SENATE  
Tuesday, December 08, 2020  
The Senate met at 10.00 a.m.  

PRAYERS  
[Madam President in the Chair]  

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY  
(AMDT.) BILL, 2020  

Public Procurement and Disposal of Public Property (Amdt.) Bill, 2020  

Bill to amend the Public Procurement and Disposal of Public Property Act, No.1 of 2015 [The Minister of Finance]; read the first time.  

Motion made: That the next stage be taken later in the proceedings. [Hon. F. Khan]  
Question put and agreed to.  

MISCELLANEOUS PROVISIONS [2019 NOVEL CORONAVIRUS  
(2019-nCoV)] (NO. 2) BILL, 2020  

Bill contains 11 clauses and seeks to amend the Cinematograph Act, Chap. 20:10, the Registration of Clubs Act, Chap. 21:01, the Theatres and Dance Halls Act, Chap. 21:03, the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08, the Motor Vehicles and Road Traffic Act, Chap. 48:50, the Bills of Sale Act, Chap. 82:32, the Moneylenders Act, Chap. 84:04, the Pawnbrokers Act, Chap. 84:05, the Licensing of Dealers (Precious Metals and Stones) Act, Chap. 84:06 and the Old Metal and Marine Stores Act, Chap. 84:07 in response to the 2019 Novel Coronavirus (2019-nCoV) and for related matters [The Attorney General and Minister of Legal Affairs]; read the first time.  

Motion made: That the next stage be taken later in the proceedings.[Hon. F. Khan]  
Question put and agreed to.
MISCELLANEOUS PROVISIONS (FATF COMPLIANCE) BILL, 2020

Bill to amend the Mutual Legal Assistance in Criminal Matters Act, Chap. 11:24, the Proceeds of Crime Act, Chap. 11:27, the Anti-Terrorism Act, Chap. 12:07, the Interception of Communications Act, Chap. 15:08, Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01, the Income Tax Act, Chap. 75:01, the Central Bank Act, Chap. 79:02, the Financial Institutions Act, Chap. 79:09, the Companies Act, Chap. 81:01, the Securities Act, Chap. 83:02, and the Non-Profit Organisations Act, No. 7 of 2019 [The Attorney General and Minister of Legal Affairs]; read the first time.

Motion made: That the next stage be taken on Thursday, December 10, 2020. [Hon. F. Khan]

Question put and agreed to.

MISCELLANEOUS AMENDMENTS (POWERS OF STATUTORY AUTHORITIES AND MATTERS RELATED TO CERTAIN BOARDS) BILL, 2020

Bill to amend the National Lotteries Control Act, Chap. 21:04, the Tobago House of Assembly Act, Chap. 25:03, the National Institute of Higher Education (Research, Science and Technology) Act, Chap. 39:58, the Children’s Authority Act, Chap. 46:10, the Water and Sewerage Authority Act, Chap. 54:40 and the Trinidad and Tobago Electricity Commission Act, Chap. 54:70 to provide for amendments to the composition of various boards and the borrowing powers of certain boards and matters connected therewith [The Attorney General and Minister of Legal Affairs]; read the first time.

Motion made: That the next stage be taken on Thursday, December 10, 2020. [Hon. F. Khan]

Question put and agreed to.

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MISCELLANEOUS PROVISIONS (ADMINISTRATION OF JUSTICE) BILL, 2020

Bill to amend the Supreme Court of Judicature Act, Chap. 4:01, the Summary Courts Act, Chap. 4:20, the Coroners Act, Chap. 6:04 and the Sexual Offences Act, Chap. 11:28 to provide for the procedural matters of the Courts and for matters related thereto [The Attorney General and Minister of Legal Affairs]; read the first time.

Motion made: That the next stage be taken on Thursday, December 10, 2020. [Hon. F. Khan]

Question put and agreed to.

PAPERS LAID


Rent Regulation for housing accommodation in Trinidad and Tobago. [Sen. The Hon. F. Khan]


Ministry of Education’s strategies for ensuring continuity in the delivery of education amidst the COVID-19 Pandemic

[Sen. The Hon. F. Khan]


URGENT QUESTIONS

Nationwide Disruption of Internet Service
(Measures Taken to Prevent Recurrence)

Sen. Paul Richards: Thank you, Madam President. Good morning, colleagues. To the Minister of Public Utilities: In light of the nationwide disruption of Internet services on December 07, 2020, what measures does Government intend to take to prevent a recurrence, given the increased need for said services during the COVID-19 pandemic?

Madam President: Minister of Public Administration and Digital Transformation, you have two minutes.

The Minister of Public Administration and Digital Transformation (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, what occurred yesterday was a bit of Murphy’s Law. We have the subsea cable coming in through the Antigua channel to Trinidad and Tobago which is the main source of connectivity. We have redundancy through a cable coming in from Curaçao. The one from Antigua experienced a difficulty on Tuesday 01 December, and while they were in the process of repairing that, which took longer because of COVID restrictions and difficulty with travelling, the cable coming out of Curaçao experienced a power outage and that is what caused the problem that we experienced yesterday.

So the citizens would acknowledge that when the initial break occurred in
the Antigua cable there was no obvious interruption of power because the redundancy system worked well. But Madam President, it is difficult to build out a system, especially an expensive system, for a Murphy’s Law occurrence. So we had a combination of the two entry points into Trinidad and Tobago being affected at the same time, and the repair of the initial one which was subsea being significantly delayed because of COVID.

As I understand it, two of the three cable providers were more directly affected because these service providers have proprietary interest in those cables, and therefore have a greater concentration of their connectivity coming from those cables.

The third major service provider has more evenly spread its risk and therefore was not as significantly impacted. So while TATT does not regulate the access to connectivity, we can and intend to have a discussion with the service providers regarding the sources from which they receive their connectivity—

**Madam President:** Minister—

**Sen. The Hon. A. West:**—to reduce the problem. Thank you, Madam President.

**Madam President:**—your time is up. Sen. Richards.

**Sen. Richards:** Thank you, Madam President. Can the Minister identify for the population, given her response and the redundancies identified, that there are systems in place to protect and maintain critical infrastructure to connectivity, including medical, security and energy, which depend on this connectivity and which were interrupted yesterday significantly?

**Sen. The Hon. A. West:** Madam President, I trust I got the Senator’s question. It is about systems to protect the medical—So, we do have endpoint protection in respect of our ICT systems, including protection in the health sector. So the information was not as risk. The issue was people getting connectivity, and it

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would depend, in the case of yesterday, on which service provider you use to determine whether connectivity was available to you. And there was not risk to the information that was available.

**Sen. Richards:** Thank you for the response, Minister. Finally, unrelatedly, can the Minister indicate if an overall risk assessment will now be undertaken to assess our present scenario in terms of online connectivity and redundancies given the increased dependence on these services and this connectivity in several critical sectors?

**Sen. The Hon A. West:** This assessment has already been commenced. We are meeting with the service providers and having discussions with them, and doing our own investigation to determine what is the best solution. I will point out, Madam President, that this is a problem that was not unique to Trinidad and Tobago. The Eastern Caribbean was also impacted and having regard to the fact that we are reliant on international service, it is difficult for us to eliminate problems, but we will do what we can to make the system as robust as possible. Thank you, Madam President.

**Madam President:** Next question, Sen. Richards.

**PH Taxi Operations**

(Measures to Address Operation)

**Sen. Paul Richards:** Thank you, Madam President. To the Minister of Works and Transport: Following the events involving a PH taxi, which may have led to the death of a female teenager from Barataria, what measures are being put in place to address the operations of PH taxis?

**Madam President:** Minister of Works and Transport, you have two minutes.

**The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):** Thank you, Madam President. Madam President, I start by taking the opportunity to
express my condolences to the families of the deceased and continue to lend my support to the operations of the TTPS and law enforcement community to bring the perpetrators of this crime to justice.

I would like to make it abundantly clear that the operation of PH drivers in Trinidad and Tobago is illegal and call on the public to treat the system as such so as to assist the authority in lending those participating in this trade into the regulated environment provided for transportation in Trinidad and Tobago.

The issue of enforcement is done by the Ministry of National Security. However, under the Ministry of Works and Transport we continue to assist via the use of the traffic warden system, the Transport Division Motor Vehicle Officers, and a clear demarcation of taxi and maxi stands and bus terminals identifying to the general public where public transportation can be accessed.

At the same time, it is recognized that the PH system is one that is abound, and over time the State has sought to put measures in place to encourage those who ply their trade via this medium into the regulatory sector. At present, we have once again started discussions with the Attorney General to develop mechanisms to allow as many individuals desirous of entering into the provision of transportation service the opportunity to do so via a system which will allow for the necessary safety and security requirements that are required. I thank you, Madam President.

Madam President: Sen. Richards.

Sen. Richards: Thank you, Madam President. Can the Minister then, given his response, identify if the resources are being ramped up or increased through possibly the licensing division and other arms of the State to ensure that the illegality is thwarted; this, seemingly, is quite prevalent in Trinidad and Tobago?

Sen. The Hon. R. Sinanan: Madam President, enforcement actually lies with the Ministry of National Security so I cannot speak for the enforcement. What I can
say is that under the Ministry of Works and Transport are traffic wardens and the different license officers will do their part when called upon.

**Madam President:** Sen Richards.

**Sen. Richards:** Thank you, Madam President. Finally, can the Minister indicate if the Government has a particular position on the regulation of the PH taxi trade in Trinidad and Tobago?

**Madam President:** That question—no, I would not allow that question. Next question, Sen. Mark.

### Contamination of Fuel at NP Orange Hill  
*(Measures Taken to Avoid Recurrence)*

**Sen. Wade Mark:** Thank you, Madam President. To the Minister of Energy and Energy Industries: In light of recent reports concerning the contamination of fuel at NP Orange Hill gas station in Tobago, can the Minister state what were the circumstances which led to said contamination and the measures being employed to avoid a recurrence?

**Madam President:** Minister of Energy and Energy Industries, you have two minutes.

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, the circumstances which led to the contamination were: One, Product was inadvertently discharged into the wrong storage tank. That is, super was offloaded into the diesel tank and diesel into the super tank. While an investigation is still underway, it appears that the SOP, which is, standard operating procedures, were not adhered to by either the driver or the station personnel. Upon completion of the investigation management will do the following: One, explore a system that would allow greater enforcement of SOPs. Two, retraining of relevant personnel, and,
three, and in my opinion most importantly, to explore changes to the coupling that will eliminate the possibility of incorrect installation.

For those of you who go to the gas station you know the diesel pump cannot go into a gasoline pump because of size differences. However, in terms of the storage, the coupling seems to be the same. NP and the other hopefully wholesaler will be advised that they should explore to change the couplings, and that will eliminate the possibility of any incorrect installation, and for this matter not reoccurring in the future.

[Electronic device goes off]

Madam President: Sen. Mark, the time for Urgent Questions has expired. Whoever had that device on that just rang through the Chamber I would ask you please to leave the Chamber, you can return in five minutes. That means that a ghost had that device going because no one is taking ownership of it. I normally do not call out names of Senators, we go on an honour system here, and I ask the person whose device went off to leave the Chamber, so.

[Sen. Nakhid leaves the Chamber]

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, the Government is pleased to announce that it will be answering all questions for oral answer, save and except question No. 09 to the Minister of Health which we ask for a deferral of two weeks. With regard to the Written Questions these will be circulated later in the proceedings.

Madam President: Question No. 09 is deferred for two weeks.
WRITTEN ANSWERS TO QUESTIONS

$30 Million Allocation to Religious Bodies
(Details of)

52. **Sen. Paul Richards** asked the hon. Prime Minister:

   With regard to the $30M allocation to religious bodies to bring relief to citizens of Trinidad and Tobago, can the Prime Minister indicate the following:

   (i) have all religious bodies received the full amount of $30M;

   (ii) if the answer to (i) is in the affirmative, provide a breakdown of how the monies were disbursed, including dates; and (iii) what accountability mechanisms were established to ensure that the monies were used for the purpose for which it was allocated?

   Vide end of sitting for written answers.

ORAL ANSWERS TO QUESTIONS

The following question stood on the Order Paper in the name of Sen. Anil Roberts:

**Non-Medical Face Masks**
(Number Procured by State)

9. Can the hon. Minister of Health advise as to the number of non-medical face masks that have been procured by the State and distributed to the population as at August 31, 2020?

   Question, by leave, deferred.

Continuous Increase in COVID-19 Cases
(Measures Taken to Address)

4. **Sen. Wade Mark** asked the hon. Minister of Labour:

   In light of the continuous increase in the number of COVID-19 positive cases and the negative effect this has been having on business operations in
the public and private sectors, can the Minister indicate what measures have been taken by the Government to address the social and economic impact this has had on the labour force?

**Madam President:** Leader of Government Business.

**Sen. The Hon. Khan:** Madam President, I expected the Minister of Labour. Sorry. He is here? Okay.

**The Minister of Labour (Hon. Stephen Mc Clashie):** The Government of Trinidad and Tobago, from the onset of COVID-19 pandemic, expressed its commitment of saving the lives and livelihoods. It was evident that the pandemic and some of the measures implemented to combat it would have negative effects on the business operations and the labour force in Trinidad and Tobago. These negative effects were anticipated, and it should be recalled that the Government implemented measures to address the social and economic impact of this pandemic as early as March 2020.

The measures implemented by the Government of Trinidad and Tobago to address the social and economic impact of COVID-19 on the labour force of Trinidad and Tobago were implemented by various Government Ministries in a coordinated and targeted manner, some, in collaboration with regional corporations and civil society to benefit those persons most affected and the most vulnerable in our society.

First, for employed persons who were registered with the National Insurance Board and would have been affected by lost or reduced income, the Salary Relief Grant, which was funded by the Ministry of Finance and implemented by the NIB, provided an income of up to $1,500 per month for up to three months in the first assistance.

For employed and self-employed persons, including those not covered by
NIB, social assistance provided by the Ministry of Social Development and Family Services included food and income support, and rental assistance where a family member was retrenched, terminated, or experienced reduced income. This programme is ongoing.

Additional support was provided for persons already in receipt of food cards by the topping up of their food cards. Food support was extended to households with children that received meals from the School Feeding Programme, but who were not current beneficiaries of the food card. Emergency hampers were provided to families in urgent need during the stay at home period. Food vouchers or market boxes were provided to families in need. This included a basket of fresh produce and a grocery voucher. This initiative aimed to provide support for 30,000 families.

Micro and small enterprises have been benefiting from the entrepreneurial relief grant which is being administered by the National Entrepreneurship Development Company Limited (NEDCO) in partnership with the Ministry of Finance. This provides financial assistance up to 20,000 in grant funding to help cover business related expenses such as salaries, rent, stock, and other working capital. It targets MSEs that earn less than $1 million in annual revenues.

I am pleased to report that at September 18, 2020, 416 grants were disbursed at a value of approximate TT $3.8 million. Taxi owners were also covered under the social assistance net through the provision of one-off relief grants to qualified registered owners of operational H-taxis to compensate for the reduction in passenger capacity and to keep transport available and affordable to the public. Maxi-taxi owners were also provided with one-off fuel support grant.

Madam President, Government through the Youth Training and Employment Partnership Programme (YTEPP) and in collaboration with the commonwealth of learning, also introduced the Workforce Recovery Programme
which provides access for free online courses from Coursera to gain skills for future employment. It targets retrenched, unemployed, and underemployed persons from—

**Madam President:** Minister, your time has expired. Sen. Mark.

**Sen. Mark:** Yeah, Madam President, Can the hon. Minister share with this Senate under the Workforce Recovery Programme, how many retrenched workers among others who would have benefited thus far from the training offered under this programme?

**Hon. S. Mc Clashie:** Okay, the training under Coursera? I do not have that information with me but I can provide it to you.

**Sen. Mark:** Yes, thank you. Can I also ask the hon. Minister as it relates to workers who were victims of the COVID-19 and were formerly engaged with the NIB, can the Minister share with us how many workers would have benefited from the salary relief programme—grant programme that is?

**Hon. S. Mc Clashie:** I do not have the specific numbers but at last count it was upward of 15,000-plus.

**Sen. Mark:** Can I ask further whether the Minister can advise of any decision or pending decision to extend the time for workers to access the salary relief grant?

**Madam President:** Sen. Mark, I would not allow that question. Last question.

10.30 a.m.

**Sen. Mark:** Madam President, can the Minister indicate whether he can share with us how many taxi drivers, “H”, as well as maxi-taxi, benefited from the grant, the one-off grant that the Minister identified?

**Hon. S. Mc Clashie:** Not at this time, Madam President, but the information can be provided.

**Sen. Mark:** When?

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Delivery of Curriculum Online
(Conducting Feasibility Study for)

5. Sen. Wade Mark asked the hon. Minister of Education:

Given the decision of the Government to begin the academic year by delivering the curriculum through online classes, can the Minister indicate whether any feasibility study was conducted to determine the bandwidth, software and hardware requirements for the effective delivery of said online classes?

The Minister of Education (Hon. Dr. Nyan Gadsby-Dolly): Thank you, Madam President. Madam President, the Ministry of Education would have researched the foundational requirements to support the online modality of classes within the education sector as a key part of its COVID-19 response strategy. Discussions with Internet service providers, TSTT and Digicel, along with the Telecommunications Authority of Trinidad and Tobago (TATT), were ongoing as early as March 2020 to address bandwidth allocation and zero-rated access to educational resources for our students which was done.

In addition, the Ministry of Education internally developed its School Learning Management System and Education Management Information System which allowed for online access to classes for schools choosing to use these modalities. The Ministry of Education continues to make, in collaboration with the donors of Trinidad and Tobago, available and allocate laptops to both teachers and students. Over 17,000 were allocated since March across primary and secondary levels to ensure that teaching and access to learning is continuously facilitated. The Ministry of Education continues to provide teacher training and detailed guidelines for teachers, parents and students to ease their transition into delivering and accessing
online classes.

**Sen. Mark:** Madam President, in light of what the hon. Minister has shared, some 17,000 students were able to access devices out of 65,000. Can the Minister indicate what time frame has the Government set to satisfy those remaining 48,000 students who would need these devices?

**Hon. Dr. N. Gadsby-Dolly:** Madam President, the question presupposes that parents have not made available devices to their children. It also presupposes that there are no other donations outside of what the Ministry of Education has been doing. Therefore, the 65,000 number, certainly, is not the figure at this time. The Ministry of Education is doing its work now to determine the exact number of students.

In addition to that, the Ministry has also began the procurement process for 20,000 more devices and, in addition to that, there are, at least, 15,000 more devices that have been pledged and have been arriving in the country. Of course, due to the global supply challenge, the devices have been arriving a little bit slower than anticipated, but all of that is in train. The devices will be delivered so that our students will be not left offline.

**Sen. Mark:** Madam President, can I ask the hon. Minister, in the interim, hon. Minister, can you share with us, how those students without those devices have been managing and coping? Can you share with us what has been taking place?

**Madam President:** Sen. Mark, I would not allow that question. Next question.

**Sen. Mark:** Madam President, can the Minister indicate whether she is satisfied with the arrangement which has seen thousands of children not being able to have these devices and whether they are not experiencing a disadvantage?

**Madam President:** Sen. Mark, I would not allow that question. You have one more question you could ask on this issue.
Sen. Mark: Can the Minister indicate, Madam President, when would these devices be in the hands of the remaining students as identified by the hon. Minister?

Madam President: Sen. Mark, I would not allow that question either. Next question, Sen. Roberts.

Sen. Roberts: Thank you, Madam President. Question No. 9 to the hon. Minister of Health.

Madam President: Sen. Roberts, Question No. 9 was deferred for two weeks, so it should be question No. 10.

Fast Ferries by Austal and Incat
(Reasons for Delay)

10. Sen. Anil Roberts asked the hon. Minister of Works and Transport:

Can the Minister advise as to the reasons for the delay in the arrival of the two fast ferries, which were purchased by the Government through agreements with Australian shipbuilding companies Austal and Incat?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you again, Madam President. Madam President, the Government of the Republic of Trinidad and Tobago, through its agency, the National Infrastructure Development Company Limited purchased two high-speed passenger cargo roll-on/roll-off catamaran ferries for the interisland sea bridge; one vessel to be constructed in Australia by the Australian Shipyards Pty Limited, Austal and the other vessel to be constructed by Incat Tasmania Pty Limited.

The Australian vessel was scheduled to be completed by June 2020 and the Incat vessel was scheduled to be completed by October 2020. By February 2020, the progress on the vessels was on target to be finished by the agreed completed dates. However, with the onset of COVID-19 pandemic in March 2020,
completion of the vessels was disrupted and delayed as was the case with virtually all projects around the world.

One of the immediate impact of the COVID-19 crisis was the rapid decline in production levels and manufacturing efficiencies. Now, months after the onset of the pandemic, manufacturers still struggle to adjust. It remains unsafe in many parts of the word for factories to bring in the normal number of workers without specific consideration. Additionally, personal protection equipment, social distancing policies and improved ventilation has become the norm.

Manufacturers faced several related challenges as well, including materials shortage, demand shocks and rising workers absenteeism. The worst business fallout from the crisis has been and will be in the form of continually stretched supply chains. Materials and equipment are low in stock and more difficult to source than usual. Logistics and shipping have been similarly affected as companies in the supply chain adjust to working safer during the pandemic.

Further, in March 2020, with WHO’s declaration of COVID-19 as a pandemic, many countries initiated border closures. This multiplied international border closures resulted in challenges in personnel and supply chain logistics. For example, the Australian Government ordered all workers in Vietnam where the APT James was being constructed to return home, because they were closing their borders and on March 20, 2020, the Vietnam borders were closed—on March 22, 2020 and to date remained close.

The closing of the borders in other countries in Europe and Asia restricted the movement of persons and slowed down the delivery of goods and cargo from country to country. These challenges impacted both shipyard causing relatively slow production levels. In addition, most countries around the world, including Vietnam and Australia, where the two ferries were constructed, introduced strict
mandatory lockdowns to curb the spread of the virus. However, Madam President, I am pleased to announce that despite these very serious challenges, the construction of the *APT James* has been completed, and its sophisticated state-of-the-art fast ferry has been commissioned and is on its way to Trinidad and Tobago under its own power.

The vessel is currently on layover in a safe harbour in Malta in the Mediterranean Sea, waiting out the passage of a severe winter storm before continuing its journey to Trinidad and Tobago. These storms have delayed the arrival of the vessel. However, barring unforeseen circumstances, the *APT James* is expected to arrive in Trinidad and Tobago by the end of December.

The other fast ferry, the *Buccoo Reef* is virtually completed and is currently undergoing sea trials. This is expected to arrive in Trinidad and Tobago in early 2021 barring unforeseen circumstances. These two sophisticated vessels will revolutionize sea travel between Trinidad and Tobago and full a promise made by a PNM Government to the people of Tobago, to improve travel on the sea bridge to the highest international standards. Both vessels can make the trip to Tobago in less than three hours safely and comfortably even in difficult sea conditions. I thank you. [*Desk thumping*]

**Sen. Roberts:** Thank you, Minister. I have noted the COVID-19 problems. Will any Austal engineers be accompanying the vessel on its way—produced and manufactured by Austal—to enable Trinidad and Tobago to get more engineers here to focus on our Coast Guard Austal vessels as well?

**Madam President:** Sen. Roberts, that question does not arise. Any further questions?

**Sen. Roberts:** Thank you, Madam President. Since this is a government to government relationship as stated by your Government, will you be meeting with
the Australian Ambassador to ensure that engineers are here to maintain and to test the vessel in our waters as it goes through the Bocas?

**Madam President:** That too does not arise. Any further questions? Next question, Sen. Roberts.

**Venezuelan Fishermen**

*(Details of COVID-19 Tests Conducted)*

11.  **Sen. Anil Roberts** asked the hon. Minister of Health:

Can the Minister provide the following information for the period March 31 to August 31, 2020:

(i) the number of unique COVID-19 tests conducted on Venezuelan fishermen entering Trinidad and Tobago’s territorial waters to conduct business; and

(ii) the agencies/medical laboratories responsible for conducting said tests?

**The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. Madam President, this question is directed or the answer directed to Venezuelan fishermen entering Trinidad and Tobago’s territorial waters to conduct, we assume, legitimate business. So the first point is that the Venezuelan fishing vessels that have entered Trinidad and Tobago’s waters since the borders were closed and for this period, the 31st of March to the 31st of August, 2020, are caught under the cargo vessels definition of the COVID Regulations and, therefore, do not require exemption.

Furthermore, based on information provided by the Immigration Division, Ministry of National Security, the crew members of these Venezuelan fishing vessels or any other legitimate cargo vessel boats, who arrived in Trinidad and Tobago at legal ports of entry were not granted shore leave and were not allowed to disembark an come assure. Therefore, no unique COVID-19 tests were
conducted on these Venezuelan fishermen entering our territorial waters for the period 31\textsuperscript{st} of March to 31\textsuperscript{st} of August 2020. Accordingly, part (ii) of the question posed does not arise.

**Sen. Roberts:** Thank you, Minister of National Security. Countless videos have been shown by Trinidad and Tobago fishermen and by citizens down in Chaguaramas of Venezuelan fishermen coming off board and going into Massy Stores and buying goods and so on. Is the Minister aware of this?

**Madam President:** Sen. Roberts, please. You just made a whole speech. I am asking you to tighten it, tighten your question. Just ask the question.

**Sen. Roberts:** Thank you, Madam President. I am just trying to give the Minister some information, because it was a question for the Minister of Health.

**Madam President:** If you are to give the Minister information—please take your seat. If you are to give the Minister information, you have to give it in as concise a manner as possible.

**Sen. Roberts:** Minister, there has been evidence as shown over—

**Madam President:** Sen. Roberts? Minister, you can now answer the question as being posed?

**Hon. S. Young:** The irony does not escape me of Sen. Roberts talking about videos on social media. I would start with that. [Desk thumping] Videos appearing on social media, as I am sure the Senator knows, are not date stamped, et cetera. All I have is the information as what was provided by the immigration authorities. These persons coming on these vessels are not provided with the authorization of shore leave. If persons are disembarking the vessels that is not something that they should be doing. It is something that I asked be looked at very seriously by the authorities, in this case, Customs and Excise as well as the immigration authority. I have also asked the Trinidad and Tobago Police Service to look into this matter.
Sen. Roberts: Let me put a small pin there. But I am a fisherman and I have seen Venezuelans disembarking down in Chaguaramas without COVID testing. So will you undertake to protect us from this invasion of COVID-19 please?

Madam President: Sen. Roberts, Number one, you just made another speech. Number two, that question, if it was a question, it is not allowed. Can we move on to the next question? Sen. Mark.

Sen. Mark: Thank you, Madam President. Question No. 19, Madam President to the Minister of Finance.

Sen. Khan: Madam President, I crave your indulgence, Madam President. There was a slight mix up when I announced what questions we were going to answer initially. We really want a deferral of question No. 19 to the Minister of Finance, and we are in a position to answer question No. 9 which will be answered by the Minister of Finance.

Madam President: So, Sen. Mark, you heard that. So, Question No. 19 is deferred for two weeks and—

Sen. Khan: Question No 9 could be answered now.

Madam President: I know. I am just trying to get it—please, let me just get the order. So, Sen. Mark, Question No. 19 is deferred for two weeks. Do you have anymore? I do not think you have any more questions on the Order Paper.

The following question stood on the Order Paper in the name of Sen. Wade Mark:

**Economic Challenges of Small and Medium-Sized Businesses**

(Measures Taken by Government to Ease)

19. In light of the financial and economic challenges facing thousands of micro, small and medium-sized businesses, as well as the interest rates and service charges applied by commercial banks, can the hon. Minister of Finance
indicate what measures, inclusive of the introduction of legislation, are being taken to ease the burdens being faced by these businesses?

*Question, by leave, deferred.*

**Madam President:** Sen. Roberts, your Question No. 9 can be answered today. So can you pose your question, No. 9?

**Non-Medical Face Masks**

*(Number Procured by the State)*

9. **Sen. Anil Roberts** asked the hon. Minister of Health to advise as to the number of non-medical face masks that have been procured by the State and distributed to the population as at August 31, 2020?

**The Minister of Finance (Hon. Colm Imbert):** Thank you, Madam President. A total of 436,400 face masks was procured by NIPDEC on behalf of the Ministry of Finance at a cost of $4.364 million. Madam President, 359,000 of these masks have been distributed to various NGOs and regional corporations free of charge, so far, leaving a balance of 77,400 masks in storage.

**Sen. Roberts:** Thank you. Hon. Minister, were any of these masks made available to the Trinidad and Tobago Police Service as they conduct their activities and shut down gatherings, so that they would have masks available?

**Hon. C. Imbert:** Madam President, what I am seeing here is that the bulk of the masks were sent to FEEL for distribution to their various customers and clients and the people that they work with, and the rest of the masks were sent to the regional corporations and the Tobago House of Assembly. As I indicated, we still have 77,000 masks in storage, so I would seriously consider that request and see whether we can send some of these 77,000 masks to the Trinidad and Tobago Police Service.

**Sen. Roberts:** Thank you, Minister of Finance. Would you undertake—and I take
that suggestion—to so do in light of the “zesser” parties and “zesser” weddings which are very dangerous at this time? Would you give us that assurance please, Minister?

**Madam President:** Sen. Roberts, I would not allow that question. Sen. Mark.

**Sen. Mark:** Madam President, through you, can the Minister indicate how many face masks were given to FEEL and how many were distributed to the regional corporations?

**Hon. C. Imbert:** Madam President—Sen. Mark, you do not need to shout, you know. Madam President, 133,756 masks were given to FEEL and then every one of the 14 regional corporations received 15,000 masks. So that is Arima Borough Corporation, Sangre Grande Regional Corporation, Tunapuna/Piarco, Diego Martin, Port of Spain, San Juan/Laventille, Chaguanas, Couva/Tabaquite, San Fernando, Point Fortin, Mayaro, Rio Claro, Siparia/Penal/Debe and Princes Town, all got 15,000 and the Tobago House of Assembly got a total of 15,000 masks.

**Sen. Mark:** Can the Minister provide us with information on the clientele of FEEL? Can you give us a breakdown on their clientele in writing, if you cannot provide us with it now, Madam President?

**Hon. C. Imbert:** Well, I would hardly be able to tell you who FEEL gave the 133,756 masks to, but I would certainly ask them and see whether the information can be provided.

**Sen. Mark:** Can the Minister indicate what system of accountability was established when the Government took the decision to engage FEEL to distribute these masks to their various clients? Can the Minister share with us what system of accountability, seeing that taxpayers’ dollars are involved?

**Madam President:** Sen. Mark, that question does not arise. We move on now. Sen. Richards.
Regional Corporations
(Criteria Used to Allocate Funds)

39. **Sen. Paul Richards** asked the hon. Minister of Rural Development and Local Government:
Can the Minister indicate:
(i) the criteria used to allocate funds to the respective Regional Corporations; and
(ii) if population size is among the criteria identified at (i), a breakdown of the number of persons living in each municipality?

**The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein):** Thank you very much, Madam President. The Ministry of Rural Development and Local Government functions as the coordinating agency which guides the 14 municipal corporations and the two special purpose enterprises in assisting communities across the length and breadth of Trinidad. It is also responsible for organizing, promoting and implementing rural development policies and strategies. As a result of our direct and constant connection to citizens throughout the 14 municipal corporations, under section 113(1) of the Constitution of the Republic of Trinidad and Tobago:

“The Minister responsible for finance shall cause to be prepared and laid before the House of Representatives before or no later than thirty (30) days after the commencement of each financial year, estimates of revenues and expenditure of Trinidad and Tobago for that year.”

In order to facilitate the preparation of the estimates of revenue and expenditure, the Minister of Finance issued to all Ministers, Permanent Secretaries, Heads of Departments and Chief Secretary of the Tobago House of Assembly, a call circular requesting that each submit on behalf of their Ministries/Department
draft estimates for the relevant financial period.

In this circular which sets out for the various criteria, the Ministries/Department must consider in preparing draft estimates—some of the criteria contained in the circular are as follows. Government National Development Strategy Vision 2030; the National Spatial Development Strategy on Seven Strategic Sectors targeted for Diversification Thrust; Government’s Service Delivery Excellence Programme; Business Community Management; Government Digital Transformation, Human Resource Planning in accordance with the Government’s succession planning and the National Climate Change Policy.

It should also be noted that prior consultation between the 14 municipal corporations, the line Ministry, which is the Ministry of Rural Development and Local Government, the Ministry of Planning and Development and the Ministry of Finance will also take place to discuss the priority projects and possibility of funding. Thank you, Madam President.

**Sen. Richards:** Thank you, Madam President. Thank you, Minister, for the response. Given that the Minister’s response and the articulated consultation with the municipalities, does the Ministry take into account a lack of provision of audited accounts in terms of determining the transparency and accountability fixtures in these municipalities where the allocation of funds is concerned?

**Sen. The Hon. K. Hosein:** Madam President, in response to that part of the question and which also referred to the size of the municipality and the population, the population size was not a criteria in answering the question.

**Sen. Richards:** May I? I think I probably need to repose the question, Madam President, through you, because I do not think the Minister understood my question, with respect. Minister does the provision or lack thereof of audited financials by the municipal corporations factor into the allocation of funds moving
forward?

Sen. The Hon. K. Hosein: No, Senator.

Madam President: Next question, Sen. Richards.

Energy Conservation and Energy Efficiency

(Update on)

40. Sen. Paul Richards asked the hon. Minister of Planning and Development:

Can the Minister provide an update on the implementation of the following:

(i) the Energy Conservation and Energy Efficiency Policy and Action Plan for Trinidad and Tobago; and

(ii) the green initiatives for Government buildings, with specific focus on paper and plastic consumption?

The Minister of Planning and Development and Acting Minister of Housing and Urban Development (Hon. Camille Robinson-Regis): Thank you very kindly, Madam President. Thank you for the question, Sen. Richards.

The National Energy Conservation and Energy Efficiency Policy and Action Plan was developed through a multi-disciplinary stakeholder committee led by the Ministry of Public Utilities. The committee had representation from various Ministries and state agencies, academia and the business sector. The National Energy Conservation and Energy Efficiency Policy is anchored in and established by an integrated set of nine implementation goals and strategic actions to drive implementation over the period 2020 to 2024, under the long-term goal of building a sustainable future for Trinidad and Tobago. The nine implementation goals are as follows.

1. Mobilize our citizenry to be more energy and resource conscious and to actively practise the policy in the conduct of their daily lives and in the operation of their businesses. And when I say “the policy”, I mean
energy conservation and energy efficiency.

2. Maximize the returns from our national gas resources.

3. Advance the achievement of our commitments under the Paris Agreement as well as the UN SDGs for reducing greenhouse gas emissions.

4. Aggressively pursue energy conservation and energy efficiency in all sectors of the economy working with key stakeholders to create a new industry and build an effective enabling environment.

5. Generate coordinated and sustained action by Government Ministries and agencies in leading the initiatives in all state-owned buildings, facilities and infrastructure.

6. Accelerate the transformation of the transport sector towards greater energy efficiency and, in so doing, reduce our liquid fuel import requirements.

7. Invest in the continued development of the power sector to provide an adequate, reliable and resilient electricity supply consistent with our economic and social development agenda.

8. Position Tobago as a low carbon development path consistent with the brand of Tobago beyond ordinary, clean, green, safe and serene, with particular attention on transport and tourism.

9. Stimulate research and development into innovative technologies and systems that advance the policy.

11.00 a.m.

The current implementation of the policy and action plans is as follows, Madam President. Ministry of Public Utilities, Goal 1: Mobilize our citizenry, as I said before, and the initiative is the LED light bulb programme. As at November
25, 2020, over 635,000 bulbs have been distributed to approximately 159,000 T&TEC customers. And the second initiative under this goal is the development of an energy management application which aims to encourage T&TEC customers to become more engaged in their electricity consumption. Goal 5, that is to say generate coordinated and sustained action by Government Ministries, again this is being led by the Ministry of Public Utilities and the initiative is a level one energy audit on Tower C, International Waterfront Complex. Energy savings opportunities were identified and work is well underway on the retrofitting of the main lighting systems.

A programme to increase awareness and encourage behavioural change amongst the occupants of Tower C is also being implemented. The proposed initiatives for fiscal 2021, are as follows. Under Goal 5, which again is to generate coordinated and sustained action by Government Ministries and agencies, a conservation and awareness programme is being rolled out in Government Ministries. Under Goal 7, which is to invest in the continued development of the power sector to provide an adequate, reliable and resilient electricity supply—

Madam President: Minister, your time has expired.

Hon. C. Robinson-Regis: Sure. Thank you, Madam.

Madam President: Sen. Richards.

Sen. Richards: Thank you, Madam President. Thank you, Minister, for that comprehensive response. Can the Minister indicate if there are specific timelines for achievement of the targets between 2020 and 2024, as outlined in your initial answer?

Madam President: Minister.

Hon. C. Robinson-Regis: Thank you, Madam. The goals do have specific timelines but I do not have that information with me and I can provide that
information to the Senator or to the Senate.

**Madam President:** Sen. Richards.

**Sen. Richards:** Finally, Madam President, through you, can the Minister indicate if an audit, as she indicated before in the Ministry of Public Utilities, is being done in other Ministries to assess where they are in terms of energy use and energy consumption reduction targets?

**Madam President:** Minister.

**Hon. C. Robinson-Regis:** Thank you, Madam President. An audit will be done in other Ministries but what I outlined this morning is what has already been done. But it will be done in other Ministries because we want to make it public sector-wide.

**Themes III and V of Vision 2030**  
(Details of)

**41. Sen. Paul Richards** asked the hon. Minister of Planning and Development:

Can the Minister provide an update on this country’s strategies and policies in relation to Themes III and V of Vision 2030, with specific focus on Goal 2 to—“establish an enabling environment to facilitate the use of renewable energy…” and on the reduction of this country’s carbon footprint?

**The Minister of Planning and Development and Acting Minister of Housing and Urban Development (Hon. Camille Robinson-Regis):** Thank you, Madam President. The Government of Trinidad and Tobago has worked assiduously through various ministerial policies, strategies and activities to encourage the increased exploitation of renewable energy and to accelerate investment in renewable energy technologies as set forth by Goal 2 of the Government’s Vision 2030. There are some current policies, strategies and initiatives already being undertaken and these are as follows. In the Ministry of Energy and Energy
Industries the strategic initiative is to establish the enabling environment to facilitate the use of renewable power—sorry, renewable energy for power generation.

What has been happening thus far, Madam President, is the provision of incentives, the review of the legislative and regulatory environment, the revision of the national electrical code and the development of technical and product standards. Capacity building and awareness has been undertaken. Pilot initiatives involving the nation’s community centres and schools are being led by the Government. There are also education and training initiatives, inclusive of renewable energy and energy education in the curricula of schools. Workshops are being held to engage personnel who would be directly engaged in the renewable energy industry, and these persons include technicians, electricians, including the T&TEC inspectorate, teachers and individuals who are interested in this movement.

There is also an awareness creation through communication fairs, workshops, various media, micro-marketing of incentives for renewable energy is also ongoing. With regard to the Ministry of Finance there is the promotion of renewable energy through fiscal support mechanisms, that is to say tax credits, import duty exemptions, zero rating for VAT purposes and wear and tear allowances. Under the Ministry of Public Utilities there is the provision of legislative support leading to a proposed amendment to the T&TEC Act and the RIC Act. There is also under that Ministry the programme of Government leading by example through an energy conservation and efficiency programme for 21 Government Ministries.

Madam President, under the initiative of instituting appropriate policy mechanisms designed to accelerate investment in renewable energy technologies,
again the Ministry of Energy and Energy Industries is the leader in this, and what
the Ministry of Energy and Energy Industries has been doing is a review of the
feed-in tariff policy. That is to say the Ministry of Energy and Energy Industries in
collaboration with stakeholders is reviewing the policy to allow for a grid
interconnection for renewable electricity generators. This policy initiative is
intended to further encourage investments in renewable energy technology as it
would generate technology that would guarantee payments to renewable energy
developers for the electricity that they produce.
Under Theme V of the Vision 2030, that is “Placing the Environment at the
Centre of Social and Economic Development”, the Government of Trinidad and
Tobago places special emphasis on ensuring the sustainable management of the
environment thereby prioritizing the reduction of Trinidad and Tobago’s carbon
footprint. We have instituted environmentally focused strategies, policies and
activities which are being utilized by most Ministries as part of their
developmental approach. In this regard—

Madam President: Minister, your time has expired.
Hon. C. Robinson-Regis: Sorry. Thank you.

Madam President: And, Sen. Richards, the time for questions has also expired.

EVIDENCE (AMDT.) BILL, 2020

Bill to amend the Evidence Act, Chap. 7:02 [The Attorney General]; read the
first time.

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
PROPERTY (AMDT.) BILL, 2020

The Minister of Finance (Hon. Colm Imbert): Madam President, in accordance
with Standing Order 62(1)(b), I beg to move that the next stage of the Bill be taken
later in the proceedings.

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Madam President: Minister, we crossed that path already so that you can just move into your presentation.

Hon. C. Imbert: Madam President, I beg to move:

That a Bill to amend the Public Procurement and Disposal of Public Property Act, No.1 of 2015, be now read a second time.

Madam President, the Bill before the Senate has 10 clauses and I will now go through the clauses briefly to give an indication of their purpose and intent. The first two clauses are typical. Clause 1 is the title—

Madam President: Minister—

Hon. C. Imbert: Yes, Ma’am.

Madam President: Could you just hold for a second, I do not think anyone is hearing you so we are just checking to make sure your mike is—

Hon. C. Imbert: How is that?

Madam President: That is better. Thank you.

Hon. C. Imbert: I have to get very close to it obviously.

Madam President: Yeah.

Hon. C. Imbert: Okay. Thank you. As I was indicating, Madam President, the Bill has 10 clauses. The first two clauses are standard. The first clause is the title of the Bill. The second clause makes reference to the Act that is being amended. The third clause is a commencement provision and the substantive clauses of the Bill are clause 4, clause 5, clauses 6, 7, 8, 9 and 10.

Clause 7 amends section 7 of the Act, which is the Public Procurement and Disposal of Public Property Act to create certain exemptions. Clause 6 is consequential. Clause 7 would indicate that a person who has been convicted within a 10-year period of corruption or fraud would not be qualified to be involved in procurement; public procurement that is. Clause 8 simply gives the
Office of the Procurement Regulator more time to respond to a submission from an aggrieved person. Clause 9 inserts the standard definition of “relative” which has involved over the last five years or so. And clause 10 is simply procedural.

So let me go into the substance of the Bill. The first substantive change we wish to make to the Act is in the definition of “bid-rigging”. At this time the definition of “bid-rigging” simply refers very, very briefly to collusion. We felt that we needed to tighten this definition and we have borrowed from words and phrases found in the European Union procurement regulations, and the European Union has a very advanced and highly developed procurement system with a vast number of laws and regulations and quite a few authorities and precedents in the European Court of Justice. And borrowing from the definition of “bid-rigging” in various publications with the European Union we are changing the definition of “bid-rigging” to read as follows:

“‘bid-rigging’ means collusive price-fixing and anti-competitive behaviour designed to unfairly influence the outcome of a competitive tender process in favour of one or more bidders;’.”

And we think this captures the whole essence of bid rigging and would leave very little room for persons involved in this unsavory practice to escape the definition. We felt that the existing definition simply was not tight enough.

The next section of the Act is the one that has attracted a lot of public attention and in this clause, Madam Speaker—Madam President, I am sorry. I seem to be mixing up my Houses today. In this clause, Madam President, what we are seeking to do is to deal with a matter that has been debated—I would not want to use the word “ad nauseam” but it has been debated consistently, has been discussed for at least 10 years, going back even before the 2010 election period.
And this is the whole question as to how do you deal with public/public cooperation arrangements. That is the international term of art that is used to apply the government-to-government arrangements and other arrangements with public bodies in other countries.

At this point in time—and this is a matter that attracted our attention during the debate on this Act in the period of 2010 to 2015. It attracted a lot of debate. If one goes into the Hansard one will see that this matter was discussed at length during that discussion in the committee meetings, the various joint select committee meetings and in the debate itself in both Houses of Parliament. And the words that create confusion in the existing section 7 of the Public Procurement and Disposal of Public Property Act are the words that refer to an arrangement between Trinidad and Tobago and another sovereign country or arising from a treaty. And the words that create the problem are as follows:

“To the extent that this Act conflicts with an obligation of the State under or arising out of the following:

(a) a treaty or other form of agreement to which Trinidad and Tobago is a party with one or more States or entity within a State;
(b) an agreement entered into by the Government of Trinidad and Tobago with an international financing institution;”—such as the Inter-American Development Bank—“or
(c) an agreement for technical or other cooperation between the Government of Trinidad and Tobago and the Government of a foreign State,”—of which there are numerous examples—

“the requirements of the treaty or agreement shall prevail except that the procurement of goods, works or services shall be governed by this Act and
shall promote the socio-economic policies of Trinidad and Tobago and shall adhere to the objects of this Act."

And the words that create the confusion are:

“…except that the procurements of goods, works or services shall be governed by this Act…”

And the problem arises when if there is a form of international cooperation with another country or with a financing agency such as the World Bank or the Inter-American Development Bank and the tender rules or procurement practices of that entity or that sovereign state are in conflict with the Public Procurement and Disposal of Public Property Act, what this says is that the procurement of goods, works and services shall be governed by the Act. So what it means is that the requirements of the treaty or the agreement that would have been entered into by the Government of Trinidad and Tobago with another government or a foreign financial institution would not prevail.

From a practical commonsense point of view one can see immediately that if one is seeking to access specialized technology or specialized equipment as we have done—this Government has done with our cooperation arrangement with the Government of Australia with respect to the two new fast ferries. The Minister of Works and Transport mentioned what the status of those ferries is. One of them is on its way to Trinidad and Tobago, will arrive hopefully by the end of the year. The other one should arrive early next year. And these are state-of-the-art modern fast ferries. One is an Austal vessel, one is an INCAT vessel, and these types of vessels have been in operation now in Trinidad and Tobago for the last 15 years or more and have proven themselves. And there are only two manufacturers of fast ferries in Australia being INCAT and Austal and the Government felt in order to
bring our ferry service into the modern era, the best thing to do was to go to each one of these ferry manufacturers in Australia, world-renowned ferry manufacturers, and ask them to provide vessels for us in collaboration with the Government of Australia. That was finalized and the Government of Australia every kindly agreed to provide export credit financing through the Australian export finance agency which it has an acronym of EFIC.

If it was necessary to subject that procurement to the Office of the Procurement Regulator, you might have a situation where the Regulator might tell you, “Well, you should get bids from ferry manufacturers in Vietnam, from China, from Italy, from Canada, from the United States, and so on and get the lowest bidder”, and, Madam President, that would not serve the interest of the people of Trinidad and Tobago in our opinion because these Australian vessels have proved themselves on this sea bridge and that is why we felt it was necessary to go straight to Australia, straight to the Government, get the export financing and procure those vessels at the best price. So that is an example.

I also want to point out that there is nothing peculiar about government-to-government arrangements. Governments for the last many years have utilized this methodology to get equipment, to get expertise, to get infrastructure and to get concessional financing because it comes as a package. These government to government arrangements do not stand alone. It is not simply that you are procuring goods and services from a foreign contractor. That is far from it. What you are in fact doing is you are procuring financing, you are procuring technology, and in return because of the concessional arrangements the foreign entity would seek to, as part of its foreign policy, to export as much of its goods and services as it can in return for the concessional financing. An example is
the Couva Children’s Hospital which was procured by the former UNC administration in the 2010 to 2015 period by way of a concessional loan of ¥990 million at an interest rate of 2 per cent over a 20-year period. And one cannot get that kind of financing on the open market, Madam President.

That kind of financing can only be obtained through a government to government arrangement. And the former UNC Government saw that and procured the construction of the Couva Hospital with this loan, almost $1 billion at these extremely good rates as part of a government to government arrangement. Similarly, the Aquatic Centre in Couva, the cycling facility also in Couva, procured under the former UNC administration with again concessional financing at an interest rate of 3 per cent over 15 years through the China Exim Bank. Again, one cannot get these kind of facilities and concessionary financing unless one goes through a government to government arrangement.

The Point Fortin Hospital was procured in collaboration and cooperation with the Government of Austria with exceptionally good interest rates on the loan financing; a current rate of 1.28 per cent per annum over a period of 10 years. The EFIC Cape Class vessels which are military vessels also procured through a government to government arrangement with the Government of Australia. The interest rate is 2.1 per cent plus Libor over 12 years. And the ferries that I just spoke about, the interest rate is also 2.1 per cent plus Libor over 14 years, Madam President. And we have also gone ahead to procure a hospital in Sangre Grande again through the Austrian government with financing being provided by Austrian institution at 1.2 per cent plus Libor. And, Madam President, it is impossible to get this kind of package unless one goes government to government.

So we on this side are firm in our view that in certain circumstances one
should, in the public interest, seek to access what is available from other sovereign governments through government to government arrangements and it is simply impractical to expect that these things would be subject to local tender rules. It is just not commonsense because they simply would not do it. So that we simply would not be able to avail ourselves of these public/public cooperation arrangements, and countries all over the world have recognized this. And I have here the Statutory Instrument, 2015, No. 102, Public Contracts Regulations 2015, and from the United Kingdom the Government of the UK, and when one looks at this regulation 12(7) in those Public Contracts Regulations in the UK Parliament states:

“A contract concluded exclusively between two or more contracting authorities falls outside the scope of this Part…”

So the UK Parliament has recognized that when you have two public authorities contracting, that the normal tender rules in the UK just do not apply.

This is also well recognized by the World Trade Organization which is a well-established body. It has been established now for at least 50 years; headquartered in Geneva, and they have an agreement on government procurement which has been revised over the years. And in Article 2 of that WTO Agreement on Government Procurement, Article II, 3, it states:

“Except where provided otherwise in a Party’s annexes to Appendix I, this Agreement does not apply to:

a. the acquisition or rental of land…

b. non-contractual agreements or any form of assistance that a Party provides…

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c. the procurement or acquisition of fiscal agency or depository services…

d. public employment contracts;

e. procurement conducted:

i. for the specific purpose of providing international assistance, including development…

ii. under the particular procedure or condition of an international agreement relating to the stationing of troops…”

And the one that is most applicable to the matter that we are discussing:

“iii. under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable…”—

And this is the operative part, Madam President:

—“…where the applicable procedure or condition would be inconsistent with this Agreement.”

So what the World Trade Organization has recognized and put into its agreement under government procurement into its rules which countries such as the United States, UK, European Union, Singapore, Australia, New Zealand, et cetera, all adhere to, is where the procurement of goods and services by way of an international organization or funded by international loans or technical assistance, where that procurement has applicable rules and procedures and they are not consistent with the WTO rules and procedures for our procurement, that the arrangements with respect to the international assistance will apply and will override the WTO Agreement on Government Procurement.

Now, this has been tested many times. There are many cases. The most
recent one is a case called the Remondis case which was a dispute over cooperation between two public authorities in Germany and there was an argument that because these two public authorities in Germany had decided to procure amongst themselves, that this was to the disadvantage of private sector suppliers of the equipment involved; it was a waste treatment facility. And just to read from that, that is the Remondis case, C-429/19, European Court of Justice, just a few months ago, and the learning says:

“The Court ruled in favor of Remondis.”

This is the entity that was engaging in the procurement.

“The law does not require a specific form to be taken by a cooperation between public authorities.”

So the European Court has adjudicated on this matter on numerous occasions and has concluded that the general rules of procurement should not apply to public/public cooperation. And that is it in a nutshell, Madam President. And that is our position with respect to section 7 of the procurement Act.

**11.30 a.m.**

Madam President, with respect to the other part of clause 5 of the Bill, we have made the point that we do not believe that matters such as medical services or legal services, et cetera, should be subject to the lowest bid principle, and these examples are facile, but I will make them anyway.

Heaven forbid someone in this Chamber became ill and was being rushed to hospital for emergency surgery, it would be absurd to ask that person or the agency paying for the medical treatment to get a quote from St. Clair, West Shore and Southern Medical, and then evaluate those quotes and then decide which one had the lowest bidder. Before the person had the surgery, the person would die.
Therefore, we do not feel that medical services should be subjected to these tender rules.

Similarly with legal services, it would be absurd to expect the Attorney General to go out and tender for legal services and use the lowest bid principle. Using the most absurd example, you could have matters where members of the legal fraternity associated with the Opposition would be the lowest bidder. So Messrs Ramlogan and Ramdeen, for example, might put in the lowest bid and the Government might be obligated to hire them to work on behalf of the Government. That is again the simplest examples I could give, and explain why we have decided that we wish to exclude particular services from the legislation.

With respect to the argument that has been raised in another place—Madam President, could you tell me how much time I have?

Madam President: You have nine more minutes.

Hon. C. Imbert: Thank you very much. With respect to an argument that has been raised in another place with respect to whether this amendment can be struck down as being unconstitutional, as being in conflict with section 13 of the Constitution, I will just recite exactly what section 13 of the Constitution is all about, that is, whether a law is reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual. The case law that I would like to cite from is quite a famous case. A particular individual that sued the Attorney General, I think it is Jason James is the case, and that caused the court to go into a very comprehensive examination of section 13 of the Constitution, and to establish what should be the best approach when looking at a section 13 challenge to legislation, as to whether it is in fact reasonably justifiable.

The judge in that particular matter decided to look at what is called the
Bereaux approach to the question of how one should treat with section 13 of the Constitution. The Bereaux in question is well-known Justice of Appeal Bereaux.

To summarize what Bereaux said, I am reading now from the judgment:

“Importantly, Bereaux JA went on to state that in deciding whether section 13(1) is breached, in following the Templeman approach”—and that is Lord Templeman in another famous case—“which he accepted, the court is entitled to compare the legislation at hand with comparable legislation from other democracies.”

So that was Bereaux’s view, and the judge in this particular case followed that line of argument, and we also accepted the Bereaux approach, that is why I recited what obtains in the European Union, what obtains in the World Trade Organization, and what obtains in many other countries. The legislation in other countries creates an exception and an exemption for procurement between public bodies, which would include government to government arrangements, and also creates an exemption for procurement from an international organization, such as the IDB, that is, the financing for the procurement from an international organization. So we believe that the Bereaux approach to the interpretation and application of section 13 of the Constitution is appropriate in the circumstances, and one has to look at what happens in other countries.

What I would also say, Madam President, because I always find that the commentary and the reportage on statements made in the Parliament is not always of the best. In the other place I had made a comment which was completely misconstrued by certain journalists, and reported badly. What I would like to point out today—and I am going to be as careful as I can so that the point is not missed—what we will be doing when we proclaim the Public Procurement Act,
and this Government wishes to proceed to proclaim it—

**Madam President:** Minister, you have five more minutes.

**Hon. C. Imbert:** Thank you very much. I will not use more than that. I want to make the point that this Government wants to get along with this. This thing has been delayed for too long. A point I made in a statement that was reported in the newspapers was that we feel this whole question as to whether we should create an exemption for public-public corporation, government to government arrangements, projects financed by international bodies such as the World Bank, et cetera, this thing has been in the mix now for over 10 years, and we have made our position clear over and over and over.

This request to have further discussions on something that has been discussed at length for more than 10 years, where our position has been crystal clear both in Opposition and in Government, all that would do is further delay the proclamation. It will do exactly what the second complaint is about, because there are two complaints. One is that this amendment is inappropriate, and the other complaint is “we taking too long”. So we want to get on with this, Madam President. We think it is about time we proclaim this Act and we are firm in our view that any further discussion on a matter that has been discussed at length would just lead to unnecessarily delays.

But to just make the point that I made in the other place, what people need to understand is that when the Public Procurement Act is proclaimed—and we hope it will be very soon—it will create a new paradigm, especially with respect to state companies, not statutory authorities per se, because some statutory authorities their tender rules are enshrined in law, such as the regional health authorities. Their tender rules are in the legislation. But state enterprises, state companies have no
public law elements in their tender rules. They simply follow tender rules which have been published by the Ministry of Finance in the State Enterprise Monitoring Manual, but these tender rules have no public law elements.

What will happen when we proclaim the procurement Act is that for the first time public law elements will be introduced into the tendering procedures of state enterprises, and when public law elements come in, which is exactly what will happen when the procurement Act is proclaimed, that allows the courts to enter the whole question of determining the award of contracts. At the present, there are several authorities, both local and international, where the courts have ruled that there are insufficient public law elements in competitive tendering by state enterprises, and therefore they are loathe to enter into the question of determining awards of contracts, unless fraud or some misrepresentation can be proven. But they do not substitute themselves for the decision makers in terms of the award of contracts. They only enter where fraud is contained in the arguments.

What will happen now, now that we are introducing public law elements into the tender rules for state enterprises, is that any aggrieved person will be able to approach the court, and the court will be entitled and empowered to get involved in the award of contracts, to overturn contracts, to scrap contracts, to change the award of contracts.

So I want people to understand, as we move forward to implement the procurement Act, which is what we wish to do, it will give rise to a plethora of litigation that has been hitherto unknown to this country, but we think that is what we should do in the modern era.

I simply wish to close by saying that this Government wishes to get on with the proclamation of the procurement Act. Thank you very much, Madam President.
Public Procurement and Disposal of
Public Property (Amdt.) Bill, 2020
Hon. C. Imbert (cont’d)

Madam President: Minister, can I get four words from you, please?

Hon. C. Imbert: Oh, I am sorry. [Laughter] I beg to move.

Question proposed.

Madam President: Sen. Mark.

Sen. Wade Mark: Thank you very much, Madam President. The Bill that is before this honourable Senate is the third of its kind since the PNM arrived on the compound of power in 2015. Three attempts to gutter, to actually compromise and to subvert the will of the people for transparency, accountability, integrity, honesty and value for money, and you have this feeble attempt by an almost embarrassed Minister of Finance. You cannot even hear the Minister. You had to squeeze yourself to try to hear what the Minister is saying. I am trying to force to hear what you said. You were so quiet, [Desk thumping] I thought you were not in the Chamber. You know, Madam President, the truth is the Minister knows that we know what he knows.

The Government is seeking to bring about a subversion of private procurement in our country, and to bring back this country to the days before the Ballah Report of 1982 when you had a lot of corruption, exploitation, discrimination, inequality of treatment between our local contractors and suppliers and foreigners. But I also want to say from the outset, we will debunk the feeble arguments that the Minister sought to proffer here today, to justify the unjustifiable. I do not know where this LLM Minister—I know he is a lawyer—

Madam President: Sen. Mark, you are free to make your contribution without this element of trying to attack the Minister. Okay? So please continue.

Sen. W. Mark: Madam President, the Bill is extremely disturbing and highly dangerous and if we allow this Bill to be passed today, it will completely destroy
the efficacy of the parent Act of 2015. The Government by these amendments will be seeking to establish two procurement regimes, two hydra-headed arrangements. One, under the procurement regulator, and the other one, under the control of the Minister of Finance. This certainly is going to be a breach of trust and will result in the decline, in the reduction I should say, in the quality of our democracy.

Madam President, I will show where it is wrong to say that the Government cannot enter into government to government arrangements, that they cannot enter into treaties. They cannot engage in international lending, in terms of accessing loans rather, through the international lending agencies. That is not what is in the law. That is not what is in the law.

What the law is saying is that wherever public money is involved, whether it is government to government, whether it is private-public sector partnership arrangements, there must be complete scrutiny, transparency, accountability, integrity and honesty along with value for money.

Madam President, this Bill, if it is allowed to be passed, will lead to corruption, more corruption under this Government, and it will also contribute to a further decline in our country’s index, that is the Corruption Perceptions Index.

Madam President, what are the goals of procurement? The goals of procurement is value for money. It is about competition. It is about fair and equitable treatment. It is about integrity and fairness. It is about transparency, objectivity and accountability.

What this amendment to the Public Procurement and Disposal of Public Property Act is attempting to do is to dismantle the legislation. We are saying this Bill, if not withdrawn by the Government, will lead to the institutionalization of corruption under this PNM administration.
Madam President, if this Bill is not withdrawn, it will lead to the legalization of thievery, in which public money is being used for purely private gain at the expense of the citizens of our country.

Madam President, if this Bill is not withdrawn with the parallel economy that we have with drugs occupying almost the equivalent of our national budget, or almost half of our national budget, we can lay the basis for a narco-state, the development of a narco-state. Therefore, today marks a watershed moment in our country’s history. We are in a very extremely dangerous place, if we in the Senate allow this piece of legislation to pass, and to pass without hindrance.

Madam President, this particular piece of legislation and the proposed amendments, we are saying in no uncertain terms, the amendments that the Government is promoting are wrong. These amendments are not in the public interest but this is being promoted even contrary to the PNM’s manifesto. Madam President, as far as we are concerned on this side, the legislation is extremely clear, Act No. 1 of 2015, and I will go into some detail on that matter in a short while.

We are committed to promoting transparency, accountability, integrity, honesty and value for public money. Wherever public money is expended on the purchase of goods, works and/or services, it must come under scrutiny. Whether it be financial services, legal services, auditing and accounting services, it must be subject to public scrutiny.

Madam President, the Bill is being promoted by an administration whose actions and public utterances have been at odds with their deeds and concrete performances. Today we in the UNC find it extremely repugnant, reprehensible, indefensible and insane for the Government, headed by our Prime Minister, who has been preaching about transparency, incorruptibility, morality in public affairs,
to be now openly defending measures that the Government knows will only lead to the entrenchment and institutionalization of corruption and fraud. [Desk thumping]

Madam President, it is said that you can fool some of the people some of time, but you cannot fool all of the people all of the time. [Desk thumping] Today the emperor is without any clothes. Anyone who had any lingering doubts about what this PNM Government stood for or stands for, all we have to do is to study these amendments to the Public Procurement and Disposal of Public Property (Amdt.) Bill, 2020, to find out and to expose, in all of its nakedness, the true intention of this Government.

Madam President, I would like, with your leave, to indicate the following: Procurement, we all know, is a complicated and sometimes opaque process, through which a large, if not the largest, percentage of public money is spent. Madam President, worldwide, procurement spending averages between 13 per cent and 20 per cent of gross domestic product. It has been estimated that an average of US $9.5 trillion of public money is spent every year by governments throughout the world on public procurement. Madam President, with such vast sums at stake, few government activities create greater temptations or even offer more opportunities for corruption than public sector procurement. Corruption in public procurement means public funds are wasted on an enormous scale.

Madam President, along with the benefits of these funds should have been brought taxpayers’ money to pay for hospital equipment, books for schools, or even safer roads, ends up sitting in the pockets of the corrupt. The European Commission calculated that in members states in Europe, almost €120 billion, which is the equivalent of US $163 billion, are lost each year to corruption.

So, Madam President, when we come to our country, Trinidad and Tobago,
the history of public procurement reveals the presence of an entrenched culture acted out by representatives and even public officers in tandem, a culture which perpetuates the mistaken view that control by the central Government amounts to regulatory oversight and effectiveness in the delivery of goods and services.

Madam President, let us look at this Bill and its clauses. We have what is called clause 4. When you look at clause 4 in the parent legislation, it refers to bid rigging. Now, Madam President, you would know that when it comes to the question of bid rigging, there is in fact a definition of bid rigging in the legislation that is before us today. The Government is seeking to expand what is called bid rigging. So in the Act No. 1 of 2015, we talk about:

“‘bid rigging’ means collusion between persons for the purpose of manipulating the proceedings;”

In this amendment to the parent Act, the Government has now expanded bid rigging in a more fulsome way, and in doing so, I want to make the following statement: Madam President, clause 4 of the Bill seeks to amend the original definition of bid rigging.

The Act as currently constituted defines bid rigging as:

“...collusion between persons for the purpose of manipulating the proceedings;”

The original definition speaks to manipulation. In other words, if two or more persons got together and through collusion sought to manipulate the process or outcome of a tender, then that could be deemed to be bid rigging. The concept of manipulation is familiar to everyone. Madam President, in the context of procurement, it means to control or coerce the tender process, usher it towards a certain outcome. In other words, the original prohibition was narrowly defined, and
targeted conduct which sought to directly manipulate the procurement process.

Madam President, what we are dealing with is a new definition, and we are submitting this new definition infringes constitutional rights. We are arguing that that requires the requisite majority for passage. When Parliament was dealing with that matter in 2015, there was a clear understanding of the offence being advanced to manipulation, and they acted, the people that is, conscientiously with that in mind.

The amendment that is before us, for which no special majority is either sought or has been obtained, has been summarily dispensed with— it has summarily dispensed with the concept of manipulation, which as I said was narrow, and has introduced elements into the offence which has the potential to capture conduct which may have been previously not fallen within the original definition. So in those circumstances, we are advancing that the Government needs to pay attention to the constitutionality of this piece of legislation as it relates to that particular expansion of the definition of bid rigging.

Madam President, if you go to section 7 of the parent Act, where the Government is now seeking to amend in terms of clause 5 of this amendment—let me go to section 7 of the parent Act of 2015:

“This Act applies to public bodies and public-private partnership arrangements.”

It seeks:

“To the extent that this Act conflicts”—if it conflicts—“with an obligation of the State under or arising out of the following:”

One:

“…a treaty or other form of agreement, which...”— this country—“is a

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party with another or more States or entity within a State;’’

Secondly:

“...an agreement entered into by the Government of...”—this country—
“with an international financing...”—agency.

And thirdly:

“....an agreement for technical...cooperation between the Government of
Trinidad and Tobago and the Government of a foreign State.”

12.00 noon

Madam President, what it goes on to say is:

“the requirements of the treaty or agreement shall prevail except...”

So, Madam President, nowhere is this law saying the Government cannot enter into
government to government arrangement. It is saying that you can enter but:

“...except that the procurement, Madam President, of goods, works or
services shall be governed by this Act and shall promote the socioeconomic
policies of Trinidad and Tobago and shall adhere to the objects of this Act.”

Madam President:

“A procuring entity engaged in procuring proceedings relating to a treaty or
agreement...”—which I have referred to—“...shall comply with section
29...”—and they have to—“...submit a report on such compliance to the
Office”.

That is the Office of the Procurement Regulation. And:

“The Office shall, within twenty-one days...”—have that report, submit it to
the Speaker— “...who shall cause the report to be laid in Parliament...”

So, Madam President, we ask the question: When this Act of ’15, 1 of ’15,
was prepared under the guidance of consultants from the UNDP and the
regulations were prepared under the guidance of consultants out of the IADB, Madam President, why the Government at the time who was in Opposition did not object? We had international agencies overseeing this exercise and guiding this process. We do not understand and appreciate, and we say further, Madam President, there should be no problem on earth why, in negotiating government to government arrangement, the issue of procurement procedures of Trinidad for goods, for works and services will not be accepted by any lending agencies or a foreign government.

Madam President, all procurement arrangements on goods, works and services are executed in Trinidad and Tobago, as you know, at this time through state enterprises. You have NIPDEC, you have a company called UDeCOTT, they—I think MTS is also involved at times, Madam President. And therefore we would like to ask the Government, why is the Government seeking to misinform the country, Madam President?

Madam President, the Procurement Regulator does not interfere in government to government arrangement, loan financing for projects, Madam President, private/public partnership arrangements. All the Act does in section 7, Madam President, is that it requires that all, Madam President, all procurement details be submitted to the regulator for scrutiny after the fact, Madam President. It is a requirement of scrutiny, Madam President, that what this thing, this matter is about, and that is to ensure, Madam President, accountability, transparency and good governance. The Procurement Regulator is not stopping the Government from entering into treaty or other forms of agreement. [Desk thumping] So why is the Minister and the Government seeking to amend a law that says that you can enter, Madam President, into government to government arrangements and
treaties? But what the law is also saying, you must subject the purchase or the procurement of goods and services—

**Madam President:** Sen. Mark, you have five more minutes.

**Sen. W. Mark:**—and works, Madam President, to and for the scrutiny of the regulator. That is what the law is saying. And therefore, we do not understand where the Government has dredged up legal services. That is not in the law. In Act No. 1 we do not know anything about legal services. We do not know anything about:

- (b) financial services;
- (c) accounting and auditing services;
- (d) medical services;”

Madam President, accounting and auditing services, medical.

- (e) such other services as the Minister may, by Order, determine.”

And that:

- “Order…shall be subject to negative resolution of Parliament.”

What madness is this, Madam President? Madam President, there are no such services listed under Act 1 of 2015. The Minister apparently has access to information that we do not have. What the Minister should be doing, Madam President, in this Parliament today, is bringing the regulations for the affirmative approval of this House. [Desk thumping] But the Minister is not doing that. The Minister is bringing amendments, Madam President, in order to allow the Government to escape scrutiny, and giving himself, the Minister that is, extraordinary powers without any supervision, without any accountability.

Madam President, I would want simply to draw to your attention two things. You have a situation where right now in some of these agencies many activities are
taking place in which the manipulation process is at work. Madam President, I want to bring to your attention briefly this Act which is attempting to gutter the Bill, the governance process. We have an instance where the PNM at a particular institution called the Accreditation Council of Trinidad and Tobago, Madam President, I have confirmed minutes of that meeting. I have for instance, Madam President, a conflict of interest occurring with the deputy chairman. And this is where, Madam President, this ACTT took a decision to employ a lawyer, an attorney. They executed that arrangement in accordance with their procurement policy. Yet still the deputy chairman of that institution called and advised the corporate secretary and attended a board meeting and indicated to the board that they should employ a particular PNM lawyer, contrary to the procurement law that governs their activities, Madam President.

And you know what is even more ironic, Madam President? The deputy chairman of the Accreditation Council of T&T is also a vice president of UTT. So that person is in a conflictual arrangement. So that person is responsible for accrediting himself or herself. That person was appointed in 2017 and reappointed in 2019. Did the Prime Minister not know that the deputy chairman of the Accreditation Council is a top official at UTT? And that very body has to give it accreditation? Madam President, that is the kind of manipulation that can take place if these amendments are passed today. [Desk thumping] We cannot allow that.

Madam President, I have a few seconds and I want to bring to your attention a particular matter which I need your guidance on. I have been reliably informed that senior government officials have been on the telephones in the—

Madam President: Sen. Mark—

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Sen. W. Mark:—in the last 48 hours—

Madam President:  Your time has expired. [Desk thumping] Sen. Thompson-Ahye. [Desk thumping]

Sen. Hazel Thompson-Ahye: Madam President, it is my privilege for which I thank you to speak on this Bill which is a very important amendment to the Public Procurement and Disposal of Public Property Act No. 1 of 2015. Every political party without exception when out of office, makes a hue and cry for public procurement legislation. One party when in power may enact the legislation but fail to effect or operationalize such a law.

Alternatively another party may move as if it is serious about public procurement, but rather than seek to bring to the Parliament a robust law that will serve the purpose and intendment of such legislation, brings to Parliament laws which raise a hornet nest of biting insects who ill-advisedly dare to attack the Independent Bench and impugn our integrity. But to them I say, if I were “Gombo Lai Lai” they envy our verbosity and cannot comprehend our lexicographical lingo.

Madam President, the hapless populace regards the word “politics” as an acronym which stands for “people only legislation issues that increase coffers significantly”. And before the word coffers, they breathe an unspoken word, “their”. The electorate is suspicious and distrustful of the commitment of politicians to not only guarding their democracy but also and especially safeguarding the national purse. Many think honest politician is an oxymoron, and this is really unfair to many politicians who strive to and actually do the right thing.

Madam President, this is an important piece of legislation that ostensibly seeks to inter alia protect us from bid rigging. Clause 4 very suitably introduces a
revised and improved definition, I think, of bid rigging and that is commendable indeed. So far, so good. The cynical may assess this clause as an attempt to lull us into a perception of goodwill. Perhaps that is the intent. I cannot say.

The long title of the original Act reads as follows:

“An Act to provide for public procurement, and for the retention and disposal of public property, in accordance with the principles of good governance, namely accountability, transparency, integrity and value for money, the establishment of the Office of Procurement Regulation, the repeal of the Central Tenders Board Act, Chap. 71:91 and related matters”

Procurement legislation is relatively new on our statute books of our countries around the world and seemingly constitute a 21st Century creation. Most countries, including the United Kingdom, the Caribbean procurement legislation enacted legislation between 2003 and 2015, most countries in 2015, states like Trinidad and Tobago, Jamaica, Barbados, Guyana, St. Lucia and Grenada to name a few. But I must say, the Government of the capital territory of Australia and Kenya, both were early off the starting blocks and enacted their legislation in 2001. And some countries have amended their laws and made regulations thereunder.

It would be beneficial, I think to have regard to the rationale for procurement legislation to properly assess our present amendments to determine whether they are justifiable, even sensible, or whether they fly in the face of good practice and international principles. If governments are to govern effectively they need to supply goods and services to their citizens and to have certain works done. Since Government does not produce all the goods and services that they need to carry out their functions, they have to acquire these from suppliers at a huge cost amounting to millions, trillions of dollars at times. And it is not surprising therefore that some
persons see in the relationship of supplier and procurer opportunities for enriching themselves at the expense of the Government and ultimately the taxpayer who, with reduced resources, cannot receive from the Government much needed medicine, variety of goods, proper of roads, housing and many services to which our citizens—to which we are entitled.

So public procurement framework cover many Government Ministries and Departments and other entities funded by governments. This Act, as so elegantly put in the Bill Essentials sets:

“...a new regime for public procurement and the retention and disposal of public property, in accordance with the principles of good governance; namely accountability, transparency, integrity and value for money.”

The last is so frequently misunderstood.

Now:

“The objects of this Act are to promote:

(a) the principles of accountability, integrity, transparency, value for money;”

—as I said:

“(b) efficiency, fairness, equity and public confidence;

(c) local industry development…”

—very important—

“...sustainable development in public procurement and the disposal of public property.”

[Mr. Vice-President in the Chair]

Trinidad and Tobago in 2019 was rated in the 85th position of 180 countries in corruption by Transparency International. For years every government has
accused the former government of corruption. There has been racket after racket. Nobody playing tennis but plenty racket”, although some enjoy more sophisticated pursuits in other places. And Trinidadians, I must say, have rightly earned the nickname of “Trickydadians; it is like in our DNA. It is expected therefore that the public procurement Act would be our deus ex machina, our saving grace, and any amendment thereto would bring even greater blessings and bring public officials involved in the procurement process even closer to heaven, and most of all would be beneficial to the citizens of Trinidad and Tobago. It is for the citizens.

Clause 5, which seeks to amend section 7 of the Act, as to put it mildly, causes some concern. I will leave the other issues of government to government arrangements, agreement international, financing institution and technical for other persons who argue and I will concentrate on the new subclause (5) which states:

“(5) The Act shall not apply to the following services provided to public bodies or State-controlled enterprises—“

So we have:

“(a) legal services;”

We have:

“(b) financial services;
(c) accounting and auditing services;
(d) medical services; or
(e) such other services as the Minister may, by Order determine.”

Madam President—oh, I am sorry. Mr. Vice-President, legal fees paid by the Minister of the Attorney General and Legal Affairs for the period 2015 to 2019 was $1.014 billion. Under the previous Government for the period 2010 to 2015, $4.585 billion. I have no comparative figures for financial services, accounting and
auditing services, medical services and such other services utilized by this Government or the previous one.

But one thing is indisputable, the government is the largest single provider of services. Its pockets are deep. Yes, COVID has dug into its pockets but the pockets are deep and many want to go into those pockets. I remember my mother used to go into my daddy’s pockets generations ago. All she could get was some coins.

Within the last few days I have examined more than dozen pieces of public procurement legislation, regional and international, and the exemption that is most often found in such legislation with regard to its applicability is, for example, as in the Guyana law which states that:

“Procedures do not apply to:

- Procurement involving national defence or national security;” and/or is
- “…funded by Multilateral Development Banks and similar external agencies such as IADB,…CDB…”—and so on—“which are governed by the procurement rules of the funding agency agreed to by—for example, the Government of Guyana.

Guyana’s procurement commission has put out a guide to the public procurement procedure which I think is very helpful.

But back to clause 5. To add insult to injury in the same clause 5 is subclause (6) which states:

“An Order under subsection (5) shall be subject to negative resolution of Parliament.”

Mr. Vice-President, I have observed that this Government has a predilection for negative resolution. I cannot recall a Bill where it was stated that a regulation will
be subject to affirmative resolution in my 29 months here. The Opposition would talk themselves hoarse. Some people may have a cause of action here, you know, permanent hoarseness arising out of voicing protests against negative resolutions. The affirmative resolution requires a positive endorsement of the statutory instrument. Both Houses must approve the draft instrument. But the Government does not want to be troubled by further debate on the issue; it is a bother. They want to get on with the parliamentary business. But what that does is deny the other Members an opportunity for further parliamentary oversight. And many times we are calling for regulation to be subjected to affirmative resolution. Even when the COVID Bill came to Parliament that was asked for and we did not have that.

And the same arguments that were raised here, were also raised in the House of Lords. Opposition Members were asking for the regulations to be brought to Parliament into the House of Lords so that they could have oversight. And maybe when you actually have oversight we can improve the situation. We could have improved it so we do not have the confusion that is now arising with the COVID-19, whether it applies here or it does not apply here. We could have helped.

The Public Procurement Act of Jamaica also contains a provision giving the power to the Minister by order subject to affirmative resolution to declare that this Act or any provision thereof shall not apply to a public/private partnership approved by the Cabinet to a national development project in respect of the procurement of any class of goods, works or services to a public body, as the Minister subject to such terms and conditions if any specified. It also gives the Minister the power to by Order subject to affirmative resolution amend the first
schedule to what is in fact exemptions.

This requirement for affirmative resolution is to be found also in the UK public procurement Act 2015 at section 33.

The Minister, may by Order subject to affirmative resolution declare that this Act or any provision thereof shall not apply.

There are questions that arise from the exemptions in the Trinidad legislation. How do these exemptions accord with the:

“principles of accountability, integrity, transparency and value for money” —with—

“efficiency, fairness, equity and public confidence; and local industry development, sustainable…development in public procurement, and the disposal of public property.”

If the regulator does not have oversight, who does? Can we trust the Cabinet to perform this role? Is the process transparent? Is it value for money? Is the procedure fair and equitable? Does it inspire public confidence? How does it provide opportunities for local industry development?

The Government of the Republic of South Africa has issued a manual titled “General Procurement Guidelines”. The introduction to the guidelines state:

“Proper and successful government rests upon certain core principles of behaviour” called “the Five Pillars of Procurement…because if anyone is broken the procurement system falls down.”

These five pillars are:

1. “Value for money.

This is an essential test against which a department must justify a procurement outcome. Price alone is not a reliable indicator and departments
will not necessarily obtain the best value for money by accepting the lowest price offer that meets mandatory requirements.”

So we keep hearing that you have to take the lowest price because otherwise we might get, you know, Ramdeen and so on and so on but it is not the lowest price.

“Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.”

Therefore, for the Government to state that subject into the procurement process, legal or other services will compel them to take, for example, the lowest priced lawyer and he may not necessarily be the best or most desirable, it is to show a lack of understanding of the principles of the procurement process.

Time does not permit me to expand on the other four pillars, so I will name them briefly and I will have them available to anyone who is interested. The other four are as follows:

2. “Open and effective competition.
   “…procedures” must be “transparent…and readily accessible to all parties.”

   “…deal with each other on a basis of mutual trust and respect…”

   …Individuals and organisations” must be “answerable for…plans, actions and outcomes.
   …external scrutiny through public reporting, is an essential element of accountability.

5. “Equity.
   …application and observance of government policies which are designed to
advance persons and categories of persons disadvantaged by unfair discrimination.”

So is clause 7 built on the five pillars? I would wish to know. Clause 7 seeks to amend section 29 to make eligible as direct persons who:

“(c) have not been convicted within the past ten years of corruption or fraud related offences locally or internationally—”

And this is reminiscent of when we were doing the planning—town planners legislation. Are we really so short of eligible people that we have to go there? Is it the case that with evil stalking our land and destroying our young women and girls that we believe that we are living in Sodom and Gomorrah or in Nineveh and we cannot find untainted persons?

Clause 9 seeks to amend the definition of “relative”. And it says the:

“…cohabitant within the meaning of the Cohabitation Relationship Act…”

Why are we using that definition? What if the parties were living together for fewer than five years? Does it mean that that spouse automatically gets a “bligh”? I seem to recall a common law spouse involving the Piarco matter. We should rethink this definition and in fact just use the cohabitant as perhaps in the domestic violence legislation.

The argument that medical services should be exempted because the procurement process is so slow that the person may die while waiting for the process to be concluded is not without a response. And we need not go too far to find the answer; right in the Caribbean. When we look at St. Lucia’s Public Procurement and Asset Disposal Act at section 53(1), it makes provision for emergency public procurement.

12.30 p.m.
And it states:

The Minister may use an emergency procurement where—

(a) the country is seriously threatened by a disaster, war, Act of God or there is a threat to national security;

(b) the country is impacted by a disaster, war or Act of God, or national security is compromised;

(c) life or the quality of life or environment may be seriously compromised;

(d) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or

(e) an investment project may be seriously delayed for want of an item of a minor value.

So we live in a real world where these things happen. And other people have dealt with it. It is nothing unique to Trinidad and Tobago. So we just have to look around sometimes to see where the best practice is, where the best legislation is, and see if we can import that into our legislation. But even while recommending such a provision I say that there should be safeguards, and I now turn my attention to another document which warns about emergency procedures without safeguards.

Madam President, sorry, I did not want to change the sex, Mr. Vice-President, the ADB or OECD, that is the Asian Development Bank and the Organization for Economic Corruption and Development Anti-Corruption Initiative for Asian and the Pacific has published is document entitled “Curbing Corruption in Public Procurement in Asia and the Pacific”. Recommendation 3 of
this conclusion and recommendation reads as follows:

In most countries open tendering is the standard method of procurement. While exemptions from this general rule may be necessary for practical reasons, countries are encouraged to assess whether exception they allow are necessary, and to ensure that the grounds for such exceptions are precisely defined and there are safeguards and control mechanisms against abuse. Particular attention in this regard should be paid to emergency procurement or exemptions that apply when tendering fails.

It gives me no pleasure to advise the Government to return to the drawing board and to embark upon further and wider consultation. I know it is a bugbear. But I make this plea in the interest of the people of Trinidad and Tobago. I hold no brief for any chamber, big business or any political party. I am guided by my oath of office as anyone who knows me would be aware. And in a prayer that we were led in this morning, we prayed that we can vow to act with honesty, courage and conviction. I am not persuaded at all that big business care about the little people as you do about their bottom line, which they may see threatened by some of these new provisions. I am aware that some of them have their dogs eating better than my fellow citizen, and I am not persuaded that if they get richer they will provide opportunities for the poor that are not exploitative.

I call from a more just society. We do not legislate for today. We do not legislate thinking that we will always be in power. We may be honest today, but we are putting things in our books that could be exploited by others. We have to be very careful. Have we given a thought to that? Many do not make the link between a just society and a peaceful society. Corruption destroys our potential to be a just society, where the needs of the most destitute in the society are fulfilled.
and their dignity is upheld. Corruption is about selfishness and greed, and must never be facilitated by right-thinking persons. Pope John Paul reminds us of one certain principle, there will be peace only to the extent that humanity as a whole rediscovers its fundamental calling to be one family. A family in which the dignity and rights of individuals, whatever their status, race or religion, have accepted. This will take place only in a society that recognizes human rights of all its citizens. A society free from all types of corruption, including it the procurement process. We can rise to that challenge and be a society if only we have the will.

Mr. Vice-President, I love my country and my God. Thank you. Shalom.

[Desk thumping]

Sen. Charrise Seepersad: Thank you, Mr. Vice-President, for the opportunity to contribute to the debate on the Public Procurement and Disposal of Public Property (Amdt.) Bill, 2020. Mr. Vice-President, it is abundantly clear that the Government has done a very poor job in selling these amendments to stakeholders, interested parties and the general public at large. This is evident from the comments and pushback in the public domain. This country, as well as most countries in the world, has been plagued by corrupt practices in almost every sphere of both public and private endeavours.

After decades of corruption in the misuse and disposal of the people's scarce and dwindling resources, financial resources, by successive governments, a powerful lobby led by the business sector, including, but not limited to the following: the Joint Consultative Council of the Construction Industry, business chambers, trade unions and civil society organizations. They provided after deliberating for considerable hours significant contributions to the Joint Select Committee
responsible for the Public Procurement and Disposal of Public Property Bill, resulting in a comprehensive piece of legislation, which required as three-fifths parliamentary majority, and therefore support by most parliamentarians. It is abundantly clear that not all parties involved have a vested interest in allowing the Act to fulfil its intended purpose, and now engage in major surgery to reduce the Act to inconsequence.

Although the Procurement Act was passed in December 2014, it remained languishing for full operationalization. Since then two sets of amendments were brought forward and required only a simple majority in Parliament. November 2015 passed in June 2016, and December 2016 passed in March 2017. I am hard-pressed to understand why this Act must be amended and failed to see how oversight by an independent Procurement Regulator cannot benefit the procurement process. Also, an Act which initially requires three-fifths majority should not be reduced to a simple majority for any change. This creeping authoritarian approach seems as an attack on the Constitution and democracy itself.

[Desk thumping] I am reminded that we are here to seek the best interest of the public, and only the people we serve can say what is in their best interest. Claims that this oversight will delay and/or stymie the alacrity by the public sector are baseless, since accountability and openness must be the cornerstone in public affairs and democracy itself.

The Procurement Regulator’s role must not be diminished for the sake of convenience and expediency. Further, giving a Minister sole responsibility for seeking the public’s interest as far as this amendment is concern is counterintuitive to that which the Act itself seeks to accomplish. That is, transparency in public affairs. The amendments made in 2015 reduced the power of the procurement
board and created a parallel structure, an Appeals Tribunal appointed in the same manner as the procurement board. As I have said before, three and a half years later the Act is still to be fully implemented. The procurement legislation seeks to prevent illegal activities such as bid rigging, nepotism and bribery.

Mr. Vice-President, the Procurement Act No. 1 of 2015 fully decentralized the procurement process so that all public money is under the scrutiny of the independent Office of the Procurement Regulator. The Procurement Regulator must report to Parliament, and that report is scrutinized by the Public Accounts Committee within 90 days of the end of the financial year. This, I am convinced, is a powerful weapon in the fight against corruption and crime, and seeks to mitigate the instances of decades of questionable procurement practices. The original procurement legislation was endorsed by the IADB and the European Union, and Transparency International also supported the legislation. Comprehensive procurement legislation is in the public’s best interest and must stand up to global scrutiny and procurement standards.

It goes a long way in ensuring that public officers, that is in government state enterprises and the public sector, are accountable. Understandably, this is another step in the right direction to open and responsible prudent and disciplined governance. The main objectives of the Procurement Act are: accountability, integrity, transparency, value for money and good governance. Since the Office of the Procurement Regulator was established in 2018, regulations on procurement of goods and services and the disposal of assets have been drafted, but not laid in Parliament. It is not yet been made available for public comment. The Office of the Procurement Regulator has put the infrastructure in place to have the public sector compliant. Officials, who the regulator will have to engage have been trained.
Once the Act is proclaimed, over 200 institutions would fall under this office. That is, everywhere public money is spent.

A handbook on procurement guidelines for state enterprises has been completed. Further, a whistling blowing firm from Canada has been engaged to assist citizens to report matters. The Procurement Regulator will also establish a database of all prequalified contractor so that the contractors and suppliers track record and suitability can be identified. So, this means that only one list will exist where all public bodies will have to use to select their contractors and suppliers. The Procurement Regulator as soon as it is in power, can also retroactively scrutinize suspicious activities involving public procurement over the past five years. The procurement legislation will also protect the Government from fraud and corruption. This includes multimillion dollar equipment used for building and constructing infrastructure, to oranges purchased for school feeding lunches. A 2014 study done by the Organization for Economic Corporation suggested that governments can lose between 10 per cent and 30 per cent of the money spent on public procurement to corrupt acts.

[Madam President in the Chair]

Let me illustrate: The projected budgeted expenditure for 2020/2021 is approximately 50 billion. If 50 per cent of the 50 billion is used for public procurement the potential for savings from corruption can be approximately 2.5 billion to $7.5 billion annually. Although my Math is conservative and assumptions are incomplete, the idea is that if the corruption hole is even partially plugged some measure of savings will accrue to the State.

Madam President, I wish to comment on clause 5 and clause 6. Clause 5, amendment to section 7 at the Act. This clause removes from the Act the following
services provided by public bodies or state-controlled enterprises, legal services, financial services, accounting and auditing, medical services and the other services as determined by the Minister. The amendment also proposes that a range of exemptions under the office of the Minister of Finance will not be subject to Procurement Regulator’s scrutiny. Madam President, these amendments changed the raison d’être of procurement legislation. Such fundamental amendments which include a range of exclusions and vesting in a government Minister is extraordinary and should require more than just a simple majority decision. It will now be possible for major state enterprises such as Trinidad Petroleum Holding Company to dispose of its properties without the scrutiny of the Procurement Regulator or Parliament. The amendment also removes from the procurement scrutiny matters involving financing of projects by multilateral agencies, and I stress, scrutiny.

Clause 6 deletes section 13(1) paragraph (o) of the Act. The Office of the Procurement Regulator would not act on behalf of the State to dispose of real property owned by the Government. Therefore, the following would be removed from the Office of the Procurement Regulator: government to government arrangements, arrangements with international financial organizations including projects funded via loans, disposal of real property owned by the Government, public/private partnership such as build/operate/lease/transfer construction projects, and special purpose companies’ transactions. These services are not only removed from the scrutiny and oversight of the independent office of the Procurement Regulator and its board, but also from Parliament. In my view, the intent here is to make the Act impotent by undermining the credibility and efficacy of the Procurement Act.

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Further these amendments to section 7 and section 13(1)(o), placed Trinidad and Tobago in a disadvantageous optical position internationally, and does nothing to reduce the incident and corruption at all levels. These amendments weaken independent Office of the Procurement Regulator by removing its oversight on major financial transactions to the Minister of Finance. The areas listed for exclusion also include the largest financial transactions and are areas with a history of dubious activities. Transparency and accountability will be virtually non-existent. Madam President, what will be left for the Office of the Procurement Regulator to regulate? With these amendment this Act will not and cannot qualify as effective public procurement legislation. It is our collective responsibility to the nation that we must have strong law to deal with all aspects of the public procurement process to ensure accountability, integrity, transparency and value for money. This is expected from us by all. It is not flattering to note that the Transparency International on a 100 point Corruption Perception Index, 2018, Trinidad and Tobago ranks 41. In the 2019 report on economic development and the Development Bank of Latin America report, Trinidad and Tobago ranks higher than average in the region for incidents of bribery, with approximately 20 per cent of firms’ surveys stating bribes are being paid for critical services.

One example where the Procurement Regulator may have avoided the embarrassment of a misstep. We entered into a contract between the Housing Development Corporation and the Chinese Construction Company, China Gezhouba Group International Engineering Company Limited for the construction of 5,000 houses. The Trinidad and Tobago Government cancelled the contract four months after the contract was signed because of lobbying by various public interest groups. The contract terms were extremely disadvantageous to the interest of
Trinidad and Tobago and could not stand up to best practice review. This was an embarrassing and potentially costly decision. To date there has been no explanation of how the contact came to be signed, nor has anyone been held accountable.

There are many examples where we have a lack of accountability and transparency which have plagued public contracts and expenditure. I can list several organizations and persons who are against the amendments to clause 7 and clause 13(1)(o) of the Act. In particular these include: The Procurement Regulator, AMCHAM, the Joint Consultative Council for the Construction Industry, private sector civil society group, the Trinidad and Tobago Chamber of Industry and Commerce, the Trinidad and Tobago Coalition of Services Industry, the Trinidad and Tobago Manufacturers Association, and the Trinidad and Tobago Transparency Institute. Further, the Office of Procurement Regulation from 2018 to present has consulted with various sectors and 1,400 suppliers and contractors who confirmed that there should be no amendment to clause 7 of the Act.

Madam President, I am convinced the Government is mistaken in seeking to have these amendments become law. I think we can all agree that Trinidad and Tobago must have robust legislation to deal with all aspects of the procurement process. All government procurement which utilizes scarce and dwindling public financial resources and other assets must be subject to independent and impartial scrutiny by the Procurement Regulator, its board and Parliament without exception. The laudable objectives of accountability, integrity, transparency, value for money, will not be achieved by the proposed amendments. I strongly recommend the amendments to clause—

Ma[[dam President:  Sen. Seepersad, you have five more minutes.
Sen. C. Seepersad: Thank you. I strongly—thank you, Madam President. I strongly recommend that the amendments to clause 7 and clause 13(1)(o) of the Public Procurement and Disposal of Public Property Act, 2015 must not be part of this Bill. I further urge the Government to lay the regulations to fully operationalize the Procurement and Disposal of Public Property Act as soon as possible.

Madam President, I thank you for allowing me to contribute to this debate.

[Desk thumping]

The Minister of Public Administration and Digital Transformation (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, I thank you for allowing me to join this debate. The impression that some people seem to be gathering from the discourse that has been happening around these amendments, is that the Government may be reluctant to implement the public procurement legislation. The Government is against scrutiny in public procurement. And, Madam President, there is nothing that can be further from the truth. The Government has subscribed to the United Nations Sustainable Development Goal, and Goal No. 12 deals with public procurement, and we fully subscribe to that.

So, Madam President, for the sake of the national public and my colleagues in the House, let me let the public know some of what we have been doing to prepare for the introduction of this legislation when we expect it to be implemented and proclaimed. Firstly, it requires all Ministries to be properly staffed with procurement officers. And at the Ministry of Public Administration and Digital Transformation, our unit there called the Public Management Consulting Division has been working with the Ministries to ensure that we have correct staff. We have

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been doing that for the past few years. Under the Ministry of Public Administration and Digital Transformation as well, we have the Public Services Academy which trains public servants. And from October 2016 to date we have trained 110 persons in public procurement, in areas such as general public procurement, very importantly ethics in procurement and strategic approach to procurement. Just so that public servants would be ready when the law is proclaimed. Among the persons trained are persons from the Financial Intelligence Unit, the FIU, and the Tobago House of Assembly as well as individuals from various Ministries.

Another significant focus of my Ministry in terms of procurement involves the agency that is popularly known as iGovTT. iGovTT working in connection with Internet service provider, locally operating has entered in an MOU for the provision of e-procurement solution. This solution has been endorsed by the Office of the Procurement Regulator, and that the regulator has indicated that the solution is consistent with the provisions of the legislation, and should be able to assist the implementation of public procurement.

So there are five key modules in this solution. It deals with the supplier prequalification, vendor registration, document management of all requests for information, quotes and proposals, online evaluation, education, evaluation and online management of contract from execution to expiration. This e-solution to procurement has several benefits. It is ready for immediate implementation. It is customizable, and as such accommodates the procurement’s approach to the two envelope system. It allows for online payment, and it has been integrated in that regard with GovPayTT. It is a fully local solution so it does not create any forex cost. It improves auditability of procurement and expenditure. It improves recordkeeping, and the digital aggregation and storage of tenders from cradle to
grave. It allows for 24-hour access, and very importantly it opens the door a little wider for non-traditional persons seeking to enter into government bids to easily have access. So it opens the door for SMEs and so on.

So, Madam President, this is one—my Ministry is one of the agencies that is supportive of and preparing for the introduction of this public procurement legislation, and it demonstrates Government’s full support of proper procurement rules and procedures. I would remind you, Madam President, that we are the Government that has been striving to do more with less, and has been able to realize significant savings in many of our procurement contracts, including many of those that have been brought to the attention of this place by the Minister of Works and Transport and other Ministries. But as with many other countries throughout the world, Madam President, we recognize that the Government will be hampered in efficiently and effectively serving the needs of the public of Trinidad and Tobago if they there are certain contracts that are required to follow the procurement rules as outlined by, or as will be enforced by the Office of the Procurement Regulator. And I would give you a list of some of the countries, Madam President, where exemptions have been included. Canada, Singapore, the United Kingdom, the European Union have all included exceptions to contracts from their normal procurement rules. And those exceptions generally have to deal with security related procurements, terrorism procurements, defence procurements, intelligence activities, acquisition of rental of land and existing buildings, legal services, financial instruments, audit services, standard advisory services.

1.00 p.m.

All of these lists of services have been excluded by different countries among those that I called recently, a few minutes ago, and others. So what Trinidad
and Tobago is seeking to do, what the Government is seeking to do by these exclusions is not something that is unusual, it is not something that is nefarious, it is not something that is underhand and it is not to give the Government the opportunity to avoid accountability, to avoid seeking value for money. What we are trying to do simply is ensure that we have the ability to best serve the public by allowing certain types of procurements to not follow the normal approach to procurement.

The procurement legislation in its current form is the method by which we have chosen to protect the public purse, but it is not the only method of protecting the public purse. What it does is that it puts checks and balances in place to ensure that there is some oversight and there is accountability. But it is not the only means to ensure accountability and oversight. One of the challenges with the normal procurement rules is the inefficiency of it.

Just this morning, Madam President, I believe it was Sen. Mark that raised a question to the Minister of Education indicating why the devices that are to be supplied to students have been taking so long to be supplied, how many students are suffering as a result and so on? I can tell you, Madam President, as the Minister charged with the responsibility for procurement of ICT devices and applications, the Ministry of Public Administration and Digital Transformation, via its implementing arm of iGovTT, is working closely and has been working very closely with the Minister of Education to expedite the procurement of these devices. And as soon as the funds were made available, approved under the budget, we started pursuing that, but we have to comply with the procurement rules, which means we have to design the bid, we have to publish the bid, we have to give persons who are interested the time to review and put together their proposal and
so on. So every other day the Minister of Education calls me and says, “Where are the devices, when are they coming?” But we have to go through the process. That is one of the implications of the normal procurement procedures. So if we have to do that with a health matter, that would be an issue. If we have to do that with a legal matter, that would be an issue.

Sen. Thompson-Ahye indicated that legislation, similar legislation throughout the world creates exceptions to that. But when I have looked at those bits of legislation and even the provisions quoted by Sen. Thompson-Ahye this morning, it focused on exceptions where there are issues of national importance. It does not list health as one of those, it does not list an urgent legal matter as one of those. So the exceptions that we are trying to create to give us flexibility in determining that we get the best service for the public of Trinidad and Tobago will not fall within the category of exceptions that Sen. Thompson-Ahye pointed us to.

Another challenge with the normal procurement rules is that they operate on a two-envelope system. Once you passed the technical envelope, you qualify technically. Then the next envelope, which is the financial envelope, you pass by being the cheapest bidder. So that, to say that we can avoid exposing somebody with a health issue to improper health is not quite accurate, because if the first envelope says there is an individual who is in need of cardiac surgery, the first envelope will seek to identify that the person bidding qualifies as a cardiologist. The second envelope then takes you to the cheapest of those people who qualify. If any of us— I challenge any of us to say that if we have a heart problem and we need to undergo heart surgery that we do not want the best heart surgeon available and that is generally not going to be the cheapest health surgeon available.

So there are certain areas where we have to ensure, because the issue is so
significant, that we can secure the best service in the circumstances and not the cheapest of those people qualifying. Health, in my respectful view, is one of them; legal services, in my respectful view, is another. Trinidad and Tobago has become more and more of a litigious society and the State is constantly underchallenged in various ways for various things, and we need to give the Attorney General the ability to secure the best legal support that he can get for the benefit of the State to protect, not only the public purse, but also the way we operate, the way we do things. So that, in my respectful view, the exceptions that we are seeking to create in this legislation is not to move away from the responsibility of accounting for what we are doing and how we are spending money, but to give us flexibility in determining that we can get the best resource available for the benefit of the people of Trinidad and Tobago.

Madam President, an example of one of the areas we would have been stymied on, if the public procurement legislation was in place and we did not have these exceptions in effect, was the recent MOU that we signed with Estonia. As the Minister responsible for digital transformation, in a very short, tight time frame, I need to ensure that the support that we get in rolling out digital transformation is the most cost effective and most appropriate support that we can get to lead us in the right direction for Trinidad and Tobago, otherwise we can spend tons and tons of money and make very little headway. Digital transformation is too important an area for us to get it wrong.

So when we looked around the world to determine who would be the best person to support us on this, we found a country that is similar in size, similar in economy but it is way advanced of not only Trinidad and Tobago but many larger countries in digital transformation, and that is Estonia. If government to
government arrangements were subject to the public procurement rules as currently aligned in the legislation with no exception, it would mean that—

Madam President: Minister, you have five more minutes.

Sen. The Hon. A. West: Thank you, Madam President. It would mean that we would be obliged to go with whoever has the experience but brings it in its lowest bid, and not necessarily somebody who is aligned with the economy and society that we live in.

So, Madam President, the key issue that I think we need to focus on is not, what are the exceptions in the legislation? It really is, do we have sufficient safeguards to protect the public purse, to require accountability even in respect of those services that we are seeking to exclude? And I posit, Madam President, that we in fact do. We have under government to government arrangements they are self-policing. But in our local legislation, we have been bringing a slew of amendments to the Cabinet or Bills to the Cabinet that provide for greater transparency and greater accountability. In respect of financial services, for example, we have the FATF rules, we have the CFATF rules, we have the Global Forum regime, all of which require accountability. We have freedom of information legislation which the public in Trinidad and Tobago are taking full advantage of. We have the Parliament which requires us to report to the two Houses as well as to the Public Accounts Committee.

So it is not if we exclude these services from the public procurement legislation that they cannot be brought before the Public Accounts Committee for accounting. So excluding them from here does not mean that they are excluding it in their entirety. There are other bits of legislation which the Attorney General has brought and which we have passed that gives the Auditor General greater access to
information. It gives the same to the police, it gives the same to the Inland Revenue, it gives the same to the public. So we all have greater access now because of this slew of legislation brought by this Government to various bits of information which require the Government to continue to be accountable to the public even in the absence of the support offered by this particular bit of legislation. So our amendments are not about reducing accountability, it is not about opening the public purse without regard to how it is done, and how effectively it is done, and whether we are getting value for money. It is just to give us the flexibility to get better services.

So, Madam President, I would say to you in closing that this Government is all about transparency, is all about accountability, it is all about integrity, it is all about honesty and it is all about value for money, but we need the flexibility to ensure that we could serve the public well and that is all we are seeking to do. Madam President, I thank you. [Desk thumping]

**Sen. Damian Lyder:** Thank you, Madam President. Madam President, with a mere 20 minutes, I will, with such a historical and important Bill being brought to this august Chamber, I will not spend much time rebutting. Today, with a debating of the mutilated legislation marks a very disgraceful and shameful day in Parliament. There has been no consultation whatsoever with stakeholders, as the Government has said. It is six years that this law has been awaiting regulations and full proclamation. As the Leader of the Opposition has declared, it has been delayed on the part of the PNM. In their last term in office, they did nothing to fully proclaim the parent Act.

In 2010, Madam President, before forming Government, the Joint Consultative Council asked for procurement legislation. It was a Prime Minister by
the name of Kamla Persad-Bissessar SC who delivered that in 2014. And it was under the People’s Partnership government that the procurement legislation was bought to Parliament, debated and passed. [Desk thumping] And, Madam President, five years later, under this PNM, no proclamation of the procurement legislation and all of this while we see government to government deals to buy not one but two fast ferries with no oversight, disposal of state lands and assets in Aripo to PNM financiers, no procurement regulator, issuing of billions of dollars in contracts, in construction, all done with no procurement regulator.

Madam President, two Cape-class vessels from Australia costing the taxpayers of this country $630 million with no oversight. And in these last five years in this country, not a dog barked, not a feline meowed, nobody picketed, nobody protested around the Savannah, nothing. But that was until last week Monday the 4th when this Government surprised the nation and like a thief in the night brought this Bill to the Parliament, and the whole nation woke up, Madam President, they woke up at this point. Civil groups woke up, private sector groups woke up, the coalition called the Private Sector/Civil Society Group woke up, and within 24 hours they pulled together their group and can you imagine the press release sent out from the Private Sector/Civil Society Group?

But, Madam President, let me list the members of this organization so that the PNM cannot come to this House once again and say that the UNC is the only one against this Bill. Because the population needs to know the position of business and civil society. We have the right in this Parliament to be the voice of these people and we will be their voice today. So let me tell you, Madam President, some of the members of the Private Sector/Civil Society Group. This media briefing, Madam President, was led by a Mr. Winston Riley, Chairman of the
Private Sector/Civil Society Group and the members present were: the Joint Consultative Council, AMCHAM, Trinidad and Tobago Manufactures’ Association, Trinidad and Tobago Chamber of Industry and Commerce, the Trinidad and Tobago Coalition of Service Industries, and Trinidad and Tobago Local Content Chamber. And, Madam President, they have said the same things that the Opposition has said. They have quoted that the PNM, in their manifesto in 2015, promised that they would swiftly move to include the necessary improvements to the Public Procurement Act in order to remove loopholes and limitations that currently exists.

However, now history will show that these promises never materialized. So they are living up to their name, Madam President, the PNM, “Promise Never Materialize”. Mr. Winston Riley and team lamented that since the budget was delivered in October 2016, that the Minister of Finance promised that it was the Government’s intention to operationalize the full public procurement system. By the end of March 2017, public bodies were supposed to have procurement personnel. But what we got instead was a failed promise and now they come to this Parliament with a watered down piece of legislation to present amendments that will just make the PNM friends and family richer and richer.

I mean, we heard the Prime Minister on the TV himself say, he has no problem seeing the rich get richer. And all of us in the Opposition, we watched the poor eating off the side of the plate. You see, but, Madam President, it would interest you to note that since January 2020, the Private Sector/Civil Society Group issued a statement stating that there should be no amendment to section 7(2), Act No. 1 of 2015. It should be remembered that both political parties voted for this Act, in both Houses of Parliament, in a three-fifth majority. Madam President, now
they come to dismiss what was delivered with a special majority by tabling a simple majority Bill.

Madam President, in mid-November, 2020, this year, the Public Sector/Civil Society Group wrote to the Prime Minister privately reminding him that the procurement legislation was promised. Would you believe, Madam President, if I told you that up to this day, on the 8th of December, there has been no response from the hon. Prime Minister? Imagine the blatant disrespect that the Prime Minister, who had the time to leave Parliament during the anti-gang debate, claiming that we did not support it but he himself was not there—

Madam President: Sen. Lyder—

Sen. D. Lyder:—to vote.

Madam President: Sen. Lyder, please, confine your remarks to the Bill, please. Okay?

Sen. D. Lyder: Thank you, Madam President. But he has not responded to this private sector group. This private sector group who is the economic backbone of this country after the Government has crashed the economy of this country. It is this private sector group, this private sector that is holding together this economy like glue. If not for the private sector, this country would completely collapse. The private sector, instead of obtaining confirmation of the procurement law being tabled in its original form, instead they received a procurement amendment Bill that they themselves described as disturbing. The private sector expected the regulations of the Office of Procurement Regulation to be tabled in the Parliament but instead they received this Bill, the Public Procurement and Disposal of Public Property (Amdt.) Bill, 2020, on procurement, to be passed by simple majority.

Madam President, I must quote Mr. Riley again, where he says that this Bill:

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....destroys…

And I quote—

…destroys almost completely the efficacy of Act No. 1 of 2020 which sets up two procurement regimes here, one under the Office of the Procurement Regulator and the other at the Ministry of Finance.

The PNM in five years have failed to proclaim fully the procurement Act and instead they bought this dangerous amendment.

And you know what, Madam President, the worst part of this is, that in five years they could not even be bothered to have consultations. Mr. Riley went on to say and I quote:

This represents a breach of trust and goodwill of the citizens of Trinidad and Tobago.

He says:

Clause 5 of the amendment Bill makes a mockery of the procurement process.

This Bill provides ultimate powers to the hands of Ministers and directors without proper accountability and transparency. Madam President, when we look at clause 5, section 7, we see what they have extracted from this Bill. It says:

“This Act shall not apply to the following services provided to public bodies or State-controlled enterprises—”

Hear the five:

“(a) legal services;
(b) financial services;
(c) accounting and auditing services;
(d) medical services;”
And hear number five:

Or—“(e) such other services as the Minister…by Order, determine.”

So that means that the Minister could wake up any morning and decide should there be any area that they do not want any public scrutiny, they can just decide to pull this into the Bill. They can pull it out, extract it. This means any time there is a friend, family or financier who needs the public scrutiny over their procurement process to be removed, they could simply get their friends in the PNM to make the changes to the law to cover their tracks. And you know, Madam President, speaking of tracks, covering tracks, I have not heard of any result that came out of the fake oil investigation. But I will move on.

You know this, Madam President, opens the way for corruption, nepotism, misappropriation, and by and large, it takes us towards a dictatorship. Every week, every month, we see ourselves getting closer and closer to a Venezuela, to a dictatorship like Venezuela because the Prime Minister is getting the power to run this country by decree. The Minister of Finance only has to worry about a negative resolution before a friend, family or financier of the PNM gets to sail through to acquire or sell any strategic asset. This amendment Bill under this PNM Government will effectively turn Trinidad and Tobago into a banana republic.

[Desk thumping]

Madam President, a banana republic where the Prime Minister can gift away any strategic asset to whoever he decides without the glare of public scrutiny. So it should come as no surprise when individuals get thousands of acres of land with blue stone and yellow stone and gravel, and there was no real procurement process in place. And, Madam President, what was very disturbing is that the PNM does not worry to hide this anymore, you know, they do not worry to hide this. Look at
what they are exempting: legal, financial, accounting and medical services. I mean, the country is not asleep. Who do we know in the Cabinet is connected to many of these industries? I mean, who recused themselves—I do not know, 90-something times, I am not sure, but I know the population knows.

Madam President, when we look at other projects, government to government projects, it was a project with a Chinese company with the HDC project, with over US $70 million just for phase one, government to government, you know, corruption rampant in that case. Even the Prime Minister admitted there were problems in that deal. The Government had to pull it back. So we cannot forsake our rights to fairness because of another government elsewhere that might be corrupt or not. You see, Madam President, under the guise of respecting other governments, this Government has placed an exemption for government to government arrangements. It declared concern of the American Chamber of Commerce was the treatment to government to government arrangements. Changes proposed in the amendment before Parliament will essentially gut the efficacy of the Act by removing government to government procurement from being covered by the regulation and also, international financial institution funding.

So, for example, Madam, we see this almost incestuous relationship between to the Government of Trinidad and Tobago and that of Venezuela with their illegitimate President. Could it be that they can go to Andean bank, supported by the Venezuela regime, and escape the scrutiny in projects that the IDB, for example, would require? This Government has effectively created a parallel system for the procurement that would lead to corruption as it will undermine the independent Office of the Procurement Regulation.

Madam President, would you believe if I told you even the Office of the

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Procurement Regulation is against these amendments. So they are against it, the civil society is against it and the private sector against these amendments. They reiterated that there should be no amendment to section 7. The private sector asked that section 7 be tested so that local providers can have equal opportunity for local content participation. You know, Madam President, it is indeed a sad day today because the Government has seen it necessary to undermine the Office of the Procurement Regulation. The approach of deleting clause 7(2) and setting up an alternative procurement process removes the issue of transparency, accountability and thus, opening the door for our country being downgraded. What 7(2) does it makes the process transparent—

Madam President: Sen. Lyder, you have five more minutes.

Sen. D. Lyder: —accountable. Thank you, Madam President— and value for money. It is also disheartening that putting up— it is also disheartening that putting up dual procurement processes both operating in tandem, one, under the Office of Procurement Regulation and the other, under the Ministry of Finance, is in contravention with section 4(d) of the Constitution, which states, Madam President, the Constitution:

“the right of the individual to equality of treatment from any public authority in the exercise of any functions;”

So if you want to bid to purchase a state asset and another family member of the PNM official wants to get through with it well, “crapo smoke yuh pipe”. You have no fairness there.

You see, Madam President, we even look at the Sandals debacle, this thing called the “Sandal scandal”, where this Government was prepared to give $700million of taxpayers’ money towards this project; 500million in land and
another 500 million in tax exemptions, take our public purse and throw this into this deal. And if it were not for civil society, the private sector and the Opposition of Trinidad and Tobago, they would have gotten away with it. Tongues are wagging. They say this deal might have been orchestrated over a dinner table, but I do not know. The point is, the deal did not happen.

So, Madam President, for this coalition that I speak of to organize themselves within 24 hours to raise the issue, uniformly and collective, illustrates the great import being placed on the systematic risk issues going forward. The national issue received no consultation from the PNM. This is a testament to the fact that elections have consequences. The PNM is not interested in consulting with anyone, but friends, family and financiers. It is the view of the coalition that section 7(2) should not be amended from the parent Act. They were hopeful that this Government heard their message and it is clear that the Government did not hear the message, did not care to listen to the deep concerns and have placed a priority of interest of their friends, family and financiers to the detriment of these institutions.

So, Madam President, we respect the fact that the Minister of Finance needs the latitude to maneuver through specific issues, but it does not take away from the clarion call to account for these said actions. It does not auger well for the public trust to simply say, “Hey, trust me, I good, I go make sure everything go well.” What is being asked for is public accountability. So hypothetically speaking, Madam President, and I am breaking it down for the layman on the street, you have a procurement man on one hand and you have the Minister on one hand. Anyone in the Cabinet that wants to get through with the multimillion dollar project, who do you think they are going to for approval? The big, bad Procurement Regulator or
their good friend in the Cabinet, whilst all of our public funds jumping up like a steel band in town with no accountability?

1.30 p.m.

Madam President, this is outrageous. This is a breach of public trust. This is a lack of transparency and accountability, and it is simply unacceptable, Madam President. The Opposition wholeheartedly rejects the Bill, just as many of our civil society have rejected this Bill. [Desk thumping] The voice of the people and the citizens of Trinidad and Tobago have rejected this Bill of dictatorship, and we expect the newspapers in this country to report this. We expect the journalists and our fourth estate in the Republic to do the right thing and report it the right way.

Madam President, as I close, the only thing standing in between the PNM bringing this gutted Bill that strangles the constitutional rights of every citizen and veils transparency, accountability of our public funds is this side of the House, and today is a most historical day while the nation looks on at this august Chamber. Today every single one of us in here needs to reflect today and we must use our conscience in this decision. Civil society is looking on, private sector business is looking on, our parents are looking on, our children are looking on. God Almighty is looking on. In your opening prayer, Madam President, you said in your opening prayer, “Open our eyes to see the truth”. Madam President, I ask my colleagues in this Chamber, open your eyes today, do the right thing and unequivocally and unanimously reject this corrupted Bill, and I thank you, Madam President. [Desk thumping]

Madam President: As we wait for Sen. Deonarine to begin her contribution, I just want to remind Members there is absolutely no need to be shouting in this Chamber. I did not stop Sen. Lyder. I should have, but he was in such full flight I
decided I will make the recommendation and I will be stopping anybody else from that tone being adopted. There is no need for it. Sen. Deonarine.

**Sen. Amrita Deonarine:** Thank you, Madam President. Thank you, Madam President, for the opportunity to contribute to this debate today on the Public Procurement and Disposal in Property (Amdt.) Bill, 2020. Now, my contribution today would focus primarily on clause 5 as I too am having some difficulty in supporting the amendments. The concerns that I have with other clauses, I would rise them in the committee stage. Because of the truncated time, I may not enough time to go through the other clauses of the Bill during my contribution. On the outset, I would like to suggest to the Minister of Finance, that since there is so much disquiet and so much discomfort about the amendments to section 7 of the parent law, it would not hurt to pause and take a second look.

What the amendments proposed in clause 5(a) does is that it exclude public/private partnerships treaty agreements, bilateral/multilateral agreements, and agreements signed with international financial institutions from the oversight of the OPR, and exclusion from adopting all procurement methods and processes. And now in clause 5(b) of this Bill we have a further amendment which is now going to introduce a whole new suite of services that will be excluded from the oversight of OPR.

But what is the big deal about this? The big deal is that the provisions under the general provisions of the parent law would now no longer apply, and what this means is that under these arrangements and for these additional services the ability for the procuring entity to limit participation in procurement proceedings; to promote local industry development would not be a priority; due diligence of suppliers and contractors now becomes optional; guidelines and handbooks
relating to public procurement would not have to be complied with; the prompt publication of contract awards or framework agreements would not be a requirement; the submission to the OPR for all contracts of this nature awarded by each procuring entity would not be required; and, of course, the OPR has no authority or power to obtain information and documents from procuring entities for these contracts awarded under these new proposed exclusions.

Now, Madam President, the removal of this type of scrutiny from the OPR for public/private partnerships, international financial institutions, government to government arrangements, would deplete the transparency and accountability mechanisms built into the parent law just like a lot of speakers have explained today. However, I understand some of the challenges, certain SCIFIs, International Financial Institutions, can encounter if section 7 is proclaimed as is. There is a conflict according to the treaty signed with these IFIs. Part of the general conditions that the Government signs on to, which are like fixed terms, subjects the contracting of goods, works and services to their procurement policies. So the procurement policies of IFIs—and I would like to single out here mostly the World Bank and the Inter-American Development Bank because these two multilateral lending agencies tend to have procurement standards that are internationally accepted and are in line with the methodology for assessing procurement systems. It is a methodology that is applied, that is used to measure procurement systems across the world, both in developed and developing countries, and it has been developed by the OECD and the Development Assistance Committee.

So procurement policies by IFIs are considered to be a higher standard, and because it is considered internationally accepted they tend to have procurement policies that are very transparent such that local industries always have the
flexibility to participate. But some contentions lie here. There may be some IFIs without rigorous procurement policies and does not subject the borrowing member country—and Trinidad and Tobago in this case—to rigorous procurement regimes that are of a higher standard. You have some IFIs whose operations are premised on being flexible to meet government demands in a short space of time and agreements that agree to use country systems.

In that case, Madam President, what would end up happening is that applying this law from all IFIs would mean that this law would not be applied to that particular IFI, and then there is no international standard procurement policy of that IFI, and then we end up in a situation where we procure from moneys that we are borrowing and are subjected to a system that does not have proper oversight. So in such circumstances there is cause for concern because the exclusion from the procurement methods and the processes in the parent law, there is the possibility that contracts awarded may not be seen, and reported, and published.

[MR. VICE-PRESIDENT in the Chair]

But, Mr. Vice-President, this does not have to be. No international financial institution is asking any Government, in any part of the world, to weaken their oversight bodies or not have oversight over international financial institutions procurement. It is in the interest of IFIs as a matter of fact to ensure that the country has strong governance and oversight.

In Jamaica, for example—and I using Jamaica as an example because they have recently upgraded their procurement law. They have improved on their procurement regulations and some international financial institutions, for example, the IDB, have partially accepted their country procurement system into their
procurement measures for various development projects. So in Jamaica every contract that is awarded by an international financial institution goes through what they call the procurement commission, which is equivalent to our Procurement Regulator, just as the ones entirely financed by the Government. And then, as a matter of fact, all over the region there are procurement oversight bodies where the IFI procurement progress passes through. For example, I know of projects in Costa Rica, projects in Costa Rica that has been stopped by what is known as the Contraloría. It is an audit and oversight of public finance body and they have picked up something that was outside of their laws and they were able to intervene and say, “Look, stop. Explain to us what is going on here.” Where there is a—and then in this instance where there is a conflict that probably might exist, the treaty supersedes the local law and in that case the procurement—well, the important thing is that the procurement process is transparent.

So, Mr. Vice-President, the point that I am trying to make is this, procurement oversight bodies all over the world are active in most countries carrying out their role, ensuring that there is prudent management of procurement, and this is not interfering in any way with the success and progress of IFI procurements. None of the IFIs are asking any Government to weaken or disregard their oversight institutions because they want them to be strong. As I said, there is a concern when it comes to IFIs, particularly the World Bank and the IDB. The Government recognizes this, and as a matter of fact, what I am trying to say is that this does not mean that you should take away the authority of the regulator to see what is going on and still allow them to be in a position where they can review awarded contracts.

So most respectfully, I do not see a justification to exclude IFI procurement
from the scrutiny of the Office of the Procurement Regulator, and to some extend the same applies for Government to Government arrangements. Because of time constraints I would not spend too much time on government to government arrangements, but what I would like to say is that I share the concerns and the anxiety of the fellow stakeholders because the concern about foreign companies eroding market share of local companies especially in the construction sector as infrastructure works and construction is where most of concessionary loan agreements takes place between government to government. But at the same time, Mr. Vice-President, I would like to say that in these arrangements we need to ensure that we negotiate these agreements to ensure local contractors also benefit.

You have to ensure that you have the best of the best around that negotiation table when negotiating these agreements, and sometimes that is where the problem lies. We go out there negotiating deals with other Governments and we fail to accept that sometimes we really do not have the best expertise in the subject area around that table making negotiations—conduct negotiating. Further, sometimes our local firms do not have the expertise in certain areas to take on mega projects by themselves, and this is something that is true and we also do not like to accept. But I would still like to recommend to the Minister of Finance to amend this clause to include “to allow inclusion of the Office of the Procurement Regulator to conduct oversight over these operations”.

As a matter of fact, section 37 clearly outlines and says that on a quarterly basis within a period of, I believe it is three weeks, all procuring entities should submit a quarterly report with all contracts awarded. Why we have to discontinue this? We should continue to include that to ensure that there is proper oversight by the Procurement Regulator. I believe that that would be a good governance
measure because you are not restricting them from following local procurement methods, but at the end of the quarter you need a report to the OPR on which procurements that were done. Mr. Vice-President, I strongly believe that the public has a right to know. Why you would not want to share these contracts that has been awarded? Whether it has been awarded by an IFI from government to government arrangements, these are public information. This should be public information, it utilizes public funds.

In this clause you are asking for flexibility in contracting, you are asking for flexibility in conducting the procurement processes, but you do not have to hide that you procure these specific services by other means. Right? So I strongly recommend that it continues to be under the oversight of the Office of the Procurement Regulator. So, Mr. Vice-President, what I am trying to say is that exclusion does not have to be absolute. It could be limited. Because what we want is to ensure that the Office of the Procurement Regulator is playing a key role in oversight on those highest risk and most valuable and difficult procurements.

Now before I move on to the amendments in clause 5(b), I want to mention a point quickly on public/private partnerships. Now the budget statement recently read in both honourable Houses—

**Mr. Vice-President:** Senator, you have five more minutes.

**Sen. A. Deonarine:** Thank you, Mr. Vice-President. The budget statement recently read in both Houses of Parliament set out the Government’s focus to utilize public/private partnership for the next two years as a matter of fact to assist in funding the investment cap, and some projects that have been identified are: privatizing the operations of the Port of Port of Spain; construction of the new Ministry of Health headquarters; East Port of Spain redevelopment, et cetera, just
the name a few. But how the Government goes about selecting the private/partner is a procurement and should be under the procurement method in this law because you want to transparently select this provider.

The only exemption from the procurements methods I see being necessary is in the event that a probity assurance or probity auditor is being utilized during the negotiation phase, and this could be captured under a sole source selection for consulting services. I believe actually—I had the opportunity, I know it is not public information, but I had the opportunity to look at the draft regulations and I did see under section 24 instances like that for emergencies, and so on, and special circumstances was captured under section 24 of the regulations.

Now let me jump quickly as time goes on. Let me jump quickly to the amendments in clause 5(b). Now the amendments in clause 5(b) is the source of a lot of contention, the introduction of these further exclusions from the Act:

“(a) legal services;
(b) financial services;
(c) accounting and auditing services;
(d) medical services; or
(e) such other services as the Minister may, by Order, determine.”

Mr. Vice-President, “such other services as the Minister may, by Order, determine” could be anything. This is too loose and should be narrowed. In addition, such orders to include other services should be laid in Parliament with affirmative resolution.

Now other Senators have already spoken on that so I would not go into much details, but I will say this. I looked at the Jamaica law, for instance—and I keep referring to Jamaica’s law because they have recently updated their
procurement law—and I said they partially approved, partially accepted by international standards and they too have exclusions in their law just like us. However, their exclusions are narrowly defined in a separate schedule—it is Schedule 1 as a matter of fact—and it requires that any further inclusion to be laid for affirmative resolution by the Parliament. So I know when we are taking about procurement, procurement for each country, procurement is done and designed to suit the circumstances of each country, and it is not a copy paste for one country to another. However, there are similarities between Jamaica and us and their procurement policies, and we should really look at it and take that into consideration.

Now, quickly let me just go to auditing and accounting services and financial services. Now auditing and accounting services I do not understand why auditing and accounting services have to be excluded. This to me should be treated as a basic consulting-type service. Auditing has standards of practice and each auditing firm follow a similar procedure and methodology. The IPSIS and international auditing practice for public sector are very rigorous. So there is not much scope for them to go off on a tangent so to say, and because accounting and auditing services are considered of a standard routine nature for which there are established practices, we could do an open tender for those and via a lease cost selection.

Now quickly with respect to financial services, let us say, for example, the Government decides to sell a bond and they all decide to divest some assets as they intend to do in this budget in terms of the NP gas stations, or they decide to have an IPO where they have to hire a financial brokerage house to manage the process. You see—Now I do not understand why it is we have to include these financial
services as a special circumstance and exclude it from the procurement law, because we cannot always think of procurement in a really conventional way and of seeing these things as the first inclination we think is that you put it—we need to be private and we need to be able to choose our own partner for financial services. But the reality is that it is being done out there where there are services that are being brought by very transparent and competitive means. Antigua, for example, had done it via an e-procurement system.

Mr. Vice-President, I would stop right now because I know my time has expired. I would mention my comments in the committee stage. Thank you, Mr. Vice-President.

Mr. Vice-President: Sen. Welch.

Sen. Evans Welch: Mr. Vice-President, thank you for affording me the opportunity to address this House on the Public Procurement and Disposal of Public Property (Amld.) Bill, 2020. Mr. Vice-President, I am in the fortunate position that I come with a fertile mind to this debate. I say fertile mind in the sense that I was not part of this House when the primary Act was passed in this House and, secondly, I have not until recently for this particular purpose looked at the provisions of this Act. Therefore, I come with an unvarnished view. I deliberately also avoided reading the commentary on the proposed amendments until such time as I had looked at the Act itself as well as the proposed amendments, and the reason I had avoided doing that, looking at the commentary or even the media reports, is because I wanted to arrive at a view which was totally unvarnished, totally independent of other considerations, and then having arrived at that view, consider all the reports on the subject matter before addressing this House.
Having taken that approach, Mr. Vice-President, of looking at the Act itself and all its provisions in details, as well as the proposed amendments, there are clauses which are of some concern to me. There are clauses in the proposed amendment Bill with which I agree and which I find reasonable, and which I will not go into or address in some detail, but there are, as I said, one clause which stands out as a matter of concern, and it is a clause which has been the subject of much debate already, both in the press and both before this House. And that clause which causes me concern and which I intend to focus on, so I anticipate I would be relatively short in my contribution because I intend to focus principally on that clause, is clause 5 insofar as it seeks to amend section 7 of the Act itself.

There are two aspects to clause 5, one which addresses section 7, that is the arrangements regarding international arrangements entered into by the Government, government-to-government arrangements, and so on, and there is the other aspect of clause 5 which proposes to introduce a new subsection to section 7, which is subsection (5). And the effect of that subsection is to take out from the ambit of the procurement legislation and from the regulatory regime certain contracts for certain services awarded by government entities, and these have already been listed and I would repeat them very quickly:

“(a) legal services;
(b) financial services;
(c) accounting and auditing services;
(d) medical services; or
(e) such other services as the Minister may, by Order, determine.”

2.00 p.m.

My concern about the removal of contracts for awards of such services from
the regulatory regime will best be understood if I refer to the principal Act itself and what it aims to achieve because as it stands, that principal Act was assented to in January 2015, and when it was assented to, it would have covered all of these services with which we are now concerned. So the question is: If it presently covers these services, then what is the impact of removing these contracts for such services from that legislation? And that is my concern, the impact of removing it.

While it exists in the legislation, it means that it is subject to the contracts by any government entity, be it a Ministry, a government department, the Judiciary, the Attorney General’s department, a state corporation, a state enterprise, it means presently without this amendment, it must be governed by certain provisions of that procurement legislation. And what those provisions ensure is that for such services, it eliminates the possibility of things such as corruption, collusion. It ensures that when a contract is awarded, it is awarded on the basis of merit and value for money which does not necessarily mean the lowest bid but it means the Government is getting quality services for the money that is being put out under the contract.

It means there can be no favouritism in the award. A procuring entity, a government entity awarding a contract cannot choose a friend. It cannot receive a bribe. It must be a situation of open competition. It is required to publicize the fact that it is seeking a contract to engage a third party in a contract and potential bidders, everyone becomes aware of it under the regulatory regime. Every potential person who is interested becomes aware of the fact that this contract is out for bidding and it is free to bid as opposed to some functionary in a government Department giving a contract to a friend.

And when that entity decides under the legislation as it stands, when that
entity decides on who is a successful bidder, that must be publicized. The decision of that entity has to be publicized and it has to be communicated to persons who were not successful; the name of the successful person, the contract price that was awarded, the date, et cetera, so everything is transparent and accountable. And then persons who are not successful, for instance, have the opportunity under the legislation to make a challenge to the Procurement Regulator who can overturn an award if he finds there has been any bid-rigging, collusion or favouritism or nepotism or any breach of the Act.

So the Government entity which is seeking to engage in a contract must follow these procedures and there is a backup measure from the Procurement Regulator even if those procedures are followed or not followed, where it can receive complaints, investigate those complaints and even reverse the award of a contract if it finds that there was any underhand dealings. In this way, transparency is achieved, the best person for the job is achieved and it is hoped that government would under those circumstances receive best quality for its services.

Therefore, if this is the intention and the effect of the legislation and one is now going to amend that legislation by seeking to take out a significant number of types of contracts from it, then it opens us up to the same mischief which one is trying to avoid. It means that when a government Department or a Ministry or the Attorney General’s department is seeking legal services, if they are not governed by this regulatory regime, if they are not under the Procurement Regulator, then it is open to them to defeat the purpose of which this legislation was intended if they are now removed from it.

So if the status quo therefore is that in 2015, when this Act was assented to, it included contracts for all these types of services—accounting and auditing
services, medical services, financial services—if it included all of these and that status quo is now to be changed by a proposed amendment, then those advancing that proposed amendment must be able to justify that proposed amendment on the basis of explaining how could it be in the interest of the country to remove such services from a regulatory regime. What are the practical considerations? Because on the face of it, unless it can be justified, it appears to be something which can potentially negatively impact on this country, its perception and open the possibilities for corruption and graft. And therefore, the onus now is to demonstrate and a burden is placed on the Government to explain this proposed amendment.

Before I come to the question of justifying or explaining the reasons behind the proposed amendment, another question one has to ask oneself is: What is the alternative, what would be the check and balance if the procurement legislation procedures and the Regulator no longer applies? What is to prevent a government entity or a government functionary or department from awarding a contract to a friend? I have heard nothing by way of alternatives to this measure. Are we now going to rely on hope and faith that the correct thing is going to be done if you have not provided an alternative? Well, my response to that is that hope and faith is not a strategy, it has not worked in the past, not having regard to the history of our country and the history of allegations of corruption from one administration to the other. It does not matter who is pulling the purse strings and I am not concerned about that.

Our perception remains the same and it remains low under whichever administration and if we remove this measure without any alternative in place to ensure any check and balance, it means that when we are all gone, this legislation
remains and the problem will continue in perpetuity and we have to be concerned about the future of the nation and not just ourselves who are in it today and dealing with it. So the first thing, there has been no explanation, there has been no alternative advanced.

My second concern is that there has been no serious attempt to explain the proposed amendment because I have looked at the Explanatory Note with respect to clause 5 and as I have said earlier and many speakers before me have said, clause 5 seeks to amend section 7 in two ways. One is with respect to subsection (2), government to government arrangements which I am not principally concerned with at this stage, and the second one is by introducing the new subsection (5) which excludes all the services that I have already listed from contract for such services from the regulatory regime.

Well, it is interesting when one looks at the Explanatory Note provided with the Bill—

Mr. Vice-President: Senator, you have five more minutes.

Sen. E. Welch:—that Explanatory Note only deals with the first aspect, it does not address the issues that are listed under the new proposed subsection (5). So there has been no explanation.

The other point about explanation is that normally when legislation exists and we seek to place an amendment, the need for amendments arises from actual experience. When you put the legislation into effect, you discover things that were not catered for or were not contemplated. Sometimes just as it is said, the proof of the pudding is in the eating, it is only when you operationalize legislation, then you see the difficulties and the things which you have not catered for and they only now occur to you so you come back and you make amendments, but this is not the
case here because this legislation has been assented to in January 2015, Mr. Vice-President, but it has not been proclaimed fully. Only the aspect to establish the office of the Regulator. So the Government cannot say to us that these proposed amendments are based on the deficiencies we have experienced in the operation of the legislation because there has been no operation of the legislation so far.

And what is curious as well, legal services, for instance, if I may look at some of the particular services, it is very ironic, Mr. Vice-President, and I would have to go very speedily because I did not realize my time is almost up. Legal services, it is very ironic that it should be included in the proposed subsection (5) and the reason why this is ironic is because it is in the field of legal services and the award of government briefs that has attracted public attention and significant adverse public attention under both regimes as to the briefing out of state legal work to attorneys. It seems that this is an area which calls for even greater scrutiny and to be brought under the procurement legislation and not to be excluded from it because we have heard of millions of dollars in briefs being given to attorneys.

And in one instance in particular, an Attorney General—it is public knowledge, an Attorney General of one administration said “Who do you expect me to give it to”? “Who do you expect me to award briefs and contracts to but my friends?” So if an Attorney General can say that, it signals the need in this particular area of legal services for scrutiny more than anywhere else. And while one administration has criticized the other by saying you spent a billion dollars on legal services but we have only spent tens of millions or hundreds of millions, I do not see that as a difference in principle between one administration to the other. It is simply a difference in degree, and all of these legal services were given without any kind of scrutiny or subject to any such legislation, therefore to include legal

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services in it is very ironic.

When it comes to medical services, the attempt to justify medical services was very brief by the hon. Minister of Finance. He says if somebody in here were to have a medical emergency and they would have to be rushed to a medical institution, there is no time for bidding, et cetera, but I view that as a somewhat narrow approach to the contemplation of what a contract for medical services would involve. I do not think a contract for medical services would be concerned with a sudden emergency of someone but with the deficiencies in our public health institutions: radiology department, sufficient beds, diagnostic equipment, et cetera. There is nothing wrong with laying down in advance and bidding out to different medical institutions, private institutions, the possibility of contracts for provision of those services in a future type of situation.

Mr. Vice-President, the same applies to financial services, there is no emergency in that. You have a number of financial firms and if a state enterprise needs to do an audit, there is no emergency why an audit has to be done the next day. It can be the subject of bidding to ensure that one gets value for one’s money. And the last example I would give, Mr. Vice-President, before you rightfully stop me, I heard another justification—

Mr. Vice-President: Senator, your time is up.

Sen. E. Welch: Thank you, Mr. Vice-President. [Desk thumping]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Mr. Vice-President and I thank all hon. Members of this Senate for their contributions. Certainly I wish to recognize that Sen. Welch put on record, in fact, I think all the very germane questions in a very succinct way and permit me to dive directly to answer these positions.

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I have asked my team—last night, I took the opportunity to settle a marked-up Public Procurement Act as it has been amended from 2015, 2016 and also as it is proposed to be amended today. I have asked to have circulated the context of the regulations as they relate to services. I have asked to be circulated a matrix of jurisdictions where precedence can be found and I have also circulated a timeline as to challenge proceedings. And permit me to dive directly to the issues.

I wish Sen. Seepersad was here so that I could address her concerns face to face. Hon. Senator put forward some very important observations but unfortunately some of what the hon. Senator said was grounded in inaccuracy. For instance, the hon. Sen. Seepersad said that she took great offence to section 13(1)(o) being included in the legislation. 13(1)(o) is the removal of the function of the public Procurement Regulator acting for and on behalf of the State and the hon. Senator cited that the public Procurement Regulator insisted on that. In fact, I think the hon. Senator may not have known but it is the exact opposite. The public Procurement Regulator wrote to the Government and said, “we do not want that provision because it is a conflict of the role and capacity of the public Procurement Regulator to be involved in that function”.

Sen. Thompson-Ahye put forward a few stats that I would just like to address quickly. The Office of the Attorney General, Ministry of Legal Affairs did not spend $1 billion in legal fees. That was $1 billion in the Ministry of the Attorney General and Legal Affairs and the previous government spent $4 billion in one Ministry. The current Ministry is comprised of three Ministries. Yes we did chop off two-thirds of the costs but the legal fees actually spent in the previous period 2010 to 2015 was approximately $538 million and the legal fees spent by this administration was some $238 million in general fees: $138 million in the
office of the DPP and of $230-odd million that we spent, we settled $137 million in arrears left by the last government.

So let us get to clause 5. Let us get to what this Bill is about and what it is not about and let us get on to why. Sen. Welch made a very important point. The hon. Senator said that this legislation, usually one has to have an experience of operationalization and then bring amendments. The public procurement legislation is now before us for amendment. Why? Why are we amending clause 5, section 7? To do two things. We are proposing to have the government to government and international arrangements, et cetera, stand in priority to the Public Procurement Act and secondly, we are seeking to exempt certain services.

In October and November of this year, the public Procurement Regulator gave the Government the regulations in draft form for the first time. In those regulations, we saw the set out for public services for consultancy services and the public Procurement Regulator also addressed us on the role and function of the Government’s view that there was a collision between the international obligations of the country and what the Act says. So let us deal with the latter one first. Let us deal with the first part of clause 5 which is the amendment to section 7.

[MADAM PRESIDENT in the Chair]

Now, permit me to say this. We are proposing in this legislation an amendment—and you will see it in the Act, it is marked up as I have circulated it—to section 7. We are saying that the Act applies to public bodies and private partnership arrangements and to the extent that this Act conflicts with the obligations of the State arising under a treaty which Trinidad and Tobago is a party with in another state, an agreement entered into by the Government of Trinidad and Tobago with an international financing institution, an agreement for technical
or other corporation that the requirements of the treaty or agreement shall prevail. Are we in good company? And if not, the public Procurement Regulator, who will supervise the potential mischief here?

Number one, in answer to Sen. Seepersad, this is not at all excluding the examples that the hon. Senator gave. The disposal of state land and Petrotrin land is caught under part 6(a) at page 38 of the draft I have sent you out, the marked-up Act. The disposal of state lands including real property owned by state-controlled enterprises is the subject of regulation. We are not excluding that. In the same way that we are removing 13(1)(o) at the request of the public Procurement Regulator, it is the Regulator that asked for 13(1)(o) to go.

So this Act does not exclude all of the examples listed. This Act does not fit itself into the generalization of many aspects of fraud or scandal. The OAS Constructora contract was not a government-to-government contract or a state contract. The Piarco Airport enquiry concerning the award of contract for the bidding of that was not a state to state contract or an IFC contract. Lock Joint, if you take your way, way back, was not a state contract. The HDC contract that the hon. Sen. Seepersad referred to is not excluded from the Public Procurement Act. The Public Procurement Act covers all of that because that, in the HDC example most recently, is a company-to-company contract and those things are not excluded.

We have come here today on the first ground to seek to exclude state to state contracts, IFC contracts, international financing. And why do we do that and what is the supervision? Number one, they are all public documents. Number two, as Attorney General, the financing arrangements are registered in the Registry of Deeds as public documents. Sen. Seepersad would be aware because there is a
department in the firm that you come from that does those contracts. The attorneys at J.D. Sellier + Co. do those agreements and they are registered in the public registry. All of the terms are known. So we have to be careful to make sure that we are not confusing ourselves today on the basis of what some of the commentators in the public domain have said. This law that we are seeking to amend in the fashion that we are doing now does not exclude a single one of the examples given, nothing.

What is the check and balance? Where is the precedent? Hon. Senators asked those very sensible questions. So let us look to the precedent. I have passed out a matrix: Examples of exemptions to public procurement laws. We are on equal footing with the following jurisdictions: Jamaica, as referred to by Sen. Deonarine, the Public Procurement Act No. 1 of 2015; Guyana; the United Nations Commission on International Trade, UNCITRAL; Kenya; Caricom Model law that we have all signed on to, Public Procurement (Caribbean Community) Act, 2017; Uganda; the World Trade Organization signed on by the United States of America, the European Union, Australia, New Zealand, Singapore, the United Kingdom.

I have gone into the OECD brief. I have lifted as well the references from the European Court of Justice and I have also cited judgments and referred hon. Senators there to demonstrate that in the matrix that we are suggesting, in removing the superiority of the Public Procurement Act to an international treaty or a matrix, we are giving examples of where they do it the same way we are proposing. These are not small examples certainly: the European Union, World Trade Organization, UNCITRAL, Jamaica, Caricom. These are not small examples.

Question: Can the mischief be managed otherwise? Answer: Yes. What is
the answer? The answer is in a plethora of examples. Madam President, what time is full time for me?

**Madam President:** 2.31.

**Hon. F. Al-Rawi:** The balances are to be found in the Constitution of the Republic of Trinidad and Tobago, the Appropriation Act, the Supplemental Appropriation Act, Chapter 8 of the Constitution, sections 112 to 119, the Standing Finance Committee which goes through every single aspect that we have, the Joint Select Committees established in the Constitution, the Public Accounts Committee, the Public (Enterprises) Accounts Committee, section 119, the Auditor General in section 116, Freedom of Information, Judicial Review, Ministry of Treasury, Rules of the Supreme Court, Practice Directions, legal profession, FIU.

Let me point out in answer to the example given by Sen. Welch. The legal scandal which is in the public domain which is now before the courts on corruption matters, that was broken in Opposition by the Hon. Dr. Keith Rowley using exactly what I have just said: Standing Orders, questions, Auditor General and the accounts produced in the budget cycle. That is how that information came about.

So let us go quickly to the other relevant point, the second part of the equation. Why services? In the matrix that I have referred hon. Members to, passed out, I refer hon. Members to the Belgium judgment and the European Court judgments which specifically show the exclusion of legal services and in particular, I want to reference hon. Members further to the Australian Government Department of Finance where we have the exclusion of legal services specifically, the engagement of an expert or neutral person including engaging counsel or barristers, et cetera.

2.30 p.m.
Public Procurement and Disposal of Public Property (Amdt.) Bill, 2020
Hon. F. Al-Rawi (cont’d)

We have the directive of the European Union, 26 February, 2014, where we also have the exclusion of legal services; and legal services should be excluded from the scope of this directive.

We also have specific contracts being excluded out as well. We then go to statutory instruments. The European Union Award of Public Authority Contracts, Regulations 2016. Again, legal services, forensic services, excluded.

Now let us go quickly in the short time. Why exclude them? You see, Madam President, the crux of the rationale for exclusion is to be borne in examples. The devil is in the details. And when we look to the regulations proposed by the Procurement Regulator, Part 7 says that you are to effectively, and I put it before hon. Members, use four methodologies for procurement for services: cost and quality scores. We are looking at quality and cost-based selection, quality-based selection, fixed budget, least cost selection.

And Sen. Welch did a very important thing for us; he painted the issues, the hon. Senator. What these regulations tell us is that the Procurement Regulator has said, which is why we did not move the amendment willy-nilly or just so, the public Procurement Regulator has said you have to effectively use a tendering process, open tender competition. Sen. Welch properly put it out. You have to inform all of the people that you are going to do a tender. Let me use an example. There is a forensic audit into a major entity, by way of example, massive corruption, let us put out a tender. We are looking for legal services, or we are looking for accounting services, auditing services, forensic accounting services. You give the details of it, you invite persons to tender. In that tender you are telling them: Well we are going for investigative tools, Norwich Pharmacal—

Madam President: Attorney General, you have five more minutes.
Hon. F. Al-Rawi:—you are going for production orders; you are going for criminal law relief. You put all of that in the public domain. Then you serve it upon the persons that are going to do this. You do a two-envelope system. You rank the quality of the entity who is procuring and then you go for the least cost. Then you apply that and you choose one person and then you tell everybody else that you did not choose them. Enter the dragon.

I have circulated a timeline for application for review under the 12 steps involved in Act No. 5 of 2016. Part 5 of this Public Procurement Act is why we are causing this today. Part V says when you give that procurement award and you tell the other people, the other people who did not qualify, now have the challenge proceedings available. The challenge proceedings are 12 steps long that take you at the Office of the Procurement Regulator to 128 days of waiting; suspension award.

Sen. Welch was right. In the period of review, the Procurement Regulator obtains all the confidential information, which account you are going to search, the forensic details of the audit. And after the 128 days, Madam President, you then get to the High Court one to three years; Court of Appeal, three to six years; Privy Council, six to nine years. Am I being a dramatist? Look at the exercise in judicial review and how it has affected major investigations of a criminal nature.

We are 22 years after the building of the Piarco Airport and we are yet to get to the High Court. We are still in the Magistrates’ Court. We are 12 years after the collapse of Clico when it first came about. We are yet to get even into the court, Madam President. And when you look at the challenge to review mechanisms, and you look to the Procurement Regulator’s provisions, we have to bear in mind that the golden rule in consultancy services is that you have to be wary of an assiduous enquirer. Because an assiduous enquirer can use the technique of procurement to
find out the very thing that you want to do. How do we justify a forensic audit being public? Litigation, which is ex parte, which you are going to seize assets on, becoming public, allowing people the opportunity to conspire to interrupt the law by bringing frivolous proceedings which have to go through the process, 128 days and then years. When does the procurement end?

So Madam President, the recommendation of the Government, brought in light of the draft regulations, the international precedent, the fact that there are supervisory elements in place in a dramatically different environment, we are now in the context where we are proposing operationalization on an electronic platform. We have the Civil Proceedings Rules amended, the Criminal Procedure Rules amended, the contentious and non-contentious fees amended, the Auditor General, in our accounts, whistleblowing testimony.

Madam President, we are not in 2020 in the same dynamic that we were in 2015. Madam President, it is for this reason that I as a Senator abstained in 2015, along with Sen. Prescott and others, on the same reasons: government to government and legal fees by way of example, or for professional services by way of example. Because it did not make sense to say that you will apply public procurement and give people the information that you are coming for them. That is to throw the entire exercise out. And how will we get justice in ex parte proceedings, criminal investigations, if we tell the whole world what we are going to do?

Madam President, it is no secret that the legal profession would have, by way of example, the opportunity to bid in these particulars and then ask for your documents, and then take them to the regulator and then take them to the court. And what are we to do? Wait for six years? Madam President, as time has run, I
propose to answer submissions in the context of the committee stage and I thank you for this opportunity. [Desk thumping]

**Sen. Jearlean John:** Thank you, Madam President. Sorry for being a little late in getting to the booth, but, I suppose I was fascinated by the hon. Attorney General’s contribution. Thank you for affording me this opportunity to join this debate. Madam President, the Public Procurement and Disposal of Public Property Act is intended to meet our current needs and in its preamble the intention is to provide for public procurement and for the retention and disposal of public property in accordance with the principles of good governance.

Now, the hon. Attorney General, in the part of his contribution that I caught, I think it would have been better for the regulations to have been proclaimed, this entire Act to have been operationalized and let us test drive it. I mean if it is working, it is working. And if it is not working then you tweak it, you know, with respect to some of the points being made by the honourable Attorney General.

Now essentially, the objective of the Bill is to ensure that those who are entrusted with the public good, will do good by the public. That essentially is what it is. It is an instrument, a tool of oversight, a tool of transparency and a tool to soothe the general public, that you are getting this thing called value for money.

For the purpose of my contribution I briefly quote the amendments before this honourable House, which I intended to do three things really, I think. Clause 6, section 13(o), I think, completely removes the procurement office from disposing, selling property owned by the State. This means that the Government would be doing its own bidding.

Now then if it is one removes this clause, what is the point? Why are we then having this public procurement and disposal of public property? I think I
heard some speakers before me speak about a parallel system. It then makes no sense. It is better we continue to scramble around in what is happening. But from time immemorial it was recognized that there was need for collaboration and for harmonization of this thing called public procurement.

Now in clause 5, section 7(2), the one that is causing a lot of excitement, it is to completely remove from scrutiny government-to-government transactions and public/private partnerships, and the hon. Minister of Finance spoke about that and he referenced the very competitive rates which we were able to negotiate on behalf of the people of Trinidad and Tobago, relative to the children’s hospital and one or two other projects. Now, that is all well and good, and it is good to have the commendation. But, I do not see what is so mysterious in a public/private partnership—I have seen one or two of those things—that one has to hide it and sequester it, that it cannot have the oversight of the regulator. There is nothing that is nefarious in it, you know. This thing goes all around. It goes to the Office of the Attorney General. It goes to the Cabinet. I think it goes to the Sol Gen, it goes to the Ministry of Finance, et cetera. So why can it not be under for people to get this extra comfort that it is indeed transparent?

I am hearing about secrecy and governments will not want to transact. But the entire transaction, as it were, is handled by public servants. It is not handled in some little darkroom somewhere. So I do not understand. If it is the work is good and everybody follows the rules and the process, I see no reason why this cannot be also overseen by the regulator. And clause 5, the new section 7(5) and (6), seek to remove from scrutiny again, not just from the regulator but of Parliament and by extension the people of the country, relative to legal, some of these consultancy-like services.
Well, the example raised by the Attorney General—this is not the normal business of an accounting firm. One will come in normally to audit and why it cannot go out for tender? Because this happens in just about every organization across the country. Because the Auditor General many times does not have the resources, so then you seek the permission of the line ministry. I cannot remember whether we used to have to go to the Cabinet for that. But basically you go out to tender. That is the normal thing to do. You go out to tender and then a firm is selected for audit services or whatever services you want.

If it is you want a particular kind of service, as was referenced by the hon. Attorney General, then I suppose once you have laid the regulations, the regulations cannot come here as a prop. What is happening the regulations came as a prop just now. But regulations should come and be properly laid in the Parliament and debated. It is not a Hollywood production. Suddenly the regulations reach as a prop. Bring the regulations and properly lay them in the Parliament and then you operationalize this thing that people have been waiting for with bated breath. And once you operationalize it, then you know. You cannot know how something will work unless you work it. It is only when it starts to work, you start to drive a car or when this honourable house was refurbished, only when the rain fall you will know whether there are leaks or what have you. I do not get excited about the leaks and so on because you have all kinds of clauses in the contract to treat with that. But that is the only time, when you have the defect liability period.

So effectively, you have a defect liability period and maybe everybody should be aware of that, we are now test driving it to see and there will be kinks in it, and then you work it, you work it. Then you could probably come back and make a good strong case for amendments because this thing is not working,
everything is being slowed down, things are leaking all over the place, et cetera, maybe in other—

You know we are talking about some jurisdictions and when we mentioned mature jurisdictions like Canada and Singapore, and so on, a lot of their systems work. And I think sometimes we have not made enough of an effort to ensure that things work. What will come with this procurement legislation being operationalized is that every state agency, every Ministry will have to comply with a set of rules that are harmonized, you know, and these rules, I mean lack of adherence to these rules, will be met by punitive measures and maybe that is probably a good incentive. But cannot see why we are going to say let us overlook these things or pull them out before we even operationalize the legislation and the whole activity.

And what we have, Madam President, is we have a country that has come together asking that this Procurement Regulator's Office be operationalized. Trinidad people, by and large like to argue about everything. But here they are all agreeing that let us get this thing moving, you know. And I think this is moment that the Government has for something that they would have said that their manifesto of 2015 and I quote here.

The UNC Government has spent five-year avoiding implementation of a modern, transparent, fair and equitable public procurement system. In its dying days merely as a public relation exercise it has partially proclaimed certain sections of Public Procurement and Disposal of Public Property Act, which are just symbolic in nature and of no real effect.

All right, these are nice words. So still quoting from their manifesto:

The PNM will waste no time addressing this very important issue. But five-
years have gone. I continue:

We will move swiftly to make the necessary improvement to the Public Procurement Act in order to remove loopholes, limitation and weakness that currently exist in the legislation, et cetera, et cetera.

Madam President, this is five years-plus later. You know, in January 2020 of this year the editorial of the *Express* actually called it an assault because instead of coming with the regulations that people have been waiting on, they came again with some bit of tweaking and the editorial was: assault on the procurement act this amendment allows the Government to retain the status quo of it modus operandi. So you know, we are not sure that the Government is serious about implementing this piece of legislation. Because, you see, what is happening now, the Government enjoys sole authority on the procurement for government to government arrangement and for public/private partnerships. There is to mystery in these things; that you cannot have it. One is doing the right thing that everybody cannot see what is happening. These things past all through the public service.

So, you see again in 2020, the editorial continues:

The public is beginning to get on insight into why the Government has been dragging its feet on the Public Procurement and Disposal of Public Property Act. And that is why today the public has grown tired and weary and fed-up and sick, and they have said: “We are not going to put up with this anymore.” You must come with the regulations and operationalize this piece of legislation.

So, Madam President, the joint Chambers and some of my colleagues before had spoken about these groups, these civil society groups, who have all band together and in very public releases, something that we have not seen. Now I think the Government should meet the moment. This is moment for the Government,
you know. They have said they have supported openly, and again let me just make the point; you never see public servants really coming up and saying: “We are not in agreement with the Government.” Generally people just comply. This public servant is saying no. Let us not water down this Bill, based on what I have seen, based on the investments that have been made.

Because again the civil society is saying, they said we have had, because after thorough consultation from 2018 to present, with various sectors, I mean widespread consultations, 1,400 suppliers, contractors, have resulted in stakeholders reiterating that there should be no amendment to section 7.

Madam President, the persons who comprise the organization's reference, they are saying: “We want to be regulated now.” These are the people who will fall under the scrutiny. These are the people. They are the ones to be regulated. They are the ones who will be hamstrung if it comes to that. And they are saying: “We want to be regulated. We do not want the taint of people questioning our business, our business model. We do not want that.”

Because you know every time someone sees a contractor or what have you, they cast aspersion. And people are saying: “Look I work hard for my money and I want it to be free of any taint and any scandal. So I welcome that scrutiny.” So they are begging the Government. The T&T Chamber says it stands firm on the need for zero tolerance on any form of corruption. I think it is a real moment; that the private sector is telling the Government: “Let us do this.” It is the other way around. And the Government is resisting. So I think we are really, Madam President, at a moment and we cannot lose this time because it may never come again.

You know, as I was mentioning before, we argue about so many things. I
mean there are very few grounds for consensus. And now everybody is saying: “After five years what is needed now?” What was needed five years ago are the regulations.

Madam President, the Public Procurement and Disposal of Public Property Bill was supposed to be the first step to responsible, prudent, and discipline governance. These amendments before us fundamentally alter legislation, which was intended to really bring all public procurement under the scrutiny of the regulator. And I again reiterate we cannot amend until we have test driven this thing. We have to test-drive it and it is only then we will see everything, whether what works. You know, we cannot just decide to pick and choose what we are not comfortable with without actually working with the instrument.

You know, the Government was voted into office on the premise that they were serious about addressing the issues before us. They were also supposed to treat with freedom of information, campaign financing reform, whistleblower protection. And you know every time we come to this particular junction we will hear the same old chorus all over again, but it just never happens, you know.

Let us start with this Bill and operationalize the Bill and we will see that probably it is not so hard after all. We are talking about what is in other jurisdiction let us make it happen here, right. Because you see we are looking on and people are seeing different things and the Government is saying: “What you are seeing is not what you are seeing.” They are saying: “Who are you going to believe, me or your lying eyes or the equivalent of that?” Because somehow, somewhere we are not moving forward. We are being promised that the regulations are going to come, that something is going to happen after this. And it is really—they just kick that can down the road over and over. And all of these editorials—everybody, I mean
they are all talking now because again I want to quote the *Express* of the 4th of December, a few days ago. They said:

Having left the Procurement Act to languish on the back burner for five years, the Government has now brought it forward in an amended form that completely defeats the purpose of the very legislation for which it voted six years ago.

We should not have been here today debating this you know, because everybody is saying the same thing. Everybody. It is very transparent to the wider society that what is happening here weakens the independence, the independent Office of the Procurement Regulator by removing major financial transactions from its oversight and putting it in the hands of politician in the person of the Minister of Finance.

The Minister of Finance’s colleague Minister was talking about the inconvenience of having, you know this—

**Madam President:** Sen. John, you have five more minutes.

**Sen. J. John:** Thank you, hon. President—of having the Regulator imposed on the function. But sometimes we probably need to be inconvenienced to get to where we want to get to. What we have going for us today is that there is widespread consensus that now is the time, not tomorrow; now is the time. That is what we have. I mean we will never have that again. You will get the vote of the Opposition if it is that one really comes with the full regulation ready to be proclaimed.

Right, so Madam President, just as the public is demanding the immediate operationalizing of the Office of the Procurement Regulator we too are demanding that on the Opposition side. You see, because in the recently completed budget debate, it is clear that the Government—well they have put on the agenda a very
an aggressive 2020/2021 agenda, which will see significant disposals of public assets. And the Government is in part demanding that the population trust them. But what is happening now, based on all of the buzz about this, the population was of the opinion putting the Government to do this, is like putting cat to watch butter, and they are intolerant of that. They are intolerant of that. The people are not—they are not going to put up with that. So now is the time when we have, you know, we have children who cannot get devices for school. We have illegal immigration which brings thousands to our shore that we cannot even manage anymore. This is time for selfless leadership, for people-centered reasoning, you know. If it is we cannot get that, I conclude that this Government is only about politics and power. And it has never been about the people, never about doing that right thing they have spoken about in the last campaign, not about integrity. The talk was just to create a smokescreen.

Madam President, in wrapping up, well I will allow my colleague to talk about some remarks we just got. So the hon. Minister, I think I want to implore them that now is a pivotal moment in our history and they need to listen to the voices of the people, raise an objection to the amendments. This is not a time for hardball politics or to flex, or to rush this Bill through by a simple majority just because you can. This is a time to be measured, to think and to act in the interest of the people. This moment demands nothing less. I thank you, Madam President.

[Desk thumping]

**Sen. Dr. Varma Deyalsingh:** Madam President, thank you for allowing me to partake in this discussion. I must say Madam President, this Bill has been a very controversial Bill. We have seen comments far and wide. It seems like the country has woken up to this public debate on this piece of legislation. And I applaud that,
because we like to see the involvement of our population in our legislative process. I heard the comments from the civil societies, from the groups, who really opposed this piece of legislation. And I heard the opposition out there to this Bill, to the changes that the Attorney General would have wanted, that the Government actually had put on the table, the changes that were suggested.

And then when I looked at the civil society and what they do, I realized look, they are well-intended. But strange enough remember they do not have the intricacies of the runnings of the Government. They do not have the idea of what the Government is facing in these COVID times, how it is going to raise finances. They would not know that, you know, the challenges that we may have in even to getting development further. We need development. And the Government has, certainly the Minister of Finance has made his disclosure where he actually sent out a release giving ideas that different countries would have had the government to government procurement out, not under the legislative aspect. Therefore what I am saying, yes, the Government would need their leeway. They would need their space to know how to react how to form this in the interest of the country.

So therefore, at this stage I have to look now, you know when I looked at this I am trying to figure, we have a piece of legislation that could really revolutionize corruption globally. We also have the Government, which is well-intentioned because they have been elected to run the country trying to say they need this piece of legislation. But then—so I am caught between a rock and a hard place. What do we do? What is the best? What serves us the best in this piece of legislation?

So I want to go in the history of this Bill a little, Madam. When this Bill was first suggested, I think in 2015, the civil societies had to pull teeth from the then
government to put in these pieces of legislation. It was not there if the original draft, so they actually had to, you know negotiate how to get this in. In fact, came in. So that is something we have to applaud that the Government of the day did listen to civil society and did in fact put in these pieces. But it took a while, you know, for everything to come on board. Because we saw the time passed, pieces that the legislation were given.

And you see, but even that, you had other pieces like PIP regulations were on board, but somehow the PIP regulations did not have any sort of dent in somehow curbing the allegations of corruption and corrupt activities. The Government side did in fact spend time listing out certain alleged corrupt activities that they may have thought would have occurred. So you are looking at the treatment plant, among other things.

3.00 p.m.

But the whole idea is, this piece of legislation was given some teeth by the last administration. And I see here now that if we intend to water it down, we might be sending a wrong message out there. Because you see, the history of Trinidad and Tobago, Madam President, was you know, in a sense when you looked at the Corruption Index we had oil booms but we had a lot of allegations of corruption there.

But I must now declare I am a bit biased in this whole debate because you see, where I grew up, I grew up at a period of time in Federation Park, 4, St. Lucia Avenue, Federation Park. My father Lennox Deyalsingh was there and we had another Lennox living right next door, Lennox Ballah and afternoons—it was a nice society. In the afternoon judges, Members of Parliament, diplomats, used to meet. They used to have discussions, and I used to be there listening. And that
Ballah report actually came after the Riley report. And the Riley report had given a report looking at corrupt practices in the giving out of government contracts.

So I actually grew up in the library with this Ballah report sitting there in my father’s library. So therefore, I am a bit biased, I would want to say that listening to the discussions, I heard the greatest of our first Prime Minister, Dr. Eric Williams, his intellectual capacity bringing us to independence but I also heard corruption. I also saw the Riley report, and I also saw—well, the Ballah report was there.

So therefore, you have to understand that, you know, when the introduction of the—when moves were made in 1979 to exclude state enterprises and government to government arrangements from what they claimed then, the heavy hand of bureaucracy, you found that the Central Tenders Board Act was amended in 1979 to do that. So the same logic, let us fast track things it is good for the people. It is good for the social means, to develop the country. But if you have that list of corruption it is mind-boggling.

You have WASA treatment plant being alleged with corruption. Government companies coming here and contracts broken and they just left and other companies came. You had ferries were actually bought by a French company. This ferry thing is not a new thing, it is since then. So you have history repeating itself. You have the same allegations of corruption, the same caution that was given about these government to government contracts—was also venture debt. And it is not to say it is Opposition saying this, this was in figures that were given about our Corruption Index then.

And you know, just as how the Government now intends to, you know, pass very good legislation to follow the money, FATCA and all these things. I am thinking we have to follow government’s money too, the expenditure. Because that
is really our money. So government needs to really you know, account to us how it is spent. We need to follow government’s money and say what is in our best interest because history has shown us successive governments did not do things in our best interest, in the interest of the people, in the interest of our generation, my children.

Because you see, when we borrow money we have to pay it back. And even though people claim about we could make a government to government arrangement with China, there are a lot of instances globally where China took over ports in Sri Lanka, you know, and globally when they spread their hands there. So, government to government arrangement, people have to be very cautious what is on their table. And we as the population, I think we deserve a right to know. So then it was really due to this exposé that was brought about was really when the Prime Minister then, George Chambers, asked Lennox Ballah to produce this report. And this report I think is the whole reason why I am looking at what happened then. What happened then. So you see, we have to say that if we did not learn from our mistakes, what are we going to do?

Now, there was a Minister actually, then—since 1979—the Minister then, actually made reference to the fact that you know, the Government would perform better. The Government would have better contract for the people, for the interest of the people, to develop the society, and we are hearing the same talk now. So if we are hearing the same talk now, we have to say could we put or implement anything in its place to protect the people from not repeating the same mistake.

And as I go there, Madam President, I would like to say that this piece of legislation here today we need to say that yes, Government needs that latitude to perform to borrow, but I think it can also be done in a matter where the
procurement officer and office could look at it. There is nothing wrong with that. We should not be usurping powers that were given to him. You see, because any altered law will betray the heart and soul of the Act that came. It will set us back, the cause of transparency, by decades.

Madam President, I was so happy when this Act came because I am thinking well, you know, now we could really show the world that we are serious about corruption. You see, part of the argument given on the other side, from the Government’s side was you know, it is not in other pieces of legislation so why do we not follow. But Trinidad had a very high corruption perception that existed.

I lived in Barbados and Jamaica for years and I had to be defending Trinidad’s position where they were telling me, “oh, you people dey have money to burn, pass through like a dose ah salt”. So this piece of legislation, if we pass it, even if it does not exist anywhere else, we would be showing globally that we are interested in showing the world we could put a piece of legislation that others could follow. And this is what I am thinking about.

You see, we have to get some way that we could put pieces of legislation out there that the world will look to us and say, well, Trinidad had that perception but now they are doing something. They are setting the world, setting the standards now for proper procurement legislation. As I look, Madam President, I want to say that the whole idea of us now being a benchmark is something I would like to see developed in this piece of legislation.

Now, the other criticism that you know, certain persons on the other side, on the Government’s side may have made is that, you know, this piece of legislation would retard certain things. That this piece of legislation you know, would—you know, they mentioned three C’s “that it harms competition,”—that it—“supports
collusion,”—and it—“undermines the commercial confidentiality”. This is what we are getting from people who are for the present legislation in its state. That it will really retard that.

But I want to quote, Madam President, from Open Contracting Partnership, an NGO who has an online research site. It is an article by Gavin Hayman:

“#Busted: the many myths of why government contracts should not be published.”

And in that list they looked at countries, they looked at a lot of countries, they looked at contracts and they found really speaking it is really a myth that you could have contracts that it would really, if you have this sort of scrutiny on the contracts, because they said they:

“…quizzed experts and reviewed research on public contracting, we found surprisingly little evidence that backed up the harm supposed caused by publishing contracts. And we found quite a lot of evidence that does not support them.”

So they looked at different countries:

“…the consensus seemed to be that intelligently, intentionally making public contracting information ‘open by design’ led to significantly improved outcomes in those countries where it has been…”—established. So:

“An academic study of 3.5 million procurement records across Europe…”—showed that you know, they saved between—“…€3.6-6.3 billion per year.”

We need to save money. And if they are saying we could save money, I am saying, “Hey, COVID time, let us go with it”.

So this is one of the reasons I would have supported this legislation in the previous form it was, where we have open contracts. A bit of greater transparency
and even the Uff report, which I looked at the Uff report and you know, section 42 of the Uff report, part 42, the forty-second and the forty-third recommendations of the Uff report stated quite clearly:

“42. The Government’s policy on the use of foreign contractors and consultants for public construction projects should be transparent and open to review.”

Madam President, our present Prime Minister was the one who raised the corruption that occurred in the then Prime Minister Manning’s government, he raised that. And I admire him for coming out, standing alone like the Lone Ranger, talking about corruption, talking about what happened and collusion and what went on in that situation.

And so, at this stage he can go a stage further by showing us that he is going to put some teeth to some legislation that people could look at him as a change, as an icon who stood up for corruption that occurred in his own administration, and corruption that occurred in previous administrations. And I am thinking this could be something where you know, greater thought has to become.

There is a report also, something called the ASEAN Post term report where they looked at Chinese contracts. You see, we love this arrangement with the Chinese arrangement. And in that report it actually showed that there are a lot of corruption and inflated costs and also kickbacks, when they are involved in these contracts, so we have to be very, very careful.

Madam President, as I look now, I would like to say that—I would like to mention the fact that, you know, every $2 out of $3 earned it has shown—I think it was the Transparency International or somebody had said that—has been lost to—either stolen or wasted. We cannot waste in this environment. There are too many
people out there. Remember one of our own colleagues here had no CAT scan available in Port of Spain Hospital when they went. Money saved from there could have probably saved her life. So I am just saying we need, we need—and you see, we need to save that money in any how we could.

So therefore, you know, I keep hearing political talk that when the previous Prime Minister, when she went on shopping spree, “I want dat”. Then the other side was saying that the Prime Minister went with the Minister of National Security and they bought some boats without any competent marine experts. So when we keep hearing these things we have to put an end to it, and this legislation could put an end to it. So we would not be having this talk from side to side.

Madam President: Senator, Sen. Deyalsingh, you have five more minutes.

Sen. Dr. V. Deyalsingh: Yeah, thank you. So this will put—because we are fed up hearing, “dis one steal, dat one steal”. This legislation could put it in the hands of the procurement office so we do not have to go through this. The country does not have to go through this. So therefore, the whole idea, Madam President, is that when I want to look at the other part of the Bill where suggested, where the hiring out of services for legal services, you know.

Madam President, I remember when this Government came in power they criticized the past Government and they listed a few attorneys, they listed—it is public knowledge—they said Ramdeen, Ramlogan, Dabideen, a few attorneys they listed were getting all the state contracts, Wayne Sturge and all these things, a previous Senator. So there was a clique of attorneys getting the contracts.

And then, when the attorneys on the other side now, they had a press release and they rebutted that, and they said now there is a clique of PNM attorneys. They included Michael Quamina, Stuart Young, Kerwyn Garcia, Colin Kangaloo,
Reginald Armour and you know, so they list it. So it comes like a tit for tat.

So therefore, they even mentioned that when they had asked the then AG at whatever year that was, Bridgid Annisette-George to now disclose legal fees at that administration, she said no, it is a breach of privacy of lawyers involved. We cannot allow this to occur. These attorneys may be attorneys who might be doing their act, they might be—you know, doing their job to the best of their abilities but if you are going to have all of this “kuchoor” in this, put it in the hands of the procurement legislator. Let him look at the attorneys, get the four best that are—best constitutional lawyer, put it in some computer system and churn out a name and give it. Because you see, if you are saying attorneys get a job and they are not going to do their best, you are now implying improper motives to those attorneys. They are not acting in a professional manner. So the procurement legislator could do the background checks, do the cost factor and let him put—just as how we choose judges to hear cases, put the names in and pull out a name, and say hey, government, this is our best bet. But it is not just lawyers.

I remember an article where Anika Gumbs in the Guardian stated that—it was on Saturday, June 02, 2012—“Fuad Furious”, where the then Minster of Health said that doctors are involved in Medical Associates for exorbitant fees. He said even in cardiology he “doh” have to imagine why is a patient you know, 15 patients costing $1.6 million. And the Anti-Corruption Investigation Bureau is now conducting enquiries. So even in that noble profession a government could give out contracts to persons who they know working in a particular institution. We have to stop that. Give it to the procurement legislator—officer, so he now, and his team would now decide which hospital to hire out to.

And you know, it made reference that if somebody falls ill here, they have to
now go and look and search. If somebody fell ill here, we should go in the public institutions. The Minister of Health says he has the best hospitals run. So it is really an insult to say that we have to go looking for all sorts of cardiology and this and that, while we have our health services that the ordinary citizens have to go to. So take that money and improve the normal health services, so if we fall ill, we go Port of Spain Hospital and get CAT scans and whatever.

So, as I like to say Madam President, I am saying as I close that you know, we have to say that we have to come better with this. I am thinking government agencies should also be involved and even our Minister Allyson West, you know, she has that unit which could actually give us very good e-contracts. All contracts be published out there, let people see it. Let people see who are the dealers. Let people make, you know, because you have—there is something called the e-procurement system, open contracted data and our Allyson West could do that for us.

And also, what I am saying, there should be no secrets in procurement information. One thing I have to say though, national security procurements we may have somehow to have certain things that if the Government is going to by certain things. That is the only thing I am thinking we will have to work out something that if you are going to buy sensitive things, you know, it should not be out in the public domain. But we have to have a way where it goes through the procurement legislator. Because remember the Government has to say we have a refusal notice as the UK has, and you know, why we should not be showing this tender at this moment, but it should be in the time being come to pass.

So with this, Madam President, I say if this present form, this Bill if it comes here I think it is really a mockery to the original Bill, and I am hoping the
Government rethinks its position and somehow listen to the people.

Madam President: Sen. Deyalsingh, your time is up.

Sen. Dr. V. Deyalsingh: Thank you.

Madam President: Senator Richards. [Desk thumping] Sen Richards is waiting to begin his presentation. May I just remind you, if—the only reason you will go into the speaking booth is if you wish to take your mask off. You can remain at your desk and speak from it, once—with your mask on. But there is no need to go in to the booth and speak with your mask on, okay?

So I just wanted to point that out to you, and a little Standing Orders 101. May I just refer Members to Standing Order 46(5), 46(5) sets out that Ministers shall be referred to by the title of their appointment. So it is not “Minister Allyson West”. It would be the Minister of Public Administration and Digital—that is how you do it, okay? Sen. Richards.

Sen. Paul Richards: Thank you, Madam President, for recognizing me, and allowing me the opportunity to make a contribution to this, the Public Procurement and Disposal of Public Property (Amdt.) Bill, 2020. I start by you know, reminiscing on the opening prayer that you present at the start of every sitting, “Without fear nor favour setting aside personal prejudices in the interest of the people of Trinidad and Tobago”. We start every session of the Senate with this prayer asking ourselves to act with principle “in the interest of the people of Trinidad and Tobago”.

This assumes that we are one people and we have one mindset, but we are really not one people. There are expectations from Members of the Government and Opposition Benches, but today a lot of spotlight has been placed on nine of us. We would be individually judged, assessed, accused, praised, or vilified, no matter
how we interpret the arguments presented, no matter how we vote, because we are not one people in Trinidad and Tobago. We are extremely divided. I hope this is not unparliamentary language but “cursed if you do, cursed if you don’t”. I will not use the other phrase. It is to quote a colleague, the theatre of the absurd—so absurd—that in presenting today, I even have to consider the implications of the colour of the tie I wear, because if I choose to wear a red tie I am perceived one way, if I choose to wear a yellow tie I am perceived another way. And that is because, the scrutiny is because so much is at stake.

But this is not now nor ever has been a popularity contest. And the issues being debated today in the context of procurement in Trinidad and Tobago and corruption, and not black or white but in many areas are very grey. This to me is one of the most important debates and moments in our country’s history. And it is extremely important to me because it is about accountability, transparency, good governance, checks and balances, and balance, and constitutional responsibility as I said before, in the interest of the people of Trinidad and Tobago.

An old statement comes to mind, “ask not what your country can do for you, but what you can do for your country”. We have countless decades-long examples of overt and covert corruption at the highest levels in Trinidad and Tobago. We have all, regardless of creed, colour, age, religion, complained and lamented about how and why it has for decades dating back to ’60s, ’70s, our very independence and possibly quite before that, not being able to get a handle on the levels of corruption plaguing our country no matter who is in power, no matter who holds the purse strings.

Sometimes it really seems, Madam President, that corruption is now or has become part of our very DNA, the fabric of who we are as a country. We also do
not seem to make the connection between corruption, lawlessness, cruelty, vile and predatory behaviours, of the persons who brutally killed Ashanti Riley, 18 years old, and 47 other women and over 7,000 other girls and women killed, raped, assaulted in the past 20 years in this country. Because we seem to think there is a disconnect between lawlessness at one level, and lawlessness at another level. But they are all connected.

You see, there is a seeming culture of lawlessness and impunity in Trinidad and Tobago that is so interconnected that it should make us all very uncomfortable. And the population likes to talk about corrupt politicians and public officials for decades, and they have the right to. And I dare any of us to count on both hands how many of them have been brought to justice. What is the message being telegraphed? Do what you want, steal, embezzle, rape, corrupt, without any risk or very low risk of being identified, caught, questioned, or brought to justice.

And in the case of corruption that in itself has become so politicized that you cannot win on either side of the political divide. No matter what I say or how I vote today I will be on the receiving end of threats, insults, innuendo, supposition, ridicule, derision, and in some instances praise. But as I explained to a colleague this weekend, this is not a popularity contest. It is not about making the popular decision or making a statement that is designed to make people comfortable. We need to get uncomfortable in Trinidad and Tobago. Not just for a week of what can be described as superficial outrage. And I say superficial not to denigrate people’s real emotional outrage about girls and women being assaulted, raped, and murdered, but superficial because very little, if anything tangible has been done to stop heinous crimes and corruption.

So today we are debating a Bill which was passed as Bill No.1 in 2015,
which seeks in large measure to end decades of unabated state-sponsored corruption, trying to eliminate corruption in the procurement of goods and services and add layers of accountability, transparency and good governance.

Unfortunately, the procurement of goods and services from the State sector has become nothing short of a business model for some party financiers’ friends, families, associates and well-wishers in Trinidad and Tobago. And it is a very lucrative business model. Trinidad and Tobago has quite simply become “the republic of kick back”, political patronage, look the other way and hope it all goes away. Oh, and lest I forget, and last and possibly most important, “we tief, but you tief more, so we less corrupt than you”. But my friends and colleagues, it is all corruption. From $5 to $5 billion, it is all corruption.

And who loses in the end? The people of Trinidad and Tobago. We could call all the names, O’Halloran, Hart, Tesoro, gas station, rice, bridges, highway, OAS Construtora, Piarco Airport, Brian Lara Stadium, Tobago Hospital, and the list goes on and on. When will it end? Sometimes I believe it is never because we do not seem to have the will to stop it.

There are very contentious provisions in these proposed amendments. Many of my colleagues would have gone through with the several stakeholder groups to voice their opinions about—and I will tell you, in the six—just under seven years I have had the honour to serve in this honourable House, I have never been so lobbied from both sides. Calls, emails, droplets in your mailbox, hard core lobbying to advocate on behalf of X or Y.

Her Majesty Queen Elizabeth in one of her weekly meetings with then the late Prime Minister Margaret Thatcher remarked:

We are heavily concerned with the economy, our economic and fiscal
position and the possibility of recession, but what about our moral balance sheet? Who is concerned about our moral bankruptcy?

But the same question can be asked of Trinidad and Tobago? Are we becoming morally bankrupt? Who is worried about that? And what if anything are we willing to do about it?

The debate has engaged the attention of the public like few Bills before. Stakeholders have received as I have said before over 15 submissions on both sides of the argument. The Hon. Prime Minister in the other place spoke about the preservation of the ability of government to carry out its constitutionally bestowed duty to the people of Trinidad and Tobago, in being able to negotiate unencumbered in terms of the government to government arrangements.

In many ways, some of the points I agree with, however, my agreement is not without concerns. And I quote one of the frequently purported arguments about—and this is section 7; of the Bill, clause 5:

“(5) This Act shall not apply to the following services provided to public bodies or State-controlled enterprises”—in terms of—

“(a) legal services;
(b) financial services;
(c) accounting and auditing services;
(d) medical services; or
(e) such other services as the Minister may, by Order, determine.”

That is a kind of open statement that raises several thousand red flags in my mind. And the argument about whether or not certain services should be subject to the lowest bidder. Now, I searched this document from end to end and I saw no reference of lowest bidder. I saw references to competitive process. And
competitive process or competitive bidding is a common procurement practice that involves multiple vendors or service providers to submit offers for any particular material or service. It allows for transparency and equality of treatment, the ability to demonstrate that the outcomes represent best value. Not cheapest. So I do not know where this argument about cheapest service has arisen from or came from. Best value does not necessarily mean cheapest service. And we need to debunk that proposition once and for all. Nobody is looking for the cheapest service, as they say “cheep ting no good” but we are demanding best value in terms of spend for the people of Trinidad and Tobago.

3.30 p.m.

And there must be established mechanisms, especially, given the levels of sometime secrecy we see covering government to government agreement. And I believe the Government has been duly elected to decide upon and carry out its development agenda for the country, and as unencumbered as possible, but under the principles of good governance, transparency and accountability. And I agree also that the Government should not be the subject of frivolous, superfluous challenges that may be political in nature from time—very often, quite frankly, because someone finds a loophole in an established or a passed law that gives them the opportunity to thwart Government’s agenda, development agenda, but that also is not a carte blanch agreement that there must be no accountability or transparency in these agreements.

The hon. Minister of Finance outlined several government to government agreements in his presentation, including, the Couva Hospital, the Aquatic Centre, the Cycling Centre, agreements with China Exim Bank, cape class vessels—ferries from Australia and the Sangre Grande Hospital. And many of these, if not all, may
be quite above board. But we are making law not for who necessarily is in power, but who may come to power and who may have quite malfeasant intentions where our public purse is concerned. And, very often, if we leave these loopholes without some sort of caveat or overlying protections, we may find ourselves at the hands of unscrupulous persons in the future, medium- to long-term future, that will continue or will initiate the continued rape of our Treasury and the people of Trinidad and Tobago, quite frankly, have been through enough of that. When will it end?

I believe that these arrangements should only be subject to this kind of challenge if the challenger can through some established mechanism, possibly the Office of the Procurement Regulator, provide credible evidence supporting claims of impropriety. And these claims can or should only stop an arrangement after some sort of independent tribunal, possibly convened by the Regulator—and I think there are some provisions along these lines already in the original Act—to make a determination that the evidence presented meets some sort of established benchmark to be subject to some other higher action. In the absence of that, it should not be able to stop the arrangement between government to government. But, again, there is actually a layer built in there with my suggestion of some sort of oversight and not a carte blanche authority to do whatever one wants. And there must also be the burden of proof on the challenger through this tribunal, the absence of which the arrangement continues, so that the Government is not subject every week or month to spurious challenges that seek to thwart their progress or their perceived progress.

Another serious, I think, lacuna being created in the legislation, again, it is in the same section 7/clause 5, and I am wondering why it is that some sort of statement cannot be made or the guidelines cannot be specifically outlined in terms
of legal services, financial services, accounting and auditing services, medical services, we can put—and I will quote from a document with the Canadian Policies, Guidelines and Reference Documents, Policy on Contracting for Legal Services and Legal Agent Appointment from the Government of Canada in terms of area 5.4 which states:

“Reference to the Minister of Justice and Attorney General of Canada …where there is sufficient recurring demand, the Department of Justice pre-qualifies…basis, registered law firms and law practitioners who meet specific requirements. As the need arises, the Department of Justice”—in Canada—“selects from the pre-qualified list the most appropriate law firm or law practitioner to be recommended for appointment…”

There is a degree of oversight built in there and:

“There is a narrow…cases that are of such importance or sensitivity…”

Madam President: Sen. Richards, you have five more minutes.

Sen. P. Richards: Thank you, Madam President—time-wise and otherwise that the Minister as specified in his or her guidelines, prior to that, or as the law moves forward, those caveats are outlined and specified, so the Minister has that leeway in those cases of emergency. And I fully understand the issue of medical services, in some instances, legal services, in some instances, auditing services as the need arises for the Government to be able to do their own due diligence and champion their own accountability and transparency practices.

So, what I am suggesting is not that this is an easy black or white fix, but it is certainly one of the areas that we just cannot decide that we are going to create loopholes that may be exploited by persons in the future. We have to put in in the law—and there is nothing stopping us from doing so—guidelines that will curtail
or encompass the intentions of section 7/clause 5, in terms of these preassigned areas and that does not, to me, limit the Government from engaging in procurement of those sorts of services in the interest of emergency circumstances or circumstances that may arise in some instances in terms of national security.

To end, Madam President, I asked you if I could sing earlier and you told me no, so I would recognize, you know, one of the more prominent calypsoes I think, ever written comes to mind and that is “Progress” by King Austin and I would just make a quote before that. A country that does not acknowledge and recognize its history is doomed to repeat the failures of the past. This procurement law, the Act of 2015, is very important for Trinidad and Tobago moving forward, extremely important. This is one of the most important debates we could have in this country if we want to see a different country moving forward. But this is the question: Do we want the same country or do we want a different country? Do we want to continue arguing and complaining about the same things? And in the words of King Austin, you know:

“Right in context”—and I am quoting from the middle of the song—“what shall be next
I’ve already seen this world have
Come divided between race, colour, creed
And class
And some of the things the scripture predict how it truthfully come to pass
Soil that wouldn’t bare
Children making children to be a part of this growing mass
And I ask, if this is progress, Lord,
How long would it last?”
Madam President, I thank you. [Desk thumping]

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, it is an honour, once again, to join a debate in this honourable Chamber on the Public Procurement and Disposal of Public Property Bill. Madam President, it is going into six years now that I have been appointed Leader of Government Business in the Senate. We have debated six budgets, and I know for a fact during a budget debate every Independent speaks, but on very rare occasions on other Bills, all nine Independents are carded to speak. I take that to mean that this Bill or this Act has struck a nerve.

As you all will know, especially the Independent Senators, it has always been my view that my job here and the Government’s Bench here, is not necessarily to trade punches with the Opposition, but we are here to attempt and hopefully to convince the Independent Bench that the legislation that we bring is balanced, is measured, is good law and it is supportable. That is what we are here to do, and during the course of the debate, we will attempt to so do in the best way we can. And if at the end of the day, there are still lingering concerns, we are willing to listen to adapt, as is necessary, and to take this entire process forward.

Madam President, public procurement is a sensitive matter. It calls for accountability, for transparency, value for money and for equity. These phrases have all become clichés. People used them ad hocly, not taking into consideration the gravity of its meaning. Many Senators today have brought up the issue of corruption, the Trinidad and Tobago ranking in the Global Corruption Index, high or low, depending on what angle you see it from, whether it is from a bird’s-eye or a worm’s-eye. But let me make a fundamental statement. Corruption occurs
because there are corrupt and corruptible people holding a position of trust in this country. That is the fundamental thing, you know. Corruption exists, if it does at all, and everybody knows it does. It has existed for decades, because there are corruptible individuals. In my opinion, too many.

The other aspect that contributes to corruption is that the system could be corruptible, and the system does not provide sufficient control and oversight and this is what the procurement legislation is doing in its entirety. The Government has all the intention to proclaim the Bill in its entirety. We have already made and we will soon publish the regulations. The Government is not afraid and is not trying to stymie the procurement legislation.

Today’s debate is just we are putting forward two key amendments which we think we have justification for. We are not fundamentally altering the legislation as Sen. John indicated. We are not gutting the legislation as was purported by Sen. Lyder. Far from it. Madam President, 90 per cent of the legislation remains intact. All we are asking this honourable House to contemplate is to support us in two key amendments, which the Minister of Finance has explained in some detail, based on the time constraint, and the AG has explained taking into consideration the time constraint, where the Minister of Public Administration and Digital Transformation has done so, and I will attempt to do it to some extent also.

We are saying that the overriding procurement policy requirement is that all public procurement must be based on value for money and should be achieved through competition, except where there are compelling reasons to the contrary, because of policy dictates, international agreements and legal requirements.

The ultimate goal of public procurement is to award timely and cost-
effective contracts to qualified contractors, suppliers and service providers for the provision of goods, works and services to support national and local government and public service operations in accordance with principles and procedures established by public procurement rules.

The current Public Procurement and Disposal of Public Property Act, to a large extent, is designed to achieve these stated goals of accountability, transparency, value for money, equity and local industry development. However, there are a number of provisions which are not in line with internationally agreed obligations of government and its policy objective with respect to economic development, and hence these are the two key amendments that we are proposing. This has been dealt with extensively, the amendment—the clause 5 amendment to section 7(2) which deals with government to government arrangement and international lending agency.

Madam President, Trinidad and Tobago is a member of a number of multilateral organizations such as the World Bank and the Inter-American Development Bank. Both of these organizations finance development and other projects of their members. Trinidad and Tobago is a recipient of financing for projects, goods and services from both organizations. The World Bank is required by its Articles of Agreement II and I quote:

“...make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.”

This is the lending agency. They have their own checks and balances.

The utilization of financing must adhere to:
— the bank’s—“…core procurement principles: value for money, economy, integrity, fit for purpose, efficiency, transparency and fairness.”

Similarly, Madam President, the procurement policy of the Inter-American Development Bank:

“…reflect the interest of the…(IDB) and its member countries to grant transparency, competition, equality of opportunities, and the principles of economy, efficiency and integrity in the procurement of IDB-funded operations.

The IDB provides funding to its Borrowing member countries with a broad range of loans and development programmes. These operations involve procurement processes for goods, works and services provided by firms and individuals.

…IDB Procurement Policies shall be observed…when a country’s system has been accepted for use in Bank operations.”

The implementation of the provisions of the Act will be cause for consideration by the IDB in the utilization of this country’s procurement procedures. We need the funding of these organizations. It is fundamental to the process of development in the coming years. You all know what COVID has done to this country. This is not to sidestep transparency. The transparency process is already built-in into these international agencies.

Trinidad and Tobago also has bilateral investment agreements with regions such as the European Union and with major developed countries such as China which give the country access to financing at soft and very competitive terms. The Minister of Finance explained that. Sen. John indicated that with the Couva
children’s hospital. However, financing is accompanied by terms and conditions which include a use of services and/or procurement of goods available in the lender country or lender region. It is a conditionality. It does not mean that you are bringing the lender country’s contractors, “lablash”, you know. There will be significant local content. So you have to meet these agencies halfway. You cannot stand alone in the world, you know. Trinidad is an island, but it is not an island onto itself, and we have to understand that it is a global village and we have to play in the international arena.

Why can we not understand that as a nation? It has nothing to do with government wants to “tief” money. It has nothing to do that the Government does not want oversight. It has to do with charting the development process with established institution. I hear some wild and crazy statements from the Opposition Senators. Sen. Mark indicating that for some reason, with the IDB and the World Bank and the EU, Trinidad will become a narco-state. Well, what type of imagination does this gentleman have? Sen. Lyder somehow linked CAF, which is the Andean Development Bank with some illegal regime in Venezuela.

Madam President, CAF has a series of full members, including Chile and Argentina, Ecuador, Paraguay, Uruguay, Colombia, Peru, Panama, including Venezuela and Trinidad and Tobago. It is Winston Dookeran, then Minister of Finance, who joined CAF, and today we are reaping some of the benefits of that decision, and we are getting concessionary loans from CAF procured at a much faster pace than any other international agency, and they are willing to provide all sorts of technical assistance to us. Latin American is our neighbour. We are part of Latin American. So these amendments have no ulterior motives in them. These amendments are seeking the national interest of Trinidad and Tobago. [Desk
thumping] So, I understand the concern. I understand the whole optics of attempting to show—

Madam President: Hold on, Minister. Sen. Mark, please, if you want to speak to someone across the aisle do it outside the Chamber.

Sen. The Hon. F. Khan:—the optics of saying that by removing something outside of the purview of the Procurement Regulator, as if it is some sinister motive to undermine the legislation. We are calling for two amendments and there is justifiable cause to so do. I move on to the other one.

Specialized services. Several speakers before me have attempted to justify legal, financial accounting, medical services. But, Madam President, I want to share with this House as I have shared on several occasions, the whole issue of specialized services, and how if a government does not have the flexibility to so do, how it can hurt you. The importance of flexibility to public institutions can be gaged from the Government’s negotiation with the Government empowered energy team and the international oil majors and gas majors operating in Trinidad. Sen. Mark likes to speak about the US $6 billion we lost through transfer pricing, and let me just remind him that we lost it during the period 2011 to 2014.

When the Keith Rowley administration came into office, we went to the Hyatt on a “Spotlight for Energy” and said this has to stop. But we could not meet the energy majors in their boardrooms in their international capitals, whether it is in The Hague, in Houston or in London—

Madam President: Minister, you have five more minutes.

Sen. The Hon. F. Khan:—unprepared. What did we do? We recruited internationally acclaimed consultants to drive the Government process. Myself and Minister Young headed that team and we negotiated with the help of two
companies. I will call them by name here: US attorneys White & Case LLP, at the time procured by the Ministry of Finance, probably the world’s best energy law firm. We recruited, Poten & Partners, one of the world’s top energy consultants.

For the first time this country went into negotiations with these majors, armed and well prepared. And you know what was the result of that? We were able to recover for this country, not all, but foregone revenue in excess of three and a half billion TT dollars. [Desk thumping] And it is still coming in.

We now have recruited a company called Gas Strategies that is advising the Ministry of Energy and Energy Industries and the empowered negotiation team on the restructuring of Atlantic LNG. That team is headed by former Minister of Finance and ORTT Mr. Wendell Mottley, and we are getting good advice, because for the first time we are meeting these international energy companies man to man, and I think Trinidad should be proud of that. We did not bypass any procurement regulator for sinister motives. We bypassed it in having the flexibility to so do, so that we can seek the interest of the people of Trinidad and Tobago. And the Prime Minister has always said and has always told the energy companies, chairmen and CEOs that you have shareholders, I have shareholders too, and while you protect your shareholders’ interest, I have to protect my shareholders’ interest.

So, Madam President, I hope and I possibly pray that I have been convincing enough to deal with the two key issues that we are asking for the amendment today. I want to urge, in particular, the Independent Bench to think it through properly. If you continue to have challenges or issues, let us discuss it at the committee state. Madam President, I thank you. [Desk thumping]

Sen. Jayanti Lutchmedial: Thank you, Madam President. Thank you for the opportunity to join in this debate. But, Madam President, I cannot say that I am
happy to be here today, because I strongly believe that the Bill that we are debating here today should not have been brought to this Parliament, and I will give my explanation on three different aspects: first, the constitutionality aspect; secondly, what the impact of these amendments would be on the Office of the Procurement Regulator and how that impact is actually against the public interest of Trinidad and Tobago and, finally, I would like to speak a little bit about the alternatives that would be open to us to deal with some of the concerns that have been raised.

Madam President, I am of the view that this Bill, being brought as a simple majority Bill is an error in law as the Government is proposing—what they are proposing to do is to create a separate process and procedure for suppliers and contractors where the State enters into contracts with international financial institutions or with foreign governments. These contractors have none of the obligations under the current law that we are waiting to have proclaimed and they are also under the law, and any decision made by a procuring entity in relation to those types of arrangements is not subject to the challenged proceedings contained in Part V of the Act.

The scrutiny of the Office of the Procurement Regulator to ensure fairness, transparency and accountability will apply to some and not to others. Madam President, this can potentially violate your section 4(d) rights to equality of treatment by a public authority. The amendment, essentially, is forcing a public authority to treat persons differently depending on where the financing is coming from for a particular project. It is forcing certain contractors or persons who wish to participate in the procurement process to open themselves up to a certain level of scrutiny and challenge, but others will be exempted. So, Madam President, it is my respectful view that this Bill, if these amendments were to be brought, it ought
to have been brought as special majority legislation.

Now, I know that the Attorney General will say that Suratt and Barry Francis and all those things apply, and I have heard the Minister of Finance here today refer to the majority decision in the Barry Francis judgment and that the Bill would be proportional and it would pursue a legitimate aim. I know that he was responding to the similar concerns that were raised in the other House.

But, Madam President, there was a very strong minority decision in the Barry Francis case by the hon. Chief Justice and Justice of Appeal Jamadar and I dare say, judicial sentiment, for those of us who are following the trends in the case law, is definitely leaning in the direction of that very strong minority judgment. And, in a nutshell, what it really says is that once your entrenched rights are being interfered with, section 13 of the Constitution is triggered.

Again, the Minister of Finance quoted from the Jason Jones judgment where Justice Rampersad, he was referring to the Barry Francis, the majority decision by Justice of Appeal Bereaux, and he spoke and Justice of Appeal Bereaux said:

“Consequently it is not every restriction of a fundamental right which may require a section 13 majority.”

And Justice Rampersad went on to say:

“This last sentence was the subject of disagreement by Jamadar JA in Inshan Ishmael and by Archie CJ and Jamadar JA in Francis. They hold the view, shared by this court”—and this is a more recent judgment—“and reasoned extensively by them in their separate judgment in light of the constitutional history of our Republic, that breaches of the rights set out by sections 4 and 5 of the Constitution must properly be enacted by way of a section 13 majority and not by a simple majority as was discussed and approved in
Suratt. To me, this makes eminent sense since the provisions of the Constitution are clear and the rights set out therein are not to be trifled with in any simple manner but after deliberate consideration and debate under a section 13 majority discussion.”

4.00 p.m.

Of course he went on to say then that:

“Nevertheless, thankfully, that issue does not fall to be resolved in this…”—case.

So, Madam President, Suratt is still good law because it was a Privy Council decision and Barry Francis was the Court of Appeal here and it was a minority view. But I wish to state upfront that my colleagues—some of my other colleagues have raised it. I think Sen. John raised it and I also do not agree that this Bill should be passed through this Parliament as a simple majority piece of legislation. The Act, the parent Act was passed as special majority and I am of the view that the amendments that interfere with the rights to the fairness and equality of treatment by a public authority—in this case the public authority may be the State on the whole or it could also be the actual Office of the Procurement Regulator who is now required to treat with different people and different participants in the procurement process differently. And that in itself, I believe, offends against section 4(d) of the Constitution and therefore this ought to have been special majority legislation.

Now, Madam President, I want to move very quickly into what I see as the decimating of the Office of the Procurement Regulator and it is quite simply that—the hon. Minister of Energy and Energy Industries does not like the use of the word but I am using it again, chopping, butchering and gutting a very good piece of
legislation. And it is on the basis that parts of it are unworkable and when we have not yet had the opportunity to see it work. It has not been tried or tested. Madam President, in 2015, and I heard it before as well—I guess great minds think alike because we are all on the same page. Since 2015 the Government has been saying through its manifesto that there was no modern, equitable or transparent public procurement system in force after five years, referring to the Partnership Government, even though the Partnership Government heeded the call that was made by all of the persons who are now leading the charge against the Government to abandon these amendments.

The Joint Consultative Council, Madam President, the media has joined the call. The Office of the Procurement Regulator, how rare it is to see someone who is appointed as essentially a public servant come out and say publicly that they do not support a legislative measure. And it goes to the independence of that office and it goes to how serious of a matter this is that someone in that position has to say, “Listen, I do not want this. This is not good for my mandate and what I have to do.” You are creating avenues and corridors where corruption will continue to exist. Madam President, you cannot stand on platforms and in Parliament and speak over and over and over about corruption and name the corruption, and who is more corrupt. And again, and I totally agree with Sen. Richards from the Independent Bench, and I have heard many of the Independent Senators and I commend them for saying that, the country is tired of hearing “who thief more, who thief first”; who, you know, spend more and who was able to save more and what we spend it on, and it takes us nowhere.

The Uff report which preceded the serious—I would say public campaign calling for procurement regulation in this country basically said that we have a
culture of corruption in this country and it went through several of the state enterprises and talked about instances of corruption, poor tendering processes. It had 91 recommendations; 91 recommendations to treat with these issues. And what are some of those recommendations, they were categorized under four different headings, for the attainment of value for money, for the delivery of projects with a high standard of workmanship, for the attainment of free and fair competition and for the maintenance of integrity and transparency, and all of those objectives that are recommended are captured by this Act.

And, Madam President, it is a sad day when we are here trying to—we as the Opposition and maybe others are trying to say, “Do not take away those things from this legislation. Not now. Not when you have absolutely no evidence.” You have brought no evidence before us here to say that the thing cannot work. You have not even brought the regulations. The Attorney General comes today and gives us, whilst we are literally on our legs, some of us, gives us part of the regulations about the selection of consultants to say that this justifies why they need to exempt people. Madam President, how disingenuous of a Government to say for five years, the regulations are coming, the regulations are coming, the regulations are coming, every budget speech. I am not going to waste time to quote every one but I have checked them, five budget speeches—the Office of the Procurement Regulator was being operationalized, everything is on train, the regulations are being drafted; it is coming. And instead of bringing the regulations to Parliament as they have promised to do, as they are required to do for us to see it and then we could have a discussion about whether something may not work or if it cannot be done or there is a conflict. They bring this legislation now, this Act to take away the teeth of the Procurement Regulator.
So, Madam President, I am not—the Government would have the population believe that this thing cannot work and that they cannot procure essential services unless they pass these amendments and that they cannot access international financing unless they pass these amendments, and I am saying today that I hope, and I sincerely hope that everyone is guided by their commitment and their duty to act in the public interest and do not support these amendments. In the piloting of this Bill the Minister refers to having comply with requirements of law that would not allow them to act quickly and access financing for various things. He names medical services and procurement of equipment and so on, high-tech equipment; Madam President, they could buy how many boats they want but they have to be accountable and transparent in what they do.

No one is telling the Government who they must buy from. That is up to the procuring agency under the law. They go out there—the Bill, the procurement Act has essentially decentralized the entire process that existed before the Central Tenders Board and for nine years I sat in a public service position where everything you had to buy that was over a certain amount and you had to go through CTB. You would see everybody cringe because of the fact that it was so bureaucratic and everybody wanted, you know, to buy things quickly and you want to act quickly and you do not want to have to wait and go through all these procedures, but there were ways that things could have been done. In emergency situations there were ways that where you did not have several people that you could get bids from.

So nobody in this law has outlawed sole select tendering. I assume when we see the regulations we would see provisions or sole select tenders. It is done now. I know one example that all of us would know of, the red books that we get and the
supplements that are published every so often, that is done through Central Tenders Board via sole-select tendering. So for the Government to say that there are certain things that they would not be able to do and that these challenges would come forward, Madam President, almost everything that they are complaining about that they need to pass these regulations for, there is a workable solution and a way to get around it.

Now, government to government arrangements, it sounds very nice and it sounds very clean and proper and even very diplomatic as though, you know, every government in the world is so squeaky clean. Now, I am not here to cast aspersions on anyone and I am not saying that anybody is corrupt. I am not going to say that unless I have evidence of it, but the fact of the matter is you are not legislating for today, we are not legislating for tomorrow. Your piece of legislation must apply to whoever holds office. And it is not only the Members of the Cabinet we are talking about and we are not only talking about Members in this House. We are talking about any person that sits in the position of the procuring agency, in one of those procurement units that would be set up in every single public authority and who is engaged in the process of procurement has the potential to abuse one of these exceptions that are being created right now and we do not want to create those avenues unnecessarily. And I again say, without actually having seen the legislation being operationalized and in effect and working, I do not see it as being necessary to create exceptions at this point in time.

Madam President, we all know that around the world there are certain governments that do not uphold the same democratic principles that we do here and therefore we must say that we must insist that accountability and fairness remains the foundation of our legislation, because we know all too well what can
happen. There are countries that we are doing business with that are far lower than ourselves on the Corruption Perception Index. Madam President, I heard the Minister of Energy and Energy Industries, you know, sometime ago in this House since he does not know what we have against Venezuela, well, you know, Madam President, when you are dealing with countries sometimes that have leaders that are not recognized by some of the largest powers in the world, you have to ask yourself if you want to create avenues to engage in procurement practices with Governments like those. So all of those things, if you take it away from this piece of legislation there would be no oversight of those types of arrangements and we have to be very careful in how we proceed.

Now, we do not need to look that far back to remember that there was a time when Shanghai Construction Group was building a $30 million value church somewhere in the Heights of Guanapo, it was shut down. A report was made to the police and the police came out and said they could not even ascertain who was the owner of the property. Madam President, these are the things that we have lived through in our lifetime, that the population has lived through in its lifetime. Up to now nobody could say where the money came from.

Madam President: Sen. Lutchmedial, you have five more minutes.

Sen. J. Lutchmedial: Yes. And it is very important for us to remember that some of these things that would have occurred. I am very glad that Sen. Deyalsingh raised the Ballah report. I was so intrigued when I raised the Ballah report. When I read it, it dealt specifically with government to government arrangements.

Madam President, the Ballah report predates my existence. It is dated 1982. So since 1982 we have been talking about the need to examine government to government arrangements and procurements and how we deal with it. And the
recommendations of the Ballah report deal with a system for open and competitive bidding, pre-qualification preference given as much as possible to local consultants and all of this. So, Madam President, we have spent so much time dealing with these things and it is now manifestly unfair. It is unjust and it would not be in the best interest of the population to come out now and gut this piece of legislation before it has a chance to make any impact and before any tangible evidence it put forward. I keep hearing people saying that we would be conflicting with our international obligations, I have not heard of any conflicts as yet. I have not actually seen any obligation that we are under from any international financial institution that conflicts with the principles enshrined in this piece of legislation.

Madam President, as Sen. John says, we are not a people that are easily united; I could count, it is carnival and probably major sporting events when we win something that this country comes together. And for the first time in a very long time I think everyone has come together in this country, the media, civil society, the Opposition and now even the Law Association. I have just gotten the copy of a letter that was sent and commentary sent by the Law Association today. And I will not be able to read the entire thing but it refers to a case, another judgment by Justice Jamadar that speaks about constitutionality and the principles enshrined in our Constitution similar to that of Belize. And it ends by saying:

In our view the removal of oversight, scrutiny, accountability and administrative fairness in the procurement processes in relation to the treaties and agreements referred to in section 7(1) amounts to constitutional impropriety, degrading public trust and confidence.

Madam President, we cannot stand here today and support amendments that would degrade public trust and confidence in something [Desk thumping] as important as
Madam President, very quickly, and I think we would have the opportunity to deal with this later on at the committee stage, I wish to say, section 30 of the Act, the parent Act gives the procuring entity the power to draft special guidelines. And I am of the firm view that some of the guidelines that can be developed under section 30, both by the Regulator and by the entity working together, can treat with the one-off situations that may arise where you have emergency situations, and so on. Madam President, it is a fallacy that is being peddled that we would have to accept the lowest offer. I am happy that the Government seems to think that Opposition-affiliated attorneys are so reasonable that we would be the lowest price, but no regulator and the Procurement Regulator is not going to force you to walk across the aisle and hand me a brief to take to anybody. And that type of conversation, Madam President, that level of discussion takes us no further in this argument.

Madam President, there are systems all over the world that deal with the procurement of legal services and no one exempts themselves from oversight and accountability. And I dare say that these things are just meant to be distractions, they are not productive. And if the Government, as the Minister of Energy and Energy Industries has just said, is open to having productive discussion, we would also be open to that, but we cannot support these amendments in their present form. With those few words, I thank you, Madam President. [Desk thumping]

Madam President: Sen. Teemal. [Desk thumping]

Sen. Deoroop Teemal: Thank you, Madam President, for the opportunity to contribute to the debate on the Bill before us. Madam President, it is indeed a pity, and if we extend a form of tragedy that this debate is being conducted without the
benefit of the regulations of the Office of Procurement Regulation. I consider this to be a severe disadvantage, because without this the impression that one would get from some of the contributions is that the Office of Procurement Regulation is constrained to only implement conventional procurement in the style of the Central Tenders Board in that they must be committed. It must only be competitive bidding. The award must be given to the lowest bidder and no other procurement process would be allowed. There are no provisions for sole selective tendering, no provisions for procurement of services in cases of emergency and national disasters. Regulations would not allow for any inflexibility and the Office of Procurement Regulation would not be au courant with international best practices with regard to government-to-government contracts and public-private partnerships, and they would be unable to align their office with procurement regulations with international best practice.

Madam President, an examination of the parent Act does not seem to lend support to a lot of these submissions that I have mentioned. Madam President, the background as well to this debate today is that, should this Bill be passed today and Governments change in the future, which is inevitable, it is highly questionable that the future change of governments would really want to make any changes to what is approved today because there is no guarantee. In other words, we as a nation would have to contend with this amended Bill for a very, very long time. Also, Madam President, this debate is not about whether we should not invest in government to government contracts or PPP contracts but it is about the procurement process for these and other contracts that is here before us in the proposed amendments to this Bill.

Madam President, government to government contracts have been utilized
by several governments of Trinidad and Tobago since the 1970s to present. And of course to mention a few, we could go back to the days of Sodeteg and the Mount Hope Medical Sciences Complex, the Secondary Roads Company, TTPOST, and more recently the Point Fortin Hospital and the Couva medical facility, and that is just to name a few. In appropriate cases there has been value and benefits to the country, as the hon. Minister of Finance in his media release dated December the 17th—December the 7th, actually, mentioned, and some benefits are of course specialized expertise, experience, technology and concessional loan financing from other sovereign governments. And there is no doubt that in order to fulfil our obligations and to advance our development as a nation that concessional loan financing, an attractive loan financing from other sovereign governments, it is a necessity, particularly considering the difficult economic circumstances that the country finds itself in.

[MR. VICE-PRESIDENT in the Chair]

So this is in fact true, there are benefits to be derived but it must be acknowledged also that there are many issues relating to alleged corruption, dubious benefits, lack of transparency, and what I refer to as reverse transfer of technology, inefficiencies, wastage. And it is these prolific issues that have served as the genesis and they are pushed by many local bodies for the establishment of the public procurement regulations that was passed. Mr. Vice-President, I think if a thorough exercise is done it is highly doubtful whether the benefits of government to government contracts, based on our Trinidad and Tobago experience, would outweigh the many negatives that these projects have brought to us.

Mr. Vice-President, government to government and PPP contracts collectively account for millions and billions of dollars over extended periods of
time spanning several years. In fact, these contracts serve as a spawning ground for what we would refer to as mega-projects, and as a result of the size and the sustained period of revenue generation for entities, they are very prized contracts in the industry. And these projects present complex procurement challenges for any entity and any government and we have struggled over the many years to find the right formula for these projects. And if we look back, what are the procurement mechanisms that we have utilized in the past through successful governments, and I think we can identify clearly that one of the approach is to use several procuring entities, such as NIPDEC, NEC, UDeCOTT, HDC, WASA, et cetera. And I ask the question whether these entities had the expertise at any point in time or the institutional capacity to deal with complex procurement processes that government to government and PPP contracts demand? And I ask this in the context of the outcomes of many of these projects.

Mr. Vice-President, as a result the nation has not benefited by spreading the procurement process through several of these entities over prolonged periods of time in the past and the current present. The nation has not benefited from accumulative experience in the procurement process housed within a single procurement regulatory agency that could inform and guide the procurement process well into the future. And I think this was a clear intention for the formation of the Office of the Procurement Regulation so that we can collectively build our experience, we can collectively build institution, equip that institution with the necessary expertise and incompetence and resources that can serve the nation well into the future by having this residual—this house of wisdom, procurement wisdom and experience that we can bring to bear on all procurement within the country.
Mr. Vice-President, the hon. Minister of Finance focused no international best practice with regard to, again, government to government and what he referred to as public to public contracts with particular emphasis on the European Union and the UK. Now, I would like the Minister of Finance in his wrap up to just clarify for me, particularly for the European Union that the contracts that we refer to as public to public contracts are by contracting authorities within a union, within a state and if they are not necessarily government to government contracts in the context of a sovereign state to a sovereign state. [Desk thumping] And also, in addition to the European Union, public to public contract, exemptions from what I understand from what I have researched, Mr. Vice-President, exemptions are not automatic. They are not automatically fall outside the realm of procurement regulations, public procurement regulations, but there are conditions to exemptions. And it goes into clarifications of vertical procurement, horizontal procurement and detailed outlines of criteria to be met in order to qualify for an exemption as a public to public contract.

Mr. Vice-President, thus far the Government has not indicated clearly or succinctly what procedures that they intend to put in place to ensure transparency, accountability and value for money for the items of procurement that they intend to remove by these proposed amendments. And I ask the question, if the Government is looking to continue to use, procurement entities such as UDeCOTT, NIPDEC and others, particularly for the PPP contracts that are being removed from the Office of Procurement Regulation—if they are, the question of institutional capacity and institutional competence becomes extremely relevant in achieving the procurement objective allowed for in the parent Act with regard to transparency, accountability, integrity and value for money.
Mr. Vice-President, when we look at the Auditor General reports for these state enterprises and agencies, the many reports over the years the Auditor General focuses on just a financial audit of these agencies and there are no provisions within the audit for public audit of the procurement process utilized by these state enterprises and agencies. And of course I could be quite wrong and if so I would like to be corrected on it, but the audit by the Auditor General focuses really on the financial aspects, the fiscal aspects of these enterprises. And removing the PPP contracts from the office of procurement legislation would deny public procurement audits taking into account the procurement objectives. So we are still going to have a slew of contracts that fall outside of a public procurement audit process.

4.30 p.m.

Mr. Vice-President, as far as PPP contracts are concerned, there are several manuals, guidelines and tool kits established by the OECD, the IDB, the ADB, the Asian Development Bank, and other international lending agencies and multilateral agencies. Mr. Vice-President, there is also the Caribbean PPP tool kit, a joint initiative of the Caribbean Development Bank, the World Bank, the IDB and other entities. These guidelines incorporate key aspects of conventional procurement such as competitive bidding, but very importantly that we should note, it is within sufficient flexible framework to allow for expedition of the procurement process with full participation by the private sector and best global procurement practice.

Mr. Vice-President, best global practice even now includes sustainability in the procurement sector. This suggests that Government’s fiscal policy should ensure that projects are affordable and the overall investment envelope is sustainable. So we have some serious catching up to do, because while the office,
the procurement regulation, outlines certain pillars and stops with value for money, sustainability in terms of global best practice and within the procurement cycle is now a factor. So we have some serious catching up to do to fulfil all aspects of best practice in the procurement cycle, and I am strongly suggesting we seek to operationalize this Act expeditiously.

Mr. Vice-President, I would just like to close with just a little personal anecdote.

Mr. Vice-President: Senator, you have four more minutes.

Sen. D. Teemal: How much more, sorry?

Mr. Vice-President: Senator, you have four more minutes. Four more minutes.

Sen. D. Teemal: Thank you. As a graduate engineer coming out of the University of the West Indies in the very late ’70s, early ’80s, I had the opportunity to work for six straight years on a government to government contract. This is with SODETEG and the Mount Hope Medical Sciences Complex. So I cut my teeth on a government to government contract. We were at the later stage of that entire process. It was just the construction phase and the commissioning phase, but it was indeed quite an experience. Even at those stages of that government to government arrangement, we had to fight tooth and nail to extract and to ensure at least the quality of what was being built was up to specifications and standards.

Mr. Vice-President, but what was uppermost in our minds at that time was the question of whether we were getting value for money, which is why I think, based on the experiences of others in government to government contracts, and the whole issue of value for money, it is why value for money is one of the pillars of the regulation Act that we are seeking to amend today.

So in concluding, Mr. Vice-President, I appreciate the challenges that the
Government is facing. These are indeed extremely difficult times, and I think no one wants to deny any government the opportunity to invest, to have investments in which attractive loans are available through certain contractual arrangements. But at the same time—at the same time—based on history, based on how we arrive at this procurement Act, and based on the concerns expressed by so many entities in the country, based on all of these factors this attempt to remove government to government contracts and PPP, I think has to be revisited and relooked at.

I thank you, Mr. Vice-President.

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne): Thank you, Mr. Vice-President. Today we are amending the Public Procurement Act, and I am honoured to make a brief intervention into this very important and so far very interesting debate.

I have noted very carefully some valuable points that have been made by several Senators that have participated thus far in the debate, and as reflected by the hon. Minister of Energy and Energy Industries, the Government is listening carefully, as we always do, and we will continue to take decisions in the best interest of the people of Trinidad and Tobago. [Desk thumping]

Mr. Vice-President, this debate is not taking place in a vacuum, and I would want to reflect a little bit on the backdrop against which we are proceeding with these matters. This debate takes place against a backdrop of an active pandemic that thus far has infected over 67 million people on this planet and killed over 1.5million. Mr. Vice-President, 188 countries have reported being affected, including of course Trinidad and Tobago, and including a number of countries with whom we have formed partnerships, with whom we do business and on whom we lean for a range of opportunities. That is a very important point that I would want
to reflect on further.

The global economy has shrunk considerably and we have seen the biggest decline worldwide since the Great Depression of the 1930s, and this decline has affected all economies, and there are long-term implications for state to state partnerships for the provision of foreign assistance to small island developing countries like Trinidad and Tobago. There are long-term implications for technical cooperation and the access of Trinidad and Tobago to the provision of technical cooperation. There are long-term implications for participation in international borrowing, in lending in some instances, in global trade and for access by Trinidad and Tobago to funding mechanisms on the international market. I repeat: This debate on this Procurement Bill is not taking place in a vacuum, and it is in a very competitive global landscape.

It is against that backdrop that section 7 of the Public Procurement Act as it currently stands does require our consideration and amendment if we are serious about national development. And everyone in this country knows that the Government of Trinidad and Tobago is very serious about national development.

It is in this highly competitive global environment that we must not disadvantage ourselves in seeking partnerships for the construction of hospitals, for the provision of sporting facilities for our people, for the hosting of international events, for the provision of ferries or other infrastructure, even for the acquisition of military and security equipment where necessary.

Mr. Vice-President, let us even consider the prospect of World Bank projects. I was the technical director of the National AIDS Coordinating Committee some years ago in the Office of the Prime Minister. There is another Senator present who was a member of the National AIDS Coordinating
Committee, Independent Senator. Those who were paying attention would recognize that the procurement regime that we were required to follow, under that very important World Bank loan, was not anything related to the laws of Trinidad and Tobago. We had to follow the World Bank’s rules.

We also attracted a European Union grant, significant resources for the safety and protection and development of the people of Trinidad and Tobago and guess whose rules we were required to follow as a prerequisite? The European Union rules. So we are coming in here today, not in an effort to circumvent scrutiny or to create avenues for any nefarious activity, but with some very specific and targeted amendments to ensure that the law, the Act when proclaimed and implemented will not be inimical to the development of the citizens of Trinidad and Tobago. I think that is a point that must not be missed in this particular debate.

So, Mr. Vice-President, we need to pay careful attention to these matters. Some things, Sen. Jearlean John—some things do not need to be test driven to know that they will not work. Some things do not require a test drive for intelligent and resourceful people to understand that they will not work as they currently stand. You cannot take the vehicle on to the busy global highway if it is designed not to function in your best interest.

So, Madam President, seriously, I want to ask Members of the Opposition—I do not want to focus too much on the Opposition because we know what they are about, and we know why they are where they are—but which government to government arrangement—we have had a long series of these in the past, many of which have been to the benefit of the citizens of Trinidad and Tobago—which of those arrangements that all our citizens have benefited from in the past would have occurred if subsumed under our local tendering rules for procurement of goods,
works and services? Which of those arrangements would have succeeded and would have occurred if subsumed under those rules? And the Minister of Finance could answer that question very easily. Which of those?

So what we are talking about here, this is not an academic debate. As one of the Independents quite rightly and correctly reflected, you have a government who is interested and seeking the development of citizens who is in possession of information, perspective analysis and responsibility to make decisions that have significant implications on the future of the country. You have that backdrop, a context of very scarce resources, of very high competition for opportunities, and what are we seeking to do? We are telling the population, we are telling the Independent thinkers that are present, we are speaking to those Independent thinkers that are present, and we are telling you that there are circumstances in the Act as it currently stands that will constrain any government, not just the PNM Government, any government, from making some of the progress that would be essential in the years to come.

I hope those Independent thinkers are taking careful note. Again, Sen. John, we do not need to test drive something that we know it is not going to work properly.

Madam President, I said we are not really speaking to the Opposition today, but they do bring some expertise into this particular debate. I am not referring to the Senators present, but certainly the party that sits opposite is regarded by many citizens as the corruption experts of Trinidad and Tobago. [Desk thumping] They have proven that, both in Government and even while in Opposition they found a way in some circumstances.

Now it is possible—I am not presuming any negative intent—but it is
possible that some of them would be happy if we either remain with no proclamation of the procurement Act. It is possible that some would be happy to remain in that circumstance, and it is possible that some would be happy if we end up with an Act that would disadvantage Trinidad and Tobago in competition for technical cooperation, for financing on the international market, with respect to the potential for state to state partnerships. And then, if key projects are missed out on if these key projects go elsewhere, guess what would happen? The same Members, the same hypothetical Members, would then be accusing the Government of a lack of progress in developing the society and the citizens of Trinidad and Tobago. I am saying we should not have to choose between those particular realities.

Madam President, I noted the Sen. Lutchmedial said that the Government was chopping and decimating good legislation. Chopping and decimating and gutting, I think was another word that was folded in there—chopping, decimating and gutting good legislation. That is a microcosm of the very dramatic language that colleagues on the other side seem to have imported into this particular debate, highly dramatic language, loaded with hyperbole and emotion designed, in my view, to mislead the well-thinking citizens of this country. So we are chopping, decimating and gutting good legislation.

But I want to ask the Senator, if the legislation was so good and proper, why was it brought right at the very end of the UNC administration just when they were demitting office if they thought it was so functional and so good as it stands? I think there is some reality behind that particular rhetorical question.

So, Madam President, I am speaking to the general public and the Independent thinkers who know that the loudest voice is not always the best informed. They know that the loudest voice, the loudest proclamations are not
necessarily those that are best informed in this particular society.

I also want to state very clearly that not everyone who questions the Bill has ill intent. I want to repeat that again. Not everyone who questions the Bill has bad intentions. We have to understand that and incorporate that into our discourse as well. Some have very good intentions, and that it is very important to listen to the reflections, particularly of the Independent thinkers.

But others do not mind if our society misses out on some key development opportunity. We also need to take that into consideration. And there may be those out there that feel that their businesses would benefit in some way if Australia or China or Austria, or any of our potential state partners, are tempted to look elsewhere where these restrictive provisions are not in place with respect to government to government arrangements. There are those who may feel that their businesses would benefit. I do not think they are in majority. If state to state arrangements are decreased or constrained, or in some ways eliminated, some interests may feel that they would potentially benefit. We need to put that squarely on the table as well.

Madam President, it is my view that we would be missing the point if we were to do like some Members opposite and rewrite reality, and construe the desire to finally proclaim a workable Act that would not disadvantage the people of Trinidad and Tobago, to construe that as an attempt to gut the Bill, gut the Act. And it is not being gutted. It is not being gutted at all.

On its implementation, an extremely wide suite of public procurement activity will be governed and regulated by the Procurement Regulator of Trinidad and Tobago and his team. If you listen to debates you may get the impression that somehow it has been denatured magically by these very simple clauses, and that
certainly is not the case.

    Madam President, let no one try to fool the population or fool the Independent thinkers among us that exceptions in public procurement law are some kind of bizarre exception, that the exceptions are some kind of bizarre exception. They are the norm internationally, because they are necessary in today’s world. We have already had a number of examples in the debate thus far from the Government side and I can reflect on the Organization for Economic Cooperation and Development. They have done a number of studies focusing on public procurement laws and regulations. I have one in my hand here, a study entitled “Enhancing the Use of Competitive Tendering in”—

**Madam President:** Minister, you have five more minutes.

**Sen. The Hon. Dr. A. Browne:** “Enhancing the Use of Competitive Tendering in Costa Rica’s Public Procurement System Streamlining The Exceptions and Redesigning The Threshold System”. Madam President, on page 26 of this report there is a very useful outline under “Exemptions”. This relates how the law applies to governmental bodies, such as contracting authorities, state-owned enterprise and non-governmental organizations:

    Participants in international trade agreements often have to codify the types of institutions that are included within the scope of treaties. This helps to clarify the relative size of the procurement market that must comply with the agreement’s procurement provisions.

It goes on to outline “Exceptions” and also “Exclusions”:

    “Procurement legislation is not a suitable measure for governing all categories of government spend. Some categories of purchases or commercial agreements, such as real estate, employee contracting, specialist
military spending or international aid, require specialist legislation or regulation. As a result, these types of spend are excluded from procurement legislation.”

You can look at legislation in Jamaica, Guyana, the Caricom model law, the World Trade Organization, European Union. I have in front of me the Public Contract Regulations of Scotland anchored in the law itself, which makes so many exclusions and exceptions, including the very provisions that are before us today. So this is not something bizarre or some mutant orphan that the Government has hatched up to destroy the law. Not at all, Madam President.

So in conclusion—I know I may only have about four more minutes—this Act is not just about section seven, and when enacted the Act will make a significant difference to the corruption index. It can make no difference if it remains unproclaimed or if it is unworkable. Some may want that, the Government does not want that, and a clear and Independent thinker would not want that.

I do not think we should have to choose. The Bill can be passed, the Act can be proclaimed, the law can be put into force and monitored closely, and as the Attorney General would tell you, the law is not stagnant. It will evolve. It will change by a responsible government. It will evolve under a caring administration of a government that simultaneously wants to proceed with national development whilst preventing, reducing and eliminating corruption. We should not have to choose between the two. We do not have to choose between those two realities.

Madam President, I thank you.

**Madam President:** Sen. Vieira.

**Sen. Anthony Vieira:** Thank you, Madam President. I will not be long, because I lost a loved one this morning. Her name was Leslia Black-Vieira, and she was very
much loved by all who knew her. So I am feeling little raw and underpowered at
the moment.

I should also make some disclosures, obviously as a member of the Law
Association, and as we have heard, they have put out a position statement on this
legislation. But I have also been involved for many years with both the Trinidad
and Tobago Chamber of Industry and Commerce and the AMCHAM. At the
Chamber I served for a number of years on their Crime and Justice Committee, and
I was also on their Code of Ethics and Grievance Committee. At the AMCHAM I
was chairman of the Transparency, Accountability and Good Governance
Committee. So I still maintain good relations with both bodies, but I hold no brief
for either of them.

Procurement has been defined as the act of acquiring goods, works and
services efficiently and effectively at reasonable prices and in time. Now, the
procurement function is neither static nor perfunctory. Rather it is dynamic and it
is strategic. Because it is ultimately about using public money to accomplish public
purposes and guarding against fraud, waste, corruption and protectionism, this
legislation will have real impact on the lives of citizens.

I have been part of the chorus calling for procurement legislation for several
years now. Not just for any legislation though, the country requires and deserves
good, robust legislation.

The joint chambers, civil society groups and the Procurement Regulator all
understand how procurement permeates all government and state-owned activities.
They know, they understand how the procurement process will affect all aspects of
society. They are not playing politics. As such, I find Government’s response to
the concerns raised by the joint chambers, the civil society groups, a former Senate
President, the Law Association and the Office of Procurement Regulation disappointing and troubling.

The rule against tedious repetition prevents me from rehashing all the concerns that we have been hearing about, as well as the concerns raised by previous speakers and my Independent colleagues, especially those concerns relating to clause 5, which seeks to amend section 7 of the 2015 Act. I echo, I share those concerns.

I was very happy to hear the hon. Minister of Foreign and Caricom Affairs say that Government is listening. Well, Madam President, through you, I call on Government, first, please withdraw and postpone acting on this Bill until the procurement—[Desk thumping]. Withdraw this Bill until the procurement regulations have been tabled in Parliament and sorted out. [Desk thumping]

The hon. Attorney General has repeatedly referred to the regulations proposed, but we have had no sight of them. Alternatively and failing sight of the procurement regulations, then I call on Government to remove clause 5 from this Bill. [Desk thumping]

Pressing forward with this legislation and disregarding the views and concerns of citizens, particularly in relation to clause 5, will result in feelings of a disenfranchised community, and it may undermine trust between citizens and Government. Our system of parliamentary democracy is all about checks and balances.

I appreciate, I understand that from the executive’s point of view, section 7 of the Act may be inconvenient. It is cumbersome, but it is worth the price where we can be assured that the principles of good governance are being observed.

Madam President, high principles are at stake here: Transparency, integrity,
Public Procurement and Disposal of Public Property (Amdt.) Bill, 2020
Sen. Vieira (cont’d)

economy, openness, fairness, competition, accountability and value for money. Our public procurement process must be subject to oversight. It must be open to public scrutiny. Clause 5 works against this.

5.00 p.m.

Additionally, let me just put on record that I am just not uncomfortable with clause 5, but the way in which it is being pushed through. Government must be responsive, not just to the needs of citizens, but also to their views and their legitimate concerns. Even if Government believes it is right, it should try not to come across as close-minded, unilateral or self-righteous. Madam President, I thank you. [Desk thumping]

Madam President: Sen. Nakhid.

Sen. David Nakhid: My dear brothers and sisters of Trinidad and Tobago, dear brothers and sisters of this noble House, I wish you all a good day in the name of Almighty God, the most gracious, the most merciful.

Madam President, thank you for the opportunity to join this debate which deals with proposed amendments to the Public Procurement and Disposal of Public Property Act which was passed by the People’s Partnership Government in January 2015 and later amended by this Government in their last term in 2016 and then again in 2017.

Madam President, I will like to preface my contribution by sharing with the people of Trinidad and Tobago, in like manner with Sen. Richards, how we can connect what we do here in this noble House with the actual man and woman on the street. Madam President, the damaging effect that not only this Bill, but any Bill that could facilitate corruption, has on the people of Trinidad and Tobago personally is of dire and immediate concern to all of us.

UNREVISED
For every unregulated dollar stolen by corruption, that is an available hospital bed gone; a CT scan machine, a dialysis machine not bought, a cancer treatment centre and upgraded health care system never built, that would save lives and serve the needs of the people of Trinidad and Tobago.

For every unregulated dollar stolen by the nepotism, that is a defunding of education, cutting of scholarships, cutting of GATE, inability to upgrade schools that only serve Form 5 students and never have Form 6 students graduate to that level, for example, in the constituency of Tunapuna, we have ASJA Girls’, St. Charles R.C., and Tunapuna Secondary who do very well at the Form 5 level but can get no funding from the Government to increase their Form 6 capacity; and countless others across the country.

For every unregulated dollar stolen by corruption we have a Government that needs to beg the private sector and businesses for laptops for students at all levels, unable to pay better salaries to teachers and administrators.

For unregulated dollar stolen by conflict of interest, that is an ineffective national agricultural policy that only gives seedlings and few land leases, chastises “doubles”, while failing to promote anything that can be termed as transformational policy to better serve farmers and their families.

For every unregulated dollar stolen by our failure to hold this Government to account, that is, a national sporting organization underfunded leading to disenchantment, less participation in sporting disciplines, poor results, poor representation, less hope to escape poverty, poor fields, poor stadia, fly-by-night coaches hired, and a national malaise. And as Sen. Lutchmedial said, sport is an uplifter, a unifier in our country, and has been historically so.

For every unregulated dollar stolen by corruption that leads to a less than
dynamic trade and industry sector which cannot stimulate growth and demand, which leads to job loss and a subsequent brain drain among our best and brightest. In other words, Madam President, should we, who are elected or appointed to represent the people of this great country, be cavalier in our examination of this Bill, in our prosecution in this Bill and derelict in our duty to protect our middle and working class brothers and sisters who stand to be most affected by the passing of this Bill, then we would have committed a historical injustice to our people [Desk thumping] and generations to follow.

Madam President, there are several disturbing clauses in this Bill. But before I go into the Bill itself, I want to ask this Government, since they amended the Act in 2016 and again in 2017, why these amendments that we debate today were not brought then? I want to know, how many times are we going to amend this Act before implementing it? It has to be a record. I cannot think of any Act amended so many times before it is even operationalized. And since the Government would like to pass this Bill by simple majority, I would like this Government to tell the Senate and the country, by extension, exactly when the Bill will be operationalized.

I would like to ask, have the regulations to the Act been completed after this debate, Madam President? I will say, no, it has not. And if so, why not? Because as far as I see, there in nothing in this—the original Act—that makes it unworkable, despite anything that we might hear. And what can we hear, Madam President? What we have heard is speculation: yes, we will do, trust us. We are your colleagues, not your friends. We have not been mandated by our people of Trinidad and Tobago to trust you with anything. We do not trust you. We will not trust you. We cannot trust you. [Desk thumping] We are here to account to the people of Trinidad and Tobago, and you must bring ironclad legislation for us to
pass it.

You see, Madam President, if this was some other Bill, we might be prepared to be lenient with this passage but this Bill is seeking to amend the existing procurement laws to make it easier to sell our property, held on trust, by the Government for the people without the involvement or protection of the independent Office of the Procurement Regulation. One cannot get any more blatant or boldface than that, Madam President. Why are we seeking to amend section 13 (1) of the Act? Their proposed amendment, in reality, emasculates the Office of the Procurement Regulation. That has been said over and over by the Senators. The essence of the amendment is a virtual gutting of the Act and makes it, in reality, as disguised repeal of the procurement Act, making it a virtual paper tiger.

When these amendments are passed, God forbid, the reasonable citizen will have to ask whether there still is, in reality, a procurement Act? Why are we removing the Procurement Regulator from the equation? When it comes to the sale of government assets and the provision of financial services, sale of government land, buildings, refineries, industrial plants should be the very thing that we need the Procurement Regulator to be involved in as a safeguard for our country’s patrimony. Do not try and fool the country by talking about Singapore and the U.S. and Canada and New Zealand, that is not our reality here and certainly not with this Government. [Desk thumping]

Madam President: Sen. Nakhid. Sen. Nakhid, you can make your contribution but there is no need to be shouting. So I would ask you to—


Madam President: Thank you.
Sen. D. Nakhid: Thank you. There are assets being held by the Government as a result of the 2009 bailout of Clico. It has been bandied about that assets such as Trincity Mall, Long Circular Mall are to be sold in short order without the independent Procurement Regulator.

Mr. Al-Rawi: I rise on Standing Order 48(1). The Bill has nothing to do with that. The law is not being amended that way.

Madam President: Sen. Nakhid, could you try and be a little more relevant to the Bill, please. Okay?

Sen. D. Nakhid: Guided, Madam. I would like to know, who will guard the public interest from political financiers in what, I am told, is a fire sale of assets? I would like to ask if—

Mr. Al-Rawi: I rise respectfully, again, on Standing Order 46(1). This Bill has nothing to do with disposal of assets. That is not being excepted from the law.

Sen. D. Nakhid: I would like to know who must guard the public interest from political financiers—

Madam President: Sen. Nakhid, I would ask you to look at the parent legislation, specifically the (o) that is being deleted. I will ask you to take look at it, and I therefore I uphold the Attorney General's objection.

Sen. D. Nakhid: Very well, Madam. We are also removing government to government dealings from the scrutiny of the Procurement Regulator. So who is going to buy our refinery in a fire sale? Wilmer Ruperti, Asdrúbal Chávez or Nicolás Maduro. Can we trust the Government with the assets of Petrotrin?

Mr. Al-Rawi: Madam President, I rise on Standing Order 46(1) for the same reasons again.

Sen. D. Nakhid: Madam President, I think we have seen—[Inaudible] With all
respect, we were told by this Government that Petrotrin was not for sale.

**Madam President:** Sen. Nakhid, hold on. You have a short space of time.

**Sen. D. Nakhid:** Guided, Madam President.

**Madam President:** I would ask you to be relevant to the Bill and accurate as well.

**Sen. D. Nakhid:** Petrotrin does not belong to the Government, Madam President. It belongs to the people. Long after, we politicians are gone on our merry way—

**Mr. Al-Rawi:** I rise again on Standing Order 46(1).

**Madam President:** Sen. Nakhid, could you move on, please? Just move on to another part of your contribution.

**Sen. D. Nakhid:** Who are we going to put in place of the Procurement Regulator? It might be better to be careful who we put. Anyone it seems might be better than the current Minister of Finance. I want to know, Madam President, if the procurement regulations would be tailor-made to apply to the Minister of Finance? And if not, why not? This is the same Minister of Finance who failed to report to the police that persons in the private sector tried to bribe him. So now we have a bunch of corrupt people walking around who tried to bribe a government Minister, and they walk around with impunity.

And we all know what our parents said about the upholder and facilitator being worse than the perpetrator. So we have a finance Minister who, by failing to report these corrupt individuals by his inactions, basically protects them. And this is the Minister of Finance who we are to put to replace the independent Procurement Regulator. How is this Minister of Finance to protect the public from government financiers when he is part of the Government? It reads like a Vaudeville show.

I would like to know what is there in the legislation to circumscribe the
power of the Minister of Finance when the assets of the people are being sold off either to international economic hitmen or those who sit around a table with CNN correspondents and boast about being the most powerful 1 per cent?

**Mr. Al-Rawi:** Madam President, I rise again on Standing Order 46(1), for the very reason that I rose four times already.

**Madam President:** Sen. Nakhid, continue, but continue under—

**Sen. D. Nakhid:** Guided.

**Madam President:** Yes.

**Sen. D. Nakhid:** Who will protect us? The Government has already sold property in Flagstaff, Federation Villas—

**Mr. Al-Rawi:** I am so sorry, again, with the greatest of respect, to rise on 46(1).

**Madam President:** Sen. Nakhid, I hope I do not have to—you have very few minutes left. You need to—

**Sen. D. Nakhid:** How many minutes do I have?

**Madam President:** You finish at, if you are allowed, because I am getting up too many times to ask you to come back to the Bill. So you will finish at 5.21 if you become relevant to the matters at hand.

**Sen. D. Nakhid:** Madam President, guided. Madam President, the assets of the people of this country are being sold with zero transparency and zero accountability. So this is why the procurement— independent Procurement Regulator is needed. Madam President, I turn to clause 5 of the Bill, in particular, the proposed amendments to section 7, clause 5 of the Bill which reads:

“This Act shall not apply to the following services provided to public bodies or State-controlled enterprises—”

Subclause (b) which deals with financial services. Madam President, in last five
years, we have seen the phenomenal growth of a finance house named NCB Global which, before 2015, was a virtual lightweight in the finance industry and is now dealing in transactions with billions of dollars. The Government needs to tell the country how much money it has borrowed from NCB Global from 2015 to now.

**Madam President:** Sen. Nakhid, you have five more minutes.

**Sen. D. Nakhid:** Thank you. The Government needs to tell this Senate the value of financing provided by NCB Global to any and all public bodies and state enterprises from 2015 to present. The Government needs to tell this Senate and by extension, this country, what rates of interest we borrowed at from NCB Global.

Madam President, I turn quickly to clause 7 of the Bill. I have to ask, why are we narrowing the categories of persons with this amendment? So now, we are limiting the persons to who—to those who have been convicted of corruption or fraud in the last 10 years. Why 10 years? We should not be doing business with convicted fraudsters at all. Why are we narrowing the categories of convicted persons we can do business with? Why not include all offences of dishonesty? Why are we leaving this door open, Madam President?

Madam President, with respect to clause 5 of the Bill, I want to ask the Government, when did they decide that section 7(2) of the Act gives rise to uncertainty? And if that is reasonable justification for not bringing the Act into operation? And I ask this in the context of transactions dealing with offshore patrol vessels and other marine assets. I ask in the context of the sale of Petrotrin to a local entity having failed to materialize spectacularly. And if as the Government is saying, this section gives rise to uncertainty, can they share with the Senate any legal opinions that they have solicited to that effect? Who arrived at that conclusion that section 7(2) gives rise to uncertainty? Is it an esteemed lawyer,
Madam President, I would like to end with a quote as my time has run out, having noted that many prominent citizens like former Senate President and the Law Association has come out against these amendments, I leave with some hope, an inspirational quote from son of the soil, Peter Minshall:

“A cancer of corruption...”

And I quote:

“A cancer of corruption corrodes the body politic, a corruption of spirit, a primitive, barbaric immorality of the soul. The beautiful island tapestry is being torn to shreds. A monument to enormous gaudy crassness replaces it, casting a...dangerous and murderous shadow.”

Madam President, through you, we are reminded that we are here to protect the interest of people, the society and the State. But more importantly, we have a sacred duty to protect democracy and our young people from that dark, dangerous and murderous shadow that this Bill, as laid, will simply and clearly bring upon our blessed country. I thank you. [Desk thumping]

Madam President: Minister of Agriculture, Land and Fisheries. [Desk thumping]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you very much for the opportunity to join the debate on this Bill. I seem to be coming after Sen. Nakhid very often which is not necessarily an easy task. I think the most dangerous thing, Madam President, that Sen. Nakhid has exposed today, and I thank him for that, is that fact that he has not read this Bill at all, he has not read the parent Act. He has not read—I stop right there, Madam President.

Madam President, what Sen. Nakhid has attempted to do was to turn this
debate into a whole conspiracy theory about disposal of property, to which the Bill
does not apply. But I just want—because I am responsible for state property—I
just want the public to know very clearly, that this Bill—the parent Act contains 70
sections and 10 of those sections deal directly with the disposal of public property.
And those 10 sections are not being affected in any way. And the 10 sections are
section 6, section 13, section 24(1) and a whole part of the Act called Part VI,
sections 53 to 57. Those deal with disposal of public property.
In fact, in section 13 where earlier in the debate it was made clear that the regulator
has asked to be removed on account of a concern of conflict of interest, the
Government proposes to delete section 13(o). But that leaves us in section 13—
with the powers of the regulator— it leaves us with section 13(c) that covers
disposal, (d), (e), (f), (h), (i), (l), (m), (n), (s). We start with the alphabet today,
Sen. Nakhid.

So, Madam President, this has nothing to do with disposal, that is for another
day. Which brought me, while I was listening, Madam President, to Sen. Nakhid
and the previous Opposition speaker, very quickly, to Maestro’s famous calypso,
“Mr. Trinidad”. And I was just thinking about that opening line.

Sen. Nakhid—“…what scene yuh on?”

That is the opening line:

“Mr. Trinidad…what scene yuh on?”

Or to ask my friends on the Opposition, what scene “all yuh” on today? Because
this is whole conspiracy theory. This Bill, as one of my predecessor speakers, I
believe it is Sen. Welch, this Bill contains 10 clauses but in reality, we are debating
clause 5 because there is really no depute with clauses 4, 6, 7, 8, 9 and 10 and
clauses 1, 2, 3 that precedes 4. This is a debate on clause 5 but there is nothing in
the others to really question or challenge. But it is worth your while, Madam President, to understand the history of section 7, because section 7 did not appear just like that.

In fact, when the Public Procurement Bill was laid by my friends on the other side in 2014, section 7 was not in the form it is in the Act that is awaiting proclamation. I want to make that very clear. In fact, section 7 in the version—the first version of the Bill, the 2014 version that lapsed, section 7 was simply and I quote:

“The Act applies to public bodies and private-public partnership arrangements.”

That was the extent of section 7 when it was laid in 2014. And when—and it lapsed but before it lapsed—and Sen. Vieira was there—before it lapsed in the committee stage, it is the Minister piloting the Bill who introduced what is now subsection (2)(a), (b), (c), subsection (3) and subsection (4).

Now, Madam President, that is very important because my friends on the other side want the country to believe—forget sanctimonious, I will come to that—wants the country to believe that this government to government arrangement is our creation. You introduced it in the committee stage in 2014 in the lapsed Bill, you introduced that and you knew why. So what is now section 7(2), (3) and (4), came in in that committee stage.

And in fact—and as Sen. Vieira, I appreciate your declaration, because a subsection (5) was introduced very, very briefly in the committee stage. And the subsection (5) that was introduced—section 7(5) that was introduced in the committee stage on the Bill—the 2014 Bill that lapsed was to exempt legal services from the application of the Act. So this is nothing—this is not something
new. This is something that came up and you brought it to the floor. And, Sen. Vieira, if you recall, you instantly rejected it, and I do not think your mind has changed and you are entitled to that.

But as Sen. Paul Richards correctly pointed, when elected and placed in Government, there are things you are required to do to get the country’s business done. And none of that is done capriciously. There are so many opportunities for oversight, including this place that we are in; so many opportunities from freedom of information, reports to the Integrity Commission, questions in all the various committees of Parliament, Questions on Notice, questions that require written responses, standing finance, there are many opportunities. And it is then attorney Anand Ramlogan who placed in the committee stage in 2014, the proposal to add subsection 5 to section 7—subsection (5) to exempt services. And if was good then, well, it must still be good now. It must still be good now and there were a number of Senators who even when it—even though it was withdrawn, who saw the merit in it. “What scene yuh on?”

The Opposition has come to us in the most sanctimonious way, as though it is the first time they have heard about Mr. Riley and Joint Consultative Council, and the citizens, the other group, the private sector group, the chamber and so on. But I will tell you this. In that same committee stage, when the addition of section 7(2), (3), and (4) was being discussed, it was Dr. Tewarie, the then Minister of Planning and Sustainable Development who spoke about the submission made by the JCC, and the same private sector group and the same chamber and the same business groups, opposed to the addition of subsections (2), (3) and (a). You see, that private sector group did not start this opposition today in fear of the PNM Government, you know. They started that opposition, and they did not start it then.
The contractors have always defended their turf.

And the Senator who referred to—Sen. Teemal who referred to Sodeteg knows that in the time when Sodeteg came here, there was opposition already, even though it was clear that Trinidad and Tobago did not have the capacity without the support of foreign contractors like Higgs and Hill, and all those contractors who were here, we did not have the capacity to take on those large projects. We did not have the capacity to do the contracts offshore to service the offshore environment, to build it. We did not have the capacity to build Point Lisas.

And it was understood.

5.30 p.m.

So to come now and talk about the private sector group and the JCC, we have been through this with that, and in the committee stage you pointed out, just as how they have. So to say it is a sign of things in the country as a kind of thing—no, they have consistently done that, and the Government has to consistently do, and the PNM in Government, we have to do what we believe we need to do to get this legislation implemented. I want to respond to Sen. Mark and the other speakers, one or two speakers from the Opposition, who talked about having two procurement regime. In fact, Sen. Mark called it the two-headed hydra. But I want to tell you because it is point I have always made in relation to procurement, and it is something I learnt when I joined Caroni (1975) Limited. You have to know the history of the Central Tenders Board. Central Tenders Board was created in 1961. But there was an amendment to the ordinance in ’83 by Act No. 22 of 1983.

And I would say Sen. Mark, it is not a two-headed hydra. In 1983 amended created a nine-headed hydra by the devolution of the power of the Central Tender
Boards. So the existence of more than one procurement regimes in this country is nothing new. Because the CTB amendment, this is what it did. It reserved for the CTB the contracts over 1 million, but it devolved power to the Permanent Secretary in a Ministry of between 500,000 and 1 million. It devolved power to municipal corporations, to city and borough between a 100,000 and 500,000. It devolved power to the clerks. The clerks in the borough and the clerks in city. It devolved power to the Deputy Permanent Secretary and heads of division in a Ministry of under 500,000. It devolved power to the Tobago House of Assembly. It devolved power to the CEO in a corporation of up to $50,000. And devolved power to special ministerial tenders committee, which we still have today, between 50,000 and 100,000. Over the years, the limits have changed.

But it is the successive changes, in particular, by virtue of Act No. 22 of ’83 that created multiple tendering regimes in the country and multiple procurement regimes. And what I learnt in Caroni, the hard way, Madam President—when I joined Caroni and was given responsibility for the official tenders committee, and I realized that at the end of the year the tenders committee had only dealt with about a million dollars’ worth in contracts, I wondered how it is Caroni—I used to hear that Caroni was spending 5 and $600 million a year. And I wanted to know if I had only dealt with 1 million in contracts, how the money was being spent? And as we know, in all those state enterprises, you have something called purchasing, and purchasing via three quotes is where the action is. I realized that there is no oversight there. There is no oversight over a three-quote system. Somebody is standing by a fax machine or somebody is standing by a box, and three quotes are invited and somebody puts it in the box and you open and you make an award. The formal tenders committee that had the CTB representative on a whole set of
bureaucracy handled only a small part. So, we have in this country—we have had, within enterprise, multiple systems of procurement, and within the country, different procurement regimes. And then we get to the creation of the RHAs which have their own tenders procedure, the Municipal Corporations Act which created a system of procurement for the municipal corporations, and, of course the defence force Act which has a procurement regime for the defence force. So, it is not something that has changed.

Madam President, we must also know that it is not the first time that we are trying to avoid concentrating all the procurement in one place. The Central Tenders Board went through that process, the ’83 devolution. By virtue of Act No. 36 of 1979, the Central Tenders Board’s powers were reduced. We moved to—we created the exception, the well-known section 20A exception which allows you to do tendering—

Madam President: Minister. Minister, you have five more minutes.

Sen. The Hon. C. Rambharat:—do procurement through a special purpose company to the point that we have significant procurement being done through special purpose committees. The government to government arrangements were codified by virtue of that amendment in 1979. The 1987 emergency procurement came by virtue of legislation; 1991, special ministerial tenders; 1993, the introduction of NIPDEC into the picture.

So, Madam President, my point is that it is not something to be feared. It is not—Central Tenders Board at one time after ’61, right up until ’79, they controlled the whole procurement show. And as things changed in the country and the requirements of the country changed, the Act was changed and power was devolved and power was placed in different places. And what we are saying today,
by virtue of this Bill, clause 5 of the Bill is the most important thing and it comes in two parts. And the first part is very simple, to put a full stop after the word “prevail”. Because what the hon. Attorney General has made known is that you have, on the one hand, the existing section 7 saying that where you have other arrangements, external arrangements, those arrangements will apply. But after the word “prevail”, something that is contradictory appears and that is, it makes a commitment. After the word “prevail”, a commitment is made to use the provision of the procurement legislation for that same—for the provision of the works, goods and services.

So there is an inconsistency if you are doing—if you are in a technical corporation agreement or a government to government arrangement, and part of section 7(1) says that the government to government arrangement will apply, and the second part after the word “prevail” says that the Act will apply, you are creating confusion and clearly that was not intended. Clearly, when you introduced in 2014, in the committee stage, subsections (2), (3) and (4) to what was in the original Bill, you understood that there must be different arrangements to government to government arrangement, and you created a contradiction that must be removed by putting the full stop after “prevail”. And the second part of it is something we could argue about. Sen. Vieira’s position is very clear. He was not supportive of excluding legal services then and he is not supportive now. But you introduced—you introduced legal services.

So if it is one thing that you should support now, is the inclusion of legal service because you wanted it then. And you know why? You were in government already for four years and you understood. And we are saying that it does not mean that there is going to be a lack of oversight, but those services which are excepted
are best performed through a different means of procurement. And it is not unusual. In Canada, in other parts of the world, legal services are procured through a variety of ways, all of which are transparent ways. All of which are transparent ways. And there is no need—the Government believes that the Act will be most efficient if those are excluded. And what it leaves us with, by fixing one section—one section we are really fixing, you know, one section, we are fixing 7, it still leaves us with 69 other sections to deal with all the other acts of corruption and everything that you complained about. All those things. Nothing we are doing here interferes with the regulator’s ability, law enforcement ability, the Parliament’s ability, or any oversight bodies’ ability to hold any government accountable for public procurement. Thank you very much, Madam President. [Desk thumping]

**Sen. Anil Roberts:** Thank you, Madam President. I hold in my hand the comments from the Law Association of Trinidad and Tobago, and they made some comments on the Bill that we are debating here today, the Public Procurement and Disposal of Public Property (Amendment) Bill, 2020. And point No. 25 that that Law Association made—and the Minister of Agriculture, Land and Fisheries should pay very careful attention:

Further to the proposed clause 6, which amends section 13 of the parent Act prevents the Office of the Procurement Regulation from acting on behalf of the Government vis-à-vis, disposal of real property owned by the Government. What this means is that scrutiny for the disposal of real property owned by the Government outlined in section 14 of the parent Act will not apply.

And it goes through section 14. And in No. 27 of the Law Association legal luminaries, it states:

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The question that therefore arises is who then would be acting for or in the name of the State to dispose of real property owned by the Government, and what oversight and scrutiny is there to preserve and maintain its objectivity and the non-discriminatory disposal? There is nothing in the Bill to provide as such.

Furthermore, in the Bill—Minister of Agriculture, Land and Fisheries, because you made an attack on Sen. Nakhid, I do not know why. Every time you come here, it is emotive, it is some—I cannot explain. But you said that he did not read the Bill, he did not study the Bill, he clearly is unprepared. Yet, your conclusions were totally wrong with regard to the debate that we are having here today. In clause 6 of the Bill, Minister of Agriculture, Land and Fisheries, the Bill says that they would amend section 13(1) to delete one of the functions of the Office of the Procurement Regulation contained in paragraph (o).

The function being deleted is that of acting for in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate.

Furthermore, we go to the actual section and we read 13(1)(o), hon. Minister of Agriculture, Land and Fisheries, and it says the part that is to be deleted, that we are actually debating here in the Senate today, it states:

Act No. 4 in the name and on behalf of the State to dispose of real property owned by the Government in such a manner as the Government may consider appropriate.

So this debate is about the disposal of property. It is about a regulator not being involved in the sale of assets, the sale of land, the sale of taxpayers’ assets. [Desk thumping] So I am dumbfounded to know that where the attack on Sen.
Nakhid came from because clearly, Minister of Agriculture, Land and Fisheries, we can now understand why you lost in Mayaro and you lost in Chaguanas East, and Vandana Mohit is looking for you. [Desk thumping] Because your attempts to be pseudo-intellectual have fallen flat in the face of the entire nation here today, as you are unprepared, after being in Government for five years, entering your second term, having lost two elections yourself. The Minister of Finance, a brilliant, intelligent man, went to UWI primary school and was bright from small, extremely intelligent. He was bright from small. I may disagree with his application of that God-given intelligence. But no one can ever describe the hon. Minister of Finance as intellectually challenged. He is bright like a bulb.

So let me deal with a little mischief then, because if one gives the fact that he is bright, then there has to be a little mischief. Because he even had some of the Independent Senators here today stating and repeating what he allowed. I know we are rushed for time, 20 minutes is short. But the hon. Minister of Finance in his speech, in his presentation here, compared and contrasted and put in one pot, the procurement for the aquatic centre, the cycling velodrome and the national tennis centre, and equated it with the acquisition of fast ferries, and said, “This is government to government, that is what you all like.” Let me just distinguished the process, because corporate governance is about process. And the basic principle about corporate governance is, the more eyes and ears, the more hearts and souls that are involved in the process, the harder it is to corrupt the process. The harder it is for any individual who may have a bad motivation or may want to impact the nation’s purse in the wrong way, it would be rather more difficult, the more individuals that are involved. You will have whistle-blowers, you will have people of good character, and the process will save itself.
So, the procurement of the contract, for example, for the aquatic centre, the tennis centre and so on, went to advertisement. It was done by the Sports Company. The Sports Company had a board, they had an evaluation team consisting of hired, intelligent, intellectual engineers of much experience and so on. There were 12 international companies that bid. There was a detailed process. The 12 were narrowed down to three. From that, the three went in to more details of financing and so on, and they were scored by an evaluation team of public servants, and then the Shanghai Construction Group won that, and then in the negotiation for the contract having won an opened advertised tender, the financing by the Ministry of Finance went to the Eximbank, and there you have it.

That cannot compare to two Ministers flying to Australia, meeting with CEOs at a company wearing hard hats, telling them to bring back two proposals to the exact same Minister who went on the plane. The Minister and his committee, he chairs the committee, they evaluate the tenders. They open the tender and they see that one bids higher than the next one. Somebody from the committee contacts one of the competing bidders and says, “Listen nah, your bid is too high. This team bid lower than you.” And then they come and lower their bid, and the same Minister who went and visited with the CEOs awards a contract for $1.5 billion, one to the left side and one to the right side. I would like to show the nation that that is two separate types of procurement. One can be best practice, corporate governance, under the People’s Partnership and the UNC, and one can be described as something else that we are here today to ensure that the procurement legislation will not be gutted to allow those who would like to procure and spend taxpayers’ money in that way, to do so going forward. [Desk thumping] My Minister, hon. Minister of Energy and Energy Industries, “I know yuh on de phone...
but yuh go come off da phone now, because yuh know meh mudda love yuh an’ I would love to talk to you, Sir.”

**Madam President:** Sen. Roberts, first of all—first of all, you address anyone through me. Okay? And you could speak about your love outside of the Chamber. All right? Just let us deal with the matter at hand.

**Sen. A. Roberts:** Thank you, Madam President, but I did not want to upset you by addressing you. So, okay, Madam President, now that you have invited me so to do, I shall. So, through you, Madam President, I will speak to the hon. Minister of Energy and Energy Industries, and I am here today to say Minister of Energy and Energy Industries, after I finish today, I will convince you to vote against the Bill that you all bring here today. So, please pay attention.

The hon. Attorney General, I must say I was listening in great detail, but we are talking about procurement, corporate governance, practice, conflict of interest, regulations, but I did not hear the hon. Attorney General, during his contribution, alert this Senate and the people of Trinidad and Tobago, as he was before entering the debate, that he is conflicted with regard to clauses in this very Bill that we are debating. It is part of the public record that he himself recused himself from deliberations at the Cabinet level with regard to elements that we are debating here. So to maintain the highest levels of corporate governance, conflict of interest, and so on, the hon. Attorney General should have alerted us to any possible conflict, so he can do that probably at a different time.

This morning while I was eating my doubles; local, national dish, down in Crystal Stream, I observed a lady, and she was pulling out her money, and she was counting ones. And she counted five one-dollar bills. And I could see her contemplating, looking at the Play Whe booth and looking at the doubles. Looking
at the Play Whe booth and looking at the doubles. She eventually decided to go to
the Play Whe booth and played a mark. Clearly, I was saying, like she is deciding
whether to eat, she is hungry, or try to get some hope to get a little bit more money
to buy things for her family later. After she played the mark, I told my doubles
man to put two in a bag for her, no pepper.

Madam President: Sen. Roberts, as fascinating as this is, I really would like you
to get to the point, please.

Sen. A. Roberts: I am getting to the point, Madam President.

Madam President: No, but get to it a lil faster.

Sen. A. Roberts: [Inaudible]—thing for you to make you happy. The point of the
Bill—

Madam President: Sen. Roberts, it is not about my happiness. It is about my
ensuring the smooth running and functioning of this Senate.

Sen. A. Roberts: Thank you, Madam President. The idea is that this Bill deals
with taxpayers’ dollars. This Bill deals with regulations and the elimination of
corruption, as Sen. Deyalsingh said, that too many dollars—purse—dollars spent,
every $10 spent is lost through corruption. So, we are here to have and bring
regulations rather than these amendments to gut and weaken a Bill that will
enhance and create opportunities for further corruption. [Desk thumping] We are
here to say withdraw these amendments, bring the regulation, and proclaim the
stronger legislation that was passed in the Parliament. [Desk thumping] Why do we
do this? Because when there is corruption, there is less for the people. There is less
for food cards, there is less for food baskets, there is less for laptops, there is less
for programmes, there is less for differently abled, there is less for pensioners. And
ladies have to choose between a doubles or Play Whe. That is why we are here to
debate for the people of Trinidad and Tobago. [Desk thumping]

The amendments here today deal with this, because these amendments are an attempt to legalize corruption, and it will not be tolerated. The Opposition Senators are here [Desk thumping] and we are here to debate on the issues. Because one must simply ask: Why? Why? Why these amendments? Why? And each citizen has to think why. You have a Bill passed, is it a perfect Bill? Will it end corruption? No. Because there is humanity involved in everything. But there is a Bill passed by a special majority that exists, waiting to be proclaimed for five years and three months, waiting on regulations. Why are we here to water down and weaken something is that strong? Why? I went and I researched, and I remember the Member for Diego Martin West in a previous incarnation in the Red House, before it was immaculately refurbished for half a billion dollars, stating to his colleagues as he stated on the Opposition side, talking across to his Government colleagues and saying, “My colleagues on the other side, we must not come to this place to help and assist those few wrongdoers who want to do wrong. We must stand firm and strong for transparency, accountability and good governance.”

That was the Member of Parliament for Diego Martin West in 2009. So why has he changed his position now? Why is he the head of a Government that brings a Minister of Finance to bring a Bill to water down and gut a procurement Bill that has been passed, that was consulted upon, that lots of citizens put their minds, their thoughts, their passion into it, to carry our country forward? Why come here to water it down? I just asked the question: Why? It is confusing. In 1995, as a swimming coach— because I understand humanity and people, and that is why hon. Minister of Agriculture, Land and Fisheries, when you make a debate and you
say that someone asked you to delete section 13(1)(o), these laws, we do not come here to make laws for personalities. Someone may hold the office of regulator right now and by tomorrow they may not be. Somebody might be the Minister of Agriculture, Land and Fisheries right now but tomorrow he may not be, or she may not be. We make laws for the position, not for the person in the position.

So to come here and say that the present regulator was conflicted, and therefore I bring an amendment to amend a law passed by an entire Parliament is not only ludicrous, it is illogical. And that is why I have to ask: Why? As I did back—for example, in 1995, as I breakdown the argument for the people out there. I was a swimming coach and coaching one of the best swimmers in the country, a 12-year-old girl called Kerry-Ann Gibbs, and she qualified for the world championships in short course in Rio de Janeiro, Brazil. And the association was run by people who were in politics, just like we are here. There was a red team and a yellow team. And those on the red team did not have any athletes that made the time. So, rather than work hard or forego the competition—

**Madam President:** Sen. Roberts, you have five more minutes.

**Sen. A. Roberts:** Already, Ma’am? That went fast. Rather than do that, what did they do? They watered down the rules. They watered down the qualification standard, and instead of saying that you had to make a time, top 20 in the world—because only one athlete did it, and the athletes they wanted did not. In order to get their athlete to go, they said, “Okay, forget the qualification standard. Let anybody who the coaches feel should go and benefit, go.” That is what we are doing here today.

We have a strong piece of legislation, yet we are coming here to the Senate to soften it, to weaken it, to make it null and void. The tenets of good governance
are very simple. The more eyes you have, the more people in the chain, the harder it is for nefarious means to take over. Let us simply compare. As I was talking about the aquatic centre and so on, back in 2010/2015, Kamla Persad-Bissessar was Prime Minister, and she told all of Trinidad and Tobago, one board for one person, one chairmanship for one person, no family members of Ministers on boards, no executive chairmen. We have changed that over the last five years. We have members—citizens of Trinidad and Tobago on eight and nine and 10 boards. We have one individual spending money, and building and in charge of police station, fire station, sports industry, fancy Red House, President’s House, Prime Minister’s residence, community centres, building everything. Why? Do we not have people with brains? Trinidad and Tobago have brains, that is one thing. We have, brain, efficient people. How is it that one person in charge of all of that? When you to that, when you eliminate people, when you eliminate discussion, when you eliminate different—you give the opportunity for human beings with nefarious goals to take root. And that is why we cannot support these amendments.

[Desk thumping] Throw them away, proclaim the Bill, bring the legislations and the Opposition will support.

I cannot believe I am running out of time. We getting paid by the Government and the time is just in half. Let me fast forward, please. Independence 1962 and today, Independence is very important. As my learned colleague, the Minister of Energy and Energy Industries, through you, Madam President, said he cannot convince me and I cannot convince him. I hope that is not true. But let us take him at his word. But he is really talking about the Independent Senators, and with all due respect, I know quite a few of you. In fact, one was kind of my boss. I did not call you. I would not speak to you. I do not put a thought in my head to try
to convince you of the efficacy of my arguments before presenting it. I come here
to make a case for what is best for Trinidad and Tobago, hoping that the
Independent Bench, not red, not yellow—“dey doh like Anil and dey doh like
Minister of Energy and Energy Industries.” They just like Trinidad and Tobago.
Well, today is a red letter day for Trinidad and Tobago. And it is unfortunate that a
lot falls on the Independent Bench. But in a country that is so politically divided
that logic goes out of the window, independence is a priceless commodity.
Independence can save our country from falling down the—

Madam President: Sen. Roberts. Sen. Roberts, you are going down a path that I
think is not proper, and I would ask you therefore to come back to the Bill itself.

Sen. A. Roberts: Thank you, Madam President. The Bill deals with procurement.
The Bill deals with politics. The Bill deals with taxpayers’ resources. The Bill
deals with the future of Trinidad and Tobago. The Bill deals with, we have a law,
three-fifths majority. The Bill deals with democracy. The Bill deals with simple
majority as opposed to special majority. The Bill deals with the very essence of our
country. So, today is about Independents and independence. Abstinence may be
good for family planning, but not today. Abstinence—[Inaudible]

Madam President: Sen. Roberts. Sen. Roberts! You are going down a path that I
do not think is proper. You have a few seconds, I would ask you to wrap up your
contribution.

Sen. A. Roberts: Madam President, [Laughs] I do not know what path you
thought I was going down, because I am not sure what path I am going. I am
saying today that we are here, Trinidad and Tobago—

Madam President: Sen. Roberts, your time has expired. Minister of Finance.
6.00 p.m.
The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President, and there are some proposed amendments which I would ask to be circulated at this time. I think the Attorney General has conduct of that and let me just deal with those amendments right away. And those are based on comments made by the Independent Bench starting with Sen. Thompson-Ahye who made the point that in the Jamaican Procurement Act and the Jamaican Procurement Act is very instructive and very relevant to what we are about today. In the Jamaican Procurement Act of 2015 there is a list of exempt services among other things. And I will go into that in more detail in a little while. But what the Jamaican Act requires is that if the Minister wishes to expand on the list of services already in the First Schedule to the Act that matter must be subject to affirmative resolution of Parliament. I think Sen. Richards also raised that point. And I am pleased to say that we have considered that matter and we agree that we can change negative resolution to affirmative resolution. So it means that if any additional services are to be added to the list of exempt services it will require debate and a vote in both Houses of Parliament, including this distinguished House where we do not have a built-in majority. So that is one of the amendments.

We also wish to change or amend or improve the list of services that are in clause 5 of the Bill. We wish to keep legal services and I will explain that in a while. Change financial services to debt financing services for the national budget, so it becomes crystal clear, it is not any ordinary, common or garden financial service. It is financing specifically for the national budget. And change medical services to emergency or other schedule medical services. I also wish to point out, because in discussion we had thought about the concept of laying all these government to government agreements in Parliament so that they could be seen, disclosed and
debated by hon. Members and examine by the relevant committee of Parliament. We have many committees at this stage. But what I did not remember is that in section 7 of the parent Act there is already a very robust system for full disclosure. And some of the commentators and some of the commentators external to this Senate really have not done justice to the debate because they say things that are not rooted in reality. They say things which are simply untrue and it is sort of organized emotion when they make these statements that are simply, patently untrue. In section 7 of the Act as it exists, section 7(3) says that:

“A procuring entity engaged in procurement proceedings relating to a treaty or agreement referred to in subsection (2)(a)”—which is the section that is being proposed to be amended by clause 5 of this Bill—“shall comply with section 29”—of the parent Act—“and submit a report on such compliance to the Office.”

Now, what does section 29 tell us? When we go to section 29 we see that certain mandatory requirements are specified in the Act for procurement of any kind. And there is no intention on the part of this Government to change or remove the application of those mandatory requirements to government to government agreements. And if I can just read section 29 of the Act now for hon. Senators so they will know, so that we are not touching section 7(3) of the Act which requires the entity, whether it is a Ministry, whether it is a state enterprise, whether it is a statutory authority, because all of these things are covered by the definition, the words “procuring entity”. And section 29 says:

“(1) A procuring entity shall ensure that suppliers and contractors—
(a) have the legal capacity to enter into the procurement contract;
(b) are not insolvent, in receivership, bankrupt”—and so on.
“(c) have not, and their directors or officers have not, been convicted of any criminal offence”—and we are amending that to say within a 10-year period.

“(d) have fulfilled their obligations to pay all required taxes and contributions in Trinidad and Tobago;

(e) have the necessary professional and technical qualifications and competence financial resources, equipment and other…managerial capability…experience…”—et cetera.

“(f) meet relevant industry standards.

(2) Subject to the right of suppliers or contractors to protect their intellectual property…a procuring entity shall require suppliers…to provide appropriate documentary evidence…to satisfy itself that…contractors are qualified.”

And it goes on and on, Madam President. Section 29 goes into evaluation. It says:

“(4) A procuring entity shall evaluate the qualifications of suppliers…in accordance with the qualification criteria specified in subsection (1)”—of this section.

And then continues to go on to say:

“(5) …a procuring entity may require the supplier…to certify on oath that the documentary evidence provided to demonstrate his qualifications…is true and correct.”

And it speaks about disqualification and, I mean, section 29 has multiple subsections.

The point is that section 7(3); 7 subsection (3) of the Act makes it crystal clear that even in the situation or particularly in the situation of a government to
government agreement a contract that is entered to by way of a government to
government agreement, that a report must be submitted to the regulator on
compliance with section 29. And as I said section 29 gives you very strict criteria
with respect to procurement even under the auspices of a government to
government agreement. And what is more important or equally important, section
7(4) says:

“The Office shall, within twenty-one days of receiving a report under
subsection (3),”—which is the report on compliance with section 29 is all
those things I just read out—“forward a copy of the report to the Speaker of
the House of Representatives who shall cause the report to be laid in
Parliament at the earliest opportunity.”

I wanted to make that crystal clear. So all this talk from outside and from the front
there, not the back, about secrecy is just baseless. Because we are not touching 7(3)
or 7(4), Madam President.

The other point I would like to make is that it is necessary for us in the
Caribbean to look at what is happening around us. And some Members made
mention of the Jamaica Act and I think that was very important and I congratulate
Senators who took the time to go and look in detail at the Jamaica Act. The
Jamaica Act, the Public Procurement Act of 2015 has been in existence now for
five years, but Jamaica procurement under a previous legislation has been in
existence since 2008. And Jamaica has already had one Procurement Regulator
serve his full term and has appointed a second Procurement Regulator and that
regulator has reported to the Jamaica Parliament on the acquisition of goods and
services by the Jamaica Government and state authorities in that country.

And in that Procurement Act of Jamaica which as I said has been in
existence now for five years and its principles in existence for much longer than that and have been applied and have been scrutinized and have been interpreted and have been disputed and have been litigated in the Jamaica Procurement Act, it says:

“1. The procurement methods and processes...do not apply to the following goods, works and services—”

The first item is:

“(a) goods, works and services donated by the Government of Jamaica to a non-governmental organization...”

Second one:

“(b) land or...immovable property...”

Third one:

“(c) works of arts...”

Fourth:

“(d) goods, works and services relating to the staging of productions...associated with creative expression...”

Five:

“(e) medical services;”

Six:

“(f) legal services;

“(g)”—which is seven—“medallions and insignias for...National Honours...”

(h) goods, works and services of a sensitive nature”—and this is very relevant—“for use in or acquisition for the purposes of national defence or national security;

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“(i) travel services…hotel accommodation…
(j) contracts for broadcasting time;
(k) programme material intended for broadcasting…”

And this is the relevant one which is exactly what we are proposing with clause 5:
“(l) goods, works and services under multilateral or bilateral agreements to which Jamaica is a party, or an agreement between Jamaica and an international organization, providing for an alternate system of procurement than that which is provided under this Act.”

So in the Jamaica legislation which has been in existence for five years and the principles in existence for more than 10 years, the Public Procurement Act and the oversight by the Regulator in Jamaica, which is the first functional regulatory system for public procurement in the Caribbean as far as I am aware within Caricom, goods, works and services on the multilateral, bilateral agreements or on an agreement between Jamaica and an international organization, providing for an alternate system of procurement are not subject to the Public Procurement Act.

So what we are doing is exactly the same as occurs in Jamaica and has occurred in Jamaica for many, many, years. What I would also like to do is just correct some misconceptions. I heard Sen. Teemal refer to PPP contracts and it appears he was under the mistaken impression that we are removing PPP contracts, public/private partnership contracts from the ambit of the Regulator. That is not so. Let me just read section 7 of our Public Procurement Act very carefully, because what I find in a lot of this debate a lot of people are not zeroing in on the actual words contained within the legislation. And let us read section 7 that we are seeking to amend.

“7. (1) This Act applies to public bodies and public-private partnership
arrangements.”
I just said so. But that is a sort of a, what shall I say, sends you down a rabbit hole because it is irrelevant to what follows next.

“(2) To the extent that this Act conflicts with an obligation of the State under or arising out of the following:”
And this is what we are touching. Not public/private partnerships. All 7(1) said is that Act applies to public bodies and applies to public/private partnership arrangement. What we are seeking to change is not 7(1). We are looking at 7(2):

“To the extent that this Act conflicts with an obligation of the State under or arising out of the following:”—and it is very restrictive.

“(a) a treaty or other form of agreement to which Trinidad and Tobago is a party with one or more States…
(b) an agreement entered into by the Government of Trinidad and Tobago with an international financing institution; or
(c) an agreement for technical or other cooperation between the Government of Trinidad and Tobago and the Government of a foreign State.”

So the specific section of the existing Public Procurement Act that we are seeking to amend only deals with these three things, a treaty to which the State of Trinidad and Tobago is a signatory, an agreement to which the State of Trinidad and Tobago is a signatory and that is with an international financing institution an agreement for technical or other corporation between the State and another State. And the operative words are to the extent that this Act conflicts with an obligation of the State.

So it is Trinidad and Tobago’s obligations under a treaty or an agreement with an international financial institution or a technical assistance agreement or
economic cooperation agreement with another State. So it has absolutely nothing to do with private/public partnerships, we have no intention of removing private/public partnerships from the ambit of the Regulator. I just wanted to make that absolutely clear. These three things are public, public, pure public, public, Government of Trinidad and Tobago, another government and so on.

How much more time do I have, Madam President?

**Madam President:** Twenty-nine minutes past six.

**Hon. C. Imbert:** Okay, so I have another 14 minutes. Very good. I noticed on the other side that Members of the Opposition resorted to, what is quite normal behaviour, by not giving the whole truth with respect to certain matters. Let me turn now to section 13 of the Public Procurement Act, the existing one. One of the Opposition Senators made a lot of, I think the correct word would be, “hooha” about section 13(o) and the proposal to remove section 13(o) from the Act. Let me read what section 13(o) says. And section 13 has a series of subsections and it starts off with:

“(1) The functions of the Office”—and that is the Office of Procurement Regulation—are…”

And when you go to (o), (o) says:

“act for, in the name and on behalf of the State to dispose of real property owned by the Government in such manner as the Government may consider appropriate and desirable;”

So in this parent Act, passed several years ago, the Regulator was given a specific function to act for the State to dispose of real property owned by the government. The Regulator has belatedly realized that this is a conflict. Because if you go to the preceding subsection which the Opposition Senator neglected to read
out you will see that it reads as follows, that the functions of the office are to:

“(n) investigate, on its own initiative or upon complaint from any party involved in public procurement or disposal of public property or any member of the public, any alleged or suspected breach of this Act;

So this is really a legal nonsense, Madam President, because in (o) it requires the Regulator to act for, in the name of and on behalf of the State to dispose of real property owned by the government. But in (n) it says it must investigate on its own initiative or upon complaint from any party or the public any alleged or suspected breach of this Act. So therefore, if it carries out the function in (o) and there is a complaint it will then have to investigate itself and the Regulator has belatedly seen that point. And this is why (o) must come out because (n) is there.

So therefore the statement made that we are deleting and taking away from the Regulator oversight of the disposal of public property is another nonsense. We are certainly not doing that. What we are doing is removing the conflict that the Regulator would be required to dispose of public property and then if there is some “rachiffee” investigate himself for the alleged “rachiffee”. But the Regulator still will have the power to investigate the disposal of public property because it is clearly defined in (n), that that is a function of the Regulator.

With respect to why we are here and why we are doing all of this, we on this side firmly believe that with the amendments that we are proposing as arising from the debate, as arising from the contributions of hon. Senators on the Independent Bench, in particular, that by putting the onus on the government to come to Parliament and receive affirmative approval for any additional services that that provides the level of safety and security that is required. We believe that by
illustrating that the law already requires any arrangement between the government and any other government with respect to a treaty or a bilateral agreement to be reported to the Regulator and to be brought to the Parliament within a short period of time for scrutiny, for debate, for examination by all Members of Parliament, we believe there are already sufficient safeguards within section 7 of the law.

What we do not want is to create a situation of conflict because the law as it currently stands creates a conflict. It speaks to government to government agreements which would flow from a treaty or a framework agreement such as the framework agreement signed between the government of Trinidad and Tobago and the government of China under the UNC government, for economic cooperation in a number of matters, including the said sporting facilities that that Opposition Senator would like us to believe is not contained within that framework agreement for economic cooperation with China. It is there together with the conversion of the San Fernando Administrative Complex into the San Fernando Teaching Hospital. That framework agreement between the Government of Trinidad and Tobago and China was modified and amended under the UNC Government to include a number of things, including the sporting facilities.

But the fact of the matter is that there is a conflict. Because if you have a framework agreement for economic cooperation with the government of Austria, which we have, that is how the said facility I just spoke about, the conversion of the Chancery Lane Administrative Complex into the San Fernando Teaching Hospital was done under the framework agreement with the Government of Austria. And that is why VAMED, an Austrian contractor was selected and that is why an Austrian Bank gave a very concessional loan for that project as well as the Point Fortin Hospital project and now the Sangre Grande Hospital project.
So that if you have a treaty arrangement, a framework agreement negotiated bilaterally between Trinidad and Tobago and all of these Governments, Austria, China, UK, United States, whatever it is, and there are particular procurement provisions within that treaty and particular procurement obligations of these particular countries or international organizations there is a conundrum in the existing law that you cannot say that the requirements of the treaty will apply unless it conflicts with the Act. Because then where are you really going with this. You would then be in breach of your treaty and in breach of your bilateral agreement with these entities and you simple would not get any assistance at all. So it is quite pointless.

And then the situation of COVID-19, who knows what is going to happen two years from now, Madam President, who knows. Who knows whether Trinidad and Tobago will require emergency financial assistance from an international organization, from the Inter-American Development Bank or the World Bank as we are getting now? In fact I wrote a letter yesterday to the World Bank asking them for their agreement to modify the World Bank loan that we got for COVID-19, to take the remaining funding in that World Bank facility and apply it to the COVID vaccine that we expect to get for our 1.3 million citizens within the next couple of months, Madam President. If there were no bilateral arrangement between Trinidad and Tobago and the World Bank I could not do that, I could not do that.

I also had the honour to provide a guarantee for the vaccine, the COVAX, vaccine alliance to allow the COVID vaccine to come to Trinidad and Tobago as soon as possible by way of a bilateral agreement with the vaccine alliance. If we had to subject that to different procurement arrangements, I could not do that,
Madam President.

So the point I am making, we are in a very difficult situation in Trinidad and Tobago. This is a very, very, serious matter. There are many things that this country will require. We certainly do not make vaccines to deal with the dangerous pandemic, we do not make that in this country. There is no supplier or contractor in Trinidad and Tobago that could make a COVID vaccine and therefore it is incumbent on us to do whatever we can to engage with the rest of the world and to apply their procurement procedures for something as simple and dangerous as that, Madam President. So I am simply making the point that we believe there is sufficient protection and provisions for full disclosure already section 7 of the Act—

Madam President: Minister, you have five more minutes.

Hon. C. Imbert: Five more minutes, thank you, Madam President, I would not use the whole five. But I am simply making the point that section 7 of the Act already compels the Government, in all its manifestations, whether it is UDeCOTT that was spoken about, whether it is NIPDEC, whether it is a regional health authority, whether it is the Ministry of Agriculture, Land and Fisheries for that matter, compels anyone of these entities if they are making an arrangement with another government for technical cooperation or economic cooperation, compels that procuring entity to send a report to the Procurement Regulator which the Regulator must lay in the Parliament. And compels the procuring entity as well to comply with section 29 of the Public Procurement and Disposal of Public Property Act which is a very strict provision, section 29.

So we think there are appropriate safeguards and significant protections for our citizens and significant opportunities for parliamentarians to examine exactly
what this Government has done. And I would also like to make the point, as nice as
the Procurement Regulator may appear, the Regulator is not accountable to the
people of Trinidad and Tobago. The Members of this House are, the Members of
the other place are, the Government is accountable to the people of Trinidad and
Tobago through the Constitution. We in this Senate and Members of the other
place we all accountable to the people. We seek their mandate, those of us who are
elected seek their mandate every five years and those of us who are appointed
swear an oath to do right by all manner of people, Madam President. The
Regulator is not accountable to the people. And with due respect neither are the
Chambers of Commerce accountable to the people.

So we feel with these amendments making the list of services that the
Minister can prescribe by order subject to affirmative resolution, making a simple
adjustment with respect to matters of national security and all of the other
provisions that already exist, Madam President, we feel this is appropriate and
correct for Trinidad and Tobago as we chart uncertain waters, as we navigate
through this COVID-19 crisis and we have absolutely no idea what next year will
bring and the year after that. We do not know what the new virus that will appear
on the horizon is, the new pandemic, we have absolutely no idea. And therefore we
firmly believe that we must engage in acquisition of technology and acquisition of
financing, in particular, from international bodies at a moment’s notice. So, having
said all of that, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*
6.30 p.m.

Madam Chairman: All Members should be in receipt of a list of amendments as proposed by the Minister of Finance, and amendments proposed by Sen. Richards. [Madam Chairman confers with the Clerk] Okay. All right, just one second. I guess now is the time to introduce a new dimension to what we will be doing in the Parliament as part of our strategic planning. We have the amendment as proposed by the Minister of Finance, I think that has been circulated; the amendment as proposed by Sen. Richards has been emailed. It is on the Rotunda and can be accessed that way. You do remember that we are trying to—as part of our strategic plan everyone has iPads and we are trying to move away from this dependence and reliance on excessive paper. So—

Mr. Imbert: Madam Chairman, with your leave—could I just make a point with your leave?

Madam Chairman: Sure.

Mr. Imbert: I understand the move towards a paperless system, but the Deputy of CPC has pointed out to me that she is unable to access the Rotunda and she is our technical adviser.

Madam Chairman: So we have a limited number of hard copies of the amendments as proposed by Sen. Richards—a limited number. I am just trying to signal to those who need it. Attorney General, you would like a hard copy?

Mr. Al-Rawi: Well, more than that, we do not have Rotunda nor do I have any emails from the Parliament that consistently said this, Madam Chair. So I will undertake to try and get into that zone, but regrettably I am not in a position to be there yet.

Madam Chairman: It was e-mailed to everyone here. Okay? So I am just asking Members, it will take a little adjustment, but it is an adjustment that is required on
the part of all. We have some copies today so we will be circulating to those who need it. Okay?

Mr. Al-Rawi: Thank you, Madam Chair.

Madam Chairman: Attorney General, I am told that because you are a guest that it was not emailed to you. It has been emailed to all Members of the Senate. That is the difference and we will address that in the future.

Mr. Al-Rawi: Very kind of you, Madam Chair. Also, I have repeatedly told the Parliament that they apparently have the wrong address for me because I do not get any emails from the Parliament. Thank you. Much obliged.

Madam Chairman: Okay. We will deal with all of that as we move along, but just to get everyone’s head in the game that you are not going to be getting the hard copies as in the past. Okay? Minister of Finance, you are ready?

Mr. Imbert: Yes.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

Question proposed: That clause 4 stand part of the Bill.

Sen. Lutchmedial: Madam Chairman, I have a concern with respect to the definition of “bid-rigging” specifically with the reference to anti-competitive behaviour. I mentioned it in passing to the Attorney General earlier that I feel that the definition there without defining what anti-competitive behaviour is, it is quite wide and this bid-rigging it links back to a very severe fine and penalty by virtue of section 60, I believe it is, of the Act, it is something like $5 million and imprisonment for 10 years. So I feel with those types of penalties being attached we need to clarify that definition a little bit further, “anti-competitive behaviour”, to define what it is. I was drawing the Attorney General’s attention to the Fair Trading Act which also deals with anti-competitive behaviour, and it is—well, in
that legislation it is a bit different because you have the Fair Trading Commission set up to determine whether or not the behaviour is in fact anti-competitive. But it does drill down a little bit more in terms of what amounts to anti-competitive behaviour and I feel some more consideration ought to be given to expanding this definition please, Madam Chairman.

**Madam Chairman:** Sen. Vieira.

**Sen. Vieira:** Thank you, Chair. Through you, to the hon. Attorney General, I find the original definition is a much better definition than what is being proposed in the amendments. The original definition is quite clear:

“…collusion between persons for the purpose of manipulating the proceedings;”

When you are now bringing these elements, “collusive price-fixing”, “anti-competitive behaviour” which I share the same concern about not defined, but now you have:

“…designed to unfairly influence the outcome of a competitive tender process…”

There are too many elements now to be proven that could almost weaken the definition. I think that—what was the term? Negative-implication canon. You know, it is much better to say no dogs allowed which is very clear, than to say open for treatment for dogs, cats, horses and all other farm and domestic animals. I prefer the original and I am not in favour of the amendment.

**Mr. Imbert:** Yes, these words come straight out of the improvements in the regulations in the European Union. And to answer the first point made by Sen. Lutchmedial, the words that follow “anti-competitive behaviour” clarify it. It means exactly that, that the behaviour is designed to unfairly influence the outcome of the process. The original definition is very vague. It simply says,
collusion between persons for the purpose of tampering with procurement proceedings, but to what end? Tampering to do what; to achieve what? So the reason why we are bringing in this definition is that it codifies exactly what we are driving at:

“…collusive price-fixing and anti-competitive behaviour designed to unfairly influence the outcome of…”—the—“…process…”

Because that is what bid-rigging is all about. When there is bid-rigging you have a number of bidders, maybe five or so, they all agree four of them will bid high and one will bid low, but the low bid is higher than the market price so that the lowest bidder gets it. That is what bid-rigging is, it is collusion between people to defeat the competitive tendering process. If Sen. Vieira is of the view that this has too many things in it, well, then I would draw his attention to the original definition, it has too little in it. It simply says tampering with the procurement proceedings. It does not yield an outcome, and therefore, very difficult in my opinion to prosecute somebody for this offence, tampering with the procurement procedures. What does that mean?

Mr. Al-Rawi: Thank you, Madam Chair. I thank Sen. Vieira for his observations. I would like to put on the record that by way of letter July 12th, 2019, from the Office of the Procurement Regulator, the Procurement Regulator in respect of this definition said the following:

The definition of bid-rigging despite its legalistic tone does not create an offence known to criminal law. Further, the way the term is drafted does not appear to amount to an unlawful or criminal offence. The definition is not wholly consistent with its international counterparts. Whether the definition ought to be amended to state that bid-rigging is in fact a criminal offence or any alternative, it remains an acceptable legal definition attracting a specific
penalty and a fine of five million dollars and imprisonment—et cetera.

It was in the course of many pre-LRCs and LRCs for the procurement regulator, that we went through his request which made the observation that the definition as in the original Act was inadequate. We therefore went, as the hon. Minister of Finance did, to the European models where we took the concepts as put forward in this Bill.

With respect to Sen. Lutchmedial’s observation, I did have an opportunity to look at the unfair competition legislation, and whilst that law does not have a definition for unfair competition, and whilst it does also have certain elements of describing how certain sections of it can be dealt with, in the international perspective of looking at a definition these elements are what we have found in the bid. It is also born about on the back of litigation that we are involved in at present. Not that we are directing to any specific litigation, but the advice coming from Queen’s Counsel, in particular, has been that the European models are certain and precise. And specifically with respect to the term “unfair competition”, as we have included it in the definition of bid-rigging, there is quite a bit of case law relative to what is anti-competitive behaviour in the context of bid-rigging and that is from the Supreme Court of the United Kingdom, previously House of Lords, et cetera, so that there is ample precedent in law as to the interpretation of these meanings.

Mr. Imbert: If Sen Vieira could give us—


Sen. Lutchmedial: Madam Chairman, I was understand what the hon. Minister of Finance was saying and the unfair competition Act is one of them, but if you look at the Fair Trading Act it talks about the definition of an anti-competitive agreement and it goes a little bit further, it talks about:

“fixes prices directly or indirectly other than in circumstances where
the agreement is reasonably necessary…”—and so on.

It is a little bit more fleshed out there, but if—I have no issue with collusive price-fixing. I think the case law adequately deals with that. What I would suggest is “and anti-competitive behaviour”, could you insert there then, “which is designed to unfairly influence” so that it will read a little bit better. If that is the explanation according to the Minister of Finance of the words to carry in terms of—to define the anti-competitive.

**Mr. Imbert:** We accept that—

**Sen. Lutchmedial:** That is fine?

**Mr. Imbert:**—improvement.

**Sen. Lutchmedial:** “…which is designed to unfairly influence”—the behaviour must be—

**Mr. Imbert:** Agreed.

**Sen. Lutchmedial:**—proven. Right.

**Sen. Vieira:** Thank you, Chair. In my research I understood that anti-competitive behaviour is usually not defined as a term of art or a statutory definition. It is more a concept about behaviour that is determined according to the circumstances of a particular case. So I would be wary for the same reasons about pinning down anti-competitive behaviour in the form of a definition. However, in terms of coming back to bid-rigging, the definition that I saw that resonated with me was, “collusive conduct between undertakings to avoid competition between bidders in response to an invitation to tender”. Now, that is—again it does not get down into all of the different things about “designed to unfairly influence the outcome”. It is collusive conduct between undertakings to avoid competition between bidders, and to me that is an easier—

**Mr. Imbert:** But what we are really trying to pin down—I mean, we have
experience with this, eh, in Trinidad and Tobago, and we are trying to pin down exactly this kind of behaviour that people are trying to unfairly influence the outcome of a tender process. So that is what it is all about. They all collude together, they fix prices, and the intention is to unfairly influence the outcome of the process. So that, you know, the contract is awarded to someone way above market price. I mean, I am hearing everything you are saying, Sen. Vieira, and those words sound quite appropriate, but I think they in themselves might run into trouble because then you get into the question on what is conduct and all that sort of thing.

**Mr. Al-Rawi:** Madam Chair, I thank Sen. Vieira and both the Minister of Finance for their contributions, but we are being very specific in the criminal law here now as opposed to anti-competition or unfair trading which have civil elements to them even though there are consequences for setting aside contracts and declaring behaviour in a particular way. What was so critical in the advice coming to us in particular in the criminal law aspects in cases that we were doing, is that we needed to have an actus reus which got to a point. The Minister of Finance said it a little bit earlier. We need to see something that is both commission and omission, and there needs to be something which is definable and tangible in the context. That is why we went into the zone of, “designed to unfairly influence the outcome”, and the designing catches in the criminal law, in the case law, the whole concept of the conspiracy to defraud.

So whilst the conspiracy to defraud is well known in our common law and in other areas, it was specifically because of this bid-rigging and how it has been actuated in the court in the criminal context that we had to look for a precipitate, if I can use that expression, in the manner that we have come with. But I am satisfied having looked at the case law in other jurisdictions that this is within it. I think that
Sen. Lutchmedial’s improvement of the language helps us to get to a better place as well.

**Madam Chairman:** Sen. Mark.

**Sen. Mark:** Attorney General, you said that the Procurement Regulator had recommended some changes to the concept or definition of bid-rigging. Can you share with us whether this final proposed amendment was seen by him and was he in agreement with it?

**Mr. Al-Rawi:** Madam Chair, so it was his written communications that I read, and then, secondly, in the public domain the public Procurement Regulator in a press release said that he was perfectly fine with this clause as drafted. We agreed that Sen. Lutchmedial’s insertion of words helps us to a better position. So therefore, I can confirm, yes, by way of his media release supporting this. He has confirmed that he is in agreement with this.

**Sen. Mark:** Madam Chair, there is another point I would like to raise. The European model that you mentioned earlier, this concept of anti-competitive behaviour, is it in the regulations, Attorney General, or is it a broad concept that you find in the definition section?

**Mr. Imbert:** It is both collusive price-fixing and anti-competitive behaviour find their way into the European procurement regulations.

**Sen. Mark:** Right. Madam Chair, this is now what I want to ask the Minister of Finance: If we were to leave the definition as it was, as it is, I should say, in the old Act of Act No. 1 of 2015, can we, for instance, put into the regulations all those areas that we are speaking about? So that, for instance, it could more fit in the regulations dealing with anti-competitive behaviour rather than trying to incorporate it in the definition without a definition.

**Mr. Al-Rawi:** Madam Chair, the reason why this is in the parent Act as it is, is
because there is an offence associated with bid-rigging, and the law whilst one has the ability to put offences into regulations and to provide for exceptions to the Interpretation Act and other prescriptions for breaches of the regulations which are common, in this case here we have to define it because of the offence that is created in the Act itself. The regulations will tell you certain aspects of how things work in the manner in which you procure, and that could very well feed into an allegation of bid-rigging but the actus reus and the mens rea for the offence must be defined in the parent law.

**Madam Chairman:** So hon. Members, the question is that clause 4 be amended as follows—Sen. Thompson-Ahye.

**Sen. Thompson-Ahye:** Bid-rigging alternative:

“…includes collusive practices amongst bidders prior to or after bid submission designed to establish bid prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.”

I think this captures what we want to say. It is taken from Kenya.

**Mr. Imbert:** And Sen. Ahye, I think that would lead us into a place where it may not be tight enough. I think that is the best way to put it. I do not know AG if you—

**Mr. Al-Rawi:** Madam Chair, I thank Sen. Thompson-Ahye for—

**Sen. Thompson-Ahye:** [Inaudible]

**Mr. Imbert:** The definition may not be tight enough because I have listened to you, it is a very long definition, it captures a lot of things but it may allow an escape hatch for somebody who may wish to engage in collusive price-fixing.

**Mr. Al-Rawi:** Madam Chair, I looked at the law of Kenya when we were looking at the comparators in the matrixes of what was accepted, and that definition does
capture the spirit of a number of things that we are talking about here, but equally the European version in respect of which we have looked at the case law is particularly tight, and therefore, insofar as there have been convictions for bid-rigging and it is well established and well traversed right up to the European courts and the British courts, we would want to go with where we now have proven jurisprudence. So respectfully, insofar as both definitions capture the intent that we are looking at, collusion, outcome, et cetera, having looked at the case law we would prefer to go with this definition, specific because the regulators also approved it.

**Sen. Welch:** With respect to the definition because this seems to contemplate a conspiracy involving more than one person, so I am thinking that after “behaviour” it should perhaps read:

“bid-rigging” means collusive price-fixing and anti-competitive behaviour between two or more parties or two or more persons designed—and then it continues as is—designed to unfairly influence the outcome of a competitive tender process.

**Mr. Imbert:** Thank you very much for that—

**Sen. Welch:** So I am suggesting the insertion of “between two or more persons”.

**Mr. Imbert:** Could I come in here, Madam Chairman? [Crosstalk]

**Madam Chairman:** One second. The Minister of Finance will respond.

**Mr. Imbert:** Sen. Welch, thank you very much for that intervention. You actually hit the nail on the head because if one goes to the OECD definition of bid-rigging, it is:

“Bid rigging involves groups of firms conspiring to raise prices or lower the quality of…goods or services…in public tenders.”

So the concept of conspiracy is definitely there in bid-rigging, and in our definition
as well we capture the concept of conspiracy—obviously it is a conspiracy—but I am advised by the Chief Parliamentary Counsel present with us today that by definition collusion must be between at least two people. You cannot have collusion of one. So once you have the word “collusive” it means two or more. Okay? So thank you very much for that crystallization of the concept of a conspiracy.

Madam Chairman: So hon. Senators, the question is that clause 4, be amended, as follows:

By including the words “which is” after the word “behaviour”.

Sen. Dr. Dillon-Remy: We did not hear what you said.

Madam Chairman: Hon. Senators, the question is that clause 4, be amended, as follows:

By including the words “which is” after the word “behaviour”.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

Question proposed: That clause 5 stand part of the Bill.

Madam Chairman: Now, may I just point out that we have two sets of amendments. We have the amendment as proposed by Sen. Richards to clause 5, and the amendment as proposed by the Minister of Finance. So that, Minister of Finance, Members, I will treat with the amendment as proposed by Sen. Richards first. Sen. Richards.

A. In Section 7 of the Act by deleting subsection (2) and substituting the following:

“(2) The Office of the Procurement Regulator may determine the extent to which this Act conflicts with an obligation of the
State under or arising out of the following”

B. In new subsection (5):
   i. Delete paragraph (b)
   ii. In paragraph (d), insert the word “emergency” before the word “medical”

C. In new subsection (6) delete the word “negative” and substitute the word “affirmative”

D. Insert the following new subsections
   “(7) The Minister shall submit to the Office annual guidelines which outline the circumstances under which exempted services in subsection (5) may be procured.
   (8) The Office shall forward a copy of the guidelines to the Speaker of the House of Representatives who shall cause the guidelines to be laid in Parliament at the earliest opportunity.”

Sen. Richards: Thank you, Madam President. Through you, Madam Chair, sorry, the intention of including:
   “(2) The Office of the Procurement Regulator”—

Madam Chairman: There is a little difficulty in hearing so perhaps—


Madam Chairman: Yes.

Sen. Richards: Is it clearer now?

Madam Chairman: Well, I think so.

Sen. Richards: I am trying not to shout.

Madam Chairman: Yes, I understand.

Sen. Richards: The intention, through you, Madam Chair, is to try to appease
much of the concern expressed from stakeholder groups in terms of the absence in the proposed amendments by the Government of the Regulator whereby inserting:

“The Office of the Procurement Regulator may determine the extent to which this Act conflicts with an obligation of the State under or arising out of the following”

And to delete paragraph (b).

Mr. Imbert: May I at this time?

Sen. Richards: In terms of (2), I think the Minister of Finance has already dealt with that aspect of the medical emergency part. So I can withdraw that part because it has already—it will be handled in the Minister of Finance’s amendment. I also see that is also changed and is handled under the Minister of Finance’s proposed amendments, sorry, and insert the following new subsection (7):

“The Minister shall submit to the Office annual guidelines which outline the circumstances under which exempted services in subsection (5) may be procured.”

So the request is for guidelines to be submitted, and:

“The Office shall forward a copy of the guidelines to the Speaker of the House of Representatives who shall cause the guidelines to be laid in Parliament at the earliest opportunity.”

And that is in keeping with having some sort of parliamentary oversight and being able to ensure that the guidelines are adhered to and there is not such a wide ambit as stakeholder groups have expressed that kind of concern.

Madam Chairman: So before I ask the Minister of Finance to comment, may I just confirm with you, Sen. Richards, that you are seeking to delete your amendment at B?

Sen. Richards: Yes.
Madam Chairman: The entire B?

Sen. Richards: Yes, the entire B.

Madam Chairman: The entire B is amended, okay?

Sen. Richards: Yes.

Madam Chairman: It is withdrawn, sorry.


Sen. Richards: Yes, thanks, withdrawn, and also C.

Madam Chairman: And C as well?

Sen. Richards: Yes, because it is handled in the hon. Minister of Finance’s proposed amendments.


Madam Chairman: So that you are really now left with A and D.

Sen. Richards: Yes, thank you.

Madam Chairman: Minister of Finance.

Mr. Imbert: Thank you very much. Oh, sorry.

Sen. Dr. Dillon-Remy: Just a question to Sen. Richards. How do these guidelines relate to the Procurement Regulator, the regulations versus these guidelines?

Sen. Richards: The principle comes from what I saw when I did my research in the Canadian system where, for example, in the Canadian “Polices, Guidelines and Reference Documents” are under “Sourcing and Selection”:

“The Department of Justice periodically publishes its intent to establish a list of’—for example, in the legal services—‘private sector law firms and law practitioners…”

And the example of guidelines in this case, so that there is clarity on the parameters within which these guidelines can be applied include but are not limited to the following:
“• timelines and level of urgency of the work
  • availability of firms and practitioners and capacity…
  • geographic considerations”—in that case—
“• security considerations”
—because there may be concerns with the guidelines eliciting the publishing of names which may put some in jeopardy.
“• conflict of interest considerations
  • financial considerations
  • public interest considerations”—and—
“• unique considerations associated with the”—specific—“work”— product expected.

7.00 p.m.

Mr. Al-Rawi: Madam Chair, if I could just for Sen. Dillon-Remy’s involvement, they also fit squarely—well first of all, the Government is very pleased with paragraph D but I can say that this fits in with the concept of guidelines in the parent Act itself:
“…functions of the Office…”
Section 13(c):
“issue and review guidelines in relation to public procurement and the retention and disposal…”—et cetera.

So littered throughout the functions of the Procurement Regulator is the concept that you can have public procurement guided by not only regulations but by handbooks and guidelines as well so that the general practice is transparent.

So if we look to the proposals in D, the annual guidelines will certainly, a, go to the office so there would be some degree of public commentary from the office which is to be welcomed and b, they would come to the Parliament as well

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and therefore one could easily see that coming before any one of the standing committees that we have, let alone a motion for debate, et cetera. So just to assist in Sen. Dillon-Remy’s enquiry in relation to Sen. Richards’ submission. Thank you very much.

**Sen. Richards:** And if I could just add one thing to Sen. Dillon-Remy’s question, it also adds an opportunity for the Parliament and by extension public commentary to hold the Government to these guidelines.

**Mr. Imbert:** I wanted to compliment Sen. Richards because what we are seeking to do and what he has done is a sort of a hybrid solution to what we are trying to create because we are creating a series of exemptions but what Sen. Richards is seeking to do is to circumscribe these exemptions. In other words, it would not be carte blanche exemptions. So it is a hybrid situation there. These are not regulations of the Regulator, they are guidelines prepared by the Minister but they have to go through the process and come to the Parliament. So the Minister cannot just exempt services just so, there will be a scrutiny process and there will be transparency. So it is a very intriguing hybrid approach and I think it is very useful in the circumstances.

With respect to A, I want to make the point because I think people do not quite understand what we are about with this procurement Act and I do not mean people here, I mean people on the outside who are clamouring.

**Sen. Richards:** Madam Chair, if I could just interject? Sorry to interrupt, Minister.

**Mr. Imbert:** Sure.

**Sen. Richards:** But I am not a legal draftsperson by any means so I am just asking if the way I have presented here, it means that it is implied that it is subject to debate in Parliament.

**Mr. Imbert:** Sure, we can do that. We can say subject to negative resolution, no
problem.

**Mr. Al-Rawi:** We could install the negative resolution. There is nothing to stop you from having a motion on anything brought forward but if you wanted it to be subjected to debate, then you just put the negative resolution inside of there if you wanted.

**Sen. Richards:** I would prefer that. Thank you.

**Madam Chairman:** For my drafting here, just to keep on track, what is being subject to negative resolution? The guidelines at (7) or (2)?

**Mr. Al-Rawi:** It will be number (8), Madam Chair:

“The Office shall forward a copy of the guidelines to the Speaker of the House of Representatives who shall cause the guidelines to be laid in Parliament at the earliest opportunity.”

You could put those guidelines subject to negative resolution.

The difficulty with it is that conceptually, the guidelines—let us put it this way. When something is subject to a negative resolution, what happens is that it has a validity of 42 days and then it becomes permanent unless it is negatived in the 42 days. If something is subject to affirmative resolution, it must be debated and passed by a simple majority to become the thing as affirmed by a debate in the Parliament.

When we lay reports pursuant to section 66 of the Constitution or when we lay material before the Parliament, the purpose of all of the things on that middle desk right now is have constructive notice and actual notice that it is on the Order Paper. So we would be going into a zone of grey to say that the guidelines would be subject to negative resolution because you know, you could say that there could be a debate on it but there is no validity to them yet. The point is there would be public notice in keeping with the functions of the office of Procurement Regulator
under section 13 for a guideline to be transparently put out by the Minister to say look, these things which are accepted, here is how we do it so that you could now be aware to the questions that you want to ask because you now have the publicity of how the thing works.

So that is best captured by the fact that you could move a motion to debate these guidelines if you wanted and anybody can move a motion to do anything. It could be on the adjournment, it could be a substantive motion, it could be referred to a joint select committee, any one of the standing committees. On legal and financial services for instance, there is a standing committee. Those matters could easily be picked up by that body and then made the subject of a parliamentary oversight by way of a committee enquiry. So whilst I catch the concept of a negative, it would be in a grey zone that probably would not work on this occasion.

But the point is, number one, it would fit within the guidelines under section 13. Number two, it would be on the floor of the Parliament and desk of the Parliament. Number three, it can be easily picked up by the standing committee on finance and legal services. Number four, it would provide transparency for people who made enquiries under the Freedom of Information Act, et cetera, et cetera. So that there would be transparency.

Sen. Richards: And through you, Madam Chair, and that is the objective, more transparency.

Mr. Imbert:—because A is very interesting but as I was making the point, there is something that a lot of people outside of this Parliament do not understand. At present—and there is a lot of law in Trinidad and Tobago and in the United Kingdom and in the Commonwealth—the procurement by state enterprises is not subject to judicial review unless you can show fraud. So that what we are doing by sticking with section 7(4) and (3) and just let me read them again:
“A procuring entity engaged in procurement proceedings relating to a treaty or agreement referred to in subsection (2)(a) shall comply with section 29…”

—which is the section with the long list of compliance requirements.

“and submit a report on such compliance to the Office.”

And then (4) says the Regulator must very quickly send that to the Speaker for laying in the Parliament. From the time we proclaim 7(3), it means we are putting into the public law this requirement. From the time this goes into the public law, the whole of 7 goes into the public law because that is the problem that litigants have at this point in time because there are insufficient public law elements in procurement by State enterprises. So the courts, there are a lot of cases in our jurisdiction, we have NH v UDeCOTT, we have Spancrete v the Attorney General and overseas in Australia, New Zealand, England. There is a lot of established precedent that establishes that fact that unless you have sufficient public law elements in your procurement rules, the courts cannot intervene and overturn a contract.

When we proclaim 7, it means anybody can challenge the applicability of 7 and what it means is not for the Procurement Regulator to determine, it means anybody. It means a member of the public, a contractor, a tenderer, an aggrieved person, a person of interest. Any one of them can now ask the High Court to determine whether the requirements of the treaty of the agreement are in conflict with the Act. It is not really necessary and I would not want to leave it up to the regulator to decide that. I think any aggrieved person should have the ability now to say, “ey, you said that you are not using the rules in this Act for that treaty contract because it is in conflict”. It now allows anybody to go to the court and ask the court to review that and determine whether the treaty arrangement is in fact in
conflict with the law. I would not want to give it to the Regulator to make that determination. Okay?

Mr. Al-Rawi: Thank you, Madam Chair, and I need to caution. Putting the Regulator to determine the extent to which the Act conflicts with the obligation of the State under the treaty creates a huge problem as follows. Number one, as the Attorney General, any Attorney General and you are engaging in borrowing for instance, the Attorney General is required to produce an opinion for and on behalf of the Republic of Trinidad and Tobago to say in the AG’s opinion that the borrowing is vires, it is intra vires. It is lawful, the laws of Trinidad and Tobago. That is a requirement of every transaction for financial services, foreign and local. The Attorney General would be incapable of rendering an opinion in those circumstances because the Attorney General would have to ask the Public Procurement Regulator to render an opinion on the treaty and its position.

Secondly, to determine the content of conflict of laws with respect to a treaty, we entering into public and private international law regime where the doctrines of Renvoi and double Renvoi will apply in an expert context as to which law applies in which order. Is it that the treaty obligation is to be viewed in the context of someone sitting in Rome looking at the Rome treaty? Is it to be a judge sitting in Trinidad and Tobago? So there is a conflict of laws dilemma in that context which would take us into difficulties.

Thirdly, the Public Procurement Regulator would be subjecting himself to judicial review for his decision on those bases and section 14 of the Constitution and the Judicial Review Act have not led us to the most urgent of movement. Our JR matters go: High Court, Court of Appeal, Privy Council and back to say revert the decision to the Procurement Regulator to go and reconsider the position. So we would end up in a number of issues which would literally shut down the structures.
On the other hand, if you look to the combination of section 7(2) and very importantly subsection (3):

“A procuring entity engaged in procurement proceedings relating to a treaty or agreement referred to in subsection (2)(a) shall comply with section 29 and submit a report…”

And 29 says that the:

“…procuring entity shall ensure that suppliers and contractors—
(a) have the legal capacity…
(b) …not insolvent…
(c) …not…convicted…
(d) …fulfilled…obligations…”—et cetera, et cetera.

These are very thorough obligations.

So for example, the OAS Construtora thing, had it been by a treaty, it was not. That was not a state to state position, that was the Government contracted with a contractor. That contractor in OAS would be subject to this law. But let us assume that that was under a treaty, all of these things would have to be there. So when OAS went bankrupt, the clause could not have been amended, the contractor could not have gotten away. So we have captured in 7(3) all of the ills by the mandatory requirement for the submission of a report under 7(3) for section 29 factors. So there is a transparency in the structure that we are seeking to amend today. You are laying it to the Regulator and to the Parliament as well as soon as it happens in the context of the law.

Sen. Richards: And through you, Madam Chair, just for my clarity again, apologies for my legal ignorance but I just want clarity coming from the hon. Ministers. In terms of the laying in Parliament are we to understand that when it is laid, it means that the guidelines also have to published in the Gazette and be
almost akin to a statutory instrument?

Mr. Al-Rawi: No, the laying is again the matter on the table. There is nothing in our—now remember, the Constitution was really well drafted. The Constitution establishes the Public Accounts Committee and the Constitution establishes the Public (Enterprises) Accounts Committee, not Standing Orders where the will of a government could exercise. The Constitution sets that out. The Constitution sets out that the Chairman of the PAC is a Member of the Opposition and the PAC by convention, et cetera, is an independent. So you have now on the table reports led by people who are not the Government where you have a report on section 29 and the Constitution says therefore that those committees have the privilege of Parliament to exercise joint select committee interrogation. That is under Chapter 8 of the Constitution and there can be no more supreme a law for transparency than the Constitution. So it would not be by way of gazetting and legal notice, et cetera, but now in this Parliament, there is the ability to interrogate and have consequences in the body of our powers and privileges in the Parliament.


Sen. Vieira: Thank you. First, I would like to support Sen. Richards’ suggested hybrid because his guidelines will go a long way towards elevating my concern about a carte blanche exemption in particular legal services and whatnot.

Secondly, I looked at section 29 but you have also sought to delete:

“…except that the procurement of goods, works or services shall be governed by this Act…”

I have no problem with that, but here is where I would rather not see deletion:

“and shall promote the socio-economic policies of Trinidad and Tobago and shall adhere to the objects of this Act.”

What is objectionable to having this that:
“To the extent of this Act conflicts with an obligation of the State under or arising out of the following:
the requirements of the treaty or agreement shall prevail…”—provided—“the socio-economic policies of Trinidad and Tobago”—are observed—“and shall adhere to the objects of this Act.”

Socio-economic policies are defined. We are looking at environmental, social, economic and other policies of Trinidad and Tobago. So I would like to keep that.

Mr. Al-Rawi: Madam Chair, I catch Sen. Vieira. When we looked at this, we wrestled with, a, the fact that in all of the jurisdictions where this exemption happens and there are numerous examples of it, let us put that aside for a moment, but they are all pellucidly clear to be say this “shall prevail”, the international matrix, the whatever shall prevail.

The difficulty with the caveat:
“…promote the socio-economic policies of Trinidad and Tobago and shall adhere to the objects of this Act.”
—is that the challenge proceedings come about and judicial review comes about for someone to say “hold on, in my view, I am exercising challenge proceedings under this”, enter, as I called it earlier, the dragon. We agree with the expressions of concerns but let us get down to the real reality, the application of law.

The application of law is set out in this Act. Challenge proceedings are set out in sections 49 onward. The challenge proceedings are clear. You have to have the right to be heard, your issues have to be ventilated, there is due process, that is 128 days long with the suspension if it is granted. Then enter the High Court, then enter Court of Appeal, then enter Privy Council. Worse yet, factor judicial review at any one of those instances where day 20, “yuh make ah decision”, day 28 is written decisions, et cetera. In that 128-day marker where there are 10 steps, any
one of those steps can be judicially reviewed and then we end up in trouble.

So bearing in mind that all examples of where this law has been applied similarly, there is no caveat for interpretation, there is no “except that”. It is that “except that” that causes the problem of interpretation and interpretation is the risk in challenge.

**Mr. Imbert:** Let me just say one more thing.

**Sen. Vieira:** Hon. AG, on—

**Mr. Imbert:** Senator—just respond to a point you have made, that same point. The problem is that when you have these agreements, it is a framework agreement for economic cooperation between the two countries. So you cannot just be promoting the socio-economic—what are the words there?

**Mr. Al-Rawi:** Policy.

**Mr. Imbert:**—policies of Trinidad and Tobago, it has to also involve economic cooperation with the other country and therein lies the problem if you keep those form of words because you would have to say the other country too, otherwise the whole treaty will just become a nullity.

**Sen. Vieira:** I understand that. I also understand the question about challenges and the broader issue about local courts having to adjudicate on international treaties and agreements. Put that to one side. To my mind, what we want to do is make sure that before the State even considers signing any treaty, any international agreement that the Procurement Regulator would have been satisfied that what is proposed is in keeping with the objects of this Act and is mindful of our socio-economic policies. So it is done upfront, not after the fact.

Secondly, I understand that when you are negotiating with states, there is a give and take but this is about us, our values, our money, our repayments. And so as regards to challenges, someone had made the point and I agree with it that a
challenge remains a challenge unless and until a court decides that the challenge has validity and there could be a screening procedure. But we have to massage this legislation so that we really keep the spirit of the Act and its intention I think alive. So I would really reconsider, if I could, that last part on the socio-economic policies.

**Madam Chairman:** Just one second, Attorney General. Sen. Deonarine, you wanted to say something on this?

**Sen. Deonarine:** Madam Chairman, no, through the discussion, my concern was clarified.

**Madam Chairman:** Sure. Attorney General.

**Mr. Al-Rawi:** Thank you, Madam Chair. So thank you, Sen. Vieira for explaining so well the mischief that you have in mind and the process by which you think that can be addressed. So the words of caveat not being present in any of the models that we have looked at all is concern number one, red flag number one. Trinidad and Tobago’s context is red flag number two. We have a highly litigious society where the experience in judicial review, for instance, is like hardly any other country in the world. Our judicial review has gone to a different stratosphere in terms of how it has been applied and you could look at the cases before the courts, I would not go into names, right, but you know what I am saying.

The fact is that we do have socio-economic positions in place because the Attorney General has to positively vet all of these treaties. Secondly, the Solicitor General is involved in that. Thirdly, where we are engaging in treaties where Trinidad and Tobago has obligations, we are a dualistic State. Our treaties become law by Act of Parliament. When we have borrowing from Andean Bank, there is an Act of Parliament to do that. CDB, Act of Parliament. CCJ Trust, Act of Parliament. IDB, Act of Parliament. So we, to be bound by treaty obligations, have
to bring it into law. We have had that recent debate in relation to migrants and asylum seekers where Mr. Justice Seepersad has given certain reflections on the dualistic versus monistic theories of law. So we have to act in that regard.

Putting the Procurement Regulator into that dance is to bring him in to a structure that he has no involvement constitutionally or within the theory and application of our law. So respectfully, I would urge us to take the precedent that has been applied elsewhere. That is no small precedent. The entire European Union, the United Kingdom, Australia, our sister Jamaica, UNCITRAL, Caricom precedent laws. All of these have the same thing, we are not out in the wilderness by ourselves, we are in good company.

And I would like to say this as I end. Remember our landscape is totally different. When 2015 we debated these laws, we had not yet done FATCA, we had not yet done Global Forum, FATF. We did not amend the Mutual Assistance in Criminal Matters Act to remove taxation matters, we did not have beneficial ownership registry, we did not non-profit organization registry, we did not have the amendments to Proceeds of Crime Act and the list goes on and on and on. Our landscape is about to be fundamentally changed when we take e-wallet and e-money as all of our payments are digitized and directed in particular in this context in a follow-the-money matrix. So our game field has totally changed from when we debated this law.

And the last thing I will say is this. The Public Procurement Regulator has put out in writing the steps to operationalize this law. It will not be just the regulations. You still have to appoint the review tribunal, the President and only the President in consultation with the Leader of the Opposition and the Prime Minister can do that. And the Public Procurement Regulator has put out in writing—it is on his website, the same way the regulations are on the website, the
regulations are public—the fact that the e-hearing, e-procurement, e-registry, manuals, handbooks, those have yet to be done and that is entirely up to the Public Procurement Regulator, nobody else. So I just want to caution that the landscape is very difficult.

Madam Chairman: One second. And at some point I have to caution Members that we are going to have to bring a conclusion to the discussions on this particular amendment as circulated by Sen. Richards. Okay. I am recognizing Sen. Lutchmedial, Sen. Thompson-Ahye, Sen. Mark, then the Minister of Finance will wrap up his response to all of those interventions. Sen. Lutchmedial.

Sen. Lutchmedial: Madam Chairman, because I agree with Sen. Richards’ proposal to the extent that the Office of the Procurement Regulator to be able to determine the extent to which the Act conflicts. I am looking at subsection (3) and the report that has to be submitted. Now, I am just thinking, would it not be—instead of just striking out all the words after the word “prevail”, can a procuring entity engage—if there is a conflict, can they not submit this report in accordance with section—comply with section 29 and submit a report to say that there is some sort of conflict that is arising and then the determination be made by the Procurement Regulator, as Sen. Richards said, whether it conflicts with the obligation of the State arising out of the obligations after the report is submitted to him?

So that we would have the Procurement Regulator playing a better or a more active role in determining how to treat with a conflict. So that he gets the report from the procuring entity to say that there is a treaty obligation and that there is some sort of conflict. So that rather than have this carte blanche removal of all the words after “prevail”, he actually comes in. So I am thinking just to refine what Sen. Richards is proposing and using the reporting mechanism in subsection (3) to
create a role for the Procurement Regulator to determine whether or not there is a conflict and to then treat with whether or not we can have an exception created because of the conflict.

**Madam Chairman:** Sen. Thompson-Ahye.

**Sen. Thompson-Ahye:** Through you, Madam Chairman, I fail to see what—when you look at “promote the socio-economic policies of Trinidad and Tobago”, how one would think possibly of entering into an agreement that would not promote the socio-economic policies of Trinidad and Tobago and when one looks at the objects of the Act which are general principles of accountability and integrity, transparency and value for money and efficiencies which is the normal things, why would we want to enter into an agreement or a treaty that would not do these things? *[Desk thumping]*

“It kinda frightening to me” that we as an independent nation thinking about the welfare of our citizens that we would want to enter into an agreement that would do violence to these principles or ignore them. You know, it takes us back to maybe slavery days or so.

**Madam Chairman:** Well, Sen. Thompson-Ahye, while you are, and I encourage persons to make their contributions, I really would ask us to modify some of what we say. Okay? Sen. Mark.

**Sen. Mark:** Madam Chair, I would like either the Attorney General or the Minister of Finance to clear the air on the fundamental difference between contracting authorities and contracting States, because from my research, Madam Chair, I am seeing where a contracting State is where to deal with the government to government arrangements and only on matters of national security would their Procurement Regulator not be involved. But once they are purchasing goods, services and other works, it must come under the scrutiny of the Procurement
Regulator. So what we are dealing with here, Madam Chairman, I am trying to determine how this is going to deal with the parallel mechanism. The Minister of Finance is in charge and the Procurement Regulator is in charge, how is this thing going to be solved? And I am not seeing these amendments either by my friend Sen. Richards or the Minister resolving this issue. The issue remains the same.

7.30 p.m.

The Government is seeking, Madam Chair—

Madam Chairman: Sen. Mark—

Sen. Mark:—to create parallel mechanisms.

Madam President: So, right now—Members, please. We have been on Sen. Richards’ amendment for quite some time. Members are getting a little restless and comments are just being made. Sen. Mark, you are just re-debating—you are just introducing an element of re-debating the Bill. We are specifically dealing with the amendment as proposed by Richards to clause 5, and we are dealing specifically with what it is set out at A in his list of amendments. Am I correct? Minister of Finance, I now call on you to respond to what has been raised by Sen. Lutchmedial, Sen. Thompson-Ahye and Sen. Mark.

Mr. Imbert: Madam President, the proposal by Sen. Lutchmedial would defeat everything we are trying to do here. Because if we were to introduce words, that before we can enter into a treaty or an agreement with another government to procure goods and services by way of economic cooperation, which means that we would get concessional financing and that the goods and services, some of them, would be provided by persons from that other state, if we were to subject that to a decision of the regulator, then there is no point in the government to government agreement, there is no point in the treaty arrangement, because you are introducing a third party who is not party to that agreement or that treaty.
So, I am sorry, I cannot respectfully accept the recommendations of Sen. Lutchmedial. It would defeat everything we are trying to do here. Because what we are trying to do is to get away from the regulator having jurisdiction over government to government agreement. So by putting the regulator back in, that does not make any sense.

What I would like to say to both Sen. Vieira and Sen. Richards, the problem with this is that you are elevating the regulator to the level of a judge of the High Court. You are elevating somebody who is not a judicial officer, to the level of a judge of the High Court. Because you are giving this person the ability to determine whether an agreement between the Government of Trinidad and Tobago and another country is in conflict with this Act. So we should not do that. We should not elevate the regulator to that evidential, at all. I think somehow in this entire public debate, not in here but outside, we have made the regulator into some sort of Supreme Being, when we should not. The regulator is simply an administrator. He is not a judicial officer, not a member of the Executive, not a Member of Parliament or anything like that.

And to answer the point you are making, Sen. Richards, because I completely understand your point. I want to reemphasize that we proclaimed section 7, the next day, an aggrieved member of public can approach the court and say: “Yuh see dat, government to government contract they are entering into to build that hospital in Penal, that does not comply with section 7”, and ask the court to stop it, and the court will have the power to stop it. Because we are now giving—clothing the court with that power to get involved in procurement for the first time; procurement of state enterprises.

With respect to the whole question of socioeconomic policies, on the face of it, it appears quite desirable. But my difficulty with this is, the point the Attorney
General has made, it looks good and, in fact, I am quite happy to go along with it, but I am guided by the legal advisor to the Cabinet, who is the Attorney General, and he has made the point that if we introduce these words in there it allows somebody to challenge the procurement of goods and services by way of a government to government agreement on the grounds that it does not promote the socioeconomic policies of Trinidad and Tobago.

And the other problem I have, how are these policies determined? Who determines them? Where are they written? Who establishes this policy of Trinidad and Tobago? There is no such thing.

**Mr. Al-Rawi:** Madam Chairman.

**Mr. Imbert:** There is no such thing as the socioeconomic policies of Trinidad and Tobago. It would be the socioeconomic policies of the Government of Trinidad and Tobago, which is not—

**Mr. Al-Rawi:** Madam Chair, the Privy Council in the Clico policyholders’ case clearly sets out—this is the Privy Council. The only entity that has the authority to define the policies of Trinidad and Tobago is the Cabinet, full stop. That is why you have a government elected for the period of time that they have.

And for the regulator to determine the socioeconomic policies, would be on the Latin phrase, circulus inextricabilis. He would have to come to the Government to say, tell us what the socioeconomic policies of the Cabinet are, produce the Cabinet Note that says that that is the thing. It is a legal fiction for him to be able to do that. But it would run in the face of the Privy Council decisions that we have as well.

**Sen. Vieira:** Just to correct a misunderstanding. I am not suggesting that the Procurement Regulator has that power. I am just saying that if you have it the way I am suggesting, you, in Cabinet, would have a checklist before you sign a treaty to
say: Is this being observed?

Mr. Al-Rawi: That is what the Attorney General does in doing the positive vetting.

Mr. Imbert: He gives the opinion. I can say every time I have to do loan financing, I cannot move a muscle. I cannot sign the agreement until the Attorney General writes and puts his signature to an opinion and gives me a whole recital of all of the criteria this thing has met and fulfil his constitutional obligation.

Madam Chairman: Sen. Richards, are you pursuing A of your amendments? Are you still going with it?

Sen. Richards: Based on the conversation, no.

Madam Chairman: No? You are withdrawing A.


Madam Chairman: Hon. Members, the question is that clause 5 be amended as circulated by Sen. Richards and reads at D in the amendments circulated. For clarity, should I read out the amendment? No? Everyone is fine with it.

*Question, on amendment, [Sen. P. Richards] put and agreed to.*

Madam Chairman: We now move on to the amendment to clause 5 as circulated by the Minister of Finance. Minister of Finance.

“In paragraph (c) as renumbered -

(a) insert before proposed subsection (5) the following new subsection and renumber proposed subsections (5) and (6) as (6) and (7):

‘(5) Subsection (3) shall not apply to reports regarding matters of national security.’

(b) in proposed renumbered subsection (6)-

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(i) delete paragraph (b) and replace with the following new paragraph:

‘(b) debt financing services for the national budget;’;

(ii) in paragraph (d) insert after the word ‘medical’ the words ‘emergency or other scheduled medical services’

(c) in proposed renumbered subsection (7) delete the word ‘negative’ and replace with the word ‘affirmative’.”

Mr. Imbert: I think, Madam Chairman, we have exhausted my amendments through Sen. Richards’ amendments. So I simply would ask that the Senate accept the amendments as circulated.

Sen. Deonarine: Thank you, Madam Chair. Through you, I have one question, with respect to the international financial institutions. In the event that a particular IFI does not have procurement policies, could you confirm that in that situation the procurement policies governed by this law, when it is proclaimed, would prevail?

Mr. Imbert: Let me just explain. I heard that point, but it does not apply in practice because every international bank that we borrow from is governed by an Act of Parliament. I cannot borrow. No Minister of Finance can borrow from an international financial institution, unless there is domestic law which empowers the Minister of Finance to do that borrowing. In other words, I cannot just pick up myself and go and borrow from the bank of North Korea. I cannot do that because there is no domestic law that empowers the Minister of Finance to do that. So it does not arise. That is the point I am trying it make.

Sen. Deonarine: Right. Through you, Madam Chairman, I understand that hon. Minister of Finance. But, for example, one particular multilateral development bank that I have been looking at that, that we have been sourcing a lot of funding from, does not have published procurement policies anywhere to be found, as

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opposed to the World Bank, the IDB and the CDB, and all these other multilateral lending agencies. So I do not know, for transparency purposes, I do not know where I can find those procurement policies to see whether they would prevail in the event that there is conflict.


Sen. Deonarine: So that is where I am trying to clarify where, in situation like that, which procurement policies will prevail. I understand that it is governed by an Act.

Madam Chairman: Sen. Deonarine, just one second. Hon. Senators, I shall suspend the deliberations of the committee and the Senate will now resume.

Sen. Deonarine: Senate resumed.

PROCEDURAL MOTION

Madam President: Leader of Government Business.

The Minister of Energy and Energies Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand, inclusive of the debate on the miscellaneous provisions, COVID Bill, and matters on the adjournment.

Question put and agreed to.

Committee resumed.


Madam President: Sen. Deonarine.

Mr. Imbert: I have an answer for you, Senator. It is captured actually in the law, section 7(2). Because this only applies to a conflict of rules. So that the rules in this—if you cannot find the rules for that, and let us assume they do not exist, the
procurement regulations will apply.

**Sen. Deonarine:** The procurement law will prevail.

**Mr. Imbert:** Yes, yes.

**Sen. Deonarine:** Yes, that is just what I needed to confirm.

**Mr. Imbert:** That is what section 7(2) says.

**Sen. Deonarine:** Yes.

**Mr. Imbert:**

“To the extent that this Act conflicts with an obligation of the State.”

So if there is no obligation, to use another set of rules like IDB rules or whatever, this Act will apply to the procurement of goods and services.

**Sen. Deonarine:** Okay. So I just needed that confirmed. Thank you.

*Question, on amendment, [Mr. Imbert], put.*

**Sen. Mark:** No. We want a division.

**Sen. Richards:** Madam Chair, could you just repeat what we are voting on, please? Sorry.

**Madam Chairman:** We are voting on the amendment to clause 5 as circulated by the Minister of Finance.

*The Committee divided:* Ayes 18 Noes 6

AYES

Khan, F.
Gopee-Scoon, Mrs. P.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.
Teemal, D.
Dillon-Remy, Dr. M.

NOES
Mark W.
John, Ms. J.
Lutchmedial, Mrs. J.
Nakhid, D
Lyder, D.
Roberts, A.

The following Senators abstained: Mr. A. Vieira, Dr. V. Deyalsingh, Ms. A.
Deonarine, Ms. C. Seepersad, Mrs. H. Thompson-Ahye, Mr. E. Welch.

Question agreed to.
Amendment, [Mr. Imbert] agreed to.
Question put and agreed to.
Clause 5, as amended, ordered to stand part of the Bill.
Clauses 6 to 10 ordered to stand part of the Bill.
Question put and agreed to: That the Bill be reported to the Senate.
Senate in Committee (cont’d) 2020.12.08

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

Sen. Mark: No. Division.

The Senate divided: Ayes 16 Noes 6

AYES
Khan, Hon. F.
Gopee-Scoon, Hon. P.
Rambharat, Hon. C.
Sinanan, Hon. R.
Hosein, Hon. K.
West, Hon. A.
Browne, Hon. Dr. A.
Mitchell, Hon. R.
de Freitas, N.
Cox, Hon. D.
Singh, Hon. A.
Sagramsingh-Sooklal, Hon. R.
Bacchus, Hon. H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Dillon-Remy, Dr. M.

NOES
Mark W.
John, Ms. J.
Lutchmedial, Mrs. J.

UNREVISED
Nakhid, D
Lyder, D.
Roberts, A.

*The following Senators abstained:* Mr. P. Richards, Mr. A. Vieira, Dr. V. Deyalsingh, Ms. A. Deonarine, Ms. C. Seepersad, Mr. D. Teemal, Mrs. H. Thompson-Ahye, Mr. E. Welch.

*Question agreed to.*

*Bill accordingly read the third time and passed.* [Desk thumping]

**Madam President:** Attorney General.

**MISCELLANEOUS PROVISIONS (2019-NCOV) (NO.2) BILL, 2020**

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):

Thank you, Madam President. Madam President, I beg to move:

That a Bill to amend the Cinematograph Act, Chap. 20:10; the Registration of Clubs Act, Chap. 21:01, the Theatres and Dance Halls Act, Chap. 21:03, the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08, the Motor Vehicles and Road Traffic Act, Chap. 48:50, the Bills of Sale Act, Chap. 82:32, the Moneylenders Act, Chap. 84:04, the Pawnbrokers Act, Chap. 84:05 the Licensing of Dealers (Precious Metals and Stones) Act, Chap. 84:06 and the Old Metal and Marine Stores Act, Chap. 84:07 in response to the 2019 Novel Coronavirus (2019 nCoV) and for related matters, be now read a second time.

Madam President, I am very pleased to pilot an entirely non-contentious Bill, all things being equal. It is perhaps, save for Sen. Roberts’ comments in relation to the Motor Vehicles and Road Traffic Act, which I can easily anticipate, it is perhaps at least safe to say that the most troubling thing in this piece of law is the word, and how it is pronounced, your good friend Cinematograph Act, Madam
President.

So, Madam President, what is it Bill about? This Bill proposes, quite simply, 11 clauses, two of which are firstly in respect of the name of the Bill. Secondly, the proclamation clause. The other clauses, nine of them, are essentially cut into two aspects, as it regards the vast majority, that is the Cinematograph Act, the Registration of Clubs Act, the Theaters and Dance Halls Act, the Motor Vehicles and Road Traffic Act, the Bills of Sale Act, Moneylenders Act, Pawnbrokers Act, Licensing of Dealers Act, the Old Metal and Marine Stores Act contained at clauses 3, 4, 5, 7, 7A, 8, 9, 10 and 11.

[MR. VICE-PRESIDENT in the Chair]

Those all concern the adjustment of the date for validity of certain actions.

The second aspect of the Bill concerns the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, that is clause 6, which is specifically to allow for the provisions of the issuance of a summons for the arrest of someone who has failed to pay maintenance, pursuant to a court order, as opposed to the root of going for a warrant for arrest. That particular clause is with an application of a sunset provision, such that that option of having a summons will come to an end effectively when the COVID pandemic comes to an end.

I will explain those in the round now along those two separate limbs. Number one, the adjustment for the dates set out in the several laws that I have just referred to, beginning with the Cinematograph Act is really quite simple. When we came as a Parliament to look at the COVID laws, we did that in the context of number one, the declaration of a dangerous infectious disease pursuant to section 105 of the Public Health Ordinance. That being done by way of legal notice by Her Excellency the President.
Number two, in that context, bearing in mind that the State went into a stay home mechanism, what we did as a country was to effectively close the doors on the public service, close the doors on the ability to access the extensions of times for a various range of matters; your licence to open a cinema your licence for a club, your driver’s licence, your transfer of documents. All of those things were put into hold because you could not access the place where that was to happen.

In having that into gear, we had to come to the Parliament, which we did. We sought then to anticipate that the COVID pandemic would take us at least to the month of July, that is what the WHO was suggesting to us would have been the life of the COVID pandemic, and we said we created a pot that said anything that expired in the period March to July would be deemed to be valid until August, and we allowed for the extension of that August deadline to a date that the Minister could, by order, extend.

So we create a narrow pot. That pot only captured the months of March, April, May, June, July; five months. If your driver’s licence, your mortgage bill of sale, your licence for a cinema, your licence for a bar, if any of those things expired after July, then you were outside of the validity period. And this legislation therefore says, let us deem to be valid anything which has expired up to today’s date and going beyond, up to month of December, and let us allow the Ministers with responsibility for those laws, for instance I am one of those Ministers, let us allow the Minister with responsibility for those laws, the ability to extend that deadline. So if the month of December2020 needs to be extended to January2021, February2021, because of how the COVID pandemic is going and how restrictions in the public service may operate, we have the ability to do that, by way of Order.

This sounds rather simple, sounds good enough, but it has serious import.
Number one, it would have been no fault of persons to not be able to extend their licences for anything. I am aware in the public domain, Sen. Roberts has already said it, that a most unfortunate event happened. Sen. Roberts was wrongly met with a penalty for late payment. That has been ordered to be corrected by way of refund to all persons in that situation for the extension of a driver’s licence. It is quite fortunate that a Parliamentarian was in that unfortunate position, because at least the voice was heard, and in Sen. Roberts’ case, that voice is well capable of being heard, even in the course of a hurricane. But the point is that the public service, regrettably, has made some errors in applying some things. We know that approximately $1.7 million for late penalties, in the case of driver’s licences, was in fact levied. That should not be done. The rebate has to happen. The money went into the Consolidated Fund. It would have to be issued out.

8.00 p.m.

But the complexity of this is important when you consider that driving with an expired driving permit vitiates or takes away the validity of your insurance, and therefore, somebody’s coverage under an insurance claim is critical. If there is an accident, God forbid that there is a death, these things happen, you need to make sure the laws of Trinidad and Tobago for insurance coverage, third party coverage, full comprehensive coverage, whatever it may be, allows for the victims of collisions to be compensated.

So this is a very important amendment before us so that we can make whole the people of Trinidad and Tobago, and to have them covered by the laws recognizing that the COVID pandemic has effectively caused the public service to go into a totally different methodology of operation.

Clause 6. Clause 6 is critical, Mr. Vice-President, because the family law
and guardianship provisions tell us the most sacrosanct thing, the most vulnerable of people are our children. Those whom we must protect the most are our children. It is so sincere an obligation under that law, that the law says that is no father or mother or person with responsibility for a child ought to not understand the obligation and the rights of the child. The child has the right of being maintained by his or her parent, or his or her guardian, or the person with responsibility for the child. That is the child’s right.

And in recognizing that, that law says that if you have failed to pay maintenance and there is an Order for maintenance, it is so sincere an obligation that you can be arrested forthwith by way of warrant and brought in to do that. But now, the reality of the COVID-19 pandemic descends upon. Many people have been put out of employment through no cause or fault of their own. And whilst there may have been a maintenance obligation to be met, they simply did not have the money. And therefore, in recognition of that, the Government said instead of just arresting someone on warrant and taking them through the court process, issue a summons. Take the other route to bring them to court to explain themselves.

Courts can be done virtually right now. The explanations can happen, but you will see in this particular clause 6 that we have included a sunset clause. And that sunset clause is specifically included because we say when Trinidad and Tobago gets back to its normal processes:

“(1A) Subsection (1)(a) would cease to apply on 31st March, 2021 or such later date as the Attorney General may, by Order, specify.”

Why the Attorney General? The hon. Chief Justice would write to the Attorney General and recommend the extension by way of the Judiciary’s recommendation. Only a Minister can sign those Orders because these are not rules of the Supreme
Court issued pursuant to section 76 and section 77 of the Supreme Court of Judicature Act Chap. 6:01 and therefore, the Attorney General is the functionary to sign that Order.

That in a nutshell, Mr. Vice-President, stands as the rationale for this legislation, the rationale for this Bill. I do hope that hon. Senators can find agreement with the terms and provisions. I of course welcome, I know my colleague Sen. Roberts would have some justified things to say in relation to this, and I look forward to those contributions, and I beg to move. [Desk thumping]

Question proposed.

Mr. Vice-President: Sen. Mark.

Sen. Wade Mark: Thank you, Mr. Vice-President. Mr. Vice-President, the matter at hand, which is the Miscellaneous Provisions [2019 Novel Coronavirus (2019 nCoV)] (No. 2) Bill, 2020, as the Attorney General said contains 11 clauses. And in the midst of this raging pandemic we have had some challenges as it relates to renewing our licenses.

But before I deal specifically with this amendment to this Miscellaneous Provisions [2019 Novel Coronavirus (2019 nCoV)] (No. 2) Bill, 2020, I want to put on the record, Mr. Vice-President, our concern as an Opposition. We would like the Attorney General and the Leader of Government Business to pay attention to this continued denial of the Opposition Member’s right to speak their full allotted time as outlined in our Standing Orders.

Mr. Vice-President, whilst we are debating this matter and we are entitled to 45 minutes—or 40 I believe—because of this Government’s attempt to use, Mr. Vice-President, the COVID-19 pandemic to reduce our speaking time. You will find important matters that like what we are debating here today is not being—we
are not being allowed as an Opposition and as Members of this Senate to have our normal speaking time.

So whilst for instance we are dealing with the COVID-19 arrangement and the Government is seeking in some parts to establish what the Attorney General calls a sunset clause, to deal with the reality out there, so that people can go about their business, to have their vehicles, their drivers’ permit that is, their taxi badges, renewed without having to have any penalties imposed due to no fault of theirs. We are being asked today, Mr. Vice-President, to confine our contributions to 30 minutes.

So I want the Leader of Government Business in this House to deal with this matter of us referring and addressing this whole issue of speaking time for Members of the Senate. So that is an issue, Mr. Vice-President, I am going to be repeating, and repeating, until the Government addresses this particular matter.

**Sen. Mitchell:** Mr. Vice-President, 46(1).

**Sen. W. Mark:** As I said, Mr. Vice-President, I dealt with this—

**Sen. Mitchell:** This is not on speaking time.

**Sen. W. Mark:**—as an introduction. So I am now going on to my matters at hand.

**Mr. Vice-President:** Sen. Mark.

**Sen. Mitchell:** Is the Senate approved that.

**Sen. W. Mark:** Yeah, the Senate approved it.

**Mr. Vice-President:** Sen. Mark, Sen. Mark—

**Sen. W. Mark:** I disapprove.

**Mr. Vice-President:** Sen. Mark—

**Sen. W. Mark:** Yes, go ahead Sir.

**Mr. Vice-President:** I think you understand the procedure in this House. And as
much as we are dealing with a global pandemic the procedure that takes place when the Chair is on his feet remains. A Standing Order has been raised, please allow me to adjudicate on it. As much as I understand the connection that you are making, you have been doing so for several minutes now in an introductory fashion. So I do invite you to move on, specifically to what is in the Bill before us.

Sen. W. Mark: Thank you, Mr. Vice-President. So, Mr. Vice-President, on this matter before us the Attorney General mentioned a sunset clause. Is the Attorney General here? Yes, can I ask the Attorney General through you, Mr. Vice-President, to clarify which clause of the Bill was he referring to when he said that there is going to be a sunset clause attached? Because every measure that we are dealing with here this evening, as you would realize, expired or will expire on the 31st of December. And what the Attorney General is attempting to do through these amendments is to extend that period to March the 31st, 2021.

So I need to have some clarification because he did mention the sunset clause because I have some amendments to make. So I want to know if he is referring to all the measures, that is contained—all the measures that are contained in this Bill, Mr. Vice-President, or whether the Attorney General was just referring to one specific measure.

So Mr. Vice-President, while I await clarification, I want to indicate that under clause 3 of the Bill there is subclause (2) and it reads:

“(2) The Minister may, by Order, extend any of the dates specified in subsection (7).”

And as I said, Mr. Vice-President, the licenses under this particular clause will be extended up to March 31, 2021. What the Attorney General is saying, Mr. Vice-President, in this particular clause is that the Parliament—the Senate must
give the Attorney General as a Member of the Executive, subsidiary—well powers to amend this provision. So, in the event, Mr. Vice-President, the pandemic continues to rage beyond the 31st of March, 2021, what the Attorney General is advising us is that he, the Attorney General, will have the authority once we give him the all clear to extend this period of time.

Now, Mr. Vice-President, we have to deal with what is called this continued automatic extensions based on the Attorney General being given that power to do so, based on the amendment that is before us. What we are arguing, Mr. Vice-President, whether it is the Registration of Clubs Act, again, we witness it is being extended to March 31, 2021. And Mr. Vice-President, again, we are being advised in clause 4.

“(2) The Minister may, by Order, extend any of the dates specified in subsection (7).”

Mr. Vice-President, we as a Parliament must have the requisite checks and balances. We will never and we should never be signing a blank cheque to any Minister. A Minister is not a legislator. We have to give him that power and that is why he is seeking, by order of this Senate, to allow him to extend the time, Mr. Vice-President, if it expires by the 31st of March and beyond and the raging COVID-19 pandemic continues.

All I am saying on behalf of the Opposition we have no problem with the Attorney General being given the power by Order to extend the time once it expires as outlined in the legislation. However, it must be subject to some oversight. And this is why I am proposing an amendment to the nine pieces of legislation, wherever it appears, that the Attorney General is going to be extending the time beyond what is in the legislation, he must return to this Parliament.
And therefore, I am going to propose an amendment to clause 3, 4, 5, clause 6, 7, 8, 9, 10 and 11, Mr. Vice-President. And this is why I was seeking to get some clarification as to whether the Attorney General—I saw my friend rising. I know it is a new place, the hon. Minister of Tourism, Culture and the Arts, yeah, through the Speaker, through my colleague. I saw you rose a short while ago and I am wondering if through the Vice-President you can clear the air for this Senate, can you? Mr. Vice-President, I am trying to get clarification before I make my amendment and if—

**Sen. Mitchell:** You are wasting time.

**Sen. W. Mark:** So you do not know what is going on?

**Mr. Vice-President:** Sen. Mark, focus here.

**Sen. W. Mark:** Okay, yes I am speaking to you, but through you to the Minister of Tourism, Culture and the Arts. Yes okay. Yeah, so Mr. Vice-President, I am proposing that whilst we have no objection to the measures before this hon. Senate, I would like to serve notice that at the committee stage I am going to propose amendments, so that all of these Orders be subject to an affirmative resolution of this Senate.

Mr. Vice-President, I do not want to detain you any longer but these are my proposals. Thank you very much.

**Mr. Vice-President:** Sen. Dillon-Remy. [*Desk thumping]*

**Sen. Dr. Maria Dillon-Remy:** Thank you, Mr. Vice-President, for allowing me to contribute on this Miscellaneous Provisions [2019 Novel Coronavirus (2019 nCoV)] (No. 2) Bill, 2020. My contribution is going to be very brief because I do not think there is much to really comment on.

The fact that we have come here to extended the time, adjusting the various
pieces of legislation what were quoted here, 11 clauses to this Bill, is a fact—has resulted as a result of the varying—what is happening with the coronavirus. There is no certainty as to what is going on. And the situation will be with us for a long time yet. As we see what is going on right now within the developed world, many places the infection rate continues to go up. So we are not sure as to what will be happening in Trinidad and Tobago within the next year. So this is likely to be a situation that would be with us for a while.

We do see that there is vaccines now available and as we had the situation where a 90-year-old was given a vaccine today in the UK. And as the Minister of Health has already said that our vaccines would be coming at some point in time soon in the near future.

Mr. Vice-President, I just want to caution us in three ways. One, the matter concerning behaviour change must remain with us and be something that is on the agenda of Trinidad and Tobago’s response going forward. And in light of this, specifically behaviour modification in the areas where we have these people who are super spreading. In order for us to contain what is happening in the future, we must put more emphasis on behaviour modification for change in terms of our behaviour. And I am saying this because I still think that we are still preaching to people from the pulpit rather than getting down to people where they are at. See what is going on within their circumstances and seeking to have them buy in and have change in behaviour, in terms of what we are seeking for them to do. So in order to shorten this time I am suggesting that we do due diligence as far as behaviour modification, getting the right people on board.

The second area is the area concerning vaccines. In order for us to get at least a 60 per cent vaccination rate in our country in terms of trying to get herd
immunity, it will take us tremendous effort. Because, as we know right now, there are many questions about the vaccines, and in order again, to shorten the time in terms of Trinidad and Tobago getting the population up to the herd immunity that is required, a robust programme must go into effect from now.

And again, I mean a programme that is not just telling people that when the vaccine comes you must get it. We see what is happening now with influenza vaccine, people are not taking necessarily. Because people again, are not buying into the whole issue of vaccination. And in order for the money that we have already spent to be appropriately utilized and for the effect to be obtained in terms of the population, we really must run a robust campaign.

Mr. Vice-President, we have a very good history about vaccination in Trinidad and Tobago, and we need to put all the skills that would have gone in in the past into what is happening now in terms of this new vaccine, the novel coronavirus vaccine. And again, we need champions in order for this to happen and if we do not have the champions, in the next couple months we will probably with vaccine on our hands and nobody taking them. So I am just encouraging from the level of the Ministry of Health and all other persons available, that we should be robust campaigning in terms of getting the vaccines going. And as I have said, in a time that is really very difficult.

So, Mr. Vice-President, that is all I have to say about this Bill and I thank you for allowing me. [Desk thumping]

Mr. Vice-President: Sen. Deyalsingh.

Sen. Dr. Varma Deyalsingh: Thank you, Mr. Vice-President, for allowing me to partake in this Bill. And first I may say I would also like endorse some of the comments made by Sen. Dillon-Remy where you need basically behaviour change
when you are looking at the society, looking at what this COVID virus has brought. And I must mention so far that this Bill serves you know to look at 11 clauses. Most of those were studied here before and we had already given it some sort of agreement that it needed to carry on the fight against the virus, to prevent people from coming to be exposed to it, and to at least help the individuals who you know would have—like taxi drivers or errant—you know, persons who would have their licenses run off to prevent them from getting the brunt of the law. So this was much needed.

And so, we have to thank the Government for thinking about this and bringing this. But then you see the Attorney General mentioned a new parameter is now coming in to play. Where he mentioned clause 6 where we were looking at the family law, and guardianship of minors where we are looking at the rights of a child to get adequate sustenance from their—either the mother or the father who has left their home for maintenance. [Interruption]

And we know this has been a challenge even before the COVID where we had officers having to go after those individuals to get maintenance for the home, for the kids. And when I look at the COVID now it has actually introduced this new problem, and in the sense that individuals who do not have their jobs would not be able to at least make that means.

So two things has to come out of it. One, the individuals who would have been able to pay but unable to pay, I am thinking could we have had some sort of a proactive declaration whereby they could have approached the Court and you know—because remember we have been hearing that the mechanism in place now is online. Online you can do a lot of, you know, transactions.

So even if I am a father and I am out of a job, instead of having to change
the law. I am thinking sometimes a proactive declaration goes towards the court to say listen, I am now out of a job. Provide the proof from your employer, and at least you could start the process going where the police officers would not come after you, and would not cause this problem that we are now trying to prevent.

So instead of having the warrants coming after you, give this as a gap default that you can drop. So it causes less distress. But factored into this it means that there are a lot of homes now who you know, homes that the children—

[Madam President in the Chair]

—Madam President, would not be able to be afforded whatever they got before, be it books, schoolbooks, be it meals, money. And I am seeing again the Ministry of Social Development and Family Services has to come into play with this aspect.

But you see our purpose here this evening really is to really look at the fact that COVID is still going on. It is still raging. And I have seen in some pieces of the legislation where we are thinking we are going to—it is a good idea to extend it, extend the period for some of those licenses when they are coming to an end to 2021. But I am thinking, with what Sen. Dillon-Remy said, where you have a lot of the persons who are not on board with the vaccines. You have the anti-vaxxers they are spreading things, and you even have the cases where worldwide this has been increasing, especially in the US we see it raging on. It is a raging fire.

8.30 p.m.

What I am saying is, I think it was a bit optimistic to say 2021. We should have probably gone to 2022, a two-year period. Because, you know, looking at the situation, after even if we get the vaccine, and if people comes on board, and as Sen. Remy stated, getting that heritability will take some time, and I am thinking that we should have looked at a longer period.
Granted, the Minister would now have the power to extend it, I see nothing wrong with that. I see nothing there alarming, because instead of having to meet here, he would just simply look at the situation, get advice from the Minister of Health, who I think is really one of the most important persons in guiding us through this extension period. Because, you see, in the USA, after Thanksgiving, there was a spike, and we expect after Christmas there will be a spike after in Trinidad also with this. Thanksgiving in the States had that spike. So you just have to look at this.

And even though you had the powers of the Prime Minister, the Minister of Health—others have been begging the population to be careful with their homes, you know, even their home gatherings—we see that the behaviour change, as mentioned before, it is a little difficult to get people to stick to that. And, Madam, I must say that the young male, if you have a young male in the home—I think that is the greatest risk we have now, where the young male thinks they are infallible—they want to go out, they want to go to bars. So the logic is, even the extension of the dancehall, the extension of the Cinematographic Act and all these things, we have to be careful.

Opening up restaurants has shown that when you are eating in that close proximity and your mouth is open, it actually causes the spread of this virus. So, therefore, even though, yes, we want the business community to mobilize, we want to get activity out there, we have to understand, opening up should be a bit—they should be very cautious with this opening up. We should be guided by the Ministry of Health according to how many bed spaces they have in terms of the ICU beds, because if you do not have enough ICU beds, this country will be in some serious, serious trouble.
And I am saying the young males who go out and, as you know, in these places, they think they are supermen, but they are actually super spreaders. So we have to now maintain that, you know, yes, mask is on board, the legislation, but I think we should probably look at legislation for social distancing—maintain that space of six feet to, at least, you know, allow persons even if they are in a crowded area, nobody is going to jam you, because if people are jamming me and I try to tell them, “please move aside”, some people will just not listen. So that six feet space, I think we should seriously think about legislating this, because even when we look at the figures worldwide, Madam, it is frightening.

Madam President, 68 million cases worldwide, I think they had and the death toll is 1.55 million. And even when you look at the cases in Trinidad, 6,775 cases and we had about 743 active cases occurring and 122 deaths I think. So, in Trinidad, we are going to see an increase. This legislation actually extends that period to try and help us realize that we are in for some, you know, problems with the COVID, you know, for a time. The UK has now started vaccinating and we hope that the vaccine could be like a hose to quell this COVID fires that we see raging.

So I have to say that, all in all, Madam President, I think these extensions are needed. I think it should have been a longer period, but that is optimism that we seek. I think that we have to look at the fact that we still have to ensure that the Government departments which have open up in terms of the public service that we also educate those individuals there. You know, there is a lot of psychological effect of this COVID virus and, therefore, even when the members of the public come to them they have to show a little empathy and a little, you know, assistance to those people, because they will be dealing with members of the public who are
very irritable. So I am just making an appeal that there should be an education programme, not just with the vaccine, the safety, because I, myself, do not know how safe the vaccine is. I am looking at what is happening in Britain. So, not everybody would be on board with the vaccine, not everybody would be comfortable and that is quite so.

So, as I am saying, the fact is the extension is there and we have to realize that the education process has to be there, not just with getting the vaccine, but observing the protocols that the Minister of Health has so, you know, time and time again, beg people to say, “listen, social distance, wash your hands, wear your masks” and these are things that we just have—basic things that we will have to continue to beg our people to listen to. And I thank you, Madam President, for allowing me. Thank you. [Desk thumping]

**Sen. Anil Roberts:** Thank you, Madam President. For the five years and three months that I have been wanting to say this, that I must agree with the hon. Attorney General that this will be a non-contentious Bill being debated here, because on behalf of the 4,533 citizens that were, unfortunately, forced to pay a fee that they should not have had to pay at the Licensing Authority, that they will be refunded as undertaken by the hon. Attorney General to the tune of $1.7 million. I am not sure when that figure was last taken. But on behalf of those citizens, I thank the hon. Attorney General for undertaking to return those funds. I hope that they can do it in either a manner of cash return or a credit for their next renewal. Some people may prefer just to push it forward and say, next time I will only have to pay $125 to renew in five years’ time. So that is very good.

I hope that also, not with the Attorney General, but with the Minister of Health would take the same approach, because on that faithful day that I went to
Licensing Office on Wrightson Road, after paying the fee that I should not have had to pay for 375, when I went to take my picture—as we are talking about COVID and I heard Dr. Remy and Dr. Sen. Deyalsingh talk about the protocols—I went into a room that was 10 foot by 10 foot with 22 people. I open the door, air condition on and 22 people sitting down in a small room. So I hope that we can improve that, because while we say COVID is very serious, vaccine is coming, we would like to limit the spread.

And I am glad that I would speak to some of the public servants out there. There needs to be better communication from the legal end and the Government end, the Cabinet end, down to those who are implementing the law, because I had a discussion with a senior licensing official, tried to explain calmly the case. Obviously, it was a crowded place, so I did not want to argue too much, but he did not see the logic, he did not understand what the Government had stated that December 31st meant, that there was no expiry of a licence. It means, no matter how I tried to explain, I said: Sir, my licence could not be expired if the Government of Trinidad and Tobago says that I am legitimately driving on the road and the police cannot charge me for having an expired licence. Therefore, my licence is valid and the six-month period cannot begin until the Government’s extension has expired which meant that on January 01st, my six-month period would have begun. I would have been and just every other citizen would have been able or willing to renew their licence.

So, I am glad that good sense has prevailed and that citizens will get their money back. I think a lot of people like Donnie Sookdeo who had a similar situation, but knows that his appointment is in January and Vishnu Koon Koon and some other people who I spoke to will be happy that they would not be charged
this 375. I have my receipt, so I am telling all the citizens who have your receipt, keep it, because the Government has undertaken to repay you that unfortunate extra money.

And also, as we are speaking about COVID, I would like, as the Minister of Finance also said, to give the police some masks, because if the police are doing their job, we saw what we call a “zesser party” but the essence of COVID Regulations is to keep us apart. We are talking 20 minutes now, so we do not talk too long, so we do not interact too long. So if the police comes to a party and there are a thousand people and then they put them to lie down and then they keep them in a maxi, and there are no masks and they take them to a station and they keep them all together, I think that defeats the purpose of COVID Regulations. So that police should have masks. If they come upon a gathering, distribute masks and then they should be instructed, do whatever quickly to get people apart, because the idea is not to give people a ticket, it is to not spread or not given an opportunity for spread of the virus. So if you keep people together for 17 hours, there is a higher proportion, percentage, of infection across the board. So I think the communication of what the Government is attempting to do with COVID down to those who are implementing needs to improve a little.

In the bar licences, I would like to, since the Government is listening and reacting, I would just throw out another suggestion for people out there—$10 million sustenance for people. Okay. But if we do the mathematics and if there are 5,000 bars with five employees, for six months that works out to about $66.67 per month. So if the Government can discuss to help because people are suffering out there who have not worked—young ladies and single mothers who have not been able to get a daily wage for some sustained period, $66 cannot even buy you a
good set of doubles for the week. So if we can increase that it will be greatly appreciated.

And to the hon. Minister of Agriculture, Land and Fisheries, yes, we will eat local doubles. Thank you very much, Madam President. I do not need all my time. It is a pleasure to not have to argue and debate, and I hope I did not talk too loud. I thank you, Madam President. [Desk thumping]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Madam President. I have to say I thoroughly enjoy Sen. Robert’s contribution. There are few people as witty as he is, Madam President, and it is good to have him in the Chamber. Madam President, I thank hon. Senators for their contributions as to the submissions in the COVID context, in general. I accept the recommendations coming from Sen. Roberts. They are all in the general sense, I think in the right zone, Madam President. I say, in response to Sen. Mark that it would be and unworkable structure to have Orders subject to affirmative resolution and, therefore, I respectfully decline the invitation to make the amendment suggested. There are a few small amendments, just by way of typographical errors in cross-referencing that we would need to do at committee stage, Madam President, and being anxious to get there, I beg to move. [Desk thumping]

Question put and agreed to.
Bill accordingly read a second time.
Bill committed to a committee of the whole Senate.
Senate in committee.

Madam Chairman: The Attorney General has circulated some amendments. Is everyone in possession of the proposed amendments by the Attorney General? Yes?
Hon. Members: Yes.

_Clauses 1 and 2 ordered to stand part of the Bill._

_Clauses 3._

_Question proposed_: That clause 3 stand part of the Bill.

**Madam Chairman:** Attorney General, you have an amendment?

3(b) In proposed subsection (2) delete the reference to subsection (7) and replace with the word “(1)”.

**Mr. Al-Rawi:** Yes, Madam Chair. Should it please you, the amendment to clause 3(b) which will repeat throughout into clauses 4(b), 5(b) and 8(b) are simply to correct the reference to subsection (7). Instead it should be subsection (1). It was just simply a typographical error, and we need to do it that way. We could not, unfortunately, do it by way of proof reading or amendment from the Law Revision Committee and, therefore, we are compelled to correct these errors in this manner.

**Sen. Mark:** Attorney General, the submission made by Sen. Deyalsingh that the practicality, given our experience of a three months’ extension, seems to be a bit narrow. So when you refer to the sunset clause, you are referring to it going up to March 31st. Is that so?

**Mr. Al-Rawi:** Uh-huh.

**Sen. Mark:** Right. Why not go up to June rather than March 31st, given the fact that this goalpost seem to be shifting quite regularly? Rather than the 31st of March, will you consider the 30th of June?

**Mr. Al-Rawi:** Madam Chair, may I?

**Madam Chairman:** Yes.

**Mr. Al-Rawi:** So, Madam Chair, I thank Sen. Mark. The difficulty in putting an outside date is that if things get better really quickly in February, then we have a date that we do not need. So it is by far more prudent to put an earlier date that can

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be extended easily as opposed to a later date that we will have to move an Act of Parliament to do. So we have gone with the March date being the first quarter, bearing in mind that the systems are actually, at the same time, going electronically as well so that we are, for instance, in the Companies Act, we are at the cusp of saying, no more paper submissions, just file electronically. We are getting rid of all of those things. So, two points in answer, one, if we were to do a later date, we would have to move an Act of Parliament if we did not need it and that would not be the best use of Parliament’s time and then two, it is fairly easy to actually move the date by way of an Order, which is a very simple technique to use.

**Sen. Mark:** From a technological point of view, where are we at the Licensing Office in terms of online renewal?

**Mr. Al-Rawi:** We are at the same point as well. So we have got the online payments in order, the online filings are nearly there. We are making a few amendments to the electronic transactions regulations to allow certain aspects of it, and having done the digitization, there is one more piece in place now, electronic queue management. So that system is near perfection.

Obviously, what we are going to do is, we are going to have people come in and register. So if you want to do a transaction, the same way when you do a credit card transaction you get a notice on your phone telling you your card has been swiped, your two-step authentication, all of those things with two-step authenticate. So we are nearly there. All of the data work and structures have already been completed and we are in a good place for that. So, in the round, the date is March 31st for extension by way of Order and the technology will catch up together with the new processes.

*Question put and agreed to.*

*Clause 3, as amended, ordered to stand part of the Bill.*
Clause 4.

*Question proposed:* That clause 4 stand part of the Bill.

4(b) In proposed subsection (2) delete the reference to subsection (7) and replace with the word “(1)”.

**Madam Chairman:** The question is that clause 4 be—Attorney General, I am sorry.

**Mr. Al-Rawi:** Yes, Madam Chair. With clause 4, the same amendment as per clause 3 for the same reasons articulated and as circulated.

*Question put and agreed to.*

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

Clause 5.

*Question proposed:* That clause 5 stand part of the Bill.

5(b) In proposed subsection (2) delete the reference to subsection (7) and replace with the word “(1)”.

**Mr. Al-Rawi:** Madam Chair, the amendments as circulated for the same reasons volunteered in respect of clauses 3 and 4.

*Question put and agreed to.*

*Clause 5, as amended, ordered to stand part of the Bill.*

*Clauses 6 and 7 ordered to stand part of the Bill.*

Clause 8.

*Question proposed:* That clause 8 stand part of the Bill.

8(b) In proposed subsection (2) delete the reference to subsection (7) and replace with the word “(1)”.

**Mr. Al-Rawi:** Madam Chair, just to point out that we left out 7A in the Bill, 7A. So the question would have to be that clause 7A stand part of the Bill.

**Madam Chairman:** Is 7A not part of 7?
Mr. Al-Rawi: No, it is not a subset. It is a separate clause.

Madam Chairman: All right. We will revert to that when we are finished with clause 8.

Mr. Al-Rawi: Sure, Madam Chair. Madam Chair, there are circulated amendments for the same reasons as we have volunteered in respect of clauses 3, 4 and 5 and, therefore, we propose the amendments as circulated.

*Question put and agreed to.*

*Clause 8, as amended, ordered to stand part of the Bill.*

*Clause 7A ordered to stand part of the Bill.*

*Clauses 9 to 11 ordered to stand part of the Bill.*

Title.

Mr. Al-Rawi: For the record, Madam Chair, could I just note that the long title, there are some words that are appearing in the Bill as published that would need to be deleted. So, just for the record to put it on to delete those words. After “this Bill” delete the following words “contains eleven clauses and seeks”. Those words ought not to be there.

Madam Chairman: So you are deleting—right. So you are deleting the words “contains eleven clauses and seeks to”?

Mr. Al-Rawi: “Seeks” not “to”, we keep the “to”. This Bill seeks to—forgive me—amend the Cinematographic Act. So, it should be delete the words appearing after “Bill” as follows, “contains eleven clauses and”.

Madam Chairman: So, hon. Senators, the question is that the title to the Bill—

Mr. Al-Rawi: Forgive me, Madam Chair. The CPC is saying that we can do it slightly different. It should be “this Bill amends”. So we can delete the “seek to”. All right? So “this Bill amends”. So the words to be deleted would be “contains eleven clauses and seek to” delete those and we change the word “amend” to
“amends”. Apologies.

**Madam President:** Hon. Senators, the question is that the title to the Bill be amended as follows, by deleting the words “contains eleven clauses and seeks to” and including an “s” after “amend”. Yes?

*Question put and agreed to.*

*Title, as amended, ordered to stand part of the Bill.*

**Sen. Thompson-Ahye:** [Inaudible]

**Madam Chairman:** We took off the words, so it will now read “this Bill amends”. We have taken out those words, Sen. Thompson-Ahye.

**Sen. Thompson-Ahye:** Thank you very much.

*Question put and agreed to:* That the Bill, as amended, be reported to the Senate.

*Senate resumed.*

**Hon. Al-Rawi:** Madam President, I wish to report that a Bill entitled the Miscellaneous Provisions [2019 Novel Coronavirus (2019-n(CoV)] (No. 2) Bill, 2020 was considered in committee of the whole and approved with amendments. I now beg to move that the Senate agree with the committee’s report.

*Question put and agreed to.*

*Bill reported, with amendment, read the third time and passed.*

9.00p.m.

**ADJOURNMENT**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Thursday, December 10, 2020, at 2.30 p.m. During that sitting we would be completing the three other miscellaneous Bills that were referred to earlier today. We would be taking them through all its stages.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.03 p.m.