THE

PARLIAMENTARY DEBATES

OFFICIAL REPORT

IN THE FIRST SESSION OF THE SIXTH PARLIAMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO WHICH OPENED ON JANUARY 12, 2001

SESSION 2001 **VOLUME 2**

SENATE

Tuesday, June 05, 2001

The Senate met at 10.30 a.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

CONDOLENCES

(MR. JOHN REGINALD FITZROY "ROY" RICHARDSON)

Mr. President: Hon. Senators, this morning we pay tribute to the late Fitzroy Richardson, while mourning his death which occurred under the most horrifying and brutal circumstances either late on Friday night or early on Saturday morning. The late "Roy", as he was affectionately called, first entered Parliament in 1966 and served as Deputy Speaker of the House of Representatives during that entire term.

In 1971, he again entered Parliament on a People's National Movement ticket, but soon thereafter, separated from the PNM, crossed the floor, and subsequently became Leader of the Opposition. He then proceeded to make his appointments to the Senate of certain Members who, I think in his view, had the potential of becoming politicians of some magnitude. History will judge him on that score.

He leaves to mourn his loss two children: a son and a daughter, his wife having predeceased him a few years earlier.

On behalf of Members of the Senate, I convey to his family our very sincere condolences and pray God's blessings that his soul may rest in eternal peace. The Clerk of the Senate has been requested to send an appropriate letter of condolence to the bereaved family.

Senators wishing to pay tribute may do so now.

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, on behalf of the Members of this honourable Senate, I

wish to convey our sincere condolences to the family of the late Roy Richardson who met his untimely death on Saturday, June 02, 2001.

We remember Mr. Richardson for his direct service to Government having served as a Member of Parliament in 1971. He was appointed Parliamentary Secretary in the Ministry of Finance under the hon. George Chambers. One year later in 1972, Mr. Richardson created history when he crossed the floor, resigning from the PNM and declaring himself in opposition to the government. He was later appointed as Leader of the Opposition with responsibility then for the appointment of Opposition Senators.

A lawyer by profession, Mr. Richardson continued in active service to the people of Point Fortin as he maintained his offices in the borough. He was well known for his dedication and commitment, having also served as a second vice-president of the Point Fortin Chamber of Industry and Commerce. He will be sadly missed by all, especially those who were fortunate enough to benefit directly from his gentility and experience. He was described by those who knew him as a gentleman who was honest in all his dealings and always striving for excellence.

We record our appreciation to Mr. Richardson for his service to this honourable Senate. Our prayers are extended to his bereaved son and daughter and the other members of his family on this very sad occasion. May he rest in peace.

Sen. Joan Yuille-Williams: Mr. President, on behalf of the Senators on the Opposition Benches, I wish to extend our sincerest condolences to the family of the late Roy Richardson.

Mr. President, it is always painful to stand in this honourable Senate and pay tribute to someone who has serve our country, especially when such an individual was a politician who sat in this Chamber representing the people, but it is extremely difficult to reflect on the life and contribution of Mr. J.R.F. Richardson, affectionately known as "Ray", who died in a cruel way. In fact, I dare to say he was taken away from us. His death came as a shock to us in the People's National Movement and indeed the entire nation.

As we have heard, he was a former Member of Parliament for Point Fortin. Mr. Richardson won the seat on a PNM ticket in 1966 replacing Mr. C. K. Johnson and served as Deputy Speaker. He retained his place in 1971 when the PNM captured the 36 seats in the House of Representatives. Following the general election, he served as Parliamentary Secretary up to 1972 and later became Leader of the Opposition. It was during that time as the lone Opposition Member and Leader of the Opposition, he appointed four Senators in 1972, and one is the current Prime Minister of Trinidad and Tobago.

Mr. President, Mr. Richardson can be described as a bastion of democracy at a very critical time. When he left active politics, he continued his law practice in Point Fortin until his untimely death last Saturday at his Clifton Hill home. Although he was not active in the political arena, he continued to assist citizens whenever necessary.

He has left two children: a son and a daughter; and to them we extend our sincerest condolences. May he rest in peace.

Sen. Dr. Eastlyn McKenzie: Mr. President, I am not very familiar with the former hon. Member, but from what I have read and what I have heard, especially about his political career, I would say that his life reminds me of the film *An Officer and a Gentleman,* and when both could not work together, the gentleman left the office and went on the other side. Today, Senators on this Bench would like to offer our sincerest condolences to the family of this very lovable gentleman as I have heard.

Mr. President, it is sad to know that just last week, Sen. Martin Daly talked about the barbarism in the country and in less than a week we are here mourning the loss of someone under those barbaric circumstances. We hope, Sir, that his death and his life would send a message to all of us, young and old, about where we are going as a country.

On behalf of the Senators on this Bench, we offer to his relatives and his friends deep condolences. May his soul rest in peace.

Mr. President: As a mark of respect, I ask everyone to stand for a minute's silence please.

The Senate stood.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have received the following communication from His Excellency, the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

Appointment of a Temporary Senator

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ Arthur N. R. Robinson
President.

TO: MR. HOWARD CHIN LEE

WHEREAS Senator Danny Montano is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, HOWARD CHIN LEE, to be temporarily a member of the Senate, with effect from 29th May, 2001 and continuing during the absence from Trinidad and Tobago of the said Senator Danny Montano.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 24th day of May, 2001."

OATH OF ALLEGIANCE

Sen. Howard Chin Lee took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Annual Audited Financial Statements of Taurus Services Limited for the financial year ended September 30, 2000. [*The Minister of Finance (Sen. The Hon. Gerald Yetming)*]

2. The Privileges and Immunities (Diplomatic, Consular and International Organisations) Order, 2001. [*The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette)*]

ARRANGEMENT OF BUSINESS

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, I seek leave of the Senate to deal with Bills Second Reading instead of Motions at this stage of the proceedings.

Agreed to.

PLANNING AND DEVELOPMENT OF LAND BILL

[Second Day]

Order read for resuming adjourned debate on question [May 22, 2001]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: Hon. Senators, the debate on the Bill which was in progress when the Senate was adjourned on Tuesday, May 22, 2001 will be resumed.

So far, three Senators have contributed, not including Minister Humphrey who made his presentation. The Senators who spoke were: Sen. Morean, Sen. Prof. Kenny and Sen. Dr. Jones-Kernahan.

10.45 a.m.

Sen. Christine Kangaloo: Mr. President, in the Explanatory Notes to this Bill, it is set out that the purpose of this Bill is to reform the Town and Country Planning laws of Trinidad and Tobago by establishing a system of planning which is designed to secure, among other things, simplicity. May I say at the outset that simplicity is not what comes to mind when one is dealing with this piece of legislation.

The first point which needs to be made is that this Bill is seeking to replace the Town and Country Planning Act. Simplicity does not come to mind when one sees that the Town and Country Planning Act has some 40 sections; and this Bill that is aimed at simplicity has 107 clauses. Simplicity does not come to mind when one sees that the interpretation section of this Bill is 12 pages long. Simplicity does not come to mind when one sees and reads about the criss-crossing and the delegation of authority and powers to the innumerable subcommittees and standing committees. To make my point, I just need to go through the particular clauses.

Clause 10(1) says:

> "The Commission may appoint a committee for any of the purposes of this Act, which the Commission thinks would be better regulated and managed…"

Subclause (2) says:

> "A committee appointed under this section may include in its membership persons who are not members of the Commission but whose appointment to such committee is approved by the Minister."

Clause 11 sets out that the commission shall appoint standing committees and may delegate to such committees the functions that are set out in that particular clause. It further says that the standing committee appointed under subclause (1)(c) would be called the development control committee.

Clause 12(2) says that the commission shall appoint the development control committee.

Clause 13(1) says that the commission may, with the approval of the Minister delegate its functions, as the commission considers appropriate.

Clause 13(2) says:

"Delegation of any authority or function under this section does not prevent exercise by the Commission of such powers or functions so delegated."

Clause 15 deals with the devolution of certain functions to local authorities, and these authorities will be called the "planning authority". Then we have a local authority that has been appointed a "planning authority" may delegate all or any of its functions to a committee or committees; a subcommittee or an officer of the authority.

How is that for simplicity, Mr. President? Has anyone kept track of how many committees have been set up, and we have only reached clause 17? Is this not, therefore, an example of bureaucracy at its finest? Simplicity does not come to mind when you read about a proposed development plan, a provisional development plan and finally, the approved development plan. We have the outline development approval; the provisional development completion notice and then a development completion notice. If I may just sum up this point. If the Town and Country Planning Act is a confusing piece of legislation then this Bill is even more confusing, with its bureaucratic undergrowth of committees, subcommittees and standing committees; its delegation of powers, and with its various approvals and notices.

Another cause for concern and confusion is the power of the Minister. We look at clause 7(2) that establishes:

"In the performance of its functions and in the exercise of its powers, the Commission shall act in accordance with any special or general directions given by the Minister."

Why, having gone through the exercise of setting up a commission, of setting out its functions and duties, should we have this clause? Why does this clause not say that the commission should act in accordance with special or general directions given by the Minister on matters of policy? Why is the control still being vested in the Minister?

We move on to clause 23. This clause is receiving the most attention. Senators Kenny and Morean have already discussed the absolute power given to the Minister in this clause. Sen. Prof. Kenny spoke about the absurdity of land being designated for compulsory acquisition and not being acquired for five years, then the persons having to take steps to have the lands acquired or have the designation rescinded.

Once you start talking about compulsory acquisition of private lands by the State, people get concerned, but when you further complicate the issue with a clause such as 23(5) which says that:

> "any designated land in an operative development plan may be acquired as if the acquisition is for a public purpose."

People get paranoid. What do these words mean? Should not the public purpose be defined?

All of a sudden, people are talking about the Toco Ferry project; you are hearing about the Chaguaramas lands. People tend to be very suspicious of their governments; and I must say that in our country, at this current time, people are very suspicious of this Government. Just look at the concerns being expressed by the environmentalist groups; just look at the concerns being expressed by the residents of Sea Lots. People are afraid of this type of legislation.

In addition, when I speak of the Sea Lots residents and about their worry about being displaced, I do not think that the hon. Minister's comments about their being given new three-level houses will allay their fears, especially if one reads about the plight of the Oropune residents.

I read in a report recently that some of the Oropune residents were given keys to their new houses but along with those keys they were given a letter advising them not to use or flush their toilets. So when you have legislation like this it is not going to be very easy to allay the fears of residents such as those in Sea Lots. So we are calling on the hon. Minister to clearly define those words so that there can be a better understanding of the clause. We feel that the people for whom this legislation is being put in motion deserve a proper explanation.

Along the lines of the powers of the Minister, we move to clause 48 which sets out that where there are certain issues arising, the Minister may give directions requiring that the application for planning permission be referred to him instead of being dealt with by the commission or the planning authority.

10.55 a.m.

Why, again, have we set up this commission at great cost? We have gone through the details as to the functions and the duties of the commission: Why are we still reposing in the Minister this control? The matters that are raised, really, do not create any sort of need for the Minister to be intervening.

What are issues of more than local importance? What are the significant architectural or urban design issues which will give rise to substantial regional or

national controversy? Really, you set up the commission, you must believe in the commission, and you must give your commission the general policy directions and leave the commission to do what it has been set up to do.

The absurdity of it is also shown in the section where it is seen that the Minister can delegate to another person the authority under this section, so that that person can deal with the arguments from the members of the commission or from the applicant. Why, again? Why would the Minister step in, in this situation because these are issues that are arising, and then give someone else the responsibility of handling the applications?

May I say that this clause, once again, does not give comfort to those who are distrustful of governments and of this Government in particular. The dictatorial tone of the clause is further emphasized by clause 48(7) which says:

> "The decision of the Minister on any application referred to him under this section is final."

So I ask that we read clause 4(3) in the context of clause 48(7). Clause 4(3) sets out that:

> "Nothing in this section shall be construed as imposing upon the Minister, directly or indirectly, any form of duty or liability enforceable by proceedings before any Court."

So, clearly, you have the Minister arrogating unto himself absolute power, but yet by clause 4(3), there is no liability imposed on the Minister. So what we have here is a typical situation in this country, with the Government wanting power without responsibility and accountability.

The next point I wish to make in showing that there is no simplicity in the approach of this Bill, is with respect to the environmental issues. Clearly, there is an overlap between this Bill and the Environmental Management Act. While there is discussion in clause 36(7) about a memorandum of understanding between the Environmental Management Authority (EMA) and the Commission, there is no clear indication as to which body is dominant. Again, why go through the time and expense of setting up the EMA and then having its powers diluted by another piece of legislation?

Let us look at clause 35(1)(f). This clause seems to suggest that the commission can override the decision of the Environmental Management Authority with respect to the issue of environmental clearance certificates. Now, let us look at clause 75. This clause has already been described as bizarre by Sen. Kenny. No matter how this clause is read, it leads us to see that the jurisdiction is

being taken away from the EMA in respect of the issuing of certificates of environmental clearance. [*Desk thumping*]

This is really a ludicrous situation and it must be changed. It is indeed a recipe for chaos and misunderstandings in this area of planning. The stakeholders themselves will be confused as to which body they should approach for the relevant approvals. We have recently seen at no lesser level than a state enterprise, the sad consequences of a chief executive officer taking directions from two ministers on the same subject matter. [*Desk thumping*]

In dealing with the environmental issues and with the environment, the Environmental Management Authority should be left alone. The hon. Minister, in his address, spoke about development in terms of the tallest building in the entire Caribbean and a yacht basin, but these things come at a cost and the cost, unfortunately, is sometimes that of the environment. We cannot afford any more for that cost to be that of the environment. Recently we were faced with the spectacle of the mangrove being cleared to make way for a cinema complex. [*Desk thumping*] Do you know what the mangrove was called? A pimple on the face.

So the simple point here is to leave the Environmental Management Authority alone. [*Desk thumping*] You see, the EMA can also do without these legislative games, as to who has the ball. They have enough to worry about in getting their own act together. Recently we saw an instance of one official of the Authority giving an award and another official taking it back. So leave the Environmental Management Authority to concentrate on what they have to do.

In concluding, I want to re-emphasize that there is no simplicity being introduced here in planning development—absolutely none. The fact of the matter is that you are seeing more delegation with all these different confusing committees. We see, as well, with respect to enforcement notices, we have been given no indication as to why the former Act was not working: why the Town and Country Planning Act was not working. Yet we see enforcement notices in this Act, which really are almost identical to those under the former Act, except in terms of the monetary fines that will have to be paid. If that is the case, then perhaps we should have gone to that Act and sought to amend it, as opposed to introducing this new very burdensome piece of legislation.

There are also some very grey areas in the legislation. They may have arisen because of the slack drafting in the legislation. One of those areas is the definition

of "subdivision" that obtains at page 28 of the Bill. I would be very happy for someone to enlighten me on this particular definition. It states:

> "'subdivision' means the division of any land (other than buildings) held under one ownership into two or more parcels…
>
> but is deemed not to include—"

And the particular part that is confusing me is this:

> "(e) granting of a lease the term of which, together with any period contemplated by any option or right of renewal, does not exceed three years in aggregate;"

Those two negatives had the effect of just confusing the issue, and I do not know if this is even something that should be included under the definition of "subdivision". The definition of "development" at page 58 of the Bill reads:

> "(a) the act of—
>
> (i) carrying out building, engineering, mining or other operations…"

But the following Act's operations are not deemed to be development of land. It speaks of:

> "(a) the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building, do not materially affect the external appearance of the building, and do not involve a material change of use;"

But later on in the Bill, I am led to believe that if I choose to repaint my house in a completely different colour, this may fall within the definition of "development". Therefore, I think that all of this needs to be clarified before we continue with this Bill.

11.05 a.m.

In concluding, there has been absolutely no simplicity. It has not been arrived at in this Bill. The Bill is confusing. The powers given to the Minister will lead to chaos. The overriding of the overlap of the jurisdiction of the Environmental Management Authority and the commission in this particular Bill could be a recipe for disaster. In its current form, the Bill should not and cannot be supported. As is suggested, I restate the position of Sen. Morean when we ask that this Bill go back to a select committee.

Thank you.

Sen. Martin Daly: Mr. President, may I say at the outset, that no one can be other than pleased that another, albeit belated, attempt is being made to reintroduce planning into the development of land in the country. We have a completely lawless situation. The Minister has told us that 70 per cent of the buildings in Port of Spain are illegal in some form or fashion. Clearly, as we strive to reach some level of civilization, one of the things to which we have to return, is a proper system of regulation in the development of the land. To that extent, this Bill has to be welcome. However, there are some quite nauseating provisions and we have to deal with those. I do not think that any of us concerned about the nauseating provisions would be deterred by the fact that either foreign or local experts, real or *soi-disant,* have been involved in the preparation of this legislation. You know the strength of our feelings about the use of so-called experts, whether from here or abroad. It would take me a little while to show one of the policy quarrels I have with this Bill and how the particular sections offend them. I will try to do it as quickly as I can.

When I am pessimistic, I hate to be right. I would not refer again to the general barbarism in the country. It is relevant to this insofar as the disorderly development of land in the country, as part of our lawless state, is concerned. I would not make any comment other than that.

The other thing I hate to be right about is that there are people who are appointed by governments who are flunkies. I understand that my use of the word "flunky" was upsetting to at least one of my colleagues. How else can we describe the withdrawal of an award to a group of persons who are very vocal in their lobbying about this Bill? What is so flunkyish about the withdrawal of this award is that the letter withdrawing the award does not contain any reasons. Here again, there would be Members from the Government's side talking about transparency. That is a word we have imported from abroad. We have all these new appeal procedures. It does not matter what you write into the law, unless people mean or commit themselves to transparency, it will not happen. I will tie all this to those provisions in this Bill with which I have much difficulty.

We are going to put all this power in these planning authorities. In some cases there is a right of appeal and in others there is not. More importantly—I digress here although I will state it in a more formal way. One of the problems I have with this Bill is its indirect conflict with the Environmental Management Act. I will explain why in due course.

This Act purports to put the agencies under this Bill and the Environmental Management Act into harmony by their being able to negotiate various

memoranda of understanding and work together. Maybe that is achievable in whatever foreign land from which we copy those provisions. The realities of an immature society are quite different. How in heaven's name would the managing director of the EMA or the chairman be able to negotiate anything with authority and conviction, when a simple thing like an award to a non-governmental organization is revoked by a letter without reason? They have no moral authority.

In other words, they are flunkies. A flunky body cannot negotiate with another body, any memorandum of understanding that would do anything to secure the environment. With one stroke of the pen, all the sections of this Act that refer to the negotiation of memoranda of understanding are shown to be quite hollow and transparent, in the proper sense of the word. We can see through them.

By a letter dated May 22, the Environmental Management Authority wrote to the president of a non-governmental organization, stating: "I am pleased to inform you that you have been awarded a certain award." I would not name the organization. It has already been in the media. I am not naming the organization because I do not really care what organization. What I care about is that this could happen in an enlightened society. This Authority that we have set up by statute is supposed to have the credibility to negotiate memoranda of understanding with another agency. However, its managing director informs a non-governmental organization that they have received an award for their outstanding contribution over the years in the protection and conservation of the environment. They go on with all the hype and when they would present it.

Actually, I think it was today, in the Caroni Bird Sanctuary. It is so polluted that the Scarlet Ibises are leaving us. Is that not a sign of our barbarity, that a bird which we regard as a national bird is leaving because we have polluted its natural habitat, to the point where it either has to turn white because it cannot get the nutrients to keep its feathers pink, or it has to leave altogether? It really speaks volumes. These are little signs that we get from above that should tell our politicians a thing or two.

On June 01, the chairman of the same body wrote to the president whose organization got the award, stating:

"It is with regret I inform you the award will not be conferred."

They specify the time. The important thing is that, "It is with regret … the award will not be conferred." No reason was given. That is very opaque.

I think that we need a public statement from the Minister of the Environment as to what is responsible for all this. Governments—not this Government alone—always tell us they had consultation and how much they value the non-governmental organizations. That is notwithstanding the fact that nearly every Minister of Finance preceding this one always cut Servol's budget. If the organization was outstanding in May, why was the award revocable in June, for no reason whatsoever? Now, it is perfectly obvious to me as someone who lives in the real world, that this group has caused offence by its protest about this legislation. May I make the point that I am not raising this issue because I necessarily support their protest. I am defending their right to protest unscathed. And even if they were an organization that was promoting something that I did not like and that I was not in sympathy with, I would refer to this in the context of this legislation.

11.15 a.m.

It is quite shameful that this award should have been revoked. The timing is very suspicious—and may I put it, at its lowest—no reason given. The chairman has overruled the managing director, and no reason is given. Give us a reason! We will draw our own conclusions; the wider community would have its own conclusions but this has all the hallmarks of a flunkey in operation who was told: "We do not like this group, we do not like its protesting, they are too miserable and so forth, so let us withdraw their award", and that is what the evidence suggests at the moment. If there were a statement—I think it should come from the Minister—explaining why this was done, then one might be able to form a different view. On the evidence at the moment, this shows a simple act of revenge. I have an open mind. That is my provisional conclusion. I invite the Minister of the Environment, or through one of his colleagues, to come and explain it. That is what the evidence suggests to me at the moment in the absence of a reason. If there is a reason it is absolutely unforgivable, and it is very important that we do not deal with legitimate protests in this fashion. Otherwise, we are wasting time in debating anything. This is the body that is supposed to negotiate memoranda of understanding with another government agency. [*Senator tears up document*] Zero credibility! Of course, I reject completely the suggestion that the Environmental Management Authority should have to negotiate a memorandum with any body and that is what I am going to deal with next. In any event, their track record on the evidence available is that they do not have the credibility and the strength to do it.

My problems with this legislation—and let me repeat—there is need, as urgently as possible, for a procedure for the orderly development of land in Trinidad and Tobago. I have no problem with the concept of the Bill. I have two policy problems with the Bill. The first is, I am not prepared to accept the Environmental Management Authority and its agencies as coequal with the agencies under this Bill. I very strongly believe those agencies under this Bill must be placed in a position that is not equal, and I will explain what I mean in a minute. But I want it to be clear—that is my objection. It is not just some *vaille-que-vaille* objection.

The EMA was set up by the government before this one, because the multilateral agencies and those who guide us from abroad said there should be one. It was not set up with the appropriate majority and this Government corrected it. We are not committed to the idea that the management of the environment should reside in a strong authority. Here we are giving other agencies, and the Minister, an opportunity to bypass the rulings or policies of that Authority. I cannot accept that, otherwise we have wasted our time debating the Environmental Management Authority twice, and having an Environmental Commission. It was a game.

Secondly, I have problems with the powers that still remain in the Minister. It has nothing to do with this particular Minister. Apparently much of the power that resided in the Minister before was given to the commission and this is entirely laudable. The fact remains—and I noticed that the Minister anticipated some of what might be said by talking about fact and reality—that on very broad-picture grounds the Minister can take over a matter relating to the development of lands—and Sen. Kangaloo has referred to some of them and I return to them. They would be as broad a picture as being able to revoke an award without reason. They do not really constitute reasons because for one thing they are so subjective, and more importantly, when the Minister takes over a matter there is no appeal, so he is subject to all the considerations that are in the Bill, but his decision is said to be final. I will examine the clauses in a minute.

The other power that is reserved to the Minister is compulsory acquisition. My position on compulsory acquisition is well known and has been stated in a debate. For purposes of the points I wish to make, I will have to restate them. Not only does this Bill consolidate provisions that already exist in the Town and Country Planning Act in relation to compulsory acquisition but, it is proposing to extend them in a way that I consider quite nauseating, and I am using the word quite advisedly. That is my other problem, that the powers of the Minister in relation to

compulsory acquisition are not only being consolidated by this Bill, but they are being extended at a time when there is a horrendous problem sitting on our hands relating to compulsory acquisition.

Mr. President, it is against that background that I would now like to comment on some specific provisions in the Bill. Before I do so, and while I do not wish to be an egg in anybody's rock stone dance it would be entirely appropriate to congratulate those winners among our colleagues in recent events. I guess everybody has his or her preferences. I would simply say that I am particularly impressed to notice that four or five of our colleagues are members of the ten thousand and over club. That is very interesting. Sen. Lucky, Sen. Dr. Moonilal, Sen. Dr. Gopeesingh, and others—Sen. Wade Mark is a special case.

I am very happy to see not only that they are winners, but that they have joined the ten thousand and over club. In fact, in some cases they did better than the heads of their slate, and that is a very interesting political development but that is where I stop. And, of course, it is particularly refreshing to see that Sen. Wade Mark has once again attained high office. I would simply say that there is a man who is a symbol of unity long before unity became a fashionable theme with the present Government. He is being cruelly used and I say no more. I am just particularly happy that the wider population has recognized his value and for that I am very grateful.

Mr. President, let us get back to the serious business at hand. If I could deal first with the clauses that collide with the environmental legislation, and I refer first of all to clause 18(1). This provides for preparation of a National Physical Development Plan and the first provision is:

> " 18 (1) In preparing the National Physical Developmental Plan referred to in section 6(1)(b) the Commission shall ensure that the plan—
>
> (a) is consistent with the social, economic, regional, environmental, cultural and other development policies of Government;"

I take comfort from that because it is recognized that the National Physical Development Plan must be consistent with, among other things, the environmental policies of the Government. If it is the policy of this Government in relation to the environment that the Environmental Management Authority and its commission should have certain strong powers, then I would have expected to see support for that policy in the Bill. I do not see that!

If time permits—because I am becoming more and more reluctant, as we hire more and more foreign experts, to do free drafting for the Government but I would propose some amendments. My amendments are going to reflect the fact that clause 18(1) of the National Physical Development Plan should be consistent with the environmental policies of the Government.

One environmental policy of this Government is to have a strong Environmental Management Authority supported by a strong commission. Therefore, if one is going to be consistent with one's own policy one ought not to make the Environmental Management Authority coequal with the other agencies. That is where the trouble starts. It says in clause 19(1):

> "A development plan shall contain goals, objectives and policies established primarily to manage and guide change in the social, economic and physical environment of the area for which the development plan is prepared."

11.25 a.m.

My first amendment, which I will submit in writing in due course, is to add there, the words "and shall be consistent with any action taken by the Environmental Management Authority or the Environmental Management Commission under the Environmental Management Act, 2000". The Government should accept that. When I say "should", I mean logically they must accept it because such an amendment would make this part consistent with the environmental policy of the Government, which is having a strong agency. I think it is important to make it very plain that none of these planning authorities could do anything different from what the Environmental Management Authority or its commission has ruled. That is a sticking point with me, so let us state it there.

Later on, Mr. President, we see another of these infringements. This is under clause 35. This has to do with determining applications for the development of land. It lists all the things the commission must take into account. When we get to 35(1)(f), the things they must take into account:

> "(f) where a certificate of environmental clearance is required under the Environmental Management Act, whether such certificate has been refused or issued and any terms of it;"

To take an extreme case, if the Authority under the Environmental Management Act has already ruled that some particular development of land ought not to take place for reasons to do with the environment, this commission can say it does not agree: go ahead and put lead acid in Wallerfield if you feel like

it because it is high foreign investment, or for whatever reason. I do not accept that. I will propose an amendment in writing:

> "…and ought not to make any decision inconsistent with the refusal of such a certificate or with any conditions of such a certificate."

In other words, if some development has been rejected by the Environmental Commission, it ought to be rejected by these authorities. We are very big in the ammonia business here. There are stacks in an ammonia plant that emit things and the technology for controlling them is becoming more and more sophisticated. Let us suppose, for example, that an ammonia plant has been the subject of a ruling by the Environmental Management Authority that it must have eight stacks, then this commission ought not to be able to approve the development of the land and say that it should have five or none at all. That does not make sense to me.

Likewise, Mr. President, when we come to clause 36, subclauses (6) and (7)—I would not read them—but they, likewise, dilute the authority of the Environmental Management Authority, if it has any left. Subclause (7) says that:

> "(7) The Environmental Management Authority and the Commission may enter a Memorandum of Understanding with respect to the administration of Environmental Impact Assessments and Certificates of Environmental Clearances, as they relate to a development proposal within the meaning of section 36."

That clearly means that if the Environmental Management Authority or any agency under it has made a ruling and the commission wishes that ruling to be different, they have to bargain over it—with respect to the administration of Environmental Impact Assessments and Certificates of Environmental Clearance. In one fell swoop, one can go to the commission, persuade the commission that a certificate received with conditions ought to be diluted for some reason and woe betide us if the Minister then jumps in the brew and says it has wider implications so he is taking it over. The Minister then is in a position to ignore an environmental certificate that has been issued subject to conditions, by an agency that his Government has set up. This does not make sense. Logically, these amendments ought to be accepted whether the Government thinks they have logic or not. My position is that these commissions must be subordinate to the Environmental Management Authority and its agencies on matters of the environment. Those are the clauses, Mr. President, that give rise to my concern, and I have already said what my proposed amendments will be in relation to those.

May I say, since NGOs may be feeling a bit threatened as a result of the arbitrary withdrawal of this award, that the thing that keeps us going in the Senate—after 11½ years, it is very stressful to get up and speak on a piece of legislation; it is even more stressful to do the drafting for free—one of the things that keeps public-spirited people going in this country is the output we get from the NGOs.

I will give them my own award today since the awards are being taken away. Every time we have a major piece of legislation, public-spirited citizens come out of every part of Trinidad and Tobago. They ring us up; they send us memoranda. They do not want us to lobby for what they say. They simply say: "These are our views and we would like you to consider them when you debate the legislation." If our view is in harmony with what we get, we will propose it; if not, we reject it. At least we have been informed. If we decide not to go along with some suggestion a public-spirited citizen makes, we have a reason for doing so. It is not arbitrary.

I am very indebted, on this occasion, to a number of persons who have sent us material on this Bill. For instance, I have had something from the Council of the Presidents of the Environment, which has been very helpful. It is helpful for this reason. When I read this Bill, I was concerned about the devaluation of the work or the authority of the Environmental Management Committee. I have no research assistant—none of us do. It happens that this particular paper identified by clause numbers those sections that conflicted with the environmental policy. It saved me time. I was just able to check them to make sure they were right, but it was a wonderful effort that helped me and something that I wanted to do anyway—identify some of the clause numbers. I found some others and it was very helpful. I am just taking one example. I am singling out an environmental NGO today because today is a bad day for environmentalists who conflict with the Government. They get punished. I do not suppose that will stop them speaking. It never stopped me.

Now, let us come to the issue concerning the Minister's powers. I entirely accept what the Minister has said, that virtually everything has been put in the commission. You know the insecurity of politicians. I am not referring to this Minister; he has paid so many dues he does not have to be insecure. When we give an authority or commission something to do, we cannot resist "keeping the hands there". I understand and I am deeply indebted to Sen. Als for one of the clearest articulations I have ever heard about why Ministers should have the ultimate authority, as opposed to independent commissions. So with some reluctance, I accept clause 48, in principle. With some reservations, I accept the

idea that the Minister can intervene because all governments—because they have to reward their supporters—suffer from runaway authority of one sort or another. If one examines every single government we have had since independence, we have always had some rogue authority or some person doing what they are not supposed to do. For the moment, I am provisionally persuaded that the ultimate authority must lie in the Minister.

In the case of the environment, I have a different view. I have already said why and will continue to explain why. I do not have a problem with the Minister having, what is so euphemistically described, as a limited power to "intervene". It is a word like "transparent". We borrowed that from the foreign experts. I do not know what they mean by "intervene". They mean make a decision. I do not have a problem with the Minister in respect of something that would normally be done by some other authority, provided the grounds are clear and not nebulous.

11.35 a.m.

Clause 48(1)(a) says:

"involves issues of more than local importance;"

Apart from it being jargon—"issue" is now a jargon word—I do not know what that means! Does that mean, for example, that the sewage would go from one county to another? It is very nebulous and I am very pressed for time so I am not going to read any of the others. Mr. President, words like "involve and affect", however, are very broad and I do not think any of them are very clear. Certainly, if it is going to conflict with national policy, then the Minister should deal right away with those conflicts to the Environmental Management Act. I regard these, however, as rather vague. I have not given any thought to how they might be made more specific. That is for the drafts-people to do if my suggestion finds favour.

What I do strongly object to is on page 80 where—and the Minister was gracious enough to point this out—when the Minister takes over a matter under 48(5), he has to be guided by the same considerations as the commission. That is fine and very encouraging, but suppose the Minister is wrong? If there is a power for the Minister to hear the people and so on, all of that is fine, but why is it in clause 48(7):

> "The decision of the Minister on any application referred to him under this section is final.

Why is that? First of all, if he has to apply all the same criteria as the commission, then why should not the appeal body, whatever that appeal body is, that sits over

the commission—Why should the Minister be exempt from an examination of whether he has applied the same criteria that the commission has to apply? It is not logical!

In any event, let us assume we accept ministerial responsibility and you do not want a commission or a planning approval body doing something that is inconsistent with Government's policy; you do not want them frustrating the Government and so on. Let us accept that philosophical position. Nevertheless, as a matter of principle, you should have a right of appeal. Why should the Minister's decision be final? I am suggesting, Mr. President—and I would put it in writing in due course—that 35(7) be deleted and the consequential amendments be made to the appeals procedure in clause 90, permitting an appeal from the Minister precisely the same way that you appeal in relation to the other things.

Now I accept, immediately, that people who are well versed in constitutional issues that affect this country would ask—I do not know about other countries—how could an appeal body override a minister or allow an appeal from a minister on a matter that involves the interest of a foreign government, or affects the obligations of Trinidad and Tobago under any treaty? May I just say that an appeal body could read and interpret a treaty as well as the Minister, so there would be no substance in that. Mr. President, I accept that you may have a difficulty if it involves the interest of a foreign government and I would be prepared to consider conceding that in relation to that, at least, there would be no right of appeal because, ultimately, no court should really get involved in the relationships that one government forms with another. We may, therefore, be able to carve out an exception to that.

We have to think out these things. We cannot just throw all of them in a basket labelled "ministerial final decision power" and give them all out. There may be valid constitutional reasons for excluding from an appeal, things that involve the interest of a foreign government because not everything could be disclosed, which is what would happen. Certainly, a local court of appeal could decide whether issues of more than local importance are involved, whether architectural urban design issues giving rise to national controversy—indeed, this letter shows that we need an appeals body. We had a controversy and "it lick up de people." If the persons appearing before the Minister is some NGO and "he aint like them," the decision is final and they "gorn through," so events would show that we need it. I would be prepared to accept clause 48, subject to there being the same rights of appeal attached to the Minister's decision. We would have to have substantial amendments to clause 90, which I will come to separately.

Mr. President, in my haste, I may not have referred to clause 75(5)(b) on page 112 which is, in fact, the worst example of the Environmental Management Authority's authority being completely eroded. I made the point before, however, and I do not want to repeat it, but that is actually the worst example and when I come to clause 75 with which I have some other problems, I will deal with that as well.

Mr. President, can we very quickly go to "compulsory acquisition"? Clause 23 deals with "compulsory acquisition" and may I say at the outset, yes, I understand that clause 23(1) repeats some provisions already in the Town and Country Planning Act, but I have never heard that repetition by itself was virtue and, indeed, I think our Standing Orders militate against repetition. The fact that it is already in the Town and Country Planning Act does not prevent us from re-examining whether it should be there at all. The fact is—and it has nothing to do with this Government—we have a deplorable record on compulsory acquisition.

I am suggesting that the Minister ought not to have these compulsory acquisition powers at all. The whole of clause 23 should go. Certainly, however, it is not acceptable that you can compulsorily acquire land or you can have a notice to compulsorily acquire land because some dreamer—and dreamers are wonderful people, without dreams we have no inspiration, but dreamers they are—somebody sits down and dreams up a plan for Toco and they say, Sen. Prof. Kenny's land—oops! No, he does not have land, I hasten to add. This is purely hypothetical because the photographers would be scouring Toco looking for your next house. Sorry, Mr. President, through you, it is not right that somebody should come up with a grand plan for Toco and conceive that Sen. Prof. Kenny's land has to be harmonized with this plan. They then publish a notice and then for five years they do absolutely nothing, and that is clause 23(6). For five years you just say look, we are going to develop Toco, we are going to put some sort of—I nearly made a terrible mistake with Sen. Chin Lee sitting there, I was going to describe a certain type of boat that was not a success, but that would not be appropriate on his maiden day, so I have to withdraw that.

Anyway, Mr. President, they have some scheme for Toco that is really quite impractical. There are three or four parcels of private land in the way of this development—so some developer says, well you know when I put this road, or this heliport, or whatever it is there, that land is in the way, so here is a notice acquiring it.

Mr. President, in one fell swoop that asset is completely sterilized. If the man has borrowed on it, the bank is going to call on him right away for new security because the asset is no good again. If he wants to use it to borrow, he cannot

because the bank might say, "Well you might have the legal title but it aint yours." For five years your asset is completely sterilized. If the man has already used it as security for a loan, the bank, I am certain, would call on him for new security. Mr. President, somebody's life and economic well-being would just collapse because somebody has an idea for a heliport in Toco and the land is in the way. Clause 23(6) is completely unacceptable! If it is to be there at all, I would consider supporting the amendment proposed by Sen. Prof. Kenny. For the time being, Mr. President, I really do not think we should extend any of the compulsory acquisition provisions that are already there. They are bad enough as they are, and we should not extend them at all. That is my position at the moment.

11.45 a.m.

May I say, Mr. President—and again, I am not concerned about the personalities whose lands have been acquired, I am concerned with the principle. As it happens, we had a Land Acquisition Motion on May 08, 2001 and Hon. Sadiq Baksh, a member of the 10,000 and over club—I think he is actually a "seventeen-thousander", so "this have real authority, eh, because he get 17—anyway. This have real authority". Shall I stop there? He brought a number of matters that we had to regularize—no, we had to pass a Motion in order to vest and he talked about:

> "…you would realize how out of the seven, over 50 per cent of those presented here, came from over two decades ago."

I quoted and I quote again:

> "There is now a system where we are identifying all those lands which were acquired over four and five decades in some cases."

So here we know from a minister with great authority that we have a backlog in compulsory acquisition that extends 50 years. Fifty years is the outer limit and over 50 per cent of those that have been the subject of that Motion were more than 20 years old. So we have people whose lands have been acquired before some of us were born or some of us were toddlers and that is absolutely unbelievable. Therefore, we have no moral authority as legislators to give the government—not this Government, any government—any more land acquisition powers until this backlog is cleared up, not cleared up in the sense that we have a promise we are going to do it—cleared up. I do not understand what is the problem.

In the same debate when he was winding-up, Minister Baksh identified what some of the problems were:

"failure of the requesting agency to provide the relevant documentation on a timely basis for initiation of the acquisition proceedings;"

So when "de fellas sit down and decide your land in de way ah de heliport and he cyar bother to send de documentation, too bad fuh you."

"…time expended in the negotiation process on the compensation payable to landowners;"

Well this is not the place for it, you know, but there is a valuation—there was. I do not know if there still is. There was a Valuations Division of the Ministry of Finance and one of the things they did was, if they thought you had understated the purchase price on a deed they sent a valuator—usually four or five months later, but they did send a valuator to value the premises to find out what was the proper consideration—and then you had to pay stamp duty based on that.

Now, I do not understand what is the problem. If you are going to acquire a piece of land, the first thing you do when you decide you are going to acquire it is, you send a valuator from the Ministry of Finance and let him come up with a valuation. If the person challenges the valuation, then you can pay him either 50 per cent, 75 per cent or the whole valuation. If he is saying it is more, you could pay him everything that the valuator asked or you could pay him 50 per cent. You might not want to give him 100 per cent, because then he might take the funds and employ a lawyer to fight it.

However, you could come to some arrangement where prima facie the value of the land is what the valuator from the Valuations Division of the Ministry of Finance decides and then pay him, I would say, 50 or 75 per cent of that valuation and let him fight with you over the rest. So I do not accept time expended in the negotiation process because everybody thinks that their land is the best piece of land in the world because they have—but we do not have time to spend on emotional attachments.

Then they said:

"…funds available for land acquisition."

Well, I am not worried about that while Minister Yetming is there because I know him as a man who is concerned about the plight of poor people. If you present a case to him for some man who has not been paid for his land for 20 years, I know he is going to find the money, so I am not worried about that any more. That is a piece of history. So that is the—[*Interruption*] I am sorry.

Mr. President: The speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. E. McKenzie*]

Question put and agreed to.

Sen. M. Daly: Thank you, Mr. President and colleagues. So, Mr. President, the case is overwhelming to put a brake on compulsory acquisition.

Another alternative is, if they want these compulsory acquisition powers, we can use the former Sen. Prof. Spence device and we can pass it but say it is not to come into effect until five years' time. So we could give them the powers now but suspend the operation and they have five years to clear up the backlog. We could do all these things once we have a debate that moves at a reasonable pace where we can think and not be just dictated to by experts, because we are dealing with real injustice here. So if you want these powers, take them but we will put them into operation in five years' time. That is another way around the problem but it is not acceptable.

The extension of powers of compulsory acquisition is not acceptable against this background so vividly described by the Minister of Housing and Settlements as recently as—they always write the date backwards. I think it is May 08, 2001, Mr. President. So that I have real problems with clause 23 and I think I have suggested several alternatives short of deletion because I know that, even if the Government is minded to accept the deletions, their experts get very upset if they accept anything that the Senator suggests. So I have given you several alternatives but I am certainly not—I have a real problem with this Bill where that is concerned.

May I again, so that I am not misunderstood, say that I accept what Minister Humphrey said, through you, Mr. President, that the Government has gone a long way in taking certain powers away from the Minister. I accept that, but the two most odious powers have remained, namely, the ability to jump in for some nebulous reason and the ability to have even wider compulsory acquisition powers, and I cannot accept that. Therefore I have very, very great difficulty with all those clauses that run contrary to the authority in the Environmental Management Act which I have already identified, as well as I have a problem with clauses 23 and 48 for the reasons which I have given.

Now, there are just a few other little matters, Mr. President, with which I would like to deal and I would just like to say something about the appeals procedure, which is clause 90 and which is page—I have lost the page—121. Well, I do not know, Mr. President, why it was thought that the Environmental

Commission (EC) was the place to lodge an appeal in a planning matter. First of all, the qualifications of the persons on the EC would be slanted toward that subject, so it raises the question of whether you would have all of the core competencies you would need. I would not trouble Sen. Lucky with a constitutional question today. She must be still tired from obtaining her membership in the 10,000 and over club so I would not trouble her with the constitutional question, at least not publicly. I might raise it with her behind the Chair.

That is the first problem: will the EC have all of the core competencies required? Secondly, if you have put the EMA in a negotiating mode with the planning authority, there is some kind of Caesar to Caesar feel. If the planning agency "rough up" the people from the EMA and treats them with the low credibility that they deserve, in the light of recent events, then you are going to be appealing to people, colleagues in the same field, and that certainly—I am not suggesting that anybody would be biased—would have the classic appearance of apprehension of bias. So I think that the Environmental Commission, as an appeal body, is not appropriate. Lack of core competencies and, in broad terms, a conflict of interest, since another agency under the same Act is put in a negotiating mode with the Government and certainly, if the EMA is not coequal, they would not be appropriate.

Also, as I have suggested, there must be an appeal against the decision of the minister, which means there will have to be extensive amendments to clause 90. If I have time I will propose them. Certainly if you are going to have an appeal from the decision of a minister on these grounds, then you have to broaden the persons who have the right of appeal. Since I never claimed that I have an original idea, I simply follow what we have done in other pieces of legislation, the simplest way to do it is, if you are going to have an appeal against a decision of the minister, the category of interested persons that we have recently introduced in the judicial review legislation would be the appropriate category of persons to add to the list of proposed appellants.

It is really very simple, you know. You just pull out the book, copy it and you just add another subsection where you have another category of appellants, apart from the applicant and people who have a financial interest, people who are interested, because the wider population, whether you like it or not, must have a say in a matter that is controversial, and the word "controversy" is used in the legislation. So these groups who are interested persons, within the meaning of the judicial review legislation, ought to have a right of appeal, so that there needs to be extensive amendments—not difficult but extensive—to clause 90.

Mr. President, I did want to say a word about clause 75 because—and I have a few minutes remaining—that clause I omitted originally in my list of clauses that undermine the Environmental Management Authority. That is the clause that makes it clearer—very clear—that what the EMA is doing is not binding on these agencies. I have said—I mean, the Government is free to disagree with me—so far as I am concerned that is not a healthy development.

Now, the other thing, Mr. President—and this will just take one little minute—is that I notice that we have started a new thing in drafting which is that one piece of legislation does not repeal another. We have creeping repeal and Sen. Prof. Ramchand pointed it out in another piece of legislation we had recently, and this Bill is littered with it that when certain things come into place certain other things cease to have effect. Now, I do not understand how, under our Constitution—and it is not a matter of constitutional argument, it is a political argument. I do not understand how, under our constitutional arrangements, a law that has been passed by the legislature can be repealed by any administrative act in principle—any administrative act—so I do not accept that.

I think if we want to repeal something, we must repeal it precisely by another Act and, if it is necessary to repeal it by reference to a fixed date, or you have to come back to get it repealed or whatever. I do not accept that we must do work, or that we must pass laws—we did not pass these, our predecessors passed them—and they could be repealed by administrative act. Also, Mr. President, the geniuses who thought this up, whether here or abroad—I do not care. Genius is a universal thing—if you are going to repeal legislation by an administrative act or when something else comes into effect, you must have legal certainty as to when a law stops being in force. If a law is going to cease being in force dependent on certain things being in place, who is going to determine the precise point of crystallization of the arrangements that produces the repeal of the law?

Now, I mean, I know we will have to have another flotilla of foreign silk in order to decide whether a particular law ceased to come into effect on a particular date because this arrangement was not in place. Maybe the building inspector's telephone was not working so you cannot say that the law came into effect. I think that is a very dangerous precedent and a very expensive precedent. It is bad in principle and it is going to create a lot of problems trying to discern when a law is repealed in relation to other administrative arrangements.

Time does not permit me, Mr. President, to go into this in more detail but I think it is going to be very expensive for the Government. I suppose what we

would do is bring the experts here and then we can boost tourism in Tobago by sending them to Tobago for a weekend but that is another story. So, Mr. President, always at the risk of being misunderstood, I welcome the introduction or the attempt to introduce orderly planning of the development of land but there are certain aspects of this Bill with which I have fundamental difficulties. I tried to explain why and I have tried to reason—my objections, I hope, are not arbitrary—as to why those provisions are bad but I ask for no forgiveness in relation to compulsory acquisition.

I ask for no forgiveness in relation to the language which I have used because it is unbelievable that people should be waiting 10, 20, 30, 40 years to be compensated for land that is compulsorily acquired and then we go about telling people we are modern, we are a hub of the Americas, we have the tallest building, the yacht basin, the smallest this, the biggest that, the biggest the other. It is just another piece of barbarism because it amounts to expropriation of somebody's land if you make them wait long enough.

12.00 noon

Mr. President, if you speak to the local constitutional experts, they will tell you that if you do not perform an act for long enough the non-performance of it could amount to a deprivation. Sen. Lucky would be well aware of those cases. So do not let the Government sit and think that forever and ever they do not have to pay people. If you postpone people's rights long enough—we have several judgments against the Industrial Court where it did not give judgment for 18 years and people recovered damages for that. I think there was another one just the other day.

This question of compulsory acquisition has to be dealt with and I am suggesting that we give the Government no more powers. I am sorry for repeating it, but I think it is quite disgraceful and I make no apologies for the strong language I have used in relation to the compulsory acquisition powers, given the track record on this matter.

Hopefully, Mr. President, some of these objections could be dealt with when we get into committee but, at the moment, I have grave reservations about being able to support this Bill because of my fundamental difficulty, which I hope I have explained and not dealt with in an arbitrary fashion, in relation to those clauses.

Thank you.

Sen. Rev. Daniel Teelucksingh: Mr. President, I want to associate with my colleague, Sen. Martin Daly, in extending sincere congratulations to all our

senatorial colleagues who contested party elections last weekend. I heard a party member say that they are all winners. It is a good spirit.

I wish to briefly add a point we seldom ever mention. I refer to the lesson, Sir, of the painful tragedy of the assassination of a king and a queen and members of the Nepalese royal household. I think, Sir, that we must appreciate those who offer themselves or who are called to leadership positions in our own society. Public office, we are reminded, is often accompanied by very serious demands. Every so often the leaders in our country have been the targets of criticisms at every level, and more than criticisms too. We are beginning to understand the vulnerability, the weakness and the risks to which leaders and their families are exposed. We may be critical of all our leaders and decisions they make, but certainly they need our prayers, encouragement and support. It is something that we hardly do in Trinidad and Tobago in our relationship with our leaders.

Mr. President, on to the Bill. My first response to the Planning and Development of Land Bill, 2001, is one of great surprise and concern, maybe disappointment. Despite approximately seven drafts to this kind of legislation, and efforts spanning, possibly, a minimum of three years, the protests and demonstrations are continuing. I am very happy that the hon. Minister is aware of that. They are outside today. They have been coming for several weeks now protesting about this very significant piece of legislation; I am concerned about that. It is not the first time.

Over the years, significant pieces of legislation have come to the Parliament and you say, okay, the drafts have been out for public comment, and yet you find the public agitating like this, condemning and concerned. I have heard this expression here, and we have been guided by this, that every so often legislation brought to the Parliament is based on some foreign model. When I see all our people protesting outside, representing various groups and organizations and interests, I always ask myself: Where are our draftspeople? I know they do a good job. Are they in some little air-conditioned room that is screened off and so dark that they do not see what is happening out there in the society and are not listening to what our people have been saying? I am not blaming the Government. The Minister has his technocrats responsible for drafting legislation such as this one. I ask myself if Trinidadians preparing those kinds of legislation and preparing laws for us on those committees are not aware of the feelings of Trinidadians? I still do not understand that.

Why is it that the Government is embarrassed today? Why is it that it has always been embarrassed when important laws are being drafted that their own people have to agitate and condemn the laws? I know the Government is

embarrassed; I do not think the Minister has an answer for this. The question I want to ask is: Where have the drafters been and where did they come from? Why is it that people have to say, and I quote from the *Trinidad Guardian* of May 16: "Why is it that people have to call this legislation that is so significant"—and I agree with all the contributors so far, we need something like this—"draconian"? I am quoting some of their comments: "draconian, evil, the purpose is deadly and it is undemocratic". Where did this come from then?

It was created without any kind of awareness of the feelings of our people. This was made for our people? Something has to be wrong, that the response to your Bill is that it is "draconian", "evil" and "very deadly". Protesters are saying that this is no good. Why must this be? Am I going to be a part of that little group that is saying, "Slow down this Bill"? I heard the Minister say that the Government does not want to do it. It is more than three years that it has been planning for something like this, but then something has to be wrong. Why is it that people have been saying, as we heard today, that we spent so many years getting the Environmental Management Authority legislation out, after all of these struggles? It is only a couple of days ago that we got the Noise Pollution Rules finally off the ground after so long, and other sections and departments of the EMA Act. Why is it you suddenly come up with a Bill that is so significant, and the general response is that this Bill seeks to undermine the EMA legislation? Somebody has to be wrong somewhere. I am talking about the people who drafted the Bill for us—for the Government. They do it for the Government.

What about those protesters outside? They have been there all the time talking about the Chaguaramas lands. I read in the newspaper that the Minister was asked to attend a meeting at La Joya. That is only one little venue, but so many people want to speak to him. If the Bill was right you would not find this kind of agitation and protest: "Come talk to us about the Bill." As though the Government never did it. I know the Government did it.

I thank the previous speakers for the kind of technical analysis which they shared with beginners and learners when it comes to understanding heavy legislation like this one. I have a few concerns that I want to share with you, Sir.

Sen. Daly spoke about the recent Land Acquisition Motion that we dealt with a few days ago in the Senate. You remember, Mr. President, that a Minister of Government indicated when we were querying something—It is a statement I still remember. Government came to the Parliament asking for permission to acquire certain lands, but we were reminded, after some of us told him, that there are agencies in Trinidad and Tobago, like Caroni (1975) Limited, for example, with

large parcels of lands. There was a time when about 32 hectares, a very large block of land, was given to InnCogen and sometime later, maybe, a portion of land in central Trinidad, just as large as that one, was given to MissChem, the chemical plant in central.

We were asking: How come you do this kind of thing? You come to us to ask for permission to acquire small strips of land; tell us about the lease arrangements for large blocks of property. The hon. Minister said that those blocks have been leased under private arrangements and, therefore, it is not necessary to come to the Parliament. Now the question is: Does this Bill permit this kind of duality? I have a feeling the answer is here in the Bill, but I have to search for it. I know it is there. Sen. Kangaloo spoke about grey areas; this is one of the grey areas in the Bill.

This land Bill does not properly address that serious question of persons who can dispose of large blocks of land; they have been doing it over the years under what that Minister said, are private arrangements. If there is one area that needs amplification and clarification in this Bill, that is one of them because I have been searching for them. I know the answer is there, in the "individual sectoral agencies" referred to in clause 18(1)(c). I suspect it is that. I hope it is that, but if this is a comprehensive umbrella for all the lands in Trinidad and Tobago, why do we not have more clauses, more distinct regulations for those who formerly had the privilege of utilizing lands under these private arrangements?

We cannot afford to give the impression that there can be private arrangements within omnibus legislation on such serious matters in a small country as ours with its limited land space. The Bill must be more explicit with regard to agencies like those. I am very pleased to see several clauses dealing with the relationship between the commission and the municipal corporation; that is well amplified and developed, but not much about what I suspect the drafters of the legislation had in mind in referring to those individual sectoral agencies.

My next concern is about clause 4 which resembles clause 48. It talks about putting the Minister above the courts of the land. Clause 48 deals with powers reserved for the Minister. A "Minister" here does not only mean the Minister as a person. I interpret "Minister" to mean Cabinet or Government; it has to be that, and this duality is preserved here in these clauses. You are preserving this duality. You give your commission certain responsibilities and duties but at the same time you are reserving some special powers for your Minister. That is dangerous: one set of powers for the commission, but another set of powers carefully reserved and hidden in the legislation for the Minister.

One of the best sections in the legislation is the composition in the First Schedule of the commission; it is really good. A comprehensive representation you will find in the membership here of the regular members and the ex officio members. When you study the composition, which was clearly gone into, the non-governmental organizations, various interests and disciplines are represented here and we went further to include ex officio officers.

12.15 p.m.

Now, Mr. President, with that kind of expertise, with that kind of diversity in talent on land use and environmental matters, why would you, at any time whatsoever, ignore that kind of expertise and give powers to the Minister? Why would you ignore them? I dare say in the present Cabinet and maybe in the last three consecutive Cabinets, I do not believe you have had this kind of talent to deal with land use and environment. This is casting no aspersions on the qualifications of any member of Cabinet, but this is quite an impressive cross-section of our community that will form your commission and yet you are ignoring them completely at a certain time and saying: "Minister, you go ahead, forget them completely."

I personally will not support clauses 4 and 48 of the Bill that gives this kind of power, "Powers reserved for the Minister". That duality undermines your commission. I know Sen. Daly spoke about the compulsory acquisition. Do you know how people in the community describe this? People have been saying that a clause like that is authoritarian and it indicates a fascist type of governance. I wonder if your drafters of the legislation ever heard that, and if they tried to address that before they prepared this document for presentation here.

Mr. President, my next point, which will be my last, and I want to use as my reference and support the excellent clauses, clause 3, especially subclauses (1) and (2). Among the purposes of the Bill which I will crystallize and condense is:

> "(b) to foster awareness that all persons and organizations owning, occupying and developing land are under a duty to use such land with due regard for the wider interests both present and future of society as a whole;"

And furthermore to ensure that the most efficient, equitable and environmentally sustainable use of land is made in the interest of all the people of Trinidad and Tobago. I want to use this as my base for the point I want to make and my own concern.

Within this context I want to specify the lands of the Northern Range and to state that the lands of the Northern Range belong to all the people of Trinidad and

Tobago. It burns for six months in the year and we look on helplessly. There is illegal logging, slash and burn; and private developments are a threat to this national treasure. We see it every day so we take it for granted. We cannot put a cost to the Northern Range; it is our best windbreaker against westerlies and hurricanes. It holds our most precious watershed, it is our prized entrapment against any agent; our prized entrapment for rainfall, it helps moderate the climate of Trinidad and Tobago. The forest of the Northern Range conserves and ensures our waters, rivers and streams from Diego Martin to the valleys. Its waters irrigate the gardens of Aranguez and elsewhere. Its waters fill the reservoirs of north Trinidad; its flora and fauna are unique. I am zeroing in on the Northern Range.

Sen. Daly spoke about the Caroni Swamp and you could add to my list as to the significance of this precious treasure to this nation, the Northern Range, and my question is who owns the Northern Range? I understand, Sir, that approximately 35 per cent is privately owned and yet all the owners must be told—and I go back to the two clauses from which I quoted—all the owners must be told that the use of their land must be in the interest of all the people of Trinidad and Tobago. This can be an exception where private and public interests must go together.

I want to just zero in on the Environmental Management Authority and the proposed National Physical Planning Commission. These two organizations must act as the custodians of the entire Northern Range on behalf of the people of Trinidad and Tobago. I suggest that Government consider very seriously the need to give subsidies to landowners, to give subsidies on the range for the reafforestation programme on behalf of the people of this land. Owners must be re-educated; that 35 per cent who claim part of the range must be re-educated to understand that the land they own there is to be held in trust for the nation and not to be destroyed for profits. There must be no tourism projects and no industrial development to be accommodated in areas of the Northern Range if environmentally sensitive sections are threatened, no matter how many people claim that they own the land. In fact, it may be good for us to say to all and sundry: "Leave the hills alone."

Mr. President, today is World Environment Day and it would be very good for us to make a national resolution beginning here to reclaim the Northern Range for the people of Trinidad and Tobago and to make it a no-entry zone to land buccaneers; we the exploiters and the rich and selfish speculators among us; money-grabbing lumberjacks and irresponsible quarry operators who blast the hills and leave them beyond repair. I ask the Government: Where are the six bamby buckets which the Canadian government gave to Trinidad and Tobago

since 1987 to fight the dry season fires, particularly in the Northern Range? This year, 2001, we lost about 12,000 acres of forest on the hills because of fires, and then we keep on announcing in this extended dry season that the nation's reservoirs are low and we blame the rivers for being lazy when their vulnerable and fragile sources have not been protected.

Mr. President, a land use Bill is an absolute necessity and I hope that by the end of this debate, even if decisions must be deferred, we must listen to our people—because land is power and this is why they behave like that; land is power, we must always remember that—political power, social power, economic power—and if we have to listen to them by deferring as we have been doing and we have done it with other bills, we must indeed, together as a nation find the correct formula to make this kind of legislation acceptable for our nation.

Thank you, Mr. President.

Mr. President: We will break for lunch at this stage. The sitting is now suspended until 1.30 p.m.

12.25 p.m.: *Sitting suspended*.

1.30 p.m.: *Sitting resumed*.

Sen. Rennie Dumas: Mr. President, I will just like to pay tribute to the lawyers who spoke before me on the debate on this particular Bill, for bringing the benefits of an area of training which asks us to examine this piece of legislation very carefully.

In looking at the legislation, I had the privilege of talking to the Tobago community; I had the privilege of talking to some students of mine from the A'level classes, who recently faced their examinations, and together with them some issues came up which I want to put on the table.

I want to try to answer the questions that I met and place them before the honourable Minister, the Government and the Senate, of course. I ask your permission to take that attitude to the discussion. I want to take it that the Bill—as any other, but this one in particular, because of the things it seeks to do—really has to face a serious constitutional test; in fact, a number of tests.

The first one I would suggest is exactly what is the text and therefore, what is the letter of the Bill as proposed? What is the spirit and what is its potential effectiveness as an administrative tool? At first, I think I am forced to agree that we have to consider whether the Bill does not violate the Constitution or ask us to look at what is required by the Constitution in Part II, sections 53 and 54.

Section 53 tells us that the responsibility of Parliament is to make laws for the peace, order and good government of Trinidad and Tobago. It goes on to say that Parliament may alter any provisions of the Constitution, and in fact, it allows you to alter those provisions according to certain set rules. I stop there and leave it to the lawyers. I think they have done a very good job of saying to us "be careful, certain rights may be violated here; certain privileges of the citizenry may be violated". Moreso, Sen. Rev. Teelucksingh, by his very good turn of phrase, which sometimes I envy—listening to him, I know the experience there is that there may be some things in the spirit of the Constitution that we are infringing upon that we need to look at.

The spirit of the Constitution, in its preamble, tells us that citizens of the country are supposed to enjoy certain inalienable rights; and I know from the immediate community from which I come, and I am sure in the larger national community, the right to the enjoyment of property, including the disposition of that property to our children or those whom we hold dear, must be part of that right.

Secondly, the concept of social justice and therefore, how the individual fits in with the others in the society and the aspirations of others; and certainly the last, that we are supposed to be trying to use as the basis for sitting and making law and in turn enforcing law, that concept of respect for lawfully constituted authority. In my view, and at the risk of being presumptuous or being deemed presumptuous, I want to suggest that the Bill violates those three concepts.

I go on further to suggest that the preamble of the Constitution says that we should try for consistency and that we should be careful as to how we handle the matter if we know we are going to violate those principles.

I would suggest that if we are conscious—and I heard it said by almost—I would correct that, and say every speaker who spoke before me was clear and convinced—and each of them was older and more educated than I am and had more experience in this Senate. They all said it violated the principles. So I will suggest that we have some inconsistencies. We have to be careful how we proceed and we should therefore accede to the request for a special majority to be used in bringing this Bill, or any derivative of it, to law.

My own knowledge of things that I have paid some interest to tells me that this Bill, as proposed, will be inoperable law and I start by saying, let us look in the Constitution and see what section 75(1) tells us. I want to suggest that this Bill is an inversion of section 75(1). The Bill takes on itself such powers that it practically makes the Minister a one-man Cabinet.

The Cabinet responsibility for collective management and for the general direction and control of the Government, which takes into account collective management of the country, is inverted and handed to one Minister. I think we have to be careful that the collective responsibility cannot be exercised by one Minister without good reason.

I heard what the Minister had to say about planning permission and compliance with the planning laws, but certainly, except we want to declare that there is a state of emergency where planning is concerned, there is no justification for attempting to pass into law clear provisions which violate the responsibilities of Cabinet. If you want to declare a state of emergency in planning in Trinidad and Tobago, then do it in that way. It cannot be permanently provided in a bill that seeks to put emergency-type power in the hands of one individual.

If we are talking about developing a requisite, comprehensive and integrated framework for human development in the nation of Trinidad and Tobago, that is a role for Cabinet. That is what the people of the country do when they elect a government; and then the elected members of that government are placed in a position where Cabinet is created and the general control and direction of the government of the country is put in the hands of designated people. I am suggesting that this Bill is an inversion of that responsibility.

I looked at the law again, and I note that while the Bill purports to reserve to the Tobago House of Assembly—the Tobago House of Assembly being the one created by Chapter 11A of the Constitution—it does not refer to the Cabinet nor reserves the Cabinet's rights to planning and development.

1.40 p.m.

I notice further that in looking at the municipal and local government authorities, the Bill purports to make these elected bodies, agents of an institution, a commission, which is not in turn made up of elected people. When I take those three things together, it is my justification for describing the Bill as a straight grab for power within the Cabinet. I am suggesting that when we take the Bill and we look at it from the perspective here, as a nation we have to conclude that the Cabinet as presently constituted and functioning, has been declared incapable, or has been declared negligent in its responsibility for planning the development of Trinidad and Tobago and I will explain what I say. Whether because of an individual search for power, internal fighting among the ministers, ignorance of the requirement for data, ignorance of the requirement for adequate policy, ignorance of the strategy required or ignorance of what is required to create a programme for development, the question of a dysfunctional set of relationships

between the leader of the Cabinet and the Ministers available, between the leader of the Cabinet and various groups and cliques within the Cabinet, and between various aspirant leaders in the Cabinet, is very clear and made clear by the provisions of the Bill.

The clear demonstration of negligence to duty and task is demonstrated, and I will come to that. I do not know if it is because of an obsession with power over duty that the Cabinet is dysfunctional.

Sen. Gillette: Mr. President. I do not know if it is correct, but on a point of order—section 35(1)—I do not see the relevance of his contribution at all.

Mr. President: Senator, while I will not say that you are breaching the provisions of the Standing Order, I think you are sailing very close to the wind and I will advise that you speak to the Bill.

Sen. R. Dumas: Thank you, Mr. President, for your advice. I will proceed to explain why I suggest that the Cabinet has been demonstrated by the provisions of this Bill to be inefficient, to be inadequate, at least, to its responsibilities. Let us take clause 16(1) of the Bill.

Mr. President: Please do not explain why you are referring to Cabinet and dysfunctional work and whatnot. Just speak to the Bill. You can make reference without criticism and not use adjectives that could be deemed to be criticism. Stick to the Bill.

Sen. R. Dumas: The Bill, in clause 16(1) recognizes Cabinet's responsibilities. In clause 16(1) it states:

> "The Minister may, by written instrument after consulting with the Commission, and subject to such conditions, directions, reservations and restrictions as the Minister considers proper, appoint—
>
> (a) a Local Authority; or
>
> (b) an authority constituted by the Minister,
>
> for the purpose of preparing a development plan other than a development plan for the whole of Trinidad and Tobago or for the Island of Tobago."

But clause 16(2), in my view, is a violation of process and intent. It is an inversion of the conceptual macrointerest of society and the economy that does not recognize our culture and the interest we have in human welfare, and submerges them to physical characteristics that seem to be superimposed on all of the Bill.

What we have are a title and meaning that are deliberately vague. Planning and development of land, may be more legitimately explained as relating to physical planning, and I want to suggest that, maybe, we would want to consider that amendment. Because in the absence of that amendment, this Bill goes beyond its focus and goes beyond its suggestions and its intent to control and administer physical planning.

Physical planning, if it is the intent of the Bill, should be the creation and development of a physical plan which is but one output of an integrated planning process that would seek to create a general framework of development for the country. I want to suggest that in the absence of any other provisions for that integrated planning process, the direction of that process should be in the hands of a collective body with the responsibility for the general management of the country, rather than in the hands of one individual in any such body.

There is a need to identify a national conceptual plan. It is absent; and it is absent after quite a long period of management of this country by this administration. There is a need to create, deliver and explain a strategic plan for the development of this country, and that is also absent. There is a need to identify an integrated planning process, and that is also absent in the country called Trinidad and Tobago. This Bill purports to give the Minister the capacity to order a physical development plan which must be based on the three foregoing. If the Minister has to be credited with the foresight of bringing to the Parliament a Bill which gives him the power to direct that such things be done, then somebody else did not do their job.

There is a clear variance between the designed and the actuality, in that one could understand frustration, one could want to build physical things, but where is the plan, where is the strategy that that physical thing is supposed to bring about? One could understand that when one recognizes that the discipline of one's training is going to waste, when one recognizes that there is no vision, one could then say: Let us do something else. Let us look at Part II of the Bill, in particular.

1.50 p.m.

In Part II of the Bill, the Minister has to be credited with the fact that we have preserved the rights, provisions and duties of the Tobago House of Assembly (THA), as laid out in the Tobago House of Assembly Act. These are recognized and reserved. Maybe, it is a course that they could recommend for the other Bills which are being brought to the Senate, where this is not done.

I have a problem that the Minister will face why we suggest that the Bill is inoperable. I thought that the Tobago House of Assembly Act was clear when it

said that policy would be reserved for the Tobago House of Assembly. If policy and execution of policy were reserved for the THA, then, somewhere else the planning and authority call to the THA is created. To create that in this Bill, I want to be very clear, it leaves us very unclear as to the source of power that would be given to the Minister or the commission that is the creature of the Minister, to name the THA as a planning authority.

Where is the power to name the local authority as a planning authority, when all the bodies were creatures of the power, given specific responsibility for planning? We have a problem. Where is the general search for consensus? Where is the Bill providing for the collective wisdom of those three bodies together with any national body, and the institution to which I cannot refer? I suggest that if we seek consensus, full development of the Bill, and we want to avoid the obvious complication that would arise by not seeking a special majority, we need to refer this piece of legislation to a joint select committee. I suggest that at the joint select committee they can demonstrate the problems and barriers; seek agreement and examine the law to come to some level that could bring all the interests of the country to bear and make sure that what we have is what we want.

Let us look at the objects and purpose of the Bill in clause 3(1)(c). I suggest that a critical factor to take into account in doing your planning, which is absent in (c), is the concern for participative and political rights in those factors they have identified. It is only when we pay attention to those, that we can avoid undue conflict, alienation and active resistance as the Government might experience, when we do not take into account participative and political rights of certain institutions and regions.

Let us look at clause 4(2) under General Administration. I ask without mentioning what was said earlier, what are these "comprehensive policies" that the Minister may make? Earlier, a Member said that the concept of a national physical planning commission is welcome and the establishment is critical. The argument though is: What is its constitution as laid out in the First Schedule? We make the Environmental Management Authority a member of the commission.

We go to page 142, No. 10. This is one of 10 members from designated disciplined groups or bodies. If they seek to reconcile making one representative from the Environmental Management Authority part of the commission, as it were, making the two sets of regulatory bodies a joint set if you want, how do you reconcile that with the pledge in the Explanatory Note in paragraph 2, that talks about memorandum of understanding?

You are ready to do physical planning in Trinidad and Tobago. One asks: Where are the ministries of agriculture, tourism, public utilities and infrastructure,

transport and energy and representatives? I suggest that if they are doing physical development planning in Trinidad and Tobago and leaving out these strategic ministries and interests, that they would be leaving a mile-wide gap.

Under functions in clause 48, I think the country would want to know how they would avoid and resolve conflicts when they emerge. What is the process for resolving or avoiding conflict that must arise?

We in the Senate would remember that the concept of reserving powers to the Minister in other legislation has been the source of conflict within government, outside of government, and between governmental institutions. In terms of deciding on planning approvals, I caution that it is very important that there be no confusion as to whether clause 48 means any planning authority. That may mean that someone who is sitting as minister would approve some hotel or other development in Tobago, or in some municipal authority, that the people do not want, under the justification that some one of (a) to (e) would be affected as provided in the Bill.

2.00 p.m.

I suggest that we would not want to repeat the history of political or administrative conflict that arose previously when these matters were not addressed. If we are specifically seeking to provide for the creation of that conflict situation without dealing with the process, I am suggesting that there is need for further consideration. Let us go to clause 7(1) where the duties are outlined.

I do not see any duty that says this commission made up of all the bright, strong, well-trained people that it should hold has an explicit duty to support the planning authorities that one purports to create. All the duties to me seem to be duties which strengthen the Minister, with no reference to performing similar duties for the planning authorities that the Government is seeking to devolve authority on. In clause 7(2), it goes further and talks about special or general directions and that needs to be explained and in my view justified. This body of strong professional persons—is there a limit to this special or general direction of the Minister or, is it as it says, "any special or general directions"? I suggest that it might be useful to think about a class of responsibilities over which the Minister may intervene and give special and general directions rather than "any special or general directions".

Clause 15—devolution. I want to know whether it is possible that there may not be an amendment to the local authority's act and whether this amendment may not be required for the devolution to be, in fact, effected. Where is the reference to the resources for the execution of the responsibilities?

There was an earlier reference to a Bill dealing with land acquisition where, one of reasons given for noncompliance, non-satisfaction of citizens whose lands had been seized, was the fact that the bodies that were to assist the Minister were unable to do so. But there is no reference to strengthening the competence and the capacity of those local bodies to satisfy these new responsibilities that are to be given to them.

Clause 16(1). If I were allowed to, one may use another word here. I want to suggest that whatever intellectual problems one may have, are, in fact, resolved right here. In clause 16(1), the Minister may order a development plan, not physical development plan and, therefore, if I read it with clause 18(1), I am not confused and I am not insulted because I am not a member of that body which is being treated with such disdain and such contempt. This says the Physical Development Plan shall be "consistent with the social, economic, regional, environmental…policies…". What "development policies"? Where is the development policy? The plan must provide the policy framework within which regional and local planning can be undertaken. It must link functional plans prepared by individual sectoral agencies. I did not see anywhere in the Bill where the ministries are not left out. It must have, as its primary focus, issues of national policy and the coordination of functions.

I want you to read that next to clause 75(1) and tell me if it is not a removal of the competencies and functions given to that body referred to in clause 75(1). I want to read it next to clause 18(d)(ii):

> "identification of problems and opportunities created by demographic change and industrial and other activity;"

If I were a member of the EMA, and I read it next to clause 18(3), I would be very worried.

I see a reference to August 15, 1984 and the conclusion has to be inescapable. This is an admission that the task of national planning has fallen into abeyance, or has been negligently handled by some body or bodies. The year 1984 is the last product that has official sanction in terms of National Physical Development Planning in this country. You are asking in this Bill that we should accept that this is the base year under which all reference to physical development must occur.

Clause 18(4) says:

> "The Commission shall ensure that development plans are reviewed at least once every five years."

That is the responsibility of Cabinet. One must admit that if one goes to election every five years and a Cabinet is created, the question of reviewing the development plans of the country belongs in the Cabinet that comes into power at the end of that five years.

Clause 19(1) says:

> "A development plan shall contain goals, objectives and policies established primarily to manage and guide change in the social, economic and physical environment…"

That is not physical planning whatever we may think. A review of the physical, social and economic service, that is what one is dealing with. The land use plan is incidental to all of that and one needs to look at it.

The planning perspective that is brought to us is not physical. It is a perspective that goes very much wider than the physical and gives instructions in areas which supersede the scope that this Bill should have. That is all right for you if you agree, but it goes on to deal with people. It gives us a lesson in clause 19(1) as to what should constitute a national development plan, the data, the policy, the areas of focus, who should do it, and what is the process. It says the Minister shall order that. It is certainly not a physical plan. I admire the Minister's mastery of the process of planning. A pity it is not and should not be his responsibility under the Bill.

2.10 p.m.

In clause 22(2), I see a straight conflict being set up between an elected body and the local authority, which is elected by the people of the particular area. I want you to listen to this language. In the proposed development plan created by the people of an area, the officers elected in that area must submit this plan to the commission and the commission will agree whether that plan becomes provisional or not. If the commission does not agree that this plan should become provisional, the commission could then instruct this elected body to whom to go to get it fixed.

What are they saying? They are saying, in their conceptual framework of the people, that they are not capable of deciding to whom they should go to get this matter fixed. That cannot be put in a law. How can they put that in a law? The language of this law says the commission may direct the local authority to seek the advice of such persons as the commission deems suitable as to the form of the

proposed development plan, which the local authority can adopt. They are destroying the local authority; that is what is wrong with that.

It then says that when the commission meets and agrees, it does not communicate with the local authority, it puts its decision in the *Gazette*. So, the local authority in Caroni or Nariva finds out that it has or does not have approval in the *Gazette*. That is what they are talking about. Devolution what?

Then clause 23(1), from the Minister to direct the commission; for the commission to advise the Minister that your land is to be taken from you. I spoke about the experience in Tobago—30 years and continuing, even after promises and proposals. Now we have another authority being created and there is nothing in this authority that pays regard to the constitutional safeguards of the people; that pays any regard to the compensation required for the people; that pays any regard to the competence of the local authority or anybody else; nor finally pays any regard to the contentment of the citizenry as to the action of the public authority you put over them. You have to deal with that or the law is not good.

Then in clause 23(7), there is the final insult. In my view, if you do not repeal the provisions in other Acts for acquisition, you are insulting those other authorities that you have given permission to acquire lands. All the other processes, for example, that are supposed to be part of the compulsory land acquisition process that was read out so ably by Minister Baksh the last time he visited us, those go by-the-by and are superseded by these. Or do these operate side by side with those provisions? You have to fix this.

In clause 24(4), what are we saying? We spoke earlier about the possibility that you can take care of the requirements for acknowledging participatory and local political rights. This clause 24(4) pays nodding concerns with it. It says we shall publish a notice and we can come and talk. I suggest, rather than certifying, they need to put down a procedure for participatory consultation by the affected communities.

Mr. President: The hon. Senator's speaking time has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. J. Yuille-Williams*]

Question put and agreed to.

Sen. R. Dumas: Mr. President, in clause 25(1), how do you modify or take a development plan off the books? This depends on what is desirable, expedient as considered by the Minister. They have to take that off. We cannot wait for matters

to be seen as desirable or expedient by the Minister. That is carrying the concept we are talking about a little far.

I suggest that the Bill that should have been before this Senate should start at Part V. The Bill before us, to me, deals with the internal workings of another entity and should not be before the Parliament. The Bill that should be before the Parliament should deal with the issues of physical planning and control of development. That starts at Part V. I suggest you have some very good provisions from Part V that deal with how permission is required and so forth. Of course, there are problems. Clause 31(1) may not be viable. The Minister may be a little too prominent. There is the question of autonomy with which you have to deal in Part II. Those problems have to be resolved. Certainly, this is where the Bill starts.

We have a problem in 31(1). There is a question of development orders where the Minister, by regulation et cetera, may provide for the grant of permission; and in (b), where any commission or planning authority; and in (c), where any application is referred to the Minister, we have a concern that the permission may be unconditional. One wants to know whether we really believe, in Trinidad and Tobago, in 2001, that an authority does not pay regard to whether you give it unconditionally or otherwise.

In 35(3), again there is a nodding acquaintance being paid to the relevance of the use of land by the Ministry of Agriculture:

> "(a) any policies and the use of land for agricultural purposes adopted by the Minister responsible for agriculture;"

I suggest, again, that is too narrow a provision.

2.20 p.m.

We would want to know, again, what is the membership of the commission? Where does it conflict with the general plans? The provision is, again, offhand. When we come to 36(1), we see reference to the EMA. What is the reference to the policies of the EMA in terms of ordering a physical development plan?

I want to urge that these considerations of an environmental effect would be constituted in the Environmental Management Act, which deals with those matters. To bring them here is to create the possibility of duality and confusion of authority, which would make the Bill or the Act that comes out of this Bill, inoperable legislation.

In clause 37(1), it is interesting that there are some impositions on the commission or the Authority, which to me, are conditions not in turn imposed on

the Minister in making the decisions that he makes. We suggest that if they hold for the commission, they should equally hold for the Minister.

The question of whether you should be granted the opportunity to be heard when your land is taken, I think Sen. Daly dealt with that quite adequately. I would only refer to it to say that I follow his instructions on those matters.

There is a part in clause 54 where offences are created that would become punishable, and properly so. If you are going to have a law, you are going to have offences and they should be dealt with. I wonder if there is not a responsibility to have some gradation in the offences and some consequential gradations in the penalties, and whether these should not be informed by the impact of the violation, the scope of the violation, the area in which it occurs and what type of violation occurs. Mr. President, to me an easy way is taking out $50,000 as the penalty and one should look to see whether all offences are likely to be the same or whether there should be a difference.

The restrictions on conveyance without planning approval is one that would be welcomed by many a citizen and particularly the younger members of our population who are now starting their families. Too many of our families are taken advantage of when they pay moneys where planning approval is not properly obtained, and where land developers use their capital. That is quite a welcome provision and should be in any control for planning.

Clauses 6 and 7 are quite laudable. My one question is: What is a penalty or what are the grades of offences that "listed persons" could perpetrate against the rest of the population? If you say that all the planning applicatiions must be by "listed persons" or should be by "listed persons", then you are empowering "listed persons" to make more money by ensuring the market grows. Now, if you are going to give them a larger market then you should impose some ethical and practical limitations on how they proceed and, therefore, when they violate the understandings and requirements that they have, that should be an offence and it should be punishable.

Finally, the question of appeals—again, I stand instructed by the goodly Sen. Daly.

I have a concern where clause 98 says that you should be able to demand information from people, but I think there is a question there. Should there not be a question as to what extent you could demand that I incriminate myself, I want to suggest that half of this Bill is legitimately before us and the other half is to be dealt in quarters and processes outside this Senate.

I thank you, Mr. President.

The Minister in the Ministry of Education (Sen. The Hon. Roy Augustus): Mr. President, I want to begin by thanking you for giving me the opportunity to speak in this Senate here this afternoon. I thank you most sincerely. I also wish to thank the Senators on the Independent Benches for their warm words of welcome when I was first introduced in this Senate. I particularly thank Sen. Prof. Julian Kenny who ran a risk, as he quite rightly said, when he congratulated me when I became Minister in the Ministry of Education.

Mr. President, I also want to say that I appreciate that a tactical last-minute briefing session did not permit the Senators on the Benches across from me to attend when we were sworn in in the Senate on the first occasion. I appreciate, however, the sincere and courteous manner with which we greet each other—most of them that is, I should say 5/6 of their number—since that particular occasion.

I also welcome here this afternoon among us, Sen. Howard Chin Lee, who I think is a very engaging person [*Desk thumping*] and his courteous approach to us indicates that he should really be sitting there permanently. Mr. President, I do not want to interfere with the workings of the other side, as much as I noticed the last speaker attempted to do with the workings on our side. In fact, I got the impression that his preoccupation with Cabinet, the operations and workings of Cabinet seem to indicate that he is anxious to be there. Since I have known him for a very long time, I feel that I could offer him some advice and maybe inform him that after this session, membership forms are available. That is the only vehicle by which he may be able to get over here for quite the next few decades.

Mr. President, I also wondered at the contribution of my friend who spoke just before me, particularly when he requested that we go to a joint select committee. If I am not mistaken, in a previous contribution that very Senator indicated that if you wanted to kill an idea, send it to a committee. I was a little worried, therefore, about his wanting this Bill to go to a joint select committee.

2.30 p.m.

So, Mr. President, I want to say that I am a little worried also by the constant harping of many a speaker, with each succeeding Bill that is brought here, about what they claim to be too much power given to Ministers, possibly completely forgetting that there is a contract between the Government and the people, a contract which was effected and which came into force at the end of a particular electoral exercise which determined that we had certain responsibilities that we had to carry out. My good friend, Sen. Als, as has been stated by Sen. Daly earlier on, articulated previously in a most clear and defined manner why Ministers must

have responsibilities. So that, I do not have too many problems, Mr. President, with the fact that, in this Bill, the Minister is given certain responsibility and certain powers.

In fact, I find some of the remarks very contradictory because many of the speakers have indicated that this Bill, in terms of the powers of the Minister, is an advance on the 1969 Act and moreso our Minister, in his presentation, indicated that, because of comments that were made when this Bill was first presented in 1998, the Government responded by further truncating the powers of the Minister in presenting this new Bill here. [*Desk thumping*] What this demonstrates to me, Mr. President, and I am certain to those of us who want to be convinced, is that what we have on this side is a government that listens and a government that responds to reasoned arguments [*Desk thumping*] and that is why I look forward to sitting in the committee stage with this Bill, not the joint select committee but in the committee stage, when evidence, since I have been here so far, suggests that this Government listens.

If you remember the debate on the Telecommunications Bill when we listened and we listened to reason, and at the end of the exercise there were more than 70 amendments made to the Bill, most of them came from that side of the pit. It demonstrates, Mr. President, that we are prepared to listen and we are prepared to make the necessary changes. So that when we get there we will look at all these powers people claim to think that the Minister has and we will determine whether we need to do anything more but, again, based on reasoned argument.

I want to suggest too, Mr. President, that there is a feeling on this side that all these accusations of attempting to have too much power and to be dictatorial, when there is no evidence of such, seem to suggest that somewhere is being concocted a plan to degenitalize this Government and therefore ensure that we do not produce. [*Interruption*] Well, I have heard the term "eunuch" used here before and therefore I did not want to use the term used by someone else, but I am saying that we have boasted that we are a government of performance and we will not accept emasculation. [*Desk thumping*] We will continue to perform and we will use this Bill when it becomes Act to ensure, Mr. President, that, as our manifesto says, we will use the land of Trinidad and Tobago equitably. We will distribute it equitably. We will develop the land for the benefit of all the people of Trinidad and Tobago—all. That is what our manifesto says and that is what we are hoping, with the concurrence of the rest of the Government, we will be able to do when this Bill becomes Act.

Mr. President, I want to say that if I was a little worried about this Bill, because of the person who piloted the Bill, all my worries would have dissipated. [*Desk thumping*] My leader—some of us cannot say that, you know, and know who it is, but I know who my leader is. [*Laughter*] While we may have battles for deputy political leadership, which we will conduct in open manner, I look forward to being able to get a peep into the battle for leadership on another side. So I say my leader—clear and unequivocal—always says that you judge a man not by what he says but by what he does, and I call him "Honest John". I always call him Honest John.

Honest John is delivering a land Bill and he is one of the better persons to do it because I remember clearly in the early 1970s, when there was a period of plenty in this country, when another grouping was handling the funds, the public purse, the land that was available became available only to those who had. The planning in the country was such that the cost of land rose and rose out of the reach of the poor man and Honest John, who always thinks of the poor man, was the man who came up with the idea of the Sou-Sou Lands so that poor people would have an opportunity to get lands developed for them so that they can build their houses. Honest John did that and when I hear arguments coming from the other side that we are putting forward a Bill that is draconian—and I am not laying any remarks at the feet of the goodly Reverend because he used the term, but he was quoting from others and there were others on the Front Bench over there who, while not using the actual word "draconian", seemed to be accusing us.

However, I am saying that Honest John has piloted a Bill here and once he has piloted that Bill, because of his history, we are guaranteed that it will take care of all; but that is not all. The Government has a history of dealing with poor people in this country. When you look at how the Government has used the land in the last five years, the Government has used the land in a particular way and there is no discrimination. When you use the land to build schools, particularly in rural areas—in fact, we have been accused of forcing out of certain areas "douens" and parrots because we went rural, but we took the land in those rural areas. That is how we used the land in order to make school places available, Mr. President, to people for whom others did not seem to have cared in the past, given the school-building exercises which took place before, particularly in the urban areas, and which will continue if we allow them back into power. We have to spread the use of the land for education.

If you look at how we used the land for sport, you will notice that we have taken areas where there were no major sporting centres and we have put down four new stadia [*Desk thumping*] in those areas, using the land, Mr. President,

equitably distributed. We have also used the land for religious purposes. You would appreciate that land has now been made available for the first time to the Seventh-Day Adventist religion for the purpose of building a school and you will also appreciate that land has been made available to the Shouter Baptist religion for the first time, in spite of all the support they have been given elsewhere, by this Government. This, Mr. President, is also an indication of some of the things that we have to do if we are to address the descent—as my good friend, Sen. Daly, would say—into the barbaric things that seem to be taking place in the society today, the uncivilized things that are happening.

It has to be done through education and therefore the land had to be used for building schools. It has to be done through sport. What we need to do now is to ensure that in all these areas where we have put these schools and where we have put these stadia, the community is invited in to work along with the young people to ensure that we keep them off the streets and we give them a sense of proper values. These are the things we have to do, Mr. President. We have got to go cultural and that is why my Government is, at this moment, thinking of putting up a multicultural centre using land properly again, because the culture must save us.

In fact, I have spoken to Dr. Morgan Job recently because he has been making statements about classical education, the use of the classics, if we are to soothe the anger that is present in the society. I want to keep talking with Dr. Job so that he can assist me in the Ministry of Education so that the curriculum can be infiltrated, for want of a better term, by the use of these classical concepts once more. You see, I am responding to the question of what we are doing in terms of elevating the society. We prefer to do that than to openly flout the authority of someone in a Chamber and then walk out vulgarly and expect our children to consider us as role models. We refuse to operate in that way, Mr. President. [*Desk thumping*] We prefer to find methods to soothe the anger that exists in the society at the moment.

Mr. President, I spoke about the Sou-Sou Lands programme but we must also remember that what we have operating in the country at present is a Land Settlement Agency which evolved out of the squatter regularization project where we were able to ensure that poor people who had been tenants on state lands for a long period of time, we gave them security of tenure, we gave them Letters of Comfort and very soon all of them will have their deeds in their hand. Is this the action of a government [*Desk thumping*] that wants to take land from the poor to give to the rich? It is not. The Land Settlement Agency, Mr. President, is continuing its work to ensure—and the Bill is going to help—that there will be regulatory devices so that there will be no willy-nilly, ad hoc developments taking

place in the country and we do not know what is happening afterwards. We are going to ensure that all the plans are regulated so that there is some system put in place.

Recently I have been looking at a development that is dear to my heart—very, very, very dear to my heart. I am talking about the redevelopment of greater Port of Spain. When I look at the plans for the redevelopment of greater Port of Spain, I see where there are plans to develop areas east of the dry river—EDR. [*Interruption*] I am hearing "never done before" but I know it was planned before—the history. It reminds me, Mr. President, when I see all the plans for the development of Sea Lots—Katanga and these areas down there—I know we are going to do it because our Government has a history of doing what it says it will do. In the last five years, nobody can dispute that. In fact, the electorate spoke resoundingly in favour of what we had done in the last five years. [*Desk thumping*]

2.45 p.m.

Mr. President, this is why I wonder, sometimes, whether people remember their own track record. I remember something called the URC, the Urban Redevelopment Corporation, in the late 1960s, very, very early 1970s, where there were plans by the then powers that be to develop the East Dry River area—beautiful plans. The question of moving people from certain areas, developing their homes, bringing them back, bringing more people in, developing homes and so on—late 1960s early 1970s. Then the windfall, the oil money came; total neglect, nothing has happened since; even the sports stadium that was started was left to rot and decay.

Sometimes I hear people talking about "little people"; they are the group for "little people". When I hear that now, I understand. Since they are a group for little people, the desire and objective must be to keep little people little all the time so that they will always have them there. We are not like that on this side.

On this side we give people an opportunity to grow; that is why it is so difficult for us to recognize that our Minister in the Ministry of Legal Affairs and our Minister in the Ministry of Labour, Manpower Planning and Industrial Relations are young people. We have given them the opportunity to grow and expand. That is why they look like adults, because they perform like adults. [*Laughter*] [*Desk thumping*] I want to warn the speaker who seems to be preoccupied with being young—[*Laughter*] I want to suggest to that speaker that if he remains where he is for too long he will remain forever young. [*Laughter*] There is no scope for development in that moribund organization. [*Laughter*]

Sen. Dr. Moonilal: What organization?

[MR. VICE-PRESIDENT *in the Chair*]

Sen. The Hon. R. Augustus: So, Mr. Vice-President—I almost said "Mr. Chairman". [*Laughter*] [*Desk thumping*] Mr. Vice-President, Sea Lots will benefit and the plan is a beautiful plan. It is a plan which takes into consideration that you must also provide economic opportunities for the people even while you provide them with living space. That is the idea.

I understand that some people in Sea Lots are indicating that they have not been spoken with. I see, however, that the plan has been up for public dissemination and that there are fora all over the place where people can send their contributions so that we can revise and modify. Remember, I keep saying that we are a listening Government and once you speak with us in reasoned language, we will listen to you and we will work together with you for development. So Sea Lots will benefit, and that, again, is land use; that again is the proper use of land.

This Bill will provide a vehicle for us to do all the things that we want to do. I have been hearing that there is no vision and no planning. I know people like to talk about 20/20 vision, but I will prefer that we sit together and work in the committee. This Bill has been described by many a speaker on that side as a necessary instrument for the further development of Trinidad and Tobago. When we sit in committee we will work together to ensure that we get the best possible results out of this Bill to convert it into an Act.

I want to also indicate that there seems to have been a problem with the devolution of some of the power and authority to the local government authorities. One speaker, I think it was Sen. Prof. Kenny, asked whether those authorities had the capacity to deal with it, when the Bill specifically states that the commission has to work along with the authorities to develop them and assist in providing them with the necessary resources so that they will have the capacity for doing what will go to them.

Mr. Vice-President, everything has been looked at. Things have been taken into consideration. We have tried to look at all the problems that may arise when the Bill becomes an Act and we attempt to work with it. We may not have seen all and we always depend on the goodly Senators on that side to assist us as we go along. I am saying that that has been taken care of and that that will be taken care of.

One of the things my mother also taught me is that you must not over-extend yourself when you go for the first time so I want to wind up. [*Desk thumping*] [*Laughter*] In winding up I want to indicate that prior to my entry into the Senate, this very august body—it fits very nicely with august and Augustus—[*Laughter*]—I know that there was quite some furore outside. I know many a person in the country is probably still not happy with the situation.

When the offer was made to me to serve at this level—and I repeat, to serve at this level—I thought long and hard. I knew that it was ground-breaking, in a sense. I knew that I had to be careful, because one thing I always try to do in any action that I persevere in is to maintain my integrity. I feel that my response must be honest and that the position I take must be morally sound. So I went through and I realized that I, along with the other Senators who were in the same situation, had served this country well, not only in the immediate past but also over the years. I thought that we had a contribution to make and I felt satisfied that if my answer was no I would have been depriving a particular constituency of representation in the Upper House.

Now when I say constituency, I am not talking electoral constituency. I always advance that anything I do must be done well if only to redound to the benefit of the people in the East Dry River/Laventille area. If by coming here I can assist in the development of those areas—and not only East Dry River/Laventille now, because I have to appreciate that whereas there are people in less advantaged positions in Laventille, John John, Belmont and Gonzales, you also have similar people in Penal, Siparia and Erin—therefore my contributions here, and where I am now, must be consistent with assisting in the development of all those people who are less privileged.

Mr. Vice-President, eventually I said yes and I am happy I did. I hope I can carry myself with decorum in this Senate, as has been done by so many brilliant people long before me. I will make mistakes. In fact, I have made mistakes in my time. Between 1986 and 1991, I was very, very loyal to the then political leader of the NAR, so I have made mistakes in my time. [*Laughter*] I may make mistakes as we go down the road. All I can say is that I am going to do this—all my actions here—sincerely and for the benefit of that group that I spoke about, particularly, and for Trinidad and Tobago in general.

Thank you, Mr. Vice-President.

Mr. Vice-President: Members of the Senate, let me, on behalf of all Senators, extend our collective appreciation to Sen. The Hon. Roy Augustus, Minister in the

Ministry of Education, on his maiden contribution to this honourable Chamber. [*Desk thumping*]

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I want to make a presentation in three main parts. In the first part I want to talk in general terms ambitiously and philosophically, about the meaning of land and the priorities that should guide the framers of a planning and development of land Bill.

The second part of my presentation will be an attempt—and I really do not wish to give offence to the Minister or to the Government, but I have to use hard words—to anatomize the assault on the people of Trinidad and Tobago contained in this Bill. I see that assault being a three-pronged one: the subversion of the Environmental Management Act and the Environmental Management Authority; the second prong is the over-weaning power of the Minister; and the third is the arrangement for land acquisition.

In the third section of my presentation I want to refer to some amendments which I propose to argue about and filibuster until tomorrow, if I have to, in order to make sure that the present Bill, which is anti-environmental, shall not be passed today on World Environment Day. [*Desk thumping*]

An island is a very valuable piece of real estate, that is why people are always trying to take it away from you. So many Columbuses and only one Castro; one plantation owner and so many enslaved and indentured people.

It is 2001. We are, I think, an independent nation, but the more things change the more they remain the same. I have been looking at the Planning and Development of Land Bill, 2001 and asking myself: What does it have to offer to the ordinary people of this country? Secondly: What does it take away from the ordinary people of this country?

3.00 p.m.

The answer to the first question is nothing—it gives the ordinary people of this country nothing. The answer to the second question is everything; it takes away everything and that is a shame, Mr. Vice-President, because these islands rose out of the salt and sweat of working people. How I wish that those who talk about money taking over their party really understood the betrayal of working people that is still being carried out in this our native land, and how I wish they meant to do something about it.

Mr. Vice-President, my major criticism of this Bill is that it has no regard for the history of this place, and it is blind to the existence of poverty and landlessness; the unequal distribution of resources, especially land; and an unequal

distribution that was consolidated by the emancipation which we mindlessly celebrate. Emancipation gave cash compensation to planters for the loss of their property in slaves, but it did not grant the vote to the legally freed population, and it never once considered the necessity for reparation in the form of land to be awarded to the formerly enslaved African peoples.

I have to go further, Mr. Vice-President. In his brilliant posthumously published work *A History of the Guyanese Working People 1881—1905,* Walter Rodney shows how working people of African and Indian origin humanized the landscape with the work of their hands. Let me explain with one or two details, Mr. Vice-President. In 1948, the Venn Sugar Commission estimated that each square mile of cane cultivation in British Guiana involved the provision of 49 miles of drainage canals and ditches, and 16 miles of the higher level of waterways to be used for transportation and irrigation. The original construction of these waterways entailed the moving of at least 1,000,000 tonnes of soil. This meant, Rodney explains:

> "…that slaves moved at least 100 million tons of heavy water-logged clay with shovel in hand, while enduring conditions of perpetual mud and water."

Rodney adds:

> "When Indian indentured labourers were added to the Guyanese population in the post-emancipation period, they too had to face up to the steady diet of mud and water in the maintenance of dams and the cleaning of trenches."

Mr. Vice-President, let us write the history of the region as it ought to be written. The imported, working people, these immigrants of every creed and race humanized the landscape and bonded with it and with one another during enslavement and indenture and during the glorious period of the 1930s and the 1940s. Today, these bonds are being loosened, we follow fashion and we blindly reject nationalism, we operate as individuals committed to the pursuit of individual materialist goals. We have become modern, we have become post-modern, we have become global.

Mr. Vice-President, working men and women of the 1930s and 1940s brought us to the threshold of authentic self-government—but the keys to a new world, the keys to a brighter sun and another life were handed over to an overseer class whose education only trained them for mimicry and only fed them with a desire to occupy the space from which the colonizer had been made to retreat.

Mr. Vice-President, it is history. Our country has been bled by these brothers and in the words of Lamming:

> "…whose recent elevation from poverty made them desperate to consolidate their new material interests and reproduce themselves by rapid personal and private accumulation."

We know, Mr. Vice-President, it was stated in the Senate last week, that the larger proportion of our gross domestic product (GDP) is trans-shipped to other countries, or siphoned into the accounts of local big business and the backers of political parties.

Mr. Vice-President, if I were writing the Planning and Development of Land Bill, I would begin by setting down some guiding and structural priorities derived from an understanding of the history we have gone through. I would begin with a clear manifesto that the development of land means preservation and protection of rivers, lakes, ponds, watersheds, mountains, the sea. The development and planning of land means agricultural development. Above all, the development and planning of land means the development of people.

Secondly, Mr. Vice-President, in my manifesto, I would provide or make sure that we create a land use map indicating present use and permissible future use and demarcating all areas requiring special environmental care in keeping with the National Physical Development Plan and I would make this map available to schools, offices and commercial establishments. The map would incidentally indicate all instances of present land use that would not have been permitted if there had been proper development and planning of land, and I would use this map as our Bible for development.

Mr. Vice-President, if I were framing these rules, I would also stipulate that nobody should own the sea, rivers, mountains, forests or access thereto. I would stipulate that the head of every poor family be granted a lifetime lease of a piece of state land to build a home and develop a kitchen garden. With immediate effect, there would be no more freehold sales of state lands to any persons or country for any purpose whatsoever, and Mr. Vice-President, the last clause that I want to read out from my manifesto is that each county or region would be planned and developed in such a way that it would be provided with the same quality of housing, schools, roads, hospitals, water, electricity, et cetera and would have offices of all ministries with electronic access to all records, files and documents of the particular ministry so that the work of the government in each region can be conducted without travel to Port of Spain. This might mean that I would not have to build any fancy flyover.

Mr. Vice-President, I hope you get my drift that a planning and development of land Bill should contain provisions that clearly make for the well-being of the

marginalized majority and for the protection and preservation of land, sea and air, and should be guided by a sense of the need for people to belong to a place. I do not see any of this in the present Bill, Mr. Vice-President.

A planning and development of land Bill should not take the short view of place or land as a commodity to own or invest in and dispose to the highest bidder. A planning and development of land Bill ought to be a statement of where we want to go; of understanding from where we came; a declaration of the values by which we want to live; a map showing how connected every aspect of our lives is with our land, sea and air and how much of our homeness depends on our sense of belonging to a place—not of owning a place, but of belonging to a place.

A planning and development of land Bill should seek to heal us from a calamity and a blindness identified by one of our classics by George Lamming in an essay called "The Imperial Encirclement" in a book entitled *Conversations.* Just in parenthesis, Mr. Vice-President, I would like to tell Sen. Roy Augustus that we need not go wholescale to the classics of Greece and Rome, that we have classics of our own. [*Desk thumping*]

Mr. Vice-President, in the book *Conversations,* George Lamming writes:

> "Today we live a global inequality which drives men and women from the soil that gave them birth, the immediate landscape that shaped their childhood, across oceans, since any dream that they may have of rescuing life, in dignity, from poverty, that dream is elsewhere, it is not in the landscape where they were born…"

People are just forced to emigrate, Mr. Vice-President. He goes on:

> "…If you go to Jamaica or Barbados there is not a single family who has not got some relation in the United States. And this person, in a relative sense, is doing well.
>
> …I say the situation is extreme because what this particular arrangement or system has so far succeeded in doing is to provide to a large extent a level of material comfort sufficiently different from preceding deprivation to make its human victims also its uncritical defenders."

So the people who are moving away from the land that could sustain them and give them a sense of wholeness are bribed by their material success in other countries to become uncritical defenders of the movement away from their native land.

Mr. Vice-President, I know this may sound very literary and it may not sound political, but I think it is very profoundly political. It may be a bit boring for those who are not interested in literature but I find that the wisdom of the nation lies not in our politicians, lies not in the people who—I do not want to insult anybody because we are all politicians so we can insult one another. But the wisdom of our nation lies in the work of our artists and our literary artists are very articulate about the kinds of pressures under which we have to live and, therefore, if I take some time to quote from our artists, I hope nobody would be fed up or bored.

In Sam Selvon's *A Brighter Sun,* the hero is on the point of a nervous breakdown because he realizes that his personal life has degenerated. He is frustrated, he is frenzied, and he is so because he has set himself material goals and social objectives and has cut himself off from the true sources of power and self-management, and he is lying on the grass and he looks up and he remembers.

3.15 p.m.

> "He remembered how he had planned to sell his first harvest for knowledge, to an unknown power. What a waste of tomatoes and ochroes and lettuce that would have been. For he knew now how to go about searching for knowledge. And the power—why, the power was all around him, he could feel it throbbing in the earth, humming in the air, riding the night wind, stealing through the swamp. The power was free, all you had to do was breathe it in, deep and full, until your chest felt like bursting. And glory in it—in the depth of the night, in the rustling trees, in the immense space between earth and sky."

Mr. Vice-President, the sequel to *A Brighter Sun* is *Turn Again Tiger*, and in that book the hero recognizes that he has made a false start and goes back to his green beginnings.

A proper planning and development of land Bill will stem the flow of people away from their natural habitat and take them back to their green beginnings, and to authenticity and self-generated power. I have to close this preamble with one more quotation, and it is from a novel by George Lamming in which a fictional character—in the last quotation I was looking at the way in which the person of the individual, the wholeness of that person is dependent upon his relationship to land and place, and in this quotation, we are seeing a connection between the land and the making of the nation.

The character in this section of the novel, like all of us who are enthusiastic about things, is going on and on about it, but this is what he says:

> "Nationalism is not only frenzy and struggle with all its necessary demand for the destruction of those forces which condemn you to the status we call colonial. The national spirit is deeper and more enduring than that. It is original and necessary as the root to the body of a tree. It is the source of discovery and creation. It is the private feeling you experience of possessing and being possessed by the whole landscape of the place where you were born, the freedom which helps you to recognize the rhythm of the winds, the silence and aroma of the night, rocks, water, pebble and branch, animal and bird noise, the temper of the sea and the mornings arousing nature everywhere to the silent and sacred communion between you and the roots you have made on this island. It is the bond between each man and that corner of the earth which his birth and his work have baptized with the name, home."

Mr. Vice-President, I have spent much of my time on what may seem to be a nebulous subject, the meaning of land and the kinds of priorities that should lie behind the framing of a planning and development of land Bill.

I now want to turn to items within the Bill that I consider to be assaults on the people. I begin with the powers of the Minister to override the commission in relation to planning applications decisions and the revocation or modification of permission to develop land.

The offending clauses are 48, 49 and 101.

"Powers reserved to the Minister".

Clause 48(1) begins by telling you the circumstances in which the Minister may take onto himself these powers. And after it lists (a), (b), (c), and (d), it says:

> "the Minister may give directions requiring that the application be referred to him instead of being dealt with by the commission or the planning authority."

There is a sickly provision for a kind of appeal against this power in clause 48(6) which says that before determining any application referred to him, the Minister shall afford the applicant, the Commission or any planning authority, if either of them so desires.

A right that should be automatically mine to speak to my application, or to speak to the refusal of my application, you are telling me if I so desire. Suppose I do not even know that I have those rights? Suppose this is just put in the *Gazette*, or you send me a letter and I did not get it because even though it is New Zealanders delivering the mail, sometimes they do not always come. Suppose I did not get any letter so I do not know anything at all, how would I desire to be

heard? If there is a provision for people to be heard, state that there is such a provision, and tell us when and how they would be heard. Clause 48(7) says:

> "The decision of the Minister on any application referred to him under this section is final."

Final, no appeal. Final. Only death is final.

Clause 49 gives the power to the Minister to revoke.

Clause 101(1) says:

> "The Minister may make regulations for any purpose for which regulations are authorized or required to be made under this Act."

And there is a whole list from (a) to (n). And 101(3) tells us:

> "Regulations made under this Act are subject to negative resolution of Parliament."

So, if the deputies give you 24 seats, an automatic majority, what is a negative resolution of Parliament? What kind of protection is that?

3.25 p.m.

I come now to clause 4(3). When I saw clause 4(3), I wondered if the Minister was the President:

> "Nothing in this section shall be construed as imposing upon the Minister, directly or indirectly, any form of duty or liability enforceable by proceedings before any Court."

What is this? Is this a democracy? "Nothing in this section shall be construed as imposing upon the Minister…any form of duty or liability enforceable by proceedings before any court"?

Mr. Vice-President, I intend to vote for Sen. Prof. Kenny's amendment, that the commission should be appointed not by Cabinet but by the President, after consultation with the Leader of the Opposition and the Prime Minister. But I want to note that this Bill rubs salt in the wound. As the Bill sets it up, the commission is a creature of the Minister, and yet the Bill is jockeying to make sure that the Minister could override his creature.

Mr. Vice-President, I think I have said enough. I have tabled amendments requiring the deletion and modification of these offending clauses. I want to come now to the compulsory acquisition of land. I was not here this morning but I believe that this has been dealt with at some length. I just want to say that

although the Land Acquisition Act, Chap. 35:01 does not define "public purposes", it nevertheless stipulates as follows at section 31(1):

> "Where any land is designated under section 5(2)…as subject to compulsory acquisition by the Minister, the land may be acquired by the Minister compulsorily in accordance with the provisions of the Land Acquisition Act, as being land needed for public purposes within the meaning of that Act."

I would like to see, in this Bill, the insertion of "public purposes" and a definition of "public purposes". But the present Bill gets around the Land Acquisition Act by allowing the Minister to acquire land as if for public purposes. Not for public purposes, but "as if" for public purposes. It leaves it wide open, as Sen. Prof. Kenny argued, for the Minister to acquire private property—having acquired private property not for public purposes, but "as if" for public purposes, it now makes it possible for him to dispose of the land so acquired, to a private operator. If the present Bill had been in force last year, the attempts to dispossess the people of Toco would have been legal. [*Desk thumping*]

Sen. Prof. Kenny: Good point.

Sen. Prof. K. Ramchand: The present Bill threatens the ordinary citizen and impinges upon our constitutional right, both to possess and to enjoy property. I intend, therefore, to vote for Sen. Prof. Kenny's amendment, that this Bill needs a special majority. In this connection, I hope the hon. Minister can provide an answer to the following question: The Joint Select Committee of both Houses of Parliament requested a written opinion from the Solicitor General on the requirement for a special majority in this Bill. Can the Minister state whether an opinion was obtained and if it was obtained, whether it was passed on to the Joint Select Committee?

I come now to the attack on the Environmental Management Act and the Authority. I have tabled amendments to all the offending clauses, so I can focus, at this point, on the most drastic. In order to save time, I should just point out that clause 75(4) has the effect of revoking the Environmental Management Act. It is there in the Bill and people can read it.

Clause 75(5)(b) radically weakens the legal power of the Environmental Management Authority to issue certificates of environmental clearance. The same tendency or bent can be seen in clause 35(1). Clause 35(1) is not so obvious, so I feel I should underline it. It states:

> "In considering any application made pursuant to section 31(1)(b), the Commission or any planning authority shall take into account—"

(a), (b), (c), (d) and (e), including a certificate of environmental clearance, et cetera.

Mr. Vice-President, "take into account" does not mean "comply with". It should be "comply with", and I have tabled an amendment to that effect. But when you look at (f), it should take into account:

> "where a certificate of environmental clearance is required under the Environmental Management Act, whether such certificate has been refused or issued and any terms of it;"

If a certificate of environmental clearance has been refused, what is the application doing before the commission? [*Desk thumping*]

[MR. PRESIDENT *in the Chair*]

Mr. President, if you look at clause 35(2)(a) to (f), the items listed there: "the uses to which"; "the pattern of development"; "the likely effects", do you know what this is doing? Clause 35(2) is really asking for an environmental impact assessment without saying it is asking for an environmental impact assessment, because it knows it is trying to steal this power away from the Environmental Management Authority.

I am trying to show that the items I am isolating constitute a very serious attack on the environmental management legislation, on the Authority and on the people of Trinidad and Tobago. By attacking the EMA, you are attacking the people of Trinidad and Tobago. But I want to go further into this attack on the citizen by quoting from an address. It is a lengthy quotation, but I think it is worth quoting. It puts the argument very clearly and passionately. I quote from an address by the former Independent Senator, Diana Mahabir-Wyatt, to Fishermen and Friends of the Sea, in which she is looking at the way in which the citizen is under attack. She says:

> "Accountability to the community is provided for in the EMA Act which provides for public hearings in various issues, again commendably. It also allows for citizens' actions, which gives a single human being the right to bring a legal action if he or she feels that his or her human rights or those of their children are being infringed. This is important, for as experience has taught us elsewhere, money talks, and whole groups of people who know that the environment is being polluted can be bought or frightened into silence, but there are still concerned and courageous individuals who will fight for their children and their children's rights to grow up in a healthy environment…. That right must not be removed.

That is why I am concerned that Section 75 of this same Bill apparently attempts to abolish these rights, which are rights that can affect the health and welfare of children, which I have never heard of any Land Developer taking into consideration, by setting up a Development Control Committee which, as Subsection (4) of that Section in the Bill says, from the time the Committee is set up, results in *'the cessation of the effect of any written law that has regulatory or approval powers'*. This includes the EMA in relation to the issuance of certificates of environmental clearance, which would, in one swoop, also remove the rights of communities and individuals to bring action against such decisions."

3.35 p.m.

Except under a state of emergency, I don't know of any precedent where any Committee can take unto itself the power of law, or a precedent in T&T that provides for the cessation of the effect of written laws and the handing over to a committee of seven men the powers under those laws as this one does. I find it unthinkable."

I find it fascist.

I come now to a scandalous episode in the relation between the Environmental Management Authority and the Government. I refer to a memorandum of understanding on environmental management between the Environmental Management Authority and the Interim National Physical Planning Commission. Mr. Vice-President, this is an agreement between—Mr. President, I did not see you. The chairman is such a dominating figure these days that—I apologize, Mr. President. I am talking about an agreement between an organization that has status in law, that is, the EMA, and a Cabinet-appointed committee, the Interim National Physical Planning Commission, which has no status in the law. I am contemplating the spectacle of these two organizations conspiring to carve up a jurisdiction already defined by the Legislature. A subversion of parliamentary authority.

I want to have it both ways. It seems that there is no honour among conspirators. Here is an agreement signed in July 2000 and it is not reflected in the Bill or any amendments brought by the Minister. So what is the status of this agreement? When you look at the agreement there is a certain comfort in it. Although it is quite scandalous, I would use this memorandum to say that the Government knows very well that the EMA has the legal power and should be the Authority issuing certificates of environmental clearance. They should not try to subvert the law and take that away from them.

I would read two of the clauses in the agreement. Clause 6.2 states:
"When the INPPC receives any…"

Mr. President: Senator, could you fully identify the document please?

Sen. Prof. K. Ramchand: Memorandum of Understanding on Environmental Management between the Environmental Management Authority and Interim National Physical Planning Commission. It was signed on July 06, 2000.

Clause 6.2 states:

"When the INPPC receives any application for the grant of any permit, licence or other documentary authorization for any designated activity, the INPPC shall require the applicant to submit in support of that application, at an appropriate stage in the application process, an application to the EMA for a CEC.

Provided always that—

(i) the INPPC may grant approval in principle for the proposed activity provisionally, subject to the condition that no permit, licence or other documentary authorisation shall subsequently be granted by the INPPC for undertaking that activity unless a CEC has first been issued by the EMA with respect thereto; and…"

Mr. President: The speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. E. McKenzie*]

Question put and agreed to.

Sen. Prof. K. Ramchand: Mr. President, a little bit of footwork and so on—even a bit of manoeuvre, but essentially, "unless a CEC has first been issued by the EMA with respect thereto…"

Finally clause 7.3 states:

"Where, after consideration of the EIA, the EMA decides that a CEC shall be granted or refused, as the case may be, the INPPC shall accept that decision as final, subject to the outcome..."

It is not final like when the Minister says final. It continues:

"…subject to the outcome of any appeal thereof by the applicant to the Environmental Commission or any other court of law."

Hon. Senator: Who is the INPPC?

Sen. Prof. K. Ramchand: That is the Interim National Physical Planning Committee, a Cabinet-appointed committee with office at Ansa McAL Building, 44-46 South Quay, Port of Spain. They are not parliamentary.

The last thing I promised to talk about was the list of amendments I have proposed. I will just satisfy myself by saying that I am calling for the deletion of clauses 4(3), 48, 75(4) and (5) and 101. I am asking another question about clause (19)1 because I am a novice in these matters. I have tabled an amendment to clause 19(1), but maybe I was wrong to table an amendment. Maybe the Minister can explain.

Clause 19(1)(c)(3) refers to buffer zones where no construction would be permitted due to vulnerability of the zone to environmental hazards whether natural or man-made. My dictionary says that a buffer zone is something that comes as a protection. It protects something that is sensitive. It is not that the buffer is sensitive. This subclause seems to imply that the buffer zone is the sensitive zone. If I am right, I think we need an amendment there. It should say buffer zones where no construction would be permitted due to vulnerability of adjacent zones to environmental hazards whether natural or man-made.

I have a question about clause 38(1). I would end with that. It brings me back to my theme that people do not seem to have any rights in this Bill, unless I misunderstood it. It says:

> "Without restricting the generality of section 37(1)(b), a grant of permission to develop land may impose conditions—
>
> (a) regulating the development or use of any land under the control of the applicant (whether or not it is land to which the application relates)…"

If I have an estate in Icacos and another in Mayaro and I am doing something on my estate in Mayaro, I make my application, they would tell me what I could do in Icacos. I do not know what they mean. I hope the Minister would explain it.

I conclude by saying that I am very disturbed by this Bill. I do not think it has any vision for the development of our people and the country. I find it positively dangerous and it infringes the rights and possibilities of the ordinary people of Trinidad and Tobago.

Thank you.

3.45 p.m.

Mr. President: Any other contributions? If anybody wishes to speak, please rise or raise your hand.

Sen. Christopher R. Thomas: Mr. President, it is very difficult to make a contribution or comments after the distinguished contributions I have heard this afternoon. Legislation of land development is such a fundamental instrument of planning and development in any country that I do wish to make a few comments, and I hope you will bear with any repetition that I might have. It is important for a number of reasons but particularly in relation to small island-states which do not have the luxury, capacity or the resources for extensive land reclamation, one has to be very careful and judicious in how one determines the whole question of planning and development of land.

Land in what one may call small-island states constitutes one of the finite resources of the State. I begin by supporting the Bill for a number of reasons. Firstly, because of its attempt and somewhat successful improvements on the Town and Country Planning Act, I support it for its many provisions on transparency through the use of public information and consultation so that there is the wider participation of the public in relation to what is being proposed. I support it for its introduction of what has been termed by the Minister a one-stop shop. It is not ideal but it is development in that area, and I also admire the ambitious purpose of the Bill in looking at the question of integral development. Integral development, perhaps, with the single exception of the Ministry of Finance, involves so much more than just land development as one sees in the Bill. It involves almost every activity of the public and perhaps, every ministry of government. It involves transport, housing, industry, education, health; every conceivable department of government has a role to play in land development because it is strictly a question of building construction. Therefore, there should be, in my view, mechanisms for coordination so that when one seeks to structure one's land development, one can have the input of these different components that form part of the larger jurisdictional picture for land development and, I would like to come back to this in a short while.

The Bill before us is a beginning and there would be a number of other things that would be required. I think, notwithstanding the fact that Bill is before us for the fourth time I am told, that we should not be discouraged or disheartened by that because it is such an important piece of legislation that requires and will bear particular scrutiny. Even after three readings there could be improvements. I have heard so many contributions today that I am persuaded there could be substantial improvements to the Bill. I would like to suggest a number of areas in which I believe the Minister and the drafters might wish to look at again in seeking to finalize this Bill before it returns to the Parliament.

I would like to look at four general areas and four specific provisions of the Bill and make two small suggestions to Members of the Senate. The first area of general application is the question of interest representation. The backbone of the Bill is the National Physical Development Plan. That plan may be developed by the National Physical Planning Commission. The commission would develop national plans and building codes, monitor its implementation and administer its provision. The plan would be administered through regional, local and special developmental standing committees as they are called. We are told that in the administration of the plan, the commission would be serviced by regional, local and special authorities called planning authorities, developmental committees and a number of other committees.

When one looks at one of the provisions of the Bill it says the commission will oversee all things subject to ministerial authority and parliamentary approval. If the commission is going to oversee all things as is said in the Bill, then the question of composition of the commission becomes critical. When I looked at the composition of the commission I saw no reference to the inclusion of a whole body of potential interested parties in this. I saw no inclusion, for example, of a small farmers' representation, no small entrepreneurs' representation, no small hoteliers, no small landowners or land tenants. I wondered about this, and believe it is not sufficient to say that there are regional and planning commissions—because if one looks at the structure of the Bill, first of all, the commission sets the parameters, the macro plan; the planning authorities, regional bodies work within that macro planning. If one looks at some of the terms of reference—and I do not wish to bore the Senate with the terms of reference—it is clear that in the planning, local authorities, with the exception of the Tobago Regional Authority, are working within certain specific areas that have already been demarcated and specified.

3.55 p.m.

More than that, when the planning authorities or the regional authorities return their work to the commission, it can, as is stated here, with or without amendment, recommend it to the Minister. It means that unless you are in on the ground where these other interests are concerned, you may find a situation—what I might call from Caesar to Caesar. It comes from the commission. You work within a certain parameter in terms of what the commission has decided; you send this back to the commission; the commission may, with or without amendments, recommend it to the Minister.

The cycle here is: national plan drawn up by the commission; local plan prepared by planning authorities, submitted to commission; commission amends

for approval by Minister. It is a traditional cycle, but one needs the representation of all interest groups. I feel that, in that sense, the plan is somewhat institutionally deficient.

If we do not seek to amend the constitution of the commission, we run a risk given the history of land ownership and land acquisition in this country. Someone has spoken about this before. I tried to find out the relative proportion of individual land ownership to organizational or corporation ownership. I have not been able to find that out, but I believe that it might be substantial. If that were the case and certain interest groups were not part of the composition of the larger body that determines these plans, I believe that we may run the risk of having a plan that can be labelled a big-business plan. The Minister may wish to look at this first point again.

My second major area refers to what I call mechanisms of coordination. I hinted at this earlier when I spoke. Having read the Bill two or three times, I have a basic problem with what is the larger purpose of the Bill as against the absence of certain provisions. I come very close to what Sen. Dumas referred to earlier. I have two problems. One is: there seems to be a lack of a strategic plan within which the land development plan will fall. I also have difficulty with some of the provisions of the Bill where we speak of a development plan and we speak of the physical development plan. They are clearly two different things.

However, clause 18(1) provides that the National Physical Development Plan shall be, inter alia:

> "(a) …consistent with social, economic, regional, environmental, cultural and other developmental policies of Government;"

This, in my view, is quintessentially the heart of integrated planning and development. As I said earlier, it involves perhaps all ministries of government in relation to the question of jurisdictional competencies: what lands must be used for airports; what must be used for hospitals, schools, highways and agriculture. It is simply a physical development plan.

I believe that these basic questions must be answered from the beginning and I am not seeing that in the plan. I therefore want to raise two basic questions in relation to the coordination. The first is: Is there a macro plan within which the commission will develop the land development plan in relation to all that is said—social, economic, cultural, environmental? Where does this body of information exist? Will the commission be able to access this body of information? It certainly will not be the existing physical plan because we are moving to another area and we consider that plan to be somewhat deficient. If we

are going into a new sort of development plan, and there is a commission to deal with this, I ask the Minister whether we can at some point find out whether there is a body with that kind of information that the commission will access. If there is not such a body of information—and I hope there is—where is the larger jurisdiction? Does the Minister of Integrated Planning and Development tell the Minister of Infrastructure Development and Local Government where roads or hospitals or schools must be built? Where does coordination take place in the absence of that kind of information that the commission will use? Does it happen before the national plan is developed or does it happen after? Do they begin with a physical national plan and then decide, as a second step within this area, where they had planned for agriculture they will also have schools, hospitals or roads, as the case may be? Or is the Minister of Integrated Planning and Development responsible? [*Cellphone rings*]

Mr. President: Senator, you are fairly new to the Parliament. We have a very, very strict rule in the Senate that when Members enter the Chamber all cellular phones must be switched off. It is very disturbing for anyone's phone to ring while someone is on his feet.

Let me just advise any other person in the Chamber who has a cellular phone on him to ensure that it is switched off, please, or some disciplinary action might be taken.

Sen. C. R. Thomas: I thank you, Mr. President. Where does the larger jurisdictional competence lie? Is it outside the domain of this Bill or will it come subsequently? I did have difficulty conceptually in dealing with the Bill from that perspective.

Let me give an example. Two weeks ago, the Minister unfolded some plans for a boardwalk, a dual carriageway going to Chaguaramas and for a very tall building in Port of Spain. Since this does not relate to just one ministry, where is the coordination in relation to planning? Is this part of the physical plan? If this were part of the physical plan, would it not necessarily have needed to be coordinated with all the other ministries that are involved in the whole question of development?

I am not seeing this in the document. Maybe the Minister can tell me if this is the first stage. That specific example I just gave—is it an idea, a plan already coordinated, have other ministries already dealt with it, or is it just a concept?

Let us take the question of Mayaro. We are told that Mayaro will have a 300-room, five-star hotel. Has tourism coordinated this as part of the physical development plan? What kind of coordination would have taken place? What has

taken place at the moment? I was in Mayaro three weeks ago and had an opportunity to talk with some of the people. There are two views. One is: Great, we are going to have a lot of employment! There will be a five-star hotel. There is another view—one of uncertainty. Where would the golf course be put? Whose land will be taken? Would there be roads? Would there be an airport? Would there be a seaport? What is going to happen to Mayaro? The people were very uncertain. I am not now discussing that.

4.05 p.m.

What I am trying to say is: If this were part of the physical plan, at what point would one be able to interject these different elements? Or, are we going to have just a plan that is purely physical? I do not see how we can do that without taking into context what, in fact, the plan would involve in its totality or at least in some majority way. That is my conceptual difficulty with this whole question of the word "physical" that does not speak to these other developmental questions.

I support integral development and I think it is particularly indispensable for small countries. I believe that this Bill might just be a forerunner to a larger planning Bill but I would certainly like to know this. At first or even fourth blush, it seems to give the impression that if this Bill is passed in its present form, it is more likely to complicate rather than facilitate the whole question of development.

Mr. President, let me turn to the environment. I can be very brief on this because a number of Senators have spoken on this. I find there is a tremendous inconsistency in the way the environment has been treated in this Bill. The environment has come to be, if not fundamental, one of the most important aspects of development impact studies. Banks and lending institutions all insist on having impact studies before moneys are lent. Lending organizations, investment partners, also assist in this.

Mr. President, it has come to be so important and critical to planning and development that one has to give it its due and its weight within the whole context of development, physical as well as other development. What I find in the Bill is that at some level, environment is treated well, at other levels it is treated with a certain amount of inconsistency and at other levels it is almost ignored.

I want to go back a little and say sometimes—as I used to say in another incarnation when I was Permanent Secretary at the Ministry of External Affairs—in our training programmes, names are important. Names are sometimes determinant of relations; we must learn to call someone by his or her proper

name. Sen. Prof. Julian Kenny said something last week or the week before that the Bill is before us either for the fourth or the fifth time, and there are still all types of spelling and drafting errors.

At the start of this Bill the Environmental Commission is being called BC instead of EC and this is the fourth time this Bill is coming before us. Somewhere, someone is not giving the commission its due. You cannot even say what it is. You say BC represents the Environmental Commission that is at the beginning of the legislation. I always told some of my younger officers many years ago that if they could not call someone's name correctly they were going to have a problem relating to him or her. It testifies to the regard they have for him or her and the regard he or she would have for them. Here we have a situation where after that fourth redrafting we have BC, which says the Environmental Commission. I think there is something wrong with that. This may, in fact, be indicative of how one perceives it to be or there may be some measure of competition. I do not know. When one looks through the clauses and there are a number of areas where the Bill is treated with some degree of seriousness and then there are others which are not.

In the appeal section, I believe that the Bill is largely given its due. When you come out of the appeal section and you look at clause 35(1) and (2), the commission is fully recognized. It talks about certificates of environmental clearance. Clause 37 provides for—I believe this was referred to before—the EMA entering into an MOU. Now the Minister did say that MOU was already signed or, I believe, dealt with, so that it is my understanding that this would be removed from the Bill. In that case I would not make any further comments on it. I did, however, have difficulty with the inclusion of this.

Then 36(4), in my view, treats this central environmental body with a casualness that is almost dismissive. Then we come to clause 75(5)(b) where it subordinates the EMA, totally, to the commission. I believe that the Minister might wish to look at this again, particularly where, as I say, the environment has become so critically important to us. We are either going to accept the whole question of environmental impact and environmental work within our development or we are not. It is already an institution and therefore I would suggest that the Minister re-look that part of the legislation.

Mr. President, I want to turn to the fourth general area, which is the decision making and, particularly, the role of the Minister. Before I do that I am going to ask that I be allowed to say just a few sentences on the question of the one-stop-shop. Although I said I support it, I believe that one needs to go a little further and maybe the Minister and the drafters could re-look the proposed legislation again.

Let me outline a few things. In the context of the Bill, we have outlined developmental order, grant of developmental order, operative developmental plan, provisional developmental plan, completion notice, compliance notice, immediate compliance, environmental repair notice, discontinuance notice, temporary certificate of occupancy, occupancy certificate, completion certificate. That is about 12, and I am sure I have not captured them all. We start by saying that one of the purposes of this Bill is simplicity. Now if simplicity is one of the purposes of the Bill, I believe that we can easily eliminate some of these steps. I have counted 11; there might be more. I am suggesting, again, that the Minister might want to re-look this.

I have a few comments on decision making. The Minister said to us two weeks ago that the powers of the Minister had been substantially reduced in several redrafts of the Bill. Obviously, that is a question of perspective. I recall very vividly in another capacity, in negotiations in Law of the Sea, that certain major delegations—at that time I was honoured to chair the Group of 77—would say to us after we had negotiated the fourth or fifth time: "We would come back to you." They would come back and say: "You see how many changes have been made to accommodate your position." If you start in the sky, however, and you are coming to us and you are still in the stratosphere you really have not reached anywhere. It is a question of perspective. You may have made 10 or 12 changes but you are still close to the ideal.

I think that there were some things that were said this afternoon that the Minister might wish to take into account. I want to list a few and I risk being very repetitive on this, Mr. President. I am not questioning the jurisdiction of the Minister, not at all, but I want to say that when you look at the administrative structure of the Bill you have a commission, you have planning authorities where all planning authorities are appointed by the Minister on the recommendation of the commission with or without amendments. That is what it says. Notwithstanding appointment of planning authorities, in clause 16, on page 39, the Minister may appoint a local authority or special authority after consultation with the commission.

4.15 p.m.

If you look at the functions of these authorities that could be appointed by the Minister, that is, in addition to the local planning authorities, you could see quite similar provisions, which in fact means that when you look at clause 20, for that matter, the special committees appointed by the Minister after consultation with

the commission can quite easily subsume or subvert or replace the work of these planning authorities.

Then you have the servicing process—standing committees, the other committees—the membership of the servicing committees, which is the standing committee, developmental committee, other committees. The membership and sphere of work of all committees are approved by the Minister. All delegation of functions is approved by the Minister. Then you come to clause 20. Notwithstanding that special authorities may be appointed by the Minister after consultation with the commission, the Minister has the sole right to revoke, to suspend, to abolish, to reconstitute or to reconfigure special planning committees.

When I read this, Mr. President, I was tempted to say—and I hope the Senate would forgive my irreverence—the Lord giveth and the Lord taketh away. The Minister giveth and the Minister taketh away. He is able to revoke, he is able to do everything without even a recommendation or consultation with the commission. So I think we need to look at that again because it does seem to give a tremendous imbalance of power.

Now, clause 40, Mr. President—I think I still have a little time so I wanted to just say, where we talk about having all this power—and I will date myself a little for the younger Senators here—when we played in the street we played a game called cricket. We did not have the facilities that governments have provided for younger people today. We had a windball, a bat and a rudimentary wicket made of what is called a kerosene drum, a "pitch-oil tin" they used to call it in those days, and we played in the streets. If the owner of the ball did not like what was happening, he took his ball away; if the owner of the bat did not like what was happening, he took his bat away, and if someone happened to have brought bat, ball and wicket, "game done" as they say, in the local vernacular. I would suggest, not in reference to the clause I just read, but as a piece of advice to you, Mr. President, if I could presume to do that, that on Sunday at our game you bring ball, bat and wicket [*Laughter*] so that you can determine the rules of the game, you can change the rules of the game and you could revoke anything.

Mr. President, clause 48, page 79, reserves for the Minister the consideration and final decision on certain applications. If we look at clause 18 and we look at the purposes of the commission, they are so broad, and if you look at page 141 under representation of the commission—and I am suggesting that the representation be increased and improved—and if you look at clauses 6 and 7 on functions of the commission, the need for these referrals becomes very puzzling. You have a commission with representation of national physical planners and a

whole cross-section of the society; you have a commission with a very comprehensive mandate to advise the Minister on a host of national policies; and you have a commission that recommends all things, I am quoting here, "to the Minister". What, then, is the purpose of referral? Where, on balance, is the professional competence of the commission if a certain number of questions are being referred to the Minister?

I go further. I believe it was Sen. Prof. Ramchand who did mention the question of clause 48(7), which is even more perplexing to me. I would think, Mr. President, if you have a commission constituted as it is, and that commission is reporting to the Minister, that commission must have a certain professional status. So, firstly, it would appear to me that the commission should be given its due to work and, secondly, where you refer certain things to the Minister you say, as Sen. Prof. Ramchand said—and I agree with that—you equate the commission with an applicant. I think that is wrong.

Then thirdly, you treat the commission with a certain level of disdain. You say, "If you want to come to me after, these matters are referred to me. When I have made a decision you and the applicant can come to me." So first of all, you take my commission and you equate it to the level of an applicant, and then, secondly, you say to me—this is a commission formed by the President. You say to me, "If you wish to come to me after, you can come to discuss this matter, but I have made the decision." I think that is wrong. I think the whole procedure is wrong. Why abort the professional procedure when the Minister has the authority? The commission is recommending to him. Why then are you taking part of what the commission is recommending, doing it for yourself—in fact, I believe that when the commission—if the commission is allowed to do its work, it insulates the Minister from any allegations of any kind of impropriety because it is the recommendation of the commission.

When the Minister takes to himself certain things that, in my view, can be handled very easily by the commission because of its constitution, then I think we are inverting the process and I think it is wrong. I would suggest therefore that everything goes to the commission and following that, it goes to the Minister because the Minister, as the provision says, has the final say.

Mr. President, these are the thoughts on what I call the general areas of the Bill. I would now like to refer to four specific provisions. Of the four provisions, one referred to the compulsory acquisition that has been referred to, page 51. I think the procedure is not clear. Again I am not questioning the jurisdiction of the Minister but the procedures are not clear and I believe that clause 23 is decidedly unilateral. There is no effective counterbalancing in the provision for

compensation to small landowners, who are more likely to be hurt than large corporations. I repeat, we know the history of land occupancy, land occupation and land possession in this country and we know that the people who are likely to be hurt here are the small landowners.

Clause 23(6) compounds the earlier provision where, as Sen. Prof. Kenny said two weeks ago—land is designated. The scenario is as follows. You designate my land, I wait five years and six months, at the discretion of the State, for restoration of the commencement of negotiated settlement which may take another five years. We have been hearing in this Senate that lands in Tobago that have been appropriated have not even been—there is no compensation so far. So it may very well take more than five years and six months. Now, that may sound not too long for corporations, but if you have someone who is an owner living on a piece of land or working the land or being a tenant on the land and you tell him for five years he can do nothing on his land but wait until you decide, how does he live? Some of us are fortunate. The Senate pays us $4,000 a month, but if he was living on the land and working on it, what does he do for five years? That is why I insist that the Bill runs the risk of being considered a big-business Bill because the average man on his land cannot wait five years. I therefore think we should look at this again.

Mr. President, page 139 clause 103, I have read and reread this clause. I think, if my interpretation is correct, the clause is hopelessly wrong. It puts the onus for evidence against prosecution on the accused. There is no onus on the prosecution, not even a signature or a document. Wherever I have operated so far, you have to sign something. I spent, while I was in Washington as Assistant Secretary General, half an hour with a former Secretary of State, dealing with a matter on which we both agreed. I had brought together a small document because I felt we should make some amendments to the document. There was no need for amendments to the document and we agreed and I left the State Department very happy that I had concluded an excellent piece of negotiation, and I left the document with him. When I got to my driver outside the car, there was the security running to me. He said, "Ambassador, Ambassador, you have not signed the document. The Secretary of State says we agreed but you have not signed the document." Now, everywhere I go I know documents have to be signed, but this provision says you can be prosecuted and the prosecutor does not even have to have a signed document. That is not legally or morally correct.

Then finally, Mr. President, page 138 on the question of bribery—bribery is an endemic form of corruption in this society and certainly I will support any measure that will eliminate bribery, but bribery is also sometimes the question or

the function of relations between unequals. Sometime ago in this Chamber I did ask, since we are making laws, how do we decide on what should be the level of penalties in relation to a particular offence? What we have here are penalties in relation only to the person who attempts to bribe, but bribery is a two-way thing.

If you take the scenario, therefore, you take my land, you designate my land or my house, I have nothing else to live on—I am not justifying bribery—I have to wait five years, and in order to sort of—I do not know what word to use, I decide to bribe you, which is wrong. I go to jail, I pay $50,000, but you can take my money, go away with it and, unless there is a sting operation—even in a sting operation I might lose. So I would suggest that the converse is also applicable and that the Minister might consider—and if he does not I certainly will—moving an amendment to this provision so that those who accept bribes will also pay a penalty because they are the ones with the authority.

That penalty, Mr. President—and I am sure—Sen. Rev. Teelucksingh is not here but that penalty should be based on the principle that "he who receives more, more is demanded". I would therefore suggest that where one pays $50,000 for bribing, those who receive bribes in a court pay $100,000; and where we go to jail for two years for bribing, those who receive it should go to jail for five years and I will certainly move that amendment to this provision.

Mr. President, I want to end with just two simple suggestions, as I said, and they relate to two matters. I do not have to really refer to the specific provision but I wondered whether, in the interest of time and getting on with our work and at least beginning with an area of consensus, we may ask framers of Bills or members of the Government to include in all such pieces of legislation, where an authority or a commission or so is being established, two phrases. One is, when it is appointed by the President, let us say "after consultation with the Prime Minister and the Leader of the Opposition"—if you come in with that Bill we start with an understanding.

The second is, where we talk about the Minister can give special directions and so in spite of the Bill, if we say, "not inconsistent with the provisions of this Bill". If we can use those two things we begin with two areas of consensus and we can move forward with a certain amount of harmony.

Mr. President, I thank you.

Mr. President: It is now teatime but I have been advised that, by consensus, we might wish to have a motion for the adjournment around five o'clock, so that I would take one more contribution.

4.30 p.m.

Sen. Dr. David Quamina: Mr. President, I came this morning with notes with which to make some sort of contribution. As I listened to the various speakers, it became abundantly clear that except I wished to duplicate what has been said before, there is little left that is new for me to say.

Let me say at the beginning that Sen. Daly did, this morning, spectacularly cover most of the ground and a lot more than I thought I would have done. This afternoon Sen. Prof. Ramchand wrapped it all up. I am grateful for these two Senators for saving me, I think, some time.

I would like to congratulate Sen. Augustus—I think this is his first speech—on his very excellently presented defence of his party's policy, and I am sure that it could hardly have been better done.

Several years ago when I was an undergraduate, together with three other students I was assigned a responsibility. When I turned up on the first occasion to look and to address this responsibility, I found that two of the gentlemen had gone ahead, planned it, were working on it and my colleague and I were left as "fetchers of water and bringers of wood". As a young undergraduate, this left me very depressed indeed, but one recovers. Now that I read this Bill, I feel some of the same depression that I felt on that occasion a long time ago.

One of the things that upsets me about the Bill mostly is that it seems to be that the applicant to develop land runs a very grave risk of ending up the culprit. I have looked at the Constitution here and I read that it is the right of an individual to life, liberty, security of person, enjoyment of property and the right not to be deprived thereof except by due process of law. I also read that it is the right of an individual to equality of treatment from any public authority in the exercise of any function.

I do not think that this right is extended to this Bill, as I would like to see it. The public outside is seeking to have this Bill delayed or changed. I have received two documents on this. Most of us have received some supplication as we were coming here. Even people from the old Chagaramas problem and a group of fishermen are saying that they are worried about what this draft presents and how it will impinge on them. They think it should be delayed and given separate and extended consideration.

The first thing that strikes one about the Bill is the extent of the bureaucracy that obtains. One of the previous speakers did mention it: a National Physical Planning Commission, a National Physical Development Plan, a Development

Control Committee, et cetera, down to local authorities amongst whom, I presume, I might be wrong, that the Tobago House of Assembly might just be one.

We come now to the Environmental Management Authority and its relationship with the National Physical Planning Commission and this interesting memorandum of understanding. It has been mentioned before and I mention it again because it strikes me that there is something wrong about this association between these two bodies. I, too, am of the opinion that the EMA should be left alone and that its authority might not be quenched.

Then we come, Mr. President, to the question of the Minister. The Minister figures significantly, as everyone else here has said, and in spite of his being armed with a National Physical Planning Commission, he seems to be responsible for quite a few things: securing objects set out; responsible for framing comprehensive policies and even supervising and inspecting these policies. I see in the Bill that there can be no enforceable proceedings before the court against the Minister.

I think on a previous occasion in this Senate, we came up against this same invulnerable position of the Minister. The Minister, again, comes into play if the problem is of more than local importance. If the architectural design is not to his liking, the Minister comes into play. If it conflicts with national issues, he comes into play, as he does if a foreign government or our international conventions are involved. These are referred to the Minister and the directions of the Minister in these situations are final.

I see somewhere in the Bill that he may revoke, modify, he may even acquire and subsequently sell other people's property. Now what of the applicant? The applicant makes his application and as I said before he turns out to be the enemy, the culprit. Somewhere along the line he has to have approval from several authorities: the Water and Sewerage Authority, the Environmental Management Authority, the Chief Design Engineer, the Drainage Division and the Highways Division and perhaps the one who really, from the Chief Fire Officer. Perhaps, whatever he undertakes, the Factory Inspectorate might have to be called in as well. To make it worse for the applicant, his application must be submitted by a listed professional and the listed professional must have his name and address and must sign the document.

These plans that are being submitted must be made consistent with the social, economic, regional, environmental, cultural, et cetera, development policies of Government. This phrase was brought to dialogue before and it is worthy of

repeating, because this is an awful lot that you expect a man with a big acre of land in Toco to be acutely aware of.

He must be aware of the existing land plan. He must be aware or be made aware of areas that are delegated to agriculture and residential areas. Even the quality and the form of his house have to be appropriate to the area. Further, there must be some assessment of the application by special interests. The public should be able to make representations and consideration of environmental efforts should be taken into account. But after all this is done, the Minister's decision remains to be final.

Outline development approval is permitted by the relevant development plan and the existing planning policy. Fees have to be paid. The plan has to be submitted and all the necessary information provided. While this is being done, the developer must wait for permission. He may even be asked to submit a bond or some type of security before he proceeds.

4.45 p.m.

He may be told the purpose for which permission is given, or for which permission is not given, and the commission may decide to approve only after there have been some alterations subject to the terms of the commission.

There are lots of other things that the applicant has to do. The planning control may attract a compliance notice, and as was mentioned before, this might be an immediate compliance notice, or it may be an environmental repair order. Or if you are not satisfied with this, and you persist with your application, the Authority may enter your land and take the required steps to cover the cost for this. They may disapprove and order discontinuance and it is said that probably some compensation might be given. At this stage, I do not think the developer is particularly keen on compensation.

What has struck me about the Bill is that it does not seem to go out of its way to help the developer very much. The Authority seems to be there more or less to be a check on developers to ensure that development is done in the right place, at the right time. We do not quarrel with this very much, but I would feel that a little more interest in the Bill could have been paid towards the man who is trying to develop his land, particularly as I read that the Chief Building Officer might disagree with what you are doing, might advise you negatively about what you are doing, and might, if he wishes, demolish your building.

Mr. President, this is more or less a brief summary of what I wish to present after listening to all my colleagues here today. And finally, there is the question of

who provides these plans. Plans are provided by a listed professional or registered professional and when these plans are provided, the inspector of a building might search and might, if necessary, agree or disagree with what has been submitted.

In the Constitution I read that no law may abrogate, abridge, or infringe, or authorize the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognized and declared. I am of the opinion, Mr. President, that the Bill does abrogate the freedom of our citizens in the way that it is written and suggest that changes are essential.

Thank you very much.

ADJOURNMENT

The Minister of Energy and Energy Industries (**Sen. The Hon. Lindsay Gillette**)**:** Mr. President, first of all, let me congratulate Sen. Roy Augustus on his maiden contribution. We hope to hear many of those dynamic presentations again in the future. [*Desk thumping*] Let me also welcome Sen. Howard Chin Lee to the Senate; maybe it might be permanent when we have a new leader.

Mr. President, I beg to move that the Senate do now adjourn to Tuesday, June 12, 2001 at 1.30 p.m. when we will continue to discuss the Planning and Development of Land Bill.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.50 p.m.