require a warrant of a judge. The Bill is known as the No-warrant wiring tapping Bill and in essence it allows interception of communication without obedience to a warrant issued by a judge. We do not call what we want to do here as a No-warrant wiring tapping Bill. The United States Senate had

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

to do something like this separate. We already have these safeguards enshrined. We already have the safeguards for this enshrined in the Telecommunications Act, the Constitution and that is built on the present legislation that we have before us today.

Mr Speaker, there is also provision made for non-compliance with the disclosure order. A judge issues a disclosure order. The authorised officer takes it to the address, the addressee refuses to cooperate. He is a member of some organisation and he says look; my people said we are not supporting this and he refuses to cooperate, but how can you refuse to cooperate with a disclosure order issued by a court even though it has to do with wire tapping and any with intercepted information or communication. The penalty for non-compliance and failure to comply is \$1 million and imprisonment for a term not exceeding six months. There is also a provision that is made... *[Interruption]* I do not want to get into that. Provision is made for security of the keys obtained to the information. *[Interruption; 'You mentioned that already.']* No! Security of the key, you are not listening. First is the need by law to hand over the key to information that is useless.

The Second is... *[Interruption: 'Hand over the key.']* I am not talking about key, Mr Ramjattan. I am not talking about keys like this. That is not the key I am talking about. What I am talking about now is security of the key to the information or to the intercepted communication

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

because ... [*Interruption: 'Key to the Code.'*] ... The key to the court, thank you. There may very well be a situation where you have this information, the person who is having the key is not available or the or the intercepted communication cannot be deciphered; you are having great difficulty in taking the key from one location to the other and in those circumstances it simply means that they must be some security here as well.

Mr Speaker, admissibility of intercepted communication in the court as evidence is something that is provided for in the Bill. I believe this is only natural because it is... we expect that if a judge issues a disclosure order to an authorised person for purposes which the judge himself has ascertained is to do with one of these applicable offences then obviously that information must come back to the court. But, on the other hand, the Bill also provides for the non-disclosure of information or intercepted communication that could prove to be harmful and if that intercepted communication in the judge's opinion could prove to be harmful; the judge could rule or could decide that that information should only be... the judge could rule that such communication be excluded.

Mr Speaker, with respect to the disclosure of communications data as distinct from intercepted communication, because you could have intercepted communication which is the text, but the data is which you are seeking also to have at the same time. This is precisely where the Telecommunications Bill that we

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

have just passed comes in, because what you need here is the time when the information was sent, when it was received and you also need the date when the information was sent and when the information was received. You also need to whom it was sent and to whom it was received. That is the kind of data that is provided for in Section 16 (1) of the Bill.

Mr Speaker, I believe that this Bill like the Bill that we dealt with yesterday which Mrs Backer described as a progressive Bill dealing with plea bargaining comes in the same tradition of being a progressive Bill.

I read, Mr Speaker, to conclude and I would not dwell too much on this; I will just deal with it *en passant* that this Bill is aimed like previous Bills at establishing a police State in Guyana, but I would leave that for the debate, because I think when we come to the benchmarks of what is indeed a police State, there could be various opinions and interpretations in this respect.

Mr Speaker, I close my contribution at this point in time and wish to ask that the Bill be read a Second time.  
[Applause]

**The Speaker:** Thank you Honourable Member.

The Honourable Member Mr Corbin

**Mr Robert HO Corbin:** Mr Speaker, when the Honourable Minister began his presentation he indicated that he thought that there was need for time to look at this

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

legislation and I anticipated that what he would do next was to indicate that this Bill was being sent to some Special Select Committee or some special group for further consideration. I did not understand that what he meant was time to filibuster so that the debate on torture would probably not be dealt with this afternoon. *[Applause]* So that we can deal with some of the issues which make the reality of Guyana very clear to all who might be deceived by this glowing exposition, which the Honourable Minister presented to us a few moments ago about the normal provisions which this Bill No.19/2008 provides for the people of Guyana. As if to suggest that this Bill has no harmful effects and will be carefully administered by the State, because of all these so-called safeguards which the Honourable Minister suggest. The Minister perhaps should know that they already exist in this country - safeguards and constitutional safeguards - but the Police still goes in Agricola and picks up young men and lock them up over the weekend without reason and release them at five o' clock on Monday afternoon. The law says it should not happen, young men in many villages locked up; the law guarantees that that should not happen, but does it happen? The law says that you should have a warrant, when you invade people's homes unless of course, you are after arms and I think narcotics. For the past two years we have had the invasion of homes without warrant always on the exception of the law. So for the Minister to suggest that we should not worry, because this Bill has all kinds of safeguards is to suggest

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

that we are not attuned to the reality of Guyana, when there are breaches of the law at the highest level and the Constitution by the highest folks of this land. *[Applause]* No regard for the Constitution more so a law that is being passed here today.

We have a law every time we come to the Parliament which says that monies from the Lotto Fund should be paid into the Consolidated Fund. Where is that money? It is still in the Office of the President account and nobody could say anything about it. There is a law that guarantees that. It is the principle I am trying to point out. Pointing out and elaborating all these safeguards are meaningless in the context of a government that has no respect for the law in this country; that is the point I am making. *[Applause]*

We have an Integrity Commission that is supposed to be guarding the integrity of this nation. And officers in public life are pointed in violation of the Constitution by the highest folks of the land. The matter is before the court for three years, it cannot be heard and we want to assure the people of this country that this flimsy law will give them protection from excesses of the State.

This law - the Telecommunications Act - which we are attempting to amend and this Bill that we amended earlier have provisions which prohibit and make it illegal for wire tapping in this country. We do not have to wait for



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

this. Act No. 47/2002 -The Telecommunications Act, which is really the Act of 1990, has provisions against wire tapping. Yet we have lived in this country to see a Commissioner of Police phone tapped and the Government doing nothing to go after the wire tappers, but going after the Commissioner of Police. The law says it was illegal; this is the environment in which we are dealing with this wire tapping Act tonight. The point I am making is that this law also says that only in certain circumstances would wire tapping be made lawful if it by an order of court. I am saying the law existed before you passed this which says that it was illegal and you have filed to utilise that law in the interest of the protection of the rights of citizens in this country. So your own Commissioner of Police, the man responsible for security could have his phone tapped against the law and we hear about the tapped communication going to the FBI or some expert organisation overseas to verify whether the thing is accurate, not who perpetrated the tapping. So we come here, we want to be assured by the Minister that we need not worry, that everything that has to happen will come with a warrant from a Judge, but we have lived in this country where judges have made decisions and the Minister responding to security is attacking those Judges *[Applause]* I do not know, this is Guyana; questioning whether the Judges have exercised proper discretionary authority and the Minister comes here this afternoon and waive this law; everything is coming from the judge.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

So Mr Speaker, I want to say that this proposed legislation is very suspect in the context of the operations of this present PPP/C administration and the PNCR-1G feels that it is dangerous and risky to hand over the management of such an operation in the hands of this present repressive administration. *[Applause]*

The question is that the issue of interception of telecommunications is not new. It is an instrument that has been used ... *[Interruption: 'You should know that.']* I know that very well, because the Government has been operating it for years in this country without any law. So the whole question of interception and the legalising of interception is an issue which has been engaging the Government of many countries around the world. In fact, I have been doing some research and I was told since 1890 Governments have been trying to find technologies to ensure for security reasons and national security concerns they could monitor communication. The Minister referred to a law being recently passed in the United States; not only in the United States they have sought for national security reasons to put in certain legislation. In the United Kingdom as late as 2000, they made into law what was called the Regulation of Investigatory Powers Act, which give certain powers to a Cabinet Minister to deal with certain matters of interception.

In 1997, Australia thought it necessary and as late as 2004 New Zealand decided that they wanted to move in that

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

direction. So no questions that in the world today, because of various developments and security threats. Various Governments have had to implement systems that can protect the national defence and national security of the country. I would have loved for the Minister of Foreign Affairs this afternoon to have told us that the intelligence network was so good that we could have intercepted the telephone call from the Minister of Suriname when he was ordering the boat from Guyana to be taken over to Nickerie - the ship in Corentyne. So Governments indeed for national events and national security have reasons to ensure that certain technological developments are used in the protection of the State and to guarantee the safety and security of the citizen. So there has always been a very thin line, a very troubled line between the extent to which you will allow the State on the basis of the protection of the National interest to invade into the privacy and the lives of the individual in the interest of national security. To what extent, in fact, the American Civil Liberty Union have filed action in some twenty-seven States of the United States challenging many of those laws that the Honourable Minister Rohee referred to as being acceptable legislation, because of the danger it poses to constitutional guarantees the rights of the citizen and so it easy for the Minister to start his presentation this afternoon with looking at the Schedule, suggesting to us that only where serious matters are concerned they would be need to use this legislation. I need to remind him that

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Oliver Hinckson only made statement at the Georgetown Mayor's Office and he was deemed national security risk. The court is yet to prove that. So I mentioned this as a reference so that the citizens are not delude that these matters fall into any straight categorization and in that context one has to be wary where a government continues to misuse its authority, abuses the law and is arming itself with greater powers to invade into the privacy of individuals. The Minister gleefully boasted what I said Vryheid Lust, I think I was there two Saturdays ago. I did speak to a farmer and I did command him on his agriculture. That was not a phone...I am just pointing out and I was at Bare Root and I was not using a phone. And so it gives an indication of the particular line of interest of the Honourable Minister of Home Affairs; he seems obsessed with my visits to these villages around the country.

But, Mr Speaker, the applicable offences here provide no guarantee that these will be the only reason for interfering with the privacy of the citizens. The Honourable Minister pointed out that the applicant has to fulfil certain criteria.

One has to ask oneself if indeed we are interested in security, why is it the authorized officer, the Chief-of-Staff of the Guyana Defence Force, the Commissioner of Police and quite carefully snuggled away there, the Commissioner of Revenue (GRA). One wonders ... the authorized officer, I look at a Bill intituled under Clause 2

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

for the Minister in this Act, unless the context otherwise requires authorized officer means:

- (a) The Commissioner of Police;
- (b) .The Commissioner of the Guyana Revenue Authority; and
- (c). The Chief of Staff of the Guyana Defence Force;

*[Interruption: 'Where is it?']* Like you have not read the Bill carefully, Minister? I am not speaking at the top of my head; I have read the Bill. And so the Minister speak glibly about these crimes here:

- Murder;
- Treason;
- Kidnapping;
- Money Laundering; *and*
- Narcotics and Trafficking

I suspect that he will be tempted to say that this might say that this might be to deal with money laundering. Is the Police Force not equipped with a fraud department or fraud squad, because money laundering has to deal with that? When you involve then Commissioner of the Guyana Revenue Authority, you are dealing with tax and so the first suspicion is that this is intended to provided some leverage to interfere in the private lives of the

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

business community of this country. Already without this Act, businessmen in this country has complained; once they have expressed independent views publicly, they suddenly come of great interest to the Commissioner of the Guyana Revenue Authority, rather coincidentally they visited, so when we move to the point of putting a smokescreen of these offences, money laundering and arming the State not with those conditions that are stated in Section 4 that the Minister sought to elaborate upon. In fairness to him he touched Section 4 (2) (b), where a warrant is applied upon the ground of national security, a written authorization signed by the Minister responsible authorizing the application on that ground, so forget all those things all you need is a letter from the Minister. This is urgently needed for national security. (tap Nadir's phone) I am told that he is to speak next; I understand that he is planning to do a few things which may not be helpful. It is an example of the kind of irresponsible behaviour which one can expect from a government that has shown a great deal of irresponsibility and a lack of concern for the laws of this country.

We speak of confidentiality of this information according to Clause 4 (4):

*The records relating to every application for a warrant or the renewal of modification thereof shall be sealed until otherwise ordered by the Court.*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Yet many days I can read in the Kaieteur News of a report at a police station, details of what transpired in the Stabroek News occasionally, reports to the police station before it is even investigated and you would like the citizens of this country to be assured that their private information garnered from a wire tap will be kept in confidence. Because in order to get this information, the Minister is saying that is necessary sometimes to kept this process for a prolong periods, even though you can extension for ninety days, he is telling you that the exception is likely to be the rule, giving us long notice. The exception is likely to be the rule, because you do not know when the bandits communicate; he is preparing the ground-work and so since the Prime Minister only consulted with people who were not involved in criminal activities for the previous Bill one wanders in the classification in these investigations whether all of us in the opposition will classify for tapping in this context.

But on very serious note, the Minister in presenting this Bill as glibly, I would think glossed over the technological implementations of this Bill and the onerous obligations, which will be placed on the companies in Guyana, officially too, that will be required to work with the State in making this Bill a reality. Modern technology being as it is with the State making such great demands, I believe the State is imposing too onerous conditions upon the operators of telecommunication in this country, and if the State is

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

desirous of setting up any mechanism, which is designed to interfere in the privacy of the citizen, then in the manner in which it is proposed to be implemented will make the telecommunication providers complicit in such operations. These provisions and the administration of them should make clear arrangements for the separation of the role of the State and the role of the telecommunication provider. It is my information, and I hope I am correct and I believe that I am correct and I stand subject to contradiction, that what is being contemplated is that the telecommunications providers will be required to set up in each of their operations (I call it) a *spy room* ... that they will be required to put in their operations a room where they can monitor peoples' calls twenty-four hours a day, appointing an officer that they will pay, assigned by their remuneration to such a *spy operation* and that the telecommunications provider will have to allow the police force to have a security presence in that operation at the same time.

So when we say it is part of the architecture of a repressive State, I am not guessing this operation. *[Applause]* So while we have the Bill and the Law saying that tapping shall only take place on the production of a warrant, if the administrative arrangements are of such that lends proximity between the actual equipment of the company and the equipment of the *spy operations* (I call it) of the State. One would have great difficulty in policing and separating when



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

legitimate activities are being carried out and when illegitimate activities are being carried out in this operation. And so the Government alone did not consult with the providers of telecommunication. I considered it my responsibility also as Leader of the Opposition to write these companies and a number of providers in this country to understand the implications of this Bill. So if I speak, it is with some knowledge and so I would like to suggest that it would be rather dangerous to allow the Government to impose upon private operators in this country conditions which force them to collaborate with the State in interfering with the privacy of citizens and for that reason I will not support this Bill which is part and parcel of that operation.

Secondly, the operators of this country, I am told, use technology which would make some of the requirements of this Act very difficult to execute, unless they indulge in huge expenditure and equipment. I know it easy to say that since they are making money they should do so, but my contention is that if the State requires that the providers of telecommunication services in this country improve technology to satisfy the requirements of the State it would be irresponsible of the State not to consider that it has an obligation to help to provide the recourses to make those obligations a reality. And so I find it extremely difficult to lend my support to this Bill this evening because:

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- (a) I am confident that all the technological ramifications have not been agreed to by the companies concerned and some of it is beyond their capability.
  
- (b). There needs to be also a demonstration on the part of the Government that they are serious first of all in regulating the telecommunication climate in this country. This is not unknown to the government; private operators have been complaining that there are several outlets for telecommunications that cannot be intercepted by them because of private operators that you have allowed to operate.

There is question of the voice over (VOIP) Viewer IP Communication, which is highly technical and which would require very sophisticated equipment to make a reality and with the best will in the world, I believe the Government is advocating its responsibility, if they feel that their duty is just to pass the Law and expect someone else to provide the equipment to make it a reality - very irresponsible to government. And if the Government is serious about national security as the Minister so claims, then it must demonstrate in the manner to administer the security services and develop the tract record of confidence that we will be willing to support them and give them the kind of sweeping powers that they would like us to give them with this legislation.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

For those brief reasons, since I do not what to filibuster I think we have to get to the Torture Motion, I cannot support this legislation.

**The Speaker:** Thank you Honourable Member.

The Honourable Minister of Labour

**Hon Manzoor Nadir:** Mr Speaker, I want to take up where number one left off, the Honourable Leader of the Opposition and we all know who number one is.  
*[Laughter]*

The Honourable Leader of the Opposition said we must have a track record of confidence and I what to posit that is what we have in Guyana today - a track record of confidence. Mr Speaker, only last week, we had a person who came from Suriname, a leading Muslim scholar and when he landed at Moleson Creek, he was saying to one of our brothers that he has not come to Guyana for a number of years, because he was scared about the crime. And he said, a policeman turned to him and said, we solved have solved the crime in two words, *Fine man dead* and that is a track record of confidence that the people of Guyana have in the Government, because since the crime wave started in 2002 with the jail break, it has been a relentless effort on the part of the government to solve those crimes, to capture who was responsible and to provide the confidence among the people of Guyana that this government is capable of doing the job with which

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

they are entrusted. Mr Speaker, that is a track record of confidence.

I have a very good friend who is a sitting Prime Minister in one our countries and for ten years he and I including the Leader of the AFC's father, Justice Trotman travelled the Caribbean from Bermuda and this Prime Minister for ten years (from 1983 to 1993) refused to come to Guyana. He said he was scared and you know why he said he was scared, because we had had in the organization in which we were members, one organization called CARIBCARE ...a Human Rights Caribbean grouping; we had made some statements to which this Prime Minister had his name affixed and he said that he is scared that if he comes to Guyana - a real police State - and he and I also went to West Berlin and East Berlin prior to when the wall was dismantled and he said, Manzoor, I am very, very scared to come to your country. That speaks to the architecture of a police State which the Leader of the Opposition knows too well about. You know they have and old saying: *To catch a thief, you must set a thief*

Mr Speaker, I do not subscribe to that adage. For us to catch thieves, we must employ the best technological techniques at our disposal, the best sociological thinking, we must understand as we are doing in this Government several of the root causes of crime. So I do not believe in that adage, but clearly among many people they do believe in the adage: *To catch a thief, you must set a*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*thief*. And so some people can only see this legislation in terms of some abuse.

I want to complement the Honourable Mr Clement Rohee for piloting this Bill and like the previous ones that we heard yesterday and earlier today this is another piece of legislation that is long in the making.

The Leader of the Opposition spoke about the misuse authority and the abuse of law and I have to say again, some of us know about that more than others; some of us know about the abuse of law and misuse of authority more than others. We are not in a James Bond movie, I think in every single James Bond movie you always have number two Basil trying to overthrow number one, because he is not bad enough for the bad organization - every James Bond movie.

Mr Speaker, as I said this particular piece of legislation has at its core, the use by legal authority of mechanisms to tap into suspected criminals and to protect the security of the State of Guyana. This is nothing new, yesterday, Jackie Smith, Home Secretary in the UK, she put on hold the Communications Data Bill. After 5 July 2005, the bombings in London, the European Union mandated that all the European countries passed legislation and implement EU directive 2006/24/EC, which requires communication providers retain a vast array of data including IP internet protocol addresses, physical addresses and the ID users for all electronic

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

communication. The particular Bill was put off, it is more sweeping than what we have before us, because as the Leader of the Opposition said since 1890 the United States of America has had provisions for the legal tapping into. He is just worried about the abuses; he said the authoritative nature of a State. I know of that particular period that we had emerged from not too long ago.

Mr Speaker, I want to go back to the European Union and the United Kingdom. In March of 2006, the United Kingdom ... and the United Kingdom leads the world in technological surveillance. In March 2006, in the United Kingdom, they introduce a piece of software that will capture a license plate, once the vehicle is driven on the road, goes into a data base and that data base cross-references it within seconds for matches in respect of illegal activities and known criminals. After a trial period the amount of convictions rose from ten per policeman a year in the United Kingdom to one hundred per policeman - the use of surveillance technology. There are thirty million drivers in the United Kingdom and fifty-million vehicles and it is said by some of those police chiefs that if they had that technology prior the bomb that was used in that July 5 act of terrorism, they would have captured it.

Mr Speaker, in the United States, since 9/11 to 7 November 2007, they were nineteenth incidents in the United States, where the United States Intelligence Agencies thwarted, because of heightened surveillance,

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

intelligence and the use of techniques such as these - nineteenth incidents they have prevented and successfully prosecuted, now none of us knows if we would have seen another 9/11 had this been allowed, but all of us know that since 9/11 there has not been something similar in the United States.

And I want to come home; do we want to hear about another Lusignan? Do we want to hear about another Bartica? I do not want to hear of a Lindo Creek either and I certainly would want the best of techniques at the disposal of all law enforcement agencies, our intelligence agencies in order to ensure the people of Guyana that we can provide for their security.

Mr Speaker, we heard all the innuendoes, the insinuations and all the bad intentions that could have happened by the state with this Bill, but actually what I saw was a painstaking amount of effort on behalf of the drafters to ensure that there are checks and balances and that warrants cannot be had willy-nilly. What we have here is an elaborate, a complex mechanism in order to ensure that we can have a warrant that is issued that is necessary - elaborate amount and only three persons can apply:

- The Commissioner General as was correctly pointed out by the Leader of the Opposition - (Basil...No 2). - The Customs Anti-Narcotic Unit - Where does that fall?

I do not have to tell you and two other people

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- The Commissioner of Police; and
- The Chief of Staff

If the Minister of National Security wants to secure a warrant under national security, I do not think the Leader of the Opposition was correct here; he signed an affidavit authorizing one of the three to make the application. That is what this is saying. The Minister cannot sign a warrant; he has no authority whatsoever ... read it back. How he puts it over ... and some people are very famous *twixting*, *tuxing* and *tweeking* ... What we have in the Bill are *checks and balances*.

If I look at the record of the Judiciary that we have is a record of not making decisions in favour of the State. How many decisions have the State won? I have great confidence that the Judiciary which is the final arbiter, whether a warrant will be issued or not that that judiciary will exercise great caution and independence in issuing such orders - great confidence. And if the record of the Judiciary at this time is something to go on, I can assure you that very, very few warrants will be issued.

What has been tabled as a flimsy Law by the Leader of the Opposition; what has been tabled by the Leader of the Opposition as a government that abuses its authority, I think, we know to the contrary.

I agree with the Leader of the Opposition that several other pieces of legislation we can search through to find



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

mechanisms to do some of the things here. I am sure that those who illegally tap communications we can find some piece of legislation on our law books today to deal with that. But we want to say here and we are saying it here in the strongest possible manner and if as Minister Rohee said, we listened to some other people we would have said it even stronger. What we are saying in this Bill is that anyone not authorized to tap into any communication will feel under this particular piece of legislation is severe penalties once convicted. What is it \$5 million, Minister Rohee? I think it is set out very earlier and up to three years - \$5 million. This is very serious and we want to make it clear no-one not even the State will violate the sanctity of that communication and there are going to be strong mechanisms with checks and balances and an Order issued only by the Court in the event that we want to do so.

I want to agree with Minister Rohee when he went time after time enunciated the several penalties for the breaches in the records, the leakages that sometimes happen and the strong penalties that exist. So, very careful attention has been placed to ensure that some of the comments made by the Leader of the Opposition were directly addressed in this piece of legislation.

This is a piece of legislation that will serve us extremely well and in the hands of a good government like this one; we are going to do even better with it. Thank you very much.

**The Speaker:** Thank you Honourable Member.

The Honourable Member Mr Trotman

**Mr Raphael GC Trotman:** Mr Speaker, they had come to a time, when no one dare to speak their mind, when fierce growling dogs roamed everywhere and when you had to watch your comrades torn to pieces after confessing to serious and shocking crimes that they to whom I refer, were the animals in Orwel's famed Animal Farm, who thought they were living in an egalitarian society; that they to whom I refer could very well be you or me or even one of the reporters seated here this evening. For those who can understand what I am saying, I am minded to believe that what we are facing is soon going to come to an end, but we must speak out against it.

The book Animal Farm had ten Chapters, the quote I gave came in Chapter 7, what this tells us is the astonishment and collapse of the farm was a relatively short affair. Knowing that you are familiar with words, Mr Speaker, I know you will remember that the time of the fierce dogs will not last forever. *[Applause]*

Mr Speaker, my objection and that of the AFC to this Legislation are now a matter of public record. We are against this Bill not because we are against efforts to suppress crime. We are very aware of the new and emerging challenges and treats to National Security and believe that they must be met with very strong action indeed. We are against, because we are quite frankly

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

afraid. Yes, we are afraid that this Bill shall be abused not *may*, *shall* be abused and that the constitutional rights of ordinary and not so ordinary citizens will be threatened and will be violated at rate far beyond that which already exist today. We have come to that time when people and their leaders will be afraid to speak their minds; when fierce growling dogs known as designated and authorized officers will roam everywhere and where people, we know, will be torn to pieces after being accused and forced to confess to serious and shocking crimes.

I cannot therefore in all good conscience and in the absence of any discernable presence of a willingness of this administration to cede in political space, to share, to engage, to include, and to understand the plight and the hopelessness of hundreds of thousands of Guyanese agreed therefore to the passage of this legislation. The genesis of this Bill, we were told when it first came, just when we took the recess in August was to meet CARIFESTA. We were told that this Bill and others like it were called from a meeting of heads of governments held in Trinidad and Tobago in April of 2008, at which our Head of State attended. Following that high-level summit, several measures were agreed and some them included and I thought the Honourable Minister of Home Affairs would have listed them. Some of them agreed included:

- Maritime and Airspace Corporation and sharing of assets;

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- Intelligence and information sharing;
- Rapid deployment units to be developed;
- Drug trafficking;
- Murder;
- Gang and youth related violence; and the issue of
- Deportees

In the area of wire tapping it was agreed by the Heads then, in April and I quote:

*Common wire tapping legislation was to be developed.*

The operative word here was *common* which, I believe, this comes to the appraisal that this Bill No 19/2008 was not generated by CARICOM or its agencies or with the assistance of any CARICOM sister nation. That point needs to be made.

The common approach intended after the April Summit has been thrown aside and replaced with a quite plain communist, if I am allowed to use a Guyanese colloquialism, *Commonness* is what we young children use to speak about; what was supposed to become *common* has now become *commonness*. As a result some regionalist has grown quite weary and uncomfortable with Guyana's evolving brand of diplomacy and approach to regional integration and cooperation. What we are now

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

seeing is just another display of brinkmanship and unilateralism by the Government of Guyana acting at variance with its CARICOM sisters and brothers. The first situation which we encountered recently was the non-signing of the European Partnership Agreement. Some say that after all the palavering regarding the EPA that Guyana will have to eat humble pie and in few days time we will have to sign that Agreement. Here again, with this legislation Guyana is going out on a limb, going with legislation that clearly has serious implementations with the constitutional rights and civil liberties of Guyanese and CARICOM citizens. What we asked is the reason for this haste and speed, why can't we wait on our brothers and sisters. I am advised by several Government officials within the region and verily believed that considered regarding the individual provisions within the constitutions of the various member States and the CARICOM Charter and Civil Society are uppermost in their minds and that they will not proceed to pass similar legislation unless and until there is widespread consultation and involvement of all stakeholders.

The Honourable Minister of Home Affairs earlier refers to Article No 146 (1) of the Guyana Constitution, and with your permission I wish to restate it. Article No 146 (1) clearly states with a proviso of course:

*Except with his own consent no person shall be hindered in the enjoyment of the freedom*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*of his expression, that is to say freedom to hold opinions without interference, freedom to communicate ideas and information without interference, and freedom from interference with his correspondence.*

Agreeably and admittedly there are provisos.

Mr Speaker, the CARICOM Charter of Civil Society itself, to which Guyana is a party, and Article No 8 states, and I quote:

*Every person shall have the right to the enjoyment of freedom of expression including the right to -*

- (a) Hold opinions and to receive and to communicate ideas and information without interference and freely to send or receive communication by correspondence by other means; and*
- (b) to seek, distribute or disseminate to other persons and to the public information opinions and ideas in any form whatsoever.*

These are the provisions which I believed our colleagues in the rest of the Caribbean are considering, while we are

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

not. We as legislators, even though the power are in our hands have a fiduciary duty to uphold the law and Constitution and the right enshrined therein. When we are going to abridge, curtail or even expand those rights, we have a duty to consult with the people, and even when we do consult, we still should not interfere with rights except in very rare cases and only for good and substantial reasons.

We are not the law we are only the guardians of it. It would have been more palatable for the Alliance For Change, if this Bill was being induced simultaneously in the various CARICOM territories so that we could gage the mood of the people and adapt and define our legislative approach accordingly. It is dangerous in our option for one CARICOM territory to state that it is operating under the aegis of the regional body and then arrogate to itself the right to abrogate the rights of citizens in one territory without there being a corresponding adjustment in all the territories. This, I will add, does not auger well for good neighbourly relations and for the treatment of Guyanese aboard.

One appreciates that crime must be suppressed; one appreciates that modern technology members must be employed to curb crime; one appreciates that there must be mechanisms put in place, but these have to be carefully balanced against endangering people's private rights, which must stand supreme over the whims and fancies of any Government. This is a social contract which was first

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

identified and developed by Thomas Hubbs in his Seventeen Century work, the *Levitia*. The responsibility and relationship of and between the citizens and the State has not changed since then.

Mr Speaker, to bolster the argument that the concerns of possible violations of the rights of privacy are more than imaginary I will refer to a few jurisdictions where wire tapping is on-going.

I start with *Uganda* - In September of 2008, last month, Amnesty International expressed concern about The Regulation of Communications Bill of Uganda, which they say could significantly hamper the general exercise of the right of freedom of expression and not just the rights of individuals whose communications are intercepted. The Bill in Uganda according to Amnesty International was deemed to be incompatible with international human rights standards especially the International Covenant on Civil and Political Rights.

I go to *Zimbabwe* - There is in Zimbabwe the Interception of Communications Bill, the same title of 2007, where our brother Mugabe when challenged said, but look at America, they have the Bill too. But according to Amnesty International; Zimbabwe's Bill entitled the Interception of Communications Bill will allow authorities to intercept both telecommunications and mail and it has raised fears that the Government will use it to spy on the activities of Human Rights Organizations and



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

the political opposition. One opposition spokesperson remarked and I quote:

*That this Bill is a final straw to the curtailment to the liberties of Zimbabwean*

*Venezuela* - In June of 2008, just a few months ago, a similar Bill was introduced in Venezuela. According to a BBC news report, which was headlined VENEZUELA'S NEW SPY LAW DRAWS PROTEST; Human Rights Activist and Opposition Members have charged that the Bill is threatening their civil liberties. One aspect of the Bill that is particularly offensive to them is the fact which we have heard of today that those who are told or instructed to comply are also facing the sword of Domiciles hanging over their heads that if they do not comply, they will be sanctioned. So you either become a spy to the Government or you go to jail. That is what is happening in Guyana.

I come to the *United States of America* - I refer you to a 9 June 2008 Article on the website [www.tectdirt.com](http://www.tectdirt.com) article, NSA abuse that is the National Security Agency has abused wiretap rights intercepted, shared private calls of Americans. The constant abuse of the power by recording and sharing citizens' private and very intimidated conversations and communications is on the rise in the United States of America.

In a recent article in the Los-Angeles Times, not by no means a frivolous publication in March of 2008 and

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

written by Julian Sanchez which is entitled *Wire Tapping Through Danger*. This article chronicled the widespread abuses of wiretapping powers by US Federal and other officials for decades. It says:

*Intelligence Analysts and the Presidents that they have serves has spied on the letters, on phone conversations of Human Chiefs, Civil Rights Leaders, Journalists, Anti-War Activists, Lobbyist, Members of Congress and even Supreme Court Judges; criminals comes lasts.*

I gone to *India*, which perhaps is the most progressive of all from the list I have just mention. In India, wiretapping was regulated on the Telegraph Act of 1885. There have been numerous phone taps scandals in India, resulting in a 1996 decision by the Indian Supreme Court, which ruled that wiretap is a serious invasion of an individual's privacy. That is the Law as it stands in India.

The Supreme Court recognized the fact that the right of privacy is an integral part of the fundamental right of life enshrined under Article 21 of their Constitution. The Court also went on to lay out line guidelines of wire tapping by the Government. The guidelines define who can tap phones, and under what circumstance only the Home Secretary or his counterpart in the State can issue such an order. Not somebody from the GRA, the Military, the Police or otherwise.

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

The Government in India is also required to show that the information sought cannot be obtained by any other means necessary. The Court mandated the development of a high level committee to review the legality of each wiretap. That is the oversight and those are the controls put to curb the excessive power which is being sought here today.

Tap phone calls are not accepted as primary evidence in any court of law in India. However, as you have noticed the gap between law and conformity in India is a bit wide, because even though all of these safeguards have been put in place, there are still abuses. There is as well in India, following the passage of the progression of Terrorism Act, a parliamentary function and a judicial review function to ensure that the power is not abused; something that the Honourable Minister may wish to consider.

I have deliberately researched a few of the countries that have this legislation and established how all of them have very serious issues and concerns regarding the protection of human rights and civil liberties. I have already indicated that we are concerned that if this is a product of a CARICOM initiative then it should look like, smell like and feel like a CARICOM product such as was the case during the 2007 World Cup Cricket preparations. That apart, we believe that the apparatus to monitor and implement this Act in the fullest is absent, that there will be tremendous problems.

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

We have already heard of a situation where two State actors, one being a Commissioner of Police and one who sometimes admit and other times chooses not to, a Member of this Assembly, were intercepted by a non-State actor and there was nothing that could have been done to protect them in the first instance and to sanction that person who intervened and tapped into their conversations and also went away publicizing what he had done.

These are some of the jeopardizes of what we will encounter because they have happened before and up to now the equipment whether it was brought in by Government or not, we know it exists in Guyana and whether we want to admit it or not, they are different stories. At one time, Head of the Presidential Secretariat - Secretary to the Cabinet said that it was in the Government's possession and other time he denied that they know where it is, but what we know is that the equipment is still very much located in Guyana and therefore can be used as it has been used in the past.

Mr Speaker, it is an irrefutable fact; that public confidence and trust in the security forces and state agencies is at an all time low. Who then is going to police the police to ensure that they will not allow themselves to be politically directed and alternately they will not allow themselves to be comprised for filthy lucre by disclosing confidential and private information of

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

citizens so they may earn an extra dollar as they do when they have illegal road blocks and other things.

Mr Speaker, in the context of Guyana and with our history which Minister Rohee referred to and I will admit there was a history, a political recrimination and targeting. I am prepared to say that this Bill *shall* and not *may*, but shall be used at some time against political opponents. Mr Speaker, I will concede that.

A political leader in Sweden Rick Falkonvinge, in June of 2008, made what I considered to be a very profound statement on legislation of this type. He says:

*Democracy is reliant on the transparency of power not on the transparency of citizens. All places where the opposite has been the case, where it has been impossible to examine the powers that be, while citizens lack any right to a private life have been really nasty places to live.*

And I am urging that we do not allow Guyana to become one of those nasty places, where citizens lack any right to a private life, by urging my colleagues not to support it. We have already heard from the Leader of the Opposition on some aspects of the Bill; we have our concerns ,but because we believed that the Bill is fundamentally flawed, for the reasons I set out before I will not go through individual sections or clauses but perhaps later on my colleague Mr Ramjattan, may address a few. Suffice

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

to say, that a common thread running through this Bill is the absence of the right of the person being scrutinize to be heard. At no stage is he or she brought into their ex-parte orders, the orders are renewed ex-party; there provisions for the orders to be called off, or withdrawn and at no time the person who has been the victim perhaps in a case where he or she was wrongly targeted, there is no apology, no compensation, their lives were probably destroyed by the time they realized they made a mistake and there is no provision for it.

For these and other reasons, and base on what I said in the previous Bill, No 18/2008 The Alliance For Change will not be supporting Bill No. 19 of 2008 - The Interception of Communications Bill. Thank you. *[Applause]*

**The Speaker:** Thank you Honourable Member

The Honourable Member Mr Nandlall

**Mr Mohabir A Nandlall:** Mr Speaker, I wish once again to compliment the Honourable Minister of Home Affairs for yet another piece of progressive legislation, which is merely a continuation from where he left off last evening , as we as a Government continues to improve and enhance our capacity and to build a proper apparatus in his own language, the requisite architecture, to prepare ourselves to face the level of criminal activities, which have descended upon this country and to improve our crime fighting capabilities and the administration of justice.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Mr Speaker, I listened carefully to the remarks of the Honourable Leader of the Opposition and I heard a lot about repressive administration, constitutional abrogation and dictatorship and as the Honourable Leader of the Opposition was speaking, by some strange coincidence, a Stabroek News was past to me by my friend Mr Steve Ninvalle a former employee of that organization, and a letter was pointed out to me in that paper - today's paper - Stabroek News - Friday, 17 October 2008, signed by one James K McAllister; as far as I know he is still a member of this Honourable Assembly and the heading of that letter reads:

*If we want to challenge the PPP/C on Constitutional Issues, the PNC/R must respect its own Constitution.*

I thought that that would be relevant to this debate in relation to the constitutional issues, which were raised and then it gets worst, because when the letter is read, Mr McAllister is making an allegation that he was charged with two secret offences and he was found guilty of those offences without being offer an opportunity to present a case.

And then worst perhaps his phone was tapped, the Honourable Leader of the Opposition said in his presentation that this Bill and I wrote down his exact language:

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*This Bill will make telecommunication providers complicit with the Administration in the perpetration of an illegality.*

And listen to the language of this letter; this is what Mr McAllister says:

*My acquiescence...*

that is an indication of the General Secretary to partake in some proceedings.

*... My acquiescence would have made me complicit to an illegal and an unconstitutional act. [Laughter]*

This is what in Hollywood they called a serendipity Sir. It is the most fortunate coincidence that I happen to read that letter as the Honourable Member was speaking.

Mr Speaker, I wish to begin by conceding that the concept of interception of telecommunication is indeed a very serious one and is indeed a very controversial one and I acknowledge the Opposition views and I respect the Opposition views. In fact, wherever this Bill was passed, where ever the issued arose, it was met with dissent; it was met with hot debate; it was met with opposition. I understand that, because of the nature of the beast itself.

However, this Bill has always been promulgated in very serious circumstances to meet a very serious situation. I believed in my humble view and is obviously the



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Government's view that that situation has descended upon Guyana.

If we look internationally, this Bill has formed part of the law in the *United States of America* since 1978 in the form of:

- The Foreign Intelligence Surveillance Act;
- The Electronic Communications and Privacy Act of 1986;
- The Money Laundering and Control Act of 1986;
- The Bank Secrecy Act of 1986; and of course after September 11, in the USA.
- The Patriot Act of 2001.

This latter Act is most expansive in its provisions and it was passed almost unanimously in both Houses of Congress, and was supported by both members of the Republican and Democratic parties.

In the *United Kingdom*, the Interception of Communication Act was passed in 1985. It was repealed and replaced by the Regulation of Investigatory Powers Act of 2000, as referred to by the Honourable Member of the Opposition, so as to modify the reason why there was a repealed and a replacement is to enhance the capability of the Law Enforcement Agency; to deal with the development of technology that occurred in the interregnum from the passage of the last Bill to the

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

present Bill. And of course Honourable Member Mr Manzoor Nadir gave us the updated position, which occurred after the 2005 explosion in the train station in London and throughout Europe, you have this legislation promulgated in countries. So much so that since 1996, the European Union passed a resolution in which they said, and I am going to quote what the resolution of the European Union said. It says:

*Criminals like anyone else, used telecommunication in the pursuit of their objectives.*

This is a direct recognition by the European Union that telecommunication is being used by criminals in the pursuit of their objectives and they take advantages of the opportunities offer by telecommunication systems, both to commit crime and to avoid detection and be convinced that lawful access to these telecommunications is vital in the investigation of serious crimes and the prosecution of offenders.

So here, we have the European Union passing a resolution not only acknowledging the use of the technological advances which have been in the world by criminals, but also the use of this technology by criminals to avoid detection.

Mr Speaker, what is the position in Guyana? When we as Guyanese, as Parliamentarians, as political leaders reflect upon Guyana over the past five years,

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- What comes to mind?
- What has gripped this country most?
- What has consumed the consciousness of our people more than the horrendous reality of a spiralling crime wave?

Nothing, everything pales into significance in this country over the past years than crime. We can argue when it begun, but most people believed it be begun with the escape of five notorious criminals from Camp Street prison on 23 March 2002. What follows thereafter, was the most horrendous spree of:

- Murders;
- Kidnapping;
- Car jacking;
- Robbery: with violence;
- Rape; and most importantly
- A very systemic assassination of our law enforcement officers.

I would simply like to share some of these incidences:

27 February 200 - The massacre at Agricola, East Bank Demerara, killing eight persons including employers from the Two Brothers gas station, a security guard from MMC, and he was an innocent bystanders who were using the road.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

22 April 2006 - The execution of our dear Comrade and fellow Minister, The Honourable Mr Satyadeow Shaw and his family;

8 August 2006 - The tragic execution of five employers of Kaieteur News, working at the press at Industrial Site, Eccles, East Bank Demerara;

26 January 2008 - The heart breaking, painful and dreadful massacre of eleven persons, including children in their sleep at Lusignan;

18 February 2008 - The tragic massacre of twelve people at Bartica including police officers;

21 June 2008 - The discovery of burnt remains of eight miners at Lindo Creek ...

I went through those, to graphically explain the state of crime and criminal conduct in this country and what is the State to do... [*Interruption: 'What about Ronald Waddell?'*] ... and I can include Ronald Waddell, but I dealt with numbers, because it will take me the entire night to go through the list, but I wish to include in at your request, Ronald Waddell and many more. The list is not intended to be exhaustive. The point I am making is:

- What should a State do?
- What should a Government do? *and*
- What should the Minister of National Security do in the face of this onslaught?

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Stay idle? [*Interruption: 'Resign'*] You feel resign, but we do not feel so on this side. We believe that to answer that to combat the level of criminality, we need to improve our capabilities to fight crime; we need to improve our investigative capabilities and our legal system so that when criminal activities are investigated; when the perpetrators are caught, they can be properly prosecuted and imprisoned.

Mr Speaker, it is in that context that this Bill was conceived and designed. We cannot ignore the advances which have been made in the technological world. This technology is available to anyone:

- Cellular phone;
- Satellite phone;
- Tracking equipment;
- Computers;
- Portable wireless internet;
- High frequency radio; et cetera.

The access to these types of equipment is not confined to the law abiding citizens, criminals have equal access to them and any sensible human beings would recognise that if it is that the criminals is becoming so sophisticate, then it only makes sense that the Law Enforcement Agency enjoys a commensurate and a corresponding improvement. That is what this Bill seeks to do - to equip

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

the Law Enforcement Agency with the modern telecommunication technology in their fight against crime.

Naturally, the issue of constitutionality will arise, because on its face the Bill appears and I will agree, to interfere with the rights of persons to receive information which is a right guaranteed by the Constitution. In fact Article 146 says:

*Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas, et cetera.*

My Honourable and learned friend, Mr Trotman quoted this, but what he did not quote in the same expansiveness is the condition, is the provision that is attached to that Article, and the provision reads thus:

*Nothing contained in or done under the authority of any law...*

and this is a law:

*... shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question made provision -*

*that is reasonably required in the interest of defence, public safety,*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*public order, public morality and  
public health.*

Mr Speaker, I have already given the backdrop against which this Bill is being promulgated. Clearly the intention here, and as a legislator, I am saying it, the intention behind this Bill is not to tap politicians' phones, as it is believed, as it is said on the other side; it is to fight crime and if politicians are engaged in criminal activities, so be it. *[Applause]* They do not have any immunity - politicians do not have any immunity - and if it is that they are going to engage in activities that is of a criminal nature, well they will come under review; they will come under the net, but the point I want to make is that the provisions of this very Constitution that guarantees the right to freedom of expression, permits the enactment of a Bill of this type, because the stated reasons are:

- For Public Order;
- For Public Safety; and
- For Defence.

That is why this Government is passing it. I can not deal with the weird and strange interpretation and intention that is being ascribed to the Bill, I can only speak of the Government's intention and this Government's intention is to pass this as a crime fighting mechanism. *[Applause]*

We have heard a lot about the invasion of privacy. Well, the true position in Guyana which perhaps may be an

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

unfortunate position is that there is no Law in this country that protects against invasion of privacy. That may be a deficiency of our legal system, but that is the present position. There is no Statue that protects the invasion of privacy. In fact, the invasion of privacy was never part of the common law of England, which we received as part of the Law of this country and therefore, as I speak now, there is no Law that protects privacy. And you know what the irony is; the irony is that it is for the first time, in the history of this country that this Bill will introduce a mechanism to protect privacy. *[Applause]* That is what I do not understand why the lawyers on the other side cannot gather that the purpose of the Bill is to protect privacy ... *[Interruption: 'How?']* Let me explain to you how; presently Mr Norton, I can tap your phone, as The Commissioner of Police Mr Felix's phone, and Mr Williams's phone were tapped and nothing they could have done about it. You know why, because the Law did not provide them with a remedy. This Law, this Bill provides them with a remedy. Now you can be charged and be jailed for three years and fined five million dollars. Why do you think that no other than the Commissioner of Police could not have done anything about persons tapping his phone? Is not that he did not suspect who tapped his phone. No! It is because of the Law; he is the Commissioner of Police. There was no Law that prohibited the tapping of his phone; there is no offence he could have charged for; there is no remedy that he could have gone to the High Court to get. So, what he had to



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

do? He had to do nothing, but as a result of this Bill, now, the Commissioner of Police could have charged someone, who is tapping his phone without the relevant authority that this Bill requires. So that is a very important aspect of the Bill that I wish to emphasize.

The Honourable Member Mr Manzoor Nadir made a fundamental point that it is clear, it is most evident when reading this Bill that the draughtsmen went at great lengths to ensure that there are sufficient safeguards in place to ensure against abuses and the Bill outlines a numbers of safeguards that are in place. First of all, the Bill provides for an authorized officer to make an *ex parte* application to a Judge in Chambers for the warrant, before he can get the warrant granted. Now, the first important point that I wish to make is in whom resides the power to apply for the warrant. The power to apply for the warrant, Mr Norton, does not reside in the Executive; it does not reside in a Government Minister; it does not reside in the Office of The President. The power to apply for the warrant is resided in the Law Enforcement Agencies of the State, not a department of Government, but a Department of State:

- The Guyana Police Force;
- The Guyana Defence Force; *and*
- The Guyana Revenue Authority.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Now, who staffed these organizations ... [*Interruption: 'The Government.'*] ... not the Government, the State and that is a distinction as a lawyer that you should appreciate. You should appreciate that, because these people who staffed these organizations graduate out of the Public Service; they are not politicians; they are not politically hand-picked people, they are public servants and they are part of statutory agencies:

- The Police Act governs the Police Force;
- The Defence Act governs the Defence Force;
- The Guyana Revenue Authority Act governs the Guyana Revenue Authority.

And these people when they perform their functions of their offices, they have functional autonomy, they have independence, they did not operate by the whims and fancies of a Minister.

So Mr Ramjattan, it is not the PPP Government who can instruct that a warrant be applied for, the Minister will request, the autonomous agencies will request it. Let us go to who grants the warrant? An inaccurate statement was made that the Minister of Home Affairs grants the warrant; clearly that is wrong. It is clear that the power to grant the warrant resides where? Again, not in the Executive, the power to grant the warrant does not reside in the Executives of the PPP or the executive of the Government; it does not reside in a Minister of the

## NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008

Government, where does it reside? It resides in the judiciary; it resides in the most institutionalized and independent Organ of the State of Guyana and that is the Judiciary. Anything goes to a judge Mr Speaker, and of course I defer to you Sir, you are a Senior Council and you would know, Sir, that Judges act upon reason, they act upon evidence, they do not act willy-nilly. I cannot turn up appearing for Mr Kurshid Sattaur one day and say, look Judge I want a warrant to search Mr Ramjattan's Office because he is a member of the AFC. The judge would lock me up, Mr Ramjattan, and you know that.

Mr Ramjattan, do not sit here and derogate the administration of justice. The most decent people in this country ought to be our Judges. These Judges enjoy independence; they are protected by a doctrine of separation of powers; they are not subject to the authority of the Government, they are not subject to the political direction of anyone; they are independent. When I appear with you tomorrow or on Monday before them; I will tell them that you say that they are political stooges.

The Bill resides in the judiciary, the power to grant the warrant and a lot has been said, it appears that the Opposition is of the view, and I speak of the collective Opposition, that anyone can just turn up to a judge and said look, I want a warrant. Forgetting that the Bill specifically provides that the warrant is only grantable for certain expressed reasons: for defence and for

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

investigation of crime, not for political prosecution and as stated in Clause 4; Sub-section (3):

*A Judge shall not issue a warrant under this Act unless he satisfied that -*

(a) *the warrant is necessary*

and it lists -:

(i) *in the interest of National Security*

(ii) *for the prevention or protection of crime*

(iii) *To assist in the investigation on relation of a crime*

And then you also have to satisfy the Judge that this is the only way of getting the information. So if there is another way other than intercepting the telecommunication, then the Judge will refuse your application. You have to demonstrate to the judge that this is the only viable, possible and feasible way to receive vital evidence before you get the order granted. All these are mechanisms in the Act. I do not think that you read them.

Again, Mr Speaker, it has the catch-all phrase at the end, which says that the judge must be satisfied having considered all the circumstances that is in the best interest of justice to grant the warrant.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Mr Dhurjon was telling me how difficult it is to draft these legislations after being forty years in the AG Chambers and he says every time he comes to this Parliament he realized how dunce he is, because things take him months to draft, looking at the various models all over the world, when he comes here it is ripped apart and what is most hurtful he told me that it is not ripped apart by politicians, but by lawyers who are advancing furious legal arguments. And he is hurt as a Senior Council, because he feels that they should know better. *[Interruption: 'He did not say so.']* Well, he is here, you can ask him,

Mr Speaker, the Bill also requires a quantity of information, which has to be provided by way of Affidavit. *[Interruption: 'You are reading the Bill.']* No, I have to go through it, because of your misunderstanding, it has a host of requests that is information that needs to be recorded in the Affidavit.. I am going to go through all of them. For example, you have to have the allegations giving rise to the application ... *[Interruption: 'Again!']*... I do not think you understood it. *[Laughter]* so that the judge can properly form a judicial opinion; it must say what type of offence that you are investigating. So that you can go and tell the Judge that you are investigating the tax record of a parliamentarian; you have to state the type of offences; the telephone number that you want to bug, and where the address is located. All of those are in the Bill. And when the warrant is

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

eventually granted, it is not a permanent warrant; the warrant has a duration it is only valid for ninety days. There are further safeguards, because offences are created ... Importantly, the Bill allows for the disposal of unwanted and irrelevant information. So that if you get a warrant to intercept the telephone of Mr Basil Williams and you have information that is not useful to your investigation, well then you are to discard it or store it in a safe place. And you misuse that information; the Bill creates a serious offence for the type of thing.

So Mr Speaker, I do not wish to go through all the safeguards, but I think I have spoken in a general sense and I have given the House a good understanding of the safeguards that the Bill contains.

There is another correction I would like to make ... and Mr Ramjattan, I am very encouraged that you called me a professor. There is another misinformation that I would like to correct.

The Honourable Leader of the Opposition said in his presentation that the Telecommunication Act of 1990 outlaw the tapping of telephone, and that we do not need to pass this legislation now it is already the Law. Well, Section 35 of the Act that my learned friend and the Honourable Member was referring to create a very limited offence and confines it only to the operators of a public telecommunication system. So that only now a member of Guyana Telephone and Telegraph Company

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

and Digicel can be charged for wiretapping. Again, I go back to the Felix/Basil tape that is why no one could have been charged could have been filed. *[Interruption]*

**Mr Basil Williams:** Who is Basil, Mr Speaker?

**The Speaker:** He said Basil Honourable Member, I do not know. That cannot be identification. Do not accuse the Honourable Member of being involved in a tape recording and mentioning No. 1 and all of these kinds of things, please. *[Laughter]*

**Mr Mohabir A Nandlall:** Mr Speaker, on a more serious note, I wish to say that this is a very serious Bill. I am speaking as a lawyer, I think, I would be in remiss if I do not acknowledge that it raises certain legal concerns, but that is the very nature of it. It is a Bill that is designed to deal with desperate situations; it is a desperate measure and in view of the government, the crime situation in Guyana has reached desperate proportions and when we walked the streets of this country that's is the information that we are getting from the people of this country. They are completely outraged by the massacres to which I have referred and they have given us the mandate to take all the necessary steps available to you to fight crime and this is one of them. I thank you very much, Sir *[Applause]*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

**The Speaker:** Honourable Members, we can now suspend for fifteen minutes.

**19:45H - SUSPENSION OF SITTING**

**20:09H - RESUMPTION OF SITTING**

The Honourable Member Mr Basil Williams

**Mr Basil Williams:** If it pleases you, Mr Speaker, this Bill and the provisions therein constitute the final bastion of this country's servitude tantamount to Hitler's final solution as it were. Essentially this Bill seeks to invade the privacy of Guyanese citizens and in so doing breach their fundamental rights.

The Honourable Member Mr Nandlall in closing had contended that there is no law that protects the invasion of privacy and that it was never part of the common law of England, which we receive; in other words that it was never a part of our law. Mr Speaker, I am sure that you will agree with me from your vantage position as Senior Council that that was not only a tenuous statement, but it was also highly erroneous.

The Guyanese citizens since independence have always been guaranteed the constitutional protection of their privacy. In fact, the People's National Congress Reform Government in 1966 introduced the independence Constitution in this country and in Article 3 (c) of that Constitution, this is what it says:



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*Whereas every person in Guyana is entitled to the fundamental rights and freedoms of the individual that is to say the right whatever is race, place of origin; political opinions; colour; creed; or sex, but subject to the rights and freedoms of others and for the public interest to each and all of the following namely: Protection for the privacy of his home and other property.*

So it is very clear that from 1966 in our Constitution the privacy of the home and other property of a Guyanese citizen were protected. There is nothing like this old aphorism; *a man's home is his castle* and that is very important. And other property would mean his office for example, his telephone therein and presently his cell phone; his thoughts and ideas.

What is significant here is that even if you believe that that privacy right is no longer existed in the constitution; Article 146 could kick in, but not why is Mr Nandlall saying that? What has happened to that constitutional guarantee that speaks very clearly, privacy of the home and other property, not this tenuous provision that you have about freedom of expression and right to communication and all that information. We are going to deal with that, but this right continued in the 1970 Constitution in Article 3 (c) and then in the 1973 revised Constitution, all the time under the PNC Government that constitutional guarantee persisted and then in the 1980 Constitution which the Members on the other side berated

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

as being dictatorial; autocratic; and all manner of ills, that Constitution also continued to guarantee the protection of the individual for the privacy of his home and other property. And when I say his, in law as in life the male embraces the female, but with my Honourable Member next to me here acting up, we are really supposed to say his and her, but the protection continued even onto the 1980 Constitution - the privacy of his home. In other words, Mr Nandlall recognises that if you tap my phone whether at my office or at my home, you would have been in breach of the constitutional guarantee and under Article 153 I could have gone to seek redress for breach of that right.

Let us go... this is instructive that the right to privacy of the home continued right on to the year 2002. The Constitution of Guyana with amendments inserted; so right up to 2002 Guyanese citizens were guaranteed protection to the privacy of their home. Then what happened? When you look for this right... *[Interruption]* You know it is not an accident. In 2003, by Act No.10/2003; this article was removed from the Constitution. *[Interruption: 'You were part of it.']* In Clause 10 it was removed, a most remarkable thing. For one to remove such a fundamental right from the Constitution and no one knew of it and that is why this thing never left me, because I always knew from my studies that there was this provision in the Constitution. I had to do the research and so it required a two-thirds

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

majority and I checked the debate that had to deal with the altering of the Constitution and there was nothing whatsoever in this debate that treated with whether this constitutional right that has been there all these years, whether it should be removed from the Constitution of this country. Not a word, but what you see in this discussion was a distraction about some Sexual Orientation provision. Under that Sexual Orientation diversion, this amendment - this fundamental guarantee - of protection in the home *in situ*. There was no consultation with the people of Guyana, no debate, nothing. So we have to now examine how this could have happened. It is instructive that this removal of this fundamental right to the privacy of the home and other property occurred at a time when Guyana was experiencing serious crime waves and national insecurity. I am respectfully contending that this could not be any accident, because all the Honourable Members on the other side who have contributed to this debate tonight have consistently said it was because of the crime wave. If you had an amendment and a completed reprint of the Constitution in 2002 and in couple months later in 2003 you amended it again to take out such a fundamental provision. It is clear that a decision was taken to start tapping people's phones, but to remove the guarantees that the event they are found out as my learned friend said Felix could only suck his teeth... [*Interpretation: 'You too'*] If it were me, it would be a different kettle of fish. You would have known why I would have sucked my

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

teeth. Anyway, the question therefore is that Government recognise that they had to get rid of the provision in this Constitution in order for them to start tapping with security people's phones, not that they were not tapping phones before, but they were looking for the protection and I find that this removal of the privacy protection was no accident. But let us come to Article 146, because I respectfully submitted, it does not avail you anything, because Article 146 tells us that a Guyanese citizen's communication is protected and their correspondence is protected. In fact, under the REPO in the United Kingdom which was passed in 2000 there was a clear provision for intercepting postal communications. So there is a lot of case law interpreting this provision, in fact a lecturer of mine Ms De Moriah in her work, a very good constitutional production outlined several cases interpreting this provision and in doing so clearly crystallised the right to have your communication protected, your correspondence protected ala the right to the privacy of the home and other property. So, Mr Speaker, I am not sure if it is a dark day afternoon, but this question will not rest, because the Guyanese people must know that they never had an opportunity to deliberate, discuss and be consulted upon why such an important provision and guarantee was removed without their consent and/or connivance. [*Interruption; 'You participated in the Constitution reform.'*] If you say that; you always had a problem of density, because the world would know and the Speaker would know that I only

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

entered this hallowed Chamber after the event; *ex post facto*.

Now, if I could continue Mr Speaker, with my dissertation, what is very clear is that this is sound evidence for being reinforced in our beliefs that this Government could be up to no good in attempting the passage of this Bill at this time. I am reinforcing that belief that if they could connive to slip past the Guyanese people such a protection then they could be up to no good coming with this Bill to invade people's privacy. What kind of man, what type of being would want to listen into the conversation of Mr Nandlall and his dear wife? Who? When Mr Nandlall is whispering sweet nothings to this wife; why should other people be listening to that? Why should a mother talking to her child on the phone, why should that conversation be taped; why should it be bugged? So what is important is that it requires a special creature to perpetrate this type of act.

Mr Speaker, Mr Trotman pointed out to you that in America right now that is a big problem, where serving members in Iraq and Afghanistan they are having their conversations tapped and there is a big clamour against this type of wire tapping. So why do you have to have this type of power? Why do you have to have it? I am further reinforcing that if this Government or its surrogate could tap a Commissioner of Police phone and a Member of Parliament that they call Basil Williams; if they could do that I can rest my case now that they could be up to no

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

good with this Bill. *[Applause]* So I need not go any further.

There is conclusive evidence that this Bill is not as it seems on the face of this Bill and the strenuous efforts that were made to put such a rosy interpretation on it also reinforces my belief that we should reject this Bill out of hand. For example, the Honourable Member was saying we could only exercise this power when the Judge grants a warrant and the Judge this and the Judge is independent and all of that. But I am not sure if the Honourable Member had recourse to Clause 3 (2) (b), where two other instances are provided. *[Interruption: 'In a case of national emergency or when the case is urgent.']* You Read it? Well, you did not understand it then because if you understood it, you would have informed this Honourable House that it is not only the warrant of a Judge, you are designing in this Bill to initiate tapping of a person's phone, but this one, put aside emergency, because every day might be an emergency for all of you, *is responding to a case where approval for a warrant is impracticable having regard to the urgency of the case.*

So Mr Speaker, why would my learned friend read this Section and then hide or conceal it in his contentions in this Honourable House? Why would he try to deceive this Honourable House in suggesting that only a Judge can authorise a tapping when it is provided here in this Bill:

*Under the authority of a designated officer in a*

And this is the one;

*... in responding to a case where approval for a warrant is impracticable, having regard to the urgency of the case.*

Do you know why he did not deal with this? Who is it that determines when it is impracticable and urgent? Is it the Judge with security of tenure? No, Mr Speaker, who does it? The designated officers:

- The Commissioner General of the Guyana Revenue Authority
- The Chief of Staff and
- The Commissioner of Police

that they removed for some boogooloo communication.

Therefore you know whenever I am speaking this whole side gets agitated as usual and my grandmother whom I grew up with always used to say, the truth hurts ... so spare me. The point is, I am further reinforcing that this Bill is up to no good when you try to conceal from the Honourable House the fact that a designated officer in the comfort of his office can say; hey let us tap Corbin's phone it is an urgent matter and it is impracticable for us to go to the Judge. *[Laughter]* So, there is no protection. In fact, this provision encourages surreptitious tapping of people's phone and without any oversight whatsoever,

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

never mind the question of the warrant and we are going to come to the warrant. I do not think I need to go further, already there are three solid points to show this Bill is up to no good. [*Interruption: 'Well sit down.'*] Now, I must give you more pain.

I am respectfully contending that if you were to have a wire tapping Bill for whatever reason, even for the reasons ascribed by the Members on the Government's side; it is only understandable and acceptable that it be restricted to judicial warrants. Only judicial warrants in this type of situation in this country could at least on a *prima facie* basis people might feel inclined to go along with this. Only if the court intervenes in this situation, but:

- we cannot have the Commissioner of Police;
- we cannot have the Commissioner General of the Revenue Authority; and
- we cannot have the Chief of Staff;

staying in their rooms wherever they are and initiating the bugging of citizen's phone. We cannot allow that and therefore I would respectfully contend that this so fundamentally flawed that it really should not engage us much longer, but let me continue.

Mr Speaker, you see the fundamental rights that are being breached by invading your privacy; interfering with your communication, because Article 146 is also interfered



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

with and it does not matter about the abridgement and all of that - the provisos. Do not worry about all of that.

What is even more relevant here is the other fundamental protection that has been guaranteed to Guyanese citizens and that is the protection under Article 142 of the Constitution. I am respectfully contending that Clause 10 of this Bill constitutes an abridgement of GT&T and Digicel's rights to the protection of their property under our Constitution; because why? If one has recourse to Clause 10 (1):

- Tells them;
- Directs them; and
- Obligates them to be interception ready.

Clause 10 (2) says this:

*Any person or entity directed to provide assistance by way of information, facilities or technical assistance shall promptly comply with that direction and in such manner that the assistance is rendered.*

In other words, this is diktat; you must comply with this. Now, this is how Article 142 comes in; in Guyana *persons* include *corporate persons*, too, so that is not for your edification, you ought to know them. Article 142 is very clear and it reads thus:

*No property of any description shall be*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*compulsory taken possession of, and no interest in or right over property of any description shall be compulsorily acquired except by or under the authority of a written law and where provision applying to that taking of possession or acquisition is made by a written law requiring prompt payment of adequate compensation.*

This I am respectfully submitting directing GT&T and Digicel to use their private property to service this Bill is a compulsory acquisition of that property. [*Interruption: 'You are wrong.'*] It is; that is one. Do not come into this.

Secondly, what constitutes this property? Services, switching equipment, technical facilities and requirements, but you tell them, use your property; dissipate your property for this activity, but you do not compensate them in doing that. It is a complete breach of this Article, but there is nothing like... [*Interruption: 'What acquisition means?'*] If you listen you will learn, you must know that I do not make statements wildly.

Now, Mr Speaker, this issue of compensation and you know we talk about America. Well America leads the way and continues to do so in many instances. If I might respectfully refer this Honourable House to the words of my learned friend; *the updated legislation*, this legislation I do not know if it is updated, but it was passed in 2008 and it is the Foreign Intelligence Surveillance Act - Amendment Act of 2008 of the United States of America.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

You see, the law is such a beautiful thing; this is what this provides, it has a similar provision, I refer the House to

Section 7:02 (h) with the caption Directives and Judicial Review of Directives ... It says at 1(a) Authorising Interception With Respect To An Acquisition Authorised Under The Subsection. The Attorney General and the Director of National Intelligence may direct in writing an electronic communication service provider such as Digicel and GT&T to:

- (a) Immediately provide Government with all information, facilities or assistance necessary to accomplish the acquisition in a manner that would protect the secrecy of the acquisition as provided in this Bill and produce a minimum of interference as is provided in this Bill with the services and as such electronic communication service provider is providing to the target of the acquisition.

This is what (h) (ii) says;

*Compensation - The Government shall compensate at the prevailing rate an electronic communication service provider for providing information, facilities or assistance in accordance with the directives.*

It is the same thing as the warrant issued first under

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

paragraph (i). So Mr Speaker, it is very clear that you have to compensate a provider when you direct them to intercept and they have to use their resources to do the interception. So you have to compensate them and the FISA says this, not me. Do you know why I could find this? Because I know that money is property under our law, we have court appeal authorities by the former Chancellor Bishop that confirms in those cases where public servants were dismissed by the Public Service Ministry and PSC and they sued for their money by way of constitutional Motion; the court held that money was private property. You have to compensate citizens whenever you are compulsorily acquiring their assets. And you are directing ... this provision is so insulting; in fact, I do not know, but this is what this Section says in Clause 10 (iv).

*If a judge issuing a warrant under this Act is satisfied that the operation of a public or private telecommunication system has failed to comply with the warrant to for want of any support services for the transmission, switching equipment or other technical facility or system or requirement, he may direct the owner, operator or licensee of the telecommunication system shall at his own cost...*

So you will tell me that I must spend my money to do your work and you are not compensating me. [Interruption: 'You have to wait on Bishop Edghill to tell

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*you that.’]* What is this? The Americans ... you see, it is only people in democratic societies would understand these principles. *[Applause]* That is why I had to find this, but not these autocratic, un-democratic tendencies that are being practiced that you feel you could set a legitimate private corporate citizen and tell them use your resources and do this thing without compensation, because I do not know how they are benefitting from doing it.

So Mr Speaker, another aspect of this Bill that confirms its draconian nature. This Bill makes no provision for either GT&T or Digicel to challenge this warrant of interception - it makes no provision. This not only undemocratic, but autocratic and breaches the provider's legitimate expectation to be afforded a hearing if it believes some aspects of the warrant needs modifying or even setting aside. Nothing is in this Bill. So in this so called democratic country where democracy was restored since 1992, you are telling a corporate citizen to send a warrant to you with your own resources. And a man looks and he sees and then he realises something is wrong, maybe even if he is willing, even if the company is willing to run with it they feel they could only do it if it is modified or if they make some changes or corrections. There is no provision for them to go back. So research again and we come to this most recent Act of 2008 in the United States and in that Act they make provision for challenging these warrants.

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- (iv) Challenging directives - Authority to challenge
- An electronic communication service provider receiving a directive and the directive akin to the interception warrant issued pursuant to paragraph (a) may file a petition to modify or set aside such directive with a foreign intelligence service surveillance court which shall have jurisdiction to review such a petition.

So the Americans created a court to afford service providers in America the opportunity to have recourse in order to challenge the directives. I do not know what you have, you have nothing here and this is bare bone thing. What you have here is a piece of dictatorial legislation that you want to push down the throats of the Guyanese people. So for that reason too, because of all the resources we heard that has been done they could not miss this; they could not miss the importance of compensating service provider.

They could not miss the fact that you should provide an opportunity for them to challenge the warrants, to modify the warrants or even set them aside. So again I am reinforcing the belief that this Bill could be up to no good. Let me continue... *[Interruption]*

**The Speaker:** Honourable Member your time is up.

**Mrs Deborah J Backer:** Mr Speaker, I rise to ask that the Honourable Member be given fifteen minutes to

continue his presentation.

### **Put and Agreed to**

**Mr Basil Williams:** Thank you Mr Speaker. We are dealing with the service providers and let me deal with this issue about the penalty. The Bill leaves much to be desired. They talk about non-compliance and all of that and they do not really tell you what is non-compliance and all of that. They really have not spelt out a penalty for non-compliance, but what they have in here is a veiled threat. This is a veiled threat that they have in Clause 10 (4). We are continuing from where we left off. At his own cost - that is the service provider at his own cost shall forthwith provide the required support service, install necessary switching equipment or provide the technical facility or requirement, as the case may be, for complying with the warrant to the satisfaction of the court.

These are the important words *and the compliance with this subsection shall be deemed to be in condition in the license granted for the operation of the telecommunication system*. That is a threat. This is not a penalty and if this is a penalty, it is *in tororem* and why do we have this concept of *in tororem*? *In tororem* is when you are terrorising, when there is no genuine attempt to arrive at a pre-estimate of what your future damage or cost would be. This here, you are threatening GT&T, you are threatening Digicel that you will take away their entire licences if they do not provide with one

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

warrant you sent; if they do not comply. Now, if this is not Soviet Russia, I do not know what it is. If this is not a throw back into a communist State; what is it. You will look at a big company like GT&T and the penalty, you do not crystallise, you do not spread it out, but you are giving this veiled threat look, it is a condition of your licence. In other words, you could use your licence if you do not comply with the interception warrant. Now, something has to be wrong with the framers of this Bill. When I read this, I became doubly reinforced that this Bill could serve no good purpose. Now, I still have voice to complete this. Now, Mr Speaker, if you are saying GT&T or Digicel comply with this interception warrant and you lose your licence, what does this entail? This is what it means to a company like GT&T; billions of dollars would be lost, thousands of jobs would be lost for this simple exercise. You take away GT&T licence, it is thousands of people in unemployment and there is a diminution in GDP. If you want to contest it, I am ready for you to contest it.

This Bill is saying here when in fact the interception warrant is an order of court and under our system of jurisprudence if you breach an order of court, the sanction is contempt of court. You are in contempt for breaching an order so how do you reach to taking away somebody's licence. A billion dollar company you are telling them about taking away their licence, because they do not want to tap Mr Corbin's phone or Mr Basil William's phone.



## NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008

So it is clear that the provisions in this Bill are widely misguided. When you breach an order of the court and you are taken into court for contempt of court and contempt of court proceedings, the court could impose a fine which seems to be more reasonable in the circumstances; because there could be a variety of reasons why they could not have complied and if the Honourable Members again feel that I am off on a tangent; let me refer them to the most recent Act in this regard - the FISA of 2008 - The Foreign Intelligence Surveillance Act of the United States. At 702 (H) (g) - Contempt of court; and this is what it provides; failure to obey an order issued under this paragraph may be punished by the court as contempt of court. So where are we going, Mr Speaker? Are you trying to tell me that the Government with all its resources and all its researchers, somebody said put aside, they have a 2008 one and they did not find this? So we cannot allow this Government through the instrumentality of this Bill to ride roughshod over these telecommunication service providers in this country and in so doing breach their fundamental rights to the protection of their property guaranteed under Article 142 of the Constitution.

Mr Speaker, again, I can be reinforced in believing that at this stage; I can safely rest my case, but let me continue. *[Laughter]* Let me show you:

- The paucity in this Bill;

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- The lack of thought in this Bill;
- The dimensions agreed in this Bill;
- A lust for power; and
- To continue to occupy Government in this country at any cost

But we say this; the Bill again omits any reference to oversight. Who are we? You just come and ram this Bill down our throats, make it an Act and this is it. Nobody is there to look over this situation and see that this thing is being implemented adequately or properly; no oversight in this day and age when in this Parliament we have fiduciary oversight even though you tried to dump that; we will come to that just now. Security oversight we even had coming out of the consultation... what was the oversight committee they planned, Sectoral Committee on Security? We have all these Committees in this Parliament and this Bill does not say that the operations under this Bill should be submitted in a form of a half-yearly report to the Parliamentary Oversight Committee - nothing! So how are you going to convince us that you do not have it in for me, the real Basil Williams this time; you do not have it in for Mr Corbin; you do not have it in for Mrs Debbie Backer. What is going on? How are you going to convince us? Show us the way home, because this Act in the United States says this also about ... all of you surely want to run from this Act ... and this is what it says about oversight and I am respectfully submitting that

it should apply in Guyana *mutatis mutandis*.

Let me respectfully refer this Honourable House to Section 707 of this Act and the caption is Congressional Oversight. It says, semi annual report not less frequently than once every six months, the Attorney General shall fully inform in a manner consistent with national security the Congressional Intelligence Committees and the Committees on the Judiciary of the Senate and the House of Representatives consistent with the rules of the House of Representatives et cetera. This is what we are talking here, Parliamentary oversight, and what are they going to submit these annual reports about?

Concerning the implementation of the provisions of this Act and what must they submit? They must give information for the proceeding six months about warrants issued during the past six months:

- How many warrants, et cetera;
- Who were they issued against; and
- What is most important, the reasons for the issuance of such warrants.

Then what directives do you give to GT&T, Digicel, et cetera; all these things have to be documented and brought to the Parliamentary Oversight Committee. The Honourable Member sits on a Committee with me in this Parliament and in the Committee the Honourable Member has already indicated that he is against bringing any security matter or report that they are dealing with in the

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Government to the Parliamentary Committee. He has already indicated that so I am not surprised that you do not see anything about Parliamentary oversight. You do not see anything - I am not surprised... *[Interruption: 'Which Bill is that?']* You are in charge of Committee, you must know. I do not mean to be rude to you, because you are a lady. So again I am reinforced in the belief that this Bill is up to no good for the people of Guyana; for your political opponents - the substantial opposition that you have on this side of this House is up to no good.

Mr Speaker, again I know I can stop here, because the case is already won, but my sister has only given me fifteen more minutes and I think my time is running out. *[Interruption: 'Run out!']* I cannot run our, how could I run out? On these most important aspects of this legislation, we must give the Government a minus; they have fallen miserably short of satisfying us on this side of the House to sign on to such a Bill. It is not only a question of self-interest, but there are no safeguards, not the safeguards you are talking about. The safeguards in this Bill I am respectfully submitting merely amount to distraction; \$5 million if you disclose. Now, who are you targeting with this \$5 million fine? Who are the persons that will be connected to this exercise?

- (i) A technician in GT&T;
- (ii) A Police Corporal or even Police Inspector both salaried

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Let us look at it; who else would be involved in that operation. I would not put the Minister in that room. There might situations of urgency where the Minister might find himself running down the place and giving the instructions. *[Laughter]* The point is, Mr Speaker, the people who would be manning this operation is salaried, so where would they get this money to pay \$5 million fine so they are making joke. You cannot be serious; you are only putting down these big figures to distract people that you are serious about this thing. Who are you targeting? You are targeting the hapless little worker, so we are not convinced that you are serious about operating this Bill if it were to come into effect impartially and in an upright manner.

Mr Speaker, I do not want to go into the rest of the Bill, because they are other persons to speak on the Bill, but I also do not want to dilute the arguments that I have raised at this stage on this matter, but I wish in closing to say this; the People's National Congress Reform-One Guyana is resolute in its contention that this Bill must not see the light of day in this Honourable House. We reject this Bill out of hand. I concur with the Leader of the People's National Congress Reform-One Guyana that this Bill cannot be accepted in this Parliament and we reject this Bill entirely and we reject it out of hand. I thank you Mr Speaker. *[Applause]*

**The Speaker:** Thank you Honourable Member

The Honourable Member Mr Ramjattan

**Mr Khemraj Ramjattan:** Mr Speaker, over the past couple of months, we have seen some Bills come to this House, which wittingly or unwittingly have the emphasis on a whittling away of civil liberties as we know them. It is important to understand that there is a great philosopher that once said, power corrupts and absolute power corrupts absolutely. From what we have been noticing starting from the High Court (Amendment) then a Court of Appeal (Amendment) in which the finality of a jury trial, acquittal is totally eroded indicates along with an Evidence Act which we debated last night, in which now a lawyer will not be next to his client to get the facility to defend his client's case. We are coming to the realisation that that erosion is not only creeping at this moment, but it has been accelerated. Indeed as you even mentioned yesterday, Mr Speaker, there are some Bills in the legal architecture of the past month, if I may say so that is progressive. The Paper Committals as President of the Bar and Vice-President of the Bar we fought hard to implement even ten years ago and some others which indeed we ought to support nationally. I have come to the realisation that some of the things that occurred while the PPP were in opposition; they are taking great ecstasy now in implementing knowing the struggles that they had while in opposition against the PNC administration. I want to argue the case in this context that if we are not going to remember our past; we are going to be very

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

much condemned in repeating those negative things of the past. I could not remember the Santania quote very accurately, but I think that is what he was talking about .We are going to be condemned if we do not remember our past.

What this Bill seeks to do is exactly and I have read some of the articles by Dr Jagan in this same Parliament in 1967, when he was arguing strenuously against the National Security Act. I have it here, Mr Speaker, the National Security Miscellaneous Provisions Act. It is the Act which was passed literally to cause the establishment then, State Police or Government Police as Mr Anand Nandlall tried to make great distinction of, could come into your house, ransack it, do whatever they want literally, because we did not have the technologies of having computers, fax machines and telephones on the large scale that we have today. So basically what was supposed to be within the privacy of your home, the National Security Act was utilised as a tool to insert the policemen of the day and whosoever were the designated officers, in almost identical terms it was drafted to come to ensure that:

- They can seize;
- They can detain;
- They can take away your items on the mere suspicion

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Dr Jagan and Mrs Janet Jagan fought hard against this Act. What do we have, but a replication because of the technologies of today that we will now have the Interception of Telecommunication Bill and instead of literally, very physical, tangible manner getting into your homes and doing the ramshackling of it. We can now get into your e-mails, get into your telephone calls. What then because of the progressive nature of society in terms of technology; is that not replicating but that National Security Act which that PPP administration and all its senior leaders condemned thorough in 1967. I want to urge that yes; criminality in our society requires sometimes a heavy hand:

- No State;
- No Government;
- No Police Force;
- No Customs Authority; or any enforcement section of our society must just stand aside and not do something about it.

But when you are going to do something about it, it must not be clinical and you must not burn down the house simply to find the pig that has ran into it. This is exactly what is happening here, it is in too sweeping terms and I want you to understand over there that whatever... and quite a few of the backbenchers that I spoke to in the PPP/C sitting over there said that they themselves do not



## NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008

understand why the sweeping nature. It has to be understood that this Bill has implications beyond that which we today feel it meets. Yes, there is tremendous criminality, but we must create a legal architecture on this war against terror, because that is what some of them described it as, fine man and his gang and certain other people; they even put politicians in that category but we must do it with a certain attribute that will cause us not to erode civil liberties. That was the fight in 1992 to ensure that we have:

- An enhancement;
- A furthering; and
- A widening of the democracy

But Bills like these are simply going to cause creeping and then with accelerated term, because you get the *spunks* as we say in the street corners - you get more *spunks* ... you now want to do it even at a larger scale.

It is important that we understand this concept too that there are distinguishing circumstances when we talk about how other countries like the great democracies of the world:

- India;
- America;
- England;

## NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008

- European Union countries have Bills like these

What came out from my colleague Mr Basil Williams, you over there hid from us, but it would not have been hidden from this Parliament the oversight responsibilities that he mentioned that came from the Patriotic Act; the oversight of the Congressional Committee, you did not want to mention that. That is why although I am of the opinion that serious times demand serious measures you must curb the autocracy that can follow with oversight that Mr Williams talked about, that inheres in the Bill or the Act like in America or the European Union. We must not come here and say that simply because they have wiretapping legislation in America that is all. Give us the full picture; frankly and fully disclose all, but you come here and say yes, they have it in America. You come here and you say that they have it India, but you do not come here to tell us the full picture of it all. That is what Dr Jagan and Mrs Jagan fought for; they were even asking in that 1967 Bill: where is the oversight? Check back the Hansard, but Mr Burnham passed it and we all cursed him down; what do we have here today? ... Almost a replication of it ...

I agree that unless we have self-restraint in this Government the thesis of Mr Raphael Trotman that we are heading towards a Police State will be dominant. I am hoping that that will not happen, but the thesis will remain, because indeed we are not showing that self-restraint. Making laugh of the story as though it does not

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

matter to us, jumping around like kangaroos and saying thing that are obviously tangential to the issues that we have at hand, obviously is clearing the way to just shove this down the throats of Guyanese. That is not what we should be doing. What this also reveals is a flagrant unwillingness to seek the support, a more consultative support from members of the opposition, from members of civil society. The President went around telling the entire country that the EPA had certain bad things about it and we must have consultation. Yes, but he must not, his Government must not and his Parliamentarians ... *[Interruption: 'His Excellency.']*... His Excellency sorry; must not only seek consultation in that regard, but when it is going to be on a Bill that can instil a democratic roll back in this country.

- We must also consult with civil society;
- W must also consult with the opposition.  
*[Applause]*
- We must also consult with the many stakeholders like GT&T and Digicel as to the implications for their finances.

Is that not what the President was talking about, the implications for the finances for our infant industries, yet he has a Bill here. I want to emphasize a certain point made by Mr Basil Williams. There is serious unconstitutionality about it that same section which says that it deems it a condition for the licence is retrospective

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

penal provisions. It is now deeming it a condition so you can be penalised and you are being penalised retrospectively. Every Bill and Statute that must pass the test of constitutionality must never have penal provisions that are retrospective in application. We have that here. It is deemed a condition of the licence so if you do not do as is decreed in that provision you will be penalised.

I am urging then that we act with caution. I am urging that we do the necessary hesitation, the mature reasoning and not simply go about stating that this is something that is necessary, because of the criminality.

And I want to give another distinguishing circumstance. We stand here stating that 'Fineman' dead. The gang that was obviously was the creature of all this terrorism you are boasting that you have gotten rid of and now you come stating that yes you want this Bill. You are indicating in a Motion that will come up on Monday, the grand successes of the joint services. If you are going to grandly praise your joint services and they are doing a wonderful job, why do you want certain civil liberties to be eroded? We have to start putting partisan politics and find workable solutions. We are not finding a workable solution here.

I want to say this, also in America, we have obviously as everybody knows, you watch CNN and you watch BBC, you read the papers, what is called the circumstances that necessitated the Patriotic Act were Al-Qaida. Unless we

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

want to give the impression that in Guyana we have the equivalent of Al-Qaida; a military organisation that is stating that it is going to have the death of the USA as its main purpose; then what is that? Are we getting ludicrous simply because of the criminality? It has to be taken in the context that we do not have what it takes to start thinking in terms of such draconian measures. We have to understand... *[Noisy Interruption]* Mr Benn, you please be quiet, *[Laughter]* because I am going to use your conduct, how you breached court orders *[Applause]* and you want us to feel that this administration has personnel that are going to ensure that there is not going to be an abuse of it. You abused court orders to the extent that you now have to now pay \$3 million that is your consent judgement last week. A lot of people do not know that, but it is important to understand that very many people... *[Interruption: 'Authoritarian attitude!']* ... exactly the authoritarian attitude - the arrogance.

What we are not addressing too, Mr Speaker, is the root causes and I come back to a man that I have tremendous respect for; one of the citizen of Guyana as I said in my speech when we had to talk about Dr Jagan. Our fight must not begin with a narrative that speaks only on security issues. We have said in the AFC on the root causes, it must not only be security issues and we have to start dealing with macro economic development, profitable trade and we must also include this social development within:

## **NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- Religious movements;
- Commercial;
- The civil sector;
- The community;

to address problems of social justice and inequality. Something I must appreciate the Honourable Member Priya Manickchand for doing, but sometimes you get the impression that we must go only after legislation of this sort. The dialecticians over there will tell you that poverty is what create criminality and poverty comes largely as a result of your development programmes not being in order. They do not accept that anymore, the Marxism of them is forgotten - they forgot the working class approaches to these things; the economic determinism that I used to learn at Acabre College seems to have abandoned them. So we must understand that we have to start talking about these a lot more, so that when you have people prospering they are not going to do the things. You do all the sociological studies, why is there terrorism, why is there violence against the State? It comes back:

- People are disengaged;
- They are marginalised;
- They are discriminated; and
- They then get to violently want to overthrow the

State;

- They want to do violence against personnel within the State

So what do we have to do? We have to go back to root causes, but we do not want that. We have to stop making life difficult for the ordinary Guyanese citizen. You have taxes on fuel. Now the President is indicating that oh yes! I will do away with the taxes, but I have to see minibus drivers fares come down. It has nothing to do with it like that and the windfall is there for their coffers. All kinds of taxes and you make jobs difficult to get. It has a bearing, Mr Nandlall, on what we are talking about our societal violence and if you did not go to Acabre College to get the training like I did; I want you to go, you should go and you will hear how they talk about it. Ask... [*Interruption: 'You never went there.'*] of course, I never went there; ask Mr Henry Jeffery, he was one of the lecturers at a very famous school on all these issues. So it is important that we make mention of some of these.

I want to talk shortly before I close about what is called the content of this Bill, because it has been giving the impression that you know what; the judge here...a judge and the member of the judiciary shall be the exclusive purveyor of those warrants. I have to re-emphasize the point of Mr Basil Williams. It is not exclusively the judge warrant, we can have from outside of the judge warrant

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

and I want to make that point. It was well made by Mr Basil Williams, but I want to even emphasize ... you give the impression as if the judge when he/she gets an affidavit as to the name and the reason and all of that that he is going to deny. How could a judge make a judgement that it is not necessary, when the Police Commissioner or the Revenue Authority Commissioner or Mr Collins from the Chief of Staff comes and ask in an affidavit ... [Interruption: 'Best'] Best sorry - Gary Best. When they come with an affidavit and they put it in front of your Honour and it is *ex parte* by the way, because you are giving the impression as if the judge has to make an objective call. The judge cannot make an objective call, it is a one-sided thing. You see that person your Honour, we saw him in a certain car last night, whatever, whatever and we wish now to go and check his e-mails and check his telephone, end of story. What check and balance is that and it is a ludicrous argument to state that because a judge now deals with the issue that that is a necessary check and balance. It is not.

The other argument... you know, again I am rather mesmerised, because of its ridiculousness. Do you expect the draftsman and all those lawyers in the Attorney General's Chambers to come up with unconstitutional Bills? What is that? These lawyers in the Attorney General... and the drafts personnel there, they are instruments and tools to draft into legal language that which the Cabinet wants especially the Chief Executive



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Officer [*Applause*] and he would put it in language, so not because of the good old Mr ... (What is his name?) ... Dhurjon comes here and bring a Bill you are going to use that Honourable Mr Rohee. That is not the seriousness of the argument when you are dealing with civil liberties, the Constitution and a Statute that deals with criminality. How obtuse could we get and I am arguing that these are not strong serious arguments when you put forward that look lawyers are not going to... when Mr Burnham put up the National Security Act he had lawyers in the AG's Chambers that brought that. It was lawyers that ensured that there was a piece of legislation that affected Mirror from getting its newsprint. Do you know what the lawyers in the PNC argued those days was that same thing that you quoted from the Constitution Mr Rohee, for civil defence and for morality and that is why we are going to deny your newsprint, because although we have a freedom of expression, there are what you call exceptions to it. Are we now going to rule that way simply because today we want to pass a Bill of this nature? Again, I am saying we must not forget our history; we are going to walk straight back into it.

We have in this administration, Mr Speaker, wanting the ordinary citizen to disclose all because that is effectively this Bill; certain specified individuals that they suspect, because that is what they will have to have as the first step - suspicion. And I am hoping that it would be reasonable; suspicion, not suspicion based on political

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

grounds and I am just hoping that that police force with all the improvements that we are going to have soon will be professional enough. Not to simply act willy-nilly suspicion that is not legitimate, but this same Government although it wants citizens to disclose all, do not want to reciprocate by having the Freedom of Information Bill passed [*Applause*] so that they could start disclosing, they do not want that. And that is why I said some time ago that *control freakism* is the concept that is active, a part of this Government. Debbie you thought I had forgotten that concept? No and so you want the citizen, they must give you all, turn themselves naked before you, but you do not even want to take of your tie [*Applause*] and that is not good reciprocation. That is the kind of thing that is going to cause violence in your society. That is what is going to cause the violence, because you want to take, but you do not want to give. I am urging that in the context of all that has been said in this Parliament especially by members of the opposition that we pay heed to that which can give us the wheels for a democratic roll back. We have struggled too hard in this country to come to where we are today. Legislation like this can very well cause us to fall back and hurt ourselves rather than running forward. We must pay more maturity; we must pay more heed to our Constitution and not laugh it off.

With those few remarks, Mr Speaker, I wish to state that the AFC will not support this Bill; this is too serious an encroachment on standards all other countries citizens

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

live in. As mentioned by my learned brother Raphael Trotman; those countries that have this Bill in this very crude form as against the more refined form in USA and Europe are what:

- Uganda;
- Zimbabwe;

All the dictators of the third world - Jamaica has it with the oversight too, why are you not mentioning that Anil? And do not be brass-faced about it. So I am urging that we do not pass this Bill here, Mr Speaker. Thank you very much. *[Applause]*

**The Speaker:** Thank you Honourable Member

The Honourable Member Ms Gail Teixeira

**Ms Gail Teixeira:** Mr Speaker, as much as I would have loved to have participated in this debate and I would have dearly enjoyed responding to the speakers before me; in the interest of time and knowing it is getting late and we would like to conclude this Bill tonight, I would like to therefore withdraw my name. Thank you very much.

**The Speaker:** The Honourable Member Mr Norton. Are you withdrawing too?

**Mr Aubrey C Norton:** Mr Speaker, the original tactic of the Government was to delay to ensure that the Torture Motion did not come and since I recognise that it will not come anyhow, I will take this opportunity to address this

Bill.

Mr Speaker, I want to begin by responding to a statement made by the Honourable Member Mr Anil Nandlall and I wrote it, he said *warrants is only ... warrants ...* it should have been *are*, but he said *warrants is only for defence and national security*. Those were his exact words. Mr Speaker, when he said that it sounded good, but if one looks at the definition in the Bill for national security and this is what the Bill says:

*In this Act the interest of national security shall be construed as including, but not limited to the protection of Guyana from threats to public order or of:*

- *Espionage*
- *Sabotage*
- *Terrorism or subversion ...*

*critical here, including but not limited to ...*

In essence what this Bill does is define Defence and national interest in so loose a fashion that anything could become national interest. I say to you, Mr Nandlall that it is that looseness that is going to be used to achieve the wicked political objectives that are set [*Applause*]

Mr Speaker, there are those who will say that they are lawyers and they are looking at the law. Well I am a political scientist and I am looking at the politics. Mr

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Speaker ... *[Interruption]* You know every time I hear you Neil, I pity you. I really wish I had the days when I could have taught you at nursery school. I want to look at the politics of this situation and to look at the politics one has to understand the political context in which this law is being suggested. What is the political context? It is in the context of a political system that is not fair. It is in the context that does not treat each and everyone in the system equally and therefore the dangers that inhere in it should be identified. It has been well established that there is little or no respect for law be it in the PNC or in the Government there still is no respect. Let us assume there is no respect for law in the PNC; let us assume there is no respect for law by the Government that makes it even more important that we should guard against this, because it is in the hands of the lawless.

That is why I believe, we cannot support this Bill, my colleagues have said... *[Interruption: 'Alright, you sit down.']* You need to sit up and listen. *[Laughter]* My colleagues have said and underscore the need for oversight and accountability. It is evident that this Government does not like oversight. Let me remind this Honourable House that a certain person in the Government structure sent a letter to a Sectoral Committee saying defence matters should not be dealt with by that Committee, which suggests young Neil ... *[Interruption: 'Old Neil!' "No, young in terms of brains, not age"]* *[Laughter]* ... which suggests that there is not

an appreciation for the need for oversight.

Mr Speaker, one has to recognise that this society has been permeated and controlled by criminal elements. No one can doubt that in this society there are criminal elements linked to the drug world that can up a phone and get certain things done or not done. Therefore if you have a Bill like this, it does not follow that the law will be implemented. That is where the problem lies. If we could have been guaranteed that the law will be applied even-handedly then I would not have a problem with this Bill, but there are so many cases that all of us sat down and felt that the law will prevail and somebody will be brought to justice and that never happens. Somebody said Fidelity to me, what was that? I remember the promise - we will get to the bottom of it; we will deal with them until now; they have not been dealt with and it seems to be swept under the table. Mr Speaker, ... Allow her to sue ... we have to understand what we are dealing with. We are dealing with a Government that practices selective justice. I would have accepted a Bill like this if I could have guaranteed that when you apply to do what is said here again it would have been done across the board.

I want to illustrate selective justice. Is it not true, Mr Speaker, that when certain people die or are killed the Government says, *bring them to justice*; when another set dies they say, *it is regrettable*. You do not even hear about the police continuing to investigate to bring the perpetrators of the crime to justice. You tell me how in a

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

system of selective justice, I can agree to give a Government this kind of power knowing fully well that they will selectively choose who they bring to justice and who they do not bring to justice. It is only a fool who will do that and then if you look Mr Speaker, Mr Trotman identified the similarities between this Bill and the one in Uganda, the one in Venezuela. Well, I had an old aunt that used to say *show me your company and I will tell you who you are*. You are not prepared to be in the company of those who have oversight over this Bill. You want to be in the company of those who are authoritarian and I want to make a comment on this whole question of comparisons in ethos. Mr Speaker, I was not a Member of Parliament when the PNC was in government and I am not here disassociating myself from the PNC, but I want to make this point. Whatever was done or let me put it differently ... If today or tomorrow, I am in a new government, I will not choose the standard of this government for my actions then. *[Applause]* And that is something that we need to recognise. If life is progressing; if life is moving in a dialectical way, as my friend Clement would say, then there should be the negation of the negation, the negative should go and the positive should be propelled to the future. But what does this government do? It harps on the past; it does not use the past in a progressive developmental way and I believe that if we do not change that approach and culture, Guyana is doomed and let us not fool ourselves a lot of the young people out there believe that in here - this place

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- is a place of dinosaurs, living in a period gone and when you do that all you do is ensure that their beliefs is the correct belief.

Mr Speaker, this Bill is not brought in the context of terrorism though all the references were to legislation created for terrorism. This Bill was brought in the context of dealing with crime in Guyana and therefore we should deal with crime. I believe that this Bill is coming in large measure, because the intelligence system has failed; because those in the Military Criminal Investigation Department (MCID) were torturing people when they should collect information, and I say that in here and I have information to prove that they were the torturers ...

Mr Speaker, may I point out that if you want to deal with intelligence start at the correct level. First, you need to establish the confidence of the people in communities, in the Police Force and in the Guyana Defence Force. That confidence will never come if you go with brute force and ignorance, but that is seemingly the only thing that is known. I am not suggesting that policemen should be priest and not fight crime. I am suggesting that if you do some of the things you do to innocent people in the communities, you can never get their confidence much less intelligence. May I point out, Honourable Minister, that it is well established in research that ninety percent of the crime solved are solved with the support of the community not with wire-tapping and listening to nobody



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

phone. And so it is important that even before you think about legislation like this, put the intelligence infrastructure (to use your word) in order, and to put that in order you will need to obviate from your speech, Minister, something you said a while back that we are not looking at forensic now. Forensic science has to be the basis of proper intelligence and policing in Guyana. Which murder will you solve by tapping that young man's phone? Which murder will you solve by looking at my e-mail? You stand a better chance of solving murders if you have forensic skills at your disposal and may I direct you, Mr Speaker, there is a lot of unemployed young bright people coming out of the University with science degrees. It might be useful to develop a scheme in the Police Force, where they can go and get specialised scientific training to help with crime, pay them a good salary and they will come back and help us. Let us not fool ourselves, you could put a spy camera in every house and you would not, if you do not do the basics in terms of dealing with crime. So, Mr Speaker, let us not fool ourselves. I want to ask you, Minister, and I hope you would answer when you come to speak, how many crimes have been committed that have been aided by cell phone that cause you to decide that cell phone is critical to crime. And when you actually got a cell phone for Lindo Creek, the public had to urge you to look at it. You got a cell phone in your hand; you got it to investigate, the pressure to go and get the information from the telephone company and put it in the public view before

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

the government asked, you suddenly gone to privacy; your choice of words is very convenient.

Mr Speaker, we need to understand that merely removing people's rights, tapping people's phones; intercepting their e-mails is but a small, if not infinitesimal, part of fighting crime and probably one of the best ways to fight crime is for those who are in charge of the system to set a good example. I notice my friend Kellawan Lall looks to the computer with intensity, but I want to make the point, leadership by government is important for ensuring that there is respect for authority and so do not believe that you will be able to tell people to do as I say, but not as I do. And so your first task is to set the example, not to protect those who perform illegality and select those who you will to prison. There has to be a comprehensive approach to crime in which once you violate the law, the law deals with you. That is our reality. If that does not happen, all this talk about fighting crime will go to waste. Mr Speaker, I want to suggest that the attitude of the Government to crime informs how crime is responded to. I could have said without fear of successful contradiction that Donna Herod, Waddell, Tenisha Morgan ... those crimes will never be looked at. The first time it is looked at, Minister ... I know you like vodka, I will buy you a double ten and we will sit down and drink vodka, because ... *[Interruption: 'Is Tenisha dead?']* as a doctor you might have known how many are dead ... Well feel free ... but let me make the point, at least she was not

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

raped. *[Laughter]* Mr Speaker, I want to make the point that when you are dealing with crime, you have to deal with it across the board.

I want to now turn to the situation on what created this Bill, I want to turn to my friend Anil, the Honourable Member. You know, he did his analysis and started at the jail break, but I recall that a policeman went and killed Shaka Blair and nothing happened to him long before the jail break, but again *[Interruption: 'Shaka Blair was killed after the jail break.']* ... but you should know, you planned it *[Laughter]* ... but the point I am making is that even in the analysis of what led to crime, we are selective. Crime started in Guyana at the jail break; unfortunately if I am to do the analysis, I will say the type of crime started just after this government came to power when Monica Reece was thrown out of a vehicle back and until now nothing happens. So I am saying to you, we cannot selectively choose the point at which we start looking at crime, we have to look at all crimes in their totality, understand their cause and I want to raise one issue. Mr Speaker, I have heard in this House the Honourable Member Ms Teixeira ... leaving ... but I am about to quote her. Mr Speaker, there are some ... You would not have been spoilt salt beef in the shop, you would not have made it; you would have been out of the barrel ... *[Laughter]*

Mr Speaker, every time it is raised in this House that to deal with crime you have to deal with the socio-economic

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

conditions. The government fought with it and tried to suggest no; they say one thing at home and another thing overseas. When the Hon Andrea Mavromattes of the Committee against Torture asked about this issue in Guyana, this is what the Adviser on Government said:

*The delegation of Guyana said that there was no doubt that there was a connection between socio-economic issues and crime. While a number of measures are being taken to improve the situation and to build safe neighbourhood, there were still persistent cases of violence in Guyana.*

One thing for home and another thing for abroad ...

Mr Speaker, I raised this point to establish that you could bring whatever draconian legislation you want, if you do not deal with the root causes of crime, at the socio-economic level, people would not be able to buy phone for you to tap. *[Laughter]* So I believe, this is not an attempt to deal with crime and I come to the main point I want to make here; if it was an attempt to deal with crime:

- we would have seen measures to deal with the socio-economic situation;
- we would have seen measures to develop the forensic and scientific capability of the police;

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

- we would have seen measures to ensure that you have proper intelligence collection and assessment;

but no, this is another tool that is being placed in the hands of the Police State to repress people and do not tell me that you *a'int gun* use it for political repression, because the evidence is suggesting that. [*Interruption: 'The evidence.'*] Well, I will have difficulty saying that, but I prefer *evidence*. The evidence suggested that. And so it is obvious to me that this is a Bill about politics and power and what you are seeking to do. You are seeking to give to the State enough power to ensure that you can exercise control over people and institutions and ensure you have a tap on the levers of power and do not tell me that it would not be misused, because it is well established that human beings given power without checks and balances, they will abuse it.

Mr Speaker, no one wants to go to bed with the nightmare of what they would have discussed with probably the neighbour ... I can give you evidence of security men telling me, they know what I said on a phone, so do not go on like if ... this Bill is only formalising what is already existed. [*Applause*] The Minister boasted that he knows everybody business, you forget ... Raphael I know your date of birth, where you live, et cetera, and it is an indication that the pangs of control like an octopus is waiting to consume us.

## NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008

Mr Speaker, let us recognise that the laws we make must be laws that we can all live with whether we are on this side of the floor or that side of the floor. There is a tendency to make laws while you are in power to suite power. At the rate you are going, it will turn around to haunt you, because it does not look like it is going to last longer in power and so I am cautioning you that it is not a good thing ... You will know that, young Manickchand, you need laws that are aimed at protection and the promotion of the interest of the people of Guyana; you do not need laws that give you power for power sake and for political purposes.

I want to close by saying that we are at a crucial stage in the history of history of this country. When I come to speak about torture, I will say this ... but I will say it now, it is always a dangerous thing for in response to criminality, we become criminals ourselves and I believe that whatever we do must be done within the confines of the law and that he who is a criminal is a function of the society and should be dealt with by the society. I do believe that, but I do not believe in abuse; I do not believe in selective justice and I do not believe that we should support a Bill that seeks to give power that can be used against this society. It is for this reason, Mr Speaker, that the People's National Congress Reform-One Guyana will not support this Bill. I thank you. *[Applause]*

**21:55H**

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**  
**SUSPENSION OF STANDING ORDER NO. 10 (1)**

**Hon Samuel AA Hinds:** Mr Speaker, in accordance with Standing Order No. 10 (3), I beg to move that Standing Order 10 (1) be suspended to allow the Assembly to conclude the debate on the Interception of Communications Bill No. 19/2008.

**The Chairman:** The Honourable Member Mr Rohee

**Mr Clement J Rohee:** Mr Speaker, we have had a long and interesting debate on this Bill, I would simply wish to make just a few quick points.

I think a lot of political issues have been introduced unnecessarily in the debate; too much politicising of the Bill has taken place; a lot of extraneous issues; a lot of irrelevancies have been introduced in the debate on this Bill, which I think was totally unnecessary.

Secondly, I would like to say that had we stuck to the Bill itself, I think that many of us would probably have been in the comfort of our homes by now.

Mr Speaker, a lot of hypotheses and hypothetical issues were introduced into the debate as well. What if abstract notions like this were to happen? What if that were to happen or that this would happen and so forth? We cannot engage in hypothetical postulations when we are speaking about a concrete matter that is before us.

Thirdly, a lot of misrepresentations in respect of the provisos in the Bill *vis-à-vis* the Constitution and I just

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

want to make one brief reference. The Honourable Member Mr Corbin said that the Police are willy-nilly running into villages and picking up young people and violating the Constitution and do forth. Mr Speaker, I would like to quote from the Police Act and Section 17 of the Act states;

*It shall be lawful for any Member of the Force to arrest without warrant any person whom such Member of the Force finds disturbing the public peace or any person whom he has good cause to suspect of having committed or being about to commit any felony , misdemeanour or breach of the peace; any person whom he finds between the hours of eight o'clock in the evening and five o'clock in the morning lying or loitering in a highway, yard or other place and not able to give a satisfactory account ... [Noisy Interruption]*

**The Speaker:** Honourable Members, please, please, please ...

**Hon Clement J Rohee:** Mr Speaker, the Constitution gives the police the authority to act in a lawful way ...  
*[Noisy Interruption]*

**The Speaker:** Honourable Members, if we do not have some peace, I will have to suspend the House.



**Mr Aubrey C Norton:** Do that.

**The Speaker:** Mr Norton, please.

**Hon Clement J Rohee:** It is not that the Police are acting outside of the law and in the Constitution; it is in itself a great misrepresentation of the facts.

**Hon Robert HO Corbin:** On a point of Order, Sir. The Honourable Member grossly misrepresents what I said and the Section of the law that he is quoting is totally out of context. My statement was that even though the law provides that only in certain circumstances, the police can invade homes with warrants, they use exceptions, they violate the law and they pick up young men throughout these villages including Agricola, Bare Root every week, take them to the police station and lock them up all weekend and release them on Monday without charge. I do not know what is this suspicion has to do with it unless the Minister is saying that all these young men who have been picked up in these villages are criminals, suspected of criminal offences.

**The Speaker:** Thank you, Mr Corbin. *[Noisy Interruption]*

Honourable Members, please let us have some peace. *[Noisy Interruption]*

Honourable Members, we will suspend for ten minutes please.

NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008  
20:00H - SUSPENSION OF SITTING

20:10 - RESUMPTION OF SITTING

Yes, Mr Corbin

**Mr Robert CHO Corbin:** Mr Speaker, I do wish to apologise for my earlier outburst in the House a few moments ago and to assure that it was only after the strongest of provocation, where it seems that the Minister of Home Affairs was justifying what I consider very irresponsible and unjustifiable action on the part of the police and this it was no intention to discredit this House as I said to you in Chambers and I wish to apologise.

**The Speaker:** Thank you Mr Corbin.

The Honourable Member Mr Rohee

20:15H

*[At this stage all Members of the PNCR-IG who were present except for Mr Aubrey Norton walked out of the Chamber]*

**Hon Clement J Rohee:** Mr Speaker, the actions of the Police, I believe, are reflected in the statement that I made earlier and I stand by the law. Those who claim that the Bill that we have before us has no smell of CARICOM, it is not too precise a statement, because the Bill that we have first of all was based on the decision that was taken on CARICOM Heads of Government for Member States

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

if the Community to pursue with a view to drafting and eventually bringing it before the respective Houses of Assembly.

In addition, to that, Mr Speaker, the Bill that we have before us is basically a proto-type of the Jamaica Bill, which has actually been passed in the National Assembly of Jamaica and is basically being fully implemented as far as I am aware.

In addition to that as far as I am aware, there is no oversight body in respect of the Jamaica Interception law.

I am further advised that the OECS countries are now completing their legislation in keeping with the decision of the Heads of Government.

Mr Speaker, I would not want to venture into answering so many of political arguments that have been raised, simply to say that I find it difficult to reconcile what maybe happening between the public and the police station and a newspaper with what this law and with what this draft Bill is all about and I have great difficulty in understanding how such a complex Bill and a Bill with so many safeguards could be reduced to what was described as leaks that appear between police stations, members of the public and daily newspapers. I think, it is a much more complex issue than that.

Mr Speaker, in so far as the private telephone companies are concerned, it is not correct also to say that this is an

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

imposition on these private telephone companies and that the technological ramifications and obligations of these companies have not been taken fully into consideration. I think, I stated from the very outset that the partnership between the Government and the telephone Companies prior to the formulation of this Bill was one bolded well and I want to insist that had it not been for their support, I doubt whether we would have been in a position to have this Bill before us this evening.

Mr Speaker, I do not have a crystal ball, but it seems as though some of the Members of this Honourable House have a crystal ball to be able to predict that this Bill when it becomes law will be abused. I think that as a developing country, we have to take steps imaginative and creative, steps based on the experiences of the jurisprudence in other countries, based on decisions on the Heads of Governments when they met at a collective level and see how best we can put the necessary safeguards in place in order to ensure that what we pass in this Honourable House is implemented in good faith and with the full partnership of those who will be involved in its implementation both from the private and the public sectors.

With those words, Mr Speaker, I would like to ask that this Bill be read a Second time.

**Question put and agreed to**

**Bill read a Second time.**

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008  
IN COMMITTEE**

**The Chairman:** Honourable Member, there are some amendments here, but I do not know what they are.

**Hon Clement J Rohee:** There are some amendments here.

**The Chairman:** You have to tell me what the amendments are.

**Hon Clement J Rohee:** Yes

**The Chairman:** All they say are how amended ... Let me put the Clause first.

**Clause 1**

**Question proposed**

**Hon Clement J Rohee:** Mr Chairman, I would like to substitute the Short Title and Commencement, which appears on the Bill with what is the proposed amendment which reads this Act may be cited as the Interception of Communications Act 2008.

Secondly, this Act comes with force on such day or days as the Minister may by order appoint.

Thirdly, an order may appoint different days for different telecommunication services, different provisions or different purposes of the same provision.

Amendments -

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

Deletion of Clause 1 and substitution of the following as the new Clause 1:

**Clause 1**

This Act may be cited as the Interception of Communications Act 2008.

- (i) This Act comes with force on such day or days as the Minister may by order appoint.
- (ii) An Order may appoint different days for different telecommunication services, different provisions or different purposals of the same provision.

**Question put and agreed to**

**Clause 1, as amended, agreed to and ordered to stand part of the Bill**

**Clause 2**

**Proposed**

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

**Hon Clement J Rohee:** Mr Chairman, again I would like to amend Subsection 2 (1) (a). This is the section addressing definition of *intercept* to have it substituted with the following words:

- (a) *monitoring and recording of transmission conveyed by fibre optic cable or any other form of wire line, by wireless telegraphy, voice over Internet protocol, Internet, satellite, and all other form of electromagnetic or electrochemical communication to or from apparatus comprising the system.*

Question -

That Section 2 be deleted

**Put and agreed to**

Amendment -

Section 2 (1) the definition of intercept paragraph (a) substitute the following:

- (a) *monitoring and recording of transmission conveyed by fibre optic cable or any other form of wire line, by wireless telegraphy, voice over internet protocol, Internet, satellite,*

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

*and all other forms of electromagnetic or electrochemical communication to or from apparatus comprising the system.*

**Put and agreed to**

**Amendment carried**

**Subsection 2 (1) (b)**

**Hon Clement J Rohee:** Mr Chairman, I wish to propose the following amendments:

Question -

That paragraph 1 (b) be deleted

**Put and agreed to.**

Amendments -

Section 2 (1) (b) for the word *monitoring* substitute the words *monitoring and recording* and for the words *the system* substitute the words *the telecommunication system*.

In the fourth line delete the words *while being transmitted*.



**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

The definition of *key* - for the words *private communication* substitute the words  
*private telecommunication.*

The definition of *telecommunication system*  
- before the word *system* insert the words  
*private or public.*

The definition of *public telecommunication system*

*Paragraph (b)* - for the words  
*telephone system* substitute the words  
*telephone network*

**Put and agreed to**

**Amendments carried**

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

**Clause 3**

**Proposed, put and agreed to and ordered to stand part of the Bill as printed**

**Clause 4**

**Proposed**

**Hon Clement J Rohee:** Mr Chairman, I wish to move the amendments:

Clause 4 (1) - for the words *exparte to* substitute the words *exparte to a*;

Clause 4 (1) (a) -- for the word *intercept* substitute the words *intercept and record*;

Clause 4 (1) (b) - for the word *manner* substitute the words *form and manner*.

**Question put and agreed.**

**Amendments carried**

**Clause 4, as amended, put and agreed to and ordered to stand part of the Bill.**

**Clauses 5 to 9**

**Proposed, put and agreed to and ordered to stand part of the Bill as printed.**

**Clause 10**

**Proposed**

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

**Hon Clement J Rohee:** Mr Chairman, I wish to move the following amendment:

Amendment -

Insert immediately after subsection (4) the following as subsection (5)

- (5) The evidence given by a technical expert in a court of law on behalf of a person who provides a telecommunication service shall be heard in camera to protect the identity of the technical expert.

**Put and agreed to**

**Amendment carried**

**Clause 10, as amended, put and agreed to and ordered to stand part of the Bill**

**Clauses 11 to 19**

**Proposed, put and agreed to and ordered to stand part of the Bill as printed.**

**Schedule**

**Proposed**

**NATIONAL ASSEMBLY DEBATES 17 OCTOBER 2008**

**Hon Clement J Rohee:** Mr Chairman, I wish to move the following amendment:

Amendment -

Insert under offence at number two the following offences as numbers 2A and 2B -

2A Terrorism

2B Trafficking in persons

Question put and agreed to

**Amendment carried**

**The Schedule, as amended, put and agreed to and ordered to stand part of the Bill.**

**Assembly Resumed**

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

**The Speaker:** Honourable Members, this brings us to the end of our business for today.

The Honourable Prime Minister

**Hon Samuel AA Hinds:** Mr Speaker, I move that the Assembly stands adjourned to a date to be fixed.

*Adjourned Accordingly At 10:37 H*