

Leave of Absence

Tuesday, August 19, 2014

SENATE

Tuesday, August 19, 2014

The Senate met at 11.00 a.m.]

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Anand Ramlogan SC and Sen. Elton Prescott SC, who are both out of the country, and Sen. The Hon. Vasant Bharath, who is ill.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I understand that correspondence is on the way, so I will defer the question relative to appointment of new Senators to later in the proceedings. The following announcements will therefore take place at this point.

**SESSIONAL SELECT COMMITTEES
(APPOINTMENT OF)**

Mr. President: Hon. Senators, in accordance with Standing Order 64 of the Senate, I wish to announce the appointment of the following Sessional Select Committees for the Fifth Session 2014/2015 of the Tenth Parliament.

Standing Orders Committee

Mr. Timothy Hamel-Smith	Chairman
Mr. Ganga Singh	Member
Mr. Anand Ramlogan	Member
Mr. Faris Al-Rawi	Member
Mrs. Helen Drayton	Member

House Committee

Mr. Ganga Singh	Chairman
Mr. Kevin Ramnarine	Member
Ms. Marlene Coudray	Member
Mrs. Camille Robinson-Regis	Member
Dr. Rolph Balgobin	Member

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Committee of Privileges

Mr. Timothy Hamel-Smith	Chairman
Mr. Devant Maharaj	Member
Mr. Vasant Bharath	Member
Mrs. Camille Robinson-Regis	Member
Dr. Dhanayshar Mahabir	Member

Statutory Instruments Committee

Mr. Timothy Hamel-Smith	Chairman
Mr. Emmanuel George	Member
Mrs. Raziah Ahmed	Member
Miss Shamfa Cudjoe	Member
Mr. Elton Prescott SC	Member

**JOINT SELECT COMMITTEES
(APPOINTMENT OF)**

Mr. President: Hon. Members, I have also received some correspondence from the Speaker of the House with regard to the appointment of Joint Select Committees. A letter from the Speaker, to myself as President of the Senate, on the subject of:

“Appointment of a Joint Select Committee

At a sitting held on Monday August 11, 2014, the House of Representatives agreed to the following resolution:

‘BE IT RESOLVED that a Joint Select Committee be established to complete the consideration of the legislative proposal entitled, *‘The Draft Houses of Parliament Service Authority Bill, 2014’* and that this new Committee adopt as part of its records all work completed to date.’

At that same sitting the House of Representatives also agreed to the following resolution:

‘BE IT RESOLVED that this House agree to the establishment of a Joint Select Committee to propose a legislative framework to govern the financing of election campaigns and to submit its report with recommendations to both Houses of Parliament within six months of its appointment.’

Accordingly, I respectfully request that you cause these two (2) matters to be placed before the Senate for its consideration, at the earliest convenience.

Respectfully,

Hon. Wade Mark, MP

Speaker of the House”

The letter is dated August 13, 2014.

Constitution (Amdt.) Bill, 2014

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CONSTITUTION (AMDT.) BILL, 2014

Bill to amend the Constitution of the Republic of Trinidad and Tobago, brought from the House of Representatives [*The Prime Minister*]; read the first time.

Motion made: That the next stage be taken at a sitting of the Senate to be held on August 26, 2014. [*Hon. G. Singh*]

Question put and agreed to.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the year ended September 30, 2002. [*The Minister of Finance and the Economy (Sen. The Hon. Larry Howai)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the year ended September 30, 2003. [*Sen. The Hon. L. Howai*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the year ended September 30, 2004. [*Sen. The Hon. L. Howai*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the year ended September 30, 2005. [*Sen. The Hon. L. Howai*]
5. Value Added Tax (Amendment to Schedule 1) (No. 2) Order, 2013. [*Sen. The Hon. L. Howai*]
6. Annual Report of the Telecommunications Authority of Trinidad and Tobago 2012/2013. [*The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh)*]
7. Report of the National Institute of Higher Education, Research, Science and Technology (NIHERST) for fiscal years 2011 and 2012. [*Sen. The Hon. G. Singh*]

MISCELLANEOUS PROVISIONS

(PROCEEDS OF CRIME, ANTI-TERRORISM, FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO) (NO. 2) BILL, 2014

Bill to amend the Proceeds of Crime Act, Chap. 11:27, the Anti-Terrorism Act, Chap. 12:07 and the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01 [*The Attorney General*]; read the first time.

Motion made: That the next stage be taken at a later stage in the proceedings. [*Hon. L. Howai*]

Question put and agreed to.

The Minister of Finance and the Economy (Sen. The Hon. Larry Howai):
Mr. President, I beg to move:

That a Bill to amend the Proceeds of Crime Act, Chap. 11:27, the Anti-Terrorism Act, Chap. 12:07 and the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01, be now read a second time.

Mr. President, with your leave, I wish to begin first of all by thanking the hon. Members for their willingness to sit today to treat with this very significant legislation, which seeks to strengthen this country's anti-money laundering and combating the financing of terrorism regime. Notwithstanding the fact that we are meeting today, I note that the budget would be read on September 08, 2014, and therefore the continuation of this Bill in the other place would take place after the conclusion of that debate. I would also want to say from the start that, as would be expected, this side will be considering amendments at the close of the debate and, in fact, I myself would have a few amendments to move at that time.

In looking at this Bill, I think we should all look at it with a certain degree of scepticism, and the reason I say we must look at it in that light is because we understand that the good intentions of honest women and men can easily be subverted by those who seek to use illegal activities for financial gain. And that is something that we have to test and retest and continue to test as we look at all of the clauses that are contained in this Bill. It is very important that we test it and we ensure that we arrive at the appropriate balance which will allow us to achieve the goal of efficiency and effectiveness in terms of what we are doing, facilitate the continuing growth and development of business, but at the same time, find a way to inhibit, to prevent and to certainly significantly curtail the activities which these pieces of legislation are designed to prevent. And therefore, it is very important that we pay particular attention to the various clauses as we go through the committee stage particularly.

Throughout the world there is a growing concern about money laundering and the financing of terrorism, as we continue to see the negative effects of these illegal activities on the integrity and functioning of financial systems, and the safety and security of law-abiding citizens. It is a burning global issue being exacerbated by the openness of the global financial system and proliferation of organized crime. Although white-collar crime tends to be viewed as victimless and non-violent, the crime of money laundering is a process by which the proceeds of crime are converted into assets which appear to have a legitimate origin, and that is where we need to clamp down in a very significant way. These assets can be retained permanently or recycled into further criminal enterprises, fuelling the growth and expansion of illegal activity which in turn leads to an onslaught of violent crimes in our communities.

Mr. President, in dealing with the Bill today, I would start with a few general principles and a few general areas and considerations that we took into account in coming up with the piece of legislation that we brought before us, and then I will deal with the specific clauses as they pertain to the amendments that we would like to see effected.

Mr. President, if we are to dismantle criminal gangs and the burgeoning drug trade which is plaguing our society, then we must find ways and means of taking the profit out of crime. Money laundering essentially enables those persons who are the masterminds, who plan and direct criminal activity to benefit from those acts by placing their dirty money into the formal financial system and allowing them to enjoy a lifestyle funded by their illegally obtained funds. Money laundering and the financing of terrorism stem from underlying criminal activity, which is pursued for financial gain, such as drug trafficking, robbery, kidnapping for ransom, fraud and tax evasion, coupled with the intent to conceal the proceeds of the predicate offence.

11.15 a.m.

Criminals tend to abuse the financial, as well as other business sectors in furtherance of their criminal conduct as far as these particular activities are concerned. These activities generate financial flows that involve the diversion of resources away from economically and socially productive uses. The corrosive and corrupting effect of these forms of financial abuses on the economic system and society as a whole has led to national, regional and international cooperation in a development of policies to combat the undesirable spread of financial crime, and it certainly involves in a very significant way the activities of—and coordination of activities among law enforcement bodies throughout the world.

As we would know, the Financial Action Task Force, or FATF, is an inter-governmental body which was established by the G7, as it was then, back in 1989, and the FATF has developed standards and recommendations to combat the scourge of money laundering and terrorist financing. But FATF goes further, by seeking to promote effective implementation of legal and operational measures which would give effect of its recommendations.

So, Mr. President, as a policy-making body, the FATF works to generate the necessary political will that will bring about legislative and regulatory reforms in countries around the world. Mr. President, the amendments before this Senate today will enhance Trinidad and Tobago's capability to combat money laundering and terrorist financing by amending our current Proceeds of Crime Act,

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commonly referred to as POCA, our Anti-Terrorism Act, and the FIU Act, thereby strengthening our anti-money laundering and combating the financing of terrorism legislative regime and making this jurisdiction less attractive to criminal elements seeking to launder their illicit gains or to transmit funds to terrorist organizations.

Among other things, Mr. President, these amendments seek to, one, widen the pool of criminal activity for which the State can confiscate assets, as well as seize, detain and forfeit cash where there is cogent evidence to suggest that the assets were derived from criminal activity, and I will come back to that later on as we look at the clause-by-clause analysis of the Bill.

Secondly, these amendments seek to make money laundering a stand-alone offence—very important, as part of what we are seeking to do here today. So that the prosecution does not have to wait for conviction in relation to a predicate offence from which the proceeds are derived, and I will speak to why we need to do this as we speak to the legislation.

And, thirdly, we are seeking to refine the existing provisions which relate to the Seized Assets Fund and its management. This is a fund into which all assets confiscated from convicted persons are to be placed and thereafter utilized for law enforcement and social programmes aimed at reducing crime, such as narcotic rehabilitation and demand reduction.

Just as importantly, Mr. President, we are also seeking to make amendments that will impact upon the operational efficiency of our law enforcement and there are some specific changes that we have sought to make—and delegation of authorities which we have sought to make in this legislation, which I will refer to as we go along—so it will impact on operational efficiency of our law enforcement, financial intelligence and regulatory agencies, and also it will bring us into greater compliance with the recommendations from the FATF. The FATF list sometimes called the “black list” is a statement issued by the FATF indicating which countries have fallen short of implementing the recommendations.

Mr. President, when this People’s Partnership Government took office in May 2010, Trinidad and Tobago was on the radar of the FATF, named on what we called the “grey list” which is a part of FATF’s public statement which speaks to countries that have significant deficiencies and that require urgent attention. In fact, when I first came into this honourable Senate, I myself had a very active engagement in this process as my first order of business, simply because of the importance which I myself, coming from my own background, attached to this particular piece of legislation, and there were significant and very intense and focused meetings with the banks, with the insurance companies, with the FATF and a number of other bodies, to ensure that the Bill was passed, which got us off the grey list. In its public statement of October 22, 2010, the FATF had this to say:

“In February 2010, Trinidad and Tobago made a high-level political commitment to work with the FATF and CFATF to address its strategic AML/CFT deficiencies. However, the FATF has determined that certain strategic AML/CFT deficiencies remain.”

A mere two years later, Mr. President, listen to what the FATF had to say:

“The FATF welcomes Trinidad and Tobago’s significant progress in improving its AML/CFT regime and notes that Trinidad and Tobago has established the legal and regulatory framework to meet its commitments in its Action Plan regarding the strategic deficiencies that the FATF had identified in February 2010. Trinidad and Tobago is therefore no longer subject to FATF’s monitoring process under its on-going global AML/CFT compliance process. Trinidad and Tobago will work with CFATF as it continues to address the full range of AML/CFT issues identified in its Mutual Evaluation Report...”

And that was a quote from the FATF statement.

So this Mutual Evaluation Report, Mr. President, was published after the third round of mutual evaluations in 2005, but, up until 2010 Trinidad and Tobago had not satisfactorily addressed major concerns raised in that report. It is to be noted, however, that by 2012 there had been a significant turnaround owing to the commitment and effort of this Government. It will be recalled, that in 2011 and 2012 considerable amendments were brought to this honourable Senate whereby the FIU was given the regulatory powers in relation to the non-financial business and certain financial sectors which needed greater oversight, such as credit unions and money remitters. These amendments brought the aforementioned sectors within the supervisory remit of the FIU. These sectors are identified as being at high risk of abuse for money laundering purposes and around the world they are regulated for AML/CFT compliance.

Mr. President, the pace at which criminals activities are evolving and adapting to the FATF has led to the FATF revising its recommendations in 2012 to address new risks, new threats and new typologies that have been identified through the work of the FATF.

So, Mr. President, this is a constantly evolving regime. The criminal elements continue to evolve how they are going about the process of getting around and circumventing the rules and regulations, and we ourselves have to continually amend and adjust to stay ahead of the game, and sometimes just in passing to keep pace with the intellectual capability of the criminal element.

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The FATF has begun the fourth round of mutual evaluations which is based on the revised 2012 recommendations. The regional body, the CFATF, will be assessing Trinidad and Tobago in January 2015. Additionally, as the fourth round progresses the third round is being brought to an end. The CFATF produces a follow-up report on each country bi-annually that maps the progress being made towards achieving compliance. In the last report there remain outstanding deficiencies in a few areas which we are seeking to address with the amendments contained in this Bill and subsequent amendments to the financial obligations regulations which will be laid in Parliament upon successful passage of this Bill.

Together with the 26 other member states of the CFATF we are required to report our progress in November at the next plenary meeting of the CFATF. We intend to demonstrate at that time that we have not only met the key and core recommendations, but that we have achieved substantial compliance with the remaining recommendations made by the FATF.

Hon. Members, this Government's commitment has not faltered. After the November 2013 meeting of the CFATF plenary, a decision was taken by Cabinet to appoint an inter-ministerial committee to monitor and manage the process by which we move towards continuing compliance with the requirements of the FATF, and this inter-ministerial committee which is chaired by the Attorney General comprises the Minister of National Security, as well as the Minister of Finance and the Economy. The purpose of this meeting is to ensure that we successfully pass through both the third and fourth round evaluations with which this country will have to comply.

One of the things coming out of these meetings of this inter-ministerial committee, Mr. President, is that we have been able to determine and to identify some of the key operational and legal issues that we need to address. We have now gotten a very good hold and a good handle on what we need to do, what are some of the obstacles that we face, what are some of the bureaucratic procedures that perhaps inhibit our ability to perform well and to inhibit—also to curtail the activities of the criminal element, and we are starting to see very good progress as far as that is concerned. We have had two recent orders which are being handed down by the courts and we have had four persons recently charged for money laundering offences.

And the thing is, Mr. President, that we may say that four persons and two others are relatively—are small numbers, but as the activities of this particular committee continue to ramp up, I expect, and with the assistance of this new legislation, I expect that we will see a very significant improvement in the

activities of the law enforcement agencies and with the successes which we will be able to achieve as a result of the implementation of these laws and the strengthening of the operational framework for its implementation.

Mr. President, one of the recommendations emanating from the third round evaluation is that Trinidad and Tobago should create what is called a stand-alone money laundering offence, whereby property can be proven to be the proceeds of criminal conduct and a person can be charged and convicted for money laundering, notwithstanding the lack of a conviction for a specific crime that gave rise to the proceeds. This is a very important change that we are making where we are delinking this particular matter from the predicate offence.

We recognize that as long as money laundering activities go unpunished there will always be the means and motives for the propagation of criminal activity, and criminals will prosper at the expense of law-abiding citizens and to the detriment of this country. Therefore, we are proposing amendments that will allow the DPP to prosecute someone for money laundering where they are found to be dealing with criminal property which was obtained directly or indirectly from any form of criminal conduct.

It is not necessary in a stand-alone money laundering case for the prosecution to wait for a conviction in relation to the criminal conduct, that is, the underlying predicate offence which gave rise to the criminal property which was laundered. Prosecutors are not required to prove that the property in question is a benefit of a particular type or a specific act of criminal conduct, and this was made abundantly clear by the English Court of Appeal in the leading case of *R v Anwoir*. The prosecution must however at a minimum be able to produce sufficient evidence from which the jury can draw the inference that the property in question has a criminal origin, and this must be done to the required criminal standard, that is, beyond a reasonable doubt. In fact, the term used in *Anwoir* which was affirmed by the court of appeal in the subsequent case of *R v F and B* is irresistible inference and you will see that in the case.

So, Mr. President, it will now be open to the prosecution to prove that the property which was laundered was derived from criminal conduct, either by showing that it is derived from a conduct of a specific kind or/and—I will quote from the judgment:

By deducing evidence of the circumstances in which the property had been handled which were such as to give rise to the irresistible inference that it could only have been derived from crime.

11.30 a.m.

Now, Mr. President, the question may arise as to why we would want to prosecute someone for money laundering if we cannot pinpoint what offence specifically generated the proceeds which were laundered, and the answer is simply this: there are persons who live what is referred to as a criminal lifestyle. They have no legitimate source of income but they own the best cars, the best houses, the most jewellery, et cetera, and unlike the average hard-working citizen of this country who takes a loan or a mortgage, they leave no paper trail or trace of evidence to show what legitimate activity they are engaged in to generate the income used to purchase these assets. But the multiplicity of their crimes makes it challenging to prove exactly which crime generated the proceeds which were then used to buy a particular house or car.

Prior to 2002, the United Kingdom faced a similar challenge when they were attempting to prosecute money laundering, in much the same way that we are doing now, pursuant to their UK Criminal Justice Act and Drug Trafficking Act. So they introduced this concept of criminal property in the UK Proceeds of Crime Act, 2002, and they have successfully prosecuted hundreds of cases where persons deal with criminal property, having knowledge or reasonable grounds to suspect that the property is, in fact, criminal property. And I know these are some issues that perhaps Members would want to have some more to say as we go through the debate.

Of course, Mr. President, there are safeguards built into the law to protect innocent third parties that unknowingly enter into transactions which involve criminal property, and I will address those when we do the clause-by-clause analysis. The low number of charges laid for money laundering in Trinidad and Tobago has been cited as a cause for concern, as it is a clear indication that the law, in its existing form, is not working the way it ought to, and I am confident that this amendment will allow for more effective implementation of the Proceeds of Crime Act.

Mr. President, apart from the proposed amendments to treat with the prosecution of the money laundering offence, this Bill also seeks to address another identified problem with the current law. The present definition of “specified offence” in the POCA captures two things: one, all indictable offences; and two, offences specified in the Second Schedule.

Mr. President, the POCA contains provisions under Part I of the existing law, which allow the court to make four types of orders: one, is restraint orders and charging orders pursuant to sections 19 and 20 in relation to realizable property in order to ensure that assets are not hidden or transferred by persons who are before the courts; secondly, confiscation orders, whereby assets are taken away by the court and vested in the State; thirdly, detention of cash orders made pursuant to section 38 whereby a customs or police officer, above a certain rank, can seize cash over a prescribed sum and detain it for a period of 96 hours.

We need to make some changes to this particular area which I will deal with in the clause-by-clause analysis, Mr. President, because we have had at least one unfortunate incident where funds were returned within the 96 hours which, perhaps, a different interpretation—and we are seeking to tighten that up now—would have prevented such an incident from taking place. Fourthly and finally, the forfeiture orders under section 39, where a magistrate can order that a sum of cash previously seized is forfeited where the magistrate is satisfied that the cash, directly or indirectly, represents the proceeds of a specified offence or are intended to be used for the commission of a specified offence.

Now, there are two issues with the current law: firstly, the FATF recommendations require countries to adopt legislative measures that will allow them to restrain and confiscate assets which are laundered, which are derived from predicate offences or which are used to fund terrorism. At Recommendation 3, the FATF states, and I quote:

“Predicate offences may be described by reference to all offences; or to a threshold linked either to a category of serious offences; or to the penalty of imprisonment applicable to the predicate offence”—which is the threshold approach—“or to a list of predicate offences; or a combination of these approaches.

Whichever approach is adopted, each country should, at a minimum, include a range of offences within each of the designated categories of offences.”

So, Mr. President, in this approach, and what we had done previously, is that we have adopted a blended approach where we try to capture all serious offences by reference to indictable offences and then we included some summary offences in the Second Schedule, which are primarily tax-related offences. The reference to the designated categories of offences is for the categories of predicate offences which the FATF has named as the types of offences in relation to which countries should be allowed to confiscate property once a conviction is obtained.

Mr. President, what we have found is that there are offences which are summary offences on the statute books of Trinidad and Tobago, which may fall into these categories and, therefore, in order to be FATF-compliant, we must capture these within the definition of “specified offences” and therefore we have made that amendment. The very nature of some of these offences makes it possible for them to give rise to substantial financial gain. By way of example, one category identified by the FATF is that of environmental crimes. In our domestic context this category can include crimes such as mining without a

licence, commonly referred to as illegal quarrying, an offence created by section 45 of the Minerals Act. From the commission of this offence, the perpetrator can acquire substantial enrichment, but it is a summary offence under the present law and as such, the State cannot confiscate any of the assets which a perpetrator may have acquired with the proceeds of this crime.

So the amendments which we are proposing today will allow the State to restrain and confiscate the ill-gotten gains of persons who offend against any law which falls into one of the categories of the specified offences where the State can prove a nexus between the commission of the offence and the acquisition of the asset. However, we recognize that you could also end up capturing a lot of petty crimes and so on. So what we have done is, we have established a threshold of \$5,000 or one year of imprisonment. So anything over that will then capture you.

So what we have sought to do is not overburden the criminal justice system by picking up on issues which have very minor penalties and which may be considered as small infractions or relatively minor infractions because, generally, the petty crimes will not give rise to criminal proceeds of the extent which we are seeking to address by way of this legislation.

The second issue which we have found is, by making reference to indictable offences, there is a lack of clarity in the law. It was felt that the law should go into detail and say, if you commit X offence and there is a nexus between the profits you have made from the commission of X offence and the property or other assets which you own, then the State can approach the court and ask for an order to restrain your assets, and if you are convicted, the State can ask for an order to confiscate these assets, which it can show are derived from the commission of that particular offence.

So we have amended the definition of “specified offence” to refer to any serious offences from which persons can derive a financial benefit and which fall within the FATF categories of designated offences, and in the process we have clarified, for the benefit of the public at large—and I want to emphasize this because we have listed it out, and this is for the benefit of the public at large. We have clarified what are the types of offences to which this Act will apply.

In relation to both these substantial amendments—the amendment to the money laundering offence and the definition of “specified offence”—we have taken heed of what was done in the neighbouring Caribbean countries, which are subject to the same assessment process as we here in Trinidad and Tobago. Grenada, St. Lucia, the Cayman Islands, Jamaica, the Bahamas and St. Vincent and the Grenadines have all modelled their law, in relation to the offence of money laundering, after the United Kingdom and have incorporated the concepts of criminal property derived from criminal conduct.

Barbados, which we considered in even greater detail, uses slightly different terminology, and having regard to the extensive body of case law to aid in interpretation when these matters are before the courts, we think it more appropriate to go with the UK formulation which has been widely adopted in the region, and successfully so, with the neighbouring St. Vincent and the Grenadines obtaining a conviction for a stand-alone money laundering offence in the case of Antonio Gellizeau and others, where the coastguard boarded a vessel and discovered US \$1.6 million concealed in vacuum-sealed bags.

So with respect to the “specified offence” definition, similarly, countries in the region have listed in schedules to their respective Acts, relevant offences which can result in restraint and confiscation orders. Jamaica, the Cayman Islands, the Bahamas, have all, in some form or the other, listed the offences or categories of offences. Grenada has opted to schedule each of the FATF categories of offences and leave it to the courts to decide whether a specific offence under the domestic law fell into any of these categories.

We agree with this approach as its scope will not only capture the widest possible range of offences to meet the FATF recommendations, but will also give greater clarity to the man in the street so that he can know that these are the types of offences that can result in the State restraining or confiscating your assets. So we have done it—we have looked at the legislation in all of the different jurisdictions. We have analyzed the implications of it; we have looked at how it has worked; we have focused a lot on what the UK has done and we have chosen to put in a separate schedule, those specific offences that the man in the street can look at and know these are the things that would create the problems that we want to address.

Mr. President, regarding the operation of the law, it is only when it is put in operation and its application is tested that one can really see first-hand, the challenges with implementation. By testing the laws over a period, it allows a country to discover better ways of doing things, as well as identify any additional procedural safeguards which are necessary to protect persons who are wrongfully accused or who may be innocent third parties. Again, I want to say that one significant benefit of this inter-ministerial committee, of which I spoke earlier, is that we get an opportunity to hear directly from the technical staff, the people on the ground who are implementing these laws, as to how they are working, as we get an opportunity for them to share their experiences with us, and this enriches our approach to the legislation and how we go about making the changes.

I would want to, at this stage, highlight some of the amendments and, perhaps, deal on a clause-by-clause basis with some of the changes that we are proposing to introduce. At clause 3(b), we are seeking to amend section 19(2) of the POCA to expand upon the current safeguard provision as it relates to restraint orders. While the current law states

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that the court can make provision as it sees fit for living and legal expenses, we are seeking to repeal and replace this section with a provision that itemizes the various factors which the court can consider when carving out exceptions in a restraint order and provide for access to funds.

So we say that the law must be fair and balanced. It is of particular importance that when we are passing law to combat the wave of crime plaguing our land, that we do not let our zeal and enthusiasm carry us down a path where we trample upon the rights of those who are still considered innocent until proven guilty. Therefore, with a provision, such as this one, that can deprive persons of their constitutionally-protected rights to the enjoyment of property before convictions, we felt it was imperative to make clear what are some of the allowances the court can make when granting the order.

You see, Mr. President, while we want to ensure that assets are not dissipated during the course of a trial, we also do not want an accused person, not yet convicted of any crime, to lose his house because he cannot make his mortgage payment, or derail his children's education because he cannot pay school fees. We do not want to deprive persons of medical care and we most certainly do not want to deprive them of a fair trial by making it impossible for them to retain counsel because they have no access to funds.

So we have looked at the provisions in the UK, Dominica and Barbados jurisdictions, as well as the UN Resolution 1452 of 2002 that speaks to the freezing of the terrorist assets and what exceptions can be made, and we crafted this section to state explicitly what are some of the expenses the court can make provision for.

11.45 a.m.

In clause 3 of the Bill, apart from correcting a typographical error in section 23(3), we have amended the subsection to allow for the production of material to the police officer that is in an electronic format. Mr. President, you know, in this modern age we recognize that in a relatively small confine of space, one can copy a number of documents and make it easy to transmit and to transfer and to allow the police officer to be able to manage the documentation and to basically move around with records or to move with financial records up to five or 10 years, and if you consider that you may be dealing with four or five different financial institutions over a period, say 10 years, for example.

The volume of documentation you could be dealing with is quite substantial, and we also have to recognize that the ability now to manage that documentation in an electronic format is far superior to what a human being can do sifting through paper documents, and therefore, what we sought to do is to allow for this information to be captured in electronic format. We do not propose that it is mandatory. As in certain circumstances, we recognize it may be burdensome on the institution, so we leave it open to the court's discretion in terms of when and how they would proceed with that.

With respect to clause 3(e) which amends section 38 of the Act, in section 38 what we did is we allowed for the police and the customs officer on duty at a particular port of entry, or a police officer on duty, to make an arrest, but we recognize that a police officer for example, or a customs officer can make an arrest in any part of the country. In fact, this has been done on a number of occasions since I have been Minister. Some of it has not been very public, but we have actually held and confiscated money and proceeds of crime in a number of the instances and there is no reason, therefore, why an officer must only be at a specific place or only be on duty in order for them to make, for example, a cash seizure. So, as a safeguard though, we recognize the fact that we should restrict it to officers who may be above a certain rank and we have done so, but the adjustment we are making will allow the officer to actually make an arrest and confiscate proceeds whether or not he is on duty and whether or not he is at a port of duty.

Section 38 is further amended in subsection (4) by allowing for the use of prescribed forms by police and customs officers, who go before a magistrate to obtain orders to detain cash beyond the initial 96 hours for a period of up to three months. We think this is important because the nature of these crimes, you know, in 96 hours, it is probably unlikely that you can put together enough of a case that would allow you to perhaps get a conviction. So this ensures that there is consistency in application before the court.

The new subsections 4(a) and 4(b) are added, which state that the initial application for detention order will be an ex parte order, but the parties must be served with notice as soon as reasonably practicable. The reason for this, Mr. President, is to ensure, as I said, that there is no lapse of the 96-hour detention period which may ensue should there be an inter partes hearing, and the interested party is informed that a detention order has been made against a sum of cash. So we are trying to manage the practical difficulties in implementation of this specific section that we had in the Act.

Mr. President, in the case of *Pop and Others v Judge Smith and Others*, there was an application for the judicial review of a district court's decision to grant an ex parte application for detention order. The case involved the detention of 38,000 euros at Dublin Airport. It was held that a granting of a detention order ex parte does not infringe the principles of a fair hearing by the other side—*audi alteram partem*—natural justice or fairness, or the European Convention on Human Rights. The court recognized that the detention order was not a final order that involved any finding of wrongdoing and was akin to interim relief which allowed for the status quo to be maintained, whilst authorities investigated the origin of the seized cash and whether criminal proceedings were justified.

So, what we are doing, Mr. President, has an antecedent in case law, and the rights of the interested party are further protected since such a person may apply to a magistrate for the release of the sum of cash at any time, the detention order must be renewed before the courts every three months and no cumulative period of detention can exceed two years. So we have put some safeguards in there for that, and therefore, with these new subsections the court can hear the matter *ex parte*, determine whether there are sufficient grounds to grant the order and, if granted, the interested parties are served and can approach the court at any time to be heard.

Most importantly, police and customs officers are given time to investigate whether the cash detained directly or indirectly represents any person's proceeds of a specified offence, or is intended by any person for use in the commission of such an offence. Such investigations will also allow for a determination as to whether there is sufficient cause to institute criminal proceedings against any person in Trinidad and Tobago.

Further, officers will be given the opportunity to determine if there is reason to cooperate with authorities in another jurisdiction in instances where there is a connection to the detained cash in Trinidad and Tobago and a crime committed in a foreign jurisdiction. This is very important for us because we find that these crimes also tend to be cross-border crimes. Mr. President, I wish to point out that in practice the courts can hear matters such as these *ex parte* and this amendment simply codifies an existing practice.

There were some amendments which we made to clauses 3(f) to 3(k) to deal with the changes which I have already outlined to the offence of money laundering and connected or consequential amendments. So I will therefore not spend too much time on that.

With respect to 3(l) which amends section 55 of the Act, the substantial changes made here are that financial institutions and listed businesses will be required to pay particular attention to complex unusual transactions, but only report those that are suspicious and, additionally, we have reduced the threshold from \$95,000 to \$90,000. The FATF recommendation is a large transaction. It is anything over US \$15,000. What we sought to do, we have used a more conservative exchange rate of 6.1. Not that I suggesting that we expect the rate to appreciate anytime soon, neither am I saying anything otherwise, right? But what I am saying is, just for conservatism, we will set it at 6.1 so that we—you know, depending on where the exchange rate goes, we will still capture the equivalent of US \$15,000. So we have dropped it down to \$90,000 and we have used an exchange rate of TT 6.1 to the US dollar.

Now, Mr. President, the reason why we are removing the requirement to report all transactions is because there are so many transactions over the threshold of \$90,000 that it inhibits to some extent legitimate business, but what it does, it so overwhelms the FIU with volume, it means that you cannot focus on the ones that are really important. Now, the institutions are still required to complete the forms with respect to all the large transactions—and they will keep those forms—but it allows the FIU just to focus on the ones that are considered suspicious. So what that does for us, is it enhances the capability of the FIU.

In addition, Mr. President, clause 3(m) inserts sections 55A to 55F and there is some renumbering of clauses that took place there, but a few important changes that I just wanted to make sure that we focus on. The first is to be found in the proposed section 55A which encompasses the old 55(3A) and (3B), but replaces the requirement to report suspicious activity in a form prescribed in the Third Schedule with a requirement to report in a form approved by the FIU. This gives the FIU more flexibility because it allows us to capture information in electronic format and to change the formats as it becomes necessary for them. So that is a change that we have made and I understand it is being done in other jurisdictions such as Bermuda, for example, and this is important in improving the effectiveness of the FIU.

What we are trying to do is, we are trying to focus the FIU on on-site inspections and, again, in order to ensure that they do not get bogged down with a number of things that perhaps could be done by others, we have introduced these amendments which will contribute to the operational efficiency of the FIU. What we have done is that—putting an arrangement in place such that the FIU does not have to review every single programme that is developed by every single organization because we are dealing with something like about 1,800 entities that are reporting into the FIU, and we have found in practice that it creates a volume that is unduly burdensome and it does not achieve the intended goal that we want to achieve as far as combating money laundering and terrorist financing.

We recognize that anyone can develop and submit a document and say we are complying and these are the things we want to do, and the FIU is spending a lot of time reviewing these documents. To what extent they are being complied with then remains an open question and we are seeking to have the senior management of these organizations be responsible, and we have put a definition—I think I will put it in the amendments—of senior management to say who is responsible for reviewing these programmes and ensuring that they are fully compatible with the requirements of the FIU and with the legislation. What we will do is have the FIU focus more on the on-site investigations that you will need to do in order to ensure that there is compliance with the programmes that have been developed. In fact, this is something that the FATF has recommended to us as something that makes sense for us to do.

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Sections 55D, E and F remain the same as the existing 55(7), (8) and (9), except that instead of the FIU, we are recommending that the power to enter premises and conduct an inspection to determine whether the compliance programme has been implemented will also be given to the respective supervisory authority. So we will also have the three supervisory authorities—the Central Bank, the SEC and the FIU—all of which possess the requisite knowledge of the sector, an experienced test level of compliance within an organization which they supervise do some of the inspections also. So we will have the Central Bank going in, we will have the SEC going in, we will have the FIU going in. So we will have a much more rigorous programme implemented which will ensure even greater compliance with the legislation than we are seeing currently.

Mr. President: Minister, just to draw to your attention, you have another 10 minutes.

Sen. The Hon. L. Howai: Thank you, Mr. President. So, it has two benefits. One is that these organizations, the Central Bank and the SEC, understand properly, better than even the FIU, how the business of these institutions operate, how to interpret what is done. And therefore, they have a better capability to be able to investigate and to trace transactions through these institutions than perhaps even the FIU may have. So that it gives each of these authorities greater power and it allows for greater effectiveness, and that is very important for us, and the FIU will deal with those other institutions that the Central Bank and the SEC will not deal with.

When you go through the legislation, Mr. President, you will see that we have identified what are the institutions that will fall under the Central Bank, what are the institutions that will fall under the SEC. So it is very clear what the responsibility of each supervisory authority will be.

12.00 noon

If I could go to the last major amendment to the POCA which I would like to touch on, and that is clause 3(o) which repeals and replaces section 58. This section governs the establishment of a Seized Assets Fund and the operations of a Seize Assets Committee. Again, I know Members may have some particular interest to ensure that—to determine how this is actually being done and it is actually working. The last time I checked, there was about \$4.9 million in the Seized Assets Fund and, in fact, I think there was one pay-out to compensate someone whose assets may have been seized and we needed to deal with. But, one would say that given what, intuitively, one can determine, or one can think, might be the extent of the activities which take place in any country, that \$4.9 million is a relatively minuscule sum and I expect with some of the processes that we are putting in place to strengthen this piece of legislation, I expect that we will have much more contributions to that particular fund in the future.

Mr. President, the FATF *Best Practices Paper* of October 2012 on confiscation states and I quote:

- “20. The Interpretative Note to Recommendation 38 requires countries to consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited for law enforcement, health, education or other appropriate purposes.
- 21. Regardless of whether an asset forfeiture fund has been established, as a matter of best practice, countries should endeavour to use confiscated property transparently to fund projects that further the public good.”

So the money that is in this Seized Assets Fund can be used to fund the projects that further the public good.

Our legislation has always reflected compliance with the FATF recommendation. Section 58(1) of POCA provides for the establishment of a Seized Assets Fund by the Comptroller of Customs with several other provisions treating with the operations of this fund. A review of the existing schemes reflect, though, that certain anomalies exist requiring a more streamlined approach.

With your leave, Mr. President, I would want to mention three areas of focus. The first is that despite the establishment of the Seized Assets Fund in section 58(1), the legislation goes on to say in section 58(2) that:

“Any moneys paid in satisfaction of a confiscation or cash or property seized pursuant to a forfeiture order...shall be placed with the Seized Assets Committee...”

—while subsection (3) identifies activities that would be supported by the moneys placed in the fund. Mr. President, from a practical and financial perspective, if a fund is established, it does not follow that moneys, cash or property seized should be placed with the Seized Assets Committee as directed in section 58(2). We have therefore sought to ensure that this is done. So we are drawing a clear nexus between the two in the amendments that we are making here, so it is very, very clear as to what will happen.

Secondly, section 29 of POCA provides for compensation to be paid in prescribed circumstances. For instance, where proceedings against a defendant do not result in his conviction, compensation in these instances is to be paid out of the Consolidated Fund. Now, as a Minister of Finance and the Economy, I would much prefer not touch my Consolidated Fund. I would prefer that if we seize your money, and we put it in the Seized Assets Fund, that if we have to compensate you, that I take it back out of the Seized Assets Fund, and only if there is a shortfall.

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For example, if the person, say, brought an action that he was wrongfully—his cash was wrongfully detained and he could have invested it and he lost interest and so on, and the court agrees with him and the court says we must pay him back his interest, that, in that case, we take from the Seized Assets Fund. But if the Seized Assets Fund does not have sufficient—it is down to some number that we cannot pay him back his interest—then we can take the proceeds out of the Consolidated Fund if there is a shortfall. But, it is not that whatever comes that we have an inflow into the fund but the outflows come from the Consolidated Fund. We just sought to deal with that.

Thirdly, Mr. President, there was no guidance on what moneys shall comprise the fund and we have addressed this deficiency in the proposed section 58A, so Members can take a look at that to see what was done. But, Mr. President, what this honourable House now has before it is a much more comprehensive regime for the management of seized assets whereby, one, the Seized Assets Fund is established with identified accounts and audit rules for the Comptroller of Accounts. Two, there will be a Seized Assets Advisory Committee, the members of which will be appointed by the Minister of National Security. The Seized Assets Advisory Committee would provide advice on disbursement of moneys from the fund. Three, it is clear that the Minister of Finance and the Economy will be responsible for disbursing funds for prescribed projects such as community development. Four, the moneys which will comprise the fund will now be clearly identified. Five, there is guidance on how the committee must deal with different types of property. Six, there is a requirement for members of the Seized Assets Advisory Committee to declare their interest and I am making one amendment to that, where someone may not have been aware at the time that they had a conflict, and it came to their attention subsequently and therefore, we just needed to put an extra clause in there. And finally, an annual report will be laid in Parliament on the management of the fund, and the report will be laid by the Minister of Finance and the Economy. I believe there was another amendment which we will bring just to tidy up some of those things.

By this new framework, we have attempted to update and enhance the structure of the Seized Assets Fund as well as ensure that there is alignment with the Exchequer and Audit Act and other legislation that treats with accounting for public moneys. Further, we are seeking to legislate the manner in which the advisory committee conducts its business to ensure that it is done in a fair and responsible manner.

As I indicated earlier, this Bill amends the three key pieces of legislation which are concerned with anti-money laundering and combating the financing of terrorism. The vast majority of these amendments have been made to the POCA. I now just ask your indulgence very briefly, in three minutes, to outline the amendments which we are proposing to the Anti-Terrorism Act and the FIU Act.

At clause 4 of the Bill, we are putting forward an amendment to the definition of “terrorist property” to include:

“(d) property belonging to a terrorist or terrorist organization;”

The United Nations Security Council Resolution 1373 calls upon states to prevent and suppress the financing of terrorism by, among other things, freezing any property belonging to a terrorist or terrorist organization. The resolution is therefore applicable to any property belonging to the terrorist and not just the property used in furtherance of the criminal enterprise. This was a deficiency flagged by the assessors in the CFATF follow-up reports as recently as May of this year. So we have made the change to accommodate that. Another deficiency flagged by the assessor is the low fines in this Act and what we have done is, without going into it in detail, given the constraints of time, we have made some amendments to that.

With respect to FIU legislation, at clause 5, we have the suggested changes. At subclause (a), we have an amendment to the interpretation section to correct a discrepancy between the Act and subsidiary legislation. So we have tried to tie in those two. And further, we have included a proposed section 18C which allows for the FIU to publish, via its website, a list of all supervised institutions which are registered pursuant to the FIU Act, making this list available to financial institutions which are required to verify the registration status of their clients who are listed bodies as part of their due diligence process. The information, of course, will also benefit the public at large.

Finally, at subclause (d), we have addressed another operational issue by including a provision that will allow an FIU officer to accompany a police officer who obtains a warrant to inspect premises of one of the entities supervised by the FIU where consent is refused. So where you have to get a court order to go in and the police are going in, the FIU will also go with the police officer because that helps to deal with some of the concerns that Members may have concerning the protection of the rights of the individual and so on.

So, Mr. President, I have spoken a great deal of the legislative changes which we have brought before this House, all of which are aimed at strengthening and refining this country’s AML, CFT suite of legislation. Our objectives are simple but far-reaching. We are here to effectively combat money laundering and terrorism financing.

As a Minister of Finance and the Economy, I cannot conclude my presentation without referring to the devastating effects of money laundering. This is a silent crime but the ramifications are tangible. A country with lax financial systems and a weak criminal justice system will be an attractive haven for criminal activity. Had we chosen not to make these changes, we would certainly have expected that we

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would have been faced with greater scrutiny from correspondent banking relationships with increased queries regarding customer transactions and beneficial ownership, higher cost of conducting business and borrowing here in Trinidad and Tobago; termination of some international banking relationships which could have had very significant effects on our banks; financial and reputational risks and an anti-investment and trade environment, and delays in the completion of foreign currency cross-border payment transactions; all of which would have had a very deleterious effect on our economy.

Mr. President, in closing, I urge hon. Members to see this legislation for what it tries to do, namely, make our systems stronger; empower our law enforcement and supervisory authorities better to detect this insidious form of criminal activity; bring more criminals to justice; and prevent criminals from legitimizing ill-gotten gains. This legislation is intended to benefit our nation and set a positive tone for the future. I therefore encourage all hon. Members on both sides to engage in healthy debate, collaboration, compromise where necessary, and eventual consensus on these significant matters.

Mr. President, I thank you. [*Desk thumping*]

ARRANGEMENT OF BUSINESS

Mr. President: Hon. Members, before putting the question for debate, I just want to revert to two matters that we had deferred to later in the proceedings.

SESSIONAL SELECT COMMITTEES

Mr. President: In the first case, there are two committees, in fact, which there are substitutions for: the House Committee, Mr. David Small is, in fact, a Member substituting for Dr. Rolph Balgobin and Dr. Rolph Balgobin will be a Member of the Committee of Privileges and not Dr. Dhanayshar Mahabir as earlier indicated.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Anthony Thomas Aquinas Carmona, O.R.T.T., S.C.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

APPOINTMENT OF A TEMPORARY SENATOR

By His Excellency ANTHONY THOMAS AQUINAS
CARMONA, O.R.T.T., S.C., President and
Commander-in-Chief of the Armed Forces of
the Republic of Trinidad and Tobago.

s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: MR. WAYNE DANIEL STURGE

WHEREAS Senator The Honourable Anand Ramlogan is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, WAYNE DANIEL STURGE, to be temporarily a member of the Senate with effect from 19th August, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Anand Ramlogan.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 19th day of August, 2014."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

APPOINTMENT OF A TEMPORARY SENATOR

By His Excellency ANTHONY THOMAS AQUINAS
CARMONA, O.R.T.T., S.C., President and
Commander-in-Chief of the Armed Forces of
the Republic of Trinidad and Tobago.

s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: MR. DANIEL P. SOLOMON

WHEREAS Senator Vasant Vivekanand Bharath is incapable of performing his duties as a Senator by reason of his illness:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DANIEL P. SOLOMON, to be temporarily a member of the Senate, with effect from 19th August, 2014 and continuing during the absence by reason of illness of the said Senator Vasant Vivekanand Bharath.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 19th day of August, 2014."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

APPOINTMENT OF A TEMPORARY SENATOR

By His Excellency ANTHONY THOMAS AQUINAS
CARMONA, O.R.T.T., S.C., President and
Commander-in-Chief of the Armed Forces of
the Republic of Trinidad and Tobago.

s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
President.

TO: DR. SHARON BEVERLEY LE GALL

WHEREAS Senator Elton Prescott, S.C., is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, SHARON BEVERLEY LE GALL, to be temporarily a member of the Senate, with effect from 19th August, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator Elton Prescott S.C.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 19th day of August, 2014.”

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Wayne Daniel Sturge, Daniel P. Solomon and Dr. Sharon Beverley Le Gall.

12.15 p.m.

MISCELLANEOUS PROVISIONS

**(PROCEEDS OF CRIME, ANTI-TERRORISM, FINANCIAL INTELLIGENCE UNIT OF
TRINIDAD AND TOBAGO) (NO. 2) BILL, 2014**

Question proposed.

Mr. President: Members wishing to join the debate may do so now.

Sen. Dr. Lester Henry: Thank you, Mr. President, for allowing me to lead off the Opposition response to this Bill here today, a day when, I must say, I would rather not be here. [*Desk thumping*] And I wish to echo—[*Interruption*]

Sen. Al-Rawi: But you are pleased to do the people's work.

Sen. Dr. L. Henry: Yes, of course, the people's work is very important, but we also have to keep in mind that all over the world Parliaments tend to take recess at this time of the year, and we have to let it be known that we are not quite happy with the operation of the Government in calling these Bills in the middle of August when many of us, obviously, as has been stated before, would have preferred to be with our families having a nice relaxing time somewhere else. And I think it is very disingenuous of the Government to try and say well: oh, because we do not want to do the people's work and all kinds of mumbo jumbo, when they themselves would have been quite happy to be on holiday, and many of them are on holiday or just recently rushing back from holiday.

Sen. D. Maharaj: Mr. President, is this about the recess or the holding of the Proceeds of Crime Act?

Sen. Al-Rawi: Read Standing Order 35(1) and see.

Sen. D. Maharaj: No, no, I am addressing the President, not you.

Mr. President: Sen. Al-Rawi, thanks for your assistance.

Sen. Al-Rawi: You are most welcome.

Mr. President: Sen. Henry, I will allow you a certain latitude in starting the debate, but we do have to come to the point when we will actually debate the Bill before us. I think you have made your point and, perhaps, we can continue. Thank you.

Sen. Dr. L. Henry: Thank you very much, Mr. President. Of course, I would be guided accordingly and I do not know why he got so jumpy about that. Maybe you lost a deposit somewhere or something? Seriously, I must admit that this is not good and it is not the right way to proceed and they all know it. Okay?

Mr. President, let me start by—after stating my objections, I want to start looking at this Bill, as the Minister did, in a relatively wider scope and then narrow it down to some of our more substantive issues that we have to deal with, at the moment, concerning money laundering and the effort to combat the financing of terrorism.

Now, of course, as the Minister said, this is a significantly important topic and it is, of course, something that all of the countries in the region and most of the countries in the world have to contend with, and I have been pretty much involved in looking at the issues relating to the Caribbean over the past five years or so. So

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we have a situation where, generally, we are always behind the ball in the region, where we are trying to keep up and are trying to avoid some kind of sanction from the FATF or other related agencies. In some cases it is IOSCO with the Securities (Amdt.) Bill and these types of things. I would say a little bit more on that later on.

Now, recently, in terms of the FATF recommendations and the kind of pressure it imposes on small states in particular, and some of the general issues, I would just like to quote a little bit. I hope you give me a little leverage in that sense, that I do not normally read any document but I have a few quotes here that I would like to make. You see, I have the consent of the Leader of Government Business, not that he wants to usurp your position.

Recently, there was a meeting in the Bahamas about the financial services industry in the Caribbean and I have attended all of them that involve the European in Caricom cooperation under the CARIFORUM heading and the leader of that organization himself, the Director General of FATF, actually made an address to the session on the third day of the conference, at which he pointed out some kind of broad areas in which the compliance issues with the FATF tend to resonate around, and he also mentioned some issues that would be relevant to the Caribbean in general. I think it is important that we take note of a couple of things that he mentioned before setting the general background for this whole situation.

Now, the FATF President, by the way is Russian, Vladimir Nechaev, and he said that there are several significant issues that, in general, affect the whole FATF approach of trying to get the issue of anti-money laundering, and so on, under control.

He said they had two significant meetings earlier in the year. He was speaking around April 1st in Nassau. Participants from the private sector in one of their meetings recognized that both the anti-money laundering and the CFT (Countering the Financing of Terrorism) and data protection requirements serve important objectives, which are not inherently mutually exclusive. However, general data protection requirements may negatively impact risk-based, anti-money laundering and Countering the Financing of Terrorism implementation. Unless they take into account the specificities of the fight against financial crime.

In particular, participants noted that inconsistent legal frameworks across different jurisdictions create implementation challenges particularly for the private sector. So this is the whole international group of organizations getting together with the FATF and the President making this significant observation, which was based on the findings of the meeting.

The second meeting, they talked about virtual and digital currencies being included in the fight against financing of terrorism and money laundering. So, that is something that we heard nothing from, in terms of our own situation here, whether we would have legislation coming or amendments coming that would take into account. Everyone knows now—well not everyone, many people know—that you have bitcoin and other cryptocurrencies that are being used to create wealth in many parts of the world today. So we may have to look at including those things into the legislation.

Now, when it came to the Caribbean in particular, the FATF President said, among other things:

I realize that it is a challenge for small nations to keep up with the work and output of so many regional and international bodies. For this reason, I would like to share some insights.

The point he is making there is that, of course, many of the small countries have begun to push back. They have begun to complain that compliance pressure is becoming to be a bit much, and in terms of having to comply with so many, in particular, the financial sector, to compare with so many international regulations and regulatory bodies, it does put a burden on small nations in the Caribbean.

It is something that many of the small countries have a very serious issue with, especially those with significant offshore banking sectors, which is virtually most of the Caribbean outside of Trinidad and Tobago, and it is quite interesting that we do not pay much attention to the offshore sector. I say that with a great deal of confidence because I have been to all three meetings of the CARIFORUM financial services conference, two in Antigua and the last one in Nassau and there was very little government involvement.

Hon. Senator: Little?

Sen. Dr. L. Henry: Almost none in fact. The second meeting there was no one from the Government. The second meeting was in Antigua in 2012. I know, in terms of the last meeting in Nassau obviously, the Minister of National Security showed up, so he was present at a second following conference, which overlapped with the conference by one day, so he would have been—

Hon. Senator: Right there for that.

12.30 p.m.

Sen. Dr. L. Henry: Right. And the Caribbean—let me just note for the public and for the *Hansard* that many of the Caribbean countries are having difficulty with the offshore financial sectors, and they see Trinidad and Tobago as not really being concerned because it is not our business. So we do not really pay much attention to the struggle, when it represents a significant part of many of their economies, and it is

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something they have seen for several years as a growth pole, and it has worked well for many of them. I mean, legitimate offshore financial sector, I am not talking about anything shady or questionable, all right—across many of the small Caribbean countries saw it as their means of diversification of their economies, and some of them have been successful more so than others, but they are under great pressure now.

So the FATF director, let me continue, he said that the FATF recommendations—and I will just skip over some:

“The FATF Recommendations touch upon so many issues and involve so many agencies that it is not possible to implement the Recommendation effectively without national coordination.”

So I think in that sense, the Minister was a little bit short in terms of giving us the feel for what really is happening in terms of national coordination. I will say more about that a little bit later on, but that is the warning from the FATF President, and as he goes on to point out:

“A national coordination mechanism, if successfully implemented, will involve the financial intelligence unit, Ministries of finance, justice and foreign affairs, law enforcement bodies, the prosecution service,”—very important—“customs, tax authorities, financial supervisors and regulators, regulators of non-financial businesses such as casinos, security and intelligence services, self-regulatory bodies and so on.”

So this is what a national coordination strategy would look like according to the FATF President. We could judge to see what we have here existing at the moment. Do we have anything close to this in terms of fulfilling, and really being effective in terms of the objectives of the FATF recommendations, which is as I said, countering—anti-financing of terrorism and anti-money laundering?

Now, he also gave what I would consider something to be concerned about in terms of the Latin American countries getting together under a Central American and Latin American financial regulatory body. So the Spanish-speaking countries in the region are getting together and they are forming a regulatory body to ensure compliance. He said this presents a vulnerability to CFATF, the Caribbean version of the FATF, because if members exit to go and join the Latin American body, then the cost to each individual remaining member will go up, their contribution to the entity will have to go up. So that is something we should keep track of that has, of course, budgetary implications in terms of—it may not be a hefty amount, but it would mean that our contribution would be on a rise, so another great outflow. Generally Caribbean countries score very low ratings in many aspects of the compliance, he pointed this out, and he said:

“This is despite the fact that in discussions at CFATF Plenary meetings some delegations suggested that some of the ratings were considered relatively generous when compared to the underlying deficiencies.”

So you see, that even the low ratings were considered somewhat generous, given the fact that many countries in the region are so deficient in complying with the FATF recommendation.

So I wanted to lay that general framework first up, and to understand that our little subsection of this international issue, we are playing catch-up in a significant way, and so too is the rest of the region. We know the situation in Guyana, where they have been found non-compliant and they are before a special committee now, before they reach the ultimate step of being blacklisted.

Now, the Minister said that during—that there was significant progress during 2010 to 2012, and I think he sort of overlooked the debate of 2009, where this initial—the Financial Intelligence Unit in its current dispensation was made into law under the previous administration. I looked back at the debate, and I find it interesting that in the debate in the Lower House on September 30, 2009, such an important Bill with significant consequences to the country, as the Minister himself emphasized, right at the beginning of the *Hansard* report of that day, the Speaker of the House started off by saying under the heading:

“Leave of Absence

...I have received communication from the following Members, not entirely the Front Bench of the Opposition, but quite a few of them.”

And the list of names absent were:

The hon. Basdeo Panday; the hon. Kamla Persad-Bissessar; the hon. Jack Warner; the hon. Ramesh Lawrence Maharaj; the hon. Nizam Baksh, and the hon. Kelvin Ramnath.

So the point I am making here is, a significant Bill like this, which the Government saw fit to drag everybody out from holidays this time around, back then, all these people took no part in the debate—September 30, 2009. Yes, printed from the *Hansard*, right? So all of them were either absent or having fun somewhere or whatever, we could only speculate.

So this, such an important Bill that you find it necessary to drag us here in the middle of August. Back then most of your leading MPs were not in the Chamber. And, of course, we note the absence of the AG here today, too. So I am just letting you know that at the

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end of that sitting, in the Lower House, the vote was taken. Of course, the Bill was passed with the requisite majority, but just for the record once again, the following Members abstained:

“Dr. H. Rafeeq, Dr. T. Gopeesingh; Mr. V. Bharath, Mr. S. Panday, Mr. C. Sharma, Mr. H. Partap, Mr. W. Peters.”

So they abstained on the Bill at that time in the Lower House. Later on, of course, the Bill as amended was passed in the Senate. But I am just pointing out that the way the Government operates, sometimes you wonder—the way the UNC party operates is quite amazing at times.

So let me move on to some of the substantive issues in terms of why we are in this position, and we are debating this Bill now. In fact, I am not sure of that, that I have the right answer to that question: Why are we doing this now?—especially given that the Minister himself said that there is going to be the budget debate and some whatever else that follows. So this Bill is not going to get to the Lower House till possibly October, you know.

So what was the emergency to drag us here now, unless you have intentions of calling the Lower House tomorrow morning or sometime later this week or Monday? What is this about, right? *[Interruption]* No, because you see the fact of the matter is we do not trust you. You are up to something. *[Desk thumping]* When you pull a stunt like this, it has to have an ulterior motive. *[Crosstalk]* Yes, you have to have an ulterior motive, you know. You have an impeccable track record of deceit. *[Desk thumping]*

Mr. President: *[Inaudible]*—to make those sort of remarks; you have to withdraw them.

Sen. Dr. L. Henry: Okay, I respect your—*[Interruption]*

Hon. Senator: Withdraw it.

Sen. Dr. L. Henry: Yes, withdrawn, Mr. President.

So yes, we have all reason to doubt your sincerity in anything you do, *[Desk thumping]* and especially in a significant Bill like this which involves the crime of money laundering. This is no joking matter, because in terms of our current state, we have so many questionable transactions going on in the country, and many of them emanating from state enterprises or statutory bodies of the Government. I mean, we do not need to remind the public of LifeSport where even in the report on the audit, by the same Government, the question of money laundering came up, right? So we know that this is a serious matter in which people working under the present Government might be involved in. So we have to be suspicious. *[Desk thumping]* Of course, that is the state of play. *[Interruption]*

I am glad to see you get animated. So debate—yes, everything has to be questioned when it comes to your behaviour in terms of bringing these kinds of serious Bills forward, especially anything relating to the conduct of criminal activity. So we have the situation where the state of play, we have a significant amount of suspicious transaction activity, and so. Yet we are in the process of witnessing very little activity, very little implementation in terms of carrying out the law.

So what I am saying is that regardless of the amendments that the Minister spoke of—and some of them, of course, are needed—but regardless of how nice you put it over, the point is, if you do not carry out or implement the laws, it is as if we are just wasting our time here, right? It is just a useless 10-hour, 14-hour debate we will be engaging in today again, and this is about the third time the FIU has come up in this particular Parliament—well, since I have been here, when it came up at least twice before, and we are always trying to catch up.

So the fact is that we have had very little—well, we have no convictions of anyone still. We understand that the banking system is very concerned about the fact that they are carrying out their duties by law; that is, by reporting suspicious transactions and nothing seems to ever come of them after they file the report. I will get into some of that in a bit.

So you have the situation where very little—I mean, the Minister mentioned four persons charged. Well, I do not think that exactly reflects the actual situation on the ground, because one of those four persons I believe is Miss Vicky Boodram, with a ticketing scandal, and one—at least two of the others that would be—that four would be a father and son combination I believe, who would have embezzled some money or defrauded British Gas in something.

So there is no real significant action in terms of cornering somebody for anti-money laundering so far. So that idea that something is happening, because you have these four separate persons being charged, is a bit overstated. So we still await some real action in terms of getting things done. I know someone on the other side will probably jump up, in fact, for the rest of the evening and say, well, you know, we are going to do this, going to do that. They are always planning to do something and six months later, they come back and it is still not done.

12.45 p.m.

So we have a situation where, in the country, we have no real action and it is making us look very bad in the eyes of the world because people are seeing Trinidad and Tobago continuously. Of course, I would not want to be too harsh on ourselves but, clearly, the rest of the region and the world are looking at us as a place where

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nobody gets prosecuted for money laundering, [*Desk thumping*]—Nobody!—despite all the questionable transactions and all the activities that are going through the banking system that many of us know of that we cannot say in public because we would not have the exact proof. We know of a lot of strange activities happening. Anybody who has friends in the financial system can testify to that.

Let me take a few minutes to emphasize the point about implementation and not just passing a law that sounds good to meet an international obligation. One of the problems we have, of course, which I have raised before, with institutions like the FIU and the Securities and Exchange Commission and these things, is that you set up these agencies, we have them in place, yet they are not properly resourced and that has been the fundamental problem we have had over the years. The thing is that despite the legislation being brought by the Government now, we are still not hearing enough about how are you going to really put the right people in place and put the adequate training and staffing at the FIU to make anything really happen?

From what we understand, the FIU is severely understaffed and overburdened and the Minister did mention the idea of making a change to reduce the amount of suspicious transactions that go there so that they will have a little more breathing room, but the point is that the institution itself is severely overworked and understaffed and there is even a question about the actual training of the people who are employed there.

The problem is that, like many of the agencies that we set up, we do not put the right people in place. We do not put the right quality people and the people with the requisite training and people who are independent enough to make serious decisions because what use is an FIU if it turns out to be just a black hole? Everything you send there just disappears. It is never heard from again.

If you read the CFATF—[*Interruption*] Do not praise the PNM like that. It does not sound good coming from you. So, if you look at the requirements for where we are deficient in the CFATF Report of May 29, 2014, we are significantly behind in most of the real hard-core recommendations.

I was planning to do this later. I will do it now. A “Breakdown of Types of Reporting Entities Submitting SARs from August 2013 to January 2014”, in sector or entity that is reporting the SARs:

“Banking 123

Insurance 6

Investment Companies 16

Securities Companies, Broker Dealers”—nothing reported there—

“Mortgage Companies 2

Credit unions 20”

That is another significant area that we need to address: money laundering in the credit union agencies and, in fact, general supervision of credit unions, but maybe I will talk more about that during the budget debate. So:

“Credit unions 20

Money or Value Transfer Services 182”

Check this out:

Attorneys and assorted professionals/

Independents 6

Motor Vehicle Sales 10

Real Estate 1

Only one.

“Private Members Clubs 1

Exchange Bureaux 1”

For a total of 368 over that period.

Now half of that came from money or value transfer services. So let us say, the wire transfer companies, half of all suspicious activity reports and I am not sure—maybe the Minister can help me when he sums up or one of the following speakers—if in part of the Bill there is a removal of someone carrying out wire transfer businesses. I saw it under “Bill Essentials”, then I looked it up in the Bill and I am really not sure what that is about. There may be a logical explanation, but given that so many of the suspicious activities are coming from the financial report, from wire transfer agencies or businesses, I think we should pay particular scrutiny to that.

In fact, the CFATF Report for Trinidad and Tobago, which I am quoting from, says:

“With regard to the reporting of suspicious transactions, the authorities advise that 368”—which I quoted—“have been submitted by listed businesses for the period August 2013 to January 2014. However, it should be noted”—as I just did—“that 182...came from one category of listed businesses money or value transfer service providers and the remaining 18 from five other categories. This suggests that the reporting of suspicious transactions and activity by listed businesses is ineffective.”

That is what they say. It is on page 14. That is why I was making the point that it does not matter if you pass even good law, which we doubt this one is in some parts. Some of it is good, but some parts are completely objectionable, which I have not gotten to yet. So the reporting of suspicious transactions and activity by listed businesses is ineffective.

Therefore, what is the plan in order to improve this situation in terms of even the reporting because we assume that the reporting is just the first step? So, if the first step is not being made, then nothing else will work. You have to have a report of a suspicious transaction generally before and then the other agencies kick in. At least we assume that is how it should work.

But, Mr. President, in terms of the Financial Intelligence Unit, again I do not want to rehash the whole problem of how we appointed a director under this Government and the vetoing of the person who came first and putting someone who seemed to be more amenable to the Government; and we also, since that time, we have had virtually very little or no serious output in terms of action from the FIU.

Now, another aspect of the implementation of our laws in terms of anti-money laundering and so on has to do with the Financial Investigations Bureau and what we are hearing in that situation. Again, it is not properly staffed and the training that they receive is relatively inappropriate for our situation.

Again, the Minister was relatively silent on that because what the FIU itself, the bureaucratic staff at the FIU, which is also understaffed and probably not properly trained as well, the people who are there, they have turned documents over to the Financial Investigations Bureau and if that is understaffed, staffed with the wrong people and the training that they are getting is very inappropriate, no wonder why we cannot prosecute anybody.

We are here to highlight some of the points that we need to address and not just pretend that we bring a Bill and everything becomes all smooth and dandy afterwards. We have to deal with what is happening on the ground if we are serious about addressing the issues.

So, as far as I can tell, the Bill that we are discussing today will help us along the way of becoming compliant, but not fully. But what is bothersome is the manner in which the Government cherry-picks which recommendations that they want to bring to us at this time and leave out other significant recommendations, some of which could be easily implemented, or some of which were so glaring and, of course, many other speakers may raise it. If you go through the list of

significant areas where we are non-compliant, some of them are things that we can fix and especially, calling us out here in August, you would think that they could have done a little more to just make a few incremental changes [*Desk thumping*] and consider it as a national emergency or something. It is not fair. Because once you peruse this document, you will see that we are basically non-compliant in most of it anyway.

This, again, will just get us over the minor speed bump in the road, but the mountain is still there to climb and that is what we are doing. So we do not understand what all this is about. So the Financial Investigations Bureau again is currently a relatively ineffective entity, so we are not getting any action there.

Another question we have for the Government is in terms of what is happening with the civil asset forfeiture legislation. The Attorney General is not here; maybe many of the other Senators present here, except—maybe the National Security Minister knows and maybe he will elaborate on it later on.

What is happening with that? We understand that the Ministry got legal advice to pursue this matter as a matter of urgency and there was a Cabinet Note on it and yet, up to now, there has not been any drafting of the Bill. We would like to get an explanation if the Minister of National Security is so generous enough to put forward when he does his contribution, why was this advice to draft this—maybe that could have been a reasonable argument for coming here in August because that is a big one. That is a serious matter in terms of the ability to seize assets before the person goes through a full trial and is found—

Sen. Howai: We have restraints on this.

Sen. Dr. L. Henry: Okay. So you are not coming with a separate Bill? Is that the answer? Okay. We will scrutinize that at the appropriate time.

Sen. Al-Rawi: He did not say it in his presentation.

Sen. Dr. L. Henry: You made no mention of it as my colleague here is pointing out.

When you look at what is happening here, one other area that we are deficient in, which we could fix relatively easily, is the issue of politically exposed persons to include our locals, not just foreigners, and I would like to hear the reason why that one was glossed over.

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1.00 p.m.

Now, another question we have for the Government is: was this Bill scrutinized by the DPP's office before it coming here today? We would like to get clarification on that. In terms of the person who is responsible for laying charges in this country: what has been his views? Was his view even considered or requested? In terms of the DPP's office what transpired and, if not, why not? Why has a Bill such as this—and there could possibly have been relatively little or minimal input from a significant officeholder in the country who is actually—[*Interruption*] I am asking a question. [*Crosstalk*] So, I await the explanation in that regard.

And, of course, I would just raise the issue of the offending exclusion in this Bill of section 43 where there is a significant omission in terms of how we could prosecute people even when this Bill is passed, because significantly missing is a part of a clause, part (c), which refers to whether the conduct was carried out before or after the passage of the Act. We are very much concerned to the point that it would be very difficult for us to support this Bill with that clause being omitted. Well, I am calling it a clause, but that subsection of a clause.

Sen. G. Singh: Are you in favour of retrospectivity?

Sen. Dr. L. Henry: Yes. It is not something that we—again, you have to give us some very clear explanation as to why it was omitted, and my colleagues will elaborate on that later on.

So what we have, Mr. President, is the Government trying to rush us again to approve this Bill which, on the surface of it, just like the Miscellaneous Provisions (Indictable Offences) Bill which sounded very good to the national population—“They want to get rid of the backlog in the Judiciary”—and any right-thinking logical person would have supported that Bill which we turned out to do. Of course, we supported the Bill and then somehow they sneaked in section 34 on us. So that is why I say, as I said at the beginning, we cannot trust you. We have no inclination that you will be above board, especially when you come claiming that this is some kind of emergency and you need to get this done.

We know that you have, as I said, an impeccable track record of doing underhanded stuff, and we are very, very sceptical about your intentions with this Bill at this particular time, and we want the public to be alert that just like the Constitutional (Amdt.) Bill, this Bill has potential scary consequences in its current form, and it would be difficult for us to support it as is. I would stop here and leave the rest to my colleagues in terms of deeper scrutiny of the Bill. Thank you, Mr. President. [*Desk thumping*]

Mr. President: Hon. Senators, it is now 1.04. I propose to take the lunch break at this point. We will return at 2.05. This Senate would now stand suspended until 2.05.

1.04 p.m.: *Sitting suspended.*

2.05 p.m.: *Sitting resumed.*

Sen. Helen Drayton: Thank you, Mr. President. I would make a few observations on the clauses of this Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism, Financial Intelligence Unit of Trinidad and Tobago) (No. 2) Bill. It is a Bill that is certainly more complex than it appears at first glance. Let me say that I am very pleased about the progress Trinidad and Tobago has made in the eyes of the Financial Action Task Force. I only wish we had made equivalent progress with respect to the prosecution of white-collar crime and money laundering. [*Desk thumping*]

Let me say that I heartily commend the Government for much of this progress. This is important legislation, and the Minister has also set an excellent tone by calling on us to robustly scrutinize and make decisions which are in the best interest of the security of this country, and also to strive for consensus.

I would go straight into the actual contents of the Bill. I want to suggest a definition for “financial institution” and that we include an amendment to item (g) to make it read:

A person licensed under the Securities Act including a broker, dealer, underwriter or investment advisor.

So what I am recommending here is that we drop the word “as” after the word “at” and insert the word “including”. I make this suggestion in order to ensure that all players are captured. All these Bills are works in progress, and given the changing nature of crime and also given the changing nature of business, generally, I think it is wise to be proactive and use the word “including” here to make sure that we are capturing all the market actors with respect to this Bill.

Now, on observation, the Government has modelled parts of these amendments from the UK Proceeds of Crime Act of 2002, section 241, to amend our law, but it left out what I think is a very crucial matter that is also very relevant here. In section 43, the intent of the amendment is to shift away from having to prove the commission of a specific offence or specific crime from which criminal property could be obtained.

Now, under the current law, it is difficult to prosecute because of challenges in proving the predicate crime. The prosecution has to prove a specific offence such as drug trafficking or kidnapping for ransom or fraud, among other serious crimes. So the conviction for money laundering could only happen after the conviction for another crime. So what this section is doing, it will facilitate the prosecution of money laundering once it could be established that property was obtained through criminal conduct.

As I said, the Government omitted an important aspect of the UK law with respect to criminal property which is, it is immaterial whether the criminal conduct occurred before or after the date of commencement of this Act. I think this leaves a gaping loophole with respect to the liability of criminal property obtained through criminal conduct prior to this Act if it comes into force. Now, let me hasten to add that I am not referring here to the creation of any new crime retroactively, but rather to prevent career criminals from benefiting from the proceeds of criminal conduct whether such conduct took place prior to or after this Act comes into effect.

Now, I have heard the argument that by including such a clause it creates retroactivity and, therefore, it would be unconstitutional. Now, my research yields information indicating that that is definitely not the case. The clause is in the broader interest of society and, if even it were not, then nothing stops the Parliament from specifically indicating its intent by including the clause as this Bill requires a special majority. [*Desk thumping*]

I have also heard the argument that whilst it is in the UK law, where it has been tried and tested, the UK law does not have a constitution, a written constitution as we do. I do not think that is a legitimate or substantive argument in this case at all. The fact is the UK has found it necessary to amend their laws to make prosecution of money laundering and the seizure of criminal property easier, and in a manner that it would assist prosecutors in dealing with criminal conduct. So the crux of the matter is the ability of law enforcers to prosecute money laundering and seize assets whether or not such evidence preceded this amended Act. It does not create a retroactive offence.

Now, if this Senate omits such a clause, I fear we may very well be creating another section 34 [*Desk thumping*] to allow criminals to get away with their illicit gains. In this country, white-collar criminals and corruption by public officials are not prosecuted, and this is both in part because of deficiencies in laws and the lack of solid evidentiary material to prosecute criminals. I would find it very difficult to understand if the Government were to resist including such a clause which could only strengthen the hand of law enforcers in the fight against crime. [*Desk thumping*]

It is nothing new in the Parliament to bring laws which require a special majority because of constitutional issues. We do that all the time, and we are required to do this with this very law. Let me add that it will not be the first time. If indeed it were retroactive—although I emphasize it is not—it will not be the first time that we have passed laws retroactively. Now, I have circulated an amendment as I think the clause is absolutely necessary.

So now while these laws—and I am turning now to the FIU—the very proceeds of crime and anti-terrorism may be viewed, as I said before, as works in progress given the changing nature of crime, I am pleased that the Government is adopting the FATF approach to an all-crimes model with respect to criminal property. I think the Minister alluded to that, and this means that there should be a section which allows the Minister with responsibility for national security to amend by Order the Schedule to include any summary offence, indictable offence or common law offence from which illicit gains could be derived. Now, the UK and many other jurisdictions have adopted this approach.

Turning to another section, section 46(2)(b), I do not think this is consistent—or rather I should say I do not think section 46 is consistent with section 46(1) on which it is predicated. I am subject to correction. Section 46(b) deals with acquiring criminal property, but section 46(1) is about using property—this will be the Proceeds of Crime Act. As I said, I am subject to correction here.

2.15 p.m.

I want to move now to another recommendation, which is a new section which, I think, is in the interest of advancing the fight against crime. I admit that what I am recommending here is not a requirement of the Financial Action Task Force, but I see no reason why we should take a minimal approach based on the minimum standards required of us in stemming money laundering and criminal conduct, other criminal conduct, and this has to do with limiting cash transactions. It is also my understanding that placing limits on cash transactions is now on the agenda of Caribbean authorities and Jamaica has gone ahead and amended their Proceeds of Crime Act, accordingly.

In proposing this new section, I am doing so to foster healthy dialogue of the proposal, and I am doing so, mindful of the fact that there is also a requirement on all citizens, I think anywhere in the world when they are travelling, that cross-border, they are limited to US \$10,000 in terms of cash. So the principle is not new. It is not unusual for people to settle transactions with wads of cash, bundles of cash, and settlement of business activities via lots of hard cash, say in amounts

exceeding \$60,000, \$70,000, \$90,000, hampers the ability of law enforcement agencies to trace the source of funds. I am recommending the law restricts the amount of cash in the form of notes and coins a person can pay or receive for any activity to anyone.

The amount that I mentioned, I have sent an amendment which is \$60,000. That is subject to, you know, discussion, and if the principle finds agreement, then, of course, that amount can be amended. As said, whilst it is not a requirement of FATF, it can only be pleased with such a law, and it would also demonstrate that the Government is serious about deterring money laundering. Criminals pay huge cash sums for goods like motor vehicles and also real estate to avoid detection, which would easier be “trackable”, be traceable, through the banking and financial system.

Jamaica’s Parliament has argued that some of the same channels that are used to avoid taxation also provide methods and channels for organized crime, criminals, to launder money. They also provide channels for financing terrorists, and they do this through the use of cash, which, as I said, is not possible to trace. So the amendment under a new section 55, under section 55 will put a limit on cash transactions. Just to give a gist of that amendment, it says that:

Insert a new section 55G

limit on cash transactions

Subject to section 2 a person shall not—

Pay or receive cash in excess of the sum of sixty thousand dollars or such other amount as the Minister may by Order prescribe for the purchase of any goods or services or for the payment or reduction of any indebtedness, accounts payable, other financial obligation; or

Artificially separate a single activity or course of activities into a set of transactions so that each transaction involves a payment and receipt of cash that is less than the prescribed amount but which activity or course of activities in the aggregate involves payment and receipt of cash that exceeds the prescribed amount.

Subject to subsection (1) shall not apply to—

a payment made to or by a permitted person

an exempted person; or

an exempted transaction.

Where the Minister is satisfied that it is in the public interest to do so, the Minister may, by order, subject to affirmative resolution, exempt a person or a particular type of transaction from the requirements of this section.

That just gives the gist of the amendment. I mentioned exceptions, so these exceptions would of course be like regulated banking and financial institutions that have to settle cash transactions daily.

I want to recommend another amendment, and that has to do with private members' clubs, to read:

A members' club which is required to obtain a certificate and a members' club which is granted a certificate under section 5(4)—in the Registration of Clubs Act, Chap. 21:01.

The present section refers to members' clubs who would have certificates, but if for some reason the members' club did not receive or did not apply, or does not have a certificate, then I think that this particular section would not apply to them. Again, I am subject to correction. It is there for discussion, but I have circulated an amendment.

As we are on the subject of private members' clubs, I want to make a comment with respect to gambling. I recall the amendment made to the Gambling and Betting Act earlier this year and my concern as to why the Government was rushing to making gambling legal across every nook and cranny in the island. Let me briefly recall the amendment made to the Gambling and Betting Act, I think it was around May this year. It was under section 13, and I am going to paraphrase the section. It says:

Nothing shall be construed as permitting any gambling by means of a gambling machine on premises, and if any gambling by means of a gambling machine takes place in any such premises, the premises shall be deemed to be a common gaming house.

In the Act, it defined a gambling machine as a machine for playing a game of chance, but that Finance Bill, it was a money Bill and passed, repealed the true and correct definition of gambling machines to call them, quite opportunistically, amusement games.

That money Bill law had the effect of giving every hotel, every rum shop and entertainment place, the licence to have up to 20 gambling machines, which can rake in hundreds of thousands of dollars a day. In the previous law, these places would have been places which provide gambling services. Now these places are

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not anywhere within the radar of the FIU, but are supposed to be tagged by Inland Revenue so they can be monitored for tax purposes. I had questioned the ability of the Inland Revenue to monitor the myriad of places, but high on the list of money laundering risks and the risk of increased crime is gambling, and it is why the very Financial Action Task Force is adamant that the gambling industry be brought under proper laws.

To some extent, if we consider the amendment that I have put forward with respect to cash transactions, the limits on cash transactions, it could help in that regard. In my contribution early in this year, I had asked the question exactly what was the priority in rushing to legislate gambling in every nook and cranny. I asked then why should any Government seek to mask the real identity of gambling machines by calling them “amusement games”. [*Desk thumping*]

So in the light of this law before us, and in light of the requirements of the Financial Action Task Force, it is a question that lingers. I acknowledged that the horse had bolted in that there were many places with gambling machines, but I did not think it was reason to seek to legislate for gambling everywhere. As I said, these gambling places are outside of the remit of the FIU and any other law for that matter, and that should be a matter of serious concern. At the time, it was promised that a comprehensive legislation regarding gambling and betting would be brought before the end of this year. If I recall, we were told that such legislation would be completed by this month. I rest that matter and I would await a response in the Minister’s wrap-up.

With respect to the FIU, I am suggesting that a new section be inserted after (h) in the original Act. I am recommending that the definition of “public authority” be expanded to include the Police Complaints Authority, the Integrity Commission, and any other body, office or agency, vested with investigative powers, and this would allow the FIU to share information with other bodies that are investigating matters. In examining the list of public bodies under the definition it would appear, and again I am subject to correction, that these bodies do not fall under any of the categories.

Before I close, let me say that this is mostly a very good Bill. All the provisions are necessary to strengthen our security systems against hard-core criminals and those who wish to terrorize our society. I want to give it my fullest support and I am prepared for the cut and thrust of the committee stage, but I need to say up front that I am not prepared to compromise the principles of fairness and justice. I am not prepared to compromise on leaving loopholes so that criminals could get away and retain their criminal property.

I wish to add also that I do not subscribe to the Government's practice of bringing substantial amendments to three and four pieces of legislation in one Bill. I understand the relationships between the pieces of legislation, the FIU, Anti-Terrorism and the Proceeds of Crime. So while it may appear to be efficient, it is not in the best interest of making laws. By all means, put the amendments in their separate Bills and bring the Bills to be debated in one sitting; [*Desk thumping*] that is okay. The reason why I do not like it, the reason why I think it is unfair, is that if for any reason after the committee stage—because I mostly make a decision on Bills at the committee stage having heard all the arguments and taking that into consideration with whatever research I have done—if for any reason I feel comfortable in supporting two of the Bills, I cannot, because what the Government is doing is forcing me to either approve all or reject all, but I have rejected all in the past.

Another matter I wish to state up front, and that is, this is very good legislation for which I commend the Government, but I do not want to be put in a situation where I am told that if we do not approve this legislation, then we will be blacklisted by the Financial Action Task Force. I will not allow myself to be placed in a situation of making critical decisions under duress, and I want to mention that the last time the Bill came around and that was said, and I had issues of principle, I voted against it. With that, Mr. President, I thank you. [*Desk thumping*]

2.30 p.m.

The Minister of National Security (Sen. The Hon. Gary Griffith): Thank you, Mr. President, for this opportunity to contribute to this debate on legislation that is aimed at combating money laundering and terrorism financing.

Mr. President, a major impetus for us being here is the fact that Trinidad and Tobago is obliged to comply with the Financial Action Task Force international standards on money laundering on account of our membership in the Caribbean Financial Action Task Force. In fact, just yesterday I had the opening remarks for the Caribbean Financial Action Task Force for training on international standards on combating money laundering and the financing of terrorism, whereby this Government, through very decisive efforts, we have since been able to chart a course of action that allows for full multisectoral participation and greater compliance with those FATF recommendations, and this Bill is just part of that process.

Whilst I am the contact to the CFATF, that is not my sole consideration in supporting anti-money laundering and terrorism financing legislation. As the Minister of National Security I function in the public interest and I am vested with the ultimate responsibility of creating an environment which ensures public safety and security through the maintenance of law and order, and the commitment of all available resources to the protection of life and property.

Mr. President, whilst crime reduction is a top priority for the Government and the Opposition as well, we know that various situations seriously challenge this achievement—to achieve that goal. In the case of money laundering, one of the problems is the existing legislative scheme as it pertains to progressing money laundering cases through the courts, and seizing assets with the aim of ensuring that criminals do not benefit from criminal activity or use those assets to fuel other crimes.

Now, I heard Sen. Dr. Henry, he spoke about the civil asset forfeiture. Now the civil asset forfeiture—the regulation—that should have been brought as a matter of urgency—yes. A legislative policy was prepared by the Ministry of National Security with input from members of the National AML/CFT committee. The policy was considered. However, it was felt at this time that further consultations—it is necessary to ensure that the proposed legislation contained sufficient and appropriate safeguards as constitutional rights could be infringed.

Hon. Senators are asked to note that the civil asset forfeiture regime is an action against a thing or property and not a person. Well it is good to note that the Opposition, they are in support of civil asset forfeiture regime, and we shall take those steps to initiate broader review of the policy. However, it is therefore decided that the first focus on strengthening the criminal asset forfeiture regime, and hence the reason for this Bill being passed.

My colleague who piloted the Bill has already comprehensively explained the legal challenges. So with your leave, Mr. President, I would like to underscore the benefits that the proposed amendments will bring to the officers who are investigating and prosecuting this crime. The focus, again with national security, we will always be looking at law enforcement, hard targeting, intelligence gathering, arrest procedures, deterrence patrols. But, Mr. President, I also take the concept of white-collar crime as serious as any criminal activity, and the time has come for renewed vigour and a full frontal attack on an economic crime that is so diverse and complex, it can cripple a country's financial system, if that country does not have strong legal financial and regulatory controls. Our goals must always include, in addition to bringing perpetrators to justice, the recovery of the proceeds of crime and criminal assets, as well as maintaining stability to the economy.

So in this case, Mr. President, where individuals may feel that they are able to beat the system through law enforcement—they are able to beat the system through the criminal justice system—we can look at a third bite of the cherry where we can actually get at them through the concept of how they acquire ill-gotten gains, and then they use the funds towards further criminal activity.

To achieve these objectives we must improve our response to economic crimes, starting with empowering our law enforcement agencies to detect, disrupt and deter criminal activity. One of the measures introduced in this regard was the establishment, in fact, of the Financial Investigations Branch within the Trinidad and Tobago Police Service with the responsibility for investigating financial crimes in Trinidad and Tobago; and this is where it is important. We must give them the operational teeth for them to perform. The fulfilment of the mandate of that FIB it is no easy feat, as money laundering involves an intricate scheme by criminals of all stations of life for hiding or disbursing those same ill-gotten gains I spoke about to avoid detection from the police, tax authorities, and perhaps even other criminals who have some vested interest.

To aid the FIB in its investigative functions, both the Commissioner of Police and the Government have supported the demands for specialist training and tools to enhance performance. We have also encouraged the signing of a memorandum of understanding amongst agencies so that staff of the FIB can access vital information. The Commissioner of Police in fact is also attempting to bolster the human resource capability of the FIB, especially as there is a need for more staff to investigate the reports produced by the Financial Intelligence Unit. The Commissioner has, this year, approved standing orders that ensure inter-agency collaboration among the various units of the Trinidad and Tobago Police Service during parallel investigations. This is important as there must be a streamlined process whereby if, for example, the Anti-Corruption Investigation Bureau is investigating allegations of corruption, that bureau is mandated to collaborate with the FIB on such investigation.

Mr. President, the FIB's investigative capabilities are clearly being bolstered, but how does this translate into prosecutions or convictions. Sen. Henry actually spoke about—he actually endorsed the need for this Bill. Yes. There have been two cases since money laundering provisions were introduced in the Proceeds of Crime Act, 2009.

So, Mr. President, I am not disputing that the Proceeds of Crime Act serves as a powerful tool. However, it is important that just as criminal enterprises have become more sophisticated and seek to exploit loopholes in the law—because crime being a product of opportunity, and if they have the opportunity they will commit the crime because there is no deterrent and a less likelihood of them being apprehended—we must periodically review and update our laws as part of our efforts to promote an effective criminal justice system.

The AML/CFT laws, in fact, were reviewed by national stakeholders who painstakingly researched other legislative methods, as well as they also assessed the Financial Action Task Force recommendations to determine this country's level of compliance with international standards and obligations. Additionally, they analyzed

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comments from the Caribbean Financial Action Task Force examiners who previously assessed the country's AML/CFT systems and considered international legal advice, and finally collaborated to identify an appropriate solution for review by this honourable House.

Mr. President, all the relevant authorities have done their part to produce this Bill before this honourable House, and now it is our turn, as responsible parliamentarians, to debate and pass sound law that would contribute towards the security of our nation and the bringing of perpetrators to justice.

Mr. President, one of the core amendments in this Bill serves to squelch the ability of criminals to have full use of ill-gotten proceeds to drive other criminals—well, other criminal activities I should say or seemingly legitimate enterprise. We cannot promote that if it is okay for criminals, no matter how big a fish they are, to benefit from corrupt or illegal endeavours. So in other words, many times people speak a lot about the law enforcement agencies and the State only go after the small fish. Well this can be very well considered “catching the big fish” Bill. Because this can be an ideal avenue for us to go after those individuals that hold such a position because they have acquired wealth, but because of how they have operated, it is difficult for them to be apprehended by the law enforcement agencies and through the criminal justice system.

We need to adopt an aggressive stance to prevent criminals from accessing funds, assets and other benefits that are to fuel illegitimate activities. This is especially important in our efforts to combat terrorism. Terrorists receive their funding from several benefactors, and there are also ingenious organizations that obtain funds for their operations through their own illegal activities. Other criminals such as traffickers use their ill-gotten gains to propagate other criminal endeavours, so it becomes a domino effect. And so, what we must do is disrupt the source of funding and access to ill-gotten gains as far and as wide as possible, and I think we do have the public's support in this.

And I can go right back to the statements I have continued to make, Mr. President, since I have been the Minister of National Security where, we do not have the intention to negotiate with criminal elements and any individual who might slip through the cracks, through the lack of intelligence or because they have put themselves in that position, because they have been able to beat the criminal justice system, this is an ideal avenue for us to go after those so-called “big fish”.

This legislation today, Mr. President, gives law enforcement more latitude to seize and detain funds and assets, as the proposed definition will allow for greater focus on crimes that now fall within prescribed categories.

Mr. President, this approach brings greater certainty and creates a wider scope of offences within which law enforcement can seek to recover assets and prevent illicit activity. Need I remind this honourable House, again we can look at the example of Al Capone—where if it is you cannot get them one way, you get them another way within the law. He was actually brought to justice for tax evasion, where there was insufficient evidence to link him to his organized criminal activities. We will therefore be able to utilize this to catch the gang leaders, the gang members, the corrupt and criminal minded, one way or the other. So this again is an ideal avenue for that “big fish” Bill.

We know that criminals are motivated by profit. The more they are able to accumulate and the more power they wield in society, the more they try to protect themselves from detection and arrest. And by doing that they further erode, get into the criminal justice system and even law enforcement officials, and it makes it even more difficult to deal with the arrest procedure of such individuals. But as white-collar criminals are generally more concerned about securing their assets than going to jail, we have to place greater focus on this aspect of the process, which is attacking the assets.

I know there are some who may think that the provisions may be abused, but there are safeguards enshrined in the legislation to treat with innocent parties who may be affected by the enforcement of the law. Even the accused can seek redress. Due process is indeed evidence. And that is why I say that, before it is even moved to a civil asset forfeiture, we have to look at the importance of this Bill. And Sen. Henry, I just actually explained what you wanted, but you were not there, I am not repeating it again. So it is a hard luck. [*Laughter*]

Before I close this aspect of my contribution, Mr. President, I must say that in reviewing the scheduled categories of offences, I was heartened to see that the technocrats have included environmental crimes. Yes. This is indeed a wide category because from where I sit as the Minister of National Security, I see this as an additional yet effective mechanism for cracking down on illegal quarrying and mining, diesel bunkering, illegal hunting, illegal logging, and all of these things, Mr. Ganga Singh, you could be speaking about, and a host of other environmental crimes. I therefore give my support to this approach, and I can give you an example, Mr. President. There is a certain individual, he was not even semi-skilled. He was—I do not even want to state the position that he was in, and he turned away from doing that, at the minimum wage, and now through illegal quarrying, he is the ultimate “big fish” in crime in this country, and he is being monitored through the intelligence agencies. But this here becomes an avenue to go after these individuals because they have put their fangs into certain areas within the criminal justice system and within the law enforcement agencies that makes it difficult for us to get that individual.

Mr. President, the other legislative tool that will now be at law enforcement disposal is the proposed approach to defining money laundering. Money laundering is being engaged in at a scale that we are unable to determine. I do not think that any country can give a true estimate and account of the insidious nature of the crime. Our efforts, to prosecute, however, are constrained as someone must have been charged or convicted of a predicate or a specified offence before a money laundering charge could be laid. As an example, Mr. President, the two cases before the court treat with previous alleged attempts by the defendant to commit fraud. That approach is not working for us, and with only two cases, the world may interpret that our legal system is not as strong as it should be.

The new approach evidenced in other jurisdictions will allow for a stand-alone offence of money laundering without the need to rely on the existence of a predicate offence which is sometimes hard to determine. This can only result in more persons being brought to justice—a goal for us all and a development that will improve our standing within the Caribbean Financial Action Task Force which is indeed critical.

2.45 p.m.

Mr. President, as it pertains to the amendments to the Anti-Terrorism Act, we recognized—and CFATF in fact pointed out in their reports on Trinidad and Tobago—that the fines and penalties needed to be increased to be in alignment with those in the Proceeds of Crime Act. This recommendation allows us to rectify the existing disparity and deficiency so as to be in compliance with the CFATF's examiners' recommendations. The amendments also serve to amend the definition of terrorist property to now conform to the definition required by the United Nations Security Council Resolution 1373, which calls on countries to have the legal authority to freeze any asset belonging to a terrorist or a terrorist organization. This expansion in the definition will allow law enforcement authorities to investigate more avenues and freeze additional assets when looking at terrorist property or assets.

Mr. President, I wish to remind hon. Members that we must, for our own nation's sake and to operate in compliance with FATF recommendations, update our laws. The CFATF third-round mutual evaluation will be conducted at the CFATF Plenary in November 2014. However, the exit process requires us to have several of these amendments passed well in advance of that plenary. Failing this, we may be subject to public censure and we all know the financial and reputational backlash that we faced when a public statement was issued against Trinidad and Tobago some years ago by the same FATF.

Also, when the FATF fourth-round on-site assessment starts in January 2015, we have to show how effective our laws are. By passing the legislation this month we would have some four months to implement same. So, as unfortunate as it is, when Sen. Henry and many others—we are concerned about the fact that we are here in August, this is an ideal opportunity to show the justification for it. It is very critical, we must not be behind the eight ball, and we have to ensure that we are prepared before January 2015.

In concluding, Mr. President, I urge all Members to seriously consider the Bill before us today, and to keep the objective in mind, which is that we have no intention of being a money laundering haven. Let us, therefore, take the necessary measures to operate in compliance with the FATF standards—which involves this Bill—better equip law enforcement with the legal tools to bring more persons before the courts, embolden our regulatory authorities to perform more effectively, invigorate the AML/CFT activities that will make us more attractive for investment, and finally to better protect our financial institutions and economy from the exploitation and effects of money laundering.

Mr. President, I thank you. [*Desk thumping*]

Sen. Faris Al-Rawi: Thank you, Mr. President, I thought my learned colleague had a little while longer to run so I was sitting back in my chair somewhat.

Mr. President, I am very pleased to rise to join in contributing to what in its long title appears to be a very well-intended piece of legislation. I have said that because, as a nation, if one were to look at the example of this Parliament, we seem to think of the bona fides of the law that is put for consideration almost simply by virtue to the long title. And therefore, the legislative aim, as opposed to the detail, seems to occupy our minds and our attention more than the scrutiny of the detail.

It is a given that the Opposition solidly supports any piece of law that is intended to ameliorate the situation, the scourge of crime that grips us right now, and to find a solution to allowing people to live under good governance with confidence in their economy, their environment, their physical security. So, the legislative aim of this Bill is something which any one of us would be very happy to support. Anything that is required to deal with criminality.

The Minister of National Security, a second ago, said something which was very interesting. Forgive me, Mr. President, if I may press pause for a moment and simply say, welcome to Sen. Daniel Solomon who has joined us in the Senate this afternoon. Forgive me for my slip of manners, I rose a little sooner than I

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expected, and also to Sen. Sturge, who is with us again. He is no stranger to this House, but Sen. Solomon is someone who I have known from practice for a very long time, and certainly is a welcomed voice to the Senate this afternoon. Mr. President, if I return.

Hon. Senator: Member, what happen to the Independent Senator?

Sen. F. Al-Rawi: Well, Sen. Le Gall is a very well familiar face in this Senate, so forgive me, Senator.

So, Mr. President, if I return, having at least bid the proper formalities, and thank you for the opportunity to do so. When we look to the laws that are before us and we go to the detail of what we are considering, the Minister of National Security said something that was very interesting. I liked what he said, if I were to reflect upon it. He said that we could call this the “big-fish Bill”, and that is a very interesting statement to make because Trinidad and Tobago is being invited on a constant basis to accept that big fishes cannot be caught because there is some loophole in the law. They are also experiencing, we as a citizenry, the fact that conviction of big fishes, as they are called, never seem to materialize.

We are very well aware that our jails are overflowing with small fishes. We are very well aware that the unwholesome conditions in the Remand Yard, for instance, are brought about by a massive overpopulation of small fishes. People are routinely herded, collected and locked up under the dangerous drugs legislation which articulates with this Bill, the Proceeds of Crime Act, locked up for small quantities of drugs and narcotics. But the big fishes are what occupy our minds.

And the Minister of National Security is correct in saying that Trinidad and Tobago could use money laundering legislation, as this is, to catch big fishes. But what my learned colleague seems to have missed is the fact that this Bill does not now magically open that door to allowing big fishes to be caught. Far from that be the truth. This legislation which we seek to amend, the Proceeds of Crime Act, articulates with the FIU legislation, articulates with the financial obligations rules, as a package of legislation.

In fact, this legislation articulates with by far more legislation than that. This legislation, the Bill which we seek to look at, seeks to amend the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit of Trinidad and Tobago Act, and it properly articulates with the Securities Act, the Financial Institutions Act, the Insurance Act, the Exchange Control Act, the Home Mortgage Bank Act, the Agricultural Development Bank Act, the Registration of Clubs Act, the Dangerous Drugs Act and the Board of Inland Revenue.

Mr. President, it articulates with the Exchequer and Audit Act. And when the hon. Minister of National Security says, we can—or rather seems to suggest, if I have caught what he said, that this now allows us to demonstrate before January 2015 the efficacy of operationalizing our laws, that we will look good in our review in January 2015, which is why we are here as a Parliament in August in the traditional vacation period, on a day when we should have been debating another Bill, but we are now debating this because nothing else qualifies for business today. No other Bill on our Order Paper qualifies for debate today. [*Desk thumping*] And the Constitutional (Amdt.) Bill, which we were originally fixed to consider, has not been brought.

But in any event, Mr. President, the point that the Minister of National Security makes, that we need to look good by demonstrating our ability to operationalize our laws, and he seems to suggest that this amendment is the tool by which we can parade our efficiency and efficacy, that is not the case. [*Desk thumping*] And let me explain why that is not the case. The Proceeds of Crime Act is very, very clear. It actually specifies for us that you can deal with the crime of money laundering—if you look to the Act as it is currently constituted, and the manner in which we now seek to amend it—when we look to the offence of money laundering, which is dealt with under Part II of this Act, the existing law, in section 42, beginning there and proceeding onwards, what you note is that money laundering is really an ancillary crime. Money laundering is a crime predicated on the back of another crime. That is to explain the use of the word, “predicate crime”.

We are dealing with an ancillary crime, and in allowing under the Proceeds of Crime Act, the ability to have restraint orders, freezing orders, essentially of moneys and assets or causing the realization of disposable assets to settle things, this law says, the existing law, that you can actually use the tools for money laundering to seize on to something which may be a specified offence. So you have to have a specified crime, and then when the money laundering is made by way of observation as another crime you can then proceed with that.

But that is to belie the fact that the Financial Intelligence Unit of Trinidad and Tobago has the power, through the reporting requirements that are considered there, the existing law, to automatically act on suspicious transaction reports and suspicious activities reports. And this country has a record of close to \$1 billion right now of suspicious transactions, and this country has the ability to operationalize laws right now to cause serious big fishes to be caught. The hon. Minister of National Security said a moment ago that we can deal with things like environmental crimes and we can go after quarrying.

But, Mr. President, that is somewhat shocking to hear from the Minister of National Security because Trinidad and Tobago is well aware—not from the Ministry of National Security, and certainly not from the line Minister with responsibility for the aspects of mining that quarrying concerns; that is the Minister of Energy and Energy Resources. Certainly not from those two sources are they aware of any of the real details of what is going on in Trinidad and Tobago. Illegal quarrying had to be exposed by the *Express* newspaper. [*Desk thumping*] The *Express* newspaper ran a series of articles and had headlines such as appeared in the *Sunday Express* under the investigative reports of Sunday, June 01, 2014, a headline which says, “Stolen material used in highway works”, and in this article by Anika Gumbs, CCN Senior Multimedia Investigative Journalist, the Minister of—whatever he does now—Communications, Sen. The Hon. Gerald Hadeed [*Interruption*] is in crosstalk saying, because he does not stand to contribute in the Parliament, but what he says is “that is unsubstantiated”.

Sen. Hadeed: It is!

Sen. F. Al-Rawi: So, let us deal with that. The *Express* article essentially tells us—dealing with a point raised by my learned colleague—that they hired a helicopter after they could not get road access and that they took pictures of excavators at work on an illegal quarrying site in the Matura forest last week.

Sen. Hadeed: “Nobody eh say that, that eh true.”

Sen. F. Al-Rawi: They then went through—now he is saying, “nobody eh say that, that eh true.” [*Laughter*] Right? [*Interruption*] Story is changing as we are going along. It is a pity the population cannot hear crosstalk, but anyway I will translate it. [*Laughter*] So, the article goes along, Mr. President, to show that there are approximately—[*Interruption*]

Would you like to contribute? If so, take some notes. Contribute afterwards. I would love to hear you. [*Interruption*] I would love to hear you. I would love to see you cross more than three contributions before this Government dies in 2015.

3.00 p.m.

But anyway, Mr. President, what I am saying here, this article gives us chapter and verse of how the State is purchasing aggregate and material from illegal operations at the Matura forest, where 400 acres of land has been savaged, all trees demolished, a huge crater existing in the forest of Trinidad and Tobago and the Government does not have to spend a cent. It just needs to go on to Google Earth, zoom into the area, the forest, and you will see the crater for free. It did not

have to hire a helicopter as the *Express* did, it did not have to track license plates as the *Express* did, it did not have to track a series of reports made to the Ministry of Energy and Energy Affairs for over a year to understand that a big fish could be caught, because the environmental legislation makes it abundantly clear that you have to have a certificate of environmental clearance to conduct quarrying activities.

The mining, that is under the Minerals Act in section 4, makes it an offence to conduct quarrying without mining. And if one were to, in looking at this legislation, have to deal with a predicate offence, then it is very, very easy, Mr. President, to bring a charge against the persons who are known to the Government in the illegal quarrying activities in Matura, to bring a charge for a breach of the EMA law and to bring a charge for a breach of the Minerals Act. But the Minister of Energy and Energy Affairs cannot yet stand up and tell us why we have no charges brought in respect of—[*Interruption*]

Sen. Ramnarine: My role is not to charge people, Sir. My role is not to lock up people and take them to court and so on. I have never said that is my role. I want to make that very clear for the Parliament and for the Senate that the role of the Ministry of Energy and Energy Affairs is to regulate as per the Minerals Act of 2000. Our role is not to lock up people and take them to jail and so on.

Sen. F. Al-Rawi: Thank you, hon. Minister. So, Mr. President, I wish to agree with the Minister of Energy and Energy Affairs. You see, when fright grips you sometimes you do not hear well—[*Interruption*]

Sen. Robinson-Regis: Exactly.

Sen. F. Al-Rawi:—and what I said is the Minister has not told us why conviction has not happened. [*Desk thumping*] And the Minister of National Security who said that this is a big fish piece of legislation which we can use to catch big fishes and show our operational strength before January 2015, I am demonstrating the point that this current law, before we even seek to amend it today, allows two pieces of law—the EMA Act, the Mining Act. One falls under the hon. Leader of Government Business, the other falls under the Minister of Energy and Energy Affairs. The Minister of National Security may also have jurisdiction, and they could easily have dealt with the unwholesome rape of Trinidad and Tobago and the Government's association with the purchase of materials for the highway.

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Let me put this into context, Mr. President. Trinidad and Tobago is building a highway, funded out of its recurrent expenditure, not by way of loan, not by way of special IDB lending, because we could not meet those requirements. The Government is paying for this thing on basically recurrent expenditure. The cost of it is \$7.5 billion—

Sen. Robinson-Regis: And climbing.

Sen. F. Al-Rawi: That is the original cost. The land acquisition, inflation that went on there has not—*[Interruption]*

Sen. Maharaj: 35(1), Mr. President. He is talking about the highway funding at this point in time. Has the debate been shifted?

Mr. President: I will permit Sen. Al-Rawi some latitude. At some point, of course, he must come around to the debate. But I think that he is entitled to introduce the matter as he has.

Sen. F. Al-Rawi: Thank you, Mr. President. *[Desk thumping]* I know it is sometimes hard for Sen. Maharaj to understand relevance, to understand relevance you would have to follow the content carefully, so I hope to connect it for him and invite him to pay attention.

Mr. President, dealing with the issue of the environmental laws as the Minister of National Security has put it on to the table, I am saying, in dealing with the proceeds of crime, \$7.5 billion, call it \$8 billion with cost escalation, \$8,000 million is being spent on a highway, and when you look to the fact that the State is spending this money and paying a known big fish, \$200 a yard for the material that is being purchased, which is below the market price, and which the Proceeds of Crime Act speaks to, the amendments before us today say something is of real valuable consideration if it is not less than the market price. If Sen. Maharaj had read the Bill before us he would understand the relevance.

But the point is, we are paying below the market price for aggregate and in doing that, Mr. President, the persons who we are purchasing this from, in flagrant breach of many laws, the Minerals Act, the Environmental Act, we know that we could convert a big fish into jail clothing automatically. *[Desk thumping]* And it has been reported in the newspapers that the EMA's chairman has basically said that the EMA is under-resourced to prosecute this matter. He also said that there is fear that grips people, and that there is a sense of fear associated with those who will be required to go out and prosecute these people.

So, Mr. President, when we look to the EMA legislation alone, we look to the Minerals Act alone, we look to the Proceeds of Crime Act, the Financial Intelligence Unit, as we seek to amend both of them today, right now we could go forward and demonstrate the ability to lock up people automatically. A predicate offence can be established automatically. You did not get a CEC, lock up, you breach EMA Act. You can do it in the environmental commission as well, they could enter into procedures there. You do not have the licence to mine, either you have the licence or you do not have the licence, easy lock up, Al Capone sitting in your hands can be operationalized right now. Big fish can be caught to the tune of hundreds of millions of dollars.

So why are we tinkering with the laws of Trinidad and Tobago to demonstrate how when we change this law we are going to become efficient in January when we can operationalize the law right now? [*Desk thumping*] But, Mr. President, it was interesting to note that the Ministry of Energy and Energy Affairs itself has forgone millions of dollars of revenue in royalties. The breach of the royalties alone, millions of dollars the Minister of Energy and Energy Affairs, he has to account for the performance of his Ministry. But the Government would not tell us that. We looking to change the law because this will finally allow us to catch big fish. Could not do it before, is the Government's theory before this Senate today, but that is not the truth.

And, Mr. President, when we look now to my learned friend, the Minister of Finance and Economy he is well aware that \$800 million, is it, in the LifeSport Programme and Ministry of Sport? Eight hundred million dollars passed through the Ministry of Sport's LifeSport Programme—[*Interruption*]

Sen. Howai: No, Sir.

Sen. F. Al-Rawi: Is it?

Sen. Howai: No, it is incorrect.

Sen. F. Al-Rawi: Sorry, how much is it?

Sen. Howai: Over two years it is 400.

Sen. F. Al-Rawi: Thank you. Sorry, \$400 million, half a billion dollars, "let meh put it dat way". [*Laughter and desk thumping*] Close to half a billion dollars, right, passes through the LifeSport Programme and we are looking for big fish to catch. We want to show efficiency and efficacy of the operationalization of laws in Trinidad and Tobago. Yet, the Ministry of Finance and the Economy engages in three audits, is it, into the LifeSport Programme, three audits. The first two, no problems. "They aint find nutten."

Sen. Howai: Senator, that is not correct. There were issues which—sorry, if I may correct, Mr. President, thank you very much. The second one was in process when the matter was raised and it was simply merged into the, what you would refer to as the third audit, but the first audit did identify some weaknesses which we did ask the LifeSport Programme to amend and correct, in fact, probably it got worse over that period of time, but the thing is we did identify and we did ask them to correct it.

Sen. F. Al-Rawi: Thank you, Mr. President. You see the honourable—this is why I call him my good friend, he is an honourable man, he is correct. The identification of the issue was there, apparently known to the Ministry of Finance and the Economy, but that did not find its way in the debates that were televised in Trinidad and Tobago when a Motion in the House of Representatives was brought to censure the Minister of Sport over the LifeSport Programme. And when we look to the fact in dealing with this law, Proceeds of Crime, money laundering, the Minister of National Security seems to be in direct opposition to the Minister of Sport, up and down Trinidad and Tobago trying to find out why nothing seems to—the country was left in wonder, why could nothing be going on. It is not as if we were hearing from John Brown outside you know, the Minister of National Security was on record saying that there were criminal elements and gang activity association with moneys passing through a government programme.

Mr. President: Sen. Al-Rawi, I seem to have lost the trend between the debate and the area that you are—*[Interruption]*

Sen. F. Al-Rawi: I will happily connect it for you, Mr. President, proceeds of crime, money laundering *[Desk thumping]* government expenditure, money passing through government programme, and therefore looking for where big fish are to catch them for January 2015—hopefully I have connected those dots.

So, in looking at that and the amendments today which seek to persuade us that we need this law to operationalize this system, “we cyah ketch big fish until we have this law in place”. I am dealing with the fact that the Government and the Minister of Finance and the Economy, who was dramatically silent, said nothing at all about the LifeSport Programme, conducted audits which he said the Ministry of Finance and the Economy found issues with but which the population did not know about.

But what I want to know, Mr. President, between the Ministry of Finance and the Economy, between the Ministry of Energy and Energy Affairs, the Ministry of National Security, how come there was no A-Team appointed to prosecute people, to bring home a conviction, on a civil standard as this law prescribes, as the existing law is based, where predicate offences could easily be achieved, where we could satisfy CFATF and FATF and perhaps gain admission into the Egmont Group?

How come no amount of serious work was done by the Government of Trinidad and Tobago to bring home big fishes? And why is it that newspaper articles, such as that appeared under the hand of Anika Gumbs that I have referred to, could say that “people calling the people name”. The person is known to the Government of Trinidad and Tobago for the illegal quarrying to the tune of hundreds of millions of dollars where the Government is paying for the quarrying, the Government is purchasing the material. How come the Government is not with any anxious step to prosecute people? That is the big question. That is the question which said to us, where is the prosecution for proceeds of crime and money laundering which may have happened in the juice cans that brought in close to \$1 billion worth of drugs into the United States of America, passed through Trinidad and Tobago? Where is the prosecution for the well-seasoned chicken with marijuana that passed through the ports of Trinidad and Tobago to a known consignment? Where is the Minister of Finance and the Economy in an anxious state to clean up the Companies Registry? Where is he?

He spoke to us earlier in his contribution about thousands of people and the overload to the FIU system, listed professionals and those people populating persons who must report to the FIU include real estate companies, they include attorneys-at-law, they include people engaging in leasing or rental of homes or properties, et cetera, all of which are captured by attorneys-at-law in this amendment, as it is proposed, who incorporate companies or engage in transactional work—corporate commercial attorneys and conveyancing and mortgaging attorneys are caught by this.

3.15 p.m.

We have a situation with the Companies Registry, which I have spoken to the Minister about on umpteen occasions on this floor and off the floor, where companies, being ghost companies, exist on the record. We saw ghost companies in the LifeSport programme. The concept of ghost workers and ghost companies is well known, but in Trinidad and Tobago we have, by virtue of the Finance Act 2012, a terrible situation where it costs \$500 per year for each document by way of penalty that you have not filed at the Companies Registry.

So if you have to file your annual return, or your notice of registered office, or your secretary, or your change of directors, each document requires you to pay \$40 at the Companies Registry, and if you have not filed that document and one year later you are in arrears, you pay roughly \$3,600 in penalties because it is \$500—let me get the correct figure. It is actually—for 12 months, for one document which would have cost you originally \$40—\$3,640. For 24 months—two years that you did not file that document—\$7,280. For 36 months, \$10,920 and for 48 months, \$14,560.

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So if you, every year, fail to file one document at the Companies Registry, four years later you have to roll up and pay them \$36,400 in penalties, and as a result of that unwholesome charge, we now find ourselves with ghost companies on the registry where you have companies, as happened in the juice cans that were exported abroad—that was a company which was a dead company which could not be brought up to date, which had annual returns outstanding, roughly a couple hundred thousand dollars in penalties for filing a document, and you cannot de-register a company unless you bring it up to date, unless it is struck off by the registrar.

So you have a situation where people are leaving dead companies everywhere and they can be used to transfer proceeds of crime. They can be used to export juice, which should be juice but turns out to be cocaine to the tune of \$1 billion. And I do not understand why the Minister of Finance and the Economy cannot deal with this situation yet.

Mr. President, when we look to the provisions of the Bill itself, apart from the general articulation issues, may I say, number one, there seems to be problems in the definition section of the Bill. The first thing that pops up out of the definition section is the conflict that we have in this Bill between the articulation of the various Ministers who must work this legislation, the Proceeds of Crime Act; we have the Minister of National Security, the Minister of Finance and the Economy, the Minister of Public Administration, all three of them. We are oscillating back and forth—and the Minister is giving us no explanation for this—between responsibility shifting from the Ministry of Finance and the Economy versus the Ministry of National Security.

When you look to see the establishment, by way of example, in section 57 or 58 of the Act that is being amended—as is proposed to be amended by this Bill—when we are looking to the establishment of the Seized Assets Fund, and then we are looking to the committee that manages that fund, we have, without any form of explanation by the Minister of Finance and the Economy, gone from a committee established by the Minister of Finance and the Economy, as the old section 58 said, where the committee was populated by a chairman and four other members, one member shall be nominated by the Leader of the Opposition—all of that goes out the window and we now just have the Minister of National Security.

The Minister of National Security applies now a new rubric, much of which looks, when you see the amendments that are proposed by this Bill, to be what regulations should specify as opposed to the parent law. Why would we want, in these amendments today, to consider putting into concrete three-fifths-majority terms—because this Bill requires a three-fifths majority to be amended? Why would we

want to put in the amendments that we propose to section 58 of the Act, a system where you are cast in stone as to how you call a meeting, how many people sit on the committee, how they regulate their procedure? Why is that in the parent law at all? I have no idea. Why are we going from the Ministry of Finance and the Economy to the Ministry of National Security, particularly when we look to the fact that our procurement legislation, which has not been amended to date, allows the Minister of Finance and the Economy to deal with these matters?

We also have the appointment of the Attorney General. You will remember under the FIU legislation and debates that we had in this Parliament in 2011 and 2012, that we had a lot of toing and froing over who should be responsible for the FIU itself: the Ministry of the Attorney General, the Ministry of Finance and the Economy. But it behoves the Minister of Finance and the Economy to give us an explanation as to why we are putting the Minister of National Security. I have nothing against the Minister himself. Why are we removing the operational successes that the Ministry of Finance and the Economy brings to the table and replacing it with the Ministry of National Security?

We saw what happened in the simple procurement of services for one fire truck. We saw what the Ministry of National Security was capable of doing, where a permanent secretary has a limitation of \$1 million by way of approval and “vaps”, out of the blue, to pull up a fire truck 50 feet from the edge of the road on a little slope, it cost the country \$6.3 million. So why are we removing the overseeing scrutiny and sanity of the Ministry of Finance and the Economy? Why?

Sen. Howai: It is in the amendments.

Sen. F. Al-Rawi: I have not seen your amendments, hon. Minister. And that is another point. The hon. Minister is always forthright in his responses. He says they are in the amendments. *[Interruption]* I have not seen them, and it is irresponsible of a Parliament considering three-fifths majority legislation, to be making up legislation on the fly. The Government has not consulted with anybody in this Chamber as to what the recommendations are that we should be looking at or why we are dealing with this. So I have problem with that.

Mr. President, when I look to the definition of “security”—because I was on the definition section—we are saying delete the definition of “security” and replace it with, “security has the meaning assigned to it by the Securities Act”, 2012. But in deleting that, we are removing the inclusion of credit union within the meaning of the Co-operative Societies Act and an insurance company, because the definition of “security” in the Securities Act, 2012 specifically removes those entities.

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So how are they going to be regulated? Did you mean to do that because you intended to include a reference to the Insurance Act? Perhaps the hon. Minister intended to do that, but I dare say, short of an explanation which makes sense to me, it does not seem to be a move in the right direction to treat with the limited definition of “securities” as we have in the Securities Act, 2012, in place of one which includes specifically, credit unions and insurance companies which you are seeking to repeal.

Mr. President, when we look in terms of big, broad areas to the concept of—in fact, I should go sequentially. When we look next, apart from the definition of “securities”, we look to the definition of a “specified offence”, the “specified offence” that we are dealing with is any offence punishable on conviction, a fine not less than \$5,000 or to imprisonment for less than 12 months. Hon. Minister, are you aware, under the Municipal Corporations Act, that selling rotten tomatoes fits that bill? I keep coming back to that point as to how we establish thresholds. How do we get to these thresholds? There is a reason why Ramesh Lawrence Maharaj, as the Attorney General in 2000, spent a lot of time zoning in on the fact that indictable offences was an appropriate threshold to be used.

But if the reason for our amendments today is to demonstrate that we are making it easier to convict people, I have already demonstrated that it is the Government’s lack of anxious alacrity, or speed, or agitation in convicting people under the existing laws that is the culprit. It is not the law itself. The existing laws can bring demonstration of our ability to convict people for money laundering or other matters or proceeds of crime easily to the table—the Al Capone formula, as the learned Minister of National Security has put it.

Mr. President, where is the operationalization of the establishment of a joint select committee of Parliament which the Proceeds of Crime Act specifically says should happen? The Proceeds of Crime Act says to us, under the miscellaneous provisions, that there shall be a joint select committee of Parliament to deal with proceeds of crime. That does not exist. Where is it? In 2009, we heard Martin Joseph, in piloting the amendments that the PNM brought to the table, speak specifically to that. In 2010, the Government changed. Five years later, nearly, we do not have anything resembling that. And I want to add to that list that the Dangerous Drugs Act says the same thing too. We do not have that as well. And in amending the Dangerous Drugs Act, as we did, in bringing to life the Proceeds of Crime Act, we specifically made deletions or repeals of the laws existing there.

So that joint select committee, where there is supervision of the performance, not only of the Proceeds of Crime Act, but of the FIU—because the FIU is established to operationalize it under the structure by which the financial obligations, 2009—the FIU and the Proceeds of Crime Act, as a tripartite piece of coordinated legislation—works, but the Government has not paid attention to that at all.

Mr. President, when we look next, as we proceed with the amendments, the Government has not explained to us why the conviction rate, or the prosecution rate, is as low as it is. The standard of proof is on a civil standard. Now, I understand the predicate offence argument, but if it is that the FIU itself is seriously under capacity and cannot perform, does it make sense in this law to ask all of the listed professionals to bear the burden? Because that is what the law proposes. The sections in money laundering make a very important and very expensive shift. What they do is, they bring into the parent law of the Proceeds of Crime Act what are really rules and regulations of the FIU. They say in section 46 or 45—somewhere thereabouts, as is proposed to be replaced—that the listed professional, that is the attorneys-at-law, whomever they may be, and the others with responsibility, they must implement provisions that the FIU prescribes that they should, and that they should monitor.

Now, that is okay. In theory it makes good sense. You are spreading the load; you are creating multiple policing agencies. That is okay for the Central Bank, for the Securities and Exchange Commission, for the Stock Exchange as a self-regulated entity, for any one of those institutions. But what happens when you get down to the attorneys-at-law? When you deal with the attorneys-at-law, the governing law which deals with fees is very important because the Central Bank and those other agencies as supervisory bodies, they can charge for the work that they send out to customers. Banks give you a negotiation or commitment fee. You have to pay that fee. Real estate agents are well compensated at 3 per cent, but lawyers have a ceiling cap, and in 1997, operationalization of the Legal Profession Act prescribes the maximum fees for lawyers.

The Legal Profession Act prescribes, by virtue of the subsidiary legislation which came into effect on May 01, 1997, which amended the solicitors—et cetera—laws of 1950, that you can only charge a maximum of a certain amount of money. So how are you expecting lawyers—and I declare my interest openly as a practitioner—to bear the cost of the supervision by external forces coming to audit or internal mechanisms coming to audit? It is a prohibitive cost. And I just want to put people upon notice that the management or operationalization of this law is very expensive, particularly when you note that the new section that is proposed to operationalize what I just spoke about, stands in the new section, in section 57, as it is proposed to be amended. Sorry, in section 57, I think it is—yes—where the offence that is being created is that a breach of the failure to implement those provisions results in the application of a fine of, on summary conviction, I think it is, of \$250,000 and on indictment of \$500,000 with serious jail terms associated. I cannot seem to locate it immediately.

3.30 p.m.

But, Mr. President, that is a serious point. How are we managing the cost to practitioners? How are clients going to be subjected to these costs? Something that jumped out at me was the proposals that we seek to put into place in repealing section 58 of the Act. We are in the new section 58, seeking to propose the establishment of the Seized Assets Fund, and the Minister with responsibility for finance shall deal with that fund.

“The fund shall comprise—

- (a) ...monies...;
- (d) proceeds of the sale of forfeited property...;
- (g) cash or proceeds of the sale of any property...;”—et cetera,
- (h)“proceeds of the sale...”—which belong to the fund,

Then you have seen the Minister say that the compensation fund is to be called into issue to make up shortfalls where there is compensation that this Seized Assets Fund cannot manage. But section 66 of the Constitution of Trinidad and Tobago and the general sections that deal with money Bills are very clear. Let me put the points together.

The Exchequer and Audit legislation says that:

““public moneys’ include—

- (a) revenue;”

This is in section 2 of that legislation. Revenue includes fines and procedures and forfeiture of moneys coming into. So we are dealing with public moneys. Section 66 of the Constitution says where a Bill deals with anything that affects the issues considered to be money aspects—where we deal with moneys as described under section 66 of the Constitution, we see a:

“...‘Money Bill’ means a public Bill which...contains...provisions dealing with all or any of the following matters...:

- (c) the grant of money to the State or any authority...variation or revocation;
- (b) the imposition, for payment of debt or other financial purposes, of charges on public money or variation or repeal of such charges;
- (d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;”

It seems to me—I will want the Minister to speak to it directly—that we are in fact, in repealing and establishing under this new law, the Seized Assets Fund, that we are potentially dealing with something which is tied to a money Bill, and there is a reason why the Constitution prescribes that money Bills should go to the House of Representatives first. That reason, Mr. President, is that the elected representatives of Parliament stand to face the axe of public opinion when they fail to consult on measures of law, and even if the Senate does not agree with a money Bill it still becomes law one month after. The Constitution is clear. So are we being proper in our process and procedure today in dealing with matters which appear to look like money Bill issues in the Senate first as opposed to the House?

This Bill was laid in the House of Representatives and lapsed. It came back to the Senate, today, because there was nothing else to do today and we adjourned to today. [*Desk thumping*] So to fill the black hole that we had created today by the failure to deal with the Constitution (Amdt.) Bill, which is another whole breach of procedure by itself, we are here today dealing with this legislation in circumstances which make no sense other than what I have just explained. We are here putting something to try and do something. Otherwise we will be here just to adjourn. There is no work that qualifies for today's business. [*Desk thumping*]

Mr. President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made: That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. C. Robinson-Regis*]

Question put and agreed to.

Sen. F. Al-Rawi: Who said no? Sen. Sturge, thank you for the no, who I welcomed a little while ago. No wonder you could say in the public domain that terrorism involves section 55 of the Constitution. But anyway, treason it was. Anyhow, there you go.

So, Mr. President, in dealing with everything other than Sen. Maharaj's objections, the business today of dealing with this law is critical. When we looked into the further sections of the Bill—which I really asked the Minister of Finance and the Economy to speak to—I would like to know what is the rationale behind requiring on-duty or off-duty policemen because there is a prescriptive benefit in seeking to amend section 38 as we proposed to do, to maintain policemen or customs officers, et cetera, on duty. There is a whole process that follows, and particularly because that constitutes a filter or safeguard where we deal with the seizure and detention of cash. We are after all in a situation where the

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Government of Trinidad and Tobago has to explain why firearms go missing from the repository for safe keep of firearms. So firearms go missing, cocaine gets eaten by rats and cash disappears, do we really want to have a situation where we are removing the requirement for officers to be on duty as we seek to propose an amendment to section 38 of the Bill?

Mr. President, I would also like to know in the second amendment that is proposed to section 38, is it that the common law was not working? Is it that the introduction of 4(a) and 4(b) as subclauses to section 38 is actually required because there was a problem that we met in law? And if that is the case, hon. Minister, why are we requiring the cash which, mind you, under section 5 of the existing law must be put into an interest-bearing account? You know that there are no interest-bearing accounts for short-term deposits. So we cannot comply with section 5 of the existing law, but why did we not seek to keep harmony with the indictable proceedings law that we just passed last session? In that session we allowed an institution, a bank, a financial institution, to hold the cash, to hold the money, to be the repository. Why are we not keeping some degree of harmony with the laws that we passed? That is an interesting point.

We have, Mr. President, next, the issue of section 45(4). *[Interruption]* Sen. Maharaj, I will bet my bottom dollar that you have nothing to say on this Bill.

Sen. Maharaj: You will be surprised.

Sen. F. Al-Rawi: Nothing of substance. *[Desk thumping]* You will be true to form. But anyway, section 45 of the Bill as it is proposed to be repealed and replaced, while we are using the terminology in subsection (4):

“For purposes of subsection (3), the standard of proof required by the person referred to in that subsection, shall be on a balance of probabilities.”

Everywhere else in the Act we talk about the civil standards. Perhaps we could look at stating that in a little more harmonious way with the existing law that prevails.

Mr. President, I want to look next to the amendment of section 55 of the Act. Section 55 of the Act as is proposed to be amended, deletes subsections (3), (3)(a), (3)(b), (4), (5), (6), (7), (8), (9), (11), yet we notice when you go to section 56 of the Act, which is not amended today, section 56(1)(b), procedure to be followed in implementing subsections (5) and (6) of section 55, that the Minister shall prescribe regulations for that. Perhaps, hon. Minister, that seems to be an oversight and that you need to make an inclusion of a new clause to amend, consequentially, section 56 of the Act because sections 5 and 6 are subsections of section 55, have been repealed.

Mr. President, section 55—I have dealt with the issue of money. I am dealing now with section 57 of the Act. Section 57 of the Act as is proposed to be amended, includes the new section 55A and section 55C. That is fine. We correct the language. If Sen. Prescott was here he would probably be very happy for the use of the words “commits an offence” as opposed to “is guilty of an offence”. But in looking at this, I wonder whether we ought to do some step better, because understand this, hon. Minister, you are including in section 57 a very important tie-back.

We have amended section 55. We have now made all legal practitioners who failed to implement certain procedures automatically under the threat of summary conviction to a fine of \$500,000 and imprisonment for two years, or conviction on indictment to a fine of \$3 million and with a term of seven years, but it just says that you knowingly contravened. Do you want to affect what seems to be an excessive criminalization by the introduction of the word “wilful”? We did take into account those procedures when we dealt with the insurance legislation and the securities laws, and insofar as we are now in the modified section 55, which is very, very potent for lawyers in particular, puts them at serious risk. I see Sens. Solomon and Sturge in the background quivering, but the fact is that it causes serious jeopardy and we may want to be careful about that. [*Crosstalk*]

The Ministry of National Security is looking at this whole supervision in sections 58A, B, C, D, F, G, et cetera, I, J, K, L.

Sen. Maharaj: M.

Sen. F. Al-Rawi: Yes, there is an M actually. I am glad you read the Bill. Good to know that you have read the Bill. But, Mr. President, I am really concerned that a lot of this—this Proceeds of Crime Act was really framework legislation. The concept in legislative drafting is that you keep your framework legislation desiccated. You allow for the flexibility of subsidiary legislation to come to operationalize the structures. Do we really need to put all of this into the amending law? I think most humbly, in my point of view, that these ought to go into subsidiary legislation and that they should not be included into the parent law.

Mr. President, I wish to strongly support the position put forward by my learned friend, Sen. Drayton. The positions that she started with are the very provisions that concern me as well. This is the disadvantage of speaking little bit later on into the game, but also the merit of listening to other points of view. Sen. Drayton quite appropriately referred to the section 43 issue, and that section 43 issue and—[*Interruption*]

Sen. Dr. Henry: You see how they turn it around?

Sen. F. Al-Rawi: Forty-three. Thirty-four in reverse. Yes, quite true. So that section 43—imagery, that lateral inversion of section 34—issue is something that concerns me.

In a mind that is cynical, you may wonder why the Government waits to the fifth year after spending close to, what will certainly be over \$300 billion of expenditure when the next budget comes on September 08, after the biggest budgetary allocations in a five-year cycle ever—matching close to 15 years of budgets back to back added up together prior—why the Government comes to deal with offences that deal with money laundering in the way that we do, and that we are not considering the effect on crimes that may have been committed in the past.

I share Sen. Drayton's point of view that seeking to amend the legislation, as she has proposed, is a laudable perspective to really think about as a Senate tonight, and that is because we do not want to see people take advantage of the technicalities of the law. I do not think it will be retrospective in any event. We are dealing with a three-fifths-majority Bill and Parliament can, through our deliberations and the sum total of our vote, therefore bring proportionality and reasonableness to that kind of perspective. And I think that is something that is very important for us to look at in a deep and reflective fashion.

3.45 p.m.

It would be a tragedy beyond tragedies if we did not seek to capture offences that have been committed in these past five years. That is to be met by the fact that the legislation, the Proceeds of Crime Act, is also limited to six-year periods. It, like the Board of Inland Revenue legislation, VAT, et cetera, is limited to six-year maintenance periods. You cannot go back more than six years. It is in section 16, section 17, section 19, section 27—somewhere thereabouts where we have that six-year prescription gap and therefore, it is important for us to think about how this law will be considered as a sum total.

I have quite a few observations to make in committee stage. We agree that the legislative aim and intention is laudable. It is a tragedy that the Government will not explain what seems to be much more than apathy on its part in prosecuting big fishes that could be dealt with right now, and why we do not have an A team, B team, C team, E team, appointed to prosecute the raping of the hills and the selling of quarry materials to Construtora OAS through the Government of agencies implementation of the highway project.

It is a sin that we have not dealt with a report which is more than the method of payment in the LifeSport Programme. [*Desk thumping*] Surely, the Minister of Finance and the Economy could have commissioned a much broader report than that, and surely there are Al Capone-type examples of quick fixes that we can do to prosecute money launderers there.

There is some merit in Sen. Drayton's perspectives on limitations of cash. I am somewhat cautious about that in terms of how a depressed economy, as we have right now—an economy which operates without confidence as we do right now—will survive that kind of limitation. But it is very laudable that we seek to track as much as we can. That is why a revenue authority of Trinidad and Tobago made very good sense for Trinidad and Tobago because it would have harmonized the operationalization of all of the laws by which we track money laundering.

The Government must speak to its mind and management proposals for how we operationalize the law because the law, as it exists right now, is very effective. It can be put into effect very effectively. The PNM left a lot of excellent work in 2009 when the now Government, then Opposition, would not even vote for the FIU amendments or the Proceeds of Crime amendments. They would not even vote for it, which perhaps explains why they have done nothing about it in the last four years into the fifth year now.

Mr. President, I thank you for the opportunity to contribute. [*Desk thumping*]

Sen. Anthony Vieira: Thank you, Mr. President. Crime and corruption is, without question, the number one issue for most citizens today. In an article in the *Guardian* dated June 25, this year, it was reported that Dana Seetahal was murdered by a transnational drug organization with operations in Trinidad and Tobago. This was according to the United States Assistant Secretary of State, William Brownfield. He highlighted the correlation between the increase of drugs flowing through our region and the crime and violence on our streets. He said:

“...the increased use of the Caribbean as a trans-shipment point for drugs has led to the increase in murders. He predicted that the level of violence was likely to get worse over the next few years”—he warned—“that even Arms of the State can be challenged.”

According to this high-ranking US Government official:

“...‘Drug traffickers...have the firepower to defend their turf...eventually’”—they will—“be prepared to take on institutions of the State, whether that is the police, border guards, customs or the Judiciary.”

It is also interesting to note that in its 2013 Corruption Perception Index, Transparency International rated Trinidad and Tobago as coming 83rd out of 177 countries. So citizens, therefore, are rightly concerned about gang-related violence, white-collar crime and corruption. And yet, this does not spill over or translate into an appreciation for the need for robust anti-money laundering measures.

Mr. President, I want to make the link today between crime, corruption and money laundering. Money laundering, as you know, is the practice of processing criminal proceeds to disguise their illegal origin. Today, I want to emphasize the importance of anti-money laundering measures as one of the most efficient ways of combating crime and corruption because it frustrates the attempts of criminals to enjoy their ill-gotten gains. Today, it is my hope that after this debate, citizens will appreciate more fully that money laundering is not a victimless crime or pertains only to white-collar crime. Nothing could be further from the truth.

The fact of the matter is that money laundering is real. Money laundering affects each and every one of us directly and money laundering is a scourge at the national, regional and international levels. It absolutely has to be dealt with. If we are serious about curtailing crime, then we need to get serious about strengthening and enforcing our anti-money laundering and anti-terrorism regimes.

Now, I should disclose that for some time, I have been part of the FIU stakeholder group which comprises representatives from the various supervised entities, and my law firm, Mair and Company, was the very first to submit a compliance programme for approval by the FIU, and we have collaborated, on a number of occasions, with the Law Association in seminars with a view to heightening awareness about the attractiveness and the susceptibility of the legal profession to criminals, and about the potential risks and consequences for non-compliance with the relevant legislation.

Illicit trade, corruption and money laundering are matters I take very seriously, as a result of certain experiences in the early days of my law practice, and I will just share two of these experiences with you.

In 1987, I successfully defended someone from a Spanish-speaking country who had been charged with certain gun offences. I later suspected that this individual had links with organized crime. Those suspicions arose when he asked me to work for him in acquiring beachfront properties and hotels in neighbouring Caribbean islands. Well, needless to say, I declined the brief, I ceased having further contact with the person, and shortly afterwards, he left Trinidad and Tobago and I never heard from him again. But the experience gave me an insight into how the underworld seeks to exploit the vulnerabilities of small States, in particular, those having unprotected coastlines.

In 1994, while serving a senior Crown counsel in the Attorney General's Chambers in the British Virgin Islands, I was assigned to assist the Inspector of Banks and Trust Companies, in respect of a request from the international liquidator of the Bank of Credit and Commerce International, BCCI, dubbed by some as the "Bank of Crooks and Criminals International". The liquidator was asking for access to certain documents and information relating to BCCI's collapse. Well, suffice to say, a legal firestorm ensued, a multiplicity of actions were brought against the Inspector of Banks and Trust Companies, and while we prevailed in the lower and in the higher courts, I experienced first-hand the kind of resistance and force that can be arrayed against a State by those who would facilitate money laundering and seek to protect the identities of those involved.

So this Bill is therefore important as it is intended to address certain weaknesses in the present legislation based on the recommendations of the Financial Action Task Force, FATF and, in particular, as regards the prosecution of offences and certain administrative matters. Among other things, as we have heard, it seeks to make the offence of money laundering easier to prosecute.

As the law currently stands, before a person can be convicted of money laundering, the prosecution first has to obtain a conviction for one of the specified offences: fraud, drug trafficking, kidnapping and so on, and only then can the money laundering charge proceed. So, one of the key amendments of this Bill is that the prosecution will not have to prove the commission of a specific offence or the specific crime from which the money was derived. The law will now allow for the prosecution of stand-alone money laundering charges. Two recent cases in nearby Caribbean islands will illustrate why we need this provision.

Recently, in Barbados, two Bulgarians were found to be in possession of large sums of currency while entering the Grantley Adams International Airport. They were both charged with money laundering. In St. Vincent, two men were charged and convicted following the discovery of a large quantity of cash on one of their boats. Mr. President, had either of those situations occurred here in Trinidad today, the authorities would not have been able to charge the offenders for money laundering as the offence must be tied or predicated to a prior related offence.

In Trinidad and Tobago, it is not a stand-alone offence. Presumably, there could have been a customs charge for failing to declare but we are all painfully aware that not even that charge was brought against Mohamed bin Hamman who is alleged to have distributed in Port of Spain over US \$1 million to various persons in brown envelopes. So one of the key amendments of this Bill is that the prosecution will no longer have to prove the commission of a specific offence or specific crime from which the money was derived. Money laundering can now be a stand-alone offence.

It should also be noted that under our law, the offence of money laundering must be proven beyond reasonable doubt as opposed to those jurisdictions where there is a reverse burden, that is to say where the burden of proof lies on the subject of the investigation to show how he came by his wealth. Here, the burden rests on the prosecution to prove that the defendant knew or had reasonable grounds to suspect that the property or money, or both, was derived from a specified offence. So, under the law, as it stands in Trinidad and Tobago, a conviction for money laundering can only follow after a prior conviction for a serious crime, and the prosecution can prove that the property under consideration derives from crime.

Now the prosecution is only able to do this by showing that the property derives from conduct of a specific kind, which is unlawful or by leading evidence of the circumstances in which the property is handled, such as to give rise, as the hon. Minister of Finance and the Economy mentioned, to an irresistible inference that the property is criminal property—that is, proceeds derived from crime.

The hon. Minister mentioned the case of *R v Anwoir*, a 2008 case, in which it was held that in order to establish an irresistible inference, it is necessary to use evidence of conduct.

4.00 p.m.

It also needs to be noted, as we have heard, that failure to bring our legislative framework up to speed with FATF's special recommendations could have a negative impact on how this country is perceived.

Indeed, my understanding is that at this juncture, the FATF's perception is that we are not really serious about tackling money laundering at all, bearing in mind, among other things, that deficiencies identified since 2010 still have not been addressed, and bearing in mind that to date, there has not been a single conviction for money laundering. One of the reasons for this, of course, is because the system is basically ineffective, which is a matter due to weaknesses, no doubt, in the legislation, which this Bill is presumably intended to address.

So, Mr. President, this is necessary legislation which, as a matter of principle, and subject to the amendments proposed by Sen. Drayton and myself which, incidentally, mirror each other, even though we came up with them independently of each other, I would urge all Senators to support. Indeed, the Global Organization of Parliamentarians Against Corruption (GOPAC) urges all parliamentarians to play a vital role in combating money laundering and the financing of anti-terrorism through their influence on legislation.

My only complaint about this legislation is that it does not go far enough, and there is the risk of a certain loophole which we should pay particular attention to, as I will point out in a while and certainly at committee stage, a very important subsection from the UK Proceeds of Crime Act, 2002, after which, as we have heard, our legislation is modelled as being the most appropriate model, has been left out, and which, if not corrected, will undermine the aims of the legislation and will considerably dampen the force of the measures we need to have implemented.

Now, I do not know how many of you watch the television series *Breaking Bad*. I highly recommend viewing it. Not just because you will see some of the best acting ever, but because it vividly demonstrates how imaginative and sophisticated money laundering can be, when it comes to washing dirty money and reintegrating the proceeds of crime back into the financial system through the acquisition of real estate, through financial investments, through sham litigation, through business ventures, and as disguised payments for goods and services. The idea is to give the ill-gotten money a legitimate appearance. And for those of you who did watch the series, it is interesting to note that one of the advisors to the producer was in fact the DEA. So you get it straight from the horse's mouth.

Now, earlier on I said I wanted to make the link between money laundering, corruption and crime. Money laundering is necessary, not just for drug trafficking, but for gains made through all types of serious crime and corruption, including robbery, car hijacking and theft, counterfeiting, human trafficking, kidnapping, blackmail, embezzlement and fraud. It needs to be understood that illicit trade and serious crime is more about transactions than products. The guy who grows marijuana or who sells pirated CDs and DVDs on the corner, he is on the low end of the spectrum. He is at the low end of the chain. The bigger predators are found at the higher end of the social and professional spectrum. These are the profit-minded, opportunistic, economic agents, often masquerading as legitimate business interests—[*Desk thumping and laughter*—]—such as malfeasant real estate agents, accountants, legal advisors, financial advisors, and non-compliant financial institutions that provide the infrastructure and support, which enables illicit trading to operate and upon whom the professional criminal and corrupt politically-exposed person depends.

There is a tendency to fixate on the actors at the lower end of the spectrum, the lower end of crime, and understandably so, because these are the types one is more likely to encounter and, thus, associate with crime, and there is also a tendency to characterize these low level actors as choosing to engage in crime because they are morally deficient, but the reality of the situation is that crime, corruption and money laundering is an economic phenomenon, not a moral one.

Today, one could move 10 of these low-level characters “and ah promise yuh, by tomorrow, dey have another 10 more lined up and more lookin’ tuh take their place.” If we hope to stop crime and corruption, we need to direct our efforts at those higher up the chain. Unless and until organized crime faces diminished incentives, unless and until we begin cleaning up the flow of dirty money and eradicating the underlying crimes that are its source, “we only spinning top in mud” when we focus only on other crime solutions.

If we want to make a serious dent in crime, which is the number one concern of most citizens, as I have said, then we have to hit the career criminal where it hurts him most, and that is by frustrating, depriving and confiscating his ill-gotten gains. Ultimately, these characters are in it for the money. Crime is driven by greed and profit, not low morals. The economics of crime starts with a simple assumption: criminals and the corrupt weigh up the expected cost and benefits of breaking the law; if the opportunity is low-risk or risk-free, they grab it.

In a paper on the economics of crime, Gary Becker of the University of Chicago made clear that the expected cost of lawless behaviour is the product of two things: the chance of being caught and the benefits of breaking the law. So, if we hope to tackle crime and tackle organized crime in Trinidad and Tobago—and we are talking now about the drug cartels, those engaged in illegal fuel bunkering, the illegal quarry operators, the hired assassins, the arms smugglers, those involved in human trafficking and prostitution, those involved in smuggling wildlife and those who have profited from unlawful kickbacks and bribery—then we need to beef up our detection rate and strengthen our anti-money laundering measures. How can we even talk about tackling crime, if we do not get to the heart of it, the money? I think we also need to pay greater attention to and to understand how serious crime, corruption and money laundering negatively impact on our social values, our sense of well-being and are in fact changing the very fabric of our society.

Consider, for example, when money launderers engage in trade-based money laundering such as mis-invoicing, or by supplying false documents, they can corrupt legitimate business. Legitimate business cannot compete with illicit trade operators who can sell goods at less than market price and even below the manufacturers’ price. This undermines and destroys legitimate business. Hard-working, but less affluent citizens are seriously disadvantaged in their ability to acquire residential real estate because they are unable to compete with money launderers—money launderers who are willing to pay top dollar and even higher than prime when it comes to converting dirty money into real estate.

When liquid cocaine is found in mock-ups of the tins of one of our oldest juice manufacturers or in soft drink containers purportedly originating from Trinidad and Tobago, legitimate business pays the price. Money laundering affects us all. I do not think that the damage of money laundering and its effect on economic motivation and social morale are fully appreciated.

Now, money laundering also causes damage at the national level. Think about it, if it is easy to hide money, there is an incentive. Ease of business encourages criminal activities. It incentivizes crime. When officials take bribes to enable illicit trade, it is the country that loses. When valuable foreign exchange has to be repatriated to pay for drugs and guns passing through our jurisdiction, or when money launderers and corrupt officials engage in smurfing—that is they place their illicit gains into financial institutions abroad—[*Interruption*]

Sen. Ramnarine: Surfing?

Sen. A. Vieira:—not surfing, smurfing.

Sen. Ramnarine: Like the Smurfs?

Sen. A. Vieira:—there is capital flight and distortions in the demand for foreign exchange.

And as we have previously heard from the hon. Minister of Finance and the Economy, in this honourable Chamber, Trinidad and Tobago has ambitions of becoming a regional financial centre. Well, that can never happen. That will hardly happen if money laundering is allowed to persist unchecked. If Trinidad and Tobago is perceived as lax on anti-money laundering, it stands to suffer a loss of international credibility.

Organized crime not only corrodes the rule of law, it can even hijack institutions and governments. Now, we spoke about this in the Bill brought by Sen. Drayton which had to do with campaign finance reform. But I want to remind you, I want you to look at real examples: Allen Stanford and how he impacted Antigua; how Suriname became a trans-shipment haven for drug trafficking because of Dési Bouterse's links with one of the major drug cartels; and what happened in Turks and Caicos where corruption had become so endemic that after an enquiry led by Sir Louis Blom-Cooper, the British Government felt constrained to take back control of the territory.

If we fail to strengthen our ability, in terms of countermeasures, there is a real and present danger that the cancer of crime and corruption can spread to the point where illicit networks become intertwined with legitimate private sector activities

and may even become embedded within the public sector and political system. We used to think that kidnapping and gang-related activity could never happen here, well, let us not delude ourselves on this aspect of crime as well.

Mr. President, organized crime is the success story of the 21st Century. Everywhere else economies are faltering, people are losing money, they are not doing well, organized crime is hitting an all-time high worldwide. And why? This has happened because of a confluence of factors. Globalization and the liberalization of international financial markets, at the same time, of the Internet and the new technologies, and something we do not often think about, but the collapse of the Soviet empire.

When the Berlin Wall came down many of the paramilitary forces from fallen communist countries turned to crime, using their military training, their understanding of logistics and sleuthing and their international connections in developing efficient and sophisticated criminal networks. You hear about the Russian mafia, the Chinese triad tongs, the Japanese Yakuza, all these Central and North American gangs. These guys are operating—they are efficient, they are deadly and they are organized.

The fact of the matter is that crime in the 21st Century is a mighty industry, which creates violence and instability wherever it goes. It has become a major economic force and a new form of politics. It affects us all in all kinds of ways. What we wear and adorn ourselves with, counterfeit goods and accessories; what we listen to and watch, counterfeit CDs and DVDs; what we consume as medication, counterfeit pharmaceuticals; and as we have already been warned in no uncertain terms, about the correlation between the increase of drugs flowing through the region and the crime and violence on our streets.

4.15 p.m.

Now, there is a tendency on the part of some to get defensive about the international pressure being brought to bear on us to stamp out money laundering. In particular, as regards what some have described as the extraterritorial bullying of the FATF, and its hard-line approach in imposing economic embargoes, and sanctions on any state refusing to comply with their recommendations and guidelines.

Well, I have said in many other places, I agree with the view that, rather than coercing nations into compliance, the FATF might do a lot better with a policy of encouragement and support, while respecting national sovereignty in keeping with the letter and spirit of international law. But having said that, I think it also needs to be appreciated that illicit trade and money laundering is a cross-border problem, which requires cross-border solutions.

Criminals have no loyalty to any flag or country. And a Government acting alone will hardly make a dent in what is now a global problem. So pooling some sovereignty amongst trusted international partners is a necessary step in the fight against illicit trade, terrorism, corruption and money laundering.

It is naive to think that we can successfully fend off criminal activity just by tightening border controls. The world has changed, and just as we require international cooperation for our financial system to work efficiently, and for our telecommunications networks to operate, we need international cooperation to fight crime. Indeed, the combating of organized crime, terrorist activities and money laundering has now become a priority in international law and cooperative law enforcement.

There is also a need to shore up our limited capabilities, among other things—and I have said it in this House before—we need to increase our complement of prosecutors. In particular, we need more specialist prosecutors trained to handle white-collar crime. We need to increase the capabilities and resources of our law enforcement agencies and regulators.

Statistics indicate that criminal earnings have grown substantially worldwide. We are talking trillions of US dollars. They also suggest that the profit-minded opportunistic economic agents, upon whom the professional criminal depends, these guys are constantly looking to improve their efficiency and their ability in laundering money. Those agents understand the opportunities and the benefits offered by globalization and the new technologies.

As we have heard from Sen. Dr. Henry, they understand virtual and digital currency and bitcoin, and they continue to develop and expand their capabilities. So the question arises, are we doing what is necessary correspondingly? Are we investing sufficient money, resources and training in properly equipping those who are fighting for us? We need better and faster communications between our law enforcement agencies and regulators. In particular, the time has come for them to stop operating in compartmentalized silos.

By way of example, one would expect that the Integrity Commission would have access to the files of the FIU, its intelligence reports and evaluations. But my understanding is that the FIU files can only be shared with the Financial Investigations Branch of the police department, Customs and Excise, the chairman of the Board of Inland Revenue, and the Chief Immigration Officer. This is what is defined in the law as the relevant law enforcement authorities.

Again, suppose there is a suspicious activity report against a police officer for corruption, one would expect that the Police Complaints Authority would have access to the FIU's information and documents, or that the FIU could provide its intelligence to the PCA, but under the current system that cannot happen. The FIU can only share its information to the four relevant law enforcement authorities mentioned earlier. In my respectful submission, the maintenance of bureaucratic boundaries only benefits the criminal. The fight against organized crime is too important to leave to separate agencies operating in silos; an integrated approach is required.

Now, one of the deficiencies in the legislation, therefore, is that the FIU is unable to request information from the Police Complaints Authority and the Integrity Commission, and conversely to share its activity reports and evaluations with those bodies; this needs to be addressed. I believe the FIU should have power to share its information and documents and to collaborate with all regulators and all law enforcement agencies.

The world has changed and we need to adjust our methods and priorities. We need to pay greater attention to how serious crime and money laundering are undermining our society, negatively impacting us and changing our world. We need tightly integrated, highly functional teams with operational latitude and open lines of communication. We need to confront the new reality of global illicit trade and the global value chain. We need to update and adapt our laws to international standards, which brings me to my last point.

Having emphasized the imperative to update our laws in keeping with the recommendations of the Financial Action Task Force, and aware of the consequences in not having the necessary tools to fight crime and corruption, including the possibility of blacklisting and the risk of sanction, I am alarmed that section 340(4)(c) of the UK Proceeds of Crime Act has been left out, notwithstanding the fact that [*Desk thumping*] it was considered more appropriate to go with the UK legislation. I do not understand, Mr. President, I really do not. I am flabbergasted given all the legal firepower that the Government has at its disposal. I do not understand how this has been omitted. If this has occurred through inadvertence, then it is carelessness of the worst sort. [*Desk thumping*]

If it is deliberate, then I question if we are being taken for a ride. [*Desk thumping*] Indeed, it causes me to seriously wonder whether this Bill is just sophisticated window dressing, [*Desk thumping*] and made as if designed to convey the impression that the country is willing to cure the long-standing deficiencies, and to bring our anti-money laundering and anti-terrorism regime up to the required standard, when there exists whether by accident or design, a fatal flaw, a poison pill if you will, which makes a mockery and a nonsense of the entire exercise. [*Desk thumping*]

Section 340 of the UK Proceeds of Crime Act and the amending section 43 in our Bill are more or less the same, except for one critical difference: subsection 4(c) has been left out from our subsection 2. The omitted section should read, and this is how it reads in England, that for the purposes of the definition of criminal property:

“It is immaterial—

whether the conduct occurred before or after the passing of the Act.”

Now, this subsection was considered necessary for investigators and prosecutors in the United Kingdom to be able to use evidence and material available prior to the commencement of the Act, and to prove criminal conduct—that is, the same irresistible inference of which we heard so much about earlier. In other words, the subsection made it possible to prosecute someone for money laundering on the basis of criminal conduct which occurred before the commencement of the Act. Failing to include this critical piece of drafting in this Bill will be the equivalent, in my respectful submission, of giving “ah bligh”. It is the equivalent to giving “ah bligh” to all those who have engaged in or all who have benefited from money laundering before the passing of this legislation.

Take, for example, someone who may have committed a specified offence earlier this month. Let us suppose a Mr. X commits a fraudulent offence today, this Bill passes and becomes law in a week’s time, let us say August 31st, and Mr. X then proceeds to start laundering his ill-gotten gains in September. Well, without that section, the authorities will be frustrated in their efforts of being able to go behind any criminal property as a result of, or in connection with the conduct preceding the legislation. Information and evidence garnered preceding the passing of the legislation would be inadmissible as a means of establishing guilt.

Again, let us imagine that Mr. X is found with an unexplained amount of money in suspicious circumstances, and the authorities have information and evidence of criminal conduct predating the commencement of this legislation, conduct which would support the irresistible inference that the money could only have been derived from criminal conduct. Well, the authorities will be unable to use that evidence, and Mr. X will happily escape prosecution. Well, that clearly—this cannot be right.

If section 43(2) is not amended to adhere to the UK section 340(4)(c), it will undermine the efficacy of this legislation. It will mean that criminals and corrupt politically exposed persons will escape prosecution, unless it can be shown that their criminal conduct occurred after—after the passing of the legislation. In effect, this legislation will provide a safe harbour for all those career criminals, drug dealers and crooked officials who cease their criminal activities and conduct the day before the passing of this legislation. [*Desk thumping*]

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This will give every pre-legislation wrongdoer a free get-out-of-jail pass. And while this will obviously suit those who may have something to hide, the repercussions for everyone else, and the Republic of Trinidad and Tobago as a whole, will be profound. I agree with Sen. Griffith, if this is truly to be the “catching the big fish” Bill, then, [*Interruption*] let us make it work. Put the clause in, let us catch the big fish.

I am also concerned that by omitting this section, unfavourable conclusions may be drawn, not just by the public, or by the various regulators and law enforcement bodies, or by the courts, but also by the international community and organizations such as the Caribbean Financial Action Task Force, and the Financial Action Task Force.

Brother Senators, Sister Senators, have no doubt about it, this debate and the legislation we are considering here today is being closely monitored. We are going to be judged by many constituents both here and abroad, both now, and in the future. I only hope we will not be considered as being found lacking or as inept. If we fail to reinstate that magical mantra into the Bill, it will be difficult to prosecute money laundering in Trinidad and Tobago, [*Desk thumping*] and this country will continue to be rated poorly. We may be even referred again to the FATF as a country with serious anti-money laundering deficiencies.

I have previously characterized Dana Seetahal’s assassination as a call to arms in the fight against crime. It is significant that one of the persons at the vanguard of this battle against money laundering and terrorism is her sister Susan François, the director of the Financial Intelligence Unit. We must give director François all the support she needs in making the FIU and our other law enforcement agencies effective and efficient.

Trinidad and Tobago must not be seen as providing economic shelter for crooks. If our beloved country is to prosper and to remain beautiful, we must ensure that the State is properly equipped to fight crime, and that it meets the prescribed international standards. Failure to do so properly is to cede the battle to the criminals and to the corrupt.

Mr. President, I thank you. [*Desk thumping*]

4.30 p.m.

The Minister of Planning and Sustainable Development (Sen. The Hon. Dr. Bhoendradatt Tewarie): I cannot help but respond immediately and say that I was really taken by the very passionate contribution of Sen. Vieira; not just passionate, but pointed; and not just pointed but, I would say, very knowledgeable both based on intellectual assessment and personal experience and also very sound in his survey of what has happened in the region, what can happen here, what is happening here and what are the implications of the legislation for going forward.

I think Sen. Drayton, too, in making her own cautions and in indicating her own willingness to support the Bill and to make her contributions at the committee stage, also reinforced the very important nature of this Bill that we have before this honourable Senate and its significance for us as a country that wants to present ourselves to the world as an enlightened country, as a country that will deal with crime and criminals at the highest level; and as a country that wants to wage a certain kind of legal war against crime, the proceeds of crime, terrorism, drugs, et cetera. Therefore, this Bill before this honourable House is a very important Bill. I think that is now established.

I want to mention a couple of things before I proceed and I will respond to some of the issues raised by the Opposition, but I do want to mention a couple of things because I think they are important.

I have before me here, from the Internet, an article on money laundering by Michael Goodwin and it is a simple article; it is not a complex article, but it does speak to the British legislation and what was made possible when the legislation was passed and what would not have been possible before. So, in one instance, there was a company which was a bureau of exchange, in which you basically would be able to make financial transactions from one part of the country or another part of the world, and that company was doing about £70,000 of business annually, and in two and a half years that business grew from £70,000 to £50 million and that was enough suspicion to allow the authorities to begin an investigation that led to the conviction of people associated with the business and to the closure of the business itself.

Now many of the amendments in this law, patterned on the British law, are going to facilitate that kind of investigative opportunity and allow for conclusions to be drawn that could not have been drawn before and that is an important part of this legislation.

There is another example given here. A woman and her husband were going through the airport and they had a phenomenal amount of money stacked up in bags and through the scanning machine, et cetera. They held them up and they opened up the bags and they found it and they claimed that they did not know it was there. But that did not prevent the action that was required or the prosecution that ensued and the jail term that would follow, because the fact of the money, notwithstanding the denial, did not stand in the way of the investigation that was required to bring it to the level where prosecution could take place.

And there are other examples of this. We have one close to us. A fellow in St. Vincent with a boat being sought by the Bermudan authorities. They found him with a boat with a set of money in it, tied up in little parcels, probably protected with plastic, et cetera, so that it would not get wet. When they found the money, of course, he could not explain where he got it, so nobody asked him where he got it. They took it as a fact that these were illegal proceeds, not properly acquired, and he was sent back to Bermuda and the authorities dealt with him.

Now, if we are passing legislation and these things are important to us, and we want to take the position that this is a country that wants to make an honest living and to support strong, positive businesses and to ensure that it can prosecute those who are involved in illicit trades and benefit from it, then we have got to pass the kind of legislation that would allow us to do that and have the balance that is required to protect the innocent from assault of any kind, including victimization and including political interference.

But the fact is that there are two sides of business as Sen. Vieira was pointing out—and he reminded me very much of a contribution I made here sometime late in 2011 when we were talking about business development in the country and the need to be competitive and the need to be innovative and the need to open up the system—and I made the point that there is a dark side of business that also goes with this that we needed to take into account. I thought his thrust was very strong and his analysis very sound and his warnings also worth taking into account.

Now, this is a Bill that, first of all, takes into account the Proceeds of Crime Act, which was an Act to establish the procedure for the confiscation of the proceeds of certain offences and for the criminalization of money laundering. But as many speakers have pointed out, there were deficiencies that need to be taken into account now and that Bill also needs to be strengthened and, therefore, amendments have been made that would strengthen that particular Bill.

It also takes into account the Anti-Terrorism Act, which is an Act which criminalizes terrorism and the financing of terrorism and which provides for the detection, prevention, prosecution, conviction and punishment of terrorist activities and the confiscation, forfeiture and seizure of terrorist assets and of those involved in the financing of terrorism and for related matters. In that Bill, of course, it defines what “property” is and it defines what “terrorist property” is. But again there are weaknesses and that is being strengthened here by the amendments brought by this particular Bill.

Then there is the Financial Intelligence Unit of Trinidad and Tobago Act itself which was an Act to establish the Financial Intelligence Unit of Trinidad and Tobago for the implementation of the recommendations of the Financial Action Task Force on money laundering and the financing of terrorism and for related matters. And in that particular Bill, Part III of the Bill speaks to the issue of functions and powers of the FIU, and this Bill again seeks to make amendments that would strengthen those aspects of the Bill, the powers as well the functions of the Bill.

Now, I could not help but think, when Sen. Vieira was speaking, that he might be a good person to act in some advisory capacity to the FIU because it does take a certain amount of, what can I say, street smarts—I mean high intelligence and goodwill and a lot of knowledge and a lot of information and a capacity for discernment and a capacity for careful analysis; all of these things are very important. But as so many people have said, the effective rate of prosecution is very low and perhaps it does take all of these things plus a kind of street smarts to be able to deal with this thing; and the fact that you have to focus very intensely on the ones that raise suspicion rather than—so you separate the wheat from the chaff and it is better to go after the five or six that raised the most suspicion than to try to scan 4,000 pieces of paper that come from various sources to tell you about what people have been doing.

I want to mention some of the amendments simply to point to the particular areas. In clause 3 of the Bill, some definitions were changed. The “financial institution” definition was changed; the “security” definition was changed in alignment with the definition of “securities” in Securities Act. The definition of “specified offence” was changed to allow for greater specificity in terms of offences and nobody actually mentioned the offences and they are worth mentioning. Perhaps you just took it for granted, but they are worth mentioning.

I want to get the most updated amendment: participation in an organized criminal group and racketeering; terrorism including terrorist financing; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; fraud; counterfeiting currency; counterfeiting and piracy of products; environmental crimes; murder; grievous bodily injury; kidnapping; illegal restraint and hostage taking; robbery or theft; smuggling, including in relation to customs and excise duties and taxes; tax crimes related to direct taxes and indirect taxes; extortion, forgery, piracy and insider trading and market manipulation.

4.45 p.m.

When you listen to this list, I mean, these are very, very serious matters. I mean, these are crimes nobody wants to have their names associated with, and for you to be involved in crimes with which your name can be associated like this, from my point of view, you deserve the heaviest penalty that might be possible. Because as Sen. Vieira said, these crimes actually undermine your entire society; they destroy the fabric of your society, and he gave three very excellent examples

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right here in the Caribbean of how these things happened and where they happened: in Antigua in the one instance; in Suriname in the other; and in Turks and Caicos as the third. These are very dangerous things that are connected internationally, and it raises the issue of how do you protect your country.

I want to say that it is really important to have your country organized in a certain way and not operating in silos. The security system in your country is absolutely critical in fighting crimes such as these which are white-collar crimes, which are criminal activities that undermine the very fabric of your society. You have got to have these elements that are prone to silo behaviour connected in a way that makes a difference internally.

There is another element as well which is the regional collaboration. We have regional cooperation at the level of security, and this is a very important thing, but the connectivity between the islands and the ability to share information—and not only in the islands but on the mainland itself—is very important for the region. But I want to say that the Caribbean really is the vulnerability of the entire hemisphere in terms of security issues and terrorist opportunities and, therefore, this is a very critical place for the region and the world and for the hemisphere, and for that reason these issues are very important to us. It is important to try to secure our own borders; it is important to try to connect our national institutions; it is important to have the collaborative framework regionally, but it is also important to have the kind of international collaboration that makes us feel fairly secure.

I do not see how the Caribbean region in my view, my humble view, can really address these issues unless we have international collaboration with the big players in the global system, and there are some who will see that as a surrendering of sovereignty. But I would say that you would have no sovereignty at all unless you are able to protect your country and this region by making the necessary collaborative relationships. You do not have to agree to anything that you do not want, but the understanding that we do not have the capability and the notion of having national capability alone that will allow you to do this or regional, is not realistic. We may be able to do some, but it is not possible to do these things in a serious way unless you have the international collaboration and support.

Now, this Bill also seeks in section 19(4) to restructure, to refine and to streamline provisions relating to the Seized Assets Fund, and this fund is specific to forfeited and confiscated assets after a person has been convicted of an offence under the Act. So the conviction comes first and the hon. Minister of Finance and

the Economy in his presentation made the point of why it is you wanted to have the conviction first before seizing the assets and recognizes the rights of the citizen, even though charged, until conviction and giving him or her the freedom to be able to look after his or her welfare even in the courts of law.

In section 19(5) there is a new provision to allow for materials being made available by virtue of a court order to be provided in electronic format, and this is really to support the more efficient investigative processes that might be available, let us say, in international or regional collaboration.

The Bill proposes that police officers and customs officers above an identified rank should be able to seize and detain cash at any time, not only when on duty, and at any place not just at a port of entry. So it does give a certain amount of wide powers to certain officers of a certain rank. The Bill allows for customs officers to now develop a form when applying for detention orders because right now there are no consistent application forms.

The Bill allows for detention orders to be made *ex parte*, however, provisions will be made for *inter partes* hearing after which the affected person can come before the court and provide a justification why cash should not be detained, for instance, and this is the existing practice and it is not contrary to any existing law. So it does not violate anything that we did not do before.

The current definition of money laundering does not allow Trinidad and Tobago to prosecute extensively. Before a person can be charged for money laundering, there must be an existing charge or conviction with regard to a specified offence. So these provisions are being repealed to allow for a stand-alone money laundering charge without having to make a connection between the money laundering and the specified offence such as the examples that I gave of the money being found without knowing beforehand that a crime had been committed.

Some jurisdictions maintain our current model, that is to say, the one we have now that we are changing; some jurisdictions use the model we are proposing. It should be noted that the existing provisions were passed in 2009. However, we have had few charges laid in accordance with the legislation some five years later. So the point is that the law needs to be strengthened in order to make charges and, hopefully, convictions possible.

So it is not lethargy as Sen. Al-Rawi was saying or lack of will, it is in fact that there are challenges with the law itself. I think we must divorce the politics from the facts and understand that if the law needs to be strengthened because it requires more teeth to be effective then we must do that, and we must not necessarily lay the political blame just because it happens to be a government that you do not support.

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The Bill also streamlines the provisions that deal with reporting suspicious activity and transactions by a financial institution and listed businesses, exemption from liability compliance programmes, entering premises by the supervisory authorities and confidentiality and the breach thereof. This is in section 19(11).

The listed Bills are identified and there are some key amendments being proposed to the Anti-Terrorism Act in section 20(1). The fines were thought to be too low and the Bill seeks to increase these fines so that they are in line with POCA, and in section 20(2) the Bill proposes to expand the definition of “terrorist property” to be in accordance with the FATF recommendation, and then there are some other amendments: section 21(1), the Bill proposes an expansion to the definition of non-regulated financial institution to include a person who carries on money or value transfer services; section 21(2), the Bill includes a provision empowering the FIU to publish names of registered financial institutions and listed businesses; section 21(3), the Bill also empowers the court to authorize in the relevant warrant that an FIU officer may accompany a police officer to enter into the business premises of a non-regulated financial institution or listed business to inspect or take documents.

Now, this is an important Bill, as I said, and it allows for stand-alone money laundering charges. There are other amendments that are made, but the main point in pointing to the amendments is that amendments were necessary in order to strengthen the Bill itself, and the various Bills that are attached to it and to strengthen the capacity of the State through its institutions to be able to address the issue of the proceeds of crime.

Now, how is the Bill going to be a better Bill? How is the Proceeds of Crime Act going to be a better Act because of these amendments? First of all, the proposed amendments to the Proceeds of Crime Act, POCA, will allow for more prosecutions to be brought against persons who are laundering either the proceeds of their own crime or the proceeds of someone else’s crime. This will be accomplished by modelling our definition of money laundering after the provisions of the UK Proceeds of Crime Act which has led to many successful prosecutions. I gave three examples and a fourth from the region, because of changes in the legislation in the UK and in other jurisdictions. The primary difference between the existing provision and what is proposed is that the new provision will allow the State to prove money laundering without having to prove what specific crime gave rise to the money.

The original Proceeds of Crime Act was enacted in 2000 and it mandated that the prosecution had to prove that the proceeds were derived from drug trafficking. In 2009, this was amended to remove drug trafficking and replace it with a specified offence defined as an indictable offence or certain scheduled offences. This amendment removes the need to link money to any specific crime or category of crime.

The amendments to the definition of specified offence will also widen the scope of offences for which the State can confiscate assets acquired by persons who are subsequently convicted of certain criminal offences, and I read out the scope of offences.

A conviction for any offence, whether indictable or summary, which falls into one of the categories of offences now listed in the Second Schedule can result in confiscation of assets where the State can prove a nexus between the proceeds of crime and the acquisition of the assets.

The proposed amendments to section 58 refine the existing concept of a Seized Assets Fund into which confiscated assets would be placed. The Bill clarifies what assets comprise the fund; how they are to be used; how the advisory committee is to be appointed; and how it is to function.

There are also proposed amendments to improve operational efficiency with respect to law enforcement and investigations as well as regulatory oversight. These are clause 3(d), providing for the production of information to law enforcement in electronic format, taking into account the age in which we live; 3(e) providing that an officer above a certain rank or duty can perform a cash seizure, as well as at the first hearing before a magistrate can be heard *ex parte*.

5.00 p.m.

I explained that a little bit, saying that the law has not really been changed because you can have *inter partes* hearing following that one. Clause 3(l) clarifies that the reporting to the FIU is on the basis of suspicion only and not based on a threshold, and clause 3(m), proposed section 55C, removes the requirement for the FIU to review and approve compliance programmes. It will allow FIU resources to be better utilized to test implementation of compliance measures by doing more onsite inspections and less desk-based reviews of written programmes.

Now, how is the Anti-Terrorism Act improved by these amendments? The proposed amendments to the Anti-Terrorism Act addressed areas which were flagged by the Caribbean Financial Action Task Force assessors as deficiencies in terms of Trinidad and Tobago's compliance with the international standards on anti-money laundering and combating the financing of terrorism, developed by the Financial Action Task Force. The Bill therefore addresses the following deficiencies: the definition of terrorist property; in the current Act it does not conform to the definition required by UN Security Council Resolution 1373. The resolution calls upon states to have the legal authority to freeze any asset belonging to a terrorist or terrorist organization. However, the current Act focuses on property used or intended for use in a terrorist act. The narrower scope had been flagged as a deficiency.

The low and possibly dissuasive fines for offences related to financing of terrorism, the assessors pointed out that, compared to money laundering offences under POCA, the offences under the Anti-Terrorism Act attract low fines and penalties. The proposed amendments seek to address this and resolve the disparity.

How is the Financial Intelligence Unit strengthened by these amendments? The proposed amendments to section 55 will enhance operational efficiency at the FIU, as discussed above, and, additionally, the amendments correct a previous discrepancy between the FIU Act and the FIU Regulations about the FIU's authority to supervise persons carrying on money or value transfer services.

Clause 5(b) provides for the introduction of a new section 18C, which gives the FIU the authority to publish the names of all entities under its supervision which have complied with the law by registering in accordance with the Act. This information will be useful to financial institutions which are required to conduct due diligence checks, and also to the public at large so that they can ensure that the person or entity with whom they are conducting business is compliant with AML/CFT laws.

An amendment to the POCA in the new section 55A will allow for suspicious transactions reporting to the FIU in a form approved by the FIU, as opposed to a scheduled form. This is where the FIU can introduce electronic forms for reporting. What mechanisms have been introduced to strengthen enforcement? Now, that is important because the issue is, what is the sense of having the laws—I think somebody asked that—if you cannot enforce them? The main mechanism which will strengthen enforcement is the amendment to the definition of “money laundering” referred to in (1)(a) above.

There are many instances where law enforcement may detect money laundering activity but cannot identify the specific underlying offence which produced the proceeds, which results in an inability to lay charges. With the new provision, the crime of money laundering will be easier to protect. What has been the success rate before now? How many people have been investigated, referred to the DPP or police, and how many have been charged so far? According to the FIU's 2013 Annual Report, approximately 125 intelligence reports have been submitted to law enforcement agencies as at the end of the financial year 2013. However, to date, only four persons have been charged with money laundering under the current POCA. This has been flagged by the assessors as an indication that the law is ineffective. The low number of charges is one of the primary reasons for bringing the amendments. There are, however, other matters under investigation by the Financial Investigation Branch and, in such instances, there is collaboration with the office of the Director of Public Prosecutions.

What are the crimes that are targeted in each Bill? The Bill will impact directly upon crimes of money laundering and financing of terrorism. However, the expansion of the Second Schedule will also positively impact upon the State's ability to confiscate profits made from the commission of a very wide range of offences. I do not have to go into the net result of not addressing such crimes, I think Sen. Vieira dealt with that greatly, but I do want to deal with some of the benefits of the legislation. First of all, the target will be any person who commits criminal offences and these will be better targeted by these improved provisions, but the emphasis will be on persons who commit crimes which fall into the categories offences in the new Second Schedule.

Who are the main beneficiaries? Trinidad and Tobago as a whole. We can mitigate also against risk to our international reputation. We will have a greater level of compliance with FATF standards, and that will make us more attractive for investment, particularly in the field of financial services. Law enforcement will now be better equipped to bring persons suspected of money laundering before the courts. The funding which enables criminal activity to prosper can be confiscated, thereby curtailing the ability of criminals to continue their operations and also increasing the national coffers. Persons will be less attracted, we hope, to a life of crime if there is a stronger likelihood of being caught living off the proceeds of this crime. We better insulate our financial institutions from money laundering activity which can hurt international banking relationships, and we can protect our economy from the effects of money laundering which can hurt legitimate business, stymie trade and investment opportunities, as well as growth in the financial sector.

This Bill, as I said, is a Bill worth passing, and a Bill that the country needs. It is true that we are doing this in order to satisfy certain requirements, but we are also doing this to meet certain standards and in order to strengthen the Bill itself. I think it is unfair and wrong to say that there are no convictions for crimes under the Bills that have been passed, prior to this which are now being amended, because there is a lack of political will or because of the ineffectiveness of the institutions. There were problems with the legislation itself which are being corrected here. I take the points that institutions need to be strong and they need to have resources in order to do these things, but I also want to emphasize the point that all of these institutions have different responsibilities and the pursuit of prosecutorial action is not always in the hands of a single institution and, therefore, there are requirements for collaboration and there are requirements for action by a number of institutions.

I want to say too that I do not want to make the point about “big fish” or “small fish”, I feel that crime in this country is a flourishing business and it could not flourish unless you had big people who were involved in it and who were capable of corrupting the existing system, and creating conditions for protection in the system for smaller people in the system. That has been something that has plagued us for at least the last three decades in this country. People talk openly about corruption in many of our institutions, whether it is the police, whether it is the immigration department, whether it is the customs department, and you cannot finger any individual or any person but you know things happen.

People also know that there are things that happen because of our shorelines, and these are realities. It is true that you cannot have police everywhere, so to speak, policing everywhere, and you do need strong laws and you do need strong enforcement, you do need strong surveillance and you do need strong cooperation in order to deal with the kinds of things that we are dealing here with, which are things that actually destroy a society, destroy the institutions of a society, and destroy the people in a society. I do not think that we can take that risk.

I heard Sen. Vieira on the clause that he mentioned that seems to suggest the issue of retroactivity. It is a complex issue because most Bills that we pass in this House, we do not have retroactivity built into the Bill, so that is a principle that we often honour. But I take the point that you are making, that you cannot pass a Bill in the House which then prevents you from being effective because the date of your investigation, so to speak, is stymied by the date on which the Bill is actually passed and proclaimed.

Sen. Vieira: Hon. Minister, may I say something on that? I understand the point about retrospective legislation as opposed to retroactive, but I think the misconception arises because there might be the belief that somebody is going to be charged for an offence that preceded the legislation. Obviously, that cannot be allowed, that would be impermissible in law, but the point that I am making is not talking about charging someone with an offence prior to the law, but referring to the conduct of that person in evidence, and that makes it entirely permissible. But if we do not have that clause in the legislation then there is a gaping loophole, because for retrospective law to be effective, it must be specifically provided for.

Sen. The Hon. Dr. B. Tewarie: Well, I take the point and I thank you for the clarification. I am sure that will be taken into account by the hon. Minister of Finance and the Economy who piloted this Bill, and I am sure he will have the advice of the Attorney General as well in order to proceed forward at the committee stage.

I want to thank all of you who contributed. I feel that the contributions of the Opposition, this time, I think there were many good contributions, but I think, as usual, politics always dominates. I have nothing against the politics, but it must not confuse and it must not misinform, and it must not create the situation in which you give the population the impression that something that is being done for the common good, for the national good, is really like something that you liken to a kind of subversive activity. I do not think that is fair. I do not think it is right. Having said that, I think that there is a general mood to support this Bill and I welcome that mood. Mr. President, I thank you very much for the opportunity to make a contribution. [*Desk thumping*]

Mr. President: It is now 5.15, or thereabout—yes it is—therefore, I propose to take the tea break at this point. We will return at 5.45 after the tea break to resume this debate. This House is suspended until 5.45.

5.15 p.m.: *Sitting suspended.*

5.45 p.m.: *Sitting resumed.*

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

Mr. Vice-President: It is now 5.45 p.m., we have reconvened. The debate continues. The last person who spoke was the Minister of Planning and Sustainable Development. Sen. Robinson-Regis, please. [*Desk thumping*]

Sen. Camille Robinson-Regis: Thank you very much, Mr. Vice-President, and I thank my colleagues for this opportunity to contribute to this debate on these miscellaneous amendments.

Mr. Vice-President, before I go into any preamble or discussion, further discussion on this piece of legislation, I would like to alert those on the other side from the outset that Sen. Henry, Sen. Drayton, Sen. Al-Rawi, Sen. Vieira have all made one salient point, and despite the fact that Sen. Griffith, Sen. Tewarie and Sen. Howai have spoken—well, I will exclude Sen. Howai for now because he introduced the Bill—they have all made a salient point that, despite the fact that in Sen. Howai's presentation he indicated that this Proceeds of Crime Act and these miscellaneous amendments were taken from the UK Proceeds of Crime Act, one specific clause has been omitted in the Trinidad and Tobago amendments that are before us.

We have said almost ad nauseam that with regard to clause 3 specifically section 43(2) which is almost verbatim what the UK Act, Proceeds of Crime Act, 2002, at section 340(4), it is almost verbatim and each of my colleague Senators

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has made that point that section 340 of the UK Act, at 340(4)(c) has been omitted, none of the Government Senators who have responded have indicated why this specific section has been left out. I will read the UK section, and I will read the Trinidad and Tobago section, and I quote.

“This section applies for the purposes of this...”—Act.

“Criminal conduct is conduct which—” and it goes on to say:

“Property is criminal property if—

- (a) it constitutes a person’s benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial—

- (a) who carried out the conduct;
- (b) who benefited from it;
- (c) whether the conduct occurred before or after the passing of this Act.”

That is the UK section, Mr. Vice-President. End of quote.

The Trinidad and Tobago clause that we are being asked to approve.

“In this Part—

“criminal property” means property which constitutes the benefit to a person for criminal conduct or represents such a benefit in whole or in part whether directly or indirectly.”

And 43(2):

“For the purposes of the definition of “criminal property” under subsection (1), it is immaterial who—

- (a) carried out the criminal conduct; or
- (b) benefitted from the criminal conduct.”

The question that is continuously being asked, both by the Opposition and by the Independents today, Mr. Vice-President, is why is (c)—which says:

“whether the conduct occurred before or after the passing of this Act”,

—why has that been left out of our legislation? [*Desk thumping*]

Mr. Vice-President, we are of the firm view, and we share the view that has been prosecuted by Sen. Al-Rawi, Sen. Henry, Sen. Drayton, Sen. Vieira, we are of the firm view that this is a get-out-of-jail card for anyone [*Desk thumping*] who has had a history of criminal conduct or a history of doing things that do not exactly fall within the pale of correct behaviour, and it is clear that if the Government wanted to capture persons or deal with investigations that are current that they would include this particular section of the UK legislation. [*Desk thumping*]

Now it is clear that the FATF has said, and I will read what they have said about Trinidad and Tobago with regard to the recommendations and the noncompliance. Now with regard to recommendation 1, and I am quoting from the Tenth Follow-Up Report, Trinidad and Tobago, May 29, 2014, and it is from the Caribbean FATF secretariat, and it says:

“With regard to Rec 1, the only outstanding deficiency is the fact that the implementation of the money laundering legislation does not appear to be effective as there have been no convictions.”

Mr. Vice-President, despite the fact the Minister who piloted this Bill is trumpeting that what we are doing today is going to lead to convictions, we are of the firm view that this loophole, this deliberate loophole is going to result in absolutely no convictions taking place [*Desk thumping*] especially with regard to persons in public life who may be, who appear to be in situations that are corrupt. And I bring to your attention, I ask you to remember that right now the Integrity Commission is investigating a claim that one previous Government Minister has several houses in Trinidad and Tobago and outside of Trinidad and Tobago. If this particular clause is not included, those investigations will fall by the wayside.

Mr. Vice-President, I bring to your attention that within the document that purports to be the audit of LifeSport, there is one particular section where it says that there is criminal conduct that might be equated to money laundering. [*Desk thumping*] If no one is charged in relation to that before this legislation, this non-inclusion of this particular section will result in all of those investigations falling by the wayside.

Mr. Vice-President, I am asking the Government to be forthright with us in this Senate, to be forthright with the people of Trinidad and Tobago and indicate to us, why have they apparently, deliberately left out this particular section? Is it to effect a get-out-of-jail free card? We will not accept anything less [*Desk thumping*] than a proper explanation, and the inclusion of that particular section in

this piece of legislation. We hear about the possibility that it might be retroactive or retrospective, but what we are saying is, this does not create a new offence, and what it seeks to do is save the work currently being done by the FIU at this time, and any other investigative agency—work being done by the FIU, by the FIB, by the Integrity Commission, any other agency that may touch or concern the issue of money laundering and criminal conduct as it relates to this particular piece of legislation.

Mr. Vice-President, we are contending that without that particular inclusion, it would make the offence unworkable, and all these years of paying the director for dealing with these matters, for assessing suspicious activity transactions and so forth, would have gone to naught. And we contend that the object of including this would be to save the current work and evidence that is being collated at this time. And as a consequence of that we reiterate that even if—and this is a broad interpretation—it is assessed to be retroactive or retrospective, the legislation can specifically indicate that there is an intention to create a retroactive or retrospective piece of legislation. This is not unseemly or this is not something that cannot be done by the Parliament of Trinidad and Tobago. And in any event, this particular piece of legislation is being passed by a special majority, if it is passed, and we will insist that there must be this particular inclusion.

Mr. Vice-President, the issue is, are we just to, again, come to this Parliament and say that we are passing legislation to ensure compliance with what is needed by FATF? Mr. Vice-President, interestingly enough in the *Newsday* of August 17, 2012—note the date, August 17, 2012—and it is headed:

“Addressing the FIU.

THE PARLIAMENT meets today to—yet again—debate legislation to amend the Financial Intelligence Unit...Act.”

And I quote:

“Finance Minister Larry Howai, responding to queries from *Newsday*, revealed that the legislation aims to prevent this country being blacklisted by the Financial Action Task Force, the powerful international ratings body which monitors State’s measures to curb money-laundering and terrorism financing.

‘There were some final amendments required in order to prevent Trinidad and Tobago from being blacklisted,’ Howai said. ‘There is a fixed deadline date by when it must be done.’ That deadline is understood to be by the end of the month when an FATF inspection team is due to visit.”

Mr. Vice-President, we are again being put in a similar position, except that we are now being told that we have a plenary to meet in 2015.

6.00 p.m.

Mr. Vice-President, if this legislation is so important, why does the Government consistently wait until they are on the brink of either a plenary or a session of being examined by the FATF to put things in place? I know it can be argued that, as this Government is wont to do, that the PNM did it, but this is the Government that said about new politics and they would do things differently, and they would be so different from the PNM. I mean, they have been extremely different from the People's National Movement. Thank God. [*Desk thumping*] But, Mr. Vice-President, the Government should not continuously put Trinidad and Tobago in this precarious position, where we have to scramble at the last minute to put legislation in place. The article goes on to say:

“Sources said the current legislation was the result of a Government promise to ‘tighten’ the legislation, made to Senators during debate of one of the amendments. Yet, why is this tightening only now taking place on the eve of a visit of an FATF inspection team? It is time for the State to get its act together. We hope that the apparent political will being demonstrated by these moves to pass laws to implement the FATF rules will, after this debate, result in this country being upgraded once and for all.”

But Mr. Vice-President, we continue not to be upgraded, because in each instance the Government is “last minute” in putting things in place and even worse than that, the Government makes claims but does not act on its claims. So, the Government will indicate, and I would like to read again, from the examination done in May of this year. It says:

“Recommendation 4

...to share information locally and internationally.

Based on previous follow-up reports the only outstanding examiners’ recommendation is to amend legislation to require that no financial secrecy law will inhibit the implementation of the FATF Recommendations.”

Mr. Vice-President, we are only now being asked—and these recommendations were made quite some time ago. We have further recommendations. The examiners’ recommendations for measures in the FIA to prevent criminals or their associates from gaining control or significant ownership of financial institutions to be duplicated in relevant legislation governing the supervision of other financial institutions is still largely outstanding.

Mr. Vice-President, Recommendation 16:

“With regard to the reporting of suspicious transactions...it should be noted that”—the suspicious transactions—“...from one category of listed businesses money or value transfer service providers and the remaining 18 from five other categories. This suggests that the reporting of suspicious transactions and activity by listed businesses is ineffective.”

Mr. Vice-President, this document is littered with a number of things that were promised since 2012 and absolutely nothing has happened with regard to this Government of Trinidad and Tobago. In 2013 the Attorney General trumpeted that there would be the hiring of specialists for financial investigations, and he said:

“Trinidad and Tobago took what may be considered a small step in developed countries but is a giant leap for our region, when the Government amended the Financial Intelligence Unit legislation to bring several cash-based business activities under the jurisdiction and supervision of the FIU.

The country has made excellent progress but there is still much work to be done...

Trinidad has to be very careful”—because criminals who launder money and finance terrorist activities are very enterprising and ingenuous and find ways to manoeuvre around existing law—“Ramlogan said the CFATF would also like to see a ‘specific law in place to deal with the credit union sector’”—He also said that following—“the Terms of Reference (TOR) for the Clico...enquiry...Government is...awaiting a report from Commission chair, Sir Anthony Coleman, which should be ready by Easter next year and will ‘guide and inform the policy of the legislation in this regard.’”

Mr. Vice-President, for years we have been hearing about this credit union law that is supposed to come to the Parliament. I ask the Government, in circumstances where the recommendations clearly say that a major loophole in our money laundering legislation is that there is no specific legislation to deal with credit unions, I ask the Government and specifically the Minister of Finance and the Economy, what is the situation regarding the credit union sector and the legislation that is to deal with this sector? [*Desk thumping*]

Mr. Vice-President, we cannot continuously come to this Parliament year after year and amend the Proceeds of Crime Act, amend the FIU legislation, and at the end of the day, we are having no real progress. All we are doing is putting legislation on the books, but there is no progress, there are no convictions and

there is no real dent in the whole issue of money laundering and the issue of white-collar crime. [*Desk thumping*] We have to continuously ask the question, is this Government really serious about dealing with corruption? And I would like to posit that this Government is not at all serious about dealing with corruption. [*Desk thumping*]

Mr. Vice-President, this Government has developed a history of dealing with issues by stealth and the population has lost all, if not all, most of its confidence in this Government. [*Desk thumping*] Mr. Vice-President, we are of the firm view that the FIU has received significant amounts of information that potentially relate to corruption. Yet, too little has been accomplished to turn this intelligence into evidence, and the persons at the FIU, the FIB, and other such agencies, do not have the requisite training to deal with these issues. I ask the Government this evening, how many officers and inspectors of the FIB or the FIU have training in forensic investigation?

I am made to understand that there is a training course in Jamaica, but it is only for two weeks, and that could never be enough training to deal effectively with money laundering and other such suspicious activities. Mr. Vice-President, I ask the Government: how many persons are effectively trained to deal with analyzing suspicious activity that comes from our financial institutions, to analyze an invitation to effect the kind of evidence that we need to actually form a conviction? And, I posit this evening that there are not enough persons so trained, and even those who may be trained, there are too few of them for the number of suspicious transactions that pass through these financial institutions on a daily basis.

And, Mr. Vice-President, while I note that this Bill is a mechanism or could be a mechanism for providing a legal framework for the prosecution of financial crimes, one wonders at the seriousness of this Government. Mr. Vice-President, the issue is, is this Government really moving the FIU to a new level or are they just paying lip service to what the FIU needs to do? Are they really serious about prosecution and taking matters to a new level or are they just coming to this Parliament to pretend that they are doing something? It is clear that when the Financial Action Task Force does its investigation, I can assure you that by leaving out section (c), they are going to say that this Government is not serious about getting a handle on white-collar crime.

Mr. Vice-President, I want to ask the Minister of Finance and the Economy certain questions, and I would like to start by asking, as I said previously, does the FIU have the relevant capacity and expertise in financial operations to investigate and effect a proper prosecution of any matters that may come to it?

The second question I would like an answer to is: what is the relationship between the FIU and the financial industry in the domestic market? Is there a proper relationship or do things go under the radar? The third question: does the FIU possess a culture conducive to protecting the confidential information and to mitigating potential harm to individual privacy? This is a small country, there may be people who may have a legitimate reason for activity that may be deemed suspicious and their name is tarnished and dragged through the mud in a small country. Does the FIU possess the actual legal authority, technical capacity and experience to provide appropriate and timely—and I repeat, to provide appropriate and timely—international cooperation? And would the legal framework of the FIU allow it to take part in the international administrative type of cooperation to allow for rapid, efficient, spontaneous requests to be fulfilled?

And Mr. Vice-President, these questions need to be answered honestly, because if in fact they cannot be answered in the affirmative then we still have a lot of work to be done with our FIU in order to make it effective, and in order to ensure that we not only meet the standards set by the FATF, but meet the standards set so that we can effectively deal with white-collar crime, which is a scourge on the nation of Trinidad and Tobago. Mr. Vice-President, this legislation, we on this side believe, is not going to be effective unless that gaping loophole is plugged.

6.15 p.m.

Mr. Vice-President, you would recall that in the airport scandal case—it was only when two things occurred that we saw progress in this case. One, forensic investigation was done and two, cooperation with the US authorities made a major difference. I will indicate what those two things did with regard to the airport matter, and if those elements are not present in dealing with this legislation it will be farcical. I quote from the *Newsday*, dated December 02, 2005, and it says:

“Local police and attorneys have had a difficult time trying to prosecute those charged with corruption in connection with the Piarco Airport development project. The preliminary inquiry has been dragging...with adjournments for one reason or another. There have been arguments over disclosure on a number of occasions. The indictment which was unsealed on Tuesday named local businessmen Ishwar Galbaransingh and Steve Ferguson, Raul J Gutierrez, Rene Diaz de Villegas, Eduardo Hillman-Waller, Armando Paz, Richard Lacle, Leonardo Arturo Mora-Rodriguez, Northern Construction Ltd (a local company) and Calmaquip Engineering Corporation. They are to face an 18-count indictment which details elaborate money transferring via wire.

Newsday learnt last night that Raul Gutierrez, Eduardo Hillman-Waller, and Armando Paz, have already been arrested.

If convicted, the US intends to forfeit property, real or personal, involved in such offences, or any property traceable to such property. The property forfeiture shall include, but is not limited to, a money judgment in the sum of US\$15 million.

If property in question cannot be located, or has been transferred, sold or disposed of with a third party; placed beyond the jurisdiction of the court, diminished in value or has been commingled with other property which cannot be subdivided without difficulty, the US intends to seek the forfeiture of other property of the defendants up to the value of the forfeitable property.”

Mr. Vice-President, I ask the question, would our FIU, our BIR, our FIB be able to do similar—to perform a similar investigation as occurred in this circumstance? I say the legislation as it is will not be enough, because our intention must be, as a country, not just to comply with the FATF recommendations, it must be, as a country, to ensure that we can capture criminals. [*Desk thumping*]

I read now from the *Trinidad Guardian*, dated May 10, 2007. [*Interruption*]

PROCEDURAL MOTION

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): I want to thank the hon. Sen. Camille Robinson-Regis, Leader of the Opposition Business in the Senate for giving way for me to move a Procedural Motion, Mr. Vice-President.

Mr. Vice-President, in accordance with Standing Order 9(8) I beg to move that the Senate continue to sit until such time as we adjourn later tonight—[*Laughter*] in keeping with the undertaking I have given over the last few months.

Mr. Vice-President: Did you state a particular time?

Sen. G. Singh: At 11.00 p.m. or before.

Question put and agreed to.

MISCELLANEOUS PROVISIONS

(PROCEEDS OF CRIME, ANTI-TERRORISM, FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO) (NO. 2) BILL, 2014

Mr. Vice-President: Sen. Robinson-Regis.

Sen. C. Robinson-Regis: Thank you very much, Mr. Vice-President. As I was saying, I quote now from the *Trinidad Guardian* of Thursday, May 10, 2007:

“Govt recovers \$10 million from Piarco fraudsters”

And this is an article by Gail Alexander.

“Attorney General John Jeremie has said that by tomorrow Government will have recovered TT\$10,892,610 from US businessmen who pleaded guilty to fraud in the Piarco Airport project.

A Miami court in January awarded US\$6.2 million (TT\$38.7 million) by way of restitution to T&T from the group.

Detailing the award at yesterday’s House session, Jeremie issued a stern warning to members of the former UNC administration which built the airport:

‘The matter cannot be closed until all those who are guilty of defrauding the people of T&T make similar restitution and serve the appropriate sentences. I say no more on this matter at this time,’ Jeremie added.

‘We wish to assure the people of T&T—including my friends sitting opposite—that Government will press ahead with its \$1 billion monetary and benefits claim in separate civil proceedings on this matter and others in court. We’ll continue to pursue this until every cent is returned and all the perpetrators are made to repay their debt to society.’”

And it goes on, Mr. Vice-President, and I quote:

“Jail, fines for Piarco six

- EDUARDO HILLMAN WALLER—to pay US\$2m (TT\$12.7m). Was to begin serving a 37 month prison term last week. Imprisonment was to be followed by three years of supervised release. Release in 2010
- RAUL GUTIERREZ—to pay US\$4m (TT\$25.4m). Serving sentence of six years to 72 months. Release in 2013
- LEONARDO MORA-RODRIGUEZ—to pay US\$100,000 (TT\$633,320) will begin six month sentence from June 15 followed by three years’ supervised release.
- RICHARD LACLE—Serving a sentence of 16 months, followed by three years supervised release.
- RENE DE VILLEGAS—surrendered April 25 to US prison in South Carolina to begin sentence of 12 months and one day, followed by three years’ supervised release.
- ARMANDO PAZ—already started four years’ probation with six months home confinement. Ordered subject to 24-hour electronic ankle bracelet.”

Mr. Vice-President, I bring these matters to the attention of this Senate, to remind this Senate of what needs to be done in Trinidad and Tobago. [*Desk thumping*] It cannot be that any aspect of this legislation can lead to a get-out-of-jail-free card for anyone. Mr. Vice-President, because of this, as my colleague, Sen. Vieira said and a few of my other colleagues, it is reminiscent of the section 34. Again we are in August, Independence Day is approaching and we do not want to see this happening again.

Sen. Al-Rawi: Section 43.

Sen. C. Robinson-Regis: As my colleague is saying, it is just section 34 turned around, section 43. [*Desk thumping*] We do not believe, or we do not want to believe that the Government is—we prefer to believe that the Government just forgot to include that section, but we await an explanation. I see my opposite—the Leader of Government Business shaking his head and indicating that an explanation is forthcoming, so I look forward to having the explanation.

Mr. Vice-President, Trinidad and Tobago has been badly rated as being ineffective in dealing with these money laundering issues, with the corruption issues—our rating on the corruption index continues to fall, and I still hold the view that this legislation, if not properly done, will not improve our effectiveness. I would like to ask the Minister of Finance and the Economy, specifically, about the Seized Assets Fund, because we are not quite sure how this fund will operate.

I am sure you would recall that during the time of the NAR with the Tesoro matter they talked about using seized assets to erect a monument to Gene Miles—[*Crosstalk*] that did. And, Mr. Vice-President, we want to be sure—[*Laughter*] that this Seized Assets Fund will be properly administered, that it will be used for the effective purpose of really bringing restitution to the people of Trinidad and Tobago. But again, I repeat, to being accused of repetition, ad nauseam, that if the legislation is not properly handled and if the training is not done, and if the right persons are not put in place, all of this, including this proposed Seized Assets Fund, will come to naught.

Mr. Vice-President, I ask you to recall also that the Attorney General in his normal verbose manner—[*Interruption*]

Hon. Member: It is an inimitable style.

Sen. C. Robinson-Regis: If you prefer to call it an inimitable style—made the pronouncement some time ago that the DPP's office will be staffed with over 100 attorneys-at-law. One hundred legal officers to move to the DPP's office in order to effect dealing with this FIU situation and other situations. I ask the Government, what is the status of that? My understanding is that no such addition to the office

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of the DPP has in fact occurred. I also ask the Government whether the DPP, the FIU have had sight of this legislation. I am led to believe that those offices may not have and I am asking the Government to indicate to us whether they have had sight and whether they agree with the way this legislation is being brought forward.

Mr. Vice-President, I also ask the Government with regard to the FATCA, on July 01, there was an agreement made with the United States Government and with regard to ensuring that every US citizen and permanent resident who has an account must declare same. But my understanding is that we have no such reciprocal agreement, and we are of the view that there needs to be reciprocity in this instance so that Trinidad and Tobago citizens who may have accounts in the US also need to be made to declare same.

6.30 p.m.

Mr. Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made: That the hon. Senator's speaking time be extended by 15 minutes.
[Hon. G. Singh]

Question put and agreed to.

Mr. Vice-President: Sen. Regis, please continue. [Desk thumping]

Sen. C. Robinson-Regis: Thank you very much, Mr. Vice-President, and thank you very much, my colleague, Sen. Ganga Singh, and to my colleague Senators.

Mr. Vice-President, I just wanted to repeat that question, that there is—I am understanding that there is an agreement with the United States to have every US citizen and permanent resident who has an account in Trinidad and Tobago to declare same. However, we do not have a reciprocal agreement for Trinidad and Tobago citizens in the US who have an account, to declare same for the Government of Trinidad and Tobago, and we have no such reciprocity. Although the Governor of the Central Bank had promised that this would be done, my understanding is that it has not been done. I suppose he is preoccupied with making sure, whatever that information is that he is stopping the *Newsday* from bringing out: "Jawala bids to block *Newsday*". He is more preoccupied with that than getting this reciprocal agreement in place.

But, Mr. Vice-President, As I close, I would just like to reiterate that the Opposition is very concerned with the exclusion of the possible section 43(2)(c). We do not believe that it falls within the ambit of retroactivity or retrospectivity because it does not create a new offence, but it really would ensure that evidence gathered now, or offences taking

place now that have not been charged, will still be able to be followed after this legislation is passed. We do not feel it falls within the retroactive or retrospective legislation, or the prohibition. And even if it did, which I repeat we do not believe, the Government could specifically say that it is making legislation that is retroactive or retrospective.

We also, on this side, are of the view that if there is not proper training, proper staffing, making sure that the agencies of the FIU, the FIB and other such agencies have the proper training, staffing and assets to ensure that they do a proper job, that no matter how much legislation we put in place, all of this will come to naught and white-collar crime, particularly corruption perpetrated by public officials, will not be captured.

We are also of the firm view that it is time that this Government ensures that when it has recommendations that need legislative cover, that they come early to the Parliament so that there can be a clear understanding of what needs to be done and that we can see the benefits to the people of Trinidad and Tobago. We are also of the view that the Seized Assets Fund will not be effective if the fund is not properly constructed and the right persons are not put in place by the Government of Trinidad and Tobago. We are clear that if this legislation does not work to the benefit of the people of Trinidad and Tobago, it is a pointless exercise and that the legislation is just another piece of legislation on the books of Trinidad and Tobago.

Thank you very much, Mr. Vice-President. [*Desk thumping*]

Mr. Vice-President: Sen. Mahabir.

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Mr. Vice-President, for the giving me this opportunity to contribute to this very important debate this afternoon. I hope I shall not be long because a lot of what is valuable has already been said by preceding Senators. Be that as it may—and I endorse practically all of the views and sentiments expressed prior to my own contribution this evening.

But we are, this evening, debating a Bill, in my mind, of critical importance. This is really examining the proceeds of crime with an aim of ensuring that those who engage in criminal activity will find it difficult to acquire property in the formal sector of the economy and, second, if they do acquire such property, there is a good chance that if they have been identified, they could lose that property to the State.

It is important for us to recognize that money laundering is a relatively old phenomenon. It is not as new as we think it is, and I always like to go back a bit in history. During the reign of Queen Victoria, the records indicate the British owed the Government of China on account of a huge trade imbalance, something which does not

seem to go away whenever one is trading with China. The United States now has a huge trade imbalance in favour of the Chinese. But the British found themselves owing the Chinese Government a huge amount of silver that, if called upon to repay, would certainly have caused significant strain to the Bank of England.

What did the British Government proceed to do? The government of England at the time decided to use the opium grown in Bengal—they controlled India at the time—and they sold that opium grown in Bengal, in China, and they were able to raise the necessary silver that they owed the Chinese Government, and the balance of trade became more balanced. But in the process, what happened was that they left a huge amount of addicts which became the problem for the Chinese Government. It gave rise to the Opium Wars, as we know, and it was the first documented case of a sovereign state engaging in the laundering of a dirty commodity to get clean silver so that they could sort their trade imbalance.

The effect of this practice, which was very much in evidence in creating opium addiction, is what is causing the problem that we are seeing today. The illegal activities which generate huge profits for the participants leave in their wake a large amount of social casualty, and when we see young men being killed, when we see men under 25 having a life expectancy that is one of the lowest in the world, in particular areas of our country, we know it is because there is an illegal trade that is luring them and causing untold problems for the wider society. It leaves a problem in the society that is almost difficult or impossible for us to handle.

In addition to that, previous colleagues have indicated that the profits in illegal activity can be so great, and the demonstration effect so effective, that young people, impressionable minds, looking on at the profits of that activity, decide that they could take the risk to life and limb to participate in that activity in the hope that someday, they too would be able to drive the fancy car, live in the big house and dine at the expensive restaurant. And while that occurs for the few, the rewards are so great and the demonstration effect is so intense, that we have a number of young people being attracted, only to find that the life that they have chosen is really short and brutish.

It is for this reason we would want to look at this activity and to ensure that having earned profits in the illegal areas of the economy, these profits are not easily cleansed so that they can participate in the more formal sector of the economy and blend into the wider society. How effective is this practice in Trinidad and Tobago? It is difficult to say, but not impossible. In this area of activity we know that cash is king. This has been emphasized earlier, and when I

look at the data in Trinidad and Tobago, I see, for example, that in the year 2000, the amount of currency in circulation was \$1.3 billion and in 2014, the amount of currency in circulation was \$4.4 billion. This is an indication that of all the payment forms that we would choose, people are choosing to pay with currency over an increasing proportion over time.

You would have thought that from 2000 to 2014, the society would have been a bit more financially conscious, and that the means of payments chosen by individuals in financing their transactions would have been more by way of cheques, bank drafts, electronic transfers, credit cards and other means of modern money. What we find is that from 2000 to 2014, currency in circulation has risen from \$1.3 billion to \$4.4 billion.

One might argue that as the economy grows, the demand for cash will also grow, but when we decompose this statistic, what we see is that in 2012, according to the Central Bank figures, currency in circulation—that is, the preferred means of payment of people—amounted to \$2.9 billion. So in 2000, it was \$1.3 billion; 2012, \$2.9 billion, but by 2014, two years later, it had risen from \$2.9 billion to \$4.4 billion.

So that we have demanded in 2013 and 2014, an extra billion and a half in cold cash to finance our transactions. This, in my line of work, is what we use as a proxy variable to indicate that there must be some reason why participants in our economy are choosing to use cash more and more to finance transactions, and when the demand for cash rises to such a gargantuan extent, while there exists other forms of payment which are much more convenient: credit cards, cheques, the LINX system, electronic payments, we know that this cash is being used for a form of financing that may not ordinarily be for which cash was intended for.

6.45 p.m.

[MR. PRESIDENT *in the Chair*]

What is cash intended for, Mr. President, especially when there are other forms of payment? If one wishes to buy a double at a stand, it is convenient to pay with cash. If you want to shop in the market to buy vegetables, it is convenient to walk with a couple hundred dollars in cash. If you want to buy fish from the wayside vendor, you would have to pay him in cash. These are small transactions, and what we are talking about, therefore, is cash in the informal economy. In the formal economy it is becoming less and less important because almost every formal business establishment is now equipped with a form of payment which is non-cash, that is, electronic payment, or credit card payment, or cheque payment. But in the wider economy there is an informal sector for which cash is efficient, and in this informal we have a lot of legal activities.

The nuts vendor is in the informal economy. Five dollars a packet for nuts, you will not pay for nuts with LINX. You will pay with cash for your peanuts. [Laughter] Though, I will not be surprised if some nuts men will pass with mobile LINX now, but that I suspect is a way off. When we are talking about the snow cone vendor and the people we trade and transact with on the street—you go to the Tunapuna, the Chaguanas, the Arima market, you are going to have to pay with cash. Small transactions. If you have a mechanic who does your work and he operates under his house in a small garage, he will in general accept the \$100 in cash to repair your vehicle.

We do have a very large informal sector that is legal, the gardener and the individual who does occasional work at your house. But then, Mr. President, we also have a very large illegal informal. Who are these illegal informal actors? Well, the illegal informals are those who are engaged in stuff deemed by the State to be against the law. There are those who kidnap. If you kidnap someone I think you will not ask for a cheque as a ransom. I think you will ask for a large amount of cash. I think, I am not sure. I hope I do not find myself in that situation. You would have those who deal with stolen items. Invariably, it will be stolen vehicles, stolen vehicle parts. They, I imagine, would prefer to deal with cash when they are transacting, and we will find, also, individuals who are dealing with banned substances. Those in the narcotics trade, for example, will deal in cash because cash is virtually untraceable.

If one wishes to trace the cash I am sure one can record serial numbers to see how they are moving, but cash is virtually untraceable. And having obtained their cash from the illegal sector of the economy, illegal informal, the question is: how do they proceed to make this particular cash palatable to the rest of the economy? Because that is where they ultimately would like to invest, and they would like to spend, and they would like to save, and they would like to participate as any other individual in the benefits of the type of economy, according to rules that we create in this particular honourable Senate.

There would be a number of areas in which this particular cash could move. We would have deposits in banks—the most normal one we would think of—and deposits in credit unions, but also we would have the increasingly important activity of investment in securities. Fortunately, we now have securities law, where we would be looking at huge volumes of cash passing to brokers and dealers for securities—are legitimate securities—and that should in fact trigger some reporting. We would have cash being sent to insurance companies for investment; we would have cash to purchase properties of all sorts, and also cash

to purchase durables such as furniture and automobiles. This is the area where we will get the Al Capones in the society trying to take the cash earned from the illegal operations that they control, and to try to move the cash into the rest of the economy which will allow them to participate in the range of goods and services produced in a more formal sector.

But at the same time, Mr. President, while we have the Al Capones, I am sure they have wised up to the difficulties of the process of an Al Capone trying to siphon his cash into the real sector. And, it is quite likely that those who are engaged in illegal activities—and certainly it is the rational thing to do—would have legitimate businesses as well. One can look at a supermarket which raises a large amount of cash on a daily basis, a hardware store, a clothing store, a restaurant, a gambling house or a dealership in spare parts. These are the types of activities which will generate on a daily basis a fair amount of cash. While I mentioned before that cash is used for small purchases, it is quite likely that a large number of people, spending a couple hundred dollars per transaction in cash can amount to a tidy sum in the course of the day.

And so, when we are looking at the means by which the informal sector is able to move into the formal sector, Mr. President, I think it is important for us to trace the cash. It is important for us at the very beginning, when deposits are made anywhere from any particular business entity, that we know the source of the cash. It is not enough for the owners of businesses to say, “Well, I own a restaurant, I own this supermarket and so on, and this is the cash I have from the day’s proceeding, the week’s proceeding or the weekend’s proceedings”. It is very important, I think, for us to place on the records, just as payments by cheque are recorded, payments by credit cards are recorded, to these legitimate businesses.

If it is suspected that a legitimate business is not generating the amount of cash that it seeks to deposit in the financial institutions, then I think it is important for us to impose upon them a requirement that you must prove that this particular cash actually came into your business establishment from the trade of your business establishment, from the sale of clothing, from the sale of food.

And I think anytime there is a customer who has spent in excess of \$2,500 in cash in any business establishment, it would be valuable for us to get the identity of this individual, name, ID number as a starter. In that way, we would be able to track the individuals who are using cash just as we know the individuals who are using the other forms of payments and, at the same time, Mr. President, we would be able to hold an individual to book. You are telling us that you are bringing in \$100,000 in cash on a daily basis on your sales, we would like to see the receipts that were issued to all those who paid in cash, and these receipts, as a policy matter, can in fact be issued by any of the agencies—Ministry of Finance and the Economy, FIU—simply filling out the information so we can trace cash that is spent in certain large quantities.

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I raise this point, Mr. President, because cash carried about in large quantities is really inconvenient. Someone must have a very good reason in the current dispensation for walking around to purchase goods and services with a certain amount of cash, like \$2,500 or \$5,000. Why do you not have a bank account; why do you not have a LINX machine? It is in fact interesting to hear that people will actually buy property with cash, that people will actually buy automobiles with cash—[*Interruption*]

Hon. Senator: Brand new.

Sen. Dr. D. Mahabir: Well, as the Senator said, brand-new automobiles. I imagine some used automobiles as well will be sold with cash. So it is interesting you see, when we had so much choice with plastic and with bank drafts and certified cheques, that you find individuals using this medium of cash which is untraceable. It is cumbersome, it is risky, it is difficult to handle, it is bulky, and yet we find people choosing to use it as opposed to the more convenient medium. I think we now need to trace the cash. The time has come where we need to find a mechanism to trace the cash, and all those businesses accepting quantities of cash above a certain amount must record the identity of the individual. We need to know the identity. That is only way we will be able to identify, and to trace, and to determine who in our society may be involved in this illegal activity.

It is a sure way, Mr. President, to investigate those businesses, supposedly legitimate businesses that are being used as a front, not generating from the sale of their goods, the type of cash that they deposit on a regular basis. Once we can trace the cash or begin the process of tracing the cash—because the move that I have seen from \$2.9 billion in '12 to \$4.4 billion in '14, suggests to me that there are a large number of people out there using a large amount of cash most likely for no good. But that, Mr. President, is the lesser point I would like to make. The more important point I wish to make is what I see in section 58E, “the Seized Assets Advisory Committee”. We see in clause 58E that:

“The purpose of the”—Seized Assets Advisory Committee—“is to provide funds for”—the following:

- “(a) community development;
- (b) drug abuse treatment;
- (c) rehabilitation projects;
- (e) compensation under section 29; and
- (f) restoration...”

When I observed the uses of the fund, I see under (a), community development. This to me is vague, it smacks of LifeSport, it is open to much mischief, it is wide, it is undefined, it could include anything like a community centre or funds to assist single mothers or day care centres, or simply income transfers, or a range of purposes.

I would recommend to the Government that the funds in the Seized Assets Advisory Committee not be used for community development. I understand we have a Ministry of Community Development, a Ministry responsible for community development, allocations on an annual basis are made in a fiscal package for all types of community development. When you look at the PSIP and the social programmes of Government, you see a great number of programmes for community development.

We saw, according to what the hon. Minister of Finance and the Economy said here this morning, \$400 million spent over the last two years in community development. Almost half a billion. It is close to \$500 million. So, a large amount, the hon. Minister, I am sure will agree, that this is vague. But we do need to use some of these funds for drug abuse treatment because when we seize the assets, to a large extent these assets would have been derived from trade in illegal substances, rehabilitation projects. We cannot quibble with that. The other subcategories mentioned are fair and legitimate.

7.00 p.m.

But what I would recommend to the hon. Minister of Finance and the Economy, through you, Mr. President, is that the Seized Assets Advisory Committee should, as its priority, have a purpose of victim compensation. The victims of crime in this country would, to a large extent, be an ignored group in this informal illegal economy. This informal illegal generates its own type of sanctions. We would have accident victims and accident victims—I am driving down the road but some guy is on some illicit substance, not alcohol, he may be on marijuana or cocaine, and he injures me. Who compensates me on account of the fact that he is using illegal substances? So accident victims, I think, need to be given some priority in this compensation fund.

Families of murder victims, so that a murder victim, someone who is murdered—not because he is involved in any gangs, not that a gang member is looking for it, but someone who is minding his own business, finds himself in a crossfire, who is looking after his dependants? The victims, again, of that warfare that occurs in the informal sector. Victims of malicious wounding, victims of rape and incest. Children, Mr. President, this may be contentious, but I will argue that it is something we need to look at. Children whose parents have been sent to prison are victims. They did nothing wrong. Their parents are in prison, cannot look after them. We do have social welfare services but they are victims. Victims of kidnapping. Who looks after the trauma of the victims of kidnapping?

The Seized Assets Fund is an excellent idea. We do need to create that fund. My colleagues prior had indicated that we need, if we are able to identify, someone who has amassed a huge amount of property and non-property wealth on account of illegal activities, these assets should be seized. But, also if we could prove that these assets were obtained illegally, and we can go seven years prior, use a period of seven years, if we can prove that seven years ago that you acquired this thing illegally, that too, in my opinion, should be assets open to seizure. It cannot be only the assets that you have acquired today.

But, once we have agreed on the time frame and we have agreed on the fact that we do need to seize the assets, we place them in the fund. I think we need to look at victim compensation in a serious and meaningful way and look at victims of crime in general, and focus the priority there. Once we do that, we can see some good at least coming out of the illegal trade and out of this fund. Basically what we are saying is that the profits of this trade which has caused harm to large segments of the society will be used as reparations or part reparations for the harm caused by this illegal activity.

On account of that, Mr. President, when I looked at the members of the Seized Assets Advisory Committee, I saw that they were going to come from certain individuals. I would like to recommend that we keep an individual with a relevant area in finance, but we need to remove someone who is trained in community development. Is there a specialization called BSc community development, MA, Ph.D.? Let us move that specialty and instead, if we are to focus on the victims of crime, I would like to see in there a medical doctor who has expertise in dealing with crime victims and trauma victims and rape victims. Someone who is trained in counselling, trauma counselling and any area that deals with the issue of the effects—the traumatic effects of crime.

So I would recommend to the hon. Minister that we look at an individual who is trained in the field of medicine to deal with compensation to injuries on account of crime, individuals who are subject to wounding and so on. But we also look at an individual who is trained in trauma counselling together with someone in law enforcement and drug rehabilitation.

I think if we are to go this route, Mr. President, track the cash, ensure that we can start recording cash transactions above a particular limit. It should just be a particular official document signed up at the business place by the individual paying the cash. Mr. DX paid \$2,500, ID number or any form of ID, and once we are able to do that, what that should do is that it should provide some kind of impediment to individuals who are paying large quantities in cash, but it will also

put pressure on those who receive the cash to show from where the cash came. If we can focus on victim compensation, I think we would go a long way to making some good out of the nefarious activities of a number of individuals who are harming the society. I think if we can relook at the composition of the committee, I think that this particular piece of legislation is a progressive one and it will benefit the social welfare immeasurably. I thank you, Mr. President. [*Desk thumping*]

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. President. I want to congratulate all the Members who participated thus far. I think that the general sentiments expressed are that the objectives of this legislation are supported and that it is something good for the society to deal with the nefarious issue and crime of money laundering, and that is the primary objective of the Bill before us, the Miscellaneous Provisions (No. 2) Bill, 2014.

Mr. President, there is a presumption—a presumption of regularity in the act of public officials, and coming out of the debate, you get the impression that notwithstanding that presumption, that there is the notion that some irregularity has taken place because of the omission of section 43(c), I think it is. It is my duty here this evening to debunk that notion and to re-establish the presumption of regularity in the act of public officials.

Mr. President, we were advised, with reference to that particular section 43(c), that there was no need to incorporate that section—and I will go into the legal opinion—because it was already dealt with by section 2(3) in the legislation. But notwithstanding that, we have been indicating that we are open to amendments and I know that Sen. Anthony Vieira, together with Sen. Roach and Sen. Drayton have acted on that embrace for the amendment and that we will proceed.

But for purposes of the record, Mr. President, I wish to read into the record the opinion which guided us in determining that that section ought to be left out of the consideration and not be part of the Bill. The opinion was given by the Acting Chief Parliamentary Counsel to the Attorney General and it is dated June 29, 2014. The question posed was:

“...Does the proposed section 43(1) of the Miscellaneous Provisions (Proceeds of Crime, Anti-terrorism and Financial Intelligence Unit of Trinidad and Tobago) (No. 2) Bill, 2014 operate retrospectively or as *ex post facto* law?”

This section deals with the “Background”.

“The Miscellaneous Provisions (Proceeds of Crime, Anti-terrorism and Financial Intelligence Unit of Trinidad and Tobago (No. 2) Bill, 2014 was recently laid in the Senate. The Bill seeks to give effect to a number of Trinidad and Tobago Obligations under the 40 Recommendations of the Financial Action Task Force.

Recommendation 1 of the 40 Recommendations requires States to criminalize money laundering and apply it to all serious offences with a view to including the widest range of predicate offences.”

A predicate offence may be referred to either by reference to all offences or by reference to a threshold, a list of serious offences or a combination of those two.

“The existing Act provides for money laundering to be tied to the conviction of the predicate offence before a person could be convicted of money laundering.

This annexing of the money laundering offence to the predicate offence was identified by FATF as one of the deficiencies with the Proceeds of Crime Act, Chap. 11:27 which was enacted in 2000. In one of our evaluations we were informed that the money laundering offence should be a stand-alone offence. In determining what should be the correct approach for Trinidad and Tobago, legislation that exists in different jurisdictions were examined and it was felt that the preferred approach was what obtained in the United Kingdom where no longer was an offence of money laundering tied to a specified offence but rather to criminal conduct which resulted in criminal property.

The United Kingdom in defining criminal property in its legislation, defines it as follows: ‘Criminal property’ means property which constitutes a benefit to a person for criminal conduct or represents such a benefit in whole or in part whether directly or indirectly’. It then goes on to provide that it is immaterial who carried out the criminal conduct, who benefitted from the criminal conduct or whether the criminal conduct occurred before the commencement of the Act. This last limb of the explanation of ‘criminal property’ is causing much difficulty.

Presumption against retrospectivity

It is a clear presumption at law that legislation is drafted so as not to be retrospective. If the law is intended to be retrospective then it must clearly provide for the retrospectivity. In respect of offences however not even the express provision of retrospectively of an Act is given favour. It is trite law that the law must not impose criminal liability for acts that were not criminal offences at the time they were committed.

The *Ex Post facto* law

An *ex post facto* law is a law which provides for the infliction of punishment on a person for a crime which at the time it was committed was not illegal. *Ex post facto* laws are seen to be a relic of rule by tyranny as it deprived persons of a sense of what behaviour will or will not be punished and allows for random punishment at the hands of those in power.

Francis Bennion, in his book on Statutory Interpretation frowns on *ex post facto* laws and noted that the principle is that of *lex prospicit non respicit* (law looks forward not back).

The principle that has and continues to pervade the criminal law is that the criminal law should be sufficiently precise to enable persons to know in advance whether their conduct would be criminal.”

The question then arises:

“Is the provision under section 43(1) retrospective/an *ex post facto* law?

In determining whether legislation which creates an offence is retrospective consideration has to be given as to whether the legislation creates an offence for an act done before the legislation commences, whether it is expanding the range of activities covered by an existing criminal offence or whether it is increasing the punishment for person already convicted of a criminal offence.

Now it is noteworthy that this principle does not apply to procedural changes which can be retrospective once the changes do not affect the punishment to which an offender is liable.”

7.15 p.m.

“So that the issue that is to be determined is whether penalties such as terms of imprisonment and fines are affected by the retrospective application. If they are then the prohibition applies. Procedural changes to court practice or rules of evidence do not bring up the prohibition.

Finally, the prohibition against retrospectivity in criminal matters only applies to laws imposing criminal liability or punishments for criminal offences and not to non-criminal sanctions, such as financial penalties imposed by a court in a civil case that does not result in a criminal conviction.

In applying the principles it must first be asked does the proposed section—

- (a) create an offence for an act done before the legislation commences;
- (b) expand the range of activities covered by an existing criminal offence; or
- (c) increase the punishment for persons already convicted of criminal offences.

The proposed section would now see that criminal property which was gained as a result of conduct committed before the passage of the Bill and which after the passage of the Bill is used, the act of such use would automatically be seen to be a money laundering offence. The offence which was committed prior to the

enactment of the Bill and the use of the criminal property which is the benefit of the past criminal conduct are so inextricably linked that it may be argued that it may become difficult to determine when the criminal conduct ended and when the money laundering offence commenced. If this is so it may be difficult to extricate the later money laundering offence to after the commencement of the Act.

While the UK sought to specifically ensure that the presumption was rebutted by specifically providing for the past conduct, the provision still does not alleviate the concern as to whether only the past criminal conduct is being referred to in the Bill or whether it will also cover past use of the criminal property.

It is being advanced that the offence of money laundering would only be in relation to the use of the property after the passage of the Bill. This interpretation, however, when one looks at the provision in its entirety, does not comfortably reflect this.

Proposed section 45(1) makes it an offence for a person who knows property is criminal property does various acts involving such property. The clause does not say when the person was required to have the knowledge: was it when the criminal property came into his possession or after it was converted? If the knowledge of the criminal property was such when it came into his possession and this was before the commencement of the Act and he then seeks to convert the property on the commencement of the Act is he then caught by the provisions? What if it came into his possession and he did not know it was criminal property until after the commencement of the Act and he then deals in the property is he caught by the Act? Or what if he comes into possession before the commencement of the Act but only gains knowledge of its taint after it is converted has he committed a money laundering offence?

It must be noted that FATF does not require our legislation speak to conduct from the past. However, having regard to the nature of the offence of money laundering, the retrospectivity of the criminal conduct is advanced in order to deal with the present treatment of the criminal property which may be in the possession of those who would now wish to convert it.

It is advised that the proposed section 43(2)(c) which would provide—

For the purposes of the definition of ‘criminal property’ under subsection (1), it is immaterial—

- (a) who carried out the criminal conduct;
- (b) who benefitted from the criminal conduct; or

- (c) whether the criminal conduct occurred prior to the commencement of the Miscellaneous Provisions (Proceeds of Crime, Anti-terrorism and Financial Intelligence Unit of Trinidad and Tobago) (No. 2) Bill, 2014, raises uncertainties in its application as to its retrospective application and should be avoided.

Ida Mariana Eversley

Chief Parliamentary Counsel (Ag)”

So, Mr. President, on the basis of this advice and on the basis of the advice that section 2(3) where it states that—

Reference in this Act to an act that would constitute an offence includes a reference to acts which would constitute an offence committed before the commencement of this Act.

—the Government took this position. By virtue of what has transpired during the debate, there are certain amendments to this particular section. In addition, we have been advised that if we proceed with both these sections, there will be a duplication and there will be, if it reaches the stage of litigation, it will cause significant confusion. So we have decided to embrace it in a different kind of way.

So, I make this point now of the presumption of regularity in the acts of public officials, if only to assert the regularity of this action in eliminating that section because of the legal advice obtained. And, perhaps, it is time we must provide a measure of detachment, in order to appreciate the work of the public officials in getting into this stage of the legislation. [*Desk thumping*]

So this is no section 34. This is an act of regularity in the act of the public officials and that, therefore, all the notion and the notional innuendo and otherwise is refuted and that therefore we have further concretized that by our capacity to embrace the sentiments expressed by several Senators as to conduct and that, therefore, it is clear now that we can proceed.

Mr. President, but before I do so and to deal—my colleague, I want to now congratulate Sen. Howai for bringing this legislation. This legislation arose out of the FATF recommendation and that, therefore, when the Members of the other side speak about “last minute”, I want to remind them that in 2009, on September 30, a mere 11 days before the deadline, the former administration was piloting the Financial Intelligence Unit Bill and this is what, at page 88 of the *Hansard*, then Prime Minister Manning had to say:

“It is not that we are trying to ride roughshod over you or any such thing. We have had to operate this way because we have no choice, really. We have come up against a deadline and Trinidad and Tobago stands to be blacklisted, disastrous consequences, and that is what we are trying to avoid.

Dr. Gopeesingh: The deadline is October?

Mr. Imbert: October 09.

Mr. Manning: October 09.

Dr. Gopeesingh: Can we be given up till Monday?”

And then they went on like that.

The point I wish to make, by virtue of the FATF evaluation, the plenary session is in November. We are in August, and we have a deadline in which to complete but there is a significant time difference. But the point made is that it is not brinkmanship. It is not a question of we are on the brink of getting blacklisted, and so on. We have significant time and that is one of the reasons why the legislation is here.

Mr. President, the hon. Sen. Faris Al-Rawi made a great deal and song and dance about the quarrying operations. It is as if illegal quarrying only started in 2010.

Sen. Robinson-Regis: Is that making it right, now?

Sen. The Hon. G. Singh: No, it does not make it right, but the constraints that impact upon the sector have been going on for years. I can read you newspaper reports on 2006/2007 and so on, but I will tell you that this administration, in a report dated December 11, 2013, this report is now crystallizing into legislation. Mr. President, the report of the inter-agency committee on the legislative changes required to alleviate illegal mining. And this piece of legislation, the amended Bill before us, provides a category of not only economic crime but environmental crimes and that, therefore, in the current legislation, there is no way that you could have proceeded under the Proceeds of Crime Act because there is no indictable offence under the Minerals Act in the country. None whatsoever! So, how could you have proceeded? When the hon. Sen. Faris Al-Rawi, in his also inimitable style says: “Easy tuh lock up! We shoulda lock dem up! It is easy tuh lock up!” How can you proceed when the legislation did not provide and give you that power so to do? It did not give you that power so to do, Mr. President.

I want to commend the Minister of Energy and Energy Affairs. I am happy that Sen. Al-Rawi has returned. [*Crosstalk*] No, you are not getting licks. What we are doing, we are placing on the record the factual situation. Under the Minerals Act, you have indicated: “Lock dem up! You have de power! Lock dem up!” But we are saying that you could not do that because the law and the whole report of the inter-agency committee, comprising of public servants across the board—Chairperson, Director, Legal Services, Ministry of Energy and Energy Affairs; Manager, Legal Services, Ministry of National Security; Director of Minerals; Deputy Commissioner of Police; Commissioner of State Lands; Legal Officer, Ministry of Land and Marine Resources—at that time Devant was in charge—Legal Officer, EMA; Legal Counsel, Ministry of Food Production.

And the outcome of this is that you have a draft Bill and that draft Bill will now provide the kind of legislation, which will come before this Parliament that will give the necessary powers to the authorities to move, and then they can proceed by virtue of the fact now, in the category of offences, it will become an environmental crime and illegal quarrying will be dealt with in that way. [*Desk thumping*]

7.30 p.m.

Mr. President—[*Crosstalk*] there are approximately 90 active quarries in Trinidad and Tobago, only 46 are licensed. In addition, the Ministry of Energy and Energy Affairs has found in its experience that the majority of illegal operations are targeted in north-east Trinidad. Although the Minerals Act mandates the Director of Minerals at the Ministry of Energy and Energy Affairs to eliminate illegal mining, it does not provide the office with the appropriate mechanisms to do this, in order to eliminate illegal mining. So that, therefore, you have no teeth in the legislation.

Then the hon. Member spoke—[*Crosstalk*] the hon. Member then proceeded to say that the EMA has the power to act. You know, it is not often that Sen. Al-Rawi does not do his homework, it is not often. I mean, I have been—you know, but I think—but because I have been in the Senate, and I know he does his homework. However, on this occasion, he—[*Interruption*] on this occasion, Sen. Al-Rawi is really, really way off mark. [*Desk thumping*]

Sen. Al-Rawi: “All yuh even know whey he talkin bout?”

Sen. The Hon. G. Singh: Mr. President, when the lawmakers envisioned the Environmental Management Authority, the approach proposed was a soft approach. This soft approach allowed for a small number of offenders to continuously degrade and pollute the environment. So that, therefore, whereas environmental crimes are those which involve land degradation, pollution, illegal quarrying,

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illegal scrapping and illegal logging, the reality is that you do not have the criminal penalties associated with that level of activity. Even if you had, and now you have this category of environmental crime, then now, you will begin to create that, and then it will fall under the—as the Minerals Act is to be amended by draft legislation brought by my colleague, similarly you are going to have the necessary adjustments and amendments to the Environmental Management Act.

Just for the education of Members, in particular Sen. Al-Rawi, you see, for the—there are civil assessments for the purposes of section 65 and 81:

“...the Authority or the Commission may make an administrative civil assessment of -

- (a) compensation for actual costs incurred by the Authority to respond to environmental conditions or other circumstances arising out of the violation referenced in the Administrative Order;
 - (b) compensation for damages to the environment associated with public lands or holdings which arise out of the violation referenced in the Administrative Order;
 - (c) damages for any economic benefit or amount saved by a person through failure to comply with applicable environmental requirements; and
 - (d) damages for the failure of a person to comply with applicable environmental requirements, in an amount determined pursuant to subsections (2) and (3).
- (2) In determining the amount of any damages to be assessed under subsections (1)(c) and (d), the Authority or the Commission shall take into account –
- (a) the nature, circumstances, extent and gravity of the violation;
 - (b) any history of prior violations; and
 - (c) the degree of willfulness or culpability in committing the violation and any good faith efforts to co-operate with the Authority.
- (3) The total amount of any damages under subsection (1)(d), shall not exceed -
- (a) for an individual, five thousand dollars for each violation and, in the case of continuing or recurrent violation, one thousand dollars per day for each such instance until the violation is remedied or abated; or
 - (b) for a person other than an individual, ten thousand dollars for each violation and, in the case of continuing or recurrent violations, five thousand dollars per day for each such instance until the violation is remedied or abated.”

Mr. President, section 70 and section 72 of the Environmental Management Act deals with environmentally sensitive areas. The role of this piece of legislation, by having a category of environmental crime, creates a whole new arena. It is now moving into the realm of criminalizing of the degradation of the environment and bringing sanctions to bear, and it will also deal—Mr. President, the old area of illegal hunting, trafficking in wild animals, wildlife, you have—it is also worldwide, a multi-billion-dollar business. And it is noteworthy that this legislation before us, the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism, Financial Intelligence Unit of Trinidad and Tobago) (No. 2) Bill, 2014, will provide that in its category of crimes to be dealt with. So, it is really a watershed event. So we are moving into the area of penalties from the soft approach that the EMA has, where it is really to remediate and rehabilitate into the arena where we will now be imposing criminal sanctions. In order to do that, we need to have the necessary mechanism.

The EMA together with the University of Trinidad and Tobago, in collaboration with the University of Malaysia, is in the process of establishing an environmental forensic unit in order to be able to map, to know the DNA of the various streams, water, the soil, have a whole forensic department, in order to be able to establish that. When there was the oil spill in Petrotrin, we had to do an analysis of where that oil—and the source of that oil—and it was necessary for the IMA to get involved. But in the environmental forensic centre that will be established in collaboration, you will have that level of academic robustness, and the kind of testing that is required, and that is coming. [*Desk thumping*]

Mr. President, Sen. Al-Rawi also spoke of the fact that nothing is being done by the Ministry of Energy and Energy Affairs. Nothing is being done by the Ministry of Energy and Energy Affairs in pursuing those who have violated the environment, those who have engaged in illegal quarries, and that Mr. Big, the big fish, to quote him, the big fish is there. [*Crosstalk and laughter*] I want to indicate that there are some 31 persons before the courts pertaining to illegal mining, 31 persons. I would like the hon. Senator to tell me if the big fish is within this category because he appears to know who that big fish is:

- (1) Lindbergh Thackorie
- (2) Norman Baxter
- (3) Wayne Coxall
- (4) Terrance Bannister
- (5) Steve Jules

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- (6) Terrence Campbell
- (7) Shivanand Ramdeo
- (8) Roopnarine Deonarine
- (9) Kurt Arnold
- (10) Horace Joseph
- (11) Isaac Jeetan
- (12) David Ramsoomar Singh
- (13) Danny Guerra
- (14) David Hernandez
- (15) Raymond Jaggassar
- (16) Rishi Gobin
- (17) Michael Mc Carthy
- (18) Wayne Bertrand
- (19) Boodram Mahabir
- (20) Renrick Dabaroo
- (21) Andrew St. Edwards
- (22) Antonio Perez
- (23) Patrick Garcia
- (24) Sean Mohammed
- (25) Dale E. Wong
- (26) Doodnath Ramkhelawan
- (27) Curtis Alexander
- (28) Ranjee Bridglal
- (29) Rudolph Persad
- (30) Steve Ragoonath
- (31) Ricardo Preudhomme

—all pertaining to illegal mining, illegal quarrying, 31 persons. So to come to this House and to say nothing is being done is really—[*Interruption*]

Sen. Al-Rawi: But one incident, come on.

Sen. The Hon. G. Singh: Thirty-one persons, not one incident. Over a period of time, and there is forfeiture of—and all matters are in court. Trucks and—I can go into the body of the report to tell you how many seizures they have had and so on. But you have—you have activity, but the problem is that you do not have the legislative teeth, and that is what you are going to get with the amendments to the Minerals Act, which is currently in draft stage before the CPC. [*Desk thumping*]

Mr. President, the hon. Sen. Al-Rawi went on to say that we are purchasing materials, the State is purchasing material to build the highway.

Sen. Al-Rawi: Not the State, I said OAS Construtora.

Sen. The Hon. G. Singh: Well, OAS Construtora issued a press release dated June 04, 2014.

Mr. President: Before you get into the press release, Minister of the Environment and Water Resources, your speaking time has expired.

Motion made: That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Al-Rawi*]

[*Mr. President confers with the Clerk*]

Mr. President: I have to recalibrate and recalculate. I stole 10 minutes of your time, not meaning to degrade your contribution. So that we will put aside the question.

Sen. Al-Rawi: Withhold my Motion until later then, Mr. President.

Mr. President: Thank you. [*Crosstalk*]

Sen. The Hon. G. Singh: [*Desk thumping*] Thank you, Mr. President. I want to thank the hon. Member for extending my time and all Members of the Senate.

The hon. Member read from articles published in the *Express* newspaper with respect to allegations contained, and the OAS in response issued a press release.

Sen. George: What is the date of the press release?

Sen. The Hon. G. Singh: The date of the press release is June 04, 2014, and I will read it for purposes of the record:

“OAS

PRESS RELEASE

IN RESPONSE TO AN ARTICLE ENTITLED ‘HIGHWAY ROBBERY’, published in the Trinidad Express, Sunday June 1, 2014 OAS will like to stress that the company holds commercial agreements with suppliers engaged in the Project, which are subject to strict contract clauses concerning technical specifications and legislation applicable to each type of material, especially as to quality standards and respect to the environment.

The contracts with OAS’s suppliers of aggregates state as follows: ‘Supplier (...) warrants that there has been no illegal exploitation of the natural resources in general and use of counterfeit product resulting in or with any criminal violation (...); and ‘the supplier shall obtain all permits, licenses and approval, as required by the laws in relation to the fulfilment of this agreement.’”

Then they went on to state that they will “investigate the information in the article” and so on, and they reaffirmed their commitment to the environment.

Mr. President, the fact of the matter is that illegal mining as I have indicated has been with us for several decades, but the fillip for illegal mining took place when the CEC was removed as a requirement for mining. And it was removed by the previous administration, [*Crosstalk*] and that, therefore, that created, that check created a free-for-all. So that the illegal mining expansion really dated during the tenure of their administration, during their tenure—expanded. What we had to do, Mr. President, was to retrieve the situation, [*Desk thumping*] by what was available to us at the time by the imposition of CEC for all quarry mining again. [*Crosstalk and interruption*]

Sen. Hadeed: “Dey do dat to give de contract to Sunway.” [*Crosstalk*]

Sen. The Hon. G. Singh: Yes. Mr. President, so that this is where—so when the hon. Member comes and speaks in that fashion, as if he had no knowledge of the past, I understand. He is part of the new dispensation of the PNM—[*Interruption*]

Sen. Maharaj: “He was ah alderman in Port of Spain den.”

Sen. The Hon. G. Singh: He was an alderman? I do not recall that. [*Laughter and crosstalk*] Well, he was part of that. So that, therefore, that is what created the conditions, [*Continuous interruption*] that is what created the conditions for the expansion of illegal mining, and gave rise to the kind of—that the newspaper reports point to.

7.45 p.m.

March 09, 2007: Four held for illegal quarrying;

November 05, 2008: Illegal quarries—Commissioner of Police to decide on illegal quarrying;

March 06, 2008: where then police commissioner Trevor Paul is expected to recommend whether or not four police officers, reportedly nabbed for illegal quarrying in Valencia, will face criminal charges.

Police link in illegal quarrying.

Illegal quarrymen spread fear, December 20, 2009, and so on.

This is just merely to indicate that the illegal quarrying has been going on for some time. It increased exponentially when there was the removal of the CEC by the Manning administration and now we are trying to retrieve the situation through the enactment and increasing the penalties through amendments to the Minerals Act and that is soon to come to Parliament.

Mr. President, the hon. Sen. Camille Robinson-Regis raised the issue whether the FIU had sight of this piece of legislation. I want to indicate to this honourable Senate that the FIU has been an intimate part of the drafting of this piece of legislation.

Sen. Robinson-Regis: You intend to leave out that section?

Sen. The Hon. G. Singh: So that to answer your question, yes they have been involved every step of the way in this piece of legislation.

The next question posed by the hon. Senator, Camille Robinson-Regis, as to whether the DPP acquired the office staff. Mr. President, I can tell you with certainty that Cabinet approved a significant increase in the number of persons for the DPP department. The Attorney General, together with the DPP, is actively engaged in seeking physical space for the increased resources that will be placed in the hands of the DPP.

Sen. Robinson-Regis: What happened to Alexandra Street?

Sen. The Hon. G. Singh: Alexandra Street may be an option. [*Laughter and crosstalk*]

Mr. President, so it is clear that this piece of legislation will provide the opportunity to increase the operational efficacy of the FIU. It will expand the ambit of the offences by the category of offences which, of course, with the new

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one being environmental crime. It will ensure that money laundering is expanded so as to increase the persons falling within the embrace of the law and that this legislation really is in accordance with FATF recommendations.

These recommendations will provide the opportunity for Trinidad and Tobago to exit the Third Round and will provide the opportunity for us to now be able to get into the realm where no other country in the Caribbean will reach or has reached as yet.

So the current FATF situation, Mr. President, unless the gloom and doom indicated, under the FIU 2013 annual report, approximately 125 intelligence reports have been submitted to law enforcement agencies at the end of the financial year 2013. To date it is acknowledged that only four persons have been charged with money laundering under the current POCA law.

This Bill then targets and will impact directly upon the crimes of money laundering and financing of terrorism and that, therefore, the principal beneficiary as a result of this piece of legislation being passed is that Trinidad and Tobago, as a whole, will benefit from this legislation in that we can mitigate against risks to our international reputation by a greater level of compliance with the FATF standards which will make us a more attractive area for investment and so on. So we are very clear on this side that we are meeting our FATF obligations; that we are acting in accordance with the recommendations made; and that we are acting so well within the time period.

It is our hope that with the small amendment provided to section 2(iii), that this Bill will receive the support of all Members. Because you see, we have indicated that we have acted appropriately and properly in this matter; that we have extended our approach to embrace whatever amendments that make sense and we hope that at the end of this session and with the end of this debate on this Bill, that it will receive the unanimous support of this Senate.

Mr. President, I thank you. [*Desk thumping*]

Sen. Avinash Singh: Thank you, Mr. President, I rise today to contribute on the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism, Financial Intelligence Unit of Trinidad and Tobago) (No. 2) Bill, 2014.

Let me state from the onset that, through you Mr. President, the population needs to know that the manner in which this Bill was brought before this august Chamber is simply not right and in my personal opinion it is simply another section 34 waiting to be proclaimed.

Having said that, I am honoured to speak after the Leader of Government Business because it seems as though the responses and the recommendations and the contributions by all Senators opposite forced him to make the statement that he made earlier, [*Desk thumping*] because he was—[*Interruption*]

Hon. Senator: Strategy.

Sen. A. Singh: Whether it was strategy or he was really flushed out to speak is beside the point.

Like most Bills brought before this august Chamber and the manner in which they are brought, consultation is key. In his discourse, he admitted to the fact that they consulted and the information that they would have received, the legal ramifications and opinions were not shared with the public, were not shared with Opposition Senators and were not shared either with Independent Senators. Hence the reason why every single Senator opposite speaking here this afternoon raised the concern of that omission, 43(2), and I also care to raise it as an issue. Because if we want to be exemplars of the English law and we are drafting our legislation in that style, then we should follow in their footsteps and also include the wording and the mere drafting of that section.

I see no wrong in including that section so that there is absolutely no loophole that can be used against this legislation in the future because, leave it up to me, like all the other Senators that spoke, we had the impression that this Bill was one calculated loophole and, as my colleague put it, a get-out-of-jail-free card for many high officials in society.

This Bill, as it appeared before us, in our understanding—I am no lawyer, but I was on the same page as some of the lawyers here today thinking that this Bill was going to allow members who have committed offences related to money laundering over the years to walk free without justice being administered upon them, [*Desk thumping and crosstalk*] and I say this in the light of participants of the LifeSport fiasco, who blatantly raped our financial resources. To them, I say they must thank this PP Government for caring so much for them that a Bill is dedicated to them to ensure that they, like many others, do not see the inside of a prison. [*Desk thumping*] It could not have been said better by the hon. Minister of National Security in dealing with big fishes.

In his contribution, he alluded to the fact that this Bill is almost and merely procedural in meeting the requirements of the international institution that we are governed by because he indicated that in January 2015 we will be reviewed and he also said that we would look good by implementing this law. I do not feel it is in the best interest of the population for us to feel good when we know in our hearts that this law, having loopholes, will not have the effect in dealing with our criminal justice system where money laundering is concerned.

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This Bill, as it was really copied from the UK law, should really be in the light of the true essence of this intention to really deal with money laundering. So when a government takes the bold stand to bring legislation here, omitting a serious clause and section that, in our minds, is a blatant attack on our democracy and they wilfully leave out this clause, it just shows the population their true nature, their real intentions.

Mr. President, I say this in the light because I am very concerned about the fact that recent developments in our environment, in our political landscape sparked arguments and sparked public knowledge and I will share some of these stories with this august Chamber.

Let us not forget stories hitting the newspapers where senior members and high officials of State were not able to buy a “doubles” before 2010—let us not forget that—and now it is assumed or it is reported that they own six houses. Let us not also forget stories of persons with millions of dollars in cash in their trunks pursuing the purchase of land; or even from rags to riches, overnight.

Let us not also forget persons who have had to use the PTSC bus service, thanks to the PNM, of course, prior to 2010—

Mr. President: I do not know if I need to remind you the debate that we are in, it is on the Bill regarding the Proceeds of Crime, Anti-Terrorism, Financial Intelligence Unit of Trinidad and Tobago. I would like you to keep the debate on track.

8.00 p.m.

Sen. A. Singh: Thank you, Mr. President, and I will be guided accordingly. I will connect the dots in my contribution, Mr. President. I was just recollecting the intention and the fact that some of these incidents that took place really created a public awareness of receipts of large sums of money and receipts of money that in our minds directly relate to money laundering, and it could be said that there was fraudulent activity.

It is also public knowledge that many contracts issued—many government contracts issued, there were situations where you hear the level of cutbacks that have to be received and these sorts of things. Mr. President, I make this point because these scenarios really indicate that some serious acts have been committed, and with the present legislation and the omittance of that section 43(3) would have led to these cases and the intelligence gathering to fall on the wayside.

So, Mr. President, these cases really lead you to wonder how effective our income tax monitoring and reporting system is. I say this in the limelight because in the current system, when a person files income tax, our system is supposed to be in a position to ultimately audit that filing, and if it is knowledge that the income tax ultimately does not support, let us say, the purchasing of a Range Rover or the income tax cannot show that person being able to purchase a piece of land or even construct a building, it is in my view that the powers vested in the FIU and the Board of Inland Revenue should be able to take action and forensically investigate situations like that.

It leads me to the fact that our FIU is in serious shambles because it is understaffed. We have heard some of the issues relating to some of the cases where the FIU is concerned and their inability to deal with allegations and activity taking place in the society. Mr. President, we are here trying to legislate our financial sector as it relates to criminal offences mainly money laundering that is an indictable offence. Act No. 11 of 2009 made provisions for the FIU to deal with this type of criminal offence. While we have laws that deal with money laundering, we see in this Bill where the section 45 is going to be repealed, so now we are going to have a situation where the criminal offence of money laundering can stand alone, whilst in the past it must be followed after a conviction of a predicate offence.

I am saying this because now in the new section 58D—and I am happy that the hon. Leader of Government Business responded to the concerns that all the Senators had here this evening. I would like to ask the question that relates to 58D: is the Government now in a position, seeing that 58D allows our Attorney General to cooperate with an Attorney General in a foreign state? Is the Government now assuring the population that the cases that were most prevalent which is the Piarco fiasco where known UNC financiers are before the law? In an article which surfaced here, *Guardian*, Saturday, January 27, it is known that the US participants of this action, the US took action against those individuals already.

It was blatant that bid rigging took place and the US dealt with those persons. The point is: what are we doing about the individuals that fingers are pointing at here locally? Are we saying that we are going to allow the Attorney General of the US to come into our jurisdiction and prosecute for money laundering against these two individuals, Ish and Steve? Is the Government saying that it is committed now to having these men charged before the US law? Mr. President, I would really like to hear what is the Government's take on that since this situation has sparked a lot of contention and the infamous section 34 Bill.

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Mr. President, while I understand the real need for this intended legislation, it is in keeping with the international standards and we will be evaluated, and that evaluation will come in the form of two inter-related components for technical compliance and effectiveness. The technical compliance will assess whether the necessary laws, regulations or other required measures are enforced and are in effect, and the effectiveness component would assess whether the anti-money laundering and combating the financing of terrorism systems are working. Mr. President, I am saying this because the reports, as they show, is that an effective criminal justice system in terms of dealing with money laundering translates into convictions, and we here in Trinidad and Tobago have a very low conviction rate where money laundering is concerned and is the order of the day.

Mr. President, we also take note that in 2005, Trinidad and Tobago was assessed in the third round mutual evaluation where we were rated partially compliant and not compliant on 15 of the 16 core and key recommendations, and 20 other recommendations. Therefore, as a nation, we had sufficient time to get ourselves in order and get up-to-date while implementing some of the recommendations of that report. Many Senators here this evening spoke to the recommendations of what we saw as urgent and law that we see as an emergency to be dealt with in keeping with international standards.

Mr. President, we are here in 2014, months away from the next evaluation, and are we really in a better place? My humble opinion is that we are not in a better place. If we were in a better place, we can show the international agencies where convictions are concerned, we can show them that we have convicted at least some percentage of the reports that we would have received, Mr. President. That would be a question for the Government to answer since it appears that they really have more important Bills like the run-off election to deal with and do not respect the international image and our relations with the rest of the world which is a major driving force in our economy. [*Desk thumping*]

Mr. President, it is not strange to know that many criminal elements are operating in this country. They are indulged in placement, layering and integration of illicit funds and many Senators spoke to that this evening, but to the ordinary man they will understand when I speak to washing dirty money; facilitating huge drug trans-shipments; absorbing most of our foreign currency and sending it via air and sea; converting cash into other valuable assets trying to legitimize that transaction.

Mr. President, only a couple weeks ago we saw where a recent police raid resulted in a huge sum of foreign currency being confiscated. I am saying this because it leads to public pressure and public scorn because I will give you one example. I had to travel recently abroad and I approached my banking facility to get some foreign currency. I

have an account in the banking institution, and I went thinking I could withdraw a few hundred dollars of foreign currency to have as pocket change in my travel and, Mr. President, I was scorned to know that the bank offered me US \$20 of my own money, telling me that they do not have any currency available.

When the public sees situations where individuals in the society can move around with hundreds of thousands of foreign currency notes and so on, it leaves you to wonder what is really taking place. It leads you to wonder what the State is doing to combat this crucial element that causes—and hon. Senators indicated—crime, and there is a direct implication to the drug trafficking and the guns and ammunition, and Senators spoke to it.

The underlying point I would like to make here is that it appears as though these actions are done almost freely and comfortably in the minds of criminals without fear or favour, without fear of being caught. Since it is a perception that there is no consequence, it is a perception that you can do anything in Trinidad and Tobago and get away with it, and this transcends, as I said earlier, it transcends into our detection rate for criminal offences which is extremely low. It is just around 3 per cent, Mr. President.

Mr. President, other aspects of this Bill deal with simple inclusions and simple clarifications. It is basically a clean-up attempt of the existing legislation. And had I had to rate this legislation, I would simply say it is just a flirtatious decorative trimming that cannot really help our situation. [*Desk thumping*] It cannot really help combat money laundering, and I will not bow. I will not be forced to facilitate this drive by the Government to have us here participate in a government cheque book agenda. [*Desk thumping*] And like this law, Mr. President, it is simply procedural in its purpose.

Serious amendments, Mr. President, should really have transformed the financial sector and created fear in the minds of criminal elements to deter them from actions of attempting or even committing crimes. [*Desk thumping*] So when you have institutions like the FIU, we should have been really reshaping that structure into a hybrid structure, and not only giving them administrative functions, but giving them intelligence and investigative authority including forensic investigation authority. [*Desk thumping*]

Mr. President, months after this Government assumed office in 2010, it was noted that there were over 1,400 new businesses and professional registrations, while the number of suspicious transaction reports and suspicious activities reported were from 111 in 2010; 303 in 2001; 258 in 2012 and 554 in 2013. These

statistics represent the public perception of the level of corruption, fraud and money laundering taking place. I am almost certain that a number of red flags are raised every single day in every single financial institution when an ordinary person goes to that institution with huge sums of money in the form of government-issued cheques to deposit.

8.15 p.m.

Mr. President, some of these individuals go in the form of contractors, and the banking institutions know for a fact, having dealt with those individuals for a number of years, that those persons were never contractors before. So that in itself would have raised a red flag and would have resulted in that transaction being reported. So when those reports are logged, they are logged by the institution and that is the end of it. It just forms part of statistics. It just forms part of our statistics to refer to, nothing is being done.

We have no substantive breakthrough in our society to state [*Desk thumping*] that a percentage of our reports have actually convicted or persons were charged. I heard the Government referred to—I think it was four cases. I think out of those four cases, one infamous person in the form of a booking service for these cruise lines and whatever, was one of the persons involved, and another case was with a father and son, so those two would really categorize as really one. Mr. President, that is to say that we really are not serious about combating money laundering in this country, effectively and efficiently.

Mr. President, earlier today, my hon. learned colleague referred to a case that Sen. G. Singh raised when he suggested that Mr. Roopnarine Deonarine, a name on the list he called out, has matters for illegal quarrying before the courts. He said, “It is false and I represented him”. The fact is that the matter he referred to is that the guy is not before the courts, and in the case in the Sangre Grande court which was dismissed over four years ago, and he was murdered some two years ago, but yet that case was referred to. It is alarming to also note that some \$1.12 billion accounts for only 29 out of the 554 STRs and SARs filled in 2013. So we can only imagine the true values of actual transactions processed that were not detected.

I would also assume that various stakeholders, and this is a point that also gave me some level of concern, seeing that the hon. Minister of the Environment and Water Resources read from the legal opinion, so I will also assume that a Bill of this nature was really referred to and was opened for comments and recommendations and inputs from the DPP, because that is the office that will

have to prosecute on matters relating to this Bill, and they would have to make whatever adjustments and recommendations they see fit. But further to that, information also reached me that the hon. Attorney General also got advice, and I am certain that he got advice to include the UK Proceeds of Crime Act 2002, section 340, subsection (4)(c), but, as usual, for political convenience it was left out.

Mr. President, I turn your attention to the United States, and my colleague initiated discussion on the recent development on the taxation system employed by the US, and that is for the effective and efficient taxation by the State on all citizens and legal permanent residents, whether they have accounts locally or internationally. I also would like to put my point on the record that we as a nation should really look to lobby and have that reciprocity agreement, so that all our nationals banking in the US can also account for their investments and assets in maintaining a law-abiding society and prevent pervasion of taxes to our State. This would also combat the issue surrounding fraud, money laundering and financing of terrorist property.

Mr. President, another point I would like to touch on, and it was also briefly touched on by Sen. Helen Drayton, in terms of businesses that are not covered under the regulatory framework of this legislation. It is of great concern that businesses that you would least expect could be indulging in questionable activity. Sen. Drayton identified gambling and betting machines in every nook and cranny, but I would like to go further because at a community level there are some groceries and there are some food chain outlets and so on that have staff members, that have to pay a rent, some huge, huge rent, and when you look at what is being sold or the average turnover from your understanding, it does not add up. It does not translate into a profitable entity, yet still they are existing.

So, this is one of the concerns that I also had where the spectrum should be broad in identifying businesses, for example, contractors, businesses also selling—and this was something mentioned by a previous speaker, where some businesses actually sell their goods and services below the cost price. These are issues for us to red-flag. It is, in my opinion, that these businesses are seriously involved in some questionable activity and criminal offences, money laundering being the main.

So, Mr. President, in my view, a more serious approach needs to be taken if we really want to accomplish the true essence of anti-money laundering legislation. As articulated before, these amendments certainly do not really stand in the way of authority cracking down, and we saw that displayed here today in

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the to and fro arguments where “big fishes” are concerned, because there are provisions in our law, and it was mentioned, where persons can be arrested, legal action can be taken against citizens where there is blatant breach of our laws. Respectfully, in my view, if the authority really wants to pursue convictions, they really can, but they are afraid. They are simply not ready to handle the fact that if they were to pursue, some of them might very well have to lock up what they see in the reflection of a mirror.

Mr. President, before I close, I would like to go through some of the glamouring effects of an article that was published on Sunday, July 07, 2013; the headline states “\$Billions in Contracts for”—US—“Financier”. This article, very interesting, spoke to ghost companies, and Sen. Al-Rawi would have mentioned the effects of all these ghost companies that are currently in our Companies Registry, but this one, in particular, was done by Mr. Stephon Grey, who is the Managing Director of BDO Forensic Accounting. That is the world’s fifth largest network of auditing firms. He indicated that there is a lack of due diligence and this has resulted in the largest contract awarded in the country over the last two years.

Mr. President, some of the things that he raised, which is also interesting, is that the public perception and the Corruption Perception Index, the public feels that this is just a perception but the actual reality, and sometimes the perception is just about 20 per cent and the other 80 per cent of that perception is the actual prediction and preliminary investigations that are conducted by these foreign experts. I would like to also caution all those individuals that feel they can pervade the course of justice by the US that they have to think twice, because once you wire-transfer money and it goes through an intermediary bank in the US, it is recorded. I am just saying this to say, “if you plant corn, you will get corn, and the seeds you sow, so shall you reap”. It may not come around in the near future but it certainly will catch up with you, if you have conscience at all.

So, Mr. President, I would like to close by saying, the urgency and the emergency of bringing this Bill in the manner in which it was brought here clearly articulated comments from all Senators here who, in my view, looked at this legislation as a step in the right way, but just the manner in which it was brought really sparked an intense debate. I also wish to add that I will not be prepared to support legislation like this because I will have to live with that in my conscience from now until the Almighty is ready for me. So, I am just saying that I would like to stand here and support good legislation but the manner in which it was brought, I decline to do so at this point in time.

So, Mr. President, with those few words, I want to thank you again for allowing me the opportunity to make a very brief contribution to this money laundering legislation, and hope that the Government really take heed and act in the best interest of the wider population, so that all in society will not have that public scorn when we see articles surfacing again, “from rags to riches”, and we question the ability of those individuals in society having received and having gained that property which they would have had. So, Mr. President, thank you again, and God bless. [*Desk thumping*]

Sen. David Small: Thank you, Mr. President. It is such a pleasure to be back here after this long holiday. [*Desk thumping*] I had so much fun. Mr. President, I must say, you look hale and hearty yourself, you seem to have enjoyed the break. It is happy to see you.

So here we are, we are in the new session and we are here talking today about the Miscellaneous Provisions Bill that deals with a crime that does not, apparently, exist in Trinidad and Tobago, because white-collar crime does not exist. I have checked the records and it does not exist. If anybody has ever been prosecuted I would like to learn of it, but, to date, August 19, 2014, no one, no one has ever been prosecuted, so that is something that needs to change.

I listened intently to the speaker just before me, Sen. A. Singh; he made several excellent points and one of the points he made [*Desk thumping*] I want to belabour. He made a point about intermediary banks and transactions, and I am sure the Members on the Government side are aware of this, that once you do a transaction and it goes either to or through a US bank, the US State Department logs that and they keep records of it, and, at the point in time, there may be requests for that information. They cannot do anything with it unless there is a request. So I think that the issue of where money goes, people know where it goes, it is just a matter of accessing information and taking action, and I am not sure where we are with that, but, to date, nothing has happened, nothing has happened.

Mr. President, in money laundering, you know, the term “money laundering” is said to originate from the Mafia ownership of laundromats in the USA back in the 1920s when they found that they were earning all of this huge amounts of money from extortion and gambling and liquor, and they did not know how to get that back into the system, and they found that laundromats, because they were essentially a cash business, was one way of effectively getting money clean. And if you think of what a laundry does, you take dirty stuff in, they do something with it and it comes back out clean; that is where money laundering, basically, the term came from.

I think that because we are also talking about the issue about the FATF, you know, we need to understand the scale of money laundering. According to the IMF, they estimated that the aggregate size of money laundering, globally, is between 2 to 5 per cent of world GDP. It is trillions of dollars. It is not an insignificant amount of money and, you know, I have looked at the FIU reports and something is wrong with those reports, and I will come to what I view is wrong.

8.30 p.m.

But my learned colleague here to my right, Sen. Vieira, made a point about “smurfing”, and perhaps, you know, many people did not understand what “smurfing” is. But the legal limit here, before you have to report any transaction, I think it is \$60,000. All “smurfing” means is that, if you have a million dollars to deposit, you break it up into \$50,000 pieces, and you send little elves out to make several deposits, make one today, make one day after tomorrow and you break it up in the system, it does not appear, and that is all it is. And that goes on every day in Trinidad and Tobago, every single day. And, you know, we operate in a space where we want to think that the right thing is happening, and I would say that the right thing is happening up to a point, but we need to acknowledge that a lot of wrong things are happening, and nobody is saying that. And that is my issue. No one is saying that wrong things are happening. We are all walking around, hunky-dory; it is all wonderful; it is smile. Good; but let us face the reality.

You know, my good colleague also mentioned the TV series *Breaking Bad*. I am actually a huge fan of that. I looked at it from series one, all the way down to series five, and it showed you how the mind of the people who are in the legal business, sometimes people actually get into business, not necessarily with some kind of, sinister intention, probably something, you know, just a basic—and then they get caught up, and then they are stuck, and you cannot get out of it; you cannot get out of it. That is what has happened.

You know, there was a part in the series where they talked about getting the “pseudo”. It is pseudoephedrine. It is a drug that is normally found in cold medicines, and because out of that you can get the chemical which is the basic building block of meth, crystal meth, the US has had to put controls on it. You cannot go into a drugstore and buy more than, I think, two or three boxes of that without having to answer serious questions. It is illegal because they know that the basic building block is based in there. Which is why, if you looked at the TV series the guy was always struggling to get “pseudo”. Could not get—so if you did not know “pseudo”, pseudoephedrine; that is what it is. Yeah.

So it is just information, it also speaks to how people have had to become creative, and we need to understand that, that the people who are doing criminal activity have become creative. Every time you put a system in place, they find another way to navigate the system. And then unfortunately, there are actors who facilitate them getting around the system, and we need to acknowledge that.

So that, you know, the only way to deal with money laundering—money laundering is essentially people having the proceeds of crime and trying to find a way to get that money clean. And you need to find a way to cut off that flow of funds, and then to remove the ill-gotten gains from them. There is no other way to fix this.

So, SEC, I have a list here. Securities and Exchange Commission, 18 years, no prosecutions. FIU Act in place, five years, no prosecutions. Process for Commissioner of Police, no action. Oh, sorry, wrong list. Yeah.

So, you have things happening and not happening, and there has to be an underlying reason. We tend to, you know, I looked at—there was this thing online a few months ago, this HBO series *Vice*, and they did a thing on Trinidad, and you know how real everything was, but the guys kept referring to “Mr. Big”. The guy who really—and they say the guy—that is the guy who really runs this is a guy driving around in a, what they call, “big ride” and in a suit. That they are the guys, they are the underlings, they are running around, but if you get rid of one of them, five more appear. So, we have to find a way to get to the people at the top of the food chain, otherwise all of this that we are doing here, we also start to spin top in mud, as the saying goes.

So that, I think one of the issues we also need to understand is that Trinidad and Tobago has a massive underground economy. People do cash transactions is the norm. I am often astounded—you go to the car parts store, and a guy walks into my favourite place—I would not call the name, I do not want to get the business in trouble—and people walk in, and a set of rims is like \$27,000, and a guy does this [*Member reaches into his pocket*] and he just puts it on the table. “Yuh taking cash?” “No problem.” That happens every day. So that I am not saying, perhaps there is a legal way you can walk around with 20-something thousand dollars in cash. If I have three or four hundred dollars on me, that is probably—I am—thank God for LINX cards. [*Laughter*] Yeah. Because that is what I do. [*Crosstalk*] Well Gold Rush; I would not comment on Gold Rush. [*Laughter*] For Gold Rush you need single dollars and \$5 bills, man. Come on, man. You need change. [*Laughter*] At least so I have been told. [*Laughter*]

But we have to recognize that we have a significant underground economy, and businesses have systematically not been reporting these transactions—systematically. You know, the US has a wonderful system. If you go to a bank and you deposit \$10,001, the bank—everything is automated—from the time the cashier punches “enter” on the system, that goes straight to the IRS; that is it. The bank does not have to do anything. The system is connected. You cannot make a cash deposit more than US \$10,000 without automatically—the information on that, your name, social security, address, whatever, goes to the IRS database, and a flag goes up. That is what we need. That is what we need. Because this is where there is a loophole in this current system. If a transaction, a business is doing all of these huge cash transactions, coming in the bank and making huge deposits. “Wow! We had a wonderful weekend. The club did very good this weekend. The restaurant did very good this weekend.” I hope that when they are doing their BIR submissions that it reflects the amount of money that they claimed because that is the fundamental gap. *[Interruption]*

Sen. Al-Rawi: The revenue authority.

Sen. D. Small: Yeah. There is a gap between what is deposited in the business account as the proceeds of the business, as opposed to what is claimed in their BIR. So that I am not sure how we address this, but that is a big gaping hole in what we are trying to do. *[Desk thumping]* There are several shadow businesses. Some businesses, you go into the business there is a sale 365 days a year—rainy day sale, sunny day sale, kind of day sale, whatever day sale. A Monday sale, Tuesday sale, Sunday sale, and then the business is just—it is amazing.

So that there needs to be a way to link what people or businesses say this is the revenue that we have earned from our business, that information has to be fed back to the BIR. So that when you come to do your organization’s/company’s accounts, what you have deposited in cash, or whatever form, into the banks and say this is the proceeds of the business, that is reflected in what you say are the revenues of your business. We need to find a way.

The US has a wonderfully interlinked system, similarly in the UK. The financial regulator there is very strong that you cannot make deposits. I mean, I have looked around the world. I mean, in Australia they have something called AUSTRAC, where there is a threshold for transaction reporting, \$10,000 Australian cash. Banks, any—car dealers, everybody. You come and do a transaction over \$10,000 Australian, automatically it is reported to AUSTRAC—automatically. The US is the same thing. South Africa, interestingly their threshold is 25,000 rand which is roughly about five or six thousand US; I think about six to one. But

attorneys, car dealers, real estate agents, those are the people who they target. That when you, someone comes and does their cash transactions of this size, automatically it goes into their system. And we need to find a way to get that done because that is the only way. If you cannot track it, you cannot catch it. You have to be able to track it.

I know this is not necessarily the intent of what you are trying to do today, but at some point in time this needs to be addressed. I had—several of the points made by my colleagues earlier, I fully endorse, I support. And I want to take the time also to commend the Leader of Government Business for making that clarification because I too had some concerns. I appreciate from my side that I think that it was important that the Minister and the Leader of Government Business made the clarification about why what seemed to be an omission was not really an omission, and there was nothing else in it other than this was the guidance that the Government had received, and I appreciate that because that helped in my internal process.

So, I do not have to talk about that again, but I think that that issue is an issue, what was done in the UK because at some way we need to start to put and inflict some pain and take some things back, take some things back. That is the only way that this is going to really have any effect. When people recognize, those who are involved in illegal doings, that with passage of this legislation, not only what they are doing now going forward is impacted, but what they have already accumulated could be impacted, then perhaps you can strike a little one back for Trinidad and Tobago. I think it is important that the legislation captures that.

So, Mr. President, I also took issue with the way in which information is currently captured. I looked at the FIU reports and, Mr. President, this is another point made by erstwhile, young Sen. Singh. You know, there is something wrong with the data capture because, on my last check, there are 107 branches of commercial banks in Trinidad and Tobago; 107. In the period January to March of this year, the FIU reported 54 suspicious transactions. Three months, 90 days—well let us say of those 90 days, 20 business days a month, 60 days of business transactions, 100 branches, 54 transactions for TT \$33 million. I am astounded. That number—that is significant under-reporting. You look at April to June of this year, 45 transactions, 107 bank branches in Trinidad; 107, and 60 business days, at least, and 45 transactions are suspicious. We are the cleanest country in the world.

If you work out, I mean, how many transactions the bank, each branch does on an average day. If you say that each branch does a hundred transactions, 10,000 transactions a day—and you get 45 for three months? Something is wrong. Something is wrong. And I am not saying we are all—but the percentage here

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works out to one, one thousandth of—it is an insignificant number. So it points at again, probably that explains why there is no white-collar crime. White-collar crime does not exist because according to the FIU data, the reported numbers of suspicious transactions are infinitely small; no pun intended. [Laughter] But I have a thesis for the Minister of Finance and the Economy, and Minister of Finance and the Economy I told you I will not be talking about the tax-free saving bonds. I am giving you a “bligh” on that tonight. [Laughter]

But I recall that we had more than one discussion around the issue of the shortage of US dollars. Erstwhile Sen. Singh also mentioned that issue. And, you know, you look at the data, and I try not to be a conspiracy theorist, but when you look in the period, the Central Bank on April 02 changed the system for allocating US dollars. When we look at the FIU report, in the period between January to March 2014, of the \$49 million, the total value was about US \$2 million. In the period April to June 2014, the amount of suspicious transactions in US dollars was \$33 million. And I go back to the previous quarters, I am not seeing any other quarter when it was that high. So, I—unfortunately I do not believe in coincidences. For the first time since the FIU has been reporting, in one quarter, they have US \$33 million reported in what they consider to be suspicious transactions, just at the same time when the Central Bank changed the regulations. Something smells very, very wrong. [Desk thumping]

And these are the things that, unfortunately for me, I dive into the numbers. When you put something in front of me, I look at it, and I establish the veracity. That is what I do. And if when I look at it, the supporting information is fishy; it is fishy. This is something that needs to be investigated strongly. If they found these transactions, US \$32.8 million in suspicious transactions, at the same time when there were these changes, and nobody—poor Sen. Singh could not get US \$20—20. But something is wrong. Something went wrong here—[Crosstalk] and I should stop on this, otherwise there may be an injunction against me for talking.

So, I do not want to lay blame or cast aspersions, but I believe that the Minister of Finance and the Economy is probably aware of this. I am sure that the Minister of Finance and the Economy is aware, but it is glaring. It is not reported anywhere, but this confluence of events cannot be a coincidence; cannot be. And I would ask that the Minister of Finance and the Economy uses his good office to just ask, make the appropriate enquiries about these particular suspicious transactions because they raise a huge red flag for me. [Desk thumping]

8.45 p.m.

So, Mr. President, we are having a fun time tonight. I did not intend to detain our colleagues here. *[Interruption]* But also we need to understand that the way in which money laundering works, it works through the formal and normal systems. Money laundering does not—you know, suitcases of money traversing in the back of trunks and just ending up in places. It goes through the formal system.

Mr. President, if you would permit me? One of the largest US banks, a bank called Wachovia, in 2010 they were indicted by the US Government, and they were fined \$110 million for facilitating transactions for the Mexican drug cartel. Do you know how much money they facilitated?—\$374.8 billion in the space of five years; \$374.8 billion in illegal drugs. I mean, we need to understand how big this is, and it is facilitated through the formal institutions. It is not facilitated through the “lil” wire dealer Western Union people or the “lil”—nah, nah, that is insignificant, and that is why I found it strange; that is where the bulk of things appear in the FIU reports, for a wrong focus. Something is wrong. It is going through the formal system, it is in the formal system and no one seems to want—it is a pet peeve of mine, credit card rates and all these other wonderful things, but I think that some more focus is required on the formal system. There are people who are systemically accepting and facilitating money laundering and there does not seem to be any action.

My opening thesis is, “White-collar crime does not exist”. It does not exist. Okay? There is no way with 107 bank branches that in three months, 60 business days, with each branch doing on average, 100 transactions a day. That is 10,000 transactions every day, and that is an extremely small number. You look at one of the big Independence Square branches, I mean, they do hundreds of thousands of transactions a day, you are telling me in three months they are making 45 transactions that are suspicious? That number is so small it is simply not believed. It is not believed. *[Interruption]* The smurfs and all these other techniques are in place, and as a bank you must know. If somebody is coming to deposit money into Mr. Sturge’s account every other day, of \$50,000, that is supposed to raise a flag. It might be below the threshold. But if in five days you get three deposits of \$45,000, something is going on there.

Mrs. Robinson-Regis: Just say that you are an attorney-at-law.

Sen. D. Small: I am not going there. *[Laughter]* Mr. President, I think that the legislation is going in the direction that we want it. I was pleased to see several of the provisions that are in here, they are certainly strengthening what we have now. I think it could still use some additional strengthening, and I understand the

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challenges of the FIU with staffing, and I was having a conversation over tea with the hon. Minister of Energy and Energy Affairs, and he expressed to me the challenges he is having with keeping staff. This is not a new problem. It is a problem of the system. If we do not pay people properly you lose them. I do not know when that is going to permeate throughout the systems. *[Interruption]*

Well, the Leader of Government Business pointed me to the SRC, but I do not want to beat up on the SRC tonight. I am leaving that for next week.

Hon. Senator: I will. *[Laughter]*

Sen. D. Small: But, I believe that these are systemic things that need addressing. You would always have challenges keeping quality people or even attracting quality people at the levels that we are paying people, and it needs to be fixed.

I understand that the Minister is making some measure of activity, because the Ministry of Energy and Energy Industries is absolutely a critical Ministry to the country and I support what he is doing, because I think that where we are, we are at a critical phase in our development and you need to have the best people on board to get things done properly. I mean, I heard about being handsomely paid, but I love being handsomely paid because I work hard. *[Desk thumping]* I work hard so pay me. I believe that.

So, I think that when we are here, and we understand that we have systemic problems—we have a problem with the legislation. We are trying to put things in place in the legislation, but the legislation is going to be useless if we do not have people to effect it. I think the hon. Senator on my right, Sen. Vieira, made the issue about making sure people have access to the appropriate training, long-term training.

The Government has access to a number of scholarships. Get people going and get the people in there with the skills to go and do forensic auditing, to go and dive down into accounting. I mean, it sounds like hard science. If you give me a set of accounts, I can go into those accounts and I—probably I spent too much time, in a former life, being the chairman of an audit committee for a board, so I understand about going in and finding where things are, and it is very easy if you know what to look for, and how accounting could be very creative. I think that is what we need. We need to have the appropriate support structures in place to make sure that the legislation that we are going, hopefully, to pass with some amendments has the capability to deliver on what we are hoping to achieve.

So, Mr. President, with these few words I would say, thank you for the time given to me. [*Desk thumping*]

Sen. Wayne Sturge: Thank you, Mr. President. Like my learned friend, Sen. Al-Rawi, I have very little to say on this Bill [*Laughter*] but unlike Sen. Al-Rawi, I will not take an hour to say it, so permit me 15 minutes of your time to deal with certain matters which were raised.

Now, Mr. President, permit me to read from the parent Act, which we are here to amend—one of the parent Acts which we are here to amend, and that is the Proceeds of Crime Act. Now section 2 subsection (3) of the parent Act reads:

“Reference in this Act to an act that would constitute an offence includes a reference to acts which would constitute an offence committed before the commencement of this Act.”

So, what the parent Act has said in essence, since 2009, when it was passed, is that they are taking into account conduct, actions which occurred before the legislation was passed. In essence it was retrospective. Today I came here and I sat amused, because I had cause to use this Act in court quite recently when I assisted a colleague of mine, Mr. Merritt, in a matter where, I think, it was US \$150,000 was confiscated. Well in the end the applicant lost, so that the State got to keep her money. When one is doing a case one has to read the Act in its entirety. So, I sat here and I listened to speaker after speaker, and let me quote some of the things that were said.

There was reference to this being “another section 34”. There was reference to this being, “I hope it is not a deliberate loophole”. Another reference, “Is this not another get-out-of-jail-free card?” And all of that with reference to section 43(c), what was left out. They are saying it was left out, and the argument was that it was left for no good reason, for some sinister reason and that this was the Government, à la section 34, trying to pull wool over people’s eyes. Now, I sat here bemused and almost flummoxed. So, during one of the breaks I ran over to one of my colleagues and I had a little chat with her, because I thought I was going mad. I thought I was in the theatre of the absurd. [*Laughter*]

So, I spoke with one of the technocrats who I knew before coming here, and [*Interruption*] yes, it was amazing. She reminded me that retrospectivity is already in the Act, so what is all this big song and dance about? So, all of this—and there should be an apology, I think. There should be an apology in retrospect. [*Laughter and desk thumping*] I am not referring to the contribution of Sen. Drayton. I did not quote Sen. Drayton. I am quoting in particular two Opposition Senators. Because while Sen. Drayton made reference to this clause which seems to leave out the retrospectivity aspect, her language was measured. So, no one can complain about that. But, my colleagues in the front engaged in—

Sen. G. Singh: “Mauvais langue”.

Sen. W. Sturge:—histrionics. I would not say “mauvais langue”, that is for outside—histrionics and demagoguery, which seems to be the order of the day. [Laughter]

To incite and inflame passions and say this is another section 34; this Government cannot be trusted; look at what they are doing again, they are trying to buy a get-out-of-jail card for themselves and so on; and I sat here and I was amazed.

Hon. Senator: Flummoxed.

Sen. W. Sturge: Flummoxed. So, you now know a new word. It was almost like I was caught catawampus. [Desk thumping and crosstalk]

I am very perturbed and I promised to be short. I am very perturbed and let me say why I am perturbed. As a lawyer, when you go into court you read all the relevant legislation, but I assume that if you are going to amend an Act of Parliament and you are going to speak about the amendments and what is going to be amended, repealed, replaced, whatever, that the first thing you should do is to read the parent Act.

And if anyone had started reading the parent Act, if my two legal colleagues in front, Sen. Robinson-Regis and sometimes Sen. Al-Rawi, if they had read the Act, by the time they got to page 10 they would have known that retrospectivity was not an issue. So, I have to ask now, was that a deliberate act to mislead the public into thinking that this was a get-out-of-jail card when clearly it was not, or, was this simply—[Interruption]—I would use the word “finagling” for Sen. Al-Rawi, was it simply a case of “waifing”? [Laughter] That is an easy word for Sen. Al-Rawi. Was it simply a case?—because they speak about section 34, and they speak about section 34, they pray in aid section 34 when they made their arguments. They pray that in aid, and they prayed it in aid to suggest somehow that the Government alone was responsible for section 34 when they supported it.

Section 34 could not have happened unless they were complicit. Unless they were awake at the time and following the proceedings and alive and focused, and doing their job. If they were alive and focused on doing their job, they would have realized that the retrospectivity clause already exists in the legislation, so there was no need for this big song and dance and praying in aid section 34, and talking about deliberate loophole and get-out-of-jail card, and all of that. So, I must say, this is a wake-up call. [Interruption] It is a wake-up call that the lawmaking body

can talk about amendments without actually reading the Act. That is a wake-up call and that should not happen. And it is dangerous because it comes at a time when people are looking on and people are listening, and it is unfortunate when people are listening that we can get up in these esteemed Chambers and make allegations and throw rumours around as if they are facts, as my friend Sen. Singh did.

So, you cannot keep making reference to—well, it is alleged that someone had money in his trunk. That is a TV show. It is alleged that someone got six houses, and it is alleged, and it is alleged. I think society has moved on from propaganda.

9.00 p.m.

So that sort of propaganda can only appeal to the base, but we have to—since this is not the Lower House we owe a responsibility to the people of Trinidad and Tobago to take it up a level and not engage in that sort of rumour-mongering in this Chamber. [*Desk thumping*] Now—[*Interruption*]

Sen. Al-Rawi: And with these few thoughts—

Sen. W. Sturge: Yes, Sen. Al Rawi. Before I close, I want to bare a real-life situation as to why prosecutions are few and far between in our jurisdiction and why convictions are going to be unlikely in this jurisdiction. Whilst Sen. Al-Rawi was going on and on, I had a conversation with my friend, the Minister of Energy and Energy Affairs, Sen. Ramnarine, and lo and behold two names came up on a list mentioned by Sen. Ganga Singh, two of them former clients.

And I want to tell this story so that you know why convictions are hard to get in Trinidad and Tobago. Illegal quarrying really took off in 2007, we got the history from Sen. Singh, Ganga Singh. Now, I represented two of those persons, I am not going to repeat their names, and when I first charged one particular client, in a sense I felt sorry for him. He was not dressed properly, and so on, and he was complaining about the fact of a conviction hanging or looming over his head and so on and so on. And when I drove—I was driving a Honda Civic back then, when I drove up to the Sangre Grande Magistrates' Court to represent him and I was waiting on him, he drove up in an E-Class Mercedes Benz and from there on I started to wonder, how could I short-change myself like this. I should have just told him, look, the deposit is X, and we will see how it goes.

He won the matter, although he confessed to illegal quarrying. He confessed, and it was amazing to see how the police officer collapsed in cross-examination to the point where he is, in essence, saying, "I made up this confession, he did not actually confess". So I asked my client at the time, how is it that you managed to

escape criminal charges all these years. You have been quarrying for all these years, you drive a better car than I do—I was renting at the time, he had a very large house, and how do you manage to get away with it, you only ever got one charge. And he related to me that he only got the charge because they had changed the divisional head in the police station.

So that whilst he is busy quarrying, and before there is ever a raid he would get a telephone call from the police station to say, well, we are coming to raid, beat it, make yourself scarce. So he went on and on for about seven or eight years, undetected, and when they changed the divisional head—I think it is North Eastern, the Sangre Grande Police Station is located at, that is the division, when they changed the divisional head, the divisional head did not know him and he did not know the divisional head, and so he got charged. He did not get his phone call, but the thing is—an otherwise credible police officer who is very hard to cross-examine, when he comes to town in the High Court collapsed miraculously and said, well, in essence, “I made up that confession”, and the Magistrate had no alternative but to acquit.

Sen. Cudjoe: What happened to the police officer?

Sen. W. Sturge: Well, what happened to the police officer? Nothing, nothing, and in Trinidad and Tobago the short point is, at the ground level, it is very difficult to get convictions if people are not willing to come forward and give evidence. That is the first thing. It is easier to get a conviction at ground zero and the higher-up you progress then you are basically untouchable, an Al Capone. And it is easier because if you are in money laundering then enforcement no longer takes the form of threats and so on. People do not respond kindly to threats, they respond better to bribes. And those who are in a position to deal with you, so to speak, you are in a position to deal with them in a way that they like and in a way that you do not mind. And, therefore, there is no one to rat on you, no one to give evidence against you and the type of evidence that we are called upon to rely in order to convict is very hard to come by.

I say that to debunk two points—well, one point really, in essence, made both by Sen. Al-Rawi and Sen. Singh when he regaled us with part two of Sen. Al-Rawi, Sen. Al-Rawi’s second contribution, when he gave the impression that somehow the Government is responsible for the low conviction rate. That is misleading and I take this opportunity to correct that so that Trinidad and Tobago would know the Government has nothing to do with convicting anyone. The fact that people are not being convicted has nothing to do with the Government. All the Government can do is bring legislation and when the legislation is brought,

how it is proceeded with in court by the relevant prosecuting authorities is another matter. And that is not to suggest that the prosecuting authorities are in any way inept or corrupt. It is simply to say that a conviction can only be based on the quality of evidence that is gathered. And that is a problem that is endemic; that is a problem that pervades the entirety of the criminal justice system. So, it is wrong and I know he is young so I ask him, [*Interruption*] and he apologizes, so different to all the others.

Hon. Senator: He apologized for listening to you.

Sen. W. Sturge: Now, just a few points before I close, I will be very short. I just want to make reference again to something that was a bit misleading when it was said by Sen. Al-Rawi, and he made reference to harmonization of terminology in the Bill and we should be consistent throughout in terms of what is the standard of proof. Sen. Al-Rawi made reference to one part of the Bill saying, well, it is a civil standard and another part saying balance of probabilities. Well, news flash for Sen. Al-Rawi, balance of probabilities is the civil standard of proof, so it is not different. So that is a distinction without a difference. So I think Trinidad and Tobago should know that Sen. Al-Rawi is not on point.

Sen. Al-Rawi: Me!

Sen. W. Sturge: He may be voluble but he is quite vacuous. [*Laughter and desk thumping*]

Sen. Al-Rawi: 35(5), Mr. President, I mean—

Sen. W. Sturge: I withdraw it.

Sen. Al-Rawi: I am putting my jacket under strain here.

Sen. W. Sturge: [*Laughter*] Mr. President, I am heartened by the discourse I heard, particularly from the Independent Bench, I particularly always look forward to and always enjoy Sen. Mahabir and Sen. Vieira. [*Desk thumping*] And I am thankful for the contributions they have made and Sen. Small, and “smurfs” and all of that, I also enjoyed his contribution. And having regard to the serious repercussions that can be effected if this Bill is not passed, I feel so good about the level of camaraderie. I ask that when the time comes to make the relevant amendments and so on, that in the spirit of that same camaraderie, that we do the necessary, so that we ensure that all citizens of Trinidad and Tobago do not feel the effects of a blacklisting which may be the consequence of not voting. So with these few words, I beg to take my seat. [*Desk thumping*]

Sen. Diane Baldeo-Chadeesingh: Thank you very much, Mr. President. I am very delighted to join in this debate, and I listened very attentively to Sen. Sturge, and I will come to him in a moment. But I remembered when I first got this Bill, I read it three times and I said to myself, I was asking the questions, you know, what is the mischief being proposed or created here? What is the Bill attempting to say and how will it affect citizens and stakeholders? Now, I listened to Sen. Singh and Sen. Sturge and I want to state categorically that the PNM studied this Bill extensively and we have done our research and we are not in agreement with your interpretation and justification, especially regarding section 43(2). [*Desk thumping*]

Sen. Al-Rawi: Lightweight, man, lightweight.

Sen. D. Baldeo-Chadeesingh: You know, Sen. Sturge said that he was amused by what persons on the Opposition Bench said here today. But what he probably neglected to see is that we too were also amused at many of the things that he had to say, and further he wants an apology. An apology for what? Expressing our stance on a matter? Senator, through you, Mr. President, are you attempting to take away our right of speech in this Senate as well. [*Desk thumping*]

Sen. Al-Rawi: Take out your eye with the jacket.

Sen. D. Baldeo-Chadeesingh: You know, perhaps it is déjà vu, because in August 2011 it was section 34, now August 2014 section 43, it is just a reverse. But, Mr. President, crime kept unchecked by Government leads to narco states and mayhem, and that is a sad reality.

Before I get into my contribution, Sen. Singh said that several people had been taken to court for illegal quarrying and he also read a long list of names to show action, and he said that is not true that nothing was done. And he read the name of Roopnarine Deonarine. Well, the fact in that particular issue is, the matter was taken to the Sangre Grande Court. The matter was dismissed four years ago and the man was murdered two years ago. Government still has no explanation for any serious work.

Interestingly as well, I heard a lot of talk about fish and, you know, fish was even prepared for us here at Parliament so I ate it as well. But I myself have not been fishing more than maybe three times in my lifetime, Mr. President, but there is a simple logic that tells me that once there is fish in a particular area and you cast your net, if it is a large net, you catch a lot of fish. If it is a small net, you catch a small number of fish. But if you go out without a net you will catch no fish, and the Minister of National Security said more than once today that this is the “big fish” Bill. Yet the clause to catch the big fish has been omitted and that clause must be included to widen the net. [*Desk thumping*]

Sen. Griffith: Is something fishy?

Sen. D. Baldeo-Chadeesingh: To no end this Government professes their love for the UK and the Privy Council, yet the Government left out that all-inclusive clause of the UK law which is important—again, to catch that big fish. On page 206 of the UK Proceeds of Crime Act, under Interpretation section 340, clause 4, subsections (a), (b) and (c), in the UK Act comprehensively covers the following: What is criminal conduct? Who benefits and when? What is important is that the UK Act ensures that there is no time limit for such an indictment. In the UK Act even if the Act or conduct occurred prior to the Act becoming law, Mr. President, it has retrospective effect and of course as soon as the law is assented to, all involved cannot escape. Without this subsection, this Act is useless. [*Desk thumping*]

9.15 p.m.

In the event of the FIU—[*Interruption*—you had your chance, it is my turn now. [*Desk thumping*]

“In the event the FIU receives a suspicious transaction or suspicious activity report or information from a financial institution or listed businesses under the Act, it shall provide feedback in writing on the report or information to the financial institution or listed businesses.”

The Government, in this area of crime and illegal activities—I am showing the success linked to stakeholder collaboration—must follow the principle of collaboration of stakeholders. The area of criminal activity, money laundering, drugs and illicit transactions are a cancer in any country and slowly kills that country’s image and life of the people. The UK, from whom this country mirrors its jurisdiction, has not been effectively used for our benefit in this Act.

We, on this bench, propose that the Act must include the clause which will allow retrospective effect and therefore no one shall escape, and acts that took place prior to the passage of this law would be covered by such a clause and will ensure that any, in future, will also be covered. Fiscal investigations can be very detailed, but no matter, when acts were committed and for how long these take, all involved will be answerable to the law.

“Where, after the analysis of a suspicious transaction or a suspicious activity report from the financial institution or listed business...the Director is of the view that further information may disclose that a specified offence has been or may be committed or the proceeds of crime are, or may be in Trinidad and Tobago”—or elsewhere—“he may—

- (a) request further information from a financial institution or listed business within a specified time, which information shall be provided accordingly;...

After the FIU has concluded its analysis or evaluation of a suspicious transaction or activity report, and where the Director is of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority—for investigation—to determine whether a money laundering offence has been committed, or whether the proceeds of crime are located in Trinidad and Tobago or elsewhere.

Co-operation and liaison with other authorities and persons:

The FIU may, in the performance of its functions, co-operate and liaise with—

- (a) the Central Bank and any other agency of Government;
- (b) the relevant authorities specified by or under a treaty or co-operation...
- (c) any person who, in the opinion of the Director is able to assist in the provision of information relevant to an analysis of intelligence or other information.”

Where are these duties of the FIU to date, Mr. President, given the suspicious transactions of illegal activities? Where are they?

In less than six months, Trinidad and Tobago will become the first country in the region to undergo the fourth round of evaluations utilizing the revised Financial Action Task Force’s 40 Recommendations. Many certified anti-money laundering specialists are concerned that Trinidad and Tobago may be blacklisted if it failed to meet the necessary requirements. Can the Minister assure us from verifiable documents and reports that this country will not receive a negative report because of non-compliance? Can he?

Mr. President, when I was researching for my contribution today, I came across the Foreign Account Tax Compliance Act (FATCA), which was passed in the United States in 2010. Now, this gets really interesting. The intention of FATCA is effectively to ensure that the elusive—here we go again—“Mr. Big”, or “Big Fish” who use foreign banks to hide criminal proceeds will not escape the long reach of the US Internal Revenue Service, (IRS).

But, further, Trinidad and Tobago was expected to be FATCA compliant by July 01, but questions are still outstanding on where the Government has reached in the finalization of the agreement and which model of FATCA it was going to

adopt because there are two models, Mr. President. Model one requires non-US institutions to report US account holders to our own tax authorities, which in this case, will be the BIR, who then reports this to the US tax authorities. In the second model, this is for non-US institutions to report directly to the IRS instead of the local tax authorities.

So, at this point, which model are we going with? And more importantly, will there be reciprocity? Sen. Robinson-Regis spoke to this point as well. You see, if FATCA is to be applied to US persons in Trinidad, then there should be a reciprocity in the agreement because if I give you information on your people, you should be able to give me information on my people. It is as simple as that. So the FATF blacklist is the common shorthand description for the FATF's list of Non-Cooperative Countries or Territories—the NCCTs—countries which are perceived not to be co-operating in the global fight against money laundering and terrorist financing.

Mr. President, I wish to draw the attention of this House to David West, an attorney, who raised concerns on July 20, 2014 during a seminar titled, Anti-Money Laundering and the Internal Auditor, held by the Institute of Internal Auditors at the Arthur Lok Jack Graduate School of Business in Mount Hope, and this was July 20 of this year. And the recommendations for the FATF is that there be prosecutions and convictions for money laundering offences. West said, and I quote:

“Right now, the State and the FIU (Financial Intelligence Unit) can easily say that they are prosecuting persons. In fact, they will say that they currently have four persons before the courts being prosecuted, and while that is a fact, it is an extension of the truth. Because these four persons only make up two cases which are currently before the courts. And while that may just be one out of 40 recommendations, we need to be fully compliant with FATF.”

This is as of July 20, 2014. I ask, where is Trinidad and Tobago, August 19, today, how far have we come? And what is the slow action on recommendations that should be in place ASAP? And why the late schedule when the image of Trinidad and Tobago will be affected?

I wish now to deal with some outstanding issues in Trinidad and Tobago. Recommendation 30 regarding the 100 legal posts have not been attended to and, to date, nothing has happened. Since the third round evaluation of the task force, there has been no effort to correct any of the Trinidad and Tobago deficiencies, which were to be completed by November 2014. Out of the seven major

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deficiencies—Sen. Lester Henry spoke about many of the deficiencies earlier this morning when he opened the debate for our bench—only about three are taken care of in the Bill. Where are we with this poor record? Where are we? And there are serious concerns about the role, function and effective compliance of the FIU, and I heard it over and over again today.

You know, when Sen. Singh earlier on indicated that the FIU worked very closely in the drafting of this legislation before us, I have to admit, I find it rather disappointing and difficult to know, according to Sen. Singh, that they would help draft the legislation without such a significant clause. I was taken aback by that.

The FIU performs a more administrative role. It is understaffed. Well, the staff—and other persons mentioned it as well in the debate today—are not adequately qualified, not adequately trained and they are severely understaffed, and staff does not have the investigative skills, and to date, there have been no convictions of money laundering in Trinidad and Tobago.

The FIU relies on reports from banks and the like, and Sen. Avinash Singh alluded to the point that a hybrid approach in its management might be necessary, and I have to admit, I tend to agree with that because I think in that instance they could perform the role as investigator as well as the other roles that they are performing currently. The main duty of the FIU is therefore not effectively undertaken is my point. The FIU requires urgently, the authority or the power so that they can investigate and gather intelligence themselves, which brings me to the lack of compliance of the FIU. In terms of the task force, Trinidad and Tobago received a poor rating.

There is a policy required for effective functioning of the FIU and the document is the Policy for Establishment of Civil Forfeiture Regime in Trinidad and Tobago, and that Note, I believe from my research, went to Cabinet—it was Note No. 421—in February of this year. This policy, we believe on this bench, would strengthen the efforts of the country to effectively deal with corruption and crime, in particular the proceeds of crime and money laundering. We on this side urge the Government—we hope the Government recognizes that we will receive another negative report and adopting such a policy will show that we are serious about compliance and crimes identified by the FATF. As a matter of fact, why is this being ignored? As a matter of fact, after having gone through it, the Policy for Establishment of Civil Forfeiture Regime in Trinidad and Tobago, this should be mandatory, even.

Mr. President, the next point I wish to deal with is the model compliance programme for credit unions, and I think this is extremely significant.

“AS the National Umbrella Body for credit unions”—in Trinidad and Tobago—“the Cooperative Credit Union League of Trinidad and Tobago...continues its thrust to ensure that credit unions remain abreast of all requirements as is required under, inter alia, the Proceeds of Crime Act, the Anti-Terrorism Act and the Financial Obligation Regulations.”

I am quoting from the body, and this is the national umbrella body for credit unions in Trinidad and Tobago:

“In this regard, our education thrust continues with adequate focus on training and retraining of all credit unions leaders, management and staff. We continue to work in close collaboration with the Financial Intelligence Unit of Trinidad and Tobago and are an integral part of its Stakeholders Committee that meets on a quarterly basis.”

The FIUTT has approved—when I was reading, because I did a lot of reading for this particular contribution.

9.30 p.m.

The Financial Intelligence Unit of Trinidad and Tobago has approved “a Model Compliance Programme for credit unions”.

This interests me quite a lot because here are the credit unions making every effort to ensure compliance of Trinidad and Tobago, yet, the Government has neglected to ensure the effective clauses in the very law that will support the efforts of this sector.

Mr. President, look at the many issues of corruption, and I wish to draw to your attention this bit that I got and I will share it with this Senate:

“The Finance Ministry’s audit report raised allegations of several acts of fraud, corruption and other crimes relating to the payment of contracts to persons and companies for work which was never done in the Life Sport Programme...”

It went on further:

“The single biggest payment, identified in the report, was a \$34 million payout...”

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But over the weekend I saw it was an additional \$2 million. So we are looking at \$36 million payout to an education company for no work done. It was so serious that it had to be terminated and the:

“...Prime Minister...announced the termination of the Life Sport programme, in the wake of the findings of the audit.”

Will those accused not be answerable if the clause is omitted?

So, Mr. President, look at the many issues: the LifeSport—issues of corruption like the LifeSport; National Quarries has its own baggage.

Mr. President: Senator, we have already heard on those issues. It becomes repetitious for you to be continuing to repeat what has been said before.

Sen. D. Baldeo-Chadeesingh: Mr. President, I take your guidance, but I think it is sufficiently important that we stress this point because it does affect—[*Interruption*]

Mr. President: You cannot really put up with repeating things that have already been said before. It becomes what you might call, tedious repetition. We have heard it before. You could continue to make your remarks on other issues, but not some things that we have already canvassed.

Sen. D. Baldeo-Chadeesingh: Thank you very much, Mr. President. I am guided. [*Desk thumping*] [*Interruption*] But I am not guided by you. I am guided by the President. [*Desk thumping*]

So, my point when I brought that up is that we need the insertion of the clause like the UK Proceeds of Crime Act, 2002, to comply with FATF and ensure that no one shall escape with the clause in the UK Act which should be inserted in our Act.

Different jurisdictions, Mr. President, define crime predating the offence of money laundering in different ways. Generally, the differences between the definitions may be summarized as follows: differences in the degree of severity of the crime regarded as sufficient to predicate an offence of money laundering. For example, in some jurisdictions it is defined as being a crime that would be punishable by one or more years imprisonment. In other jurisdictions the necessary punishment may be three or five years imprisonment or differences in the requirement for the crime to be recognized, both in the country where it took place, and by the laws of the jurisdictions where the laundering activity takes place, or simply a requirement for the conduct to be regarded as a crime in the country where the laundering activity takes place, irrespective of how that conduct is treated in the country where it took place.

In conclusion, Mr. President, in practice, almost all serious crimes including drug trafficking, terrorism, fraud, robbery, prostitution, illegal gambling, arms trafficking, bribery and corruption, are capable of predicated money laundering offences in most jurisdictions. We must insist that this Government identify that all serious crimes are capable of predicated money laundering offences in this jurisdiction, and insert the clause that will not exclude crimes committed before this Bill is enacted into law as a responsible Government.

Thank you, Mr. President. [*Desk thumping*]

Mr. President: Sen. Dr. Balgobin.

Sen. Dr. Rolph Balgobin: Thank you, Mr. President. I rise to just speak very briefly on this Miscellaneous Provisions Bill. Just a few comments that I would make. I would just open very quickly. I do not expect to take more than a few minutes to say I think this is courageous legislation. I am impressed that something is being done to amend these bits of legislation, and I think this is what a modern Parliament in a modern democracy should do. We should be visiting and revisiting legislation, fixing it as we go and improving it. [*Desk thumping*]

I am of the view that while I see how they sit together well, that we would have perhaps been better served if the amendments had been brought separately. I think that it may have lent to better or fuller discussion on some of the aspects that are changed, but I think we are where we are. The only things I would say in relation to the Bill would be that notwithstanding what is put forward in section 2(3) of the parent Act, the Proceeds of Crime Act, which says clearly that reference to the Act and so on relates to any offences committed before the commencement of the Act, I am firmly of the view that there should still be retrospective treatment in the proposed 43(2), and therefore, suggest the inclusion of a subsection (c) there which really would address the question of whether criminal conduct occurred before or after the date of commencement of the Act.

I do not think it is a major adjustment for the Government to make, and therefore, along with others here, I would join my voice in encouraging the Government to give due consideration and perhaps accept the suggestion which brings us in line with what is in the UK legislation because I am not persuaded that what is in 2(3) of the parent Act is enough. Of course, I gave due deference to my friend, Sen. Sturge, [*Desk thumping*] who has drawn our attention to it and I think a belt and braces position is better in my view.

I thought that 45(3) is courageous because it introduces the balance of probabilities argument which is good, because it lowers the standard that is required for us to get in there and take action. And clearly, while we have an improvement in intelligence, we still find that much of this falls below the evidential standard that will typically be required to take this kind of action. So lowering the bar I think is a good thing. It helps us to perhaps get at some things that are just exceeding both our reach and our grasp as it were.

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I fully support and declare myself a very big fan of the Seized Assets Fund, and I think this is a long time in coming. It is very common sense and commonplace elsewhere, and so there is not too much that one has to say about that. However, I just wanted to draw the attention of this august Senate to two glaring contextual stupidities. I am assuming I am one of the last persons to speak on this, so hopefully people do not—I will not be more than a couple minutes more.

The first is that our institutional framework is weak. It is shamefully so. It is not just weak, it is shamefully weak. For the money that Trinidad and Tobago has, for the resources that we have, our institutional framework should not be in the state it is in. We are now in the fourth year of a government that lasts five years. All other things being equal, elections are held when they are next constitutionally due. So we are in the fifth year, I stand corrected. The number one issue coming into the life of this Government was crime. I have a constitutionally structured body called the Police Service Commission, whose whole and sole job is to appoint and assess the performance of a Commissioner of Police.

This body has existed for the full term of the Government, and with a government that is progressive and a Police Service Commission which is headed by, which still is headed by a professor—because I think his resignation comes effective at the end of August—we have not been able to appoint a Commissioner of Police and I think that is an embarrassment. [*Desk thumping*] It is an embarrassment not to a government, but to a society. I mean, we should hang our heads in collective shame. We cannot do that? We cannot appoint a Commissioner of Police and crime is our number one problem? [*Desk thumping*]

So, if I may ask the question then, Mr. President, perhaps somewhat rhetorically: what else have we been doing that we cannot make time and resources to do that? Why has there been such a low profile for the FIU, for the Equal Opportunity Commission, the Ombudsman, the Police Service Commission, the Public Service Commission, the Teaching Service Commission and, of course, the Integrity Commission? I think the Integrity Commission really flabbergasts me because for the entire life of this entity, this commission, in a society where corruption is viewed as a major problem to not have even a single conviction for corruption is such a staggering failure, it really boggles the imagination. I am flummoxed. I am utterly discombobulated. I am stunned. And again, this has nothing to do with the Government or an Opposition, this has to do with our society and how we foist these things upon ourselves and then collectively watch them not work; [*Desk thumping*] collectively watch them accomplish nothing at all.

So for me, this is the first of my two contextual stupidities. You know, where are these institutions? Nothing works. And when you do see an institution, perhaps march a little way down the crease, it often trips itself up. Again, I suppose the Integrity Commission recommends itself to our attention, but not only them. The Central Bank has made a grand hash of the foreign exchange market over the last several months. [*Desk thumping*] I mean, it is fantastic. I do not think anybody could have dreamed that up and, you know, just gone. So, I am very impressed there.

And so, this leaves me to conclude that there is a second contextual stupidity. Second and final, we are all tired. [*Laughter*] You know, in Shakespeare's *Macbeth*, the three hags, the three witches, that lit the fire of ambition in Macbeth's breast or perhaps stoked it, greeted him by saying:

"All hail, Macbeth...Thane of Glamis!"

Which he was, and then said:

"All hail, Macbeth...Thane of Cawdor!"

And then said:

"All hail, Macbeth, thou shalt be king hereafter!"

And Macbeth said to the hags.

Glamis, I am, but these other things, I do not know anything about that.

And he says:

"...why do you dress me in borrow'd robes?"

9.45 p.m.

And so, a second contextual stupidity for me would be: why do we keep trying to fit our democracy into borrowed robes? [*Desk thumping*] Why do we keep trying to take these models from somewhere else and slam them on a country which oftentimes is too small to shoulder and accommodate the administrative burden? And always we come here under threat—FATF, blacklist, "yuh know, if yuh doh pass this now, at midnight, we gonna be blacklisted. The world, as we know it, will come to an end. Pass it now." Well, I have had enough years in here of that. So blacklist me for a day or two, no problem, I am fine with that. We ought to have the courage to walk our own road. My point is, part of the reason, I think, our institutions do not work is that we take wholesale models we see elsewhere without fully understanding why we are doing what we are doing.

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So, globalization has gone and galloped ahead of our governance and we find ourselves flatfooted and behind. We are not just flatfooted and ahead, we are flatfooted and behind. And so, not only do we not know what we are doing and the evidence of course is clear. We have a very poor record, and this transcends governments, it transcends politics and political parties. As a society, our democracy, its institutions are not achieving enough and, in some cases, they do not appear to be doing anything at all which tells me that not only do we not know what we are doing, we also do not know why we are doing it.

I am reminded here of the story of a farmer's visit to the White House to see their friend, United States President, Calvin Coolidge—and his friends were from a rural area so they went to see President Coolidge. He invited them, of course, he wants to remember his roots and so on. They get their invitation, they turn up in Washington. And so, the fellas meet outside and say, “Guys, simple rule: we know we do not know how to behave in the White House so what we are going to do is we are going to do exactly what President Coolidge does.”

So they all went in, they sat down round the table and President Coolidge takes some tea and pours it into a saucer—not a cup, a saucer—and he mixes the tea in the saucer, so they all poured tea into their saucers and they mixed the tea in the saucer. They put some milk and they put some sugar and they all stirred the tea in their saucers. At which point in time, President Coolidge picks up his saucer and places it on the ground for his cat. [*Laughter*] Well, of course, there was only one cat, would have been very well fed that day, and so I feel like that when I look at some of the things we do with our institutions. Like we are doing it and do not understand why. We are just doing it because somebody else somewhere is doing it. So, I think we need to be careful about that because we create employment certainly, but we do not create any progress.

Whatever this legislation says, all we are doing is making things more onerous without contending with the root causes. If we have all of this intel, how come we do not have any big fish incarcerated anywhere? How many prisons do we have? Three, four, none occupied by a big fish, only for guppies; small fish here. And you pass outside any Magistrates' Court, you go outside any court of law in this country, and you see that there is a radically strong appearance of a correlation, albeit anecdotal, between the people who are hauled before the courts and the people in the society who are poor, because the only wealthy people I see in a court are the lawyers.

Sen. Lambert: Because it is the poor people paying them.

Sen. Dr. R. Balgobin: So why not take a policy position, as I think the Minister of National Security, to be fair, has advocated in the past. Why not take a policy position about funding criminals through contracts, for example? All this law and all this paper here and so on, why do we not just say that? Put one line and say, “Well, we know we not funding criminals through contracts anymore”. If we have intelligence that you are a criminal, no contract for you, no state money. Why do we not do something like that? How about that? Because we go and we clothe ourselves in all of this complexity, much of which comes from somewhere else, maybe not the words but certainly the logic, and we still go ahead and continue to do these things that are so dangerous for our democracy. They give rise to the very conditions that we come here and we try to legislate to resolve.

And so, that is my second contextual stupidity, Mr. President, we are doing complex things but not appearing to achieve anything. We must do better. I thank you, Mr. President. [*Desk thumping*]

Mr. President: Sen. Joy Abdul-Mohan.

Sen. Abdul-Mohan: I defer to the committee stage.

Mr. President: Minister of Finance and the Economy.

The Minister of Finance and the Economy (Sen. The Hon. Larry Howai): Thank you, Mr. President. I have to apologize to the hon. Members that, I must say, I got caught a little bit flatfooted there. I thought that there was going to be further persons speaking and so on. But, Mr. President, we are pleased to have gotten the various comments. I do admit there was some repetition in the course of the comments and so on, but a lot of it focused on the question of the retroactive or retrospectivity of the legislation and that is something that we will certainly address in the committee stage. We are committed to doing so. There are a number of areas which we will address during the course of the committee stage tomorrow.

There is one point that perhaps—[*Interruption*]

Sen. Al-Rawi: Sorry, when?

Sen. The Hon. L. Howai: Tomorrow. [*Laughter*] I know you are anxious to be back, so I thought I would let you know as early as possible. [*Laughter*] There is one point which has been made which relates to the whole question of the blacklisting and so on. I think it is important—while we have made the point that it is important for us to push to ensure that we come to a conclusion as quickly as possible of this particular legislation, and we would want to ensure that we do

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pass the legislation as early as possible, I want to just, for the record, indicate that there is no question of Trinidad and Tobago being blacklisted because we have not completed this piece of legislation, or that there is some issue of us being blacklisted by the time the third round evaluation comes to an end at the end of November of this year. If there is a blacklisting event, it comes up out of the fourth round evaluation and the fourth round evaluation does not start until January of next year.

And therefore, in that context, the issue of how we deal with this piece of legislation going into the House, for example, in the Lower House, what we have done is that even though we would complete the legislation tomorrow, the fact is that it would not be debated by the Lower House until sometime around mid-September, and we expect that the legislation should be—everything should be tied up before the end of September, which will be well ahead of the completion of the third round evaluation in any event.

So I think that we should not—[*Interruption*] So there is no question of the blacklisting and no urgent and imminent threat of being blacklisted and so on as seem to have come up during the course of the discussion, and it is just a clarification that I need to make. Although, you know, I have to say that we did push all the technical staff and so on to ensure that we would be in a position to complete this as quickly as possible.

I would say, Mr. President, that the intention is that we would continue tomorrow and therefore I would like to complete my own discussion and my own summarization of what took place today prior to the commencement of the committee stage tomorrow so I can turn over to—

ADJOURNMENT

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. President, and I want to thank the hon. Minister of Finance and the Economy.

Mr. President, consistent with the undertaking given to this honourable Senate, I beg to move that the Senate do now adjourn to Wednesday, August 20 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.56 p.m.