SENATE

Monday, October 05, 2009

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Conrad Enill and Sen. The Hon. Dr. Emily Gaynor Dick-Forde who are both out of the country.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. FOSTER CUMMINGS

WHEREAS Senator Dr. Emily Gaynor Dick-Forde is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Emily Gaynor Dick-Forde.

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 5th day of October, 2009."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. NOEL GAYLE

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

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NOEL GAYLE, to be temporarily a member of the Senate, with effect from 5th October, 2009 and continuing during the absence from Trinidad and Tobago of the said Senator Conrad Enill.

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 1st day of October, 2009."

OATH OF ALLEGIANCE

Senators Foster Cummings and Noel Gayle took and subscribed the Oath of Allegiance as required by law:

PAPER LAID

Annual report of the Teaching Service Commission for the year 2008. [*The Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith)*]

ORAL ANSWERS TO QUESTIONS

Contractual Obligations Under GATE (Details of)

181. Sen. Gail Merhair asked the hon. Minister of Science, Technology and Tertiary Education:

Could the Minister inform the Senate what measures are in place to ensure that the students live up to their contractual obligations under GATE?

The Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, I regret that the answer to this question is not yet ready. I seek the indulgence of the Senate for a deferral of two weeks.

Question, by leave, deferred.

Immigration Department (Details of)

182. Sen. Gail Merhair asked the hon. Minister of National Security:

A. Could the Minister advise the Senate if the Immigration Department informs applicants of discrepancies in the processing of their passport application forms?

B. If the answer to (A) is in the affirmative, could the Minister further advise the Senate:

(i) what are the methods used to convey this information to applicants; and

(ii) at what point in the processing of applications is this information conveyed to the applicant?

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. President, in response to question 182A, hon. Senators are advised that within the machine-readable passport application process, there are occasions where discrepancies are discovered on application forms and/or supporting documents and must be brought to the attention of the applicant for correction in order to complete the passport document. On such occasions, the Immigration Division makes every effort to advise members of the public of such discrepancies in a timely manner. However, there are certain discrepancies which the division can address in its interdepartmental arrangements with other government agencies such as the Registrar General's Office and for which no notification will be given to the applicant.

In response to B(i) and (ii), notifications of discrepancies can occur at the prequalification/reception/interview stage. At the prequalification/reception/ interview stage, where the applicant is interviewed by an immigration officer who reviews the application form, as well as all original supporting documents pertinent to the application, the immigration officer will inform the applicant immediately of any discrepancies detected and advise on possible ways to resolve them.

As the passport application advances to the verification and review stages, there are some discrepancies which the Immigration Division will seek to rectify without involving the applicant. These include discrepancies relating to documents prepared by the Registrar General's Department such as birth and death certificates, marriage certificates, deed polls and adoption certificates. Examples include where a birth certificate is assigned two personal identification numbers PINs by the Registrar General's Department, this dual assignment of PIN is most common where one birth was registered twice; and where marriage certificates have been issued by the Registrar General's Department, but the information is not yet recorded on its database, therefore, the applicant's marriage status cannot be verified on the database by the Immigration Division and requires that the Registrar General's Department undertake further checks.

Once the problem can be resolved within that interdepartmental arrangement, there is no notification to the applicant. However, it would mean that the processing period would be extended by the amount of time it takes to have the adjustments made. There are other circumstances however, where there is need to consult with the applicant in order to have discrepancies resolved. On such occasions a designated officer will contact the applicant via telephone, within 24 hours of discovery, to inform him or her of the discrepancies and how they should be resolved. A note is made on the application form of the date and time of the call and the name of the officer making the call. It is then the responsibility of the applicant to produce the document required to complete the processing of his/her passport. A new appointment is not required.

Some of the more common discrepancies in this scenario include:

- affidavit/statutory declaration contains incorrect information;
- applicant's name or maiden name of mother differs from that entered on Immigration Division or Registrar General's database; and
- non-declaration of previous passport on application form.

Hon. Senators should note that in an effort to reduce such delays, the Immigration Division is in the possess of launching another comprehensive public education campaign on the machine-readable passport, which will address all aspects of the process, including details on the requirements, as they relate to completion of application forms and submission of supporting documents.

I thank you.

COMMITTEE OF PRIVILEGES
(WADE MARK)

Sen. Linus Rogers: Mr. President, I rise under Standing Order 26 to move a matter which concerns the privilege of this Senate. As I understand it, parliamentary privilege is concerned with protecting the integrity of the Senate and among the privileges of this House is included the power to punish for contempt. It is also my understanding that contempt includes actions or conducts which obstruct or impede the Senate in the performance of its functions or offences against its authority or dignity. This power belongs to this honourable Senate as a collective body for the protection of its Members and the vindication of its own authority and dignity.

From time to time, you have advised all of us who have the distinct honour to serve in this Senate, that we have the responsibility to maintain the public trust placed in us by performing our duties with honesty and integrity, respecting the institution of Parliament and exercising a duty of care towards all persons, especially those whom we may injure in the exercise of our freedom to speak in this House.

It is well settled that making a misleading statement deliberately will be treated as a breach of privilege and contempt of the House. Thus, a Senator must not knowingly mislead the Senate in statements he or she makes in this House. Indeed, all Senators are under an obligation to correct the parliamentary record as soon as possible when incorrect statements are made unintentionally.

1.45 p.m.

Against that background, Mr. President, I wish to refer you to statements made by the hon. Sen. Wade Mark on October 01, 2009 which now form part of the parliamentary record. On that day, during a debate in his honourable Senate, Sen. Wade Mark stated:

> "Mr. President, I understand that the bank of Belize is opening shop here. Lord Ashcroft 'does' buy political parties. He bought some in Australia and in England. There is a 'fella' called Mr. Forrester who is the general manager of

that group, and he was a director of a company called Johnston Construction Limited. They got a tender, without any competition, from Mr. Calder Hart and UDeCott for $130 million to build the Chancery Lane project."

Mr. President, not only did Sen. Wade Mark mislead the Senate in the making of this statement. He did so wilfully. He did so intentionally. And, Mr. President, you will recall that you were moved to interrupt Sen. Mark during this speech and caution him against the making of reckless statements to the Senate, but in an irresponsible manner, Sen. Mark failed to heed your caution and continued:

"They are good friends. Do you know what the end result is, hon. Attorney General, through you, Mr. President? They got a tender and award of a contract, worth $124 million, it is now running over $700 and counting. I believe that is what is called 'money laundering', but we will talk a lot about that on Monday."

Mr. President, mere weeks ago, this matter of the award of the contract to construct the Chancery Lane building was discussed at length in the other place. The record will show that it is not true as the hon. Sen. Mark has alleged, that Johnston Construction was awarded the contract for the Chancery Lane project without any competition, or "free", as Sen. Mark also alleged.

The record will reflect that during the budget debate in the other place, on September 14, 2009, the hon. Minister of Works and Transport in response to concerns raised by another Member, informed the House of Representatives that there had been a number of tenders for the Chancery Lane project in a competitive bidding process, and after careful evaluation of all the relevant factors, Johnston Construction's tender was found by UDeCott's tender committee to be the best evaluated tender for the project. Thus, authoritative and accurate information on this matter was placed on the parliamentary record, accessible by all Members and broadcast on the Parliament's television and radio channels. Additionally, these details were also published by the general media and enjoyed wide coverage. I submit, therefore, that Sen. Mark knew, or ought to have known, that his allegation that the contract for the Chancery Lane project was awarded by Calder Hart to Johnston Construction without any competition was untrue.

Mr. President, this conduct by Sen. Mark cannot go unchecked. In the past, Members of this Parliament and other persons have been penalized for less serious offences. Wilfully misleading the Senate brings dishonour on all Senators of this Senate, and all decent and hon. Senators of this Senate believe it is their duty to hold Sen. Mark to account in order to restore the people's faith in Parliament.

Mr. President, in accordance with Standing Order 26(4), I raise this matter before you and move that it be referred to the Committee of Privileges of the Senate for its consideration and report.

I thank you.

Mr. President: Hon. Senators, I received notice of this just a few minutes before the start of this sitting and, therefore, I would need some time to consider what it says and the evidence that has been presented and, therefore, I will make my ruling at the next sitting.

PROCEEDS OF CRIME (AMDT.) BILL

Order for second reading read.

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. President, I beg to move,

That a Bill to amend the Proceeds of Crime Act, Chap. 11:27, be now read a second time.

Mr. President, in light of international initiatives, the global threat of terrorism and the prevalence of other serious crimes including money laundering, drug trafficking and arms trafficking, it is critical for the Government to take even more stringent measures to ensure that persons engaging in a wide array of business activities are not allowed to hide their illicit ventures behind the veneer of legitimacy.

The Proceeds of Crime (Amdt.) Bill, 2009, is the first of three pieces of legislation which the Government has prepared to provide a comprehensive regime to deter and detect all forms of money laundering and to provide for the confiscation of the proceeds of criminal activities.

The second is the Financial Intelligence Unit Bill, 2009 which is on the Order Paper, and will be debated as soon as we conclude the debate on this Bill.

The third is the Financial Obligations Regulations, 2009, which will be made pursuant to the Proceeds of Crime (Amdt.) Bill and will be laid in Parliament shortly.

The Proceeds of Crime Act, (POCA) 2000, was assented to on October 27, 2000 and proclaimed on November 06, 2000. This was done in furtherance of the 1988 United Nations Convention against illicit trafficking in narcotic drugs and psychotropic substances, commonly referred to as the Vienna Convention, by virtue of which Trinidad and Tobago was obligated to enact legislation for several purposes including the countering of money laundering.

Mr. President, since POCA has been in operation, criminal masterminds have devised more sophisticated money laundering methods and techniques in response to the development of countermeasures. These changes were not ignored, but rather were met with several international initiatives. One such international initiative is the United Nations Convention Against Transnational Organized Crime, to which this country became a signatory on September 26, 2001.

Specific reference is made to Article 7 of this Convention which calls upon states to:

> "…institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions."

Another such international initiative is found in the operations of the Financial Action Task Force, commonly referred to as FATF. The FATF is an international governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

Just for the record, I think I need to mention which are the countries that comprise FATF. They are: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, European Commission, Finland, France, Germany, Greece, Gulf Cooperation Council, Hong Kong, China, Iceland, Ireland, Italy, Japan, the Kingdom of the Netherlands, Luxemburg, Mexico, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States of America.

I think also for the record and for the information of hon. Senators, I need to also mention the FATF associate members. They are: the Asian Pacific Group on Money Laundering; the Caribbean Financial Action Task Force (CFATF); the Council of European Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism; the Financial Action Task Force on Money Laundering in South America; and the Middle East and North Africa Financial Action Task Force.

FATF published some forty recommendations which were initially developed in 1990, as an initiative to combat the misuse of financial systems by persons laundering drug money and were revised for the first time in 1996.

In October 2001, the FATF expanded its mandate to deal with the issue of the financing of terrorism and took the important step of creating special recommendations on terrorist financing.

In response to increasingly sophisticated combinations of money laundering techniques, such as the increased use of legal persons to disguise the true ownership and control of illegal proceeds and an increased use of professionals to provide advice and assistance in laundering criminal funds, FATF again reviewed and revised the 40 recommendations in 2003, into a new comprehensive framework for combating money laundering and terrorist financing. The new FATF recommendations are now known as the 40 + 9 recommendations.

These recommendations cover all the measures that national systems should incorporate within their criminal justice and regulatory systems, as well as the preventative measures to be taken by financial institutions and certain other businesses and professions and measures to ensure international co-operation.

The FATF 40 + 9 recommendations have been recognized by the International Monetary Fund and the World Bank as the international standards for combating money laundering and the financing of terrorism.

Although Trinidad and Tobago is not a member of FATF, we are nevertheless required to implement the 40 + 9 recommendations by virtue of our membership in the Caribbean Financial Action Task Force, commonly referred to as CFATF.

CFATF, as I indicated earlier, is an associate member of FATF and is an organization of 30 states and territories in the Caribbean. It was established as the result of meetings convened in Aruba in May 1990 and Jamaica in November 1992. Just for the record, I think it is necessary for me to identify those countries that make up CFATF: Anguilla; Antigua/Barbuda; Aruba; Bahamas; Barbados; Belize; Bermuda; British Virgin Islands; the Cayman Islands; Costa Rica; Dominica; Dominican Republic; El Salvador; Grenada; Guatemala; Guyana; Haiti; Honduras; Jamaica; Montserrat; Netherland Antilles; Nicaragua; Panama; St. Kitts & Nevis; St. Lucia; St. Vincent and the Grenadines; Suriname; Trinidad and Tobago; Turks and Caicos Islands and Venezuela.

The co-operating and supporting nations are: Canada, France, Mexico, Netherlands, Spain, the United Kingdom and the United States of America. Of course, they have observers which invariably make up a lot of some of the other international financial organizations.

Members of CFATF have agreed to implement common countermeasures against money laundering from a regional perspective. In November 1996, 21

members of CFATF, including Trinidad and Tobago, entered into a memorandum of understanding which now serves as the basis for the goals and work of CFATF.

2.00 p.m.

In this memorandum of understanding, CFATF members agree, inter alia, to adopt and implement the 1988 United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances and to endorse and implement the 40 recommendations of FATF. The Mutual Evaluation Programme is the primary instrument by which CFATF monitors progress made by member countries in implementing the FATF recommendations. Each member country is examined in turn by the CFATF on the basis of an on-site visit conducted by a small team of experts in the legal, financial and law enforcement fields from other member countries. The purpose of the visit is to formulate a report that reflects the assessment conducted regarding the extent to which the evaluated country has moved forward in implementing an effective system to counter money laundering and terrorist financing, and to highlight areas in which further progress may still be required.

Mr. President, an evaluation was carried out on Trinidad and Tobago in 2005. The Mutual Evaluation Report which documented the results of that evaluation was presented and adopted at the XXV Plenary of CFATF which was held from May 07—May 10, 2007. The findings of the report indicate that Trinidad and Tobago is compliant with only one of the 40 recommendations, largely compliant with six, partially compliant with 13 and non-compliant with 20. The eight special recommendations on combating terrorist financing were also rated as non-compliant—and just in the event that it seems as if there is a discrepancy because all the time I was talking about 40 + 9, I am now talking about eight as it relates to the combating of terrorism were also non-complaint. The last of the terrorist financing recommendations was adopted by FATF just before the evaluation commenced and in fairness to the countries they were not evaluated on it.

The principal reason for the non-compliant rating of Trinidad and Tobago is the absence of legislation, regulations or other enforceable means to give effect to the requirements of the recommendations. The CFATF has called upon all member countries to take the necessary steps to bring their national systems for combating money laundering and terrorist financing into compliance with the FATF recommendations and to effectively implement these measures.

Sen. Seetahal SC: Through you, Mr. President, the Minister mentioned the 40 + 9 recommendations a number of times. I do not know if other Senators have those recommendations, but they have not been circulated and I know this is not

necessarily the custom, but in the past I have asked that things like that be circulated so we would know what we are talking about. Perhaps the Minister could mention a few of them or maybe he is getting there sometime, but if not, I hope he would.

Sen. The Hon. M. Joseph: Okay, what I would do, because I have them all, is to make sure that they are copied and then I can have them circulated during the debate. As soon as I am finished winding up, if you do not mind, I could have it circulated. Is that acceptable?

Sen. Seetahal SC: Yes.

Sen. The Hon. M. Joseph: The Government of Trinidad and Tobago as a responsible Government heeds the call and now seeks to enact the Proceeds of Crime (Amdt.) Bill 2009 in order to bring our national system into compliance with the FATF recommendations.

Mr. President, please allow me to take you and hon. Senators through the salient parts of the Bill. The long title of the Bill is being repealed at clause 3, and is now being replaced with a long title that is more appropriate to the intent of the Act which will result from the amendments. The long title will now read, "An Act to establish the proceeds for the confiscation of the proceeds of certain offences and for the criminalizing of money laundering".

In clause 4, there are several significant definitions. Clause 4(a) of the Bill proposes that the definition of "Designated Authority" be substituted for the following definition:

> "'FIU' means the Financial Intelligence Unit of Trinidad and Tobago established under section 3 of the Financial Intelligence Unit of Trinidad and Tobago Act, 2009."

This is the reason why I said earlier on—because the Bill comes immediately following the proceeds of crime. Since the debate of the Financial Intelligence Unit Bill 2009 will come on the heels of this debate, it is for this reason that we refer in this clause to the Financial Intelligence Unit Act, 2009.

This new term "FIU" is intended to correct a deficiency in the existing POCA, which designates the "Designated Authority" as a single individual. Recommendations of FATF require the "Designated Authority" to be established as a unit.

The existing administrative arrangement is that the FIU operates as part of the Counter Drug Crime Task Force, (CDCTF). CDCTF is a unit within the Ministry of

National Security and was established by Cabinet in April 1997. However, the administrative arrangements currently in place in relation to the FIU have not been given effect in any legislative framework. Thus, the existing Designated Authority is not a formal structure, but undertakes the responsibilities recommended for the FIU by FATF. It is essential, therefore, that a body be formally established and named the FIU.

Recommendation 27 of FATF expressly requires a highly trained or specialized investigative body with responsibility for investigation of money laundering offences. Government soon will be bringing legislation for this highly specialized investigative body, but in the meantime the definition of "police officer" has been extended to ensure that the requisite expertise residing in the investigative arm of the State will be made available in the detection of specified offences as defined in the Bill. This is the purpose of the extended definition of "police officer" in subclause 4(d) of the Bill.

Clause 4(f) of the Bill also deletes the definition of the word "security" and substitutes a new definition. The new definition widens the scope of the old definition and brings the Act into accord with the definition of "security" which is now found in the Financial Institutions Act, 2008.

Mr. President, it is in my view an appropriate time to inform this Senate that the Government will be moving a few amendments at the committee stage of this Bill. At this stage we will seek to make two amendments to clause 4 of the Bill.

Firstly, we are proposing to delete the words "Exchange Control" and substitute the words "financial institution", thereby correcting the title of the legislation under which an exchange bureau is licensed.

Secondly, by updating the law in recognizing that the cash remitting services are now required to be registered under the Central Bank Act. If required, more detailed explanation will be given at the committee stage.

Mr. President, the Bill before us today differs materially from the existing POCA. Two such material differences are that:

1. The Proceeds of Crime (Amdt.) Bill widens the definition of a specified offence; and
2. It also widens the category of business which will be regulated by the provisions of the Act.

Clause 4 of the Bill amends section 2 of the POCA to provide a new definition of the words "specified offence". The amendment by clause 4 is necessary to satisfy part of recommendation 1 of FATF, which states that countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.

The current definition of "specified offence" clearly does not meet the requirements of this recommendation, as such, in order to be fully compliant with recommendation 1, Trinidad and Tobago is required to extend its definition of the term "specified offence".

The Government is proposing to do this firstly by applying the law to all indictable offences from which the proceeds of crime may be derived. Secondly, by extending it extraterritorially in the sense that the law, when enacted, would also apply to a specified offence committed outside of Trinidad and Tobago. Thirdly, we are retaining the offence listed in the Second Schedule of the Act. Thus, the definition of the term "specified offence" would consist of three components.

It would include:

1. Indictable offences committed in Trinidad and Tobago from which proceeds may be derived;
2. Indictable offences committed outside of Trinidad and Tobago from which proceeds may be derived; and
3. The offences in the Second Schedule which fall under the Income Tax Act, Chap. 75:01, the Corporation Tax Act, Chap. 75:02, the Value Added Tax Act, Chap. 75.06 and the Copyright Act, Chap. 82:80.

Sen. Mark: Mr. President, would the hon. Minister give us an appreciation of the specified offence—and we are talking about indictable, because, just as you have indicated under Schedule IV, we have VAT, we have income tax, et cetera, do you have a list of all the indictable offences that will be captured under the legislation?

Sen. The Hon. M. Joseph: I do and I will have it circulated.

Clause 21 amends section 43 of the Act by deleting the reference to "drug trafficking" and substituting the words "specified offence". This amendment is being effected in order to maintain consistency with the definition of specified offence, thereby giving effect to the purpose of the Act. Corresponding amendments to delete references to drug trafficking throughout the Act are found at clauses 22, 23, 24 and 25.

Mr. President, the second instance in which this Bill differs from its predecessor materially, is that it widens the range of business that are under an obligation to keep records and to disclose suspicious transactions to the FIU. FATF in recommendation 12 deems it essential that customer due diligence and record keeping requirements apply to designated non-financial businesses and professions as well as financial institutions. FATF has defined designated non-financial businesses and professions to include casinos, real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries, other independent legal professionals, accountants and trust and company service providers.

2.15 p.m.

This Bill meets this recommendation, by introducing additional categories of business absent from the existing First Schedule and defines all of them by the term "listed business" in clause 4 of the Bill. In the proposed definition of "listed business", we are now including "money or value transfer services, accountants and attorneys at law or other independent legal professionals, and art dealers".

Mr. President, you will no doubt realize that the proposed definition of the term "listed business" in this Bill does not include trust and company service providers as recommended by FATF. This is an oversight, which we will address at the committee stage by including "trust and company service providers" in the First Schedule to the Act.

Mr. President, the effect of this amendment is that POCA will now apply to all financial institutions as defined in section 2 of the Act, and to "listed business" included in First Schedule to the Act.

Mr. President, we have been advised by stakeholders that the implementation of the Act in relation to these "listed business" is challenging. Under POCA, several categories of relevant business activities have been included, however, identifying them in accordance with enabling legislation or defining them properly in accordance with current business practices has not been possible in all cases. The Government seeks to remedy this situation by the proposed new First Schedule. This schedule will provide an interpretation of "listed business" that would assist in identifying those businesses to which the Act would apply, and therefore, facilitate its implementation.

Clause 5 of the Bill deletes the term "designated authority" and "person engaged in relevant business activity" wherever they occur and substitutes the acronym "FIU" and the words "listed business", respectively.

Mr. President, this amendment will assist in giving effect to recommendations 26 to 32 of FATF which provides that countries should establish a FIU that serves as a national centre for the receiving, requesting, analysis and dissemination of Suspicious Transactions/Activity Reports, and other information regarding potential money laundering. The effect of this recommendation is that the FIU is now the institution charged with these responsibilities as required under the FATF recommendations.

At clause 6, the opportunity is being taken to introduce certainty in the law as it applies to the jurisdiction of the magistrate in dealing with the specified offence. Section 110 of the Summary Courts Act, Chap. 4:20 provides inter alia as follows and I quote:

> "110. (1) The Court may order the seizure of any property which there is reason to believe has been obtained by, or is the proceeds of, any summary offence, or into which the proceeds of any summary offence have been converted, and may direct that the same shall be kept or sold, and that the same, or the proceeds thereof if sold, shall be held as it directs, until some person establishes, to its satisfaction, a right thereto."

Mr. President, when the POCA was enacted, clearly it was intended that decisions on proceeds of specified offences would not be taken by a magistrate. It was intended that the magistrate would, in accordance with section 3 of the Act, send all such matters to the High Court for its determination. In the absence of any amendment to the Summary Courts Act, both provisions being coexistent, some doubt arises as to the magistrate's jurisdiction in respect of specified offences.

This Government is of the view that a magistrate's jurisdiction should be made very clear in statute to avoid any challenges of this nature. We are therefore proposing an amendment at clause 6, which will ensure that a magistrate can convict a defendant for the commission of a specified offence, but decisions on questions relating to the proceeds of such an offence must be addressed by the High Court, in accordance with the provisions of POCA.

Clause 18 would amend section 38 of POCA, which provides for the seizure and detention of cash by a senior customs officer on duty at a port, or by a police officer of the rank of sergeant or higher, on duty at any place if there are reasonable grounds to believe that the cash is the proceeds of crime. The amendment seeks to insert the correct title of the ‘‘senior customs officer ‘‘on duty.

The section will now refer to the Customs and Excise Officer of the rank of Grade III or above, in the same manner in which the rank of police officer is identified in the existing section.

Mr. President, another instance in which this Bill differs from POCA, is that clause 20 inserts a new section 42(A). Subsection (1) of the proposed new section 42(A) creates the offence of money laundering. This provision will satisfy FATF's requirement for a definition of "money laundering" in the Act. The proposed subsection (2) stipulates that money laundering is an indictable offence.

Money launderers manipulate their illicit proceeds in an effort to conceal or disguise their true source and movement, with the ultimate objective of integrating these proceeds into and through the legitimate economy. Through the proceeds from illicit activities, the drug dealers, the terrorists, the arms dealers, just to name a few, are able to expand their criminal activities. In clothing these illicitly received gains with apparent legitimacy, these criminal elements are able to manipulate financial systems and erode the integrity of the country's financial system. Recognizing the damning effects of money laundering, the Government, through this Bill, is sending a strong signal that money laundering is an offence of a serious nature and is to receive the highest form of censure.

Clause 26 amends section 51 of POCA, by deleting subsections (7) and (8). At subsection (7) of the Act, there is a definition of money laundering, but no offence was created. Now that the offence is being created in clause 16, that definition is unnecessary. This clause will also delete subsections (6) and (7) of the said section 2 of the Act. Members will note that these two provisions are not definitions; they are procedural provisions, and therefore, are placed more appropriately in section 10 of the Act.

Section 52 of POCA is amended by deleting paragraph (c), which formerly provided that a person was guilty of an offence if he did not disclose the information or other matters to a police officer. Clause 27 by amending section 52 allows the report to be made to an FIU agent, and is consistent with ensuring that the FIU is part of the reporting process as recommended by FATF.

Clause 29 of the Bill amends section 55 of the Act to require a financial institution or listed business, where it suspects or knows that funds are the proceeds of a specified offence, to report that knowledge or suspicion to an FIU on the prescribed form within 14 days of the date the transaction was deemed to have been known to be suspicious. The purpose of this amendment is to introduce the element of knowledge or reasonable suspicion into the provision. As the provision

now stands, reporting may be made without this requirement in the law. Reporting of suspicious activity may have serious consequences, and therefore, arbitrary reporting is being discouraged.

Further, we will move an amendment at the committee stage of the Proceeds of Crime (Amdt.) Bill to repeal the existing subsections (2) and (3), and replace them with provisions in line with the FATF recommendations. These provisions will define a large transaction; require attention to be paid to certain transactions which have no apparent economic or visible lawful purpose, as well as to report all complex and unusual transactions to the FIU. There are other requirements which will be dealt with in further detail at the committee stage.

Mr. President, as you may be aware, there are anti-money laundering guidelines in existence in Trinidad and Tobago. It has been reported by CFATF that the Central Bank of Trinidad and Tobago (Bank) Guidelines on Combating Money Laundering and Terrorist Financing were largely adhered to by the institutions supervised by the bank. However, our country was still rated as non-compliant as these guidelines were not made legally enforceable via legislative enactments, but were adhered to merely through the use of moral suasion.

It would appear that on the enactment of POCA, consideration was not given to the full range of obligations that this country was required to implement in order to satisfy the recommendations of the Financial Action Task Force. Alternatively, if such consideration was given, the intention may have been to enact these obligations by another piece of legislation. When we prepared regulations to give effect to the full range of obligations, section 56, which empowers the Minister of Finance to do so, could not accommodate what was required.

Thus, it is essential that clause 30 delete and substitute subsection (1) of section 56 to expand the scope of regulations which could be made under that section of the Act. The amendments to this section are therefore intended to ensure that the regulations which will follow the Act are not ultra vires. At the committee stage, we intend to move an amendment to further increase the scope of regulations which will be made under the Act. At that stage, we will seek to expand the regulations to stipulate measures that are taken by a Supervisory Authority to secure compliance with POCA, or measures which may be taken by the Supervisory Authority to prevent the commission of an unsafe or unsound practice, including administrative sanctions and disciplinary actions where possible.

We also propose the expansion of the scope of the regulations to stipulate the manner and time frame in which retrospective due diligence may be undertaken in

respect of business relationships, or one-off transactions that were established or performed prior to the coming into force of the Proceeds of Crime (Amdt.) Act, 2009. It is appropriate to indicate at this stage, that because of the expansion of the regulations, the Bill requires a three-fifths majority.

Clause 30 will also amend subsection 2(a) of the said section 56 of the Act, to delete the word "affirmative" and substitute the word "negative", thereby providing for these regulations to be subject to the procedure of the negative resolution of Parliament.

Mr. President, hon. Members, the rationale for this amendment has its basis in the dynamic nature of the offence of money laundering and the need for a procedure by which response to the need for regulations can be instant. We acknowledge the need for parliamentary oversight, and this amendment seeks to balance this need with the reality of the ever changing climate of cross-border international crime.

Clause 31 would amend section 57(1) to provide a penalty for breach of regulations made under section 56.

2.30 p.m.

Section 63 of the Interpretation Act, Chap. 3:01 directs that where no penalty is provided in an Act for breaches, only a minimum penalty can be imposed.

Clause 32 amends section 58 of the Act and inserts a new subsection (3A). This clause seeks to empower the Attorney General to enter into an agreement with any foreign state on behalf of the Government of Trinidad and Tobago for reciprocal sharing of the proceeds of property confiscated, forfeited or seized either under this Act, or by the foreign state. This clause satisfies the FATF recommendation for the sharing of confiscated assets between or among governments.

Mr. President, the recommendations of FATF require the assignment of a supervisory authority with responsibility for ensuring compliance with the provisions of the Act. In the larger developed countries, most categories of listed business are regulated by legislation. In the context of the smaller developing countries such as ourselves, this is not the case.

We have approached CFATF to seek assistance in establishing a comprehensive regime for identifying supervisory authorities and creating the necessary legislation which would regulate the listed business.

Pending the response to our request, the Government has implemented a temporary measure at clause 33 which will provide for the FIU to perform the functions of the Supervisory Authority. Clause 34 would provide for the deletion and substitution of the First Schedule of the Act.

Mr. President, financial markets worldwide are undergoing a phase of dynamic development which demands that there be a solid regulatory framework to ensure financial stability and market integrity.

It has been said that money laundering is a silent crime that leaves no obvious victims and requires no lethal weapons. The truth is though, that money laundering is a grim reality that destabilizes financial institutions, private sector enterprises and a country's economic development.

Failure to comply, at this time, with the recommendations of the FATF, will result in dire consequences for the financial sector of this country, and will place Trinidad and Tobago in the unenviable position of being among the few countries upon which ultimate, financial sanctions have been imposed.

In recognition of the gravity of the consequences, the Government of Trinidad and Tobago, as a responsible Government has chosen to comply with its international obligations. In so doing, this Government is seeking to ensure that vulnerabilities are diminished, or better yet, eradicated.

To do so, there must be effective regulating, monitoring and management of financial institutions and businesses that can be susceptible to illegal activity. This Government's efforts dovetail into our vision for financial services in Trinidad and Tobago.

By the year 2020, we would have done all that was necessary to ensure that Trinidad and Tobago is recognized as the pre-eminent financial centre in the Caribbean and Latin America.

Mr. President, this Government is cognizant of the fact that various actions must be undertaken to achieve these goals. It is for this very reason that we now introduce the Proceeds of Crime (Amdt.) Bill, 2009 which seeks to incorporate into our domestic legal and financial framework, policies and international standards to combat money laundering and to confiscate the proceeds of illicit activities.

Mr. President, having regard to the foregoing submissions, I commend the Proceeds of Crime (Amdt.) Bill to this honourable House and I beg to move.

Question proposed.

Sen. Wade Mark: Thank you very much, Mr. President.

Let me from the very outset extend belated birthday greetings to my former teacher and parliamentary colleague. I would like to extend warmest, belated birthday greetings to my colleague on his 60th birthday, an honourable milestone.

Mr. President, this measure, this piece of legislation that we are about to debate is a very serious, far-reaching and sweeping legislation which infringes, breaches and violates the fundamental rights and freedoms of the citizens and particularly those organizations, individuals and professions that are going to be covered by this legislation.

As far as I am aware, Mr. President, there has been little or no consultation with the population on this very far-reaching and sweeping piece of legislation. There has been no education, public awareness campaign or programme to alert the population of the implications and repercussions of this very important piece of legislation. And, therefore, I disagree very strongly with the hon. Minister when he speaks to the issue of a responsible government. I believe this Government is highly and extremely irresponsible in this particular matter.

Mr. President, are you aware that we are operating under virtual duress in this Parliament today, and tomorrow? Do you know why? Because we have been informed that on Friday, October 09 in Paris, France there is a big meeting of the Financial Action Task Force (FATF) and they have given this country until Friday to pass the necessary pieces of legislation otherwise our country would be blacklisted according to the information we have.

So here it is this Government, at the 11th hour has brought legislation to be debated, conscious of the fact that there have been little or no consultations with the population, the various stakeholders that are to be affected here, are lawyers. Has the Bar Association or the Law Association been consulted? Have the chartered accountants been consulted? What about the auditors, have they been consulted?

Mr. President, we are talking about your personal accounts in a bank being monitored and any suspicious transactions within that account are to be reported to an organization and if you do not have properly trained people, what is going to happen is that honest and decent professionals in this country can end up being given a very raw deal in the circumstances.

This is why we believe that the Government is really—you say this Bill which we are amending is called POCA for short, I think we are dealing with a pack of jokers. It looks like if it is a card game that is taking place here.

Mr. President, how can this Government come to this Parliament today and talk about being responsible when a very thick report called the Mutual Evaluation/Detailed Assessment Report, Anti-money Laundering and Combating the Financing of Terrorism was given to this Government in May 2007 by the Caribbean Financial Action Task Force (CFATF). They submitted this report since May 2007—that was two years and four months ago—and this Government did nothing about amending the Proceeds of Crime Act, it did nothing to deal with the issue of the Financial Intelligence Unit legislatively. Today, the hon. Minister has told this Parliament that the Financial Obligations Regulations will be tabled shortly, when this Government knew since May 2007 that we were heading to be blacklisted by the international community, particularly our financial sector, and this Government did nothing about it and come today at the 11th hour to tell us if we do not pass the legislation the country is going to be blacklisted.

Mr. President, let me tell you what CFATF told this Government on page 45 of this report on Mutual Evaluation, paragraph 127:

> "The mission team as indicated earlier is concerned to note that despite the seeming availability of legislation, there were few prosecutions and no conviction of money laundering cases at the time of the site visit in 2005. This may be the case due to the lack of the Financial Obligation Regulations, adequate FIU legislation, sufficient resources, staff and training in the area of investigation and prosecution of money laundering offences and a limited focus on money laundering and Proceeds of Crime issues by the relevant authority. The Trinidad and Tobago Government is recommended to address these issues swiftly in order to ensure that any perpetrators are dealt with."

This is what we were told since May 2007, to act swiftly to deal with this matter. This Government had no priority when it came to money laundering; it had no priority when it came to the proceeds of crime; it had no priority when it came to the establishment of the Financial Intelligence Unit making it legislatively solid. No, it had no time for these things; it had time for other matters.

You know what has me a bit concerned? This Government has embarrassed the population of this country. It has not only embarrassed us in Trinidad and Tobago, but internationally. I will tell you why.

The United States Department of State has a publication called the Bureau of International Narcotics and Law Enforcement Affairs and they produced a report in 2009 dated February 27, International Narcotics Control Strategy Report. Do you know there are three categories you can place countries insofar as money

laundering and proceeds of crime are concerned. You can either be jurisdiction of primary concern, jurisdiction of concern or jurisdiction being monitored.

2.45 p.m.

You know Trinidad and Tobago graduated in 2009 from a category of a jurisdiction being monitored to a jurisdiction of concern by the United States government and, by extension, the international community, because this report is not only given to us in Trinidad and Tobago, it is circulated far and wide in the global community and the global village, as we call it. So Trinidad and Tobago has been graduated from a country being monitored to one that the United States government is extremely concerned about in terms of its activity.

Then when I went to the Country Report under this same Narcotics Control Strategy Report on Trinidad and Tobago, you know, after receiving a report in May of 2007, this Government, between when it came to power in 2002 to the present time, out of 40 recommendations and 9 special recommendations—40 + 9—this country is only compliant in one? In one out of 49? In one? That is why they have to graduate us from being monitored to one of concern and if we did not come here today to debate this piece of legislation, we would have become a country of primary concern, because money laundering is being allowed to take place in this country under the very watch of this administration for how many years. It has worsened between 2002 to the present time.

We are being told by this Government that it is going to bring Financial Obligations Regulations shortly. That is inexcusable; that is indefensible. The Government had sufficient time to table in the two Houses of Parliament, the regulations governing financial obligations, which are necessary to give effect to POCA and to give effect to the FIU. But you "ain't" do it and you "ain't" do it yet and it appears that the Government is going about its merry way as if nothing is of concern to it.

Hear what the US Narcotic Report says about this country:

> "There is no indication that the Government of T&T has adopted a risk-based approach to combating money laundering and terrorist financing at the national level."

This Government does not care. Hear what the United States government is saying about Trinidad and Tobago:

> "They are leaving the financial system open to any activity because they have failed to adopt a risk-based approach to combating money laundering and the financing of terrorism."

What is even more alarming is that this Government has not convicted one individual for money laundering for the last seven years, not one; and there is serious money laundering in Trinidad and Tobago.

The underground economy, we understand, is equivalent to TT $60 billion. That is the value of the underground economy that we have estimated so far. And you cannot tell me that a government that is concerned about money laundering, drug trafficking and gun smuggling, has done nothing in the last few years to deal with this question of rampant money laundering in Trinidad and Tobago. This Government stands almost indicted in this matter.

There can be no excuse, whatsoever, for the lethargy on the part of this administration in taking action to deal with the issue of money laundering. It has done little or nothing to deal with money laundering in this country. When you look at, for instance, how it has under-resourced the various agencies that are supposed to be on top of this matter, you will understand that this Government is not very serious about this whole issue of money laundering. Wire fraud and bank fraud is a big thing in this country today and even though, as I said, this Government has brought this piece of legislation today, the reality is that the Government is not really doing much to improve its image and the country's image, internationally.

Between 2002 to the present time this Government has not prosecuted nor has it convicted one individual for money laundering in this country; not one! But, Mr. President, you and I and the country are very much aware that in the western part of this country multi-storey complexes are being erected, valued between $10 million and $15 million for an apartment—for an apartment—and there are people who have already bought those apartments before the completion of those particular structures.

Do you think the Government does not know about this? Why has the Government not taken action to deal with this question of money laundering in this country, when the Government is aware that the underground economy is close to TT $60 billion here? Why? Why did we have to be brought to this Parliament virtually kicking and screaming? It is because they know that Trinidad and Tobago will be blacklisted come Friday if these two pieces of legislation do not become law; Why did it take this Government all these years? Why could this Government in 2002, 2003, 2004, 2005 right up to 2009, not take the kind of measures to protect our international image?

Sen. Browne: Senator, I would like to find out what is the source of information about the size of the underground economy for $60 billion?

Sen. W. Mark: That was in a publication sometime ago by Royal Bank. Royal Bank had issued a statement about two or three years ago saying that the estimated value of the underground economy is about $50 billion or $60 billion. You must check it out, because you should know about that. You are the Minister of Finance. You should be telling us here today what the value of the underground economy is in this country! You should know! And money laundering! The Central Bank Governor should be able to give us an estimation.

Before my colleague interrupts me again, are you aware that the International Monetary Fund and the Financial Action Task Force has estimated that the total value of money laundering in this global economy is between 2 and 5 per cent of the GDP of this world economy? And do you know what the value of that is, Sir? It is close to $600 billion to $1.5 trillion. That is what is estimated by the Financial Action Task Force; that the amount of money laundering in the world today is between US $600 billion to US $1.5 trillion. That is the value! And we have estimated, based on the information that we have received, that it is about TT $60 billion in this country.

So if this Government is serious about fighting the money launderers, drug traffickers, the corrupt elements, all of those who are taking dirty money and translating it into clean money, do you think the Government could not take action if it wanted? But I will tell you why later. Mr. President, this Government, as far as we in the UNC are concerned, we have a lot of concerns about this matter. This Bill is totally inadequate for the task and we intend to submit a series of amendments to strengthen this piece of legislation.

Would you believe after five years, or let us say two years and four months—I want to be generous to the Government; they got the report in May 2007, we are now in the month of October, so two years and four months is my rough estimate—this Government could not have taken the necessary action in order to bring our country up to mark? Why it is we have to be forced by the international community to take action? Why? Is it incompetence on the part of the Government? Is it its failure and inability to deal with how to deter, detect, prosecute and confiscate the purveyors of evil in this country?

I want to advise the Government that there are very many serious proposals that we would like to advance, because at the end of the day we want to ensure that the people of this country would have proper legislation. Our information—and the Minister of National Security must tell us—it is our information that out of the 40 + 9 recommendations advanced by the Financial Action Task Force, the legislation before us today only contains 26 out of the actual 49. Why are we

bringing legislation after so many years of failing, to bring the legislation that is inadequate? What the Government is seeking to do is to just meet the minimum standard that is necessary so they would not be blacklisted and the country would not be blacklisted.

You are now in power for—you went through one term, 2002 to 2007; you are now in your second term, 2007 to 2009, and you come to this Parliament today and you have not brought all the recommendations advanced by the Financial Action Task Force into legislative form so that we can reach a threshold in terms of our compliance, could rise further than it is at this time. I am very sorry. This is a matter—

Sen. Jeremie SC: Thank you for giving way, Sen. Mark. The Government has been in power, as you say, from 2002, but between 2002 and November 2007, we did not possess the requisite majority to pass legislation of this type. We did not have a special majority in the other place. We now have that. So that, really, what you are looking at is the period beginning November of 2007 to now. [*Interruption*] And if I could just finish, you asked why the legislation only addresses 26 points.

3.00 p.m.

It is because no one piece of legislation could address all 40 + 9 recommendations. There is an amendment to the Anti-Terrorism Act which is required to bring us somewhere closer to the 40 recommendations, not 40 + 9, and that should be tabled shortly.

Sen. W. Mark: I understand that you are still recovering, obviously from the brutal assault on your personality by the UDeCott lawyers. You must be recovering because your excuse is feeble! Totally feeble! [*Desk thumping*] That is not the Attorney General I know! How can you get up and make that kind of feeble excuse here today? I want to remind the Attorney General who was part of the anti-crime talks which he spoke to on the last meeting when we met here. They needed amendments to the Police Service Act which was two-thirds. Two-thirds! They met with the Opposition and we sat with the Government and came to this Parliament and gave the Government the two-thirds that it required. [*Desk thumping*] Do not come and tell us in 2009, that the reason you could not bring this piece of legislation then, was because you did not have the constitutional majority, when you know that the Opposition is open. We are open. We are reasonable. I do not understand the talk that you are on.

I would like to go to the Glossary to the Financial Action Task Force (FATF) No. 40 recommendation, the following categories of offences are incorporated. This document dated April 2009, is the Model Provisions on Money Laundering, Terrorist Financing and Preventive Measures and Proceeds of Crime. It is a model document involving the United Nations Office on Drugs and Crime, the Commonwealth Secretariat and the International Monetary Fund. I would have hoped that the Government of Trinidad and Tobago would have looked at this piece of model legislation because we have many amendments to make on the basis of this submission. We have respect for the Commonwealth Secretariat, the International Monetary Fund and of course, this United Nations Office on Drugs and Crime. Hear what they have said. Page 13 says:

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

Hear these categories. That is why I asked my colleague, the hon. Minister of National Security to circulate the indictable offences—

> "• participation in an organized criminal group and racketeering;"

Is that an indictable offence in Trinidad and Tobago? Is that part of the legislation?

> "• terrorism, including terrorist financing;
>
> trafficking in human beings and migrant smuggling;"

That is an offence.

> "• 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 crime;
>
> • murder, grievous bodily injury;

- kidnapping, illegal restraint and hostage-taking;
- robbery or theft;
- smuggling;
- extortion;
- forgery;
- piracy;
- insider trading and market manipulation."

These are offences that the United Nations, the International Monetary Fund and the Commonwealth Secretariat indicated in their April 2009 model legislation on money laundering and proceeds of crime and the financial intelligence agency that you must incorporate in your legislation. I do not know where I can find those things. All I hear is a broad category of special offence and it is indictable. What is that? You are dealing with human beings here. What will the accountant, real estate agent, auditor, or lawyer as the case may be, or all these professions like a dentist, know about indictable offences? Do they have a list? It is the duty of the Government to outline the list of indictable offences in the legislation so that the population would know. The people will not know about what they are talking.

Why is the Government bringing legislation that is so technical and complex to the ordinary man in Trinidad and Tobago? Maybe a practising lawyer could understand that. An ordinary man on the street, what are you telling him about indictable offences? Once you have proceeds of crime going in that direction, every one of them would be an indictable offence. Does that mean that insider trading and market manipulation are indictable offences? Is that what we are being told? Are fraud, corruption, bribery, counterfeit currency, robbery, theft and kidnapping indictable offences under this piece of legislation?

Sen. Seetahal SC: Mr. President, the definition of "specified offence" in the draft Bill is an indictable offence committed in Trinidad and Tobago from which proceeds of crime may be derived. There is no specified indictable offence so it is very wide. I understand Sen. Mark's concern, but an indictable offence means any offence which is said to be indictable. It includes all those offences except racketeering, trafficking human beings and market manipulation which he called. The problem would be when you have to look at the offences and define whether or not in Trinidad and Tobago proceeds of crime can be derived. He does have a point. Probably, we need to have a list eventually.

Sen. W. Mark: I would like to incorporate state enterprises and special purpose state companies like UDeCott as part of the listed business in the First Schedule and we would make a recommendation and amendment to that effect. There is where it appears to us on this side that a lot of money laundering is taking place in this country. It seems to be taking place through state enterprises. Therefore, we need to have state enterprises and these special purpose vehicle companies incorporated as the list of businesses. We are going to recommend that.

We talk about real estate in the First Schedule, section 34 of the Act and we know what takes place there. You have the motor vehicle sales. I have no problem with that. Hon. Minister, you did talk trust. Are you talking about Unit Trust Corporation or a trust company as an example? Is it like in the bank where you have the merchant and trust company? What is the role of Unit Trust Corporation which is a $6 billion to $7 billion to $8 billion company? That could be a company that is a channel for money laundering in Trinidad and Tobago. Are we going to leave them out as we made that error in the Financial Institutions Act, 2008 Part II, Third Schedule, page 172? We left out the Agricultural Development Bank, Unit Trust Corporation of Trinidad and Tobago, National Insurance Board and Mortgage Finance. Under the financial institutions definition, are these institutions incorporated?

Sen. Browne: Thank you very much for giving way. The purpose of the changes in the Act is to capture all financial institutions. Generally, the financial institutions have been captured under the anti-money laundering guidelines and are all institutions that manage and deal with cash. Initially, it dealt only with the commercial banks and is being widened to encompass all those institutions that would be deposit-taking institutions as well, that would follow through with know-your-customer guidelines.

Sen. W. Mark: It means to say from what you have said, hon. Minister, that Unit Trust Corporation would be incorporated in this. I stand corrected. I am very grateful.

You talked about gaming house. I would say gaming and gambling. What about auction houses? These "fellas" who auction houses all over the place, where are they captured under listed business? That is a channel for money laundering as well. What about brokers, insurance agents and investment advisors? Where are these people in terms of listed business? Are they covered under the insurance? I do not know. There is something called Internet casinos. Are these captured? These are things that we would like to know. We would like these things to be captured there.

We would also like an amendment where we capture such other businesses and professions as may be prescribed by regulation. Right now, they seem to tie it down to lawyers, auditors and accountants. What about the dentist, my friend here? [*Laughter*] I am not saying this dentist but you could have people who could be involved in this thing. You have to widen this. I am proposing to the Government that we include as an amendment, "such other businesses and professions as may be prescribed by regulations by the FIU". We have to incorporate that to ensure these categories are not left out in this particular matter.

I also saw clause 30, section 56(e) which reads: "manner in which the Supervisory Authority", but nowhere in this legislation is there a definition of what we mean by "supervisory authority". What is the "supervisory authority" about which we are talking? [*Interruption*] It cannot be, because you exempt the Central Bank that has responsibility for financial institutions. We know that under this "supervisory authority", the Central Bank Governor is not responsible for the agencies that are outlined in this legislation. I would like the hon. Minister to provide us with a clear definition of what is a supervisory authority. We want a definition of that.

As I indicated to the hon. Minister, in section 4, "listed businesses" is too limited. It is inadequate and therefore, we have to expand it. When we come to (d) why are you saying in terms of a police officer, you insert after the semicolon or at the end thereof the words, "or any officer of an agency of the State, lawfully vested with investigative powers similar to those excisable by the police appointed under the Police Service Act, 2006"? Is that the Special Anti Crime Unit of Trinidad and Tobago (SAUTT)? No, no, no, we are not supporting that. You bring legislation first and make SAUTT a legal body and then we could entertain this. We are deleting this, and bring back the Inland Revenue officers and the customs officers. They were there in the original parent Act but you have deleted them for whatever reason, I do not know. Where is the customs officer included here? Where is the Board of Inland Revenue with the chairman and commissioners? These are areas that we have to address.

We have a problem with the Government trying to sneak—the hon. Minister, I know that he loves SAUTT. I like SAUTT too. I think that it is a good body. They are professional, as we said, but legalize them. Do not come and sneak SAUTT into the legislation and we know that it is not legal. Therefore, we do not support this particular aspect of the measure.

I would like to know why the Minister has not expanded on property. What the Financial Action Task Force said about money laundering is that in the parent

legislation, we confined money laundering to property. That allows many people to escape but since then, the Financial Action Task Force has given a broad and comprehensive definition of it. I did not see it in the amendment that is before us.

3.15 p.m.

I have a comprehensive amendment on the concept of property, which would capture all those loose ends that we did not take into account in the previous parent legislation. We would like to advise the Minister that we would want to address that.

There is something called high-risk customer and politically-exposed persons. I want to know where that is going to be captured in the legislation. We have definitions of what these things mean. In Trinidad and Tobago, even though the Central Bank has done a relatively good job in providing anti-money laundering guidelines to the banks and other commercial organizations, there is no compulsion on their part to effect it; even though maybe some of them do. The reality is that we need to ensure that the banks are not establishing what is called anonymous accounts. That is one of the problems the Financial Action Task Force referred to. You may have several banks, in the absence of legislation, establishing fictitious accounts and anonymous accounts, and there is nobody to inspect them because the legislation is not there.

Why did it take the Government so long to bring the legislation to deal with these matters? It is the same thing you did recently, when we dealt with another matter. The horse has bolted and you are now coming to close the stable. We have to be threatened, in order for us to take action to get things going in the legislation.

I always believe in a high threshold. I think the Minister needs to explain to this honourable Senate, why it is in section 56(2) of the parent Act it is the same three-fifths. You talk about the oversight of Parliament. We in the UNC recognize the importance of Parliament and this is why, under section 56(2), the regulations made by the Minister of Finance, in terms of the Financial Obligations Regulations, would be subject to an affirmative resolution. Why are you removing this high threshold that is already in the legislation? [*Interruption*] No, no, we do not buy your explanation. We are saying that the Parliament has a duty and responsibility to have an oversight role. This matter is going to affect accountants, lawyers, auditors, real estate agents and car dealers. You are making a big sweep. Obviously, people's rights are going to be at stake. It must not be whimsical, on the part of the Government, to come and bring Financial Obligations Regulations,

put it here and if we want to debate it say: Do it on Private Members' Day. No, no, it is already in the legislation. It is an affirmative resolution and we maintain it should stay that way. We are not supporting negative resolution of the Financial Obligations Regulations. We serve notice on the Government that we will be putting an amendment to ensure that we have an affirmative resolution.

Do you know what I could not understand? We are being told by the hon. Minister that section 56, which is amended in clause 30 of this legislation, could not have been effected. Do you know why? It is because the regulations were too restrictive. When we look at what is being proposed in clause 30 of the legislation, all that the Government has done is change around—[*Interruption*]

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. Dr. A. Nanan*]

Question put and agreed to.

Sen. W. Mark: Why is it that the Government—since this legislation became law, we demitted office in 2001 and PNM took over in December 2001—and the Minister of Finance could not have worked with these regulations? Why is it that the Minister of Finance never brought to this Parliament, regulations consistent with the provisions of the Proceeds of Crime Act? Why is it, up to this day, we are being told by the hon. Minister of National Security that regulations will be here shortly? How is that going to impact on us not being blacklisted on Friday? What is the Caribbean Financial Action Task Force saying about your dereliction of duty in not bringing the Financial Obligations Regulations to the Parliament today? What are they saying about it? This is inexcusable.

When we look at section 56, under clause 30 of the Bill, the Government could have taken action to deal with all these measures that were outlined in section 56(1) of the parent Act, and in doing so we may have been able to capture a few money launderers, because customers' due diligence proviso or recommendation would have been effected in regulations. Your customer recommendations would have also been effected, but because of the fact that the Government had no interest in money laundering legislation, they took no time to prepare legislation to bring to this Parliament to deal with this issue. Today we are being told—the former Minister of Finance, who is the Prime Minister, was in charge between 2002 and 2007 and he failed to bring regulations. Then the current Minister of Finance, Hon. Karen Nunez-Tesheira, she too, has not brought

any regulations. Now the hon. Minister of National Security is saying that it will come shortly. Could the hon. Minister tell the Parliament today when those regulations are going to be tabled in the Parliament? I would like the hon. Minister to tell us that.

Under clause 32 of the Bill, section 58 of the Act, I see:

"(3A) The Attorney General may enter into agreement with the government of any foreign state for the reciprocal sharing of the proceeds or disposition of—

(a) property confiscated, forfeited or seized…"

by that foreign state. They went on to indicate how that is going to be done.

We have lost confidence in the Attorney General. We in the UNC have lost confidence in our Attorney General. I believe the Attorney General, being placed in this situation here—I want to tell you that trust is very important. If you want to build a lasting democracy, trust, honesty and integrity are critical values and ingredients. What we are seeing today is a situation where we cannot trust this Government. The population does not trust this Government. That is why it is important that we have put certain measures in place, so that we can have independence, as far as possible, in terms of these organizations that are being established. We want to ensure that the personnel are in place.

Do you know why we have not been able to hold anybody for money laundering? The Government has under-resourced all the agencies and structures that are responsible for investigating and prosecuting persons who could be identified. Look at the state of the Director of Public Prosecutions Department today. The DPP has a critical role to play in money laundering and prosecution. Look at how many vacancies there are right now, in the Office of the Director of Public Prosecutions. This Government spent $300 billion in seven or seven and one-half years and still half of the offices in the Director of Public Prosecutions Department remain vacant. What is the role of the—in the Ministry of National Security we hear of a Financial Intelligence Unit. We understand that it is badly understaffed and under-resourced. In the Ministry of National Security there is the FIU, but they do not do serious work. You have the Director of Public Prosecutions, no resources for him. In fact, you had the former Attorney General trying to give instructions to a former DPP to charge Basdeo Panday and Lawrence Duprey. He had to tell him: "Know yuh place. Dat is not yuh business!" This is the issue about confidence. How can we trust persons like the Attorney General, given his track record? The Mustill Report is another example—project manager. We have very serious concerns.

I want to ask the hon. Minister of National Security: Where does courier services fall in this legislation, like DHL? Where does the Securities and Exchange Commission fall under this legislation and all the elements that comprise that particular organization; the broker, the investment agents, advisors and all these companies? Where do they fall in the legislation? We would like to know.

We are being told in clause 33:

"Until regulations are made under section 56 for the selection of the Supervisory Authority, the FIU shall be the Supervisory Authority for the—

(a) financial institutions at paragraphs (d), (h), and (i)…; and

(b) listed business."

Our hon. Minister of National Security must tell this Parliament if this is being set up to fail. You need to have a well resourced Financial Intelligence Unit. You have to have the personnel. Do you know what it is to supervise and to get information on a regular basis on suspicious activities and transactions involving real estate agents; motor vehicle salesmen; money transfers or wire transfers; the gaming and gambling industry; auction houses; pool betting; national lottery; jewellery; a private members club; an accountant; an attorney at law and other independent legal profession? Where are you going to get the personnel to deal with this?

3.30 p.m.

I believe that the Government is not serious. The Government only brought this Bill today because they are going to be blacklisted. They have no serious intention of monitoring and ensuring that money laundering is stamped out, eradicated or eliminated in this country. We are not seeing the efforts.

What about training? The judges and magistrates have to be trained. What is the role of the Customs and Excise Department where the Government is now thinking about establishing a Revenue Authority where everybody would be employed on contract? There is a lot of confusion in this legislation, and we have to ask ourselves whether the Government is serious. The Government cannot be serious about this matter. We want to serve notice that we will be putting forward amendments consistent with the model legislation and consistent with what CFATF and FATF have called for in their submissions. We are hoping that at the end of the day, we will be able to have model legislation being passed in this Parliament. We are against money laundering; we are against all forms of money laundering.

We are concerned about the failure of this Government to take action against money launderers in this country.

For the last six years not one conviction has taken place. This is not a good thing. We were in Government for five years and we have fellows behind bars. We confiscated property. The UNC had Dole Chadee on the run and a fellow called Joey Ramlochan or whatever his name was. At least, in five and a half years, a UNC administration was able to put criminals, drug lords and money launderers behind bars and seize their properties and assets. [*Desk thumping*]

This Government presided over $300 billion in seven and a half years and not one money launderer in this country has been convicted under this administration. Why? The question is: Is the Government of Trinidad and Tobago part and parcel of the problem? If they are part and parcel of the problem, they cannot be part of the solution. [*Desk thumping*]

In closing, I can tell you that had a UNC administration been in power, we would have brought to this Parliament in 2002 and, for the latest, 2003, all the requisite legislative arrangements to ensure that the Proceeds of Crime Bill was up to mark. For instance, we would have already brought the Financial Obligations Regulations and we would have had in place a proper financial intelligence unit. I am sure, given our track record, many of these money launderers who are still loitering in this country, would have been behind bars and a lot of their ill-gotten gains would have been forfeited and confiscated by the State in Trinidad and Tobago.

What is the role of the Inland Revenue Department in all of this? The tax evaders are there and the Government knows them and nobody has been arrested.

Mr. President, we have a lot of concerns about this piece of legislation. We serve notice on the Government that we intend to circulate a number of amendments—it is going to be a very long evening—and we intend to fight to ensure that legislation that is passed here tonight or tomorrow morning is legislation that we, as citizens, would be proud of. We do not want any half-baked legislation. We want legislation to get these criminals behind bars. We want legislation to catch the money launderers; to deal with the drug traffickers; to deal with the gun smugglers in this country; and all of them who are laundering our money through the state enterprise sector, we want them behind bars.

Mr. President, I thank you very much for allowing me to make my contribution. [*Desk thumping*]

Sen. Prof. Ramesh Deosaran: Mr. President, this is a billion-dollar piece of legislation, if only because of the kinds of money implicated in what the Government sets out to do with this legislation. Mr. President, I am intrigued by the persistent fact that it seems as if only when an international body threatens us either through blacklisting or removing our name from some honourable list that we get busy to rectify what we should naturally rectify, if we do love our country and we are obligated to protect and preserve our national sovereignty. I am very intrigued by that phenomenon.

Here we are scrambling toward a deadline because through G7 countries, this Financial Action Task Force tells us that if we do not do what we are doing now, what the consequences will be. I find that very strange for an independent country. This is an example that comes from the UNDP report, where whatever position we occupy, we either try to scramble up or make excuses as to why we occupy that place. If Transparency International tells us that we are sliding through the perception index, then we get busy to rectify and sanitize what we should have been doing naturally and out of political responsibility. I find these things extremely intriguing.

Since 1989, this task force laid out what was supposed to be done, and the Caribbean Financial Task Force took it up. I am very surprised, not only because of the principle involved, but you have people like myself scrambling to read the complicated legislation, and to do whatever research is required to be done to make, at least, a reasonable contribution.

Sen. Mark's point about consultation is very important, especially when you consider the professional groups involved. There are many of these groups, some of which I would have liked to speak to and get their perceptions, not necessarily agreeing, but we have to leave all of that at the wayside for the reasons I have just explained.

This is a very serious piece of legislation. I was impressed by the Minister of National Security's presentation. It was quite detailed. As my colleague pointed out to me, and I agreed, it was reasonably well cross-referenced so we can know what the holistic attempt is looking like in the long run.

This is a piece of legislation to capture high-powered deviousness. In the days of Al Capone, when the banking industry was not as widespread as it is now, do you know what he used for money laundering? He used coin machines; thousands of them all over the country. He used the coin machines to amass his wealth—millions of dollars in a quick period of time. So, there are many different ways

that this could be done. I am quite sure that the legislation, when it is being enforced either through prosecution or through the judicial process, you will begin to see the complexity of this phenomenon called white-collar crime, one of its prominent sons being money laundering.

In fact, in 2001, the International Monetary Fund produced a report which indicated that about US $1.3 trillion had passed through the banking industry as money laundering. That is a phenomenal amount. Part of that report was reported in *The Economist* on June 23, 2001.

Before I proceed, there is a small point which could be corrected if it is not important. In the Explanatory Note, on the first page, I see that the Bill will require a two-thirds majority. Is that an error? In the Minister's presentation and, in our own view, at the back of the Bill it says three-fifths. If there is an error, perhaps it could be corrected just for the record.

Mr. President, the other contention is that very innocent people—professionals and private citizens—will now have their private business fully exposed as a measure of accountability and the search for information. It tells us, once again, the sacrifices that ordinary citizens and civil society are continually asked to make in order to satisfy legislation that looks for thieves, crooks and other culprits. That is another intriguing point. How further back can we go as private citizens and have our business exposed in order to fulfil that mission of catching thieves and crooks? It tells you the way we are going; maybe the Orwellian route.

There are so many different ways that money laundering can occur. The Bill touched on a few, but one of the major ways is through shell companies. Companies in different countries are opening—you just have to give them a name—especially in some parts of the Caribbean like the Cayman Islands and the Bahamas. There is also underground exchange of currency. The casinos are the most prominent element in money laundering. The Minister of Energy and Energy Industries promised—I have the story here—about three years ago that they were going to do something about casinos in terms of preventing money laundering. The hon. Prime Minister himself promised the country to do something about casinos, and one reason that was given was to prevent money laundering, but the casinos are still flourishing. Why? The Government should now explain its position as to what changed its mind.

In my view, the real estate industry, there could be no better explanation for the rapid escalation in prices for houses built in this country within the last few years. The

suspicion must be strong that some money laundering is being injected into that escalation. It is too sudden; it is too unreasonable, especially at a time when in other countries houses are taking a different direction.

In terms of sport, that is the new direction now. That is why I say it is not only complex, but it is devious. When you block a hole here, they seek another opening over there, and that is why the legislators and the different authorities have to keep both eyes and ears perpetually open, apart from matters like integrity and vigilance and so on.

With respect to terrorism, I was reading a book *Readings in White-Collar Crime*, and there was an exciting chapter on the role that investors play in money laundering—investors, stocks and bonds and insider trading go with it. I remember one prominent businessman, Mr. Joseph Esau, warned this country about his observations with respect to insider trading and he called some names. I would not call the names. I would not be so uncharitable, but I must tell you that when you look at the movement of certain stocks and bonds in the country—who buys back what they were sold within a short space of time—the suspicion is very strong that insider trading in this country is alive and well. I would implore the special authorities, not only the Securities and Exchange Commission, but the different agencies to look more fully into this matter.

3.45 p.m.

One section of the book had a heading in terms of insider trading and the role of investors. It says, "Gentlemen prefer bonds". It tells you three things: That many money laundering businesses are engineered, cultivated and perpetrated by the rich and powerful, largely so, when it comes to court—Sen. Mark also asked—why there was no conviction? Why nobody was jailed? [*Interruption*] The rich and powerful people can hire expensive lawyers and they have all the techniques in the book when it comes to such matters to hold back the case for a number of reasons because many times these defence lawyers are better equipped than the prosecution side.

That is the imbalance to which Sen. Mark was referring, which I strongly support. Perhaps, I support the need to fill those gaps in the offices of the Director of Public Prosecutions much more. They are distressed and when you think that the office of the DPP is being stabilized, the head is either cut down, cut off, or transferred to the Judiciary, as if the Judiciary now is a refuge for people being moved from the DPP's office.

The picture is not quite pleasant in terms of the readiness to deal with white-collar crime, and of course, there is no need to repeat—the banking industry is

about the most strategic route. That is why the Organization of Economic Cooperation and Development (OECD) put so much pressure on some countries in the Caribbean—St. Kitts, the Bahamas, the Cayman Islands and so on, blacklisted them—and Caricom had to fight tooth and nail, one explanation being, because they cut off our bananas we had to seek an alternative route in terms of tax havens.

There is a powerful view coming from the Organization of American States that money laundering and election campaign financing are first cousins. They ride together invisibly, and as a distinguished Minister said, as silent crimes. The data on white-collar crime and money laundering is very difficult to get. That is why it is part of what criminologists call the dark figure of crime, you know it is there but you cannot touch it. The barriers are complex and that is why I welcome the legislation in terms of the agencies being set up and the spreading of the coverage from just drug trafficking into the additional elements that go with money laundering. That is, wherever the source is illegal, if the money is taken from an illegal source that should be related to the offence, the difficulty is you do not want to narrow the definition too much, but at the same time you have a difficulty making it broad and at the same time manageable for evidential reasons. I guess that is a very difficult proposition, so the task is very challenging but I am happy to see some inroads being made.

I want to repeat this matter of election financing. It is serious, but I am disappointed why the Government—when the Motion asking the Parliament to set up a legislative framework to control any irregularities and to protect governments from themselves, because the temptation to use money to fight election is so great—when the Motion was passed, the Government side abstained. So what that does, is to reduce public confidence in your intention. I did not do it, you did it all by yourself. And worst yet, when it went to the Lower House, just for one minute, up to now it is there dangling and suspended in the Lower House. When you sent down the missive to ask them to set up their names so we here in the Senate could supply our own names to do the right thing, to do the correct thing and the parliamentary thing, it is an insult to the Senate to see that the Motion is passed here properly and the Government sits idly by and takes no action to lift public confidence in its ability to fight white-collar crime and money laundering in this particular respect.

So, those are the conversion agencies, some of which I have just mentioned. Those are the conversion agencies. It is difficult, I say, for a prosecution—it is done secretly—money laundering—and it is of neutral benefit, the giver and the

taker, nobody gets injured except the taxpayers in many cases because many times taxpayers' moneys are being used. It is the opposite to what we say "tief from tief make God laugh". You have two important categories at which the money laundering takes place; it takes place through occupation and it also takes place through cooperation, and sometimes the legislation cannot cover both places simultaneously, so it is a point to look at as we move forward into this area.

I am worried about the yachting industry. I always find our border security has some large holes in it and one of those holes, I have a strong view, is the extent to which yachts are allowed to just come here and go back with such ease. I know there is customs oversight, but I do not think it is enough given the geography of the place and given the manner and the ease with which these yachts come and go. I think it is a matter for scrutiny. It is difficult to prosecute, it is also difficult to measure, and so you will find the Minister coming here without any amount of data to tell us, for example—from the original Act 55 of 2000—how many people were arrested; how many reports he got and how many successful prosecutions took place.

I am also concerned, not only as a legislator, but as a citizen. I was at the function hosted by one of our embassies, and to cut a long story short, the reports going from these embassies and high commissions located here, about the financial integrity of this country is not as pleasant and favourable as it should be. Alongside the crime reports, I think we really need some refurbishing and it is my respectful view that the introduction of this legislation with the Financial Intelligence Unit, that reputation will be refurbished and people will see us in a more positive light.

This is serious legislation. This is not merely about taxation as important as it might be. This concerns the integrity and reputation of Trinidad and Tobago, especially in light of the fact that you are pursuing the establishment or you want to be an international financial centre. The establishment of an international financial centre depends on two related things: trust and confidence in your financial systems. When you have haemorrhaging, leaks and mistrust in the system, I think it would subvert your intention to establish such a financial centre.

So alongside this is another conference. My distinguished colleague was present there as well at the Hilton some months ago, might be last year, and the question of white-collar crime and money laundering was raised. What are the police doing about white-collar crime? Why does it seem to have such a low priority in prosecution and police investigation? The senior officer got up and said quite plainly and frankly, "we do not have the kind of resources required; we

do not have the kind of expertise required and we do not have the quality of forensic capabilities required." And everybody got silent because it should not be so, given the damage that white-collar crime and money laundering can do to our country's financial system. And yes, Sen. Mark is right. Quite right! There is a lively underground economy in this country. I would not go so far as him to call the numbers—

Sen. Browne: Every country has an underground lining.

Sen. Prof. R. Deosaran: Well, if you want to use that as an excuse, I am making a point. [*Interruption*] I am making a point.

The underground economy here rests on drug trafficking and it rests on money laundering and black marketing of currency. I am not an alarmist as you said in another context and I am certainly not ignorant as you said in another context. You feel that anybody who gives a point that does not please you, through you, Mr. President, you have a kind of excuse that merely eradicates the goodwill that might otherwise be brought up on the matter.

The Minister in the Ministry of Finance wants to tell me, because other countries have an underground economy there is no problem by this country having an underground economy, not of the suspected enormity that we enjoy in the real estate industry for example. I think if you want to live with that feeling—that is why you seem so complacent and diffident about matters at hand. [*Desk thumping*] That is what contributes to the apparent complacency because everybody else has it so you could relax because you are just as bad as everybody else. If that is the standard you want to set for this sovereign State as a Minister of Government, it is a sad disappointment. [*Desk thumping*] Very sad disappointment. I thought I would have seen a more positive and aggressive stance taken that we have to be better than other people, [*Interruption*] but we will handle more of that another time. There is another issue coming up soon enough.

Mr. President, because to deal with this issue and similar issues, even in your profession—accountancy—integrity and trust are vital. That is why this issue of money laundering and white-collar crime, the moral authority of the Government is paramount and must be seen to be paramount. It must be seen to be paramount, aiming for the better and struggling for a higher standard, but there are seven deadly pitfalls, one of which we just witnessed.

The first deadly pitfall you have is the existence of the judicial mistrust we have; the second one has been echoed even by the judges themselves, that there is

a shaky criminal justice system; the third one is the hard-pressed prosecution agencies, the DPP's office in particular; the fourth one is forensic deficiencies, we do not have enough forensic capabilities to deal with the challenges of money laundering and white-collar crime; the fifth one is the criminogenic political alliances that we witness, the politicians and political groups forming alliances with undesirable people who themselves have connections, some established, others suspected in white-collar crime.

4.00 p.m.

The sixth one is the seemingly crippled watch dog agencies. So the Central Bank tells you for example, that we saw signs of the destabilization in the financial sector, but we were waiting to see whether it would improve. The Securities and Exchange Commission tells you, "We are asking for tighter legislation." Whereas if you examine the books, you will see in both cases as examples, there is enough legislation for them to act. But when you read the literature on white-collar crime across the world, it tells you what we call the "paliwally" syndrome, everybody is a partner to the other person in such context. So you have a culture of tolerance. That is what you have. You are not prepared to act judiciously. You have a partner there and a partner here, and the "fella" who might be doing it is your partner because you all meet in the cocktail circle together. That is a culture of tolerance in a small society like ours. Sometimes there is an advantage to it, but in this context, there is no such advantage. And a more precise one which the United States Congress has taken care of in their own legislation, the complicity between management consultants and the same company acting as auditors for the company. The company acting as a management consultant, but the same company performing the service of auditing. Certainly, it speaks for itself. Those are the seven deadly pitfalls.

So alongside this, let me say once again, all these specifics in the legislation and the ways in which the white-collar crime and money laundering are committed, they diminish public confidence in the system. Because you need the public, whether they are professionals or wherever they are located to be like whistle-blowers, to make the complaint properly and there is provision to protect them. The first instance is, they must be ready to make the complaint, but they must have confidence in the systems, in the authorities, and I believe that is one particular thing the legislation is seeking to achieve and I would welcome that.

Somebody told me yesterday, "You know, we have a motto together we aspire, together we achieve." But jokingly, he said, it looks as is "together we aspire, together we thief." Very colloqually, but once the feeling amongst the ordinary people gets to that level, I think it weakens not only civil society, but the connection between civic responsibility and helping the State to perform its functions.

You see, on the issue of transparency, that will help the process of detection, it will bring reputation to the Government. Let me give you an example as to where we have lapsed, so that we will not lapse to any great extent with this legislation. Under the Dangerous Drugs Act, No 38 of 1991, it says that the Minister will report to both Houses annually on the administration of the Act. That is section 59A of the Dangerous Drugs Act. So I would like to ask the Minister, has such a report been presented as this particular Act requires? Maybe it slipped your advisors or your administration. You are required—well whichever Minister is described to be responsible—to report to both Houses annually on the administration of the Act. It is etched towards the very end. What I would like to suggest is that we ask the authorities to present annual reports to the Minister, and let the Minister present that report to Parliament, annually. I think that will help the process of building public confidence and even help the Minister improve the system by whatever reforms might be required.

There is a little difficulty I see. It would take a deeper amount of consideration than I can give it today, but I merely want to point the Minister in a certain direction, that is, in the Dangerous Drugs Act, for example, in sections 4 and 5, especially section 5, if you are found guilty, you are liable to a conviction and a fine. The fine is $100,000 and the imprisonment is 25 years, and it goes on to elaborate on the street value, and so on. In the Prevention of Corruption Act, sections 5 and 6, for taking bribes if you are found guilty you have a fine of $500,000 and/or 10 years, and so on.

What I am pointing to, when you look at penalties in this Proceeds of Crime Bill for concealing and transferring funds, I am not saying Minister, through you, Mr. President, whether it is high or low, but I am looking for some consistency, because in this case you are charging a fine of $25 million or 15 years and there are other instances where the sentences among these three first cousin legislation, they do not seem to be consistent.

I make that appeal to you, with great respect, in the context of the Sentencing Commission Act, No. 80 of 2000 which was passed in 2000, that the Sentencing Commission Act was really designed to help remedy such apparent discrepancies and to strengthen the role of the Judiciary in terms of sentencing. Not that all

sentencing should be the same, there are different circumstances, but I think if you look at the Sentencing Commission Act, No. 80 of 2000, some of its functions will be to: collect analyze and disseminate sentencing data; develop sentencing guidelines and principles and ranges of sentencing for specific offences and categories of offences; to periodically review sentencing guidelines and provide a framework for the setting of maximum penalties and ranges of sentences; to make recommendations regarding the revision of maximum penalties, the nature of particular offences and the categorization of offences as to degree of seriousness. It says to conduct research for the Judiciary, the ministry and for the Government generally; to publish a bi-annual bulletin summarizing leading sentencing decisions for public discussion and for reform by Government; and to conduct public education programmes in the particular context, and it goes on.

This is a very helpful Act, but the question I ask, why has the machinery not yet been set up to execute the legislation, which is in the books? The legislation is properly included in our law books, but there is no sentencing commission. So once again, there is a big hole, another black hole in public administration. So when you put all these together, it brings us to the question of governance. The legal and judicial architecture is defective, hopefully to be salvaged in part by the Minister's presentation today. And I must say I was impressed by the detail that he went into and the very cohesive way that he made his presentation, of course I do not have the luxury to read it as he did, but I think it was an impressive—[*Interruption*]

Sen. Joseph: I thank the hon. Senator for giving way, but I am almost sure, Mr. President, otherwise I would have asked in advance, that given the nature of the Bill that I was piloting, that I had the luxury of being able to refer almost verbatim to my notes. Under normal circumstances when I debate, I do not read. So I think in all fairness and I am sure my Senator colleague is a fair man.

Mr. President: While not specifically contained in the Standing Orders, it has been a long–standing practice of this Senate to allow Ministers to read their brief when they present a Bill, not when they respond on the final, because that is when the debate starts. The debate really only starts when I propose the question after the Minister has presented his brief, and therefore, reading the brief is really not part of the debate and that is how I think the practice has come about. So it is not specifically a luxury, it is just a practice that has come about.

Sen. Prof. R. Deosaran: Thank you, Sir, and I am very glad that you have cleared it up. But I really did not mean any offence. I used the word "luxury" because I would have liked to read what I have here. It is so complicated—[*Interruption*]

Sen. Dr. Saith: When you become a Minister. [*Laughter*]

Sen. Prof. R. Deosaran: Well, which side would I join? [*Laughter*] But thank you, Sir. I want to refer or affirm what the Minister said, because the presentation indicated that this matter of money laundering and white-collar crime is as sociological, it is as political as it is legal, because the context in which the laundering takes place has a lot to do with the relationships between different people in high positions and the role of different socio-economic groups in the country.

In fact, white-collar crime and money laundering are largely defined as "elite deviance"; it is a rich people crime because of money involved. But ironically, we focus much more on street crimes, violence, rightfully so, but with less importance to these other horrible crimes that cheat the public of its wealth and it reduces public confidence and it feeds the underground economy.

I think Sen. Mark is right, we should have had more consultation, visibly, and some public education—[*Inaudible*] I could not understand the point as part of the debate made by the hon. Attorney General. Whether the Government needs a two-thirds majority or a three-fifths majority, that is no reason for them to hold back the legislation because they have a public to account to, and if the legislation is justifiable, if it is fair and reasonable, as I think it should be otherwise you would not have it as a piece of legislation, bring it up, bring it forward and let public opinion determine. Just as I said with the Attorney General and the Justice Narine matter, let the Attorney General do his duty and let Justice Narine do his duty as well, and let the public decide. This is still a democracy. The last time I checked, it is still a democracy and let us try and keep it so. So the Government, bring your legislation and expose the vice or virtue of the Opposition, and I do not think it is any excuse to say that because you did not have a special majority.

4.15 p.m.

Mr. President, as I come to the end, I must ask: What are the trends in white-collar crimes? Is it a lot? Is it a few? Or are we just paranoid?

In 2001, under the category of white-collar crime there were 308 reports; in 2003, it went up to 460 but it went down last year to 245. In other words, from 2003—2008, there was a drop of 47 per cent in the reports of white-collar crimes; embezzlement, fraud and so forth. So what does that tell you?

Why are we so frightened? It is because we suspect it is happening without detection and the symptoms of it are in certain sectors of the economy; casinos, real estate, the underground economy. And since this is a very prosperous

country, the Minister in the Ministry of Finance has repeatedly told us that our GDP has risen around the $100 billion mark.

So with all that money circulating, we cannot say because other countries have it—countries much poorer than we are—we must sit back. We have too much to protect in hard currency, the integrity of the Executive and our financial system. Other countries are not going towards an international financial centre; therefore we have to be different. [*Interruption*]

I am trying to help, you know. I am saying the legislation is good, but you interrupted me, you are forcing me to retreat into a more robust position. [*Laughter*] He cannot help it. If he continues like that he may cause the Government to lose the election. You have to be careful. This is politics; this is not banking. This is political economy.

The Minister in the Ministry of Finance, I will submit, is quite an intelligent gentleman. I have heard him debate, I have seen him with his facts and figures, but he still has to understand something about the nature of Trinidad and Tobago politics and public opinion. Barbados is more conservative and more congenial with their politicians.

There are other crimes which I will not belabour the Senate with. The figures suggest a number of things, that white-collar crime on money laundering on the record books does not seem to be a serious problem in terms of the trend. So it means that the legislation should help to correct the record by discovering more of what really exists, and that is the challenge we have.

That is why I have been belabouring the point about the Director of Public Prosecutions Office, the fast-tracking of certain elements and the hope that this particular piece of legislation and others which will follow will need the necessary corrections. So I commend the Minister for his presentation, it was useful and well laid out, and I hope the suggestions made here will bear some fruit.

Thank you, Mr. President.

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you, Mr. President. I rise to make a few points in response to the contribution of Sen. Mark and Sen. Prof. Deosaran. I think perhaps, I should start off with the quotation that was made by Walter Wriston in his final article as he demitted office as Chairman of CitiCorp.

It is a very simple observation. He said that there are only two kinds of money; money that is taxed and money that is not taxed and all money is looking

for a home. Coming from a man who had literally defined corporate and investment banking in the world economy, that is a particularly important statement. It is particularly important in the context of this particular organization and this particular Proceeds of Crime (Amdt.) Bill.

The point I was trying to make by asking Sen. Mark to clarify his sources—because I actually tried to go back to determine where Royal Bank ever made such a statement, and they have disavowed any knowledge of it in the first instance. So that the estimate of the size of the underground economy as being $60 billion so far is hot air, and I guess in the absence of any survey, study, or any attempt to quantify it, one's guess is as good as another. And as we know, in the case of Sen. Mark—and I must thank the *Newsday* for pointing out—is more often wrong than right. [*Desk thumping*]

So I do not know where that number comes from, but certainly, in terms of defining an economy, one always tries to bring the economy to what we call the declared economy as distinct from the underground economy. Because by definition, if you allow the economy to grow, it sets economic discontinuities, it sets wrong price mechanisms and wrong price signals. So there are always fundamentals for any country to ensure that its underlying contract system in law and tax is robust and strong and I go back to that concept; there are two types of money, one that is taxed and one that is not taxed.

But there is also a definition what we call avoidance and evasion. An evasion is illegal and invariably associated with what we consider to be illegal acts. So an underground economy as defined, is generally something that one tries to limit and make as small as possible, and in particular, because of its destabilizing impacts, we try to keep it under control and at the same token, try to ensure that the tax framework that is developed is one which encourages compliance. So the better definition of a compliance framework is one in which there are lower levels of taxation and generous allowances, to reduce the benefit of hiding and crime. In that context, that explains some of the policies that have been determined over time.

There was another point made: Why should an international agency be the one that is in fact setting standards or helping us move forward? It is interesting to note where the definition of anti-money laundering and the counter terrorism activities come from. In fact, they are the Paloma Declaration and the Vienna Convention and, of course, there is one thing we associate with Paloma—crime, the mafia. That has always been a fundamental effort on the part of any government, to control crime and illegal activity.

So you would find that countries that have had those difficulties would be the ones tending to have conventions that underlie the definition of money laundering, which in fact, follows through from the Vienna Convention which is perhaps the home of the OECD and the Paloma Convention which is the home of something else. The idea being to control the underground, or illegal activity as distinct from underground or grey economy where people are avoiding tax.

The anti-money laundering mechanisms are centred on a very critical effort. In the first instance, one of the reasons international organizations started because it was determined very early—and it goes back to 1988 just a little past the Red Brigade and the Barda Mindoff gang which were underground organizations that were attempting to destabilize the state. One of the ways in which you brought those organizations under control was to ensure that they did not have access to financing.

More importantly, and more close to home would be the activities in Latin America and in particular the left, who has financed a fight against the government in an attempt to control a country by essentially using the proceeds of illegal activity, or the drug trade. So that anti-money laundering has its antecedents in the first instance in what we would consider to be controlling organized crime, and in the second instance dealing with terrorism and the incidence of terrorism, to cut it out.

Sen. Mark: What is the source of that document?

Sen. The Hon. M. Browne: The source of that information, Sir, is the background documents if you were to check. As we are speaking, the critical recommendation revolves around a number of issues and the core issues that are dealt with in the Financial Action Task Force recommendations really have to do, as set out, with a number of recommendations grouped together: Customer due diligence and record keeping; reporting of suspicious transactions and compliance; other measures to deter money laundering and terrorist financing; measures to be taken with respect to countries that do not, or insufficiently comply with the recommendations.

In other words, to try to put together a holistic operational mechanism that will ensure that the attempt to handle money laundering, or illegal activities of a particular country are dealt with at the level in the country and across countries so you will be able to isolate it. A very strong and important aspect of it is the issue of regulation and also supervision, and by definition, enforcement.

Under that particular heading, those recommendations can also be grouped into another four or five themes which have to do with the finding of what is a

competent authority, the resources, the transparency or the legality of the operations which they use, international cooperation which actually is covered under recommendation No. 35, mutual legal assistance and extradition and that is to ensure, given the fact that we are dealing with cross border operations, that there is a mechanism which allows for the information transfer between organizations and other forms of cooperation. Those are the critical areas of the recommendations and that is what in fact it deals with.

The genesis of this arrangement at its first blush, we attempt to control and deal with money laundering, the idea was that you go after the biggest institution. And the biggest institutions which handle money are, in fact, financial institutions. So the definitions and guidelines for anti-money laundering have a lot to do with financial institutions. Banks in the first instance, and as we attempted to do in this particular Bill, to also incorporate non-banking financial intermediaries, in other words, the alternative banking sector insofar as they also deal substantially with movements of cash.

The Act also goes further than that because the experience over time has been to determine that by controlling the banks, they can only institute certain types of guidelines, but they also must take into consideration other types of businesses that deal substantially in cash and hence the reason the Bill widens the ambit and definition of businesses and listed businesses and, invariably, you will find the businesses which deal directly with cash.

Also, given the fact that certain types of professions that could be suborned, but are important to the whole regulatory and agency framework that lawyers and accountants are brought into the ambit and the sphere. It is found that accountants and lawyers tend to operate what are known as "clients accounts"; they operate on their behalf and they operate as trustees on behalf of third party agencies, and on that basis, it was also felt that it was important, given the experience over time to incorporate and bring certain types of professions under the rubric of the Act. This is not only in Trinidad and Tobago, it is internationally. That is the practice that has grown up over time.

I want to make a distinction between the definition and developments which have taken place with regard to the OECD and what is called offshore tax havens. That is one of the reasons I started off with the definition of money that is taxed and money that is not taxed. Offshore tax havens by definition are areas which allow for movement under treaty, and that is a completely different matter.

The OECD came to the conclusion, very fundamentally, that it was losing a lot of revenue under existing exemptions and dealt with what is an economic problem politically. We need to be clear and understand the difference between the two. So the OECD attempts to deal with Caribbean jurisdictions which operate under valid tax treaties—

Mr. President: Minister, if you can wrap up in two minutes, I will let you finish; if you cannot then we will return at 5 o'clock.

This session is suspended until 5 o'clock for the tea break.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. The Hon. M. Browne: Thank you, Mr. President. Just to continue from where I left off just before the tea break, I had started to deal with the comment which was made by Sen. Prof. Deosaran dealing with the OECD initiative in what was deemed to be the tax havens and, in particular, the OECD initiative was not merely aimed at the Caribbean but was aimed at a number of jurisdictions which have come to be called "low tax jurisdictions" and a rationale for the involvement of the OECD and their initiative, in fact, is due as much to their own individual fiscal circumstances as it is due to the tax regimes that exist in these so-called low tax jurisdictions, and it was of particular significance to the Caribbean insofar as we have a number of jurisdictions which are deemed to be low tax jurisdictions which do not necessarily fulfil or make disclosures under the North American or the OECD tax regulations.

I think it is important to understand a little bit of history and to decouple the argument about money laundering and low tax jurisdictions. In particular, low tax jurisdictions were, in fact, developed by European countries as a way, one, of enhancing the competitiveness of their individual businesses and, two, as a method for creating a store of wealth which was a little way from the tax man. I think that is very important. And in particular, that occurred largely as a result of two world wars and also a need to ensure that wealth was preserved notwithstanding whatever the circumstances that may have taken place in terms of the outcome of war.

To that end, one of the best examples is the fact that little Bahamas, in 1948, was the headquarters for the Nestle Corporation and, in fact, a number of large corporations had their headquarters in the Bahamas. The rationale for that was, very simply, it created a head office structure to ensure continuity of the organization in the event that the conflagration, the world war in Europe, had gone in a way which would have destroyed their asset value.

So the purpose of these jurisdictions—Liechtenstein is one of them and, in fact, parts of Switzerland; in fact, even in North America we had low tax jurisdictions, one of them is Phoenix; one of them is Delaware and the majority of North American corporations are, in fact, headquartered in the state of Delaware. So I think it is very important that when we look at that, to understand that a low tax jurisdiction does not necessarily mean a money laundering environment and much of the debate and much of the argument that took place, that one heard coming out of the OECD countries, had to do with money laundering and it required a very vigorous defence by some of our Caribbean colleagues to ensure that it was understood that this was not about a money laundering environment; this was about a low tax jurisdiction.

Part of the reason it captured the attention of the OECD had to do with the fact that because their populations have rapidly become an ageing population, and in fact the wealthier part of their populations have now been a little bit older, and as you grow older what you want to do is preserve your capital, so you put your capital in a place where it cannot be touched; where it is isolated. The net result of that is that it was deemed to be having an economic impact on the OECD economies and, hence, an assault was mounted on what was deemed to be fairly soft targets, so that they would comply. In large measure you would have seen, certainly within the last 18 months, a number of arrangements which have been made and tax agreements with some of the major countries, for example between Switzerland and UK; between North America and Switzerland and between some countries in the Caribbean, as well, and North America, in recognition that there is a certain source of income and that the tax take in those jurisdictions has fallen.

So that there is not an identity equation between a low tax jurisdiction and the OECD initiative, and I wanted to ensure that I made that point so that we would understand that what we are talking about, anti-money laundering guidelines, is not related to the OECD initiative. The two things are separate. That is not to say that there has not been some illegal-gotten gains that people have attempted to find, to put into low tax jurisdictions. That has happened, and those have been identified and also been dealt with.

But the critical issue with anti-money laundering and the anti-money laundering initiative is really to deal with the proceeds of crimes and illicit or illegal activities. The definition, for example, of underground economy or hidden economy, is any form of economic activity that is not taxed but adds to national income. That is why I started off with the definition of money that is taxed and money that is not taxed. The anti-money laundering guidelines, by definition,

therefore, are founded in very sound economic logic, in the idea that you do not want to have your economy destabilized by the development of illegal activities which provide a disincentive effect. Or, alternatively, create an incentive to do the wrong things, away from the normal aspects of doing business.

It has also been determined by way of experience that the anti-money laundering guidelines are effectively built on what underlies normal declaration or normal tax basis, the issue of diligence and record keeping because, for example, the payment of tax is built upon the presumption of record keeping, that you keep reports; that you understand what your income is; what your expenses are and that you can explain yourself. That is where the anti-money laundering—it starts off on a commonsensical framework.

So its basis is about customer due diligence, knowing your customer and knowing your customer rules, and those know-your-customer rules have been extended away from the financial community onto other listed businesses that, by themselves, also involve high levels of cash transactions. One wanted to bring those activities under the rubric of anti-money laundering guidelines to ensure that any large transactions, or if you want, suspicious transactions, are captured.

That also underlies the reason, for example, that there is a critical determinant as to size of deposit, and it varies from jurisdiction to jurisdiction. The number that is more regularly used is a figure of $10,000 and you would see, for example, as on your declaration, in most countries they ask you how much cash you are coming in with. The idea is that if you are coming with cash as distinct from a monetary instrument, that cash in some way is tainted, but if you declare it, it gives them the opportunity to ask you questions, and if you do not declare it, then it gives them the opportunity to ask you some questions but under different circumstances; the fact that they will take it from you. And also under existing financial rules where, across all financial entities, deposits of a particular size in cash, whilst not discouraged, are required to be declared. The idea being that if it is in cash and not in a monetary instrument, there could be some doubt as to where it comes from, and what it asks you to do is to declare it. It does not make the fact that you declared it illegal; it is just that we put it in a way that we are alerted; we know what it is; we could identify it, and once you can explain yourself, the likelihood of it being captured or sequestered, falls.

Also, transactions which are abnormally large are not in themselves illegal, and that is one of the reasons they are deemed to be suspicious transactions. I heard Sen. Mark use the concept of a risk-based approach not being used. In fact, it turns out that all organizations have to use a risk-based approach. It is

impossible to manage in a financial environment by scrutinizing every single transaction; it is almost impossible. So that any organization that is worth its salt and is of any substantial size, in fact, uses a risk-based approach, and that risk-based approach may be using commonsensical administrative techniques. One of them would be the example I gave just now, the idea that funds of a certain size must be declared and the person must say what was the reason for it, and they have a record of it, so that if at any stage subsequently, there was an investigation, the organization would have done its work and alternatively they would have been able to proffer a reasonable explanation. If the customer does not want to give an explanation, that does not make it illegal either, but the organization needs to have a record of it so that in the event that something happens, it would have done its responsibility.

That is where, as mentioned in the legislation, as mentioned by the Minister presenting the Bill, the Minister of National Security, that is one of the reasons a Financial Intelligence Unit is also required to be able to undertake those investigations of activities of a suspicious nature. Once again I make the point that activities of a suspicious nature do not make them illegal. On a risk-based measure, what we do is identify those transactions and then follow them through and examine them to determine where they came from and why they came into being. If there is a routine pattern of activity, it may lead one to the identification of an activity which may be illegal, or at least falling outside of the definition of a normal transaction.

I also heard Sen. Prof. Deosaran make a very interesting point when he linked the rapid rise in the cost of construction with the fact of illegal transactions taking place in the system. The two things are not necessarily related and there is no definitive link between the development of illegal or illicit activities and the changes in the price of construction in the domestic market. If, for example, we were to make that comment, then, by definition, we would also have to ask the question: Is that the reason for the tremendous rise in food prices? And the answer is that it does not follow; it is illogical. The tremendous rise in food prices was occasioned by certain changes that took place in the international economy and continue to take place in certain elements of the food segment.

In the case of Trinidad and Tobago and in a number of other countries which are close to us, once the economy started to grow and we reached pretty close to full employment, there was a change in the underlying prices. And we also have to say that the changes in the international economic arena also led to an underlying change in the prices of construction. That has to do with the price of

inputs, in particular, steel, aluminium; anything along those lines; any of those inputs that were imported. They were imported and underwent significant increases in price in the last 18 months, ending somewhere around August, September last year, when the world economy went into depression.

In fact, the price of steel is a benchmark point; the price of copper; the price of any kind of commodity, in particular in the construction industry, went up and went up dramatically. The price of steel, I think, rose by approximately 300 per cent or something along those lines.

So there is no causal relationship between illicit activities and the changes in the prices of houses in Trinidad and Tobago. That also has to do with the fact, if we go back to the early '70s when the money supply was strong, when the country was in boom, house prices also rose significantly in value. That is a matter of fact. So that there is a relationship between the strength of your economy and the relationship between asset prices.

Sen. Mark: Yes, but in the Mutual Evaluation Report, they made that connection.

Sen. The Hon. M. Browne: Well they may have made that connection but it is not a necessary and sufficient condition. And the fact that they made the connection does not make it right. There are sufficient causative and explanatory reasons that can give a rationale for the changes in house prices.

Sen. Drayton: With respect to that industry, you have in the Bill, real estate, and I wondered whether, in fact, it should not be real estate and construction, because if you are going to pay a contractor or a builder $500,000 cash, there might not be any relationship in the context of the price of housing, but both of us are a past incarnation and there is sufficient information to suggest that both the construction industry and the real estate, and for the size of this market, import/export as an industry, should be on that list.

Sen. The Hon. M. Browne: Yes, and it should be on the list from the point of view of precisely that, suspicious activity, that you examine it and you determine on the basis of those factors, what the current condition is.

5.15 p.m.

I make the point given the extensive, not merely anecdotal evidence, but the extensive evidence of certain factor prices being priced out of whack. One of the examples of that is the oil industry where, even though the sector went into some level of decline, the prices of current factors are still very high. One of the reasons

is that there were a number of cost overruns in construction, particularly where steel and those types of commodities were in use.

I take the point that given the fact that you have individual contractors who may be paid in cash and willing to accept cash, it is possible in those circumstances. That is one of the reasons at the end of the day, the anti-money laundering guidelines started off at its core dealing with financial institutions. At the end of the day, you always go back to that equation. Two types of money, one is taxed and one is not taxed. All money is looking for a home. At the end of the day you have to deposit the money somewhere, alternatively, leave it under your bed which is not something that takes place on a regular basis.

Sen. Drayton: In both instances and in the import/export business, that cash foreign exchange transaction via any type of bank instrument may not take place because the payment is being facilitated overseas, but if the bank as you said know-thy-customer, they would have an idea of the inventory, all the supplies are being paid for and the merchandise in terms of the days' receipts, but the actual cost payment for that importation, there is no cash transaction in this market. This is why I believe that to send a clear signal it should be put as a specified business. In the final analysis, you are making laws as a deterrent.

Sen. The Hon. M. Browne: I take the point and I have asked the Minister to take a look at it to ensure that it is listed alternatively, something that it goes onto. Therein lies one of the difficulties that compliance is actually levied on the shoulders of what we would consider to be the organizations which would generally comply with these requirements. In a sense they are very much in the front line.

One of the other points that were made and I thought it important to deal with, is the issue of gambling. By definition, gambling involves a large amount of cash and the Government needs to pay attention to that. I want to put on record that the Government did indicate an intention in the first instance of dealing with the gambling sector in one way, particularly the private members' clubs and the casinos. It is actively a matter of policy consideration. A way that we could deal with that sector is by way of regulation. I think that the Bill recognizes that in developing countries there would be a range of activities which will not necessarily have a governance or supervisory authority. This is one of the areas for which there is a loophole.

We do have a supervisory regulatory regime for the racing pools and the National Lottery under the Betting Levy Board, but it has not been amended to take into consideration the growth of private members' clubs and casinos. That is

an active policy involvement and it is as active as today. It is not to say that because nothing has been heard nothing is being done. It takes a little while to move from the issue of discussion and policy formation to the issue of legislation. We are in that process as we speak. That matter will be addressed. [*Interruption*] Prosecution can only come after you have the regulatory regime in position.

One of the other insidious matters that were raised by Sen. Prof. Deosaran was the issue of money laundering and political donations. I have to say that I took exception to that particular matter. It suggested that political parties were to be bought by illegal activities. The experience of the Trinidad and Tobago jurisdiction has to do with the fact that we may not have a very strong regulatory regime with respect to campaign and political contributions, particularly as it relates, for example, to a tax declaration position.

This is not to say that there are not people who are willing to support political parties without the prospect of gain. This is not that there are people who attempt perhaps to win political favour and ultimately economic favour. I am sure that there are individuals who attempt to do so as well. The reality is that political parties would not be able to survive without the contributions of individuals, not merely by way of time and effort, but also by way of money because it takes time to do so. Because people contribute to the political process and exercise, that does not make it an illegal activity or money laundering.

I want to disavow the connection between money laundering and political donations. There may be certain desires in terms of how we would like to see it happen. I know that Sen. Prof. Deosaran has put forward a motion which has been debated, for greater transparency in the process. The fact that there is a lack of transparency in the process alternatively, people do not necessarily want their contributions to be known. There are several possible and potential reasons in our existing environment for that. One of the reasons people do not necessarily like to be known as making donations for anything is that they do not necessarily want to become a target from the point of view of crime.

On that point in the same way, for example, in a recent court case a political party was asked to disclose the names of its members. The names of its members would have been disclosed to the judge but not in a public forum. There is a right of freedom of association. You do not necessarily have to know what party I belong to and what party affiliation I have. In small societies it may work against you.

I go back to the original comment with which I started. I think that I must hammer home this point. In every economy there would be activities which are

caught within the broad ambit and some level of activity which is not caught and sometimes deemed to be an underground economy. It takes place in every economy. Most of our small businessmen may not be tax declarers. That is a fact. You would find that in many instances or economies you have that in certain specific sectors. Taxi drivers and domestic workers may not fall within the definition of the tax net. It does not mean to say that they do not provide an important economic activity. It does not necessarily make their action on illegal or an illicit one.

For us to talk in a wider sense that an underground activity takes place and then by definition it is illegal, is to miss the point. This Bill and anti-money laundering guidelines attempt to direct the actions of the relevant agencies in terms of dealing with illicit and illegal transactions for gain and money. This is what this Bill seeks to advance. On that basis I support it.

Thank you. [*Desk thumping*]

Sen. Dr. Sharon-ann Gopaul-McNicol: Mr. President, I want to start by quoting something from the Minister of Finance dated October 01, 2009 from the *Daily Express*. It states:

> "Government is going after white-collar criminals because it is their nefarious activity which spawns street crimes and leads to 'the blood that is let by our young people', Finance Minister…said yesterday...
>
> 'What is the crime that the FIU is intended to police? It is the crime that is dressed up nicely in white shirt and a tie and looks so respectable. We sometimes forget that those persons involved in organised crime are really the true criminals,'"

Of course, I have to remind her that it is not just those in shirt and tie but skirts and dresses as in the case of herself considering what the Minister got herself into most recently. Let us not forget. The Minister went on to say:

> "'And the symptom of that crime is what we see expressed on our streets…When we see young men and women who are losing their lives and their blood being shed…the real variable is organised crime. Who is laundering the money, it cannot be the small man.'"

That is so critically important which leads me to question and wonder why something so serious as this—this is a very serious matter that we are discussing, the confiscation of the proceeds of drug trafficking and other crimes including human trafficking and the criminalizing of money laundering. Such a serious matter and yet, we took so long to bring this not just to the Senate, but to have open discussion around this matter with the citizens of this country.

Last week I was invited to sit in on a meeting in which several business persons were concerned about if we would be supporting this Bill, because of the blacklisting of our country, if we do not. I am thinking that this is what it took for us to discuss this, such a serious matter. It took us being blacklisted that led to discussion at this time. I am very saddened and disappointed by this.

In any event, our Minister of National Security said that we are not a member of the Financial Action Task Force but we are a member of the Caribbean Financial Action Task Force which is a joint action group to combat money laundering. This is excellent. I am pleased to see that all the countries that were listed—I am hopeful that we are committed to the tenets upon which the CFATF have been built.

I want to look very briefly at the reason for the amendment which is besides enabling Trinidad and Tobago to achieve a higher compliance rating with the revised 40 recommendations of the Financial Action Task Force on money laundering and the nine special recommendations on terrorist financing, I am certain it would make a significant dent in the criminal activity in this country. After reviewing the 40 recommendations, quite frankly, I do not see this Government making any significant dent, largely because we are talking about reporting suspicious activities from banks and other financial institutions including real estate and if you suspect any unusual activity with motor vehicle sales, gaming houses, pool betting, jewellery and so on. If that is the case, I am thinking that with the amount of social connections deeply endemic and rooted in this Government's interaction in this country, I do not see the reporting of individuals.

In fact, I can recall once being told, being reminded on August 03, 2005, that the important thing was the preservation of the political party and not all my concerns that I was raising. I maintain that with that kind of position where party supersedes that of country and the safety and well-being of our children, I cannot imagine this Government taking seriously, money laundering and any of these nefarious activities. I remain concerned and wonder if this can ever really happen.

Notwithstanding that, as I look at the amendments, I am pleased to see that the Act indeed introduces the Financial Intelligence Unit of Trinidad and Tobago which was one of the recommendations of the FATF. I was also pleased to see clause 33 of the Bill which applies to a judge for a warrant authorizing a police officer to enter and search premises. I thought that this is something that we certainly hope will facilitate the ceasing of all these unsavory activities.

I saw in clause 43 reporting any suspicious dealings with property and so on.

I respect the tipping off in clause 51. Indeed, a person guilty of section 51 is liable on conviction to a fine of $5 million and to imprisonment for five years. I thought that this was really good.

5.30 p.m.

Until we begin to take seriously people who are making reports or rather tipping off others when someone is close to being captured for any nefarious activities, would that be dealt with. I see that it is in this particular amendment.

Section 52 speaks of failure to disclose knowledge or suspicion of money laundering. In my view, I hope we would add the construction industry, seeing what a mess we have made of the UDeCott situation. This week alone, we saw headlines where the country is losing trust in this administration. Look at the headlines:

"Government slammed for Uff Commission fiasco"

I also think it was good, when I saw in the amended Bill that, with respect to complaints of suspicious activities, one is required to fill out the form with no signature or witness information, as opposed to the Integrity in Public Life (Amdt.) Bill, where someone making sure a claim had to go on affidavit to do that. I was pleased with all of that, but I have some concerns. To me, quite frankly, it does not really matter what amendment or legislation this administration passes in the Parliament. The mere passage of laws is not the solution to crime; it must be supported by serious implementation. This has been one of the handicaps of this administration; the implementation of laws that have already been passed.

This Government's policies are unable, it seems, to control crime because they themselves have marginalized the seriousness of any kind of criminal activity. As long as this continues, as long as we continue to turn a blind eye to any kind of serious allegations, as we have seen with this administration, or to marginalize the seriousness of corrupted activities, be it the CLICO fiasco engaged in by our Minister of Finance, we will not be serious about stopping crime in this country.

The introduction of this Bill could very well be seen as a red herring meant to distract us from the revelations that were coming out, in my view, of the many acts of corruption, be it UDeCott or otherwise. The scandal involving the Minister of Finance was suddenly put on the back burner when there are other serious things that ought to have been addressed with respect to that issue.

I do not see this as stopping any kind of criminal activity, as far as I am concerned, because for the past 40 years we have seen, whether it was the Jean Miles issue or any other matters that were brought to our attention in this country, that could have stopped the existing criminal activity, had we dealt with it then. I see this as continuing.

We hear people say that money is probably the reason this administration has failed so miserably in its efforts to address crime, I do not think that is the concern at all. Other administrations, be it the NAR or the UNC, operated on much less money and they were able to bring about a stoppage or certainly a mitigation of crime. I just think it is a question of not having the political will. All kinds of operations, be it Anaconda or Zero Tolerance, have failed. The Ministers, be it former Minister Chin Lee or the present Minster, have miserably failed in their efforts. What we have seen instead is a continuous increase of crime.

In the passage of legislation, this administration has a terrible track record when it comes to implementation. This is my concern, with all the efforts being put forward. This Government still does not seem to have a clear strategic legislative agenda when it comes to crime. There are all sorts of, I would consider, games that seem to be playing. On the one hand, we are putting forward positions held by the United Kingdom, with persons with whom we seek consultation. We looked at the consultation guidelines from the Unites States and Mastrofski and we are now with General Ross of Canada. It is all sorts of different things; straying from the local agenda. Our experts, right here in Trinidad and Tobago, understand the issues. The police and the Commissioner of Police are committed to the eradication of crime, yet we marginalize their involvement and we go on involving ourselves with foreign persons who know very little of our country and have very little commitment to what we are about.

I have some more concerns. The Government wants to set up a new unit, notwithstanding SAUTT still exists, albeit illegally for the past four and one-half years. I am wondering: how are we going to staff this unit? Have we thought through this? Police officers from the police service will be leaving the police service. Are they going to be undermining or "undermanning" the police service? I need to ask. What is the status at this point, with respect to the Children's Authority? Is it fully staffed and functioning? All this links directly to what we are talking about.

We have a low detection and prosecution rate, due to witness protection failure and the backlogs in the court, therefore, at this point, are we looking at reforming the police service? Our spending millions of dollars on consultants

certainly did not lead to that. What will we be doing about all that foreign contracting of companies in Trinidad and Tobago with the existing allegations of money laundering against them? Are we addressing that?

In my view, this Government does not seem to possess a clear understanding of all of this. Likewise, are we going to continue the excessive amount of spending that we have done in the past year? I have to wonder: Why is a body that deals with investigating and monitoring criminal activity being transferred to the Ministry of Finance? I do not understand this. It should remain, in my view, with the Ministry of National Security, rather than be transferred to the Ministry of Finance.

I also have to look, in general, at the situation of the dismissing of police officers. Are we going to be hiring contractors when we move this body to the Ministry of Finance? Does that mean we will be looking at new police officers, or the transferring of police officers from one unit in the Ministry of National Security to the Ministry of Finance? Again, this is a concern, because we already have an understaffed police service. What will remain of the already embattled and unstaffed police service?

I am also concerned about the FIU Bill, which seems to have no definition of "suspicious activities". [*Interruption*]

Mr. President: Senator, it is out of order to anticipate a Bill, which we will be debating in the near future, so do not go there. I would just like to take the opportunity to correct you on one thing. You said a moment ago that SAUTT was operating illegally. I have recollections, very specific recollections, of explanations by both the Minister of National Security and the Attorney General. While they say that SAUTT may be operating without the cover legislation, they have been at pains to explain that the unit is not illegal. Therefore, to say that in the face of the evidence before the Senate is in fact to mislead the Senate and that is also not allowed.

Sen. Dr. S. Gopaul-McNicol: My apologies, I stand corrected. Thank you, Mr. President.

Clause 20(4) refers to the imprisonment for five years of a listed business. In the enlisted business, this is my understanding of it, can an individual be imprisoned? We would have to look at that a little differently, as we put forward our recommendations for this amendment.

I started with the comment made by the Minister of Finance in the context of who is laundering the money. It cannot be the small man, it cannot be the small man. This was repeated throughout several articles. One article made connection between the 2,500 deaths and that the Minister of Finance is linking the 2,500 deaths to white-collar crime.

I want to put that in context—because I just have a few more minutes—of understanding the psychosocial stages of development. I think we all understand that the criminal activity at this level that we are engaging in this debate is not an independent unit in and of itself; it is linked to the "small man". It involves the young men and women in the poor communities. I would like us to understand that the concept of trust was raised by two of the speakers prior to me. They talked about the importance of this Bill in the context of trust. Trust versus mistrust is one of the very first stages, as we look at psychosocial development. This is critical in us understanding that this country has lost trust and our children have lost trust in us as leaders. More importantly, they have lost trust in this Government.

Another stage, because I do not have the time to outline all the stages, is that of identity versus role confusion. It is in this stage young people are confused about their own identity and are very liable and susceptible to being lured into all kinds of criminal activities, including, as some of them have so well admitted to us, their own involvement in drug trafficking in this country. We have to look at creating policies and practices that will give our youngsters enough options and alternatives, so that they will not have "no hope and despair", which is the very last stage.

One of the most interesting things, as you look at the psychosocial stages of development, is that young people do not seem to go through—I am speaking about this country—most of the stages of development. They leap right over, from their very young stages of role confusion and identity to despair. It is like they do not have hope. There is no hope or place for them in this society, so immediately, they are easy victims to drug traffickers and money launderers.

I have to be very, very clear. It is the role of Government to nourish dormant qualities in people and create opportunities through its policies and practices. This has not been the case. When the Government refuses to encourage independence—you do not see young people being encouraged to have their independent small businesses enough. We see people being railroaded into these makeshift kind of programmes such as URP and CEPEP. We see people coming out of MuST and HYPE and they cannot get employment; leaving them open to all kinds of possible temptations and luring them into all kinds of nefarious activities, which we are talking about today. I am very concerned about this.

These are some of the issues I would like to see us address as we continue with this debate. I have said it time and again, when our policies are not encouraging our young people to engage in positive activities, we are basically shifting them into negative criminal activities, by the limited choices they are exposed to, or the lack of job opportunities available to them thereafter. It is against all this information, as well as information presented by other speakers, I must say, while I am certainly willing to support this Bill, I do so with a heavy heart and I am very concerned if this Government is ever going to take seriously the issues facing our country.

Thank you.

Sen. Helen Drayton: Thank you, Mr. President. I would be very brief. This has to do with, what would I say, a few amendments which should be circulated.

Under clause 4(f), there is the definition of "security". I think we should substitute the words "security means" to "security includes", because I think by using the word "means", we are in fact limiting the definition of the words to certain instruments and we know that in the financial services sector, you have all different types of instruments involving and emerging over a period of time.

Also in the definition clause I noted that "property" was excluded. I think that probably was an oversight. "Property" should be inserted between the words "debt and profits".

In the same section, 4(f)(d) on page 8, "instrument" was omitted after "document", so it should read in the definition "document, instrument or writing evidencing"….

I have already suggested that serious consideration be given to including the import and export sectors and also the construction industry.

5.45 p.m.

Another suggestion is on page 12, in clause 15(b) where it says "in subsection (1*)(a)*…", but I think it should be "(10)*(a)*". Apart from that, I have no other comments.

Sen. Lyndira Oudit: Mr. President, thank you. The Vienna Convention that was spoken about by the Minister of National Security was set up in 1988, and it was not until April 1998, under our administration, Trinidad and Tobago actually ratified that particular convention. I think somehow it slipped the Minister to mention that. What we have is some form of games, as Sen. Dr. Gopaul-McNicol said. According to the Minister of National Security, the Government is signalling that money laundering is serious, because of this particular Bill. Why did it take Trinidad and Tobago so many years to come to this particular recognition?

Mr. President, crimes are now trans-boundary. That is a new term that they have added. It is actually quite international in flavour. This Bill that we have here is not timely, but it is long overdue and behind time. The PNM has been dragging its feet on this Bill. This process was supposed to be in keeping with work that started in the mid-1990s with the establishment of the Caribbean Financial Action Task Force (CFATF). In that report on Money Laundering through Emerging Cyberspace Techniques submitted in 1988, the recommendation then was for the establishment of a permanent joint task force for this region. Again, under the UNC, that suggestion was taken very seriously, and by the end of 1999 collaborative efforts had already been started.

Mr. President, to show you the commitment of the then UNC government, at that time, in June 2000, the Caribbean, United States of America, European and Canadian Ministerial Conference was held right here in Trinidad as a direct result of the work of that task force. The Proceeds of Crime Act that we are amending is actually the work of the UNC.

Sen. Dr. Saith: It was Ramesh!

Sen. L. Oudit: It is still the UNC. Why did it take so long for this particular administration to act on that particular piece of legislation that was so critical, coming out not only of the Vienna Convention of 1988, but the CFATF? After 2000, all legislation under the PNM lapsed, including the Integrity Commission Bill and the Prevention of Corruption Bill. The people of this country must see what this non-action means.

According to the Independent report of the TTTI submitted on August 13, 2009, one page 19 it says:

> "…the term 'illicit enrichment' was only cited in the Prevention of Corruption Bill of 2001, but that Bill lapsed at that time and since then there has been no attempt to bring legislation which utilizes even the concept."

This is the TTTI report for this year. This Bill that is here before us is just an amendment Bill, but it is really standing on the strength of the parent Act, which is the only serious signal coming from this country that this government was serious about taking this criminal bull by the horns.

The ability to establish business across boundaries really renders irrelevant things like borders and jurisdictions. This Bill is only now seeking to make Trinidad and Tobago compliant. Let us look at some aspects of this Bill.

Clause 29 seeks to amend section 55, but the Minister referred to an oversight where trust companies were not included. Again, we seem to have this word "oversight" very often in the last few weeks. There are a number of oversights,

and my question at this time is: Why is there no reference to other institutions or other type of business activities, for example, cooperatives, international companies, foreign corporations and mutual fund corporations?

We got an explanation for mutual funds, but I would like to refer to the same TTTI document where it talked about state enterprises. In fact, we have just come out of a gruelling session with the construction industry and the commission of enquiry. Presently, there are many questions in the public domain about the manner in which state enterprises and special purpose companies are being managed.

On page 38, the TTTI report talks about public service organizations and the way in which they tender. I would like to quote from it and it says:

> "a. Stemming from the White Paper, there was the development and finalization for legislation to harmonize public procurement. However there has been the lack of follow through by the Government.
>
> b. Section 23 A and B of the Central Tenders Board Ordinance (Act No. 22—1961) provides for the CTB to act on behalf of Government. However, State Enterprises, Companies and Regional Health Authorities are responsible for their own tendering process. As such there is not a uniform process for all public procurement which falls under the CTB."

Many smaller non-traditional channels outside of the strict financial systems such as these identified here are often used as conduit for the investing of funds through illicit operations; the lack of adequate regulations, lack of diligence and inconsistent scrutiny which actually work in the favour of money launderers and corrupt officials using these unscrutinized avenues—to the extent that we would have scrutiny, for example, financial institutions.

So, many non-traditional financial systems often report consolidated accounts, if they have to, not often identified by jurisdiction or even between subsidiaries. We have examples here with the Clico Investment Bank and so forth. One of the concerns of the Government was the inter-company transactions. We could not legislate them and we could not fix the regulatory framework for inter-company transactions. That is one of the ways in which a lot of money filters through.

What we have today is a little putting of the cart before the horse. The amendment to section 2 in this Bill seeks to identify or insert some sort of importance to the FIU. This really signals the urgency with which this

Government is under crunch to make this thing happens. We are even skipping a step ahead when we should have dealt with the FIU first. Further, it exposes this last minute type of approach of this Government. This is not the only piece of legislation that has come here in this manner.

Today, we heard about the threat of blacklisting and that is one of the reasons. Unless they do not come kicking and screaming, they will not bring legislation. You have to literally hold the legs of this Government and pull them through the door. Unless we do not do that, they do not come here with timely pieces of legislation. That is a serious problem that exists here.

Clause 32 seeks at forging greater links with international efforts and international agencies. Regional and international corporations are very critical, especially where there are many who seek to avoid, not only the scrutiny, but also the compliance. They resist compliance. In the Caribbean, we have a number of not only persons, but agencies that have been very successful in flaunting the laws albeit inadequate, especially in light of the half-hearted efforts, not only of this Government, but regions in the Caribbean are somehow notorious.

I would like to refer to the International Narcotics Control Strategy Report issued in Washington in 2007. This was one of the most telling things that I have read. It says that when it comes to drug trafficking and money laundering, "member States of the Caricom are a major concern to the United States of America." In fact, the report compiled a detailed analysis of all the territories in this region and outlined the specific concerns.

In light of all our economic and political integration, we now have to ask the question: What are we getting ourselves into? I hope it is not deliberate, but if all of this is in the public domain, international, are we not a little too easy and quick to jump on the political integration bandwagon when we might not only be having to help, but adding extra burdens and taking on the responsibility of fixing their problems—in this case, money laundering and so forth—and we would be compounding ours?

Mr. President, for Grenada, the report identified that "South American and Caribbean drug traffickers used Grenada's coastal waters that are often unpoliced islands to tranship cocaine and marijuana en route to the United States of America and the United Kingdom."

With respect to St. Vincent and the Grenadines, the report indicated "that country was the largest producer of marijuana on the Eastern Caribbean and the source of most marijuana use in the region."

Mr. President, this Bill seeks to expand section 58 and this expansion is very critical. It is actually relevant in light of the details that particular report has. It says "that the proceeds of narcotics trafficking in the Caricom may be laundered through a wide variety of businesses, as well as through the purchase of land, boats, jewellery, cars, houses and other real estate."

6.00 p.m.

Clause 28 which seeks the expansion of section 53 seeks to increase fines upon conviction to $25 million. That may seem harsh at first, but reports coming out of the developing regions' studies indicate that this is actually a drop in the bucket. The Task Force on Financial Integrity and Economic Development Impact indicates—and I think Sen. Mark also pointed this out, according to 2008—"some US $1 trillion flows out of developing countries each year." Out of that report what was eye opening was this recognition which hit the nail on the head. It says here and I quote:

> "There are a lot of countries where the group in power doesn't want to dig up the transgressions...it is a matter of political will…it takes a regime that really wants to accomplish that goal…"

Mr. President, this was stated in the Task Force for Financial Integrity and Economic Development. It takes a matter of political will and it takes a regime. What we have—when we tie this particular report and Narcotics Control Strategy Report—and what we see unfolding is in fact a strong network. We did not have to wait for any political union. You have a very strong network right here. Unfortunately, it is a network that is nurtured and sustained but in the wrong area. It is a network of crime, and Trinidad and Tobago is actually recognized by these international agencies as the leader in this network. According to that strategy report, and I quote:

> "Trinidad and Tobago is reported to be a transit country for illegal drugs from South America to the US and Europe…but what is of particular and unique concern is the petrochemical industry as chemicals originating from Trinidad and Tobago have been found in illegal drug labs in Colombia…
>
> The illicit narcotics proceeds are laundered through various financial institutions, cash couriers and casinos…there has been an increase in fraud and the use of counterfeit instruments…"

Mr. President, under this amendment, sections 43 to 46, you have persons so convicted, liable to a fine of $25 million and 15 years imprisonment. But I would like to suggest to the Minister that you might have an additional oversight. In fact, what you have done is you have repealed section 53(1) and substituted 53(1) and 53(2).

However, when you repeal section 53(1) there was the section that referred to section 52; when you did 53(1) and 53(2) no mention was then made of persons liable under section 52, and that section dealt with persons who fail to disclose information about suspicious money laundering activities. Therefore, your current Bill has nothing or no conviction or no liabilities for persons who previously in the parent Act fell under 52.

I would like to give the benefit of the doubt that this again was an oversight, that really and truly 52 should have been included—or at least those persons liable in 52—in the amended section 53(2) where persons so convicted should be liable to a fine of $5 million and imprisonment of five years as it was dealt with in the parent Act. So again, I would just like to bring that to your attention, Mr. Minister, through you, Mr. President, I believe it is an oversight; "undersight"; all sorts of poor sight and poor vision, but we have to deal with these things as we see them. It might be typographical.

In May of 1998 the Caribbean Financial Action Task Force with the assistance of RAND Corporation did a study on Internet casino gambling in an effort to arrest the phenomenal growth of cyberspace criminal activity in the Internet field and this report concluded and I quote:

> "Ambiguous regulations and differing legislative interpretations prove daunting for many governments—in the region—Transnational criminals possess the ability to stay ahead of new laws and dominate the regions for blocks of time".

Mr. President, what was critical coming out of that study on Internet casino was that really and truly governments have to be very proactive and they have to be very watchful, and they also need to keep up so that it is no longer enough to say, well, in 2000 this is what the legislation brought and that is what we had. Nine years is a long time. Nine years is a lifetime, especially in this age of technology. In this age of technology what you find is that—months, days, a long time, when it comes to technology—the speed and the rate at which technology is changing. So, I would like the Minister to take all of that into consideration, we do need to look at Internet gambling.

Section 56 of the Act, according to clause 33 of this Bill, is very crucial, the amending of section 56, but I believe that the Minister has to include channels that are not traditionally used for money laundering, including the casinos, credit cards and other lines of credit that are offered by financial institutions.

According to Mr. Dave Williams, in *Journal of Financial Crime, Vol. 14* of 2007 and I quote:

> "Credit card fraud has only been a recent phenomenon in Trinidad and Tobago…the law regarding credit cards is in a very confused and unsatisfactory state in T and T…there should be the formulation of credit card policies along similar principles as those for cheque fraud to deal with…the inadequacies of the detection, prevention and enforcement machinery…"

Even your clause 2 which has expanded definitions does not include under listed businesses or business, anything to do with credit card, casinos or even any other lines of credit that may be offered by financial institutions.

Clause 29 seeks to amend section 55. I believe just one suggestion here that we should have the inclusion of some regulatory reporting self-assessment checklist which would be used, not only to determine your implementation gap, but it would also be used to determine your need for technical assistance. I also would like to suggest to the Minister in this piece of legislation that we include a national database.

Mr. President, when you have sexual offences, there is a registry of sexual offenders, especially when it comes to sexual child offenders. This sort of database could be used in a similar line, persons, especially law enforcement agencies and other regulatory institutions can access information on the database. So, at a glance, locally, regionally and internationally persons would be able to look at compiled data, access hard copies if needed, especially online access through the electronic industry, some form of database which would be used to counteract the secrecy and jurisdictional variations that we have which were identified as one of the problems in the way in which we were able to manage the compliance and detection. I would suggest that this database requirement could be included in section 56 which deals with reporting and types of records that are kept.

In 2008. the Financial Action Task Force led off by Norway identified the problem of tax evasion as a predicate offence and directed that suspicious activity reporting should be done to cover cross-border legislation. I thought that if amendments were being done to the parent Act, then certainly the inclusion of tax evasion rather than just property would have been included. I know the Minister, through you, spoke of the revision of the Income Tax Act and even copyright, but I really do not know if the intention was to include tax evasion. According to the task force report in 2007 and I quote:

> "The G8 countries could be approached before meeting in Canada in 2010…and agree to identify tax evasion as a crime on par with corruption and money laundering."

Further to that, another international task force on Financial Integrity and Economic Development which was submitted in September 2009 identified and I quote:

> "The massive outflow of illicit money out of developing nations, estimated at some $1 trillion per year…consists of tax evasion, tax avoidance and criminal and corrupt funds…"

Tax evasion is really an age-old way of getting away with murder, in many cases, literally, but it is also one of the ways that if you are serious about catching the criminals just remember Al Capone, after years and years it was through the tax man that he was eventually caught. So, tax evasion, I believe, ought to be included in legislation, or we actually would give the smart men another loophole.

In a very recent debate we spoke about a loophole that led to the non-gazetting of information, a loophole which could have cost this country millions, billions, wasted time, money and effort. So we do not want to bring legislation here today that somehow provides another loophole where we leave out tax evasion as one part of it, we need to close this loophole so that the smart men do not really get another way to filter out our sums of money through corrupt ways.

Mr. President, a very critical concern, and Sen. Mark brought it out, was the question of human trafficking. In July of this year, Trinidad and Tobago became a member of the International Organization for Migration (IOM) and that international organization is a direct response of this evil that has plagued the developed world and many parts of the Eastern world, but has shown its ugly head, not only in the West, but in particular in the Caribbean. I remember earlier this year we had a huge panic out of the port and we had all of these allegations of a container of bald-headed children, allegations about human trafficking and that came in the wake of dozens of children in particular who had simply vanished. You do not find their clothes, you do not find pieces of their body, you do not find a skeleton, you do not find a skull, you do not find teeth, you do not find anything; you just have people vanishing into thin air.

So when we had the issue of Trinidad and Tobago becoming a member of the IOM, I was very heartened, I was quite pleased to see that the Trinidad and Tobago Government took the initiative to become a member of the International Organization for Migration, so much so that I have on the Order Paper two questions regarding the way in which the Government intends to look at benefiting from this and also the way in which we intend to treat with the question

of human trafficking. And I would have thought that if we were bringing legislation to deal with the proceeds of crime, then certainly, there is money to be made by selling live bodies and it is certainly not legal, so if it is we are dealing with this, then I would expect and I would hope that some form of inclusion would be there.

6.15 p.m.

The national database that I spoke about earlier, Mr. President, could secure, not only information on questionable practices by companies, it would also indicate foreign persons or companies that have been avoiding taxes or the tax laws of this particular country. But in addition to that, you can actually use this national database to include those persons who may very well have been victims of human trafficking as far as it comes on to an international awareness.

Mr. President, Sen. Mark, in a private motion brought the Extractive Industries Transparency Initiative to this Senate a few months ago. There is also, in addition to this initiative, the IMF Code "Guide on Resource Revenue Transparency", according to the Task Force Report of 2008 and I quote:

> "Natural resource gains are often the most substantial source of funds in developing countries and can easily be siphoned out when they get captured by the business or political elite."

Mr. President, in this country, we have had a track record of what we call patronage and now we are not only referring to local patronage, we have our foreign patronage. The Task Force went on to talk and it says:

> "The awarding of natural resource concessions have long been used as a tool for patronage. The tools used to plunder natural resource wells could be the establishment of shell corporations, falsified reporting and the mispricing in invoicing."

When we spoke sometime ago in this very House about the question of variations in pricing, one must ask the question: When you have $100 million and you have a new price of $700 million and $1.2 billion, where is all of that money going? Certainly, if there is something to show for it, then you can say, "Well, yes, I bought 42 cars, or I bought six yachts, or I bought three mansions", but if there is nothing to show for it, then where is your money? What accounts for this money? This is where we have to look at variations and mispricing of invoices when we talk about the proceeds of crime. In fact, the report on the Task Force was very, very explicit and it says here:

"Financial institutions should recognize the risk for corruption when there are oil-backed loans to state-owned companies in oil rich countries, or when State bank accounts are held abroad under the sole control of politically exposed persons."

Mr. President, the writing is on the wall and in this very Senate we have been asking the question, who is benefiting from all these loopholes and oversights? Who is benefiting? The international agencies are very vigilant, and they are very vigilant not only in their own affairs, but in the affairs of the Caricom. According to the Task Force, it says:

"Look closely into situations where politically exposed persons and their relatives and close associates in resource rich countries have a paper trail showing diversion of resource revenue."

Mr. President, we have in this country the tradition of people siphoning and diverting funds through variations and mispricing. A number of areas, a number of persons, documented and out in the public, and so we have now been labelled as vulnerable and deficient, non-compliant. Non-compliant, when it came to the majority of things in the 40 + 9 conventions.

History, as some may like us to believe—

Mr. President: Senator, we have a procedural motion.

PROCEDURAL MOTION

The Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, I beg to move that the Senate continue to sit until the completion of the debate on this Bill.

Question put and agreed to.

PROCEEDS OF CRIME (AMDT.) BILL

Sen. L Oudit: Mr. President, in my winding up I would like to say, that history is not something that is dead as many people would like us to believe. History is in fact a living example that guides us daily. This country has been blessed by natural resources, including its people, including the human resources, but what we have seen in the last eight or nine years in particular, is the left hand being cut off to support the right hand. In the words of the political scholar, Aristottle, translated in 1953, and in a very short and simple line he says here, "Happiness must be distinguished from amusement." And so, what we have is an amusing vision of this country that, God help us, many of us are not included in that vision, the crooks are laughing all the way to the bank.

This Bill is certainly important, but even more important is the political will. The political will of each Member of Government, the moral obligation to right the wrongs that had been committed against the people of this country, and we really, really are looking to this Government. If you can undo the wrong, then undo it. Enforcement of the law is critical.

Winston Churchill said, "Hit the point once, then come back and hit it again, and then hit it a third time, a tremendous whack." Let us get it right. I do not know how many times you will hit this, but please, let us get it right this time.

Thank you. [*Desk thumping*]

Sen. Subhas Ramkhelawan: Thank you, Mr. President, for giving me the opportunity to speak on this amendment to the Proceeds of Crime Act. I want to start by speaking to the other side of this equation because what we have heard in terms of the this piece of legislation or this Bill, is what would happen in terms of money laundering, in terms of drug trafficking that leads to money laundering. But I want to speak to the innocent citizens who want at times to invest their moneys outside with international firms and international houses.

If this piece of legislation were not passed and we were blacklisted, there would be growing impediments to these citizens who wish to invest abroad, and there would be growing impediments for international players who wish to come to this country to invest, because the bar of compliance is being raised every single day as we speak, and if we are blacklisted, there will be many impediments to our citizens investing abroad when the whole question of know your client comes up and compliance comes up. I am seeing out there as a practitioner, more and more the stringency where the bar is being raised, and even to set up an account for clients is becoming more and more difficult. In that sense then, I do not think that there is any question that we should support this particular Bill. Albeit, it may be coming late, it may be coming close to the mark, but as I have said before, better late than never.

I do have a couple of questions with the amendment though and I will raise some of them now and will raise some later at the committee stage. Probably the first aspect that causes me concern—and I have not had the comfort that this is not a matter to be worried about—is clause 4 of the Bill, which replaces the definition of "designated authority" with the establishment of a Financial Intelligence Unit, by the Financial Intelligence Unit of Trinidad and Tobago Act. The concern I have is that this thing is not in existence and I certainly would like to hear from the Minister, or the Attorney General, that we can pass a piece of

legislation for something in the legislation that does not exist. And I hope if the Attorney General is not there, that an equally eminent Senator in the Senate, my colleague, Sen. Dana Seetahal SC would be able to explain that particular aspect to me which I have not been able to wrap my mind around. As I said at the last sitting, I am not a bush lawyer. So certainly, I would like to get some clarity as to that particular matter as we go along into this debate.

The second point that I would like to make is, as regards to the First Schedule, there are a number of listed businesses that are being addressed to capture the whole movement of cash, whether it be in the used car sales business, or whether it be in property. But there is one area where there is some great concern with regard to the movement of cash and that is in the area of supermarkets and groceries where there is quite a lot of cash being moved, and it is an area which I am told is a possible loophole in terms of money laundering.

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

Certainly, I would like the hon. Minister to look into this matter, and maybe, we can consider adding to the list, this whole area of supermarkets and groceries which are significant cash turnover businesses.

The third area that I would like to get some clarification on is under clause 32 which addresses the whole notion of reciprocal sharing of the proceeds and benefits arising from criminal activity where the assets are confiscated. I did not quite understand and I did not have clarity as to what this reciprocal sharing meant. Is it an equal sharing? Is it prorated in some way? What exactly is the basis on which this matter of reciprocal sharing will take place? I hope that the Minister in his winding up or at some other time would clarify this matter so that in the legislation there can be clarity of sharing between nations, jurisdictions and so on.

Fourthly, clause 33 of the Bill stands out because this, as I understand it, is an amendment Bill, and this particular clause seems to stand almost on its own and does not fit into the Act as it is configured because it speaks to:

> "Until regulations are made…the selection of the Supervisory Authority, the FIU shall be the Supervisory Authority..."

6.30 p.m.

I thought that should have been fitted somewhere in the Act itself, because I am not sure where it fits in this amendment; it does not fit into a particular spot in

the Act. So I think maybe we should have some clarification and the Minister, in his winding up, will say where this fits in terms of the amendment to the Act. It cannot be a stand alone because this is an amendment.

There are some thoughts that I would like to share, many of which I will raise in committee stage, but there is one in particular that I thought deserves some attention. Throughout this document and in the definition, "financial institution" is used to cover a wide range of institutions; whether it is under insurance, the Financial Institutions Act, the Cooperative Societies Act or the Building Societies Act.

I think that the term "financial institution" has a specific connotation under the Financial Institutions Act and it could be somewhat confusing in law to use "financial institution" as defined in this Act, and then use "financial institution" as it is understood in the ordinary course of the law. If they are used interchangeably, they could be very confusing.

I suggest that some attention be paid to this and, maybe, we can change for the purposes of this Act "financial institution" to "financial intermediary" because in essence, that is what most of the institutions referred to here really are; they are financial intermediaries of which a bank or financial institution under the Financial Institutions Act, 2002 would be a specific category.

These are some of my thoughts. I have no real difficulty in supporting this particular Bill. I have some difficulties with some of the legal questions which I hope will be answered and clear the way in terms of my supporting this Bill without any qualms or any particular conditions.

So that is my contribution, Mr. Vice-President, and I thank you.

Sen. Mohammed Faisal Rahman: Mr. Vice-President, I have pleasure in making my contribution on this Bill to amend the Proceeds of Crime Act, Chap. 11:27.

First of all, I would like to say that we have been placed at a little disadvantage. I know one of my colleagues had a similar problem, I do not know if everybody had the same, but the putting together of the Bill was very poor and I had to cut out pages, photocopy them and assemble them in order. I have seen mistakes in the past with Bills, but this is the worst.

Sen. Oudit: I had to cut it, the pages did not flow.

Sen. M. F. Rahman: The pages were not in sequence and it was very confusing, I spent quite a while trying to sort the matter out.

The events of the last few days have left me in a bit of a stupor and I can find no reason to repose confidence in any of the assurances that even Ministers of Government in this administration would offer to us. We are at a stage where whatever is said we have to take with a very big pinch of salt.

Here we have legislation that is absolutely for the benefit of the country and which has been on the statute books since the UNC days but has remained entirely unenforced by the present administration and then we would have the Attorney General try to convince us that it was in anticipation of our non-cooperating that they let the matter slide for all these years. That is to insult our intelligence.

The Finance Minister is on public record as acknowledging the incidence of white-collar crime and I believe—I have not heard any of my colleagues say this—the Minister of Finance said clearly that the Government knows who the culprits are, just as "Mr. Big" was known, but for the lack of proper legislation, they have not been able to get around to prosecuting.

This was even more reason why this matter, which has been known to the Government, ought to have progressed long before today, long before we were facing blacklisting on the international credit rating system and being now stampeded to look as if we want to conform by adopting some of the 40-plus recommendations that have been given to us all this time.

Mr. Vice-President, it is not very reassuring to the country and in the present circumstance, where white-collar crime and corruption have been so completely exposed in the public arena and where, rather than implementing existing law and going after the culprits and having the DPP prosecute matters and having them go to the police, we have the administration willingly handcuffing itself and manacling its legs and saying it can do no better but to let its best assurances to us be washed away, and allow all the flagrant criminalities that are now in the public domain to slide into greater heaps of calumny.

Today we have this Proceeds of Crime legislation being brought to us and the Government is incapable or unwilling to attend to crime. It claims that it cannot contain the actual physical, violent crime, but it seems as though it is in fact, unwilling to come to grips with white-collar crime.

How can we have this Bill presage any change of Government policy when it is really a Bill that is being brought as compliance legislation to save our credit rating name? I have no confidence that this Bill which we must support, quite obviously, because we originated it and we want to support the amendments, but it is a

sad commentary that notwithstanding a supporting of the Bill, we can repose no confidence in its implementation and not because of a lack of personnel, but because of a lack of what has been called by my colleague, the political will.

The Government likes it so, as I said before, and this legislation is not going to change its modus operandi. It is not going to look after crime, it is going to qualify for our continued credit rating and hope that the rest of the world does not pay attention to the corruption that is bursting out all over the nation. It is a pathetic situation, Sir. We are totally in denial.

The two most important positions in the Government are that of the Prime Minister and the Attorney General. At the start of this particular Parliament, when there was a little reluctance to get the Parliament going, if I recall properly, the Prime Minister took a while to even announce his Cabinet. And once he had filled the prime ministerial and the Attorney General's position that was all he needed to continue to take his time.

But from the Attorney General down and the Prime Minister down the administration has lost all credibility in the present circumstances and we just do not know how the Government expects to continue to stand with any stature on the world stage. How can it expect to continue to gain respect? Our Prime Minister goes all over the world, addresses committees at UN and different fora. They investigate us and they know us and we are coming out as a pipsqueak little nation that cannot contain any sort of aberration within the society.

It is really very unfortunate and it is sad because the President of this Senate has repeated to us on more than one occasion that this is the highest office and Chamber in the land, and this is the Chamber that is being brought into—in my sincere, personal view—disrepute with the events of the last few days and here we have a Bill to purport to look after the stable so more horses cannot bolt. All the horses ran away and now you are looking to come with a Proceeds of Crime (Amdt.) Bill.

I want to say something to which I have alluded in prior debates regarding proceeds of crime. I have said and will say again that it seems to be a policy objective of this Government to benefit from crime, because we have had an escalating fine and penalty situation where alcohol is increased, tobacco increased, serious fines of $1 million, $2 million and $5 million are becoming the order of the day.

The Government seems to be very willing to benefit from the proceeds of crime in the country. I would like to recommend that the Government cease to take fines and penalties and put in the Consolidated Fund or wherever and flagrantly benefiting from the crime of the country, and take all the funds you say

you are putting in because of concern for all the increases in taxation for the benefit of the health of the country, and all the fines from all the different crimes that are committed including the current ones, and put those in a particular fund to put back into the communities that have been violated by the crimes that have been committed in the country because of the dereliction of the Government in its regard to dealing with those crimes.

So I would like to say that let the Government not have its funding, its funds and its revenue benefits from crime but take those moneys and put into that area I just mentioned. And I say that very seriously. It may sound like a novel idea, but I believe it would give the Government some pause because it does not need to have the penalty and punitive taxation that it has been imposing upon the people to the extent that it has in recent times. And it will make it very clear that this Act to control the proceeds of crime will not apply to itself, because I sincerely believe that the Government's policy now is to benefit from crime, and as I said before, it is almost a civic duty to commit a breach of the law in order to contribute to the coffers of the Government, which is very ironic.

6.45 p.m.

I want to say this, that for all the goodwill in the world, with the tidal wave of commercial transactions that pass through even the littlest nation, it is pie in the sky to believe that implementing even the new measures that you are going to bring in, in this Proceeds of Crime Bill, that you are going to be able to identify criminal acts, because the banks, among themselves, put through thousands of transactions per day.

You see, when you are listening in the blimp to people's telephone conversations, you could set up key words, like terrorism; somebody says a word and it triggers a response in the eavesdropping mechanism and you could listen to that conversation. But when silent transactions are going through the wires, without any revelation as to purpose, content and so on, there is no way to identify a $10 billion illegal transaction from a $5,000 legal transaction. And if you are going to be relying only upon the size of the transaction, you would be chasing a lot of red herrings down the road.

So I would like to suggest to the Government that in addition to all of its amendments and so on, that it considers offering serious rewards to whistle-blowers, because the very employees who under duress, discharge the requirements of their employers to transact illegal transactions, will be very happy to call 800-TIPS, if you would set up a similar line, and blow the whistle on the transaction.

In the same way that you have a criminal entering New York and you want to catch him here but you cannot catch him with the present laws, so you tell the people up there to watch out for this fellow; pick him up for us and start the action, you need to have a notification system, because crime under the agency of financial transmissions is not identifiable. However, if, as the Finance Minister says, they already know who the criminals are, you could certainly monitor those bank accounts, whether they will do that—because they have known it all along. We were able to confiscate all of Dole Chadee's property and put it to use and I do not know why the Government would like us to believe that it is going to find the will to implement law which it has neglected to pay any regard to for the last, what, seven years.

We are really being used as a rubber stamp here, out of a sense of civic duty, because we know that whether the Government intends to use this Act or not, we have a duty to support it. But it is a shame that we have to come here, talk ourselves blue in the face and know that for all our good intentions and support, nothing is going to come out of these measures because it has not so far. When there was no bar to implementation and when there was no incentive to implement additional measures, the Government sat and twiddled its thumbs and it has left us totally neglected with regard to this area where it owes the greatest duty to the citizens of the country, to protect the citizens from crime and to protect the economy of the country from financial hemorrhaging through illegal means and avenues.

You know, Sir, we have been told recently that in the last few months there has been a serious drop in the foreign reserve holdings of this country and I would like to suggest that in a situation where there is reduced importation and a commensurate reduced revenue stream, part of the reason for the drop in the foreign reserves could well be that there has been no drop in the underground criminal financial activity that has been continuing at its usual pace. So that while you have a drop in import, so you do not have the need to pay as much, and a commensurate drop in revenue, what has not changed is the demand for foreign exchange which has been—because the drug trade does not suffer from seasonal dips and fluctuations; the drug trade is a burgeoning, continuing, developing trade internationally.

So part of the reason for our reduction in foreign exchange could very well be in the drug trade and the money laundering that has continued at its normal or developing pace. And this is a significant thing to give us pause, because if we are looking at trying to understand what the underground economy really is worth, such a figure would give us a good indicator.

But I want to say, not in defence of, in support of my colleague, Sen. Mark, that I also recall reading about the TT $60 billion underground economy, and it is very possible that when the GDP was being discussed that the Central Bank made reference to the underground economy as an additional part of the GDP that was not reflected in the GDP. If it is not there, it has been publicly mentioned because I personally have a recollection of that figure and I know that there has been discussion of the underground economy in relation to the GDP which is not a true GDP of the complete country's GDP, but it cannot, of necessity, reflect what it cannot account for.

However, it is academic. I am sure that the Government does not deny there is an illegal outflow of funds. If it does, then why are we wasting our time with the Proceeds of Crime (Amdt.) Bill and trying to close all the doors and plug all the loopholes? So, clearly, there is a substantial—and if it is not substantial, you are wasting your time. Clearly there is a very substantial hemorrhaging of funds leaving the country illegally and this is what this Bill is all about. But it is unfortunate that the Government has to be goaded into action by circumstances that had been forced upon us by international agencies to be able to come to grips with what is a fundamental duty of the Government.

The Government apparently feels very satisfied with the future revenues that it hopes to get after these blips have passed over and does not seem to be very concerned with the hemorrhaging, because, evidently there may be a thinking that we have enough money and that cannot affect us. But I want to say, Sir, that that is not a very smart approach, if it is the approach, because cumulative hemorrhaging can result in a serious anemic situation and I will tell you, our country is not in a very safe and guaranteed economic situation either now or in the near unforeseeable future.

I want to say this, that I am almost tempted to call this and so many other bits of legislation that have been brought here and not implemented and not proclaimed, what I will call charade legislation. Charade legislation: when you validate with the legislation and you invalidate by non-compliance and non-implementation. It is really very ironic, but, you know, the Government continues to fool many of the people most of the time. You see, people are so busy with their day-to-day affairs and their little expenses and their little quarrels and little fights, that they are not paying attention to what is happening at a national level. We have too many things on our plate, one after the other. So I would say that the Government seeks to hallow its image with legislation but it desecrates the nation by its non-implementation, which is a very serious thing.

I want to harken back to the matter of our income tax laws. Our income tax laws are such that if you do not pay your income tax—I know several big businessmen who, when they do not pay their income tax, the Inland Revenue goes down and seize their property or their yacht and these things. Now, the Government claims that it knows the drug lords, and this is what continues to baffle me. You are claiming you know the drug lords; you know they do not have official businesses, why do you not put the Inland Revenue to work and investigate their income and their wealth? I am sure that the earlier legislation has a question of having to account for how you came by your money. The Inland Revenue can come and do an assessment on your wealth and your lifestyle and decide how much income tax you owe and how much income tax you have to pay.

It also has rights to find out, how did you come by all of this overnight money. Unless you get a CEPEP contract from the Government and they give you a $15 million to run it and you could always say, "Well, the Government give me to run the business", you cannot claim that that guy has got that money illegally because the Government has given it. What he is going to do with the money after that, you could look into, but I do not think that the Government wants you to look into the financial affairs of its patronized clients. So you are not talking about those people. As Sen. Prof. Deosaran said, it is the crimes of the rich; we are talking about those people and those people are not immune from the investigation of the Inland Revenue.

In America you have the IRS, Internal Revenue Services. You know, that is one of the favourite ways—and I am sure that this Government probably does it here as well; put the IRS on your political opponents. You are bound to dig up some kind of dirt. But the position is this, that here the Government knows Mr. Big; it knows all the white-collar criminals; it knows all the drug lords and it knows everybody who is doing everything, but it claims that it is powerless to do anything because proper legislation is not in place.

I keep on saying our intelligence is being insulted. This is clearly not the reality of the situation. The Government—I cannot explain why it wants to fold its arms and have all of this mud thrown in its face, because, quite truly, it is being tarnished by all of this. Does the Government really believe that it appears pristine in the eyes of anybody as an upright administration that is concerned about stamping out crime and lawlessness? They cannot believe it. How can they expect the country to believe it?

And in the face of the Uff Commission being totally brought to a halt, after the best of assurances, in a circumstance where the Government did a similar matter with the unions, the Minister of Works and Transport and the Minister of

Public Utilities Minister could tell the organizations do not take that course of action. Here you have a special purpose state enterprise being totally free—above the law—to take our money to preserve its skullduggery which has been exposed and bringing a commission to a halt, in your face and you cannot do anything because the men of the administration who have the duty and the responsibility of arresting that atrocious situation are sitting with their arms folded and doing absolutely nothing.

This has to be an international disgrace. Trinidad and Tobago can claim no virtue; we have no virtue, but we are bringing a Proceeds of Crime Act to appear to be concerned, really only to re-qualify for a good credit rating. This Bill, as noble as it is, is one of the last stages in a series of developments.

7.00 p.m.

Before you can come to grips with the Proceeds of Crime Act, you have to identify the crime, initiate investigation, prosecute, convict and then, you could seize proceeds. We are setting out to do the last item in the chain of events and we are not looking after the first, second, third or fourth. I ask: Do you think anybody is impressed with this? We would vote for the Bill with the amendment that Sen. Mark is going to bring forward. I do not even believe that the world body would be impressed. I do not believe they would say that Trinidad and Tobago has done a good job and that they deserve to be recognized. They would say, "These hypocritical people fooling dey own people."

I heard a very eminent lawyer say that he is going to bring non government organizations to prosecute privately, the issues that are offending the citizens of this nation. If that gentleman keeps good his promise, it would be a very refreshing change in Trinidad and Tobago. In those circumstances, certainly, I wish him well because I wish the nation and the people of this nation well. [*Interruption*] He will come back. He is not a good politician but he is a good lawyer. Give him that. You have to give him his legal status. The man knows his law. Whether he has the will to implement his knowledge is a different matter. This is the way I will like to urge him on because it is for the benefit of all of us. When that is done and the chaff has been separated from the grain, whoever sits on that side, would sit with more dignity and we would sit here with more pleasure.

This Proceeds of Crime (Amdt.) Bill in the hands of an honest—well I do not want to say that the present Government is dishonest lest I am charged with imputing improper motives—competent Government, interested in looking at the

proper priorities would be devastating to the criminal element. Unfortunately, in the hands of this Government with its plate full of mega projects that are getting nowhere fast and having cost overruns, this would not see very much activity. Shakespeare said about life, a walking shadow that lives, that struts; full of sound and fury at the end of it signifying nothing. That is the part of the phrase that I wanted to use. This exercise, today, is full of sound and fury, but I am afraid it does not signify much because this Proceeds of Crime (Amdt.) Bill is going nowhere very slowly.

Today, the Attorney General did the same thing. Every time the Government is brought to book, Senators on the Government Bench get up and very piously, recite all the ills and sins of the prior UNC administration, as if that vindicates them from their dereliction. How do they believe that their incompetence, dereliction and lack of activity in any constructive way get excused by the sins of the UNC government? I do not understand. That is a red herring that is always pulled out.

The population is becoming increasingly intolerant. As far as the public is concerned, there are many sacred cows in this country and white-collar crime is being covered and more so, now, with the present recent developments in the judicial area with regard to the commission. Our concerns with this Bill are the limited scope and lack of inclusion of several clauses which were recommended; the non-implementation of what was there before; the further anticipated non-implementation of what is yet to come; and the non action and non-use of the law that we have repeatedly tried to reinvigorate.

SAUTT is not illegal. I want to endorse the words of the President. SAUTT is not illegal. It is simply not legalized. [*Laughter*] There is a fine line of difference. The United States' authorities have recommended that we pass legislation to legitimize. This is important because SAUTT and other bodies are going to be involved in all these proceeds. With all the best of intentions, if you put SAUTT to investigate these things as they well might be, because they are an elite force, none of their findings can be used in a court of law because they do not have a locus standi. They do not have validation. They are very legal but I have forgotten how I phrased it. They need validation. We have to get that done. I think that the Minister of National Security promised that to come shortly. Why he has not fast-tracked and prioritized it, I cannot understand. I do not know if they are waiting for some additional developments before they wrap everything into one nice little bundle but that could never be the way this Government functions.

To come to the clauses in the Bill, the Bill speaks about the FIU changing the name from "designated authority" but it anticipates because we cannot discuss the FIU right now. It does not exist. Yet in this Bill it is referred to as "A" then why do you not say, "to be established" rather than "established"? It is so simple. This is clause 4(a), the FIU, put in the words "to be".

Sen. Seetahal SC: No.

Sen. M. F. Rahman: However you want to do it, solve it in a legal way. Do not put it there as if it is "the".

Hon. Senator: Point taken.

Sen. M. F. Rahman: Thank you, Sir. Do not hassle me. You are getting my point. You could hassle me but you are making a monkey of yourself when you hassle me with something that you agree. Reference is made to the word "security" when it is in fact—

Mr. Vice-President: Senator, I believe that the remark you just used that he is making a monkey of you or you are making a monkey of him, is unparliamentary and I think that you should withdraw it.

Sen. M. F. Rahman: Willingly and happily I withdraw it, although some time in an earlier debate the good Minister told me that I was making a fool of myself. I am not arguing with your ruling, Sir. I apologize. I do not even remember the words that I used but I do humbly apologize, Sir.

Sen. Dr. Saith: Accepted.

Sen. M. F. Rahman: Thank you. Most generous. The term "security" is used but I think that it is replaced with the word "securities" being various instruments of convertible value. I do not know why you are saying "security" rather than "securities". That is another thing you should look at in your draft.

In clause 4(d)(i) you say you are deleting "and" when in fact you are replacing it with a comma. I think that is the only way it would read properly. Apart from the bad collating of the draft there are some little errors that may give you good reason to postpone for the next five years implementing the Bill. We want to ensure that you dot your “i’s” and cross your “t’s”.

Casual mention is made of the President's pardon. I think that is in 8(d)(iv). Out of a clear blue sky, we have a President's pardon. In what circumstances is a President's pardon granted? Who recommends it? Which kind of big boy, Mr. Big is going to get a pardon from, the President? I think that we need to have a little detail about the President's pardon and its scope.

In clause 18(a)(1) mention is made of a customs and excise officer. Government has already telegraphed its intention to appoint a Trinidad and Tobago Revenue Authority. It is making no provision for the new name of the officer who would be functioning in that position. I do not know if that makes a difference.

There is another thing where funds may be confiscated from people on suspicion, but I see no mention of a receipt being given to the person about the amount of funds being confiscated. If the person is exonerated afterwards, he would have no way of verifying the kind of funds. [*Interruption*] We are covered there. Fair enough.

I believe that that brings my little contribution to an end. I will like to see implementation and the Government coming to grips and not giving us empty promises and leading us up a garden path.

Thank you very much

Sen. Dana Seetahal SC: Mr. Vice-President, I have a few points that I wish to make in relation to the proposed amendments to expand the law on the Proceeds of Crime Act rather than the Crime Act which I heard on one of the radio stations when I drove to my office, that the Minister has brought an amendment to the Crime Act. Of course, I hope they know by now that it is the Proceeds of Crime Act.

The first matter is the definition of "specified offence". In the definition section of the Act "specified offence" reads thus:

> "an indictable offence or an offence specified in the Second Schedule except that in sections 32 and 33"—this "means an offence under the Dangerous Drugs Act…"

The Minister now proposes to amend this as an "indictable offence committed in Trinidad and Tobago from which proceeds of crime may be derived".

If the purpose is to make this law stronger, then this definition is not a good definition. This is weakening the law. I will make that clear. Under the existing law that is meant to be amended, all offences that are indictable offences as we stand, and other offences in the Second Schedule would be specified offences.

In Trinidad and Tobago, there is a variety of indictable offences. Any offence which is not summary is indictable. Murder, rape, arson and larceny, if they are not under the Summary Offences Act, they are indictable offences. The proposal is to restrict the specified offence to be an indictable offence from which proceeds of crime may be derived. I do not know if there is some purpose for that. I think

that that would make the law vague and then people would say, murder, no proceeds of crime could be derived from that. In certain circumstances, yes, it could be. In respect of rape in some circumstances, larceny, robbery and other offences not named here, that we do not know the list of indictable offences grows daily whenever we pass legislation to create a crime.

It seems to me unless there is some burning reason which is obviously unknown to the rest of us for restricting the definition of "specified offence"— If you want to be able to get more proceeds of crime, you want to come down on people who commit crimes in terms of their economic benefits, I would think that you would want to widen the ambit of offences for which they can be called to book. That is the first point. Therefore, I cannot see logically any support being given for that.

Another point is that there is a wider definition in one sense in that it includes extraterritorial offences.

7.15 p.m.

But, if one looks at what is stated here, it says:

> "any act committed or omitted to be done outside of Trinidad and Tobago, which would have constituted an indictable offence within the meaning of paragraph *(a)*;"

It refers back to that. I think you need to clarify that, in relation to the two. That is really the first point; the offence.

My second point has to do with police officers and a question that was asked: Whether the definition now proposed would include officers from SAUTT? The answer to that is no.

[MR. PRESIDENT *in the Chair*]

The expanded definition here is:

> "…any officer of an agency of the state, lawfully vested with investigative powers similar to those exercised by the Police…"

SAUTT is not an agency lawfully vested with investigative powers. Maybe when the legislation is passed, which is what you are probably looking at, I would imagine eventually, but you cannot say they are now. It is not lawfully vested. Individuals may be lawfully vested, but not the agency.

Moving on to section 55, which is proposed to be amended in this way— section 55 deals with the expanded definition. Instead of relevant business activity

we are talking about listed businesses, which include all those things Sen. Mark mentioned, including private members clubs, an accountant and an attorney-at-law. The section in the original Act which deals with that is section 55(1):

> "Every financial institution or person engaged in a relevant business activity shall keep and retain records relating to financial activities in accordance with the Regulations made under section 56(1)."

Are there any regulations made? As far as I know, none are contained in the laws of Trinidad and Tobago, as at December 31, 2004. Therefore, all this expansion of the law, what we had before, could not be really enforced. We had laws for four years that could not be enforced because there were no regulations and we are passing laws that, until there are regulations, cannot be enforced. Is there some purpose to this, other than to satisfy our international obligations? I would hope so, because it seems like it is a waste of time, which would fall to this legislation, the list of the number of unused legislation in this country and all these hours that we spend here after 7.00 p.m., 8.00 p.m. getting to midnight, would be wasted and I have a strong objection to wasting my otherwise relaxing time.

In relation to penalties, there is a proposal to amend section 53, which deals with penalties. It is really in relation to streamlining the penalties. However, there is no indication as to what happens to those offences under section 52. It might be a typo, but it is too important a typo to leave behind.

Section 52 is a section which creates that specific offence of failing to disclose knowledge or suspicion of money laundering. It has been omitted in the new penalties and there is no other penalty otherwise provided. Is it to be an indictable offence or a summary offence? I see there is now a separation of these two, in relation to penalties under this Act.

There was a question asked by Sen. Ramkhelawan on the proposal to amend that section dealing with reciprocal sharing. That is section 58. The question asked, which would probably be better answered by the Attorney General, is how is this reciprocal sharing intended to occur? Have we ever shared and if we have shared, how was the reciprocity effected? My understanding of that is agreement. It is a case by case basis and it has to do with the involvement of each government in bringing the penetrator to justice. That is my understanding. Maybe at some

point in time it could be cleared up, but that is how it works generally and internationally. If Trinidad and Tobago did a lot of work in relation to a United States citizen who was prosecuted, we will get some of that money, or we ought to and vice versa.

My final point is in relation to the issue that has been touched by Senators Ramkhelawan and Rahman in relation to the question of the FIU. For example, at clause 4, where you include the Financial Intelligence Unit and those powers are now given to that unit, in clause 33, how can you have a Unit which is not yet in existence dealt with in a piece of legislation? That would come into effect first. That is an obvious sensible question and the answer will have to be that both pieces of legislation should be proclaimed on the same date. I think the Government would be so inclined and reasonably so, because otherwise it would just be null and void.

Thank you very much, Mr. President.

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President, for the opportunity to contribute to this debate, the Proceeds of Crime (Amdt.) Bill.

We are here this evening, as is the modus operandi of this Government, playing catch up, rushing to pass this piece of legislation, because of the fear of being blacklisted by the international financial community. We on this side are saying very categorically that we feel that this is inexcusable, because of the length of time this Government has had to deal with this situation.

The Minister of National Security hastened to say to us that the revised recommendations have been on the table only since 2007. The truth is that the original recommendations by the Financial Action Task Force were made since 1990, and, therefore, it has been a long gestation period in which illegal activity, money laundering, has had a chance to grow and develop and totally distort our economy and our society.

Mr. President, the question is: Even if we accept that some of the revisions that were brought here this evening to the 2000 Act were based on the recommendations of 2007, what has this Government been doing over the last two years, in order to deal with the criminal activity of money laundering? What have they been doing to protect the economy, our society and our people, from the horrendous effects that money laundering has on a society?

The Attorney General attempted to answer this question by saying that the Government lacked the three-fifths majority needed to pass the Bill before us. This statement by the Attorney General is totally unforgivable, in our view, given

the serious nature of the problem. We think that the Attorney General has totally trivialized an issue which is of such vital importance to every one of us in the society. Clearly, he has put politics before the people. He negated to acknowledge the fact that—in fact, over the last several years the Opposition has been calling very stridently for action on this matter; for the upgrading of the legislation.

I remember raising this question several times in this House: Why has the Attorney General and the Minister of National Security not sought to deal with the problem of money laundering, because of its strong links to crime and criminal activity in this country? Why have they not sought to bring white-collar criminals to book? The entire Opposition has raised these questions in various fora in and out of Parliament. It is inconceivable that the Attorney General must stand here this evening and say he did not think that the Opposition would support such a move. Why would the Opposition not support such a move, when we have been calling for this over the last several years?

Even in the absence of the tightening of the legislation to make the activity of money laundering specifically a criminal offence, it is still incomprehensible to us why no white-collar criminals have been brought before the courts, given the legislation on the books. We have asked this question. The Minister of National Security seems to advance the issue that without the tightening of the legislation and the amendments we have this evening, there was only a moral suasion on the part of the financial institutions, to deter the activity of money laundering and that there was not the legislative bite. But it cannot be true, when we look at the Bill of 2000.

We asked Members of the banking sector, if what are on the books, even before the amendments, were not enough to detect money laundering and white-collar criminals to bring them to book? Everybody had the same reply: No, the Central Bank just issued guidelines to detect and prevent money laundering and that there was no real impetus for the regulatory and financial organizations to implement.

When we look at the original Act that we are amending and we look at the amendments to the clauses, we see a totally different picture. In the amendment Bill before us, one of the clauses that the Bill seeks to amend is section 55. Section 55 seeks to introduce the issue of keeping records, on the part of the financial institutions and paying special attention to all the complex or unusual large transactions.

Section 55(3) states:

> "Upon suspicion that the transactions described…could constitute or be related to illicit activities, a financial institution or person engaged in a relevant business activity shall report the suspicious transactions to the designated authority..."

When we look at the amendment to this clause, the only real difference between what is before us this afternoon and the original clause is that the original section 55 was very clear on the obligations of the financial institutions to keep records and the obligations to pay special attention to unusual activity. The amendment specifies that they would report to the "Financial Intelligence Unit" and the original Bill says to a "designated authority." That is one of the major differences. The Bill before us says that it establishes a period within which the authority should report unusual activity, but that time period is in the original Bill; 14 days within which to report activity. There is not much done to this section 55, in terms of the obligations of the financial institutions.

There is no reason why, under the original Act, 2000 that these obligations should not have been enforced and should not have resulted in the detection and conviction of white-collar crime in this country related to money laundering.

7.30 p.m.

Mr. President, clause 30 of the amendment before us repeals and substitutes subsection (1) of section 56 of the Act to expand regulations which can be made under that section.

Section 56 in the original Act says:

"The Minister to whom responsibility for Finance is assigned may make Regulations—

(a) prescribing the types of records to be kept…;

(b) prescribing the period for which, and the methods by which, records referred to…are retained;

(c) prescribing measures that persons to whom this Act applies are to take to ascertain the identity of persons with whom they are dealing where the transaction is one in respect …Act applies…"

Mr. President, what is the difference between what is before us and what we already have? The Minister says that the Bill before us allows the Minister to expand the regulations which can be made under this section.

Another difference is that instead of "affirmative resolution" it was changed to "negative resolution". So, the changes are not earth shaking. They are not of a nature where the original provisions of the Act could not have been implemented effectively. What they are supposed to do is to describe the regulations and to ensure that the regulations would prescribe the type of records and measures that the person is supposed to take to ascertain suspicious persons.

Sen. Seetahal SC spoke to the question of the content of these regulations and so on, but we have not seen any regulations. They are purporting to tighten this particular clause, but the essence of the clause remains the same.

Section 57 which is before us is amended only by inserting a phrase "and any regulations made under section 56". That is the extent of the amendment to section 57. Section 57 is very clear and it says:

"Everyone who knowingly contravenes or fails to comply with the provisions of section 55 is guilty of an offence and liable—

(a) on summary conviction, to a fine of five hundred thousand dollars and to imprisonment for a term of two years; or

(b) on conviction on indictment, to a fine of three million dollars and to imprisonment for a term of seven years."

Mr. President, what is the amendment to section 58? Section 58 states:

" (1)…the Comptroller of Accounts in the accounts of the Government of Trinidad and Tobago a Seized Assets Fund.

(2) Any moneys paid in satisfaction of a confiscation or cash or property seized pursuant to a forfeiture order under this Act shall be placed with the Seized Assets Committee…

(3) Anything placed with the Seized Assets Committee pursuant to subsection (2) shall be used for the purpose of community development, drug abuse demand reduction and rehabilitation projects and law enforcement."

This is a very good section. It is a very clear commitment to seizure of assets and using these assets for the purpose of community development, drug abuse demand reduction and rehabilitation. Why this section was not enforced for the stated purposes in the Act over the last seven years? We have communities of young people being destroyed by drugs; being destroyed by the illegal activity that money laundering has and the criminal activity that money laundering engenders in our society. Yet we have on the books very clear provisions to detect, record, confiscate and to use the money so confiscated for community development, drug abuse demand reduction and rehabilitation and so on.

It is wicked on the part of this Government not to make any effort at all to implement the law as it stands for seven years. It refuses to bring any of the white-collar criminals to book to the courts and then they come at this last minute

and say that because of specific issues that we should have in this piece of legislation, they have to rush through this. We are at a disadvantage here because of the short time we have to deal with this and the fundamentals have been ignored for so long.

What has been inserted in section 58 is a (3A) which says:

"The Attorney General may enter into agreement with the government of any foreign state for the reciprocal sharing of the proceeds or disposition of—

(a) property confiscated, forfeited or seized…

(b) property confiscated, forfeited or seized by that foreign state,

in circumstances where law enforcement agencies of that foreign state, or of Trinidad and Tobago, as the case may be, have participated in the investigation of the offence that led to the confiscation, forfeiture or seizure of the property..."

We are bringing this amendment as if this is a whole new thing and a brave thing that they are doing and so on, but we have the Seized Assets Committee that was supposed to seize the assets and bring the people to book, put them in this fund and use it for positive purposes to help our society and they have not done it. So, why should we think that this amendment to section 58 would make any difference?

The only difference now is that we will share this confiscated property and so on and we will send away a portion to the foreign law enforcement agencies—we will lose foreign exchange and resources—and they will use those resources in their societies. We have refused to use it in our society. We have refused to implement what is here in clause 58 of this Act. Why have we not done so? Why are we bringing an amendment to ensure that other jurisdictions will have the opportunity to export foreign exchange and to export assets from our country?

Another "brilliant" change that was made in section 58 was to change "the Minister" to "the Minister responsible for Finance". These changes are not fundamental to the problem and to the fact that this Government has refused to deal with the fundamentals; the pain and suffering that has been engendered in the society under their watch.

Mr. President, I looked at the penalties spelled out in the Act. The summary conviction in the original Act is a fine of $10 million and imprisonment for 10 years or on conviction on indictment to a fine of $25 million and to imprisonment for 15 years. The change that is being proposed here is to change "summary conviction" to "a fine of $5 million and imprisonment for 5 years" which is even

less, but indictment stays the same which is "$25 million and to imprisonment for 15 years". So, it is the same. As far as I see here, the penalties are less under summary conviction under the amendments to the Act.

Mr. President, the Minister of National Security did not proffer any explanation on the size of this underground economy. He did not offer us any kind of breakdown on the sources of illegal financial injections into the economy, but based on a document I have before me which is the Negative Effects of Money Laundering on Economic Development, by Brent L. Bartlett International Economics Group, for the Asian Development Bank Regional Technical Assistance Project No. 5967—Countering Money Laundering in the Asian and Pacific Region, May, 2002, they were able to outline the sources of money laundering. This has a lot to do with the whole issue that Sen. Mark raised. Why did we not indicate the indictable offences for which the Proceeds of Crime Act are going to apply? There are very specific areas of criminal activity that are very closely linked to money laundering, based on studies done by experts in the field.

Mr. President, some of these areas are illegal arms sales, smuggling, drug trafficking, prostitution rings; embezzlement; insider trading; bribery; and computer fraud schemes. I believe that these are major areas for investigation by the law enforcement agencies, because these are fundamental to money laundering enterprises that are clearly at work in our society.

So, if you take a serious look at the law enforcement agencies and the issue of illegal arms sales which is taking place every day in this country—everybody knows where they can go and get a gun and how much it costs and the ammunition and so on. That is prevalent in our society. That is why we have developed this culture of death in our society. Everybody has a gun and everybody is prepared to settle their differences by means of the gun. So, illegal arms sales is an important area that needs to be looked at very seriously.

We all know the stories of smuggling in this country from the different ports; legal and illegal into this country. In fact, I went to Toco recently and there was a fishing port nearby. The person I had visited has a nice place close to the fishing port. I was saying to him that he lives in a very nice place here, because he could go down and get his fish and so on, and he was telling me that he would not step his foot down there, because there are a lot of illegal smuggling activities that take place on the port. There are countless stories where people tell you that in all areas in Trinidad—North, East and West coasts and so on—of the illegal smuggling activities that take place, and yet this Government has refused to make the connection and to take the proper steps to deal with the issue of smuggling, which fuels money laundering.

Drug trafficking is basic to the whole issue of money laundering and drug trafficking continues unabated. In fact, recently there was a comment by a judge where a couple of fishermen appeared before him charged for drug trafficking and so on. He made the comment, "Where are the big fish? Why are these small people before me, the people who offload the boats and so on and the last person in the chain and so on?" The big fish on their offshore islands have their warehouses and docks and so on where they bring these drugs into the country.

Prostitution rings are another area outlined as prime activities from which money laundering emanates. Control of prostitution in this country is a question of the police making a raid on one or two of the known areas or houses every so often, and then it is back to business as normal. Everything continues as normal. There are women who are imported into this country on a regular basis from South America and so on, and ever so often the police will make a big raid and carry them to court, and then it continues, like there is no will or capacity on the part of this Government to deal with prostitution rings in this country.

7.45 p.m.

That is serious because that is also linked to human trafficking and we shudder to think that it would also be linked to the issue of the increasing phenomenon of "disappeared" people in our society; the disappearance of young girls and children, because we can imagine that if the boats are coming in they are also going out and they would also have human cargo on those boats going out.

These are some of the critical areas for investigation by this administration, by the Minister of National Security and by the law enforcement agencies, if we are really serious about combating the toxic effect of money laundering in our society.

It was interesting to me listening to the comments made by Sen. Mark with respect to the different areas to be listed also in the Schedule because of the connection to money laundering. And I looked at legislation from Gambia and it was interesting to me that they listed, in addition to some of the areas that we have listed in our Schedule: Real estate, motor vehicle sales, money or value transfer services, gaming house, pool betting, national lotteries online betting game, jewellery, a private members' club, accountant, attorney-at-law and other independent professionals or dealers.

They had some other categories specifically listed in their Money Laundering Act of 2003 and they had areas like venture risk capital; offshore banking business; issuing, selling or redeeming credit cards; travellers cheques; bank drafts; money order or similar instruments; delivering cash as part of providing a

payroll service; they had underwriting and participation in share issues; credit reference services; safe keeping and administration of securities; money brokering; money lending and pawning; credit unions; building societies; insurers; intermediaries; security dealers and brokers.

So, apparently based on what other jurisdictions are doing, it is quite a wide net that you have to cast in order to trap all the lawbreakers and people who are engaged in illegal activity, and therefore we have just touched the tip of the iceberg with this amendment before us and there are several other institutions and areas that we have to look at in order to really do the job that we purport to do.

Mr. President, in terms of the illegal activities, prescribed offences they mentioned in their Bill, blackmail and counterfeiting, false accounting, forgery, fraud, illegal deposit taking, robbery involving more than $20,000 of their currency, terrorism, thefts involving more that $20,000 of their currency, insider trading. We have had a pretty decent piece of legislation on the books. There is need for improvement; there is need to widen the net; there is need to tighten the legislation, but we are saying at the same time, there is absolutely no excuse for the total inaction of this Government over the past seven years. [*Desk thumping*]

Mr. President, we were also really alarmed and very saddened by the callous nature of the statement made by the Attorney General that he did not have the three-fifths therefore he did not bother to bring this legislation to Parliament, because of the huge political and social cost to the economy as this situation has been left unchecked by this Government over the last seven years they have been in office. Based on the work done by the researchers Brent L. Bartlett of the International Economics Group, they have made the point that organized crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment or often bribes to public officials, or indeed, the Government.

When you look at the enormity of the scope of the activity of money launderers and organized crime in terms of their control of institutions, as outlined by people who have done the research, who know what is happening; what the effect of money laundering is in the societies, we then understand when we look at certain phenomena in our society. What is really going on? Bartlett went on to make the point that economic and political influence of criminal organizations can weaken the social fabric, the collective ethical standards and ultimately the democratic institutions of our society. This statement seems to be actually describing what is happening in Trinidad and Tobago in 2009.

Mr. President, it goes on to say:

> "When criminal funds are derived from robbery, extortion, embezzlement or fraud, a money laundering investigation is frequently the only way to locate the stolen funds and restore them to the victims."

I think Sen. Oudit also made the connection between the getting at criminal activities through investigating of money laundering, and it says here, restoring them to the owner. But if we are not even getting at these criminals, we are not using the legislation we have to retrieve the funds, and getting them back to the owners is the last thing on this Government's mind.

They went on to make the point that without a useable profit, criminal activity will not continue, therefore it is clear to us and to the population that this Government's refusal to deal with this issue, confront the issue, use the legislation that it already had in the books, and this delay in enforcing the legislation over the last two years, by doing that this Government, in fact, has contributed to the flourishing of criminal activity in this country, because it is clear from the research that criminal activity will not continue, will not be profitable if they are not able to use their ill-gotten gains by placing it in the financial system and integrating it back into society through clean activity.

In addition to which, we have made ourselves vulnerable because of this Government's lack of action and lack of political will to deal with this problem; because, perhaps of the issues that were outlined that institutions, if left unchecked, are controlled by criminal elements—governments are controlled by criminal elements and so on—they have outlined that where there is this lack of enforcement, where there is the lack of political will generally, money launderers tend to seek out countries or sectors in which there is no risk of detection due to weak or ineffective anti-money laundering programmes. Apart from the money launderers and the criminal activities, the embezzling, the frauds, the prostitution rings and the drug trafficking that you would already have operating in your society, more of these criminal elements would be attracted to your society, because of the lack of enforcement.

So the situation deteriorates. It is not a static situation. So when the Attorney General got up here and said that he did not bring these amendments because of the lack of the three-fifths majority, and the administration refused to enforce the legislation already on the books; we did not have a static situation, we had an accelerated situation down the slippery slope where this illegal activity went on unabated, unchecked. And more illegal activity went on unabated, unchecked and more criminals were attracted to our society, attracted to the sectors in our economy that would allow them to launder their ill-gotten gains.

Even though the Minister of National Security did not give us any idea of what is happening in our society with respect to the size of the underground economy, we who have eyes to see can see, and we are seeing all the symptoms of the effects of money laundering in our society and our economy as outlined in this document. The Minister in the Ministry of Finance denied that there was any link between money laundering and real estate; the price of houses and so on. I think there was some sort of interaction and he says, "How do you know that? That is not true." But it is clear that money laundering activities tend to be concentrated, as this document says, in non-productive areas, in areas of the economy which are sterile, but in which they can invest their ill-gotten gains without any fear of depreciation. This is how this document that I referred to by Bartlett described this. We can see exactly the trends in our society that supports this analysis, and I quote:

> "The flow of laundered illicit funds follows a path through the economy that is different than that such funds would take if they were not being laundered. As can be seen from the various money-laundering mechanism typologies reports, money laundered through channels other than financial institutions is often placed in what are known as 'sterile' investments, or investments that do not generate additional productivity for the broader economy. Real estate is the foremost example of such sterile investments; others include, art, antiques, jewelry, and high value consumption assets such as luxury automobiles."

We see that clearly in our society today, the escalation of luxury automobiles in our environment. The fact that the real estate market went through the roof and ordinary people are forced out of the market because of the availability of all these illegal funds to buy up real estate and put them out of the reach of the ordinary people in the society. They are saying that money laundering depresses economic growth and that is what we are experiencing in this country. The commitment of the country's resources to sterile as opposed to productive investment, ultimately reduces the productivity of the overall economy.

Finally, funds that are being laundered through the purchase of certain targeted assets—real estate is often favoured—will drive up the prices of such assets, causing overpayment for them throughout the economy thus crowding out productive investment to less productive use. That is what we have seen. We have experienced that. A number of people might not have taken note of the fact that this is one of the causes of the high prices of real estate and so on, but that is exactly what this document is saying here, that these issues have a very real effect on our economy and it hurts the poor man, it hurts the middle class and it leads to a sense of hopelessness among wide sectors of the population.

Younger people coming out of school and coming on to the job market—all of a sudden properties that about 10 years ago were in the range of, maybe, $250,000 to $300,000 are $1 million or more now, and therefore of these young people coming into a society and coming into the job market, those with qualifications are very scared of the prospect that they would never be able to own a home. The lower levels know for sure that they would never be able to own a home in this society, because of the way this Government has sat back and allowed this scourge to take over our society.

Mr. President, it is difficult for us to contemplate such callous disregard for our population. It is difficult for us to contemplate such criminal neglect of our economy and our society; it is difficult to contemplate the burgeoning of crime and criminal activity just left to fester, rot and disintegrate our society; the social and the moral fabric to the point where we have reached the stage now that we have five and six murders a day. We have mass murders taking place; people walking into clubs and so on, five people shot to death, including innocent bystanders, including ordinary people whose only crime was to walk in perhaps to get a drink.

8.00 p.m.

Mr. President, the effect of the lack of action of this Government is clear, in that a document called "The Consequences of Money Laundering and Financial Crime", by John Mc Dowell, Senior Policy Adviser to the Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State, spoke to the issue of capital flight. I think this is Sen. Rahman's favourite topic and I think he made this point, money laundering and financial crime may result in inexplicable changes in money demand and increased volatility of international capital flows, interest and exchange rates; the unpredictable nature of money laundering coupled with the attendant loss of policy control may make sound economic policy difficult to achieve. Therefore, I do not know why the Minister of Finance was not more worried and was not more interested in getting action on the part of the Minister of National Security and the Attorney General, to deal with these issues because this would have affected his portfolio, these issues of capital flight and monetary instability and so on. Because what this document says, and we can see it very clearly happening here and I quote:

> "In some countries, for example, entire industries, such as construction and hotels, have been financed not because of actual demand, but because of the short-term interest of money launderers.

When these industries no longer suit the money launderers, they abandon them, causing a collapse of these sectors and immense damage to the economies that could ill afford these losses."

So we have to be careful. We have to be careful of all these huge buildings that are going up and all these huge high rises that are springing out of the ground from night to morning and so on. We have to be careful because these could be symptoms of a total collapse of our economy later on, if they are the results of the sterilization of ill-gotten gains of the money launderers. So this is a serious issue.

We totally condemn this Government for its refusal to deal with this issue over the last seven years. We totally condemn this Government for actually presiding over the flourishing of crime and the flourishing criminal activity attracted to these shores because of the lack of enforcement, and because of the lack of tightening of the legislation. We totally condemn this Government because of the thousands of deaths that they have admitted that have occurred, under their watch, of young people because of the drug trafficking, the guns and the violence this has engendered in our society; while the money launderers live happy in multimillion dollar mansions and drive the multimillion dollar cars and they live a life of total luxury, while our young men kill each other in the depressed areas and depressed communities. We totally condemn this Government for the social repercussions that we have not even begun to see in this country. When we see the genocide of young black men in the East-West Corridor, and you have a whole generation of young people, of babies and children and so on, being raised by single mothers who are totally bereft of economic, social and psychological, spiritual support in this society; children are bereft of any image of fatherhood, family and so on; and we are going to reap the whirlwind in the next few years.

If we think now is bad, when those young children who are coming up in this society in all this violence have lost fathers and parents to all this violence, when they reach 10, 12 and 13 years, Mr. President, we are really going to see the effects of the blatant neglect and criminal neglect of this society and this economy by this Government.

I thank you. [*Desk thumping*]

Sen. Gail Merhair: Mr. President, thank you for giving me the opportunity to join this debate. One of my concerns with this Bill, which was already mentioned by some of my other colleagues, but I would reiterate the point nevertheless, is the fact that I have a serious concern with passing legislation for an FIU, which is the Financial Intelligence Unit of Trinidad and Tobago and it has

not been established as yet. It is my understanding that an attempt will be made so that both Bills would come on par, up to date with what is transpiring.

My second concern is 4(d), in which the definition of a police officer was in fact widened. Now, my problem is that I have no problem with the widening powers of law enforcement officers, however, what seems to be happening, every day we read the newspaper, and the general consensus out there—and I am not trying to put any aspersions on the police officers who I know work very hard—in the public domain is the trust and confidence in these law enforcement officers. So I would like to ask the hon. Minister of National Security, what is happening with the Police Complaints Authority and the appointment of a chairperson, and perhaps he can shed some light because I am certain that once the powers are widened, uncertainties may come into play and I would like to ensure that we put things in place to protect the citizens of Trinidad and Tobago.

Now, the Bill tightens the parent legislation, but is it in fact effective? As I looked at the amendments that were brought with the amendment to the Copyright Act, which was passed a year ago, it seems to me that more persons are still selling pirated CDs and DVDs on the streets. So I am left to wonder what is happening with enforcement. While we may stay here and pass all sorts of legislation, what is really indeed happening? I would like to refer to an article which summarizes a BBC Panorama Broadcast, that is, which is entitled "Crime Pays" from Monday, March 16 at 8.30 p.m. and I would just read the concerns:

> "…the organization tasked with civil recovery, the Assets Recovery Agency (ARA), managed to freeze almost £190 over the last five years. But it only actually took £30—a 15 per cent success rate."

It goes on to say:

> "This failure, has led the government to hand the ARA's civil recovery functions to another body"—and that body is—"the Serious Organized Crime Agency."

The acronym to that is SOCA.

> "Describing the failure as regrettable, Andrew Mitchell, ARA's former senior litigator, tells Panorama he is also worried about the government's SOCA solution."

So, here we have a similar legislation in the United Kingdom, in which an in-depth article was done on the BBC and it shows very clearly the United Kingdom itself, is having some concerns with its Proceeds of Crime Act.

In another article from the *Newsday,* dated Thursday, May 18, 2006, by Rory Rostant entitled "The fight against dirty money", Mr. Rostant interviewed Chas Roy-Chowdhury, Head of the Tax, ACCA, UK and I quote:

> "He urged them to always remember that a big part of the problem facing the authorities is that criminals will also be trying to stay one step ahead of the game. ′Whenever one set of controls is put in place, money launderers will try to get around them by turning to new methods, and dedicated financial criminals will very often have the means and resources to do this successfully,′"

The article goes on to state as well:

> "′The criminals will always try to evade existing controls and stay one step ahead of the authorities, so the job of the regulators always has to be to try to stay aware of new methods used by criminals and to try of negate them,′"—as much as possible.

So Mr. President, I would like to state that we need as much help as possible to catch the criminals and to enforce the relevant laws. However, it is important, it is imperative that we stay ahead of these criminals, in order to control the problem we have at hand. I must also mention that very few persons have in fact been brought to justice when it comes to white-collar crime, and I think that this needs to be changed. It is my hope that the passage of this legislation amendment before us would indeed see a change in that policy that has been adopted in the past.

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

Sen. Dr. Adesh Nanan: Thank you, Mr. President. I rise to make a contribution on a Bill to establish the procedure for the confiscation of the proceeds of certain offences and for the criminalizing of money laundering.

Mr. President, the Minister of National Security in his presentation earlier this evening, said that this is POCA legislation. Well, an intrinsic part of poker playing is bluffing, and the Government is a bluffer of the highest order and we can look at the evidence. No Integrity Commission, no Uff Commission of Enquiry, no substantive Solicitor General, no substantive Commissioner of Police. Broken promises, non-performance and corrupt regimes are the hallmarks of despotic and failing leadership which ultimately lead to failed societies.

Mr. President, Trinidad and Tobago has dropped from 4.9 in 2002, to 3.6 in 2008.

Sen. Jeremie SC: What index?

Sen. Dr. A. Nanan: Corruption index. I am surprised that the Attorney General would ask me something like that. That should be on your lips, the corruption perception index. Trinidad is ranked 72 out of 180 countries. Barbados—my friend over there, Sen. The Hon. Mariano Brown, Minister of Trade and Industry and the Minister in Ministry of Finance must be aware that Barbados, in terms of the Caribbean region, is the best in terms of that particular index.

But, Mr. President, what I referred to earlier, no Integrity Commission, no Uff Commission of Enquiry, I would surmise that we are heading towards a century. We are heading to be ranked as 100 in this index. As I said before, this legislation before the Senate this evening deals with terrorism and anti-money laundering, the financing of terrorism and measures to deal with the financing of terrorism and we have a living example in Trinidad and Tobago, in terms of the 2002 general election and the Privy Council decision and I will just read from a small section of that Privy Council decision:

> "The essence of the agreement between the Prime Minister and Mr. Abu Bakr on behalf of Jamaat was that certain advantages would be given to the Jamaat out of the state property in return for securing voting support for the Prime Minister's political party."

I rest my case on that one.

Sen. Jeremie SC: Senator, would you give way?

Sen. Dr. A. Nanan: Sure.

Sen. Jeremie SC: That is simply a description. It is not a finding. The Privy Council does not find that. They said that the essence of the affidavit is that, and they also go on to say that the affidavit is irrelevant.

8.15 p.m.

Sen. Dr. A. Nanan: Attorney General, I was surprised that you actually jumped up so fast to defend the Government. I would not go on to read the purported evidence because everybody from St. Joseph, to Tunapuna, to San Fernando West knows all that took place.

So for you to come here this evening and try to defend the Government and your credibility is at stake.

Sen. Jeremie SC: My credibility?

Sen. Dr. A. Nanan: When I opened my contribution, I talked about the failure of the Uff Commission and you gave us the undertaking that that fiasco that took place would not happen. You misled the Parliament, but I would not go so far.

Mr. President, as I was dealing with misleading the Parliament, I hope that you permit me because earlier today we had a privilege motion raised. I just want to make an observation because the Member who raised the Privilege Motion was Sen. Linus Rogers and he is a Member of the Privileges Committee that is now dealing with—I am just making an observation, I am not accusing you of anything.

In preparing for this meeting I looked at Argentina, France and Norway in terms of their legislation and to see what is happening with this particular piece of legislation. I want to talk about this section just for reference and to show some kind of comparison. We heard Sen. Mark raise dentistry and dentists in his contribution and I am dealing with the First Schedule under Listed Business which is jewellery.

"A business licensed under the Precious Metals and Precious Stones Act"

I do not know how many Members are aware that dentists also deal with precious metals, because a part of dentistry is related to jewellery because it is the same process in an expanded form that is used to produce jewellery as it is to produce crowns in dentistry. So we utilize the same principle in terms of using a wax form that we design, we then burn out the wax and use gold, just as it is in jewellery, the percentage might be different.

Also, for all those Members who have porcelain or metal crowns in your mouth, the porcelain is also one of the precious metals which is gold. I make that observation because in fact, when I looked at Norway in terms of dealers in precious metals and precious stones, all dealers in high value goods, that is including precious metals and stones are subject to obligations under the Money Laundering Act, when performing transactions in cash exceeding a value of euros, US $5,800. That is roughly about TT $40,000—$45,000.

Long ago, in the pricing of dental materials one would have had to have a large amount of work done at the dental office to qualify in this particular area, but now with the coming on board of these precious metals and porcelain fuse to metal crowns, it is very expensive. I am sure you are aware of the price of a crown in Trinidad and Tobago.

In fact, you can go even further now because they have gone to a higher level in terms of replacement of teeth now using implants which go from $10,000—$20,000. That is a single tooth implant. So if you are looking at money laundering—and I heard in the debate that we are dealing with illegal transactions for gain and money—there can be a situation where, at the dental office, if a particular patient comes in and needs, let us say five implants, we are looking at

the dentist being paid something like $50,000—$100,000 and it is not being captured in this legislation. What is happening is that reference was made here with respect to large sums of money being eventually captured. When the dentist goes to make a deposit, he will have to give information based on that large transaction.

Let us say, hypothetically, that the person who went into the dentist's office is a money launderer and the dentist was not aware, I hope that there will be somewhere that the dentist who did not know that person was a money launderer would not be culpable in that scenario. I can expand even further, because based on that particular inference, we can consider other professions.

If an ophthalmologist does laser surgery on somebody's eye, that could be $60,000 or more for that eye operation using a laser. Again, that ophthalmologist would have to go to the bank and would be questioned on that transaction. So there are certain areas because of the large amount of money coming into those various offices, I do not know if under "Listed Business" those areas are being captured under the First Schedule.

Mr. President, with respect to Argentina, they ratified the UN International Convention for the suppression of the financing of terrorism and they went even further to use their anti-money laundering and counterfeit financing systems very carefully. They have an FIU and they call that the "Unidad de Informacion Financiera" and that is under the Ministry of Justice and Human Rights. [*Interruption*] I just wanted to show in the Argentinian scenario they are under the Ministry of Justice and Human Rights.

Of course, their law establishes requirements for customs identification, record-keeping and reporting of suspicious transactions just like we have here. There is another peculiar area where supervision is taking place by the Central Bank, the Securities Exchange Commission and the Superintendent of Insurance.

Mr. President, numerous cases of suspected money laundering have been passed to prosecutors by the UIF and the Central Bank has a specialized unit devoted specifically to money laundering. What they also do—and I am sure they must have a linkage here too, although I did not see it in the Bill—is the linking of the transaction and comparing it to the terrorism list of the United States, the European Union, Great Britain and Canada and in addition to the UN 1267 Sanctions Committee Consolidated List. So I am sure the Attorney General would have jumped up here and said, yes, we have that.

They have also legislated here for training with respect to programmes to combat money laundering. I am sure that will be part of the regulations that would

be coming with respect to illegal transactions in the country. So that is the Argentinean scenario and I just wanted to have a comparison between Argentina.

And then I was looking for the situation with France because that is also important, how France deals with its money laundering problem. France has a money laundering problem there because of their economy. They have a large economy and an attractive venue for money laundering. These are the requirements they put forward because of their sizable economy, political stability and a sophisticated financial system. There is something in their particular legislation on which I need some clarification. I am sure it is here but I did not see it, and you can correct me if I am wrong in terms of how they separate the two offences.

Sen. Dr. Saith: Look at the legislation instead of the phone.

Sen. Dr. A. Nanan: Are you telling me I am not supposed to use any aid? When I read the legislation and the approach by France, I wanted to ensure that France—

Do you know France also includes in its listing, bailiffs? I do not know if that was something that was omitted or if it is not part of the legislation. I did not see it. France also lists games of chance, movable auction houses and horse racing forecast but there is also an area here of unions, of pension management and intermediary handled securities.

I do not know if under your gaming house or pool betting if horse racing is covered. I am sure the Vice-President would know that with respect to horse racing and where it falls in this particular legislation.

In fact, the Supreme Court of France ruled in that respect to separate the offences; money laundering as well as the other offence. So that is the Argentinean and French outlook, let us now look at Norway because Norway is very interesting.

Norway in terms of casinos: Casinos including Internet casinos are not allowed to operate in Norway, but Norwegian nationals can gamble on Internet casinos that are operated from a server located in another country. Norway is prohibited for Norwegians to offer such a service in Norway.

8.30 p.m.

"Although casinos are prohibited in Norway, the following gambling activities are allowed."

Of course, they have their lottery. There are the betting companies in Norway and they even go further; they bet on soccer games. I do not think we bet that way

here as yet. Then you go to real estate agents and real estate services are provided by licensed real estate agency firms; lawyers who have provided security for real estate agencies and housing cooperatives which are in the business of brokering cooperatives flats.

Then you have dealers in precious metals and precious stones, as I already made reference to. They have lawyers; they have notaries; they have other independent legal professionals; accountants, auditors, trust and company service providers.

But if we look at the Cayman Islands and how they operate, it is very interesting, because in the Cayman, they have a different economy, and why the Cayman Islands are important is because they are the world's fifth largest economy.

> "Money laundering in the Cayman Islands is a significant issue because the island is a prominent offshore financial centre. "

And we heard from the Minister in the Ministry of Finance, Sen. Mariano Browne, in terms of tax havens. They have also prosecuted, as the other territory, in terms of money laundering, and they have a wide range of services which is important. They do private banking, brokerage services, mutual funds and various types of trusts, as well as company information and company management. They have an agency that is responsible for licensing, regulation and supervision of the Cayman Islands' financial industry, which includes banks, trust companies, mutual funds, insurance companies, money service businesses and corporate service providers.

Now this is important. The Financial Reporting Authority replaces—now this is a new concept that I wanted to find out about in terms of the location of this particular FIU.

> "The Financial Reporting Authority replaces the former Intelligence Unit of the Cayman Islands. This FRA opened on January 12, 2004. The FRA is a separate civilian authority governed by the anti-money laundering steering group, which is chaired by the Attorney General."

So I have to ask the Minister of National Security if the Government is looking at the Cayman Islands in terms of how—

Sen. Dr. Saith: Tomorrow.

Sen. Dr. A. Nanan: Tomorrow, in terms of this particular arrangement. And also, again the Cayman Islands also have a major training programme to combat illicit financial transactions.

So I looked at the Cayman Islands, Argentina, France and Norway. I just have one observation on this particular Bill and that is with respect to clause 29(d) "by deleting subsection (10)". Subsection (10) deals with the schedule and that schedule, according to that subsection is to be amended by order, or can be amended, according to the Act. This is how it is in the Proceeds of Crime Act, Chap. 11:27, which you are deleting:

> "The Minister may by Order subject to negative resolution of Parliament amend the First and Second Schedule."

So what the Minister is attempting to do here by deleting that subsection (10), is to remove this particular provision, and we have a concern about that and we want to make an amendment that that subsection (10) should not be deleted and remain as is in this Bill.

I just want to make a quick observation about crime. In terms of economic crime—and Sen. Ramkhelawan made reference to the blacklisting of Trinidad and Tobago if these particular pieces of legislation are not passed in time, and he was going on to talk about the hardships that people will face. But I need to go a little lower down in terms of people utilizing the system.

If you look at a situation of a university student who is studying abroad and who has to get a certain amount of funds for his particular course abroad, now we have this watchdog on Trinidad and Tobago in terms of this Caribbean Task Force and the international body and they are already looking at that—Sen. Mark made reference to the kind of category in which we are placed—it is going to be more difficult.

As it is now, these banks are already reporting, based on international standards; they already comply. It is not a legislative requirement but they comply based on the international standards and maintaining that standard across the region and internationally. They are already complying with respect to filling out these forms, but now when you are trading with these other countries that have their legislation in place already, you are going to have a second look at our country.

So you will have a situation where a transaction that will normally be done quickly, will now take a longer period of time. It is not only with respect to that, but I just drew reference with respect to students studying abroad and the transfer of funds from an account here and the account in probably London or the United States. It is those kinds of transactions that will become very difficult if we were blacklisted.

Of course, our transfer systems, whether it is Western Union, Money Gram and those other wiring transfer of money, will become very difficult, and our businessmen that are abroad who rely on these services of money transfers to

purchase goods, there will be a major obstacle in their way. It is all because of the tardiness of the Government, because this particular report was presented in 2007, as was already mentioned in this debate, and now we are in a situation where we can be blacklisted and all the people who do business via wire transfers can be greatly impeded.

We are saying on this side that we are putting forward a number of amendments to this particular piece of legislation today and we hope that the Government will consider these amendments, because they are made in good faith. We are putting forward amendments to make the Bill more comprehensive and in that particular vein I know that the Government will be very supportive.

You know, Attorney General, when I read the Bill—of course, we heard comments about the Order and all that, but I do not know if you read the Explanatory Note, but it talks about a two-thirds majority. I do not know if that was an oversight or that is what was intended.

Sen. Jeremie SC: It is a three-fifths majority.

Sen. Dr. A. Nanan: No, but the Explanatory Note points to a two-thirds majority, and I am sure yours had that too.

Sen. Jeremie SC: We changed that a long time. Did you not hear the Minister explain that?

Sen. Dr. A. Nanan: I know that, but I am just making reference, if that was the original intention and, suddenly, because you stood up there and said that the Opposition would not cooperate so that is why you went quickly and changed it from two-thirds to three-fifths. I do not accuse the Attorney General of any sleight of hand.

With those few words, Mr. Vice-President, I hope that the Government will consider our amendments.

I thank you.

The Minister of National Security (Sen. The Hon. Martin Joseph): Thank you very much, Mr. Vice-President. Let me start by placing on the record our appreciation of the contributions made by every single Member on the other side and, of course, our Minister in the Ministry of Finance and Minister of Trade and Industry, and just to again inform hon. Members that this Government listens; we pay close attention to the comments made. To the extent to which those comments made can be dealt with, implemented, we will. With respect to the comments

about which we cannot do anything, we still make note of. But I must say that each contribution was considered, will be considered but, of course, you know, it will be impossible for me to respond to what every single person commented on, even though there was a certain amount of redundancy. I am not using redundancy in any negative way, but there were some Senators who mentioned some of the same things over and over. So what I would try to do is to comment on some of them and then, of course, at the committee stage we will be able to go into a whole lot more detail as we deal with some of the amendments.

Let me start, of course, as I will have to, with Sen. Wade Mark. His first issue was the definition of specified offence and why were the offences in the glossary not included in the Bill. FATF recommendation 1 states and I quote:

"Countries should apply the crime of money laundering to all serious offences,"

These offences can be determined either by the threshold approach, that is, being in accordance with the quantum of the fine or in accordance with the categories of offences. The explanation of the recommendation goes on to state that:

> "Whichever approach is adopted, each country should at a minimum include a range of offences within each of the designated categories of offences listed in the glossary."

What we attempted to do is to apply the offence of money laundering to the widest possible range of offences by applying it to all indictable offences from which the proceeds of crime may be derived.

There are procedures in POCA for the court to determine whether a person has benefited from the commission of a criminal offence. So it is in that context that the question about being able to identify all those indictable offences, as Sen. Mark requested, could not be responded to in the way which he wanted it to be responded to.

The second issue he raised was that Government has addressed only 26 of the 40 + 9 recommendations of FATF. Hon. Members, the fact is that not all of the FATF recommendations require legislation. Some of them relate to administrative action and some to executive action and nine of them related to the financing of terrorism.

8.45 p.m.

Recommendation 35, for example, mandates countries to undertake steps to implement certain conventions. Recommendation 36 speaks to the mutual legal assistance and 39 relates to extradition matters.

Sen. Mark raised the other issue that the inclusion of state enterprises like UDeCott should be included, as well as Unit Trust Corporation. The listed businesses included in the Schedule are those which were recommended by FATF. Not all these companies and professions included in the Schedule are governed by legislation of a regulatory nature and the Government has to establish quickly, a regime for the implementation of POCA. In considering the inclusion of the state enterprises, serious considerations must be given to which state enterprises are to be included and the manner in which they are to be governed by the supervisory authority. This is a decision that we may not be able to take at this time, but we will give the matter our consideration.

Sen. Mark raised the issue of the definition of listed business, that a further clause should be added to permit the Minister to make other listed businesses. We agree to this suggestion but a similar provision is already in section 2(2) of the Act. As a result, it is not necessary to consider that.

The other issue he raised was that the definition of "supervisory authority" does not appear in the Bill. At the committee stage the FATF definition would be proposed.

He raised the issues of the definition of "property", "politically exposed persons" and "anonymous accounts".

[MR. PRESIDENT *in the Chair*]

These definitions and their explanations are included in regulations which would be brought to Parliament when these two Bills—POCA amendments and FIU—are enacted by Parliament.

Sen. Mark raised the issue that 56(2) should be reinstated to the affirmative resolution. I had indicated in piloting that we have to strike a balance with the question of the urgency with which regulations may be necessary. Even though we are talking about negative resolution, Senators will still have the opportunity to debate a negative resolution if there is such a need.

There was the issue of the Securities and Exchange Commission not being included in the Act. This commission is the regulatory body for the investment companies that are licensed under the Securities Act. These companies fall within the definition of financial institutions under the present Act and these institutions will include brokers. They are within the ambit of this Act.

Sen. Mark also raised the issue about public education. What he saw was the lack of consultation. Hon. Senators, a public awareness programme, a component

of the Cabinet appointed AMLCFT strategy comprised two categories. At one level there are sectoral awareness programmes with banking financial and other sectors and regulated sectors, for example, accountants, real estate, et cetera. This is a programme that is ongoing and has been ongoing for the past three years.

At a second level there is an awareness programme with the wider public led by the Ministry of Information. There have been radio discussions with CFATF executives, printed media advertisements, et cetera. This started over the last four months.

With respect to Sen. Ramkhelawan, his issue was that the First Schedule should include supermarkets and groceries. The concern here is: Could the Senator suggest for the purposes of reporting under the Act, what would qualify as a suspicious transaction or activity including the supermarkets that would necessitate the provision of a definition of a supermarket, in terms of size, turnover or some other criteria? This is not a decision that can be made at this time.

The second issue was the question of reciprocal sharing of the proceeds under clause 58. The reciprocal sharing between two countries operates on the basis of agreement between them. When the government of one country assists another country in locating the proceeds of an offence, they can agree between themselves whether they would share the proceeds and the proportion in which they would be shared.

Clause 33 speaks to a supervising authority and appears to come out of nowhere.

Clause 33(h) authorizes the Minister to make regulations for determining the manner in which the supervising authority may be selected. This is the context in which clause 33 is drafted. Clause 33 is linked back to section 30(h).

Sen. Drayton's issue was that the definition of "security" should read "security includes" and not "means". This definition is intended for consistency to mirror the definition of "security" in the Securities Act. As a result, the drafters are suggesting that they should be the same. I guess that at committee stage you would have an opportunity, if you do not mind, to further raise the issue where the competent drafters will be able to respond more adequately.

In terms of property, the issue was that property should be defined in the Act. Section 33 of the Act speaks to property while section 5 speaks to cash and there are also references to securities. The Act takes account of real property cash and securities in different places.

The other was the inclusion of the construction industry into the First Schedule with listed business. How do we define construction industry? This industry includes various professionals, contractors, suppliers and workers. The question is: What aspects are proposed for inclusion? At the committee stage—

Sen. Seetahal SC—the definition of "specified offence" as contained in the Act has been weakened by the wording of the new definition. That was the issue that Sen. Seetahal SC—raised. I am advised that the definition as included in the Bill was intended to simplify the existing definition while at the same time widening it. There is a limitation in the existing definition which defines the term "specified offence" to exclude drug trafficking offences. We have included that limitation and by so doing extended the meaning. We also added the words "from which the proceeds of crime have been derived" to identify which indictable offences fall within the scope of the Act. However, since the court under section 3(1) will determine whether the defendant has benefitted from the proceeds of crime, those words would be removed.

Again, there was the issue of the definition of "listed business". Why are we passing laws for which there are no regulations? These would be introduced as soon as the enabled provisions under clause 56 are enacted. Why is there no penalty for offence under section 52? A new amendment is proposed to section 53 that would address that omission in section 52.

Sen. Prof. Deosaran raised a number of issues. He raised the question about the Sentencing Commission Act, No. 80 of 2000. I understand that that Sentencing Commission Act is being reviewed. Some deficiencies exist that have resulted in it not being proclaimed.

I expect number of amendments to be circulated that we would take at the committee stage. With those few words, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

9.00 p.m.

Mr. Chairman: We have several amendments to clause 4. Let us take the amendments by the Minister first.

4. A. In paragraph (b)—

(a) In subparagraph (i) by deleting the words "Exchange Control" and substituting the words "Financial Institutions";

Sen. Mark: Mr. Chairman, I want to ask the hon. Minister, when we talk about "Financial Institutions" would it capture the Unit Trust?

Sen. Joseph: Yes.

Mr. Chairman: (b) Insert at the end of subparagraph (ii) the word "and";

(c) Insert after subparagraph (ii) the following:

"(iii) deleting paragraph (h) and substituting the following:

"(h) a person who is registered to carry on cash remitting services under the Central Bank Act;".

B. In paragraph (d)—

(a) In subparagraph (i) by inserting after the word "three" the words "and replacing it with a comma";

(b) In subparagraph (ii) by deleting the word "after" and substituting the word "before".

C. In paragraph (f) by deleting the words "security" and replacing it with the word "securities".

Sen. Seetahal SC: Before we go there, the amendment under (c), which says:

"deleting paragraph (h)…" I was wondering, since there are several (a), (b), (c), (d), if you look at page 8 of the original Act, maybe we should say "paragraph (h) under 'financial institution' or something like that, if you see what I mean, because the paragraph (h) is (h) in the definition section of the Act. I am just saying that for Sen. Ramkhelawan, so for ease of reference—

Sen. Jeremie SC: There is only one (h).

Sen. Seetahal SC: I know there is only one (h), but look at the next one in paragraph (d), (b) and paragraph (c), for clarity that would assist. Sen.

Ramkhelawan is confessing himself to be totally confused and people were reading it. Bearing in mind we are not going to have another revision of the law for the next 20 years—

Sen. Jeremie SC: I do not know that is true; we do law revision every year now.

Sen. Seetahal SC: That was just a point I thought would make it clearer, but it does not bother me. You left out "to", by the way.

Sen. Jeremie SC: We saw the "to" and that must be corrected; it is obviously a typographical.

Sen. Seetahal SC: Is there a big difference to say deleting paragraph (a) under the definition "financial institution"?

Sen. Jeremie SC: I do not think it is necessary, but—

Sen. Seetahal SC: I think it is clearer.

Sen. Ramkhelawan: Mr. Chairman, before you leave "financial institution", there was a suggestion that was put forward to create some clarity; instead of using "financial institution" use the words "financial intermediary". I do not know if the Minister took note of that.

Mr. Chairman: Let us deal with one thing at a time.

Sen. Jeremie SC: The technocrats agreed with me that there was no need for it. There really is only one clause (h). They promised a consolidation, and if there is some element of doubt, which exists because we do not have a consolidation before us, and what we have is a list of amendments and a Bill which comes from the House, which comes with amendments, once the consolidation is done that should take care of it.

Sen. Seetahal SC: As you wish, except that I do not agree with your technocrats, because I have seen many pieces of legislation come here and have been carelessly drafted. One of the reasons is that it is not easy to find. When you say (a), (b), (c) or (d), it is simpler to put "under the definition of financial institution or (c) under the definition of this or (j) under so and so. It makes it clearer; it makes it easier to read. Who are we trying to get to read this thing? Is it to be hidden? Whether it is necessary or not, is it easier to read and appreciate? That is the point. If you think that there is going to be a big debate about it and you want to persist, go ahead.

Sen. Browne: Patience.

Sen. Seetahal SC: My patience is exhausted at 9 o'clock when we could settle this in 10 seconds.

Sen. Jeremie SC: Sen. Seetahal SC, we do not see that there is a difficulty, but in the interest of bringing everyone around, if you think there is a problem we would be willing—

Mr. Chairman: What exactly are you asking for?

Sen. Seetahal SC: I am suggesting that in (iii) we put after "deleting paragraph (h)", "deleting paragraph (h) under the definition of 'financial institution' and substituting the following", so everything will remain. All I am saying is include the words "under the definition of 'financial institution'. The words "financial institution" would be in inverted commas.

Mr. Chairman: Sen. Ramkhelawan, you had an issue with the definition of "financial institution"?

Sen. Ramkhelawan: Yes, Chairman, the words "financial institution" are used particularly in the Financial Institutions Act to define a specific organization. I was suggesting "financial intermediary", because this covers a whole range of intermediaries, including a financial institution, a credit union, insurance and so on. It could be very confusing. Just for clarity purposes, wherever you have "financial institution" you could put "financial intermediary".

Sen. Jeremie SC: We take your point as a technocrat, but we have used the words "financial institution" in a particular sense throughout this Bill. If we were to make that change here, it would do violence to some of the other clauses in the Bill. Perhaps that is an exercise which the Law Revision Commission could take on. A properly functioning Law Revision Commission could look at it.

Mr. Chairman: Let me read the amendment:

4. A. In paragraph (b)—

(a) In subparagraph (i) by deleting the words "Exchange Control"" and substituting the words "Financial Institutions";

(b) Insert at the end of subparagraph (ii) the word "and";

(c) Insert after subparagraph (ii) the following:

"(iii) deleting paragraph (h) under the definition of "financial institution" and substituting the following:

"(h) a person who is registered to carry on cash remitting services under the Central Bank Act;" and

B. In paragraph (d)—

(a) In subparagraph (i) by inserting after the word "three" the words "and replacing it with a comma";

(b) In subparagraph (ii) by deleting the word "after" and substituting the word "before".

C. In paragraph (f) by deleting the words "security" and replacing it with the word "securities".

Sen. Drayton: Mr. Chairman, I have amendments for clause 4.

Mr. Chairman: Let us take the amendments from Sen. Drayton. We have a proposed amendment to 4(f):

In the definition of the word "security":

(a) in line 3: Delete the word "means" and substitute the word "includes".

(b) In line 6: Insert the word "property," after the word "debt" and before the word "profits".

4(f)(d) (a) In line 1: Insert the words, "instrument" after the word "document" and before the word "or".

Sen. Drayton: In Sen. Joseph's winding up he indicated what is written in this Bill is consistent with what is in the Securities Bill. What I am recommending is consistent with the Securities Bill. The Securities Bill reads specifically "security includes"—I imagine this was done so that it is not limited in its definition.

Property was included as well. I do not see how you could leave out "property" from the definition of "securities".

Sen. Jeremie SC: Yes, we agreed to delete the word "means" and substitute "includes". The point is that the categories of security are not closed, so you would want it to not mean that you would want to include.

Sen. Drayton: It is consistent with the Securities Bill. I did not mention that because this Bill is not yet being debated. [*Interruption*]

Sen. Ramkhelawan: To be fair to Sen. Joseph, he spoke about security being consistent with the definition of "security" in the Financial Institutions Act, 2008, which I have before me; "security" means any document. I think Sen. Drayton is referring to the Securities Industry Act, 1995.

Sen. Drayton: No, no.

Sen. Ramkhelawan: We do not have a 2009; that is still to come.

Sen. Drayton: I know, but there ought to be a decision as to whether there would be consistency.

Sen. Jeremie SC: As a matter of drafting style and in respect of this in a definition section, we have no objection to making the change. We think it is useful. It does not limit you to these categories.

9.15 p.m.

Sen. Seetahal SC: Are we moving on to the next amendment?

Mr. Chairman: The question is that clause 4 be amended as follows:

In the definition of the word "security":

(a) in line 3: Delete the word "means" and substitute the word "includes".

(b) In line 6: Insert the word "property" after the word "debt" and before the word "profits"

4(f)(d) (a) In line 1: Insert the word , "instrument" after the word "document" and before the word "or".

We have another amendment to clause 4.

Sen. Seetahal SC: Before we move on, this is probably what is causing the problem. In this same clause 4 you have "(*a*)—(*f*)" and then on page 8 you have "(*a*)—(*g*)". Now, I know they are intended to relate to different things, but do you see a problem there with the repetition? One refers to the clause in this Bill and the other refers to the main Act. Is that it? Is it because the second set refers to the sections in the main Act? That is why, for referencing, people might find a problem. The second set refers to the main Act whereas these are the ones in this Bill.

Sen. Joseph: That is the confusion that is being removed.

Sen. Seetahal SC: That is the confusion, in my view, that is being created.

Sen. Joseph: The apparent confusion would be removed once it is consolidated.

Sen. Seetahal SC: I am just observing for the clarification of Senators.

Mr. Chairman: There is an amendment to clause 4 from Sen. Wade Mark.

Sen. Mark: Mr. Chairman, the hon. Minister did indicate that there will be a definition for "supervisory authority". I looked through his amendments and I did not see any definition for what "supervisory authority" means. It is in the Bill. I thought that in the definition section we should be very clear in terms of what we mean by "supervisory authority".

Sen. Jeremie SC: That point is being taken.

Sen. Seetahal SC: Is that not in clause 33?

Sen. Mark: There is no definition, so it has to hold out until the "supervisory authority" is appointed.

Sen. Seetahal SC: And when they do, it says "until Regulations are made". If it is that they are saying that there is one supervisory authority, the FIU, until regulations are made, then it would seem to me that the regulations would be made by the supervisory authority.

Sen. Mark: I probably have a different interpretation.

Sen. Jeremie SC: We have a definition section. Are you going to give us your support if we—

Sen. Mark: I would like to know what is the definition.

Sen. Joseph: Mr. Chairman, "'supervisory authority' means the competent authority responsible for ensuring compliance by financial institutions and listed business with requirements to combat money laundering." Incidentally, that is FATF definition. We have taken it straight from the FATF definition.

Sen. Mark: Mr. Chairman, through you, I would like to ask the hon. Minister if this Bill is also dealing with the financing of terrorism as well.

Sen. Joseph: No, we have a separate Bill which is ready.

Sen. Mark: So, there is a separate Bill on the financing of terrorism.

Sen. Jeremie SC: Yes.

Sen. Mark: I got the impression that one of the areas that we have to satisfy in order to be qualified would be to have legislation covering the financing of terrorism. So, I was wondering if that would have to be included before the 9th.

Sen. Jeremie SC: We already have anti-terrorism legislation which deals with terrorist financing, but we need to strengthen the provisions in there. What we are doing today, as you said, I think, during your contribution—I am not sure

if you made this point, because you seldom make points, but you might have made this point—that it is going to bring us into compliance with 26 of the 40 + 9 recommendations. What we are doing today and what we will be doing tomorrow would carry us substantially further, in terms of the 40 + 9 recommendations. It is not ready, so we cannot put it.

Sen. Mark: Mr. Chairman, you may proceed with the definition and I would go on to something else.

Mr. Chairman: Clause 4 is amended by inserting at a new *"(i)*" the definition for "'supervisory authority' means the competent authority responsible for ensuring compliance by financial institutions and listed businesses with requirements to combat money laundering."

Sen. Seetahal SC: I do not know if you have dealt with everything in clause 4.

Mr. Chairman: No. Each amendment to clause 4 would be read and approved and then I am going to put the entire clause 4.

Sen. Mark: Mr. Chairman, through you, we just agreed to an amendment by Sen. Drayton on the word "property" to be included under "security". I would just like to know that when we talk about "property" whether the definition in the parent Act is going to apply or whether you want to go for FATF definition. I think they have now broadened their definition of "property". They were saying that ours was a bit somewhat restricted. I do not know if it is appropriate at this time for the Minister to consider that particular definition of "property" in this piece of legislation. I am just asking the hon. Minister.

Sen. Joseph: Mr. Chairman, I am advised that the Bill now deals with real property, cash and security. If we proceed to define "property" in the way Sen. Mark is suggesting, we are going to run into some problems. The Act is structured in a particular way. To extend it now, as you would like us to, is going to create some challenges for us at this time.

Sen. Mark: Would it run afoul of FATF?

Sen. Joseph: We are not saying that it is going to run afoul of FATF, but what we are doing is not going to run afoul of FATF either. What we are saying is that the way in which the Act is structured to include what you are asking for now is going to create serious challenges for us.

Sen. Mark: Based on what the Minister said a while ago— we already have an Anti-Terrorism Act and there is need to strengthen it through regulation—I

would imagine that the areas that I was concerned about, like a terrorist act, terrorist organization and what is a terrorist, perhaps we can deal with that when we are dealing with the regulations governing the Anti-Terrorism Act that we have on the statute books. We need to really strengthen that. So, I would withdraw terrorist act, terrorist organization and terrorist.

However, I want to ask the hon. Minister, when we talk about wire transfer and things like record and suspicious activities report and predicate offence transaction, et cetera, where are we going to capture these definitions and in which piece of legislation? In many respects they would fall under the proceeds of crime, but there is no definition in the legislation to guide us as to what these terms really mean. In the parent Act, it talks about suspicious activity transaction and report, but there is no definition in the interpretation section to tell anyone what that means. Given the serious nature of this piece of legislation, we need to be as clear as possible in guiding the population. That is a view I am expressing.

Sen. Jeremie SC: Mr. Chairman, "predicate offence" is a term that is used regularly now. It might not even be used in the Act at all. Although I know it is used in the CFATF and the FATF 40 + 9 recommendations. It has a technical meaning, in any event, and it means predicate or criminal offence. The other terms are ordinary terms which do not require a definition except for wire transfer which is in the Financial Obligations Regulations (FOR) as it is now. It is ready.

Sen. Mark: Mr. Chairman, I am going to leave these as they are.

Mr. Chairman: We have a further amendment to clause 4.

Sen. Mark: Mr. Chairman, I know that the hon. Minister might have good intentions in terms of what he is attempting to do here, but if you look at the Proceeds of Crime parent Act and the definition for a "police officer" it means an officer of the Trinidad and Tobago Police Service and it includes an officer of the Customs and Excise Division and an officer of the Board of Inland Revenue. Now, in the definition we have here, the Government wants to add to police officer. What I find strange is that they want to leave out, from what I am seeing here, "an officer of the Board of Inland Revenue". I am wondering why are we seeking to leave out an officer of the Board of Inland Revenue, given the important role that agency has to play under the Proceeds of Crime Act under Schedule 2 or 3.

9.30 p.m.

And then what is even more disturbing to us, why are we going to include any officer of an agency of the state, lawfully vested with investigative powers similar to those exercisable by the police appointed under the Police Service Act? I could

not understand what the Minister is trying to accomplish here, because I can only assume that the Minister is trying to incorporate the anti-crime unit here.

Sen. Joseph: I think you have it all wrong, Sen. Mark.

Sen. Mark: Well, tell me.

Sen. Joseph: The definition as it stands now, the parent Act just as you say, police officer means "an officer of the Trinidad and Tobago Police Service and includes an officer of the Customs and Excise Division, and an officer of the Board of Inland Revenue" and we are now adding "or any other officer of an agency of the state lawfully vested with investigative powers similar to those exercisable by the police appointed under the Police Service Act 2006". What we have done, is now we have expanded the persons who are now—

Sen. Seetahal SC: And it even includes SAUTT, I think we made that clear earlier on, Sen. Mark, because they are not lawfully vested right now. So when they become lawfully vested, it is only then.

Sen. Jeremie SC: It is not that SAUTT is illegal, eh.

Sen. Seetahal SC: "Specified offence", I think the Minister conceded—although I do not see it in the amendment that the words "from which proceeds of crime may be derived"—at least I thought I heard you concede, were already dealt with in section 3, so therefore, "specified offence" would now mean "an indictable offence committed in Trinidad and Tobago whether or not the offence is tried summarily". So that would be the amendment.

Mr. Chairman: What is the amendment?

Sen. Seetahal SC: Under "specified offence" at page 9, delete from the third line the word "from" to the fifth line "and" so it now reads, "specified offence" means "an indictable offence committed in Trinidad and Tobago whether or not the offence is tried summarily", and therefore (b) would have to change as well to read—could I go ahead?

Mr. Chairman: No, I am not with you. Remove which word, because I am not following?

Sen. Seetahal SC: At (a) from the word "from" to the word "and" in the fifth line, so it now reads "an indictable offence committed in Trinidad and Tobago whether or not the offence is tried summarily". Then I am saying as a consequence of that we would have to amend (b).

Sen. Mark: Just repeat what you just said there, Sen. Seetahal SC, "an indictable offence committed in Trinidad and Tobago"—

Sen. Seetahal SC: Right there, and then it goes on "whether or not the offence is tried summarily", because you can try offences either way, some of them. Then I am saying that (b) would have to be amended and my suggestion is this. It should read, "any Act committed or omitted to be done outside of Trinidad and Tobago which would constitute an offence in Trinidad and Tobago". Okay, so that is basically that, and the reason I wanted to make it clear for doing so, is that section 3 already says that the person's property would only be seized for the specified offence if the magistrate considers the persons to have benefited from it. So it is redundant to say proceeds of crime and so.

Mr. Chairman: All right, let me put the question. The question is that clause 4(g) be amended at (a) by deleting the words "from which proceeds of crime may be derived" and at (b) by deleting the words "have constituted" and inserting the word "constitute".

Sen. Seetahal SC: And deleting the meaning of paragraph (a). You do not have to say that.

Sen. Jeremie SC: You are deleting the words in paragraph (a)?

Sen. Seetahal SC: Yes.

Mr. Chairman: And deleting the words within the meaning of paragraph (a).

Sen. Seetahal SC: So it reads, "any Act committed or omitted to be done outside of Trinidad and Tobago which would constitute an offence in Trinidad and Tobago".

Mr. Chairman: So, you are removing the word "indictable" as well? Well, I would just read that again. At (b) amending (b) by removing the words "have constituted" and inserting the word "constitute" and deleting the word "indictable"—

Sen. Seetahal SC: No, we are leaving the word "indictable" and we are deleting the words "within the meaning of paragraph (a)" and substituting the words "in Trinidad and Tobago".

Mr. Chairman: Deleting the words within paragraph (a), very well.

Sen. Seetahal SC: And in its place we are putting "in Trinidad and Tobago".

Mr. Chairman: What!

Sen. Seetahal SC: An indictable offence in Trinidad and Tobago—

Mr. Chairman: Let me read that again just to make sure everybody gets it straight. At (b) delete the words "have constituted" and insert the word "constitute". Insert the words after the word "offence" "in Trinidad and Tobago" and delete the words "within the meaning of paragraph (a)".

Sen. Mark: When you say offence you mean indictable offence, eh, Sir?

Mr. Chairman: Yes.

Question put.

Sen. Mark: Mr. Chairman, before you go on, may I just indulge you and my colleagues again. Could you just shift back to "security" just for a moment, I just want to clear my mind on something.

Sen. Jeremie SC: Security where, I am not following you?

Sen. Mark: I am dealing with (d) on page 8. We talked about financial institutions, Mr. Chairman, a credit union, cooperative society, an insurance company; where would Unit Trust fit into this?

Hon. Senator: Financial institutions.

Sen. Mark: No. Mr. Chairman, that is why I am asking this question. What is the definition of a financial institution, because the only definition I have is the parent Act and the parent Act does not include Unit Trust. So when you talk about a financial institution, we are operating with the meaning of the institution as given in the interpretation section, and that is why I wanted to get some clarification.

Remember, I raised the point in my contribution earlier and I want to really bring it to your attention, the Financial Institutions Act of 2008 which is the one that was passed last year, there is a section of this Act in the Third Schedule, Part I, the "Exempted Institutions" from under the words "financial institutions" and among the institutions you have exempted in this Act is the Unit Trust. The Unit Trust is not a financial institution and the Trinidad and Tobago Mortgage Finance Company is not a financial institution.

The Trinidad and Tobago Mortgage Finance Company Limited is not a financial institution as defined by this Act of 2008, so when we talk about a financial institution we must take into account what the latest Act says, and I am simply saying that we need to ensure that when we are dealing with security we incorporate Unit Trust and the TTMF, if it is necessary, under this section and we redefine what financial institution means, otherwise we will be defeating ourselves.

Sen. Narace: That is why they had to examine them because the Unit Trust is a big institution.

Sen. Mark: Yes, but what I am saying is that for purposes of money laundering they would be captured, because Unit Trust is a big institution, you could launder there. That is why they should be captured. [*Interruption*] I agree with that, so I do not know what Sen. Narace is saying. [*Crosstalk*]

Sen. Jeremie SC: It seems to us that there is a generic provision which allows the Minister by order to include an institution such as the Unit Trust. Do you want a specific reference to the Unit Trust?

Sen. Mark: Yes. What I am saying, on page 8, Mr. Chairman, under paragraph (d), we have (i), (ii) and (iii), I am saying that you could have (iv), the Unit Trust Corporation of Trinidad and Tobago, The Trinidad and Tobago Mortgage Finance Company and the Agricultural Development Bank. You have those things specifically outlined in the legislation.

Sen. Joseph: As what, being exempt?

Sen. Mark: No, as being organizations that would fall under security. That is the point I am making, put them under security.

Sen. Jeremie SC: What we are saying is that there might be policy implications for that. The Minister with responsibility for the Unit Trust happens to be here, but the parent Act provides in (g) that "any other person declared by the Minister by Order, subject to negative resolution of Parliament to be a financial institution for the purpose of this Act". So, there is provision there for the Minister, if there is a policy reason, to include the Unit Trust and those other institutions to which you refer. I cannot make a policy decision here at this time without instructions from the relevant Minister.

Sen. Mark: All I am saying, Mr. Chairman, is that under the FATF the redefined financial institutions and if we are following their recommendations in the context of beefing up our legislation, if you look at their definition of 'financial institution', they included mutual funds and they included trust companies. So, all I am saying is that it is already in the definition of the Financial Action Task Force and it is not so much a policy decision that you are saying.

Sen. Jeremie SC: We are trying to give effect to the FATF recommendations, but how we do so domestically is a matter for us. We have been consulting with the CFATF and the legislation that we have meets with their support. I am not certain that we can, without proper consultation with the Minister responsible for

those institutions. I do not think it would be proper for us to make what is in essence a policy change, not a drafting change, but a significant policy change to the legislation. I do not think that would be fair to the Ministers involved.

Sen. Mark: Yes, but we are in Parliament, man, and we cannot go along with these kinds of things. You are tying our hands behind our backs.

Sen. Joseph: Sen. Mark, how are we tying your hands?

Sen. Mark: We are saying, for instance, under the FATF, there is a clear definition of what a financial institution is. It includes the Unit Trust, it includes the Agricultural Development Bank and it includes the Trinidad and Tobago Mortgage Finance Company Limited. How can we say that because it is a policy decision that you have to take—well, then let us adjourn this debate and go to the Cabinet and come back and let us know. I am not taking promises at this 11th hour, that the Minister will decide this and the Minister will decide that. We cannot operate like that. [*Steups*] If you all do not want that fixed, well, tell us. We are trying to strengthen the legislation to be complaint and you all are saying that it is a policy decision. [*Inaudible*]

9.45 p.m.

Sen. Jeremie SC: The Minister in the Ministry of Finance.

Sen. Ramkhelawan: Mr. Chairman?

Mr. Chairman: So the Government has agreed then? Does that include the Agricultural Development Bank? But the Agricultural Development Bank does not receive any public money from the public. It is funded entirely by the State, and therefore, would only be laundering state moneys.

Sen. Browne: In so far, it could be used as an avenue, somebody wanted to do money laundering, it could be used. Not so much that State funds will be jeopardized, but deposits, for example, going in for repayment of loans could be used in that fashion. There is a possibility that it could be used in that fashion.

Sen. Ramkhelawan: Mr. Chairman, the Agricultural Development Bank is empowered to take deposits, whether it enforces that or not, it is empowered under law to do that.

Sen. Browne: And from that perspective too, there may be a policy change.

Mr. Chairman: Both institutions. So the proposed amendment is that at 4(d) insert a new subparagraph (iv)—and the TTMF?

Sen. Mark: Through you, Mr. Chairman, hon. Minister Mariano Browne, I also mentioned the Trinidad and Tobago Mortgage Finance Company.

Sen. Browne: We have no problem.

Sen. Mark: No problem.

Sen. Dr. Saith: [*Inaudible*] [*Laughter*]

Sen. Jeremie SC: The Minister is saying he will make a special order for you.

Sen. Drayton: Mr. Chairman, the problem I have with that is saying specifically, Unit Trust or Trinidad and Tobago Development Bank, because you are talking now about a specific institution, but if you say "to include development banks, mutual funds, mortgage and finance companies", that is a different matter. But to list a specific company, you are now going outside of the realm of the—

Sen. Joseph: Agreed. Even better.

Sen. Mark: Excellent.

Sen. Jeremie SC: That is very useful. It is less venomous than Sen. Mark's contribution.

Mr. Chairman: Would you like to give me that line again, please?

Sen. Drayton: Development banks, mortgage and finance companies, mutual funds and trust companies.

Mr. Chairman: The question is at 4(f)(d) insert a new subparagraph (iv) with the following words "development banks, mutual funds and trust companies"—

Sen. Drayton: Mortgage companies.

Mr. Chairman: "and mortgage companies". That is it?

Sen. Ramkhelawan: Mr. Chairman, mortgage and finance will be captured by financial institutions under the Financial Institutions Act. That will be repetitive.

Mr. Chairman: Very well.

Sen. Ramkhelawan: So if you go specifically with Unit Trust which is established under a specific piece of legislation—well, I think the mortgage finance, through you, Mr. Chairman, to the Minister in the Ministry of Finance, mortgage finance is a licensed bank, is it not?

Hon. Senator: Is it?

Sen. Dr. Saith: Leave it "nah". Even if you duplicate, it is there. It is safe.

Mr. Chairman: So we have the amendment including the words "development banks, mutual funds and trust companies".

Sen. Joseph: Mr. Chairman, I am being advised by the drafters that we now have to include a new paragraph in the definition of financial institution to:

"(a) an entity providing mutual funds; and

(b) development banks, trust companies and mortgage companies."

Sen. Mark: In the definition?

Sen. Joseph: Yes. So I understand "(i)(a)" and then an "(i)(b)". We are just renumbering.

Mr. Chairman: So we are not amending 4?

Sen. Joseph: Yes. We are not using "(i)(a)", all we are doing now is using "(j)" which is an entity providing mutual funds, and "(k), development banks, trust companies and mortgage companies" and we are now renumbering the old "(j)" as "(l)" . Okay?

Mr. Chairman: So we are inserting a new "(i), an entity providing mutual funds. "(k), development banks, trust companies and mortgage companies" and renumber "(j)" as "(l)".

Sen. Joseph: Mr. Chairman, it is a new "(j)"—I think you said "(i)"; it is a new "(j)" and a new "(k)"

Mr. Chairman: A new "(j)" and a new "(k)". "(j), an entity providing mutual funds", and a new "(k), development banks, trust companies and mortgage companies" and renumbering "(j)" as "(l)".

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Chairman: The question is that clause 5 be amended as follows:

"in paragraph (b) by deleting the word "activity" and substituting the word "activities".

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clauses 6 to 14 ordered to stand part of the Bill.

Clause 15.

Question proposed, That clause 15 stand part of the Bill.

Mr. Chairman: We have an amendment by the Minister.

In paragraph (f), by deleting all the words after the word "associated" and replacing them with the words "for the purposes of this section associated means".

Question put and agreed to.

Sen. Drayton: Mr. Chairman, clause 15(b). "In subsection (1)(a)", is that (1)(a) or (10)(a)? I cannot seem to find (1)(a).

Sen. Jeremie SC: Just hold on, I am trying to figure out where it is.

Sen. Joseph: Yes, you are right, it is subsection (10)(a). We just double-checked it.

Sen. Jeremie SC: It is missing the zero. It is (10). It is a typo.

Clause 15, as amended, ordered to stand part of the Bill.

Clause 16 ordered to stand part of the Bill.

Clause 17.

Question proposed, That clause 17 stand part of the Bill.

Sen. Ramkhelawan: Mr. Chairman, clause 17(a) speaks to deleting the words "government department", but replacing it with what, because section 34 does not make sense to me. When you read section 34 which is intended to be amended, it does not make sense when you take out "government department". If you go to section 34 which is supposed to be amended by clause 17(a)(i), when you take out "government department", what you will have is "Subject to subsection (4), the High Court may, on an application by the person appearing to the Court to have the conduct of any prosecution". Is that what was intended? And then you take out "which is in the possession of an authorized government department". You should take out "government department" there, "authorized to be produced", because there are two "government departments" in that particular subsection.

Sen. Joseph: "Government department" comes up in the first one.

Sen. Ramkhelawan: Well you need to clarify that.

Sen. Joseph: It comes up for the first one; where it first occurs.

10.00 p.m.

Sen. Jeremie SC: Where it first appears.

Sen. Ramkhelawan: Then you need to put in line 3 or where it first appears to make it clear.

Mr. Chairman: The question is that clause 17 be amended by including at (a) after the word 'department' the words 'where it first appears'.

Sen. Baptiste-Mc Knight: Mr. Chairman, I think there is a similar problem with 17(4)(a) by deleting the words "18 to" and then it is left—"18 or 20".

Sen. Jeremie SC: It is 19 and 20.

Sen. Ramkhelawan: Okay, that is all right.

Mr. Chairman: So what will we be doing now?

Sen. Joseph: In subsection (4)(a) delete the words "18 to" and substitute the words "19 and 20".

Sen. Ramkhelawan: Okay, it makes sense now.

Mr. Chairman: The question is that clause 17 be further amended at clause (c) by including the word "and" after the word "19".

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18.

Question proposed, That clause 18 stand part of the Bill.

Mr. Chairman: There is a proposed amendment from Sen. Mark.

Sen. Mark: Mr. Chairman, I would like the hon. Minister of National Security to consider, having regard to the seriousness of the legislation and the dangers that this piece of legislation could pose to citizens' fundamental rights and freedom in the context of what we are doing, and the question of trust is very important in this exercise. I believe we need to cooperate as a Parliament to have some initial oversight on this piece of legislation.

In those circumstances, I am suggesting that we should really move from a negative resolution to an affirmative resolution. It is my view, if we can cooperate together in overseeing this legislation, I think it would go a long way. That is what I suggest to the hon. Attorney General.

Sen. Jeremie SC: Mr. Chairman, as you know, once it is subject to an affirmative or negative resolution, there is oversight. We think, as a policy matter, that an Order made under this subsection should be subject to negative resolution. It is easier; it gives the Parliament an opportunity to debate the matter.

You have done countless motions to annul legislation, so you know that. We would rather have negative resolution, Mr. Chair.

Sen. Prof. Deosaran: Mr. Chairman, in trying to respond to Sen. Mark's amendment and the Attorney General's response, could we be told what the prescribed sum is? Is there a prescribed sum indicated anywhere?

Sen. Jeremie SC: There has been no prescription as yet. There is a matter before the Cabinet now to take care of this.

Sen. Mark: So why the Cabinet cannot be up to speed with this matter of the prescribed sum, where we would have some determination in this?

Sen. Jeremie SC: Sen. Mark, you will be brought up to speed once there is a resolution.

Sen. Mark: I have been around like you for a little while, and I know what is a negative and what is an affirmative. I am saying we want to cooperate, we want to meet you halfway, and I am simply asking you to meet us halfway too. But you are insisting that the negative resolution will come, you will table it and Wade Mark can move a Private Member's Motion or something to have it annulled.

By the time I do that, it is already in force. Whereas, if you want to bring it as an affirmative, we need to debate it before it is put into law, and that is the problem with which we are faced. But if you insist, then go ahead.

Mr. Chairman: Are you withdrawing the amendment?

Sen. Mark: I am not withdrawing anything, Sir.

Mr. Chairman: The question is that clause 18(d)(13) be amended as follows:

Delete the word "negative" and substitute the word "affirmative".

Question, on amendment, put and negatived.

Question put and agreed to.

Clause 18 ordered to stand part of the Bill.

Clauses 19 to 27 ordered to stand part of the Bill.

Clause 28.

Question proposed, That clause 28 stand part of the Bill.

Mr. Chairman: There is an amendment to clause 28. In section 53(2), substitute the words "section 51" with the words "sections 51 and 52".

Sen. Mark: Mr. Chairman, that was an oversight on the part of the hon. Minister because section 52 was left out completely and he is putting it in. So he is agreeing with me, Sir.

Sen. Joseph: No, I am not agreeing with you. Mr. Chairman, I am proposing an amendment at clause 28 to add a subsection (3) and at 53 to add (3). It reads as follows:

"New subclause (3): A person who is found guilty of an offence under section 52 is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years."

It is consistent with the nature of the offence, because it is not money laundering, it is failure to report.

Mr. Chairman: So we will withdraw yours and go with this one?

Sen. Mark: No, I am just trying to get it clear if 52 which was left out is being included?

Sen. Jeremie SC: Yes.

Sen. Mark: Therefore, what we are adding is what the hon. Minister just said?

Sen. Joseph: Section 52 is the penalty that was left out, and all we are doing now is including the penalty.

Sen. Mark: Okay.

Mr. Chairman: So you are withdrawing your amendment of clause 28?

Assent indicated.

Question put and agreed to.

Clause 28, as amended, ordered to stand part of the Bill.

Clause 29.

Question proposed, That clause 29 stand part of the Bill.

Mr. Chairman: We have amendments from the Minister and from Sen. Mark. We will deal with the Minister's first.

In paragraph (a) by repealing subsections (2) and (3) and substituting the following:

"(2) Every financial institution or listed business shall

(a) pay special attention to all—

(i) business transactions with persons and financial institutions in or from other countries which do not or insufficiently comply with the recommendations of the Financial Action Task Force. "

Question, on amendment, [*Sen. M. Joseph*] *put and agreed to.*

Mr. Chairman: There is a further amendment to clause 29 by Sen. Mark.

Sen. Mark: Mr. Chairman, I could not understand the rationale, and we could never agree to what the Minister is proposing. What is in the parent Act reads as follows:

"The Minister may, by Order, subject to negative resolution of Parliament amend the First and Second Schedules."

I find this to be very highly proper that he needs to come to the Parliament if he is going to bring about changes.

The Minister, with all these new changes to the Act and Schedules, including the First Schedule and the Third Schedule, is now proposing that this entire thing be deleted and I do not understand the rationale for that.

The Parliament should have a role and a say in this whole matter, and whilst I would like an affirmative resolution to this matter, in fact, there was a negative before so I would not fight an affirmative, I would say let us just keep it as the negative and go along with that.

Normally I would stand for affirmative. Do you understand what I am saying, Attorney General?

10.15 p.m.

Sen. Jeremie SC: It is already in subsection (2) of the parent Act. So it is a repetition and that is all that we are seeking to do to make the legislation consistent.

Sen. Mark: What section is that, Sir?

Sen. Jeremie SC: Section 2(2).

Sen. Drayton: There is just one item on the amendment. The second page:

"(d) acting as (or arranging for another person to act as) a trustee of an express trust:"

Or it is "expressed"?

Sen. Jeremie SC: I am sorry. We are not hearing you, Senator.

Sen. Drayton: That is page 3 of your amendments. "The trust and company service provider—"

Sen. Joseph: We have not reached there as yet.

Sen. Drayton: Okay. Sorry.

Question put and agreed to.

Clause 29, as amended, ordered to stand part of the Bill.

Clause 30.

Question proposed, That clause 30 stand part of the Bill.

Sen. Mark: Mr. Chairman, I do not know how this one slipped me, Sir; I really was supposed to incorporate it in our amendments. I would like the hon. Attorney General and the Minister of National Security to reconsider this change to section 56(2). Already we have a high threshold in the parent Act of an affirmative resolution. An affirmative resolution is already there, planted, entrenched, in the Act and I do not see any rationale for its removal. Again, I believe that this exercise that we are engaged in must be a cooperative one and the Parliament should have an oversight role in this exercise and not be subjected to any negative resolution when we already have an affirmative resolution in the legislation. Therefore, I am suggesting that we retain section 56(2) as is and I ask the Minister to withdraw his amendment.

Mr. Chairman: But the Minister is not amending 56(2).

Sen. Mark: I am asking the Minister to withdraw because—

Mr. Chairman: He is only amending 56(1).

Sen. Mark: Mr. Chairman, what is happening is, if you look on page 19, (b) by deleting in subsection (2) of section 56 the word "affirmative" and substituting the word "negative". I am suggesting to the hon. Minister that the status quo be retained as we have it in the Act, as we speak. Therefore, I am asking him to withdraw that particular amendment that he is proposing. Repeal it or withdraw it.

Mr. Chairman: That is a clause; that is not an amendment.

Sen. Mark: Well a clause, Sir.

Mr. Chairman: Okay. That is why I was confused.

Sen. Mark: Sorry, Sir, my apologies.

Mr. Chairman: How does the Government respond? Sen. Mark is asking that clause 30(b) be deleted.

Sen. Jeremie SC: To make it consistent with what it was before?

Sen. Mark: Yes, I would like it to be consistent with what it was before.

Sen. Jeremie SC: Are you with us so far on the legislation?

Sen. Mark: All the time, I am with you.

Sen. Joseph: You are going to abstain, you know.

Sen. Mark: I have not deviated.

Sen. Jeremie SC: Okay, yes, Mr. Chairman. We take them in good faith. They say they will support.

I am sorry, we do have a problem, Sen. Mark. If we agree to make it "affirmative resolution", as you know, it would only take effect after we have debated it. To meet our deadline we need to have the financial regulations made and laid. Of course, you know with "subject to negative resolution" it is made, once it is laid.

Sen. Mark: Yes, we are coming back. We are prepared to come back here, with your leave, and debate it.

Sen. Jeremie SC: We have a difficulty with respect to time.

Sen. Joseph: This one has to take effect immediately.

Sen. Mark: When you say, take effect immediately, what do you mean?

Sen. Joseph: As soon as it is—

Sen. Mark: Yes, but why you did not bring it today.

Sen. Joseph: We could not.

Sen. Mark: Bring it tomorrow. No, man, "ah mean tuh say"—

Sen. Joseph: This is one for which we really cannot—

Sen. Mark: But why it is, Mr. Chairman, we have to be handcuffed like this, when the Government had sufficient time to bring this thing?

Sen. Jeremie SC: Sen. Mark, we are going to lay the regulations; you will have an opportunity in the normal time period to debate it, and if you want you could annul the regulations.

Sen. Mark: Mr. Chairman, I am objecting very, very strongly.

Question, on amendment, [Sen. W. Mark] put and negatived.

Sen. Baptiste-Mc Knight: Mr. Chairman, can I just be clear on how clause 30 now stands.

Mr. Chairman: We are not finished with clause 30.

Sen. Baptiste-Mc Knight: Okay.

Sen. Joseph: Mr. Chairman, the proposed amendment to clause 30 as circulated, reads as follows:

In clause 30(a), in new section 56(1)—

A. Delete the word "and" at the end of paragraph (e);

B. Insert after paragraph (e) the following new paragraphs:

"(f) the measures that may be taken by a Supervisory Authority to secure compliance with this Act or to prevent the commission of an unsafe or unsound practice including—

(i) administrative sanctions;

(ii) disciplinary actions when possible;

(g) the manner and time frame in which retrospective due diligence may be undertaken in respect of business relationships or one off transactions that were established or performed prior to the

coming into force of the Proceeds of Crime (Amendment) Act, 2009 by a financial institution or listed business;"

C Renumber existing paragraph "(e)" as paragraph "(h)".

Sen. Baptiste-Mc Knight: There is a problem because there is (a), there is (b), then after (e) you add new (f) and (g) and then you just renumber the old—after (f) you go to (b) again.

Mr. Chairman: What is your problem? I am not with you.

Sen. Baptiste-Mc Knight: If after (e) you put the new (f) and (g); you now renumber (f) as (h). What happens to (b)? On the top of page 19 there is a (b). Okay, I get it now; all of this is subsection (a). Okay.

Sen. Drayton: Just under (d), this is under the Trust and Company Service Provider, where you have:

"Acting as (or arranging for another person to act as) a trustee of an express trust:"

It should not be "express"; it has to be "expressed."

Sen. Jeremie SC: That is the Schedule.

Mr. Chairman: That is an amendment to the First Schedule.

Sen. Drayton: So this is not part of clause 30?

Mr. Chairman: No.

Sen. Drayton: Okay.

Question, on amendment, put and agreed to.

Mr. Chairman: We have an amendment by Sen. Prof. Deosaran.

Sen. Prof. Deosaran: Mr. Chairman, the circulated proposed amendment reads as follows:

Add two (2) new sections after clause 30 of the Bill as follows:

"56A. The Supervisory Authority shall submit an annual report to the Minister who shall lay such report one (1) month after its receipt in both Houses of Parliament.

56B. There shall be established for the purposes of this Act, a Joint Committee of Parliament to be known as "The Joint Parliamentary Committee on the Proceeds of Crime."

These two amendments arose for several reasons. One is that the Minister himself said that this matter of money laundering and white-collar crime is a very dynamic problem and I thought these two provisions would create some consistency in legislation which has the same objectives. For example, the legislation on dangerous drugs, the Dangerous Drugs Act, has similar provision in sections 59A and 59B and I thought, for consistency, these provisions are quite suitable.

I also believe that it brings forward a higher measure of transparency and accountability. It also gives the Government an opportunity to have a bipartisan approach to what is a very serious national problem, and by putting these two provisions which ask that the Supervisory Authority submit an annual report to the Minister, would help satisfy those objectives. This is a problem of the proceeds from crime and I think every opportunity should be taken up to make it a bipartisan issue.

I also believe that in 56B, the second amendment, which is exactly what is in the Dangerous Drugs Act, this joint parliamentary committee can also satisfy those objectives. I would implore the Government to open the doors to bipartisanship and also to explain to the public the scope and the seriousness of this proceeds from crime issue. I think it would do the Government side well to open the doors to these two proposed amendments.

Sen. Jeremie SC: Mr. Chairman, we agree. We have no difficulty with it.

Sen. Drayton: Just one thing needs clarifying. The first 56A of Sen. Prof. Deosaran's amendment: Does the Supervisory Authority here refer to Financial Intelligence Unit?

Sen. Mark: No. They had given a definition of supervisory authority. That is the competent authority that you defined earlier.

Sen. Drayton: Is it the Financial Intelligence Unit?

Sen. Mark: No, that is a separate unit.

Question, on amendment (Sen. Prof. Deosaran) put and agreed to.

Question put and agreed to.

Clause 30, as amended, ordered to stand part of the Bill.

Clauses 31 to 33 ordered to stand part of the Bill.

Clause 34.

Question proposed, That clause 34 stand part of the Bill.

Mr. Chairman: This is the First Schedule and we have some amendments. The Minister has circulated his proposed amendment. I believe that Sen. Drayton had an issue.

Sen. Joseph: Mr. Chairman, the circulated amendment to clause 34 reads as follows:

First Schedule Insert after item "An Art Dealer" the following new item.

"Trust and Company Service Provider	Any such person when they prepare for and when they carry out transactions for a client in relation to the following activities (a) acting as a formation agent of legal persons; (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; (c) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; (d) acting as (or arranging for another person to act as) a trustee of an express trust; (e) acting as (or arranging for another person to act as) a nominee shareholder for another person."

Sen. Drayton: It is subclause (d) on the Senator's amendment. That should be "trustee of an expressed trust"? Could that be clarified?

Sen. Joseph: I am sorry, I am not hearing you.

Mr. Chairman: The question is whether the word, "express"—does that mean anything.

Sen. Joseph: I am advised that it is a legal term. You have "implied trust" and you have "express trust."

Sen. Drayton: Okay. All right.

10.30 p.m.

Question, on amendment, put and agreed to.

Mr. Chairman: We have a further amendment from Sen. Mark. Where is he?

Sen. Dr. Nanan: He has deputized me to make representation on his behalf. I beg to move that the First Schedule be amended as follows:

"Add and amend to Listed Business

Gaming and Gambling

Auction Houses

A Private Member's Club including Internet Casinos

Creation, operation or management of legal persons or arrangements in the buying or selling of business entities

Courier Services

Trust Company service providers

Such other businesses and professions as may be prescribed by Regulations by the FIU

Co-operatives

State Enterprises

Foreign Sales Corporation

Mutual Fund Companies

Regional Health Authorities"

Sen. Jeremie SC: We have some of them already. We indicated when I was winding up why state enterprises would pose an issue.

Sen. Dr. Nanan: What was the reason for state enterprises not being included?

Sen. Jeremie SC: We either have it or we do not want it.

Question, on amendment, [Sen. Mark] put and negatived.

Question put and agreed to.

Clause 34, as amended, ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

New clause 2.

Mrs. Atiba-Dilchan: Insert after clause 2 the following:

"2A The Act shall come into operation on such day as may be set by the President by proclamation."

Sen. Dr. Nanan: Mr. Chairman, I have one concern. The drafting of clause 2A, is that accurate? In other Acts it has been drafted differently, if I recall.

Sen. Mark: The Act shall come into effect or whatever. I cannot recall seeing the word "operation" in terms of language.

Sen. Jeremie SC: It is usually shall come into effect.

Sen. Joseph: Okay, shall come into effect.

Sen. Dr. Saith: We will effect the change.

New clause 2 read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.

New clause 2 added to the Bill.

Preamble approved.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed

Bill reported, with amendment.

Question put, That the Bill be now read the third time.

The Senate divided: Ayes 21

AYES

Saith, Hon. Dr. L.

Jeremie SC, Hon. J.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Gronlund-Nunez, Hon. T.

George, W.

Rogers, L.

Hadeed, G.

Melville, Miss J

Primus, J.

Cummings, F.

Gayle, N.

Deosaran, Prof. R.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Miss G.

The following Senators abstained: W. Mark, Dr. A. Nanan, Dr. J. Kernahan, M. F. Rahman, L. Oudit, Dr. S. Gopaul-McNicol.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister in The Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, October 06, 2009 at 10.30 a.m., at which time we will debate the Financial Intelligence Unit of Trinidad and Tobago Bill.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 10.39 p.m.