

**STATEMENT BY THE HONOURABLE PRIME MINISTER OF TRINIDAD AND
TOBAGO
IN THE HOUSE OF REPRESENTATIVES ON THE INTERCEPTION OF
COMMUNICATIONS**

INTRODUCTION

Thank you, Mr. Speaker.

Mr. Speaker, I rise today to address the sensitive and delicate matter of wire tapping by the State. The issue of wiretapping or interception of communications is a troubling and vexing one because it is a surreptitious invasion of your right to privacy.

Very recently I indicated to the country that I believed that the former administration was intercepting private conversations of citizens, including my own.

I now know this to be true.

THEN PRIME MINISTER PATRICK MANNING'S STATEMENT

My suspicions were aroused by a contribution made in this Honourable House by my predecessor in his contribution to the budget debate on Tuesday, September 30, 2008.

Permit me Mr. Speaker to quote the Honourable Member for San Fernando East:

'Four years ago, as we were seeking to get people to sit on boards of directors a significant number of them began to say to me that they were not prepared to do that because they had reason to believe that the Member for Siparia had special access to the Integrity Commission.

This is what they said. I initially ignored it, but when I heard it often enough and realized the effect, I called one of the security agencies to check it and, Mr. Speaker, you will not believe it, they confirmed that there was someone in the Integrity Commission who is loco parentis, as the lawyers would say, with the Member for Siparia.

As a consequence of which, the Member was in a position to know far more than she, under normal circumstances, was authorized to know.

We reported it to the Chairman of the Integrity Commission at the time. I have monitored the relationship between the Member for Siparia and the individual concerned for years.

They can say what they wish. That incidentally has a jail term associated with it. When they talk about the Prime Minister protecting people, if I protected anybody, it was the Member for Siparia.'

Mr. Speaker, you will recall on October 3rd 2008, mere days after this allegation was made under cover of Parliament, the Chairman of the Integrity Commission responded in an official statement and advised that there was in fact no leak of Integrity files.

The allegation that the Integrity Commission was compromised was patently false, and the imputation on the character on the Member for Siparia was equally false.

Mr. Speaker, my government has carefully examined this very serious and sensitive matter. We have given it the most anxious consideration.

The unregulated and unauthorised interception of communication of citizens is open to misuse and serious abuse.

Moreover, any use of interception of communications without the people's consent through the Parliament is contrary to democracy to say the least. It represents a dark and sinister side of governance and is symptomatic of a creeping dictatorship.

EXECUTIVE DECREE VS PARLIAMENTARY APPROVAL

The confirmed use of wiretapping by secret agencies in the State without the approval of Parliament is illegal.

That such illegal activity was sanctioned by the executive arm of the State without reference to the elected representatives of the people and the Parliament of this country is a tragedy and an extremely dangerous precedent.

It shows that the country was being run by executive decree instead of parliamentary approval.

We have discovered that there are several security agencies with the capacity to intercept communications.

These State agencies were authorised by Cabinet to intercept private communications of unsuspecting, innocent citizens in circumstances where it is not at all clear what the justification was.

There was a lack of coordination and an unnecessary duplication of effort and resources.

These agencies reported directly to the Minister of National Security and the Prime Minister as head of the country's National Security Council.

In some cases this power was misused to spy on political opponents and perceived political enemies. In other cases no clear justification exists on the grounds for interception remain dubious and questionable.

SAUTT

The Special Anti-Crime Unit of Trinidad and Tobago (SAUTT) was established by cabinet in 2004 without any proper legal foundation. Billions of dollars were poured into SAUTT whilst the Trinidad and Tobago Police Service was relegated to the back burner.

Cabinet policy at that time, took precedence over legislative authority. No transparency, no accountability and indeed, no drop in crime. SAUTT possessed immense capability. It was

however, misdirected and misused by the former administration. It was unfortunately involved in political wire tapping and was hence unable to concentrate its efforts on the fight against crime.

The government ignored the public outcry against the illegal operation of SAUTT and hence no legislation was brought to this Parliament to legalise such an important law enforcement unit. The secrecy and mystery and lack of oversight created fertile soil for waste, mismanagement, underperformance and corruption.

REVIEW OF SAUTT

As you know Mr Speaker, we have terminated the employment of the former director of SAUTT Brigadier Peter Joseph. We have a steering committee chaired by deputy commissioner of police Mr. Steven Williams who has been appointed to review and restructure the SAUTT.

Other members of this committee include special advisor to SAUTT Professor Daniel Gibran, acting Chief of Strategic Operations Ms. Judy Brown, and retired permanent secretary Ms. Jackie Wilson.

It is expected that this committee will submit its report before the end of this year.

Rest assured Mr. Speaker should there be need for any legislation arising out of the recommendations of this committee, it will be tabled in this house for debate. We do not intend to conduct government in secrecy and mystery. We intend to be honest and transparent in our relationship with the people of this country.

SECRET INTELLIGENCE AGENCY (SIA)

Having dealt with SAUTT, the government was of the view that it had dealt with the problem of illegal wire tapping.

As Chairman of the National Security Council, I was made aware of the existence of the SIA.

At no time however, did my brief on this agency inform me that the agency was involved in illegal wiretapping and interception of communications of private citizens. Had I been briefed about this secret aspect of the agency's functions, I would have taken immediate steps to address an act which I am advised to be unconstitutional and illegal.

I was therefore shocked when I received a report, less than two weeks ago, which suggested that one of our security agencies, the Security Intelligence Agency (SIA) may also be involved in political wire tapping.

The information suggested that sensitive information obtained via illegal wire tapping of government Ministers phones was being supplied to a certain MP from the opposition bench. That MP, now sits in this honourable House and served the highest level in government under the previous administration.

I asked Police Commissioner Gibbs to investigate the matter.

Experts were flown in from Canada and a high level team from the special branch of the police service moved in at 6:15am on Saturday 23rd October, 2010 and took control of the operations of the SIA.

The investigation conducted by the police service revealed a frightening picture involving and financial impropriety and illegal wire tapping of a wide cross-section of civil society.

FAILURE TO HELP DEAL WITH KIDNAPPING

It grieves my heart to say whilst our children were being kidnapped and the Anti-Kidnapping Squad (AKS) seemed powerless and unable to trace the several telephone calls demanding a ransom, the SIA was busy listening to our conversations – conversations of prominent members of society who had no connection with criminal activity.

How many men women and children who were kidnapped or abducted could have been saved we'll never know.

Let us not forget that some of those children have never been found and the stories from grieving parents about the archaic equipment that was used by the Anti-Kidnapping Squad in its failed attempt to trace the calls from the kidnapers as they demanded their pound of flesh.

WIRETAPPING NET CAST FAR AND WIDE

No one escaped this secret wire tapping operation as a net was inexplicably cast very far and wide.

Subjects included:

- ➔ Members of the judiciary,
- ➔ trade unionists,
- ➔ Editors and journalists,
- ➔ media houses,
- ➔ radio talk-show hosts,
- ➔ comedians,
- ➔ persons in the entertainment industry,
- ➔ former opposition MP's,
- ➔ government Ministers,
- ➔ sports personalities,
- ➔ businessmen,
- ➔ newspaper columnists,
- ➔ advertising executives,
- ➔ county councillors,
- ➔ lawyers and
- ➔ in some cases, the children of such persons.

Such activity cannot be condoned as it represents a clear and present danger to our democracy.

Words cannot express the deep sense of personal outrage and hurt I feel about this matter.

Such an unwarranted and unjustified invasion of citizen's privacy is a cause for alarm.

Why on earth would a government wish to engage in such unproductive illegal activity when the country was under siege as a result of criminal activity?

THE TAPPED LIST

Permit me to cite a few examples Mr. Speaker. A covert project code named "OPPORATION NEWS" commenced in March 2005 and has been ongoing since then. Among the targets in this operation were:

POLITICIANS

- ➔ The UNC's head office
- ➔ Constituencies offices of UNC members of parliament
- ➔ Kamla Persad Bissessar
- ➔ Anand Ramlogan
- ➔ Suruj Rambachan
- ➔ Gerald Yetmin
- ➔ Wade Mark
- ➔ Manohar Ramsaran
- ➔ Roodal Moonilal
- ➔ Roy Augustus
- ➔ Winston Peters
- ➔ Robin Montano
- ➔ Jack Warner
- ➔ Fuad Khan
- ➔ Carolyn Seepersad Bachan
- ➔ Winston Dookeran
- ➔ Gary Griffith
- ➔ Anil Roberts
- ➔ Ashworth Jack
- ➔ Keith Rowley
- ➔

JUDICIARY

Members of the judiciary who were targeted included:

- ➔ Then Chief Justice Sat Sharma, his wife Kalawati Sharma and his son Shiv Sharma
- ➔ Justice Herbert Volney
- ➔ Justice Narine
- ➔ Madam Justice Carol Gobin

MEDIA PERSONNEL

Mr. Speaker, freedom of the press is enshrined in our constitution and the widespread wire tapping of journalists and the media houses undermines this important pillar in our democracy.

Targets included:

- Dale Enoch
- Sasha Mohammed
- Shelly Dass

- Francis Jospheph
- Ian Alleyene
- Inshan Ishmael
- Ken Ali
- Devant Maharaj
- Peter O'Conor
- Camini Marajh

TRADE UNION MOVEMENT

Member of the trade union movement whose phones were tapped included:

- Mr. Errol Mcleod
- Clyde Weatherhead
- Mr. Rudy Indarsingh
- David Abdullah
- Robert Guiseppi
- Lyle Townsend

OTHER PROMINENT PERSONALITIES

Mr. Speaker the list, as you could imagine is a very long one but permit me to cite a few more examples. Other prominent persons who phones were tapped included:

- Former Commissioner of Police James Philbert
- Former CEO of the San-Fernando city corporation Marlene Coudrey
- Comedian Racheal Price
- Former Security Chief Mr. Richard Kelshall
- President George Maxwell Richards
- Sat Maharaj
- Ato Boldon
- Emile Elias
- Former Chief of Defence John Sandy
- Gary Aboud

PNM OFFICIALS

The dictator was not content to spy on opposition MP's and the aforementioned list of persons. Former Government Ministers were also the subject of wire tapping, targets included:

- Colm Imbert
- Penelope Beckles-Robinson
- Donna Cox
- Faris Al Rawi
- Keith Rowley

EMAILS MONITORED

The interception was not limited to telephone calls but included the monitoring of peoples email as well. One list provided by the Commissioner of Police contains the name of every single government Minister in the People's Partnership. Sadly, Mr. Speaker the names of our children are also included on this list.

PRIVATE CITIZENS

Mr Speaker I have given today, a sample of some of the persons whose telephones were tapped and whose emails were being intercepted by the SIA since 2005.

I did so with a heavy heart. I regret the further intrusion into the private lives by virtue of this disclosure but I felt it necessary to do so to demonstrate by reference to hard evidence the depth and extent of the dictatorial operations of the former administrations.

Under the former Government, Big Brother seems to have taken a very keen interest in ordinary citizen's private lives and affairs.

I want to reassure you that I do not intend to move from Big Brother tom Big Sister.

There are many others whose names I have not disclosed to this Parliament. The ones that I have mentioned are persons involved in public life in one form or the other.

FINANCIAL IRREGULARITY

Reports from the Special Branch indicate that the SIA was a virtual law unto itself. It reported directly to the Minister of National security and the Prime Minister. There are serious concerns about accountability and transparency.

Special branch officers found \$5.9 million dollars IN CASH and an undisclosed quantity of firearm and ammunition were seized. Initial audit reports reveal that some \$15 million cannot be accounted for.

SANITIZATION

There was evidence suggest that a massive sanitization operation took place after the general elections. Empty folders carrying the name of the individuals who were the subject of interception were found.

Other records of taped conversations and transcription of conversations have been removed and/or destroyed. We may never know all of the persons whose right to privacy was compromised by the unlawful intrusion of wiretapping.

TAPPING AFTER MAY 24TH ELECTIONS

Incredibly, Mr. Speaker, the wire tapping continued after the results of the last general election. It is alleged that information gathered by the SIA were secretly being siphoned to a certain opposition MP.

AMALGAMATION OF SIA INTO SSA

The Strategic Service Agency is a proper legal entity. It was established in 1995 by the Strategic Service Agency Act. Its functions include the development of strategic intelligence that could assist in the detection and prevention of the illegal trafficking in narcotic drugs.

There is no legislation governing the SIA. The previous administration, *(in what I suspect was a plan to legitimize the SIA)*, was in the process of merging the SIA into/with the SSA.

On March 25th, 2010 Mr. Nigel Clement was appointed Director of the SSA (*one month before the last general elections*). Mr. Clements continued to function as the de facto head of the SIA and was overseeing the amalgamation of the two entities.

APPOINTMENTS REVOKED

In the circumstances I wish to announce that I have advised His Excellency Professor Richards to revoke the appointment of the director of the Strategic Service Agency (SSA) and the Secret Intelligence Agency (SIA). Commissioner Gibbs is also conducting a financial audit into the operations of the SIA.

I have therefore removed the director of SUATT (Mr. Peter Joseph) and the director of the SSA and SIA (Mr. Nigel Clements). New appointments would be made very shortly to restore some measure of integrity and redirect these critical state agencies.

PROPER USE OF EQUIPMENT TO FIGHT CRIME

But every cloud has a silver lining and amidst the darkness cause by the sinister operations of these agencies, I'm pleased to say we will now be able to properly utilize the equipment and technology to assist in the fight against crime. It is my hope therefore that the police service will now be able to benefit fully from criminal intelligence that can be lawfully gathered by these agencies.

REVIEW OF INTELLIGENCE AGENCIES

The lack of co-ordination among our security agencies cannot be allowed to continue. Hence, we are in the process of reviewing the various intelligence agencies with a view to streamlining their activities so as to obtain the best value for money and a more effective system for gathering criminal intelligence.

INTERCEPTION OF COMMUNICATIONS BILL

Mr Speaker, it is our intention to give this Parliament the respect and supremacy that was intended by the Constitution. With this in mind, we have tabled the Interception of Communications bill 2010.

This legislation will strike a balance between the need for regulated wiretapping in limited circumstances as a weapon in the fight against crime and the need to prevent the abuse and misuse of the power to intercept private communications by our citizens.

REGULATED INTERCEPTION NECESSARY

Mr. Speaker, let me make it clear: it is our view that wiretapping is an important tool that can greatly assist the police in the fight against crime and protect national security.

It must however be carefully regulated and justified on the basis of necessary criminal intelligence or a potential threat to national security.

Gang activity, organized crime, violent crime and drug trafficking continue seemingly unabated.

Detection rates are low and conviction rates are declining as eyewitnesses refuse to testify because of the very real fear of reprisal.

Criminals have become more and more sophisticated in their methods as they take advantage of technological advancements, particularly in the area of communication.

Governments worldwide have found it necessary to embrace the use of communications interception to collect the vital intelligence needed to gain the advantage to fight domestic and international crime and terrorism.

This is particularly so in an era where –

- There is an influx of telecommunications providers on the local market;
- Cellular phones are ubiquitous;
- The satellite telephone market is evolving quickly; and
- Internet communications and transactions have grown dramatically.

BILL DRAFTED SINCE 2007

Mr. Speaker, it is a mystery to us as to why the former administration consistently failed and refused to bring legislation to this Parliament to deal with the interception of communications.

As far back as in the year 2001, the Law Reform Commission in a report entitled “Interception of Communications – the need for a regulatory frame work”, made the following recommendations in support of a regulatory framework for the use of interception of communications:-

1. **Legality** – the possibility of interference should be clearly laid out in law so that citizens are aware of the circumstances in which it may be done and of the fact that such interference is subject to prior judicial scrutiny.
2. **Necessity** – the interference should be necessary because less intrusive means have failed or have been considered and rejected, or are less likely to succeed.
3. **Proportionality** - the intrusive measures should be proportional to the seriousness of the offence.
4. **Accountability** – there must be proper control, oversight and effective and adequate remedies against abuse.

These recommendations remain relevant today.

The goal, therefore, must be to create a single framework, underpinned by the aforementioned principles, which deals with all interception of communications in Trinidad and Tobago, regardless of the means of communication, of how it is licensed or at which point of the route of communication it is intercepted.

We have made several changes to the original draft bill. On my instruction, SAUTT’s ability to intercept communications, is no more.

I am of the view that the security interests of our Nation would be better served by streamlining and harmonizing the various intelligence units.

It is better that one unit be authorized to intercept private communications for the clearly defined purpose and specific mission of gathering criminal intelligence and protecting and defending national security.

I have also changed the person who can authorize interception of private communication from the Prime Minister as existed in the previous Bill, to the Minister of National Security.

Whilst you have my every assurance that I am very confident about my ability to exercise such power in a responsible manner, the findings of the investigation conducted by the Police Service have clearly shown that there may be others who are unable to resist the temptation to learn more about people's private lives and affairs.

Rest assured however, that I do not anticipate any one else occupying this chair for the next ten years.

The issue of interception is a troubling one that has bedeviled countries around the world. It is a necessary evil, but the interests of National Security must prevail in the clash between the right to privacy and National Security.

It is important that we strike the right balance and it is my hope that this Bill accomplishes that objective.

That said, this is far too important an issue for partisan politics and my government remains receptive to any ideas and constructive comments that those on the other side and indeed members of the public may wish to offer.

On this note, the issue of the retention and disposal policy with respect of intercepted communications is a matter which should engage the full attention and deliberation of this Honourable House.

The legal framework needed to accomplish this goal requires four main areas of concern to be addressed. These are:-

1. the right of the individual to privacy;
2. confidentiality – access to information gathered;
3. use of the information as intelligence or evidence; and
4. oversight/accountability.

On the matter of the right of the individual to privacy, the Constitution of Trinidad and Tobago does not afford an express protection of the right to privacy.

It does however enshrine

“the right of the individual to respect for his private and family life” (section 4 (c))
and the
“freedom of thought and expression” (section 4(i)).

STRIKING THE RIGHT BALANCE

The right of the individual must be balanced, however, against the interests of national security, the public interest and the economic well-being of the country. When these interests conflict the public interest must prevail where reasonably justifiable.

It is often necessary that individual rights are abrogated to some measure where there is a threat to the public good.

In determining the rules to govern any society, priority must be given, *inter alia*, to the maintenance of public order, the security of the State and the prevention, investigation, detection and prosecution of crime.

As such, the State recognizes that in certain circumstances the rights of the individual may be suspended to allow the State to combat the threat.

This is true whether the threat manifests itself as serious organized crime, terrorism or a threat to national security.

Mr. Speaker, in most countries across the globe, the use of intrusive or directed surveillance, or covert intelligence sources, by public bodies is regulated by statute.

For example, there are

- ➔ **the Regulation of Investigatory Powers Act, 2000 (UK);**
- ➔ **the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (South Africa);**
- ➔ **Chapter 119 of the US Code; and the**
- ➔ **Telecommunications (Interception and Access) Act, 1979 (Australia).**

These Acts cover a wide range of surveillance activity, from covertly following a person or watching a person, placing secret listening or filming devices near him, using informants to obtain information about him, or intercepting his communications.

Statutes worldwide provide that surveillance or interception techniques require authorisation into different categories: judicial or ministerial or a combination of both.

Hence, Mr. Speaker, the People's Partnership now introduces this Bill to ensure that any interception of communication is done in accordance with law.

I take this opportunity to briefly highlight some of the key aspects of the proposed legislation.

HIGHLIGHTS OF BILL

This Bill would seek to provide the legal framework within which public or private communications, which are being transmitted by means of a public or private telecommunications network, can be lawfully intercepted.

An interception of communication would be lawfully done only when it is done pursuant to a warrant issued by a Judge on an application by an authorised officer. Consequently, it is an offence for a person intentionally to intercept a communication being transmitted without an order of the Court.

In general, a warrant would be issued only to investigate, prevent or detect a specified offence, and would be valid for an initial period of ninety days, but may be extended by the Court for two further periods, each for ninety days.

The Bill would also make provision for an oral application for a warrant in urgent circumstances, subject to certain safeguards.

Finally, Mr. Speaker, the Bill provides that the content of a communication or communication data, which is lawfully obtained, is admissible as evidence in any criminal proceedings.

Mr. Speaker, the proposed legislation would be inconsistent with sections 4 and 5 of the Constitution and therefore would be required to be passed by a special majority of three-fifths of the members of each House.

Part I of the Bill would provide for certain preliminary provisions.

Part II of the Bill would provide for the interception of communication, the method to achieve this and the use of the intercepted communications as evidence.

For example, it is proposed that it would be unlawful to intentionally intercept a communication during its transmission, except in certain circumstances, such as it is not a private communication and it is intercepted pursuant to any other law.

Mr. Speaker, we propose that unlawful possession of a device or any component thereof, the design of which renders it primarily useful for surreptitious interception of private communications would be a strict liability offence. This is similar to our dangerous drug legislation.

JUDICIAL OVERSIGHT

The legislation would provide that lawful interception of communication can only be done by means of a judicial warrant, applied for in writing by an authorised officer and issued by a Judge after he has taken a number of factors into consideration.

A warrant may be granted, in the first instance for not more than ninety days, but may be renewed by the Court if satisfied that the renewal is justified in the particular case for a period of ninety days, and a further period of ninety days in exceptional circumstances.

However, Mr. Speaker, this Government is of the view that in urgent circumstances the Court may issue a warrant on an oral application, but within seventy-two hours of its issue, the

applicant must submit a written application, at which time the Court will review the matter and either revoke or confirm the warrant.

It is to be noted that intercepted communication shall be treated as confidential. Secondly, the content of a communication lawfully obtained is admissible as evidence in any criminal proceedings.

Mr. Speaker, in order to protect the confidentiality of the process and the persons involved, it is proposed that method used to get communication data and the person who supplied it, except in special circumstances, shall not be disclosed.

Part III of the Bill would provide for certain miscellaneous provisions, such as offences, annual reporting by the relevant Minister and power to make regulations.

For example, it is proposed that it would be a summary offence to make a false statement in an application or affidavit under the Act, or intentionally to disclose information obtained by a warrant or in contravention of the Act or to have possession of intercepted communication without authority.

ACCOUNTABILITY

Mr. Speaker, in keeping with the People's Partnership philosophy of accountability in public affairs, the proposed legislation would provide for a system of parliamentary accountability.

First, the Minister of National Security shall prepare an annual report on the operations of the proposed legislation and cause it to be laid in Parliament.

Furthermore, we propose that the Chairman of the National Security Council will have the power to make regulations to give effect to the Act, subject to affirmative resolution of Parliament.

The Government is of the strong view that since the interception of communication is an interference with a person's human rights, the Parliament must be given a crucial role in the overall operation and scrutiny of the legislation.

MISUSE AND ABUSE OF WIRETAPPING

That such illegal activity could have been facilitated and supported by the executive arm of the State is a stain on our proud and cherished tradition of parliamentary democracy. It has also cast a long dark shadow on the politics of our country. We may never fully appreciate the dangerous consequences that such actions may have on a civilised society based on law and order with respect for the rule of law.

I trust that the debate on this Bill will be an enlightening and illuminating one. I thank you.