

Leave of Absence

Monday, January 18, 2010

SENATE

Monday, January 18, 2010

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. Subhas Ramkhelawan, but the temporary appointees are not here at the moment, so we will take the swearing in a little later in the proceedings.

PAPER LAID

Report of the Auditor General of Trinidad and Tobago on the financial statements of the Environmental Management Authority—Environmental Trust Fund for the year ended September 30, 2008. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]

SUPREME COURT OF JUDICATURE (AMDT.) BILL

Bill to amend the Supreme Court of Judicature Act, Chap. 4:01 [*The Attorney General*]; read the first time.

EVIDENCE (AMDT.) BILL

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

ANTI-TERRORISM (AMDT.) BILL

Order for second reading read.

The Minister of National Security (Sen. The Hon. Martin Joseph): Thank you very much.

Mr. President, I beg to move,

That a Bill to amend the Anti-terrorism Act 2005 to provide for the criminalization of the financing of terrorism and for related matters be now read a second time.

Mr. President, on Christmas day 2009, news of an attempted bombing of a Northwestern Airlines plane bound for Detroit resounded throughout the world.

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. JOSEPH]

Monday, January 18, 2010

This attempted bombing served as a chilling reminder of that now infamous day of September 11, 2001 where a group of 19 men stepped onto four airplanes intending to terrorize the United States of America.

Nearly 3,000 persons died on that horrible day in New York City, in Arlington, Virginia and Shanksville, Pennsylvania. Trinidad and Tobago mourned with the rest of the world on September 11, 2001 as we too lost cherished nationals in that tragedy. The world wept collectively for the innocent men, women and children who lost their lives on that faithful day and recorded it as a harsh and permanent reminder of what must become one of the world's greatest goals; the need to protect our citizens from these horrors and to make terrorism offensive and unacceptable to all nations everywhere and for all time.

This, Mr. President, is what it means to share this world in the 21st Century and this is a responsibility that we, the Government of Trinidad and Tobago take very seriously. Even prior to 2001, the international community had begun its fight against terrorism. Between 1963 and 1999, 12 international conventions which sought to confront the increasing phenomena of terrorism were embraced by nations of the world, today Trinidad and Tobago is party of all 12 conventions and has thereby signalled to the international community that we are dedicated and steadfast in our commitment to making terrorism unsustainable anywhere in the world.

Just for the record, Mr. President and hon. Senators, let me mention the 12 conventions to which I referred:

1. The 1963 Convention on Offences and certain other acts committed on board aircraft. Trinidad and Tobago assented to this in 1972.
2. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, ratification date, January 1972.
3. The 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, assented to in 1972.
4. The 1973 Convention on the Prevention of Punishment of Crimes against Internationally Protected Persons, assented to in June 1979.
5. The 1979 International Convention Against the Taking of Hostages, assented to in April of 1981.
6. The 1980 Convention on the Physical Protection of Nuclear Material, assented to in April 2001.

7. The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports, assented to in April 2001.
8. The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, assented to in 1989.
9. The 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, assented to in July 1989.
10. The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection, assented to in June 2001.
11. The 1997 International Convention for the Suppression of Terrorist Bombings, April 2001.
12. The 1999 International Convention for the Suppression of the Financing of Terrorism and we assented to that in September 2009.

Mr. President, notwithstanding the advances made by the international community prior to 2001, the events of 9/11 brought to the fore the need for the international community to develop a comprehensive and bold strategy to suppress terrorist acts.

Within this hemisphere, the Organization of American States (OAS) has also developed and implemented measures to combat terrorism. From 2005 to 2006, Trinidad and Tobago was the Chair of the Inter-American Committee against Terrorism commonly referred to as CICTE of the OAS.

At the fifth regular session of CICTE which was held in Port of Spain, this Government joined with other member states of the OAS in reaffirming that terrorism in all its forms and manifestations, whatever its origin or motivation, has no justification whatsoever and constitutes a grave threat to international peace and security, undermines ongoing efforts to foster stability, prosperity and equity in the countries of the region and violates the democratic values and principles enshrined in the OAS Charter, Inter-America Democratic Charter and other regional and international instruments.

Internationally, the Financial Action Task Force (FATF), an inter-governmental body tasked with the development and promotion of national and international policies to combat money laundering and terrorist financing, formulated the special recommendations on terrorist financing.

The FATF 40 plus nine special 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.

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. JOSEPH]

Monday, January 18, 2010

As Members of the Senate may recall from our previous debates on the Proceeds of Crime (Amdt.) Bill, 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 (CFATF).

Mr. President, and Senators will also recall that the Proceeds of Crime (Amdt.) Act 2009 and the Financial Intelligence Unit Act of Trinidad and Tobago, 2009 were debated in this very Parliament and were both assented to on October 09, 2009. The Financial Obligations Regulations 2009 were made on October 10, 2009.

These pieces of legislation were all brought to this Parliament in order to bring our national system into compliance with the FATF 40 recommendations. The Anti-terrorism (Amdt.) Bill is the last of four pieces of legislative counter-measures designed to bring our national system into compliance with the FATF 40 +9 recommendations.

Mr. President, just for the information of the Senate, let me remind us of what those nine recommendations are:

- I Ratification and implementation of UN instruments. Each country should take immediate steps to ratify and implement fully the 1999 United Nations International Convention for the suppression of the financing of terrorism.
- II Criminalizing the financing of terrorism and associated money laundering. Each country should criminalize the financing of terrorism, terrorist acts and terrorist organizations. Countries should ensure that such offences are designated as money laundering predicate offences.
- III Freezing and confiscating terrorist assets. Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.
- IV Reporting suspicious transactions related to terrorism. If financial institutions or other businesses or entities subject to anti-money laundering obligations suspect, or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.
- V International cooperation—each country should afford another country on the basis of a treaty arrangement, or other mechanism for mutual,

legal assistance of information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement and administrative investigations, enquiries, proceedings relating to the financing of terrorist acts and terrorism organizations.

1.45 p.m.

- VI Alternative Remittance: Each country should take measures to ensure that persons or legal entities including agents that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network should be licensed or registered and subject to all the FATF recommendations that apply to banks and non-bank financial institutions.
- VII Wire Transfers: Countries should take measures to require financial institutions including money remitters to include accurate and meaningful originator information on funds, transfers and related messages that are sent and the information should remain with the transfer or related message through the payment chain. Countries should take measures to ensure that financial institutions including money remitters conduct enhanced security of and monitor for suspicious activity fund transfers which do not contain complete originator information.
- VIII Non-profit Organizations: Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organizations are particularly vulnerable and countries should ensure that they cannot be misused.
- IX Cash Couriers: Countries should have measures in place to detect the physical cross border transportation of currency and bearer negotiable instruments including a declaration system or other disclosure obligation. Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering or that they are falsely declared or disclosed.

I took pains to read the nine recommendations so that you would see that the Bill is designed to ensure that we are compliant with the nine recommendations. We spoke about 40 + 9. We have done very well with respect to the 40. As it relates to the other pieces of legislation, we are now dealing with anti-terrorism

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. JOSEPH]

Monday, January 18, 2010

financing. Hon. Senators are asked to note that in 2005, the Government of Trinidad and Tobago sought to enhance its capacity in the fight against terrorism through the passage of the Anti Terrorism Act, No 26 of 2005, which was assented to on September 13, 2005.

This Act sought among other things to specifically criminalize terrorism and provide heavy sanctions for the support of such activity. However, it did not address the issue of terrorist financing. Notwithstanding the enactment of the Anti-terrorism Act, 2005, this country's mutual evaluation report done by CFATF in 2007 disclosed that the nine special recommendations on terrorist financing were among the key recommendations of the FATF still to be satisfied. The Anti-terrorism (Amdt.) Bill now before this honourable Senate requires a three-fifths majority in both Houses of Parliament and will bring our domestic legislative framework into harmony with the nine special recommendations of FATF that I just took pains to read.

Mr. President, please permit me to take you and the hon. Senators through the Bill. Clause 1 of the Bill sets out the short title and reads: "This Act may be cited as the Anti-terrorism (Amendment) Bill, 2010."

Clause 2 of the Bill will provide that the Anti-terrorism Act, 2005 would be referred to as "the Act" throughout the Bill unless otherwise stated.

At clause 3 of the Anti-terrorism (Amdt.) Bill, the long title of the existing Act is repealed and substituted with a more appropriate long title given the purpose of the Anti-terrorism (Amdt.) Bill, 2009. The long title would now read:

"An Act to criminalize terrorism and the financing of terrorism, to provide for the detection, prevention, prosecution, conviction and punishment of terrorist activities and the confiscation, forfeiture and seizure of terrorists' assets and of those involved in the financing of terrorism and for related matters."

As I indicated previously, this Bill requires a three-fifths majority of both Houses of Parliament and as such, clause 4 of the Bill declares that:

"The Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution."

Clause 5 of the Bill includes some significant definitions. At clause 5(a), the term "Designated Authority" is deleted. In the existing Anti-terrorism Act "Designated Authority" has the meaning assigned to it under section 2 of the Proceeds of Crime Act (POCA). Hon. Senators will recall that the "Designated Authority" was replaced with the Financial Intelligence Unit (FIU) in POCA, thus

to ensure consistency with existing legislation, the term “Designated Authority” is being deleted and the term "FIU" is inserted in clause 5(e).

It is now an appropriate time to indicate that at clause 14 of the Bill, a corresponding alteration to section 33 of the existing Act is proposed to delete the words "Designated Authority" wherever they occur and substitute them with the term “FIU”.

The existing Anti-terrorism Act, 2005 has been criticized for its limited approach in defining the terms “property” and “terrorist act”. Government has taken note of these criticisms and has sought to address them in clause 5 of the Bill.

Clause 5(c) of the Bill proposes to delete the existing definition of “property” and replace it with an expanded definition of “property” or “funds”.

“‘property’ or ‘funds’ means assets of any kind, whether tangible or intangible, moveable or immovable, however acquired and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, whether situated in Trinidad and Tobago or elsewhere, and includes a legal or equitable interest, whether full or partial, in any such property;”

In a similar vein the definition of “terrorist act” has been expanded to include an offence under Part II, Part III or section 22A of the Anti-terrorism Act.

Clause 5(e) inserts a definition of “terrorist”:

“‘terrorist’ means a person who—

- (a) commits a terrorist act by any means directly or indirectly, unlawfully or wilfully;
- (b) participates as an accomplice in terrorist acts or the financing of terrorism;
- (c) organizes or directs others to commit terrorist acts or the financing of terrorism; or
- (d) contributes to the commission of terrorists acts or the financing of terrorism by a group of persons acting with a common purpose where the contribution—
 - (i) is made intentionally and with the aim of furthering the terrorist act or the financing of terrorism;
 - (ii) with the knowledge of the intention of the group of persons to commit the terrorist act or the financing of terrorism;”

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. JOSEPH]

Monday, January 18, 2010

In addition, clause 5(e) proposes the insertion of a definition of “terrorist organization”.

“‘terrorist organization’ means a legal entity or group of terrorists that—

- (a) commits a terrorist act by any means, directly or indirectly, unlawfully or wilfully;
- (b) participates as an accomplice in terrorist acts or the financing of terrorism;
- (c) organises or directs others to commit terrorist acts or the financing of terrorism; or
- (d) contributes to the commission of terrorist acts or the financing of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or the financing of terrorism with the knowledge of the intention of the group to commit the terrorist act or the financing of terrorism;”

Another significant definition included in the existing Act by clause 5 of the Bill is the definition of “law enforcement authority.”

“‘law enforcement authority’ has the meaning assigned to it under section 2 of the Financial Intelligence Unit of Trinidad and Tobago Act, 2009;”

Mr. President and Members of the Senate will recall that under the FIU Act, “law enforcement authority” is defined to mean:

- (a) Commissioner of Police; or
- (b) any law enforcement body prescribed by the Minister with responsibility for national security.

The inclusion of this definition into the Anti-terrorism (Amdt.) Bill is proposed for two reasons. Firstly, the Government recognizes the increasingly sophisticated methods by which terrorists carrying out their activities and is committed to suppressing this development with a strong, bold and targeted approach to implement measures that would target terrorism more precisely. In this vein, Government would be bringing legislation for a highly specialized investigative body with responsibility for investigating terrorist offences under this Act.

Thus, the inclusion of the definition of “law enforcement authority” allows the Minister of National Security the flexibility to include this investigative body as a law enforcement authority in due course.

Secondly, the short-term definition of “law enforcement authority” has been drafted to ensure that the requisite expertise residing in the investigative arm of

the State would be immediately available through the Commissioner of Police for the detection of terrorist offences as related to in the Bill.

Corresponding amendments to include references to officer of a law enforcement authority are found at clauses 10, 11, 12 and 20.

Clause 6 of the Bill repeals section 3(1) of the existing Anti-terrorism Act. Members of this honourable Senate will no doubt recognize that the offence as previously drafted in section 3(1) only targetted persons who commit terrorist acts.

At clause 6, it is now proposed that any person who participates in a terrorist act commits an offence and is liable on conviction on indictment to imprisonment for 25 years. This amendment is necessary to widen the range of activities that may constitute an offence under this section.

Hon. Senators will note that clauses 7 and 8 of the Bill delete the words “is guilty of” and “be guilty of” wherever they occur in sections 18 and 21 of the Anti-terrorism Act and substitute them with the word “commits”.

As hon. Senators are aware, findings of guilt are more appropriately determined in another place after careful consideration of facts and evidence and should not be a foregone conclusion in legislation.

A significant criticism levied against the existing Anti-terrorism Act, 2005, is that it fails to criminalize the offence of financing terrorism in accordance with the International Convention for The Suppression of The Financing of Terrorism as required by the FATF recommendations.

Clause 9 of the Anti-terrorism (Amdt.) Bill is being proposed to address this deficiency. Clause 9 proposes the insertion a new Part IIIA which will insert new sections 22A to 22E into the existing Act.

2.00 p.m.

Section 22A(1) creates the offence of financing of terrorism. Section 22A(1) provides that:

"Any person who by any means, directly or indirectly, wilfully provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part—

- (a) in order to carry out a terrorist act;
- (b) by a terrorist; or

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. JOSEPH]

Monday, January 18, 2010

(c) by a terrorist organization,
commits the offence of financing of terrorism."

Section 22A (2) of the Anti-terrorism (Amdt.) Bill provides that:

"An offence under subsection (1) is committed irrespective of whether—

- (a) the funds are actually used to commit or attempt to commit a terrorist act;
- (b) the funds are linked to a terrorist act; and
- (c) the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist or terrorist organization is located or the terrorist act occurred or will occur."

Thus, the proposed section 22A now embodies the essential elements of the offence of financing of terrorism as required by the FATF in the following way:

1. The offence of terrorist financing would extend to persons who wilfully provide or collect funds by any means directly or indirectly with the unlawful intention that they should be used or in the knowledge that they are to be used in whole or in part to carry out a terrorist act, by a terrorist organization or by an individual terrorist.
2. The offence of terrorist financing would extend to funds whether derived from a legitimate or illegitimate source.
3. The offence would not require that funds were actually used to carry out or to attempt a terrorist act, or be linked to a specific terrorist act.
4. The offence would also include the participating, organizing, or directing others to commit a terrorist act or contributing to the commission of a terrorist offence.
5. The offence of terrorist financing would apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist acts occurred or would have occurred.

Hon. Senators would no doubt recognize that the proposed offence of financing of terrorism is an indictable offence. This is a critical aspect of the offence, the effect of which makes the offence of financing of terrorism a predicate offence for the purposes of money laundering as required by Special Recommendation II.

Financing is the lifeblood of terrorism and terrorist activities. The Report of the National Commission on Terrorist Attacks upon the United States indicates that the 9/11 plot cost approximately US \$400,000—\$500,000 of which approximately US \$300,000 was deposited into US bank accounts of the 19 hijackers.

The 1993 attack on the World Trade Centre is a further example of how important financing is for terrorism. In 1995 Ramzi Yousef, a confessed organizer of the operation, admitted that the terrorists had intended to build a bigger bomb but were unable to do so due to lack of funds. In recognition of the fact that terrorism and terrorist financing are indelibly linked, this Government is sending a strong signal that the financing of terrorism is a serious criminal offence.

Accordingly, the seriousness of the offence is duly reflected in the proposed section 22A wherein a person who commits the offence of financing of terrorism is liable on conviction on indictment:

1. In the case of an individual to imprisonment for twenty-five (25) years;
2. In the case of a legal entity to a fine of \$2 million; and
3. In the case of a director or person in charge of a legal entity who commits the offence of financing of terrorism to imprisonment for 25 years.

Special Recommendation III provides inter alia, that each country should implement measures to freeze without delay funds or other assets of terrorists and those who finance terrorism and terrorist organizations, in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

UN Resolution 1373 (2001) in particular, obligates countries to freeze without delay the funds, financial assets and economic resources of those who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts and of persons and entities acting on behalf of terrorists.

We recognize that stringent measures need to be adopted to starve the terrorists, terrorist organizations and those who finance terrorism of financial support. However, this Government places a high value on the protection and enjoyment of human rights and civil liberties. As such, we are ever mindful of the fundamental rights and privileges afforded by our Constitution, in particular the right not to be deprived of property without due process of law.

In order to strike a balance between these competing interests, a new section 22B is being proposed. In the first instance, the proposed section 22B(1) provides that the Attorney General shall make ex parte application, supported by an

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. JOSEPH]

Monday, January 18, 2010

affidavit to a judge for a declaration that an entity included on the list of terrorist entities as designated by the United Nations Security Council, is a listed entity and an order that the funds of the listed entity are to be frozen.

In the second instance, section 22B(1) also provides that where the DPP has reasonable grounds to believe that an entity has knowingly committed or participated in the commission of a terrorist act or is knowingly acting on behalf of, or at the direction of, or in association with an entity included on a list of entities designated as terrorist entities by the United Nations Security Council, the DPP may make an ex parte application for an order declaring that an entity is listed and the funds of the listed entity are to be frozen. Upon these applications being made and satisfactory evidence being adduced, the judge shall declare an entity to be listed and order that the funds of the listed entity are to be frozen.

In drafting this section, the Government was cognizant of the fact that persons may be inadvertently affected by a freezing order and, as such, we have sought to develop and implement a procedure which allows recourse to the courts in the shortest possible time frame. Thus, to balance the interest of parties inadvertently or otherwise affected by a freezing order, the proposed section 22B(6) has been drafted to allow aggrieved parties to apply to a judge to review the order within 60 days of the publication of the order by the Attorney General.

Upon such an application being made, the judge shall, among other things, provide the applicant with a statement summarizing the information available to the judge so as to enable the applicant to be reasonably informed of the reasons for the order and provide the applicant with a reasonable opportunity to be heard.

It is proposed at section 22B(7) that on the basis of the procedure indicated above, the judge will make the final determination as to whether or not such an order should be revoked.

Clause 9 of the Anti-terrorism (Amdt.) Bill, creates an obligation for financial institutions and listed businesses, to report to the FIU where they know or have reasonable grounds to suspect that funds within the financial institution or listed business belong to terrorist organizations or persons or entities designated by the United Nations Security Council.

It further creates an obligation for a financial institution or listed business which knows or has reasonable grounds to suspect that funds are linked or related to or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism, to make a Suspicious Transaction or a Suspicious Activity Report to the FIU in the form set out in the Third Schedule to the Proceeds of Crime Act.

Clause 9 addresses Special Recommendation IV which requires that where financial institutions or other businesses or entities subject to anti-money laundering obligations suspect or have reasonable grounds to suspect that funds are linked or related or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.

In recognition of the precarious position in which financial institutions and listed businesses are placed, in having to balance their statutory duty to disclose suspicious activity in respect of their customer against the common law and statutory duty of confidentiality owed to their customer, a new section 22C(7) was drafted.

Section 22C(7) provides that when a suspicious activity report is made in good faith, the financial institution or listed business and their employees, staff, directors, owners or other representatives as authorized by law, are exempt from any criminal, civil or administrative liability, as the case may be, for complying with the reporting obligation imposed by section 22C(1).

It is reported that the 9/11 hijackers were financed by three primary and unexceptional means:

- (1) wire transfers from overseas to the United States;
- (2) the physical transport of cash or travellers' cheques into the United States; and
- (3) the accessing of funds held in foreign financial institutions by debit or credit cards.

It is also reported that all of the hijackers used the US banking system to store their funds and facilitate their transactions. The hijackers and their financial facilitators used the anonymity provided by the vast international and domestic financial system to move and store their money through a series of unremarkable transactions.

It is for this reason that the proposed section 22C(2) mandates financial institutions and listed businesses to pay special attention to and where appropriate report to the FIU:

- Complex, unusual or large transactions whether completed or not;
- Unusual patterns of transactions;
- Insignificant but periodic transactions which have no apparent economic or visible lawful purpose; and

- To examine the background and purpose of all transactions which have no economic or visible lawful purpose.

At section 22D it is proposed that where the FIU receives information in furtherance of its statutory obligations and is of the view that an investigation may disclose that funds in the possession of any person is being used, has been used or is intended for use in the financing of terrorism, it shall forward such information to the relevant law enforcement authority for further investigation.

This meets Recommendation 26 of the FATF which states that the FIU should be authorized to disseminate financial information to domestic authorities for investigation or action where there are grounds to suspect money laundering or the financing of terrorism.

At section 22E it is proposed that the FIU may instruct a financial institution or listed business in writing, to suspend the processing of a transaction for a period not exceeding three working days, pending the completion of an evaluation and analysis of a suspicious transaction or suspicious activity report.

In recognition of the need for protection of an aggrieved person, this clause also provides that where those instructions are given to a financial institution to suspend a transaction, an aggrieved person may apply to a judge to discharge the instructions of the FIU and shall serve notice on the FIU, to join the proceedings.

2.15 p.m.

Essential criteria 28.1 of the FATF recommendations states that:

“Competent authorities responsible for conducting investigations of ML or FT”—money laundering or terrorist financing—“and other underlying predicate offences should have the powers to be able to:

- (a) compel production of,
- (b) search persons or premises for, and
- (c) seize and obtain

transaction records, identification data obtained through the CDD”—customer due diligence—“process account files...other records, documents or information, held or maintained by financial institutions and other businesses or persons.”

To address these essential criteria, clause 12 of the Bill inserts new sections 24A, 24B and 24C, which enhance the investigative powers of police officers and officers of our law enforcement authority. This new section 24A would empower

police officers to apply to judges for search warrants in accordance with the procedure outlined in this section.

Section 24B will enable the Director of Public Prosecutions to apply to a judge for a customer information order for a financial institution or listed business to give information related to a customer where the information is sought in the investigation of an offence under the Anti-Terrorism Act.

Section 24C will enable the Director of Public Prosecutions to apply to a judge for a monitoring order to direct a financial institution or a listed business to provide information to an authorized officer in respect of a particular account where there are reasonable grounds to believe that an offence may have been committed or is about to be committed.

Hon. Senators are respectfully asked to note that a monitoring order may also extend to non-profit organizations. This measure addresses Special Recommendation IX of FATF which states that non-profit organizations are particularly vulnerable to abuse with the financing of terrorism and countries should ensure that they cannot be misused by terrorist organizations.

Clause 13 of the Bill will amend section 32 of the existing Act to impose a duty on any person or regulatory authority to disclose information relating to the commission of a terrorist act to a police officer, officer of a law enforcement authority or the central authority. By virtue of the proposed amendment, the term “regulatory authority” will be defined as the Central Bank, the Securities and Exchange Commission, the Financial Intelligence Unit, the Trinidad and Tobago Stock Exchange and the Inspector of Financial Institutions.

Clause 15 of the Bill will amend section 34 of the existing Anti-terrorism Act. This addresses Special Recommendation III of the FATF, which also provides that jurisdiction should adopt measures to enable competent authorities to seize and confiscate terrorist funds. This proposed clause empowers customs officers, immigration officers, police officers or officers of a law enforcement authority to apply to a judge for a restraint order where they reasonably believe that property in the possession of a person is intended to be used for the purpose of a terrorist act or for financing terrorism, terrorist property or property of a person or entities designated by the United Nations Security Council. It also empowers the court to authorize access to funds, which are the subject of restraint, for living expenses.

Further, clause 15 empowers the Law Enforcement Authority to apply for a restraint order in respect of matters referred to it for investigation by the FIU under the proposed section 22D.

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. JOSEPH]

Monday, January 18, 2010

Clauses 16, 17 and 18 of the Bill reflect drafting amendments.

Clause 19 of the Bill provides for seizure and detention of cash by the customs officer, police officer or officer of a law enforcement authority where there are reasonable grounds to suspect that the cash is intended for use in the commission of an offence under this Act or is terrorist property. This addresses Special Recommendation IX of FATF, which states, inter alia, that countries should have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering or that are falsely declared or disclosed.

Lastly, clause 20 amends the schedule by inserting the words “or officer of a law enforcement authority” after the words “police officer and inspector” in paragraphs 1, 8 and 9 respectively.

The Government of Trinidad and Tobago remains fully committed to the fight against money laundering and terrorist financing and recognizes that critical to the success of this robust legislative framework is the effective engagement of all key stakeholders.

In this vein, Cabinet established, under the Ministry of National Security, a national committee to develop, monitor and promote a counter-money laundering and counter-terrorist financing framework. This committee has given highest priority to raising public awareness in relation to measures being taken to combat money laundering and terrorist financing.

As recent as last Thursday and Friday, the Ministry of National Security and CFATF, in conjunction with the Commonwealth Secretariat and the Bankers' Association of Trinidad and Tobago hosted the Sixth Annual Conference on Money Laundering and Combating the Financing of Terrorism at the Hyatt Regency Hotel in Port of Spain.

One of the objectives of this conference was to sensitize key stakeholders, such as law enforcement intelligence units, and institutions of banking and non-banking sectors, the Judiciary and tax authorities, to the important role they must play in the fight against money laundering and terrorist financing.

I now take this opportunity to affirm this Government's commitment to raising public awareness and strengthening partnerships with key stakeholders to ensure a strong institutional framework to combat money laundering and terrorist financing.

Mr. President, the methods and practice of terrorism in all its forms and manifestations are aimed at the destruction of human rights, fundamental

freedoms and democracy. Terrorism threatens territorial integrity, security of states and destabilizes legitimately constituted governments. The global challenge all nations share in dealing with terrorism and terrorist financing is enormous. However, it has always been said that huge challenges give us huge opportunities.

Through this Bill, the Government of Trinidad and Tobago takes this opportunity to continue the pursuit of a bold vision. We join with the global community in building a culture of cooperation; in reaffirming the commitment to prevent, combat and eliminate terrorism and terrorism financing in whatever its form or manifestation and pursuing a vision based on the conviction that there must be no safe haven for terrorists who threaten the world.

Having regard to the foregoing submissions, I commend the Anti-terrorism (Amdt.) Bill, 2010 to this honourable Senate and beg to move.

Question proposed.

Sen. Wade Mark: Thank you very much, Mr. President. What is important or significant about what the Minister presented a short while ago is not what he said but what he failed to say. I believe that the Bill before us seeks to lower the threshold standard of justice in the Republic of Trinidad and Tobago. As you know, Mr. President, enshrined in our Constitution are clearly defined, entrenched human rights and fundamental freedoms. The Minister has glossed over a very important provision, which I intend to highlight and which has to do with the removal of matters being heard by a judge in chambers to an ordinary judge. I will say more later.

[*Interruption*] If there is no difference, we will just have it replaced. Wherever you put “judge” and you say “eliminate High Court Judge”, since there is no difference, I propose in my amendments on behalf of the Opposition that you leave the status quo.

Anti-terror legislation, if not properly formulated, could become highly discriminatory and allow unscrupulous governments to limit the freedom of political expression, particularly of opposition forces in any nation. Anti-terror legislation, and the one we are dealing with is an extension of the parent Act, and this one in particular brings about a certain degree of invasion of privacy, the seizure and forfeiture of property based merely on some suspicious activity.

What is even more serious is that I do not understand how a minister of national security could bring legislation to Parliament to incorporate hodgepodge law enforcement agencies that remain illegal and unlawful in order to give them the all clear to engage. I have more to say on this. These are my introductory remarks. [*Interruption*] Leave me alone today; I agree.

Anti-Terrorism (Amdt.) Bill
[SEN. MARK]

Monday, January 18, 2010

Citizens' fundamental rights and human rights, I would like to advance on behalf of the Opposition, must be placed at the heart of all anti-terror laws; and human rights and fundamental freedoms must be placed at the heart of all anti-terror laws. I did not say so. I have a fact sheet here, which I downloaded from the Internet. It deals with the UN action plan to counter terrorism. It was published recently, in March 2009.

2.30 p.m.

This is the United Nations. One of the things that they indicated is that in implementing what they have called the global counter-terrorism strategy, four pillars need to be looked at. The first one that you have to address is the conditions conducive to the spread of terrorism. *[Interruption]*

Sen. Jeremie SC: Sen. Mark.

Sen. W. Mark: Let him take notes. May I continue?

Mr. President: I think what the hon. Attorney General is trying to get to is that you really ought to indicate who is the author of this thing and where it came from.

Sen. W. Mark: This is a fact sheet entitled United Nations Action to Counter Terrorism. It is about the United Nations global counter-terrorism strategy. This is a fax sheet and it is on the Internet from the United Nations website. This is the United Nations website! They can go on the United Nations website and download it. I do not know why the Attorney General, who is supposed to be the guardian of our democracy—

Sen. Jeremie SC: Not democracy, rights.

Sen. W. Mark:—and the guardian of our freedom, would be rising on his legs repeatedly to query a fax sheet from the United Nations. You have something to hide? I will expose you today.

The second pillar deals with preventing and combating terrorism. The third one deals with building state capacity to counter terrorism. The final area, which I would like to emphasize, is defending. The United Nations is saying, in terms of counter-terrorism strategy, that all governments must defend human rights whilst combating terrorism. I want to repeat; the United Nations has said that whilst you are combating terrorism, you must at all times defend human rights.

Let me indicate what is said under the fourth pillar of the strategy. It indicates that member states, of which we are a member, must commit themselves to adopt measures to ensure respect for human rights for all and the rule of law as the

fundamental basis of the fight against terrorism. They also pledge to take measures aimed at addressing violations of human rights, to ensure that any measure taken to counter terrorism, comply with their human rights obligations.

I raise this in my opening to set the stage for my contribution. I want to serve notice on this Government that we intend to circulate comprehensive amendments to ensure that the rights of the citizens are not abridged, violated or in any way affected by legislation of the type that we have before us. Whilst we in the United National Congress are opposed to all forms and manifestations of terrorism we, like the United Nations, would ensure that there is a balance between the human rights of the citizenry and the struggle on the part of the State in its fight against terrorism.

Sometimes the Government in its haste may overlook these things, or maybe I should say in terms of their quest for political advantage, may wish to overlook these things, but we are the eyes and ears of the people and we are here to establish the checks and balances to ensure that the citizens' rights are never compromised.

We have a lot to say about the role of the Attorney General in this piece of legislation; plenty. We do not want you to be there. We are proposing that you be removed, because you are a political animal; not in that strict sense. He is an individual; a human being, but I am being figurative and metaphoric. We do not want the Attorney General to be involved in matters involving the human rights and fundamental freedoms of the citizens of this country. I will bring legislation right from within Caribbean, where the Attorney General has no role, except in extradition proceedings. It is the Director of Public Prosecutions who is responsible for these matters. As I have said, we have a lot of amendments that we are going to circulate. If you are going to get our support on this measure, let me tell you from the start, we are not going to compromise on the human rights and fundamental freedoms of the citizenry in any measure. Coming to tell me that you are going to fight terrorism? No, no, no, fighting terrorism is one thing. Making sure you protect and defend the human rights of the people is another, but you must balance them.

This is another attempt by the Government, obviously brought kicking and screaming. I would like the Minister to tell me if we have a deadline for this legislation. If we do not pass this by tomorrow and the House by Wednesday, will we be blacklisted? I would like to know. I do not believe that the Parliament should be rushed into legislation that is going to impact negatively on the rights of the citizens and they have had no say in this matter. I get the impression that the Government is in a rush job again, today.

Anti-Terrorism (Amdt.) Bill
[SEN. MARK]

Monday, January 18, 2010

Therefore, we want to say from the outset, this is a device designed to fool the general population into believing that the Government will criminalize terrorism, when in fact I will show this Bill criminalizes the innocent. It is the innocent that will be affected the most, by this legislation.

We have a history of draconian legislation being introduced by this Government. I think the last year six pieces of legislation which have been brought to this Parliament suspended sections 4 and 5. What we are doing in this Parliament is facilitating the erosion of the human rights and fundamental freedoms of the people whenever the Government brings a Bill that requires a three-fifths majority. We are participating in the undermining of the people's human rights and fundamental freedoms. Therefore, when we are doing so, we must ensure that there are sufficient checks and balances, so that the long arm and reach of the Minister of National Security and the Executive arm of the State does not reach into the homes, bedrooms, properties and businesses of innocent people. That is what we have to ensure against, Mr. President.

This Bill, as you know, is dealing with the question of financing of terrorism. It developed, obviously, as a result of the 9/11 terrorist attack and subsequent events. Developing countries like ours were forced to march in line because "big brother in the United States say yuh have tuh march in line". The United Nations then followed and we all have to fall in line. This is what we are dealing with here today; another extension in the context of money laundering for the financing of terrorism. We are going to be, in principle, supporting the measure in the context of us opposing the use of funds to finance terrorism. We are not going to support that. We oppose that.

This Bill, in its current form, I fear, in the hand of the current Executive, could be used as a political weapon to destroy what they perceive as their enemies. That is what could happen. After all, we are dealing with a Government that is bringing anti-terrorism legislation to this Parliament, but that has a track record of walking arm-in-arm and hand-in-hand with terrorist organizations in the country. What a contradiction!

Mr. President, not only that, but this Government is known for walking hand-in-hand with gang leaders. They used muscle power in the 2002 general election to win. I was in Tunapuna when I saw men in garbs with arms terrorizing the people. I called the police on several occasions and they turned their backs; many of them. There were terrorists in long garbs telling people "doh come out dey house, otherwise dey will burn it down". I saw that. I was in San Juan/Barataria, St. Joseph and Tunapuna. That is what is called state-sponsored terrorism. [*Interruption*]

Sen. Jeremie SC: When was that, 2000?

Sen. W. Mark: No, you were not there; you were still young. In this piece of legislation, it is highly dangerous what the Minister is proposing. How can a Minister bring legislation here and say either a police officer or some law enforcement authority prescribed by him? Prescribed by him! The Minister of National Security, under this legislation and all that he referred to, should never have the power to prescribe a law authority; it is the Parliament. It is a lawful institution that he will have to govern and guide, but not to prescribe. "How yuh prescribing, by order?" Will that order be subject to a positive or affirmative resolution of Parliament? We do not know. We are asking—there is need for safeguards in the legislation. We are not seeing the safeguards in the legislation. What we are seeing is the PNM mongoose gang called the anti-crime body. That is a local mongoose gang which is illegal and unincorporated law being given the power to go into your private bank account. You want us to support that here? We are not supporting that. When you legalize the SAUTT and you bring legislation, then we will support the law enforcement authority or some officer, but we cannot give carte blanche approval to any officer of a law enforcement agency.

What is even worse in the legislation is this same so-called officer of the law enforcement agency may apply to a judge; not even the Commissioner of Police or persons with a special rank, but any police officer and any officer of the so-called law enforcement authority can apply to the court through a judge to get an order to search and enter your premises and take whatever you have there that they suspect is terrorist-related.

I want to tell this Government, through you, you cannot bring legislation and describe terrorist organization, acts of terrorism and terrorist property and there is no definition of what is terrorism. How did you derive these definitions? We are going to provide for the Government, if they do not have, what is terrorism as defined by the United Nations. We are right now swimming in the deep or shooting in the dark, insofar as certain definitions are concerned.

2.45 p.m.

Many things are being taken for granted in the legislation. We talk about funds as an example in the legislation but there is no definition of what funds are. What are funds? Well, I will tell you what the UN said in their model legislation, what funds are and we would circulate that for inclusion.

Mr. President, let me just indicate, I have concerns that businesses could be criminalized under this legislation. Innocent people could be criminalized under

Anti-Terrorism (Amdt.) Bill
[SEN. MARK]

Monday, January 18, 2010

this legislation. There are no checks and balances. They could come into a law firm; they could come into a real estate organization and they could come into an accounting firm. If the Government of Trinidad and Tobago—vindictive as they are—do not like X or Y, they would check him out and suspicious transaction. What is unusual and complex? Is there any definition in the legislation for that? None! But you are leaving that up to your law enforcement officer who is a part of the mongoose gang—the PNM mongoose gang—to determine what they will do.

Sen. Joseph: Mr. President, on a point of order, inferring improper motives. He is referring to Government having a mongoose gang.

Mr. President: Well, I was listening to that; I was listening to one or two other statements as well and think that the Senator ought to depersonalize his comments and to suggest that a government might do these things. But to suggest this Government is doing that, really, is to seriously malign the integrity of the Senators in this Chamber who we all accept are honourable men and women, and therefore the Senator should not go there. The Senator knows how to say these things without being so insulting.

Sen. W. Mark: That was not my intention to insult anyone, Mr. President. It was not my intention, and if I did insult you, Sir, I humbly withdraw. I never intended to do that.

You see those who live in glass houses must be careful how they are throwing stones.

Sen. Joseph: Can I give you some help?

Sen. W. Mark: Mr. President, hear what is happening in the legislation.

Sen. Joseph: Can I give you some help?

Sen. W. Mark: No, you must give Bakr advice, not me. He was in Mayaro with Bakr. I do not want any advice from him.

Mr. President, hear what this legislation says; hear what I would like to say—

Sen. Joseph: Mr. President, on a point of order. I was not in Mayaro with Bakr. Can I make a suggestion to my colleague? Separate your campaign platform from the Senate. [*Desk thumping*]

Mr. President: I am inclined to agree with that. I think that we have some very serious work to do here this afternoon and I think that we ought to stay away from the politicking and to deal with the issue at hand. This is the best way we can serve the people for whom we are here to speak.

Sen. W. Mark: Yes, Mr. President, I do not know why my colleague is so jittery.

Sen. Joseph: I am not jittery.

Sen. W. Mark: One of these days I would bring the affidavit and all of the court documents on that. *[Interruption]* But anyway, let me go back to this legislation. I just want to walk you through step by step in terms of the implications.

The first step under financing of terrorism is there is something called a suspicious transaction. Nowhere in the legislation are we told what a suspicion transaction is, nowhere, but we are told that there are elements that would make up this suspicious transaction, if it is complex, if it is unusual and if it is large. That says nothing to us, but you are saying that suspicious transaction is step one. No evidence, “eh”. There is no evidence.

Once there is a suspicion the banks, the financial institutions or the listed bodies or entities are compelled under the penalty of heavy fines and jail to send this information to the Financial Intelligence Unit. Once they would have received that information the FIU is empowered to instruct that particular financial institution to suspend the person’s accounts until the so-called suspicious transaction is investigated via, what is called, a suspected transaction report.

This matter is really going at the heart and soul of people's rights to privacy.

Sen. Jeremie SC: What section?

Sen. W. Mark: I am coming to you. People's rights—

Sen. Jeremie SC: Tell me what section.

Sen. W. Mark: I am reading the Bill, you take your time.

Mr. President, I would like in the definition section for the Attorney General to bring the following definitions in: Transaction, suspicious transaction—

Sen. Jeremie SC: It is in the FIU.

Sen. W. Mark: No, it is not in the FIU. We also want to see funds defined. It is not in the Anti-terrorism Act, it is not in the FIU, and we would also like to see a definition for terrorism and you do not have to go far.

Sen. Jeremie SC: It must be in the parent Act.

Sen. W. Mark: No, it is not there.

Sen. Jeremie SC: It is in the actual parent Act.

Sen. W. Mark: It is not in the parent Act, therefore I am asking the Attorney General to ensure that these definitions are included. [*Interruption*]

Mr. President, when we look at the section dealing with the financing of terrorism we go to section 22B(1) which reads:

“The Attorney General shall apply to a Judge for an order under subsection (3) in respect...”

What is subsection (3)? Subsection (3) says:

“Upon the application under subsection (1) the Judge shall, by order—

- (a) declare an entity to be a listed entity for the purposes of this Act if the Judge is satisfied as to the matters referred to in subsection (1); and
- (b) freeze the funds of the listed entity.”

So the Attorney General who has so much work to do otherwise is finding the time to apply to a judge—not a High Court judge, not a judge in Chambers—in order to do the following.

Sen. Jeremie SC: What is the difference?

Sen. W. Mark: Why a politician in a matter as sensitive as this? We are asking you to look at that again. We are saying that the Director of Public Prosecutions should be the appropriate institution or office to apply for that particular order and not the Attorney General.

Wherever the rights and freedoms of the people are involved we want the Attorney General to be detached. [*Sen. The Hon. J. Jeremie SC attempts to stand*] We want an independent institution to be involved and I want to refer the Attorney General early—before he rises—to the Barbados legislation on this question of the financing of terrorism. I want you to look at that.

Sen. Jeremie SC: Sen. Mark, the role of the Attorney General in relation to mutual legal assistance is set out in the Mutual Legal Assistance Act which was passed in 1997 by your good self, that deals with international cooperation, it has nothing to do with prosecutions. It has to do with the matters which are set out here—the UN list—which is a matter of international cooperation. That is all that it is limited to.

Sen. W. Mark: Mr. President, we are suggesting that the Attorney General’s name be deleted from this section and we are proposing that the Director of Public Prosecutions replace that name.

We are going further; we would like the hon. Attorney General to provide this Senate with the list of entities designated as terrorist entities by the United Nations Security Council. I have looked for it, I have not seen it and maybe I need to get some help from you to tell this Parliament which entities the United Nations Security Council—circulate it to us. That is what we would like to suggest to the hon. Attorney General.

We have this thing talking about the freezing of persons' funds based on an order that on suspicious transaction results in your funds being seized. But we have no definition, as I said, of what funds are and I am asking the Attorney General to make the appropriate amendments to define what that means?

You go to page 8, subclause (7):

“Upon an application made under subsection (6), the Judge shall—

- (a) hear any evidence or other information that may be presented by the Attorney General and may, at the request of the Attorney General, hear all or part of that evidence or information in the absence of the applicant or any counsel representing the applicant, if the Judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;”

Mr. President, we have to balance—we are all opposed to terrorism—people's entrenched fundamental rights with the rights of the State to protect its citizenry against criminal elements of a terroristic nature. We cannot argue against that. All we are saying is that you have to establish the balance. I am not seeing the balance here. I am not seeing the balance in the legislation.

We are saying we see again in (7)(b) that they are going to summarize the information available to the judge to enable the applicant to be reasonably informed. You take my funds, you seize my assets, you say I am a terrorist and I am financing terrorist organizations, and look at the strictures you are putting here. So, if I am an innocent person, what is going to happen? You are saying in this particular provision that the judge is going to enable the applicant to be reasonably informed of the reasons. What does that mean? Could you define that for us?

Mr. President, it goes on:

“...without disclosing any information the disclosure of which would, in the opinion of the Judge, be prejudicial to national security...”

Anti-Terrorism (Amdt.) Bill
[SEN. MARK]

Monday, January 18, 2010

This is a broad and sweeping matter. Our responsibility in this Chamber is to ensure that innocent people are not caught in the net, you know. We have to safeguard the innocent. We know that we have a police service—this is not telling tales out of school. You have many police officers—I am not saying all, but we know that we have rogue elephants or rogue elements—[*Interruption*] Let me take back the word “elephants”—in the police service; US \$100,000 gone missing in Chaguanas or Couva; guns have gone missing in St. Joseph and recently in another station. All we are hearing from the Commissioner of Police is that he will investigate this, he will investigate that, and he will probe this and probe that; up to now we cannot get the probe when the PNM illegally assembled in Woodford Square since 2008. Up to now. But all we are hearing is that, he probing this and he is probing that.

3.00 p.m.

So you are going to put my rights in the hands of police officers, many of whom are questionable in their conduct. You are going to put my rights in the hands of police officers who are questionable. Mr. President, the Government has to think very, very carefully on these matters. This is serious business, a very serious business in which the rights of the people would be involved and would be compromised. We go to subclause (9):

"The Attorney General, shall, every six months—

(a) review all orders made under subsection (3)..."

This is not the role of the Attorney General. Why are we giving the Attorney General that power in this legislation? There is no role for the Attorney General in this particular section of the legislation. That is the role of the DPP. The hands of politicians should not be here. We know this Attorney General. We have a whole dossier on his colourful past.

Sen. Jeremie SC: On my what?

Sen. W. Mark: You are a flamboyant individual.

Sen. Jeremie SC: On my what? What is he trying to say?

Sen. W. Mark: I am not trying to say anything. I am saying that there is public record to show your role in many events and activities. I am not saying you are guilty or you are not guilty. I am saying we have to be careful. We have to be careful. We have an Attorney General, Mr. President, with the greatest respect, whom we have to query and question at times. We have to query and question.

Mr. President: Senator, you are again sailing very close to the edge. In my opinion, I think you have sailed over the edge. There is no need to call the character and personality of the Attorney General in the question at all. He is a sworn officer of the Government and of the Senate, and like you, is sworn to uphold the Constitution and the law. To call his motives or his conduct into question is grossly out of order. Now, this is the third time that you have gone there, I do not expect you to go to that kind of thing again. You have got 22 minutes left, so please do not do that.

Sen. W. Mark: So, Mr. President, we go to page 11. Again, you have an invasion of the rights of privacy of citizens in this country. In (ii) we talk about "complex, unusual, or large transactions", and nothing is given as to the definitions. What definitions do we apply to the particular language that is associated?

Mr. President, we go to page 13 again, and we talk about financial institution or listed business which knew or had reasonable grounds to suspect that the funds were linked or related to, or was to be used for terrorism and so on. Mr. President, I am asking the question: Who is going to determine that? Who is going to determine that the financial institution or listed business on page 13, subclause (6)? Who is going to determine these things? Is it the police? Is it the Attorney General? Is it the Minister of National Security? I do not know. But this is bordering on the infringement of the rights of the citizens of this country.

The hon. Minister of National Security said that some special task force—I do not know if it is a task force or he was referring to the SAUTT—would be coming on stream through legislation shortly. So before it comes on stream, he has put into the legislation a provision for law enforcement authority. We cannot play that kind of game with the Parliament. We cannot put in legislation and make provision for something to come. We do not know what is coming, we do not know when it is coming, but we are being told it is coming. No, we are not supporting anything that is coming. You bring it, we discuss it, we debate it or we may even recommend changes to it, and then we will put it into the legislation.

So I am saying, Mr. President, if you look at 22E(4):

"For the purposes of this section, the Minister with the responsibility for national security may by Order prescribe the law enforcement authorities to which the FIU shall submit the report referred..."

Why the Minister of National Security? The Minister of National Security is a politician, why is he getting involved in these activities? I am suggesting that the

Anti-Terrorism (Amdt.) Bill
[SEN. MARK]

Monday, January 18, 2010

DPP, an independent institution under our Constitution, particularly where rights are concerned, should be the office or institution responsible for these kinds of matters.

Mr. President, I want to tell you, we do not trust the Government. We do not trust the Government. Therefore, when we go to clause 10 of the legislation, what do we see? Imagine in the parent Act, Act No. 26 of 2005, we have what is called a "police officer", and that was it—police officer. If I may refer to section 24 of the Act, hear what it says:

"(1) Subject to subsection (2), a police officer of the rank of Inspector or above may, for the purpose of an investigation of an offence...apply ex parte..."—injunction.

A police officer of the rank of Inspector and above. Do you know what the Government has done? The Government has said in this legislation, any police officer or any officer of the law enforcement authority can apply to a judge for an Order. So we do not know if it is Tom, Dick or Harry. We do not know if it is family members. In the case of the SAUTT that is not properly incorporated, we do not know what their aims and ambitions are. You are going to tell me that you are going to deal with a man's property, a man's privacy and a man's funds, and you are going to let any police officer, where in the parent legislation you defined the police officer must be above the rank of an inspector, and now you are saying any officer of a law enforcement authority. That is a vague and ill-defined expression here. We do not know what you are talking about. I can only assume that they are talking about the anti-crime unit.

Mr. President, we cannot support such draconian invasion of the rights of the citizens of this country.

Sen. Jeremie SC: Read section—[*Inaudible*]

Sen. W. Mark: No, I will read that later. Mr. President, we go on to clause 12 of the Bill, and you will see again, "a police officer or officer of a law enforcement authority". That was not in the Anti-terrorism Act that we passed. What has changed between 2005 to now, to put in a definition or a statement or expression that an officer of a law enforcement authority?

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. Browne: [*Inaudible*]

Sen. W. Mark: Thank you very much, Mr. President. So, Mr. President, you understand why I have to respond. You heard it? You heard it? Oh, Mr. President, you did not hear that? Oh, God! I know.

Sen. Jeremie SC: What did he say?

Sen. W. Mark: Nothing? I am not going to deal with the Minister of Trade and Industry at this time. I know if I was to respond to him, the President will rise, but I will not do that now. I have time for you.

Sen. Jeremie SC: [*Inaudible*]

Sen. W. Mark: No me. You google Mariano Browne like you would google a next person, and you would see what he is about.

Hon. Senator: Relevance.

Sen. W. Mark: Yes, relevance is true. I am going back. So, Mr. President, when you look at this legislation throughout, you will see the Government sneaking in the anti-crime unit. That is the definition of an officer of a law enforcement authority, the special anti-crime unit which is an illegal entity in this country. It is not properly incorporated. The United States Department of State has told you to bring that particular body under legal authority, and you said that you were going to do it. Five to six years now and you have done nothing about it.

So we are worried. We are worried about an entity that gets over \$500 million of taxpayers' money to spend and is accountable to no one, except the Minister of National Security and the Prime Minister. Not even to the Commissioner of Police, the SAUTT is accountable to and you are coming to legalize an illegal entity. How can we give power to the SAUTT and any officer belonging to them to go into people's private accounts and to seize people's assets when they have no legal authority and basis in law, and you want to pass this type of legislation? What are we establishing here? A fascist state, a police state? Mr. President, we cannot support that. I am telling the Government, we have to make sweeping amendments.

Mr. President, imagine, they can seize your property and you know what—10 days—the person to whom a search warrant is issued shall furnish a report in writing within 10 days. We go to 24B and this is an example:

"(1) A Judge may on application made by a police officer or officer of a law enforcement authority and if the conditions set out in subsection (2) are met,

Anti-Terrorism (Amdt.) Bill
[SEN. MARK]

Monday, January 18, 2010

make an order that a financial institution or listed business provide to an authorized officer any such customer information relating to the person or account specified in the application."

You are telling me you are going into a man's private account, Attorney General, and you are putting any police officer. That cannot be right.

Sen. Jeremie SC: A judge.

Sen. W. Mark: No, not any police officer. We are saying that we are going to take the lead from the Anti-terrorism Act where we put a policeman, the rank of an Inspector and above, can make an application to a judge in Chamber. We are not in support of any police officer going to do that. There are too many corrupt officers in the police service and we cannot be taking chances in our human rights, giving any police officers the rights to come and invade somebody private accounts. This is my private account and if the PNM believes there is suspicious activity they say, "Go after Wade Mark", and a policeman goes and asks for an Order. No, Mr. President!

This is a dangerous piece of legislation that we are debating here. [*Desk thumping*] What are we in here? Are we in a mongoose gang arrangement? Is this Haiti? My heart goes out to the people of Haiti. [*Interruption*] Is this Grenada? Is this Guyana under Forbes Burham? What is going on here? This Government is trying to take away the rights of the people, and using all kinds of fancy language. So they are using anti-terrorism to take away our rights. This is an escape. It is a cover, to infringe the rights of the people. You want to come into my private accounts at the Bank of Nova Scotia or Republic Bank and give a police officer that power to come into my bank account, any hoodlum.

Mr. President, no, that is wrong. That is wrong and we are not supporting that whatsoever.

3.15 p.m.

You have to go back to the Anti-terrorism Act, where you give an inspector or policeman above the rank of inspector to apply for an application or make an order. This is a dangerous thing that we are dealing with here and everyone is involved; every business listed on the Schedule that we have under the FIU and the Proceeds of Crime Act would be subject to this. Are we going to criminalize business? Is the objective of the legislation to criminalize business? Mr. President, the Government cannot be serious. I do not believe that FATF and the Egmont Group are in support of such dangerous and draconian invasion of our rights as citizenry in this country.

If you go to page 19 of the legislation, that is 24B(3), hear the kind of customer information they are demanding from your bank card:

"Customer information is information as to whether a person holds,...an account or accounts at the financial institution or listed business..."

and they go on to tell you that they want the account number; they want your full name and your date of birth. I thought that was my private business, but they are invading and they want all these things: my date of birth, my most recent address. What business is that of the Minister of National Security and the PNM? They want to know the dates on which you began to hold your account, and it goes on and goes on. It is only invasion, after invasion, after invasion of my privacy and my rights. The Government is tearing up the Constitution and tearing it apart, and we are here participating in the undermining of the rights and freedoms of our citizens under the guise of anti-terrorism.

If this is going to be a Bill to fight terrorism and you are going to take my rights away, I ask you to withdraw it. Withdraw this Bill, withdraw it, and bring a bill that could balance people's rights as we fight against terrorism. I am not going to support this kind of draconian legislation to invade people's privacy. If the criminals are guilty, get at them. You have SAUTT and all kinds of intelligence agencies, why do you not use them to get at those criminals that you want to get at, rather than coming to infringe the rights of citizens?

If you go to 24C:

"A police officer or officer of a law enforcement authority may apply, *ex parte* to a Judge for a monitoring order directing a financial institution, listed business or non-profit organization to provide certain information."

Imagine that, a constable; a constable who is corrupt and who is in the pay of the Government or who might be a party member, because there are policemen who are party members. We know that.

Sen. Browne: Of the UNC too.

Sen. W. Mark: So you have a police officer, a constable who is a party member, being instructed by the Minister of National Security or the Commissioner of Police to go after John Brown or Harry James; this is dangerous. This is dangerous legislation we are dealing with here. This Government should really withdraw this piece of legislation or send it to a select committee or a joint select committee.

Anti-Terrorism (Amdt.) Bill
[SEN. MARK]

Monday, January 18, 2010

Two Presidents in Mauritius resigned; do you know why? Draconian legislation was brought and the civil society protested and they refused to assent to the legislation. Two Presidents in Mauritius tendered their resignation; they had to go. They refused to sign and the Constitution said that they had to go, because people are not prepared to really stomach such measures in the way that we would want to advance them.

This is a recipe to set up innocent citizens of this country; this is what this Bill is. We are not prepared to give this any kind of support.

Mr. President, please go to page 25 and look at (7)(a):

"A financial institution, listed business or non-profit organization that is or has been subject to a monitoring order shall not knowingly disclose the existence or operation of the order to any person..."

So you are monitoring me, you have a monitoring order out and this is saying that I cannot tell you that I am being monitored. If I tell you that I am being monitored, hear what could happen to me. They could fine me a big set of money. Hear what it says:

"an officer or agent of the financial institution, listed business or non-profit organization for the purpose of ensuring compliance..."

He cannot disclose that.

"...a legal adviser...or authorized officer referred to..."

So what we have is that you are in a dictatorship. What we have here is not a democracy; this is a police state. You cannot disclose that you are monitoring my account, because if you do that, you could be fined \$250,000, but the police investigating my private affairs and I have no right of knowing that they are doing so.

Why is the Government amending clause 15 under section 74 of the parent Act? They have customs officer, immigration officer and police officer. Do you know what they included? The Special Anti-Crime Unit of Trinidad and Tobago (SAUTT); the Mongoose Gang:

"or officer of a law enforcement agency..."

We cannot support any provision in the legislation that speaks to "officer of a law enforcement agency". What is that? What is that? We have a police service headed by a commissioner of police. In the legislation in Barbados, it is the Commissioner of Police that deals with these things and he assigns officers, not a

minister. How could a minister have the power to assign officers to investigate something? What business is that of the minister?

We are convinced that this legislation is lowering the threshold standard of justice for the citizens of our country, and we will not be party to that. All we are hearing is "ol' talk" from the Minister of National Security about democracy and human rights, but when you look at this legislation, they are undermining the human rights and the fundamental freedoms of people of this country.

Why was it necessary for the Government to remove a judge of the High Court? Hear what the hon. Attorney General tells me: It is the same thing. What is the difference between a High Court judge and a judge?

Hon. Senators: Tell us.

Sen. W. Mark: I want you to tell us. If there is none, I am asking that the status quo remains; that is all I am asking; leave the status quo.

It goes on to 38A clause 19 again:

"38A. (1) Any customs officer, police officer or officer of a law enforcement authority may seize and detain part of or the whole amount..."

As far as I am concerned, this legislation is obnoxious and offensive, and we cannot support it in its current form. We are going to be proposing amendments, because we are against terrorism and against all manifestations of terrorism, but we are not prepared to support any legislation that is going to undermine and infringe the rights and fundamental freedoms of the citizenry of our country.

Thank you, Mr. President.

Sen. Basharat Ali: Mr. President, it is a privilege and honour to make a contribution to, effectively, the first debate of this Third Session. It seems that we have been here all the time, because if you look at the programme of the Senate you would see that we hardly had a Christmas season and then we have moved into the 29th and 30th with those two Bills, the Valuation of Land (Amdt.) Bill and the Property Tax Bill; all of that on the 29th and 30th. Before that we had the Tobacco Control Bill, which put us also again under great pressure to complete, and then finally on the day before the prorogation of Parliament we did the amendment to the Integrity in Public Life Act. The amendments were passed and have now been assented to.

Mr. President, we seem in the Senate to be always working under pressure, which we never know why we are doing it. It has to be done, that is what we are

Anti-Terrorism (Amdt.) Bill
[SEN. ALI]

Monday, January 18, 2010

told, so we come here and we do it. But when we have so little time to do, to study and to make sure that what we want to bring across is correct, the risk is that we make bad laws. I take a very serious view of that.

I did a quick summary, and I am just going to speak for a very brief moment on it, to compare what we have done in the Parliament during the First Session as against the Second Session.

In the First Session, the Bills laid were 34, assented 27, and seven bills lapsed. That is 21 per cent of the bills lapsed. In the Second Session, 35 bills laid, almost the same as the bills laid in the First Session, 19 assented and 16 lapsed; so 46 per cent of what we sat here and debated, et cetera, has lapsed. I think that is a terrible situation to be in. I am hoping there is some solution to that, that somebody would address it, because we cannot keep going at this pace all along. Next week we might hear that we have something to do again which needs to be passed.

When I say that we are rushed, I really am quite serious. I take as an example two bills which are crucial to what we are doing today and those are the bills that were passed in October. October 09 it says they were assented to in the Parliament. That is the FIU Bill, which we now call the FIU Act, and the POCA Bill, which is the Proceeds of Crime (Amdt.) Bill.

Mr. President, just to look at the time line; let us take the FIU Bill, which was first read in the House of Representatives on May 04, 2009. There was a second reading on May 22, 2009, a second reading continued on June 03, 2009, and the second reading wind up was on September 30; almost four months after. It was passed then on that day.

What happened in the Senate? The Senate had its first reading on October 01; the second reading was October 06, 2009 and the third reading and passage was on the sixth; the same day. So here it is the Lower House had all this amount of time and we had to come here and do that in a hurry on October 06; the same thing with the Proceeds of Crime (Amdt.) Bill. They both were laid at the same time, the FIU and POCA Bill, as I call it, May 04 in the Lower House.

There were two first readings, two second readings, May 15, and the second day was May 22, 2009, and it was passed on June 03, 2009; so that is the time line. What happened in that big, long period we do not know? I would like to be advised by someone as to why there was that big gap, almost four months before the thing came to us. The Senate first reading was on June 09, the second was October 05 and the third was also on October 05. There were amendments made

in the Senate, notwithstanding the fact that we only had one day of debate, and those amendments had to go back to the other House. They were passed on October 09, 2009. That is what I cannot understand.

We have had it all along. We did the Tobacco Control Bill, where we had a seven-hour committee stage. I think it is quite ridiculous that a whole large group of people sit here to do that.

3.30 p.m.

I am pretty sure sooner or later we would be having amendments for it, but more than that, nothing has been proclaimed yet on the Tobacco Bill which was passed—I think it was on December 23, so I did not expect it to be passed, but the prospect of proclamation is what concerns me.

It is all right to have an Act, an Act does not mean anything until it is in force and that is why I have this concern. Right now, I have that concern about the FIU Act which was passed on October 05, and then it was sent back for some amendments. So it was in fact in force on October 09 that is the day it was assented to; that is three months ago.

I have heard nothing about the proclamation and I would be happy if the hon. Minister of Finance because since the FIU comes under the hon. Minister of Finance instead of the Minister of National Security, I would be happy to be told why we are having these big gaps. After we rush and pass it, we have to sit and wait for proclamation but the FIU is not in effect at the moment and that is something that concerns me, because those two bills which are now Acts will be part and parcel of the Anti-terrorism Act which will be amended as we are expecting so we will be having that Act passed and one of those Acts, and an important one is not yet proclaimed.

I am saying it is an important one and I am of the view that all this rush we are going through has to do with other matters. I may be wrong, but my personal view is the sittings to finalize this all relate to what we want to do with something we have outstanding. Having established an FIU, the next step is really the membership to the Egmont Group. I have not heard the hon. Minister mention that, maybe because it is the business of the hon. Minister of Finance, but I have not heard that word “Egmont” mentioned although it is the FIU Act and I have done quite a bit of work on that and I would like to know where we are because evidently, we cannot apply yet because the Act is not in effect, but my feeling is all these things are associated with that.

Anti-Terrorism (Amdt.) Bill
[SEN. ALI]

Monday, January 18, 2010

Mr. President, for the benefit of the Members, I want to give a brief overview of how the Egmont Group functions. If you go to the website of the Egmont Group, you will see the first page asks: What is an FIU? A very terse definition, you do not have to read the whole Act to see. It says:

“An FIU is a central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime and potential financing of terrorism, or (ii) required by national legislation or regulation, in order to counter money laundering and terrorism financing.”

That is a very tight definition I think, and the Act will conform to that definition. I just want to highlight what the process is, and if we have not started an application to the Egmont Group, then we are about a year behind getting membership because there is a procedure which has eight steps outlined. I would not read all the steps, but the first one is to submit the application and with the application, you have to send a letter of request for Egmont Group membership, copies of AML/CFT legislation this is what we are doing today and other relevant documents pertaining to the establishment of the FIU translated into English. That is the first step.

The second step is to identify sponsor FIUs. We do not do it, the Egmont Group does it. They look at the regions and choose the sponsors and there are usually two sponsors to follow through with the applicant in this case we are an applicant or will be at some stage and they will then identify two sponsors who would work in consultation with the applicant FIU.

The third stage is the monitoring phase after confirmation of the sponsors; these FIUs will initiate the monitoring phase in close consultation with the applicant FIU, that is all I am going to read. Anyone who wants can go on the Egmont Group website and get all the details on it; I am just dealing with the heading.

The fourth is the preparation for the on site visit which requires a Secretariat to submit the LWG questionnaire which is a legal working group of the Egmont Secretariat to the applicant and that is quite a big document. The legal working group application form has 12 pages and they ask many questions. I have a feeling some of them may not be answerable at this stage.

Mr. President: Senator, with all due respect, you started off by asking why it took so long to get these Bills passed and Bills that had not succeeded in a

particular session, and I sat and listened to what everybody says no matter how long it takes and you have just spent the last 15 minutes and you have not mentioned this Bill once.

I would ask you to lead by example and assist this Senate to get through its work as quickly as possible. It is not fair to the other Senators to make a lengthy discourse on issues that are not directly related to the issue at hand. I have allowed a fair amount of flexibility and I would ask you to try to talk now about the Bill and where we go with the issues here, please.

Sen. B. Ali: Thank you, Mr. President, for your advice but as I said the FIU is a key part of the amendment we have before us. If you read 22A, 22B and 22C, you will see so many things being referred to the FIU but it really cannot function without all these other FIUs. The Egmont Group is a group of FIUs, so that is why I am trying to get it into this perspective; if we do not get there, I do not know how we will be able to exchange information at that critical level in order to have this formalized. Since you said so, I will just skip it but I am hoping that somebody answers me. Nobody chooses to answer me, on that question, if they tell me yes or no they have applied. The Egmont Group is a group of 20-odd persons, our financial FIU people.

Sen. Browne: Mr. President, if I could just bring a little clarity to some of the questions raised, particularly with regard to the FIU. Whilst the Act was passed there are some administrative measures which have to be put into position before it becomes fully operational and those matters are before us and are being considered as we speak. So it has not been, in a sense, operationalized because some of the measures are now being designed and put into position, that is one.

With respect to the application and membership of any international grouping, there are certain prerequisites which we need to have in position. We did mention during the course of the debate of the FIU and, certainly, the Minister of National Security with regard to the debate on the Proceeds of Crime Act, we indicated that there is an audit process and that is why some of the amendments that were being suggested and in particular sunset clause legislation could not have taken place because in a sense, we have to put legislation in position which upholds the principle on a continuous basis.

Having said that, we are in the process and I believe we have substantially met but not completed all the requirements we are supposed to meet under the

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Monday, January 18, 2010

regulations which is one of the reasons we are here today discussing amendments to the Bill and it is to meet those requirements and as and when they are met, then membership will be forthcoming.

Thank you.

Sen. B. Ali: I would urge fellow Members of this Senate to go to that website and look at the questionnaire. I am convinced that we are way behind. If we do not get it—we are always well intentioned, that is why I will urge all Senators to go under the Egmont Group website and you will see how long it is going to take. I am saying it is going to take a year because we would have to wait until they have a plenary session of the Egmont Group before our membership is even considered. This document gives all those things and that is the only reason I chose to do it because if we pass everything else and we do not get these things done, we are spinning top in mud.

Mr. President, we are way behind other Caricom members because in Caricom there are 10 members who have FIUs and they are members of the Egmont Group. They are: Antigua, Bahamas, Barbados, Belize, Dominica, Grenada, St. Kitts and Nevis, St. Vincent and the Grenadines and St. Lucia. So 10 out of 14 or 15, and we are in that lot, the ones that have not reached there yet. So if these small countries can do it, why can we not? We are supposed to be leaders in Caricom but we are following, I do not know who the leader is but we are not following a leader now.

Mr. President, since we talk about FIUs which is in this Bill before us so many times, Trinidad and Tobago used to have an FIU until they created a designated authority and then we really find we do not have an FIU because it was first of all in the Ministry of National Security—now it is in the Ministry of Finance—it was headed by a policeman; it was a division of the Caribbean Action Task Force or something like that.

3.45 p.m.

I have the name somewhere. It has one of these acronyms and I cannot remember acronyms so easily. CDCTF is what it was. It was a division of that headed by an inspector, I believe and maybe five or 10 persons in it. We said that from 2000 the enactment of POCA provided for the receipt of SARs by the designated authority in POCA which is not the same as the FIU. The FIU does not have legislation authorizing it to receive, analyze and disseminate disclosures of SDRs and suspicious money laundering activities. We have no history of an FIU that is a legitimate body acceptable to the rest of the people in the Egmont Group.

I will not go into the role of the SSA. That is another arm of the system. I do not know where they will be when we have done all these matters with respect to the FIU, the Proceeds of Crime Act and the Anti-terrorism Act which covers both money laundering and what we are dealing with today, primarily, terrorism financing. We know very little about SSA to start with. I am wondering whether there is a place for them and where they would be. All I do is go to a website and do things. I await word on the status of our FIU.

The hon. Minister spoke on FATF and we know what FATF is. I say "FAT F". It is easier for illusion purposes rather than "FATF". That is a basic organization which was established by the group of seven at the time. It is probably the group of eight now. They are a policy formulating group. They formulate policies at both national and international levels to combat money laundering and terrorism financing. The current membership of FATF is 35 which includes the European Commission and the Coordinating Council.

We heard about the recommendations of FATF, the 40 + 9 from the hon. Minister. I thought that I heard the Minister say that we did very well. I am wondering from where that information came. I have to clarify that the hon. Minister said that we have done very well on the 40 recommendations. I do not see that. I think that we are in a terrible state when it comes to being compliant to FATF. The Caribbean Financial Action Task Force (CFATF) is an associate member and we are a member of that Caricom financing. The important thing about all this is that we have the Mutual Evaluation Report which is where the judgment is made as to how compliant we are with the 40 + 9 recommendations. I was quite surprised to hear the Minister saying that we had done very well.

Sen. Joseph: Thank you very much. I was saying it in relative terms. With respect to the 40, legislatively, we have addressed the 40 CFATF requirements. The nine we have not. That is the context in which I was putting it. The nine deal with terrorist financing and that is on what we are focussing. When I said that we did relatively well, I am talking with respect to the 40. That is the legislative requirement to ensure that our legislation is more robust. You are right. At the end of the day when the evaluation is completed in February, we would see. On the basis of interfacing, we have designed the legislation in keeping with the requirements of both FATF and CFATF. We are relatively confident that the Financial Intelligence Unit Act and the other amendments that we have made would make us better compliant.

Sen. B. Ali: Hon. Minister, I hope that you are correct because I am not as optimistic as you are. I went back and looked at the Mutual Evaluation Report of

Anti-Terrorism (Amdt.) Bill
[SEN. ALI]

Monday, January 18, 2010

May 2007, in Guatemala. I can give you the numbers. The report says that we are 27 recommendations between partially compliant or non-compliant. Of course, we were non-compliant on all the special recommendations. This is Trinidad and Tobago's first follow-up report. This gives the summary at the third mutual evaluation.

This report is a review of actions to meet recommendations by the examiners. This was presented at a plenary in St. Kitts and Nevis. They do not give the date, but I presume that it is 2008. I can work only through the websites. If it is not 2008, I am quite prepared to say that I am wrong and I would like to be updated as to where we are. I have the figures here; partially compliant on 13 recommendations and non-compliant on 20 plus this nine special recommendations. This is the last that I can access from the website. If you have anything more favourable than this, I would be quite happy to look at it and respond as necessary.

I wanted to read from this report.

Sen. Joseph: What date?

Sen. B. Ali: It was presented at the last plenary in St. Kitts and Nevis. The report does not give a date. The hon. Minister should know when it was. I do not. I looked for the date but there is none on it. That is why I am very careful. You can judge where it is. This is one statement coming from this document, *The Summary of Progress by Trinidad and Tobago*:

“Since the MER, the authorities in Trinidad and Tobago have taken steps to assess and propose various means to achieve compliance with the recommendations outlined in the MER. This has been carried out under the auspices of the National Committee Established to Develop, Monitor and Promote a Counter Money Laundering and Terrorist Financing Framework.”

The hon. Minister said something to that effect. This is what Trinidad and Tobago is writing in a post plenary follow-up report. Mr. President, this is where I want you to listen:

“A plan of action has been developed by the National Committee comprising of a national AML/CFT policy document, a partnering with the IMF to conduct a national risk assessment survey and drafting of policy and legislation to establish a Special Anti Crime Unit of Trinidad and Tobago. A proposed Financial Investigation Bureau responsible for the investigation of money laundering and the financing of terrorism will be located in this unit.

Government has agreed to a comprehensive legislative package incorporating the Financial Intelligence Unit Bill, 2009...”

That has been passed. The Financial Obligation Regulations (FOR)...”

I do not know what that is. I have not found anything about that anywhere. Do we have anything on it for the public? Please let me know. I searched and I have asked and I have not found it.

“The Financial Obligations Regulations (FOR) and the Special Anti Crime Unit Bill to be tabled in Parliament as a matter of national priority early in 2009.”

We are here early in 2010 and we have not seen any of it. This is why I am saying that we are way behind many people. They went through a list of the recommendations. I do not see too many looking totally compliant. This is why I get very concerned and I wonder whether the Government comes clean and says that it has those things to do and it comes to us to seek the legislation which will support what it plans to do. That is where we stand. I have never seen an FOR. I do not know if it has ever been tabled in Parliament. I have asked and nobody seems to know. That is where we are on that.

I will not go longer on that theme except to say that I believe that there is evidently, a fourth round in the offing of the MER. I even go by blogs. Here is a blog from CFATF. You probably know a gentleman who is a consultant to CFATF. His name is Jefferson Clarke. I do not know whether you know the name. He was engaged by CFATF in 2007. He wrote a little blog and it is on CFATF website. The heading is, Finally FIU Legislation for Trinidad and Tobago. The date is October 07, 2009. Evidently, he was following the debate. He wrote a little commentary but I would not read it. It does not make much sense.

In the end he said, “this leads me to parrot the comments of one Senator who finds that in her view the Bill lacked innovation.” I do not know who of the women Senators said that. He was trying to say that it is not necessary to start from scratch. His last sentence is what gave me this clue. “I will like to add that T&T's fourth round mutual evaluation will be quite interesting.”

4.00 p.m.

That is what he writes. He is supposed to be a consultant with them; an economist and everything else. But that is the only information I have. Nobody has come and said, “Okay, we are going to have one of these evaluations, a mutual evaluation”, and when it will start and what would be the time line for it.

Anti-Terrorism (Amdt.) Bill
[SEN. ALI]

Monday, January 18, 2010

Nobody has said that. I only spoke of Egmont because nobody spoke about it. All this information on the recommendations, et cetera, is all there for all of us to read, and I just searched them out in order to help myself to develop, what I think is my knowledge on what we have before us.

So, Mr. President, I am hopeful that we will have good, clean, clear sailing. I do not expect that from what Sen. Mark has said and I share some concerns with Sen. Mark about our position vis-à-vis these other people who really have terrorism problems. So the protection of our citizens is something that is close to me. I often say I do not know much about terrorism but I have a name which makes me a target. The first six letters of my name "BASHAR," that is the name of the President of Syria, Bashar al-Assad and he is a guy who they said was the President of the Axis of Evil of some countries. It was Syria, North Korea and somebody else. That is from the previous government.

So there it is. They say any "Ali" might be a terrorist. So I would like to ensure that I am not profiled. I know I have been profiled in travelling into the United States; I know my daughter has been profiled travelling to the United States; I know that. Nobody can tell me, I do not know. I know when I am profiled. Okay? So I want to be protected and I am hoping that Sen. Mark will come up with items which give me that protection.

Having said all of that, you will think that I did not say anything about the Bill. I, in fact, spent many, many hours on this amendment Bill; I did, and I have proof of it here. If you look at Act No. 26 of 2005 marked up right through, including all the notes as to what is going into it. I even have something on POCA, because they say, listed business was the Proceeds of Crime Act of an earlier generation; the listed business which gives that long thing about everything under the sun: real estate; motor vehicle sales; money or valued transfers, et cetera. That is for the listed business. I did not know what it was so I went and found out.

So I have a fair idea of what the amendments to this Bill, the existing Act, is and I have looked at the addenda and, as I say, I can follow through the new sections 22A to 22C, financing of terrorism, where in section 22A terrorism is an offence; 22B, listing of terrorist offences and 22C, reporting requirements.

So I have taken my notes and I, as a layman, can only say, "Well, look, it seems to be all right." Some more hardened gentlemen like my friend, Sen. Mark, may think that we are not well enough protected and I will be happy if he will come up with amendments that we can all look at, because as a layman I have gone through the Act. No one can say I did not; I spent a number of hours at it.

When you have to start with the parent Act and look for the amendments, you take a lot of time, so you read everything. I can even tell you what the other subjects are that were not touched. I have a list here: 18—kidnapping of international protected persons; 19—offences related to fixed platform continental shelf or EEZ; 20—offences with regard to nuclear matters or facilities; 21—inducement with respect to a lethal device and 22—threats with respect to chemical, biological and nuclear weapons.

I have gone through it, so even if I do not speak about it, I know what the content of this Bill is. Therefore, as a layman, I wrote here that I am satisfied, but only as a layman. I have next to me senior counsel who I believe will give an opinion at some stage of this game. But I am prepared to support it, notwithstanding the fact that I think we are led all the time when it comes to terrorism matters. We are led by the bigger guns. But I look after protection of our people and terrorism is abhorrent to anybody and it does not necessarily have to be someone with a Muslim name; it might be an Irishman; it might be somebody from Bangladesh; it might be a Tamil person.

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

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Prof. R. Deosaran*]

Question put and agreed to.

Sen. B. Ali: Thank you, Mr. President, and my colleagues on both sides for their generosity for the extension of my time, but I really do not think that I need it, because I was just in the process of winding up.

In looking at the Bills, one thing that struck me is, in looking at officers, police officers, a new repeat is "officer is a law enforcement authority" which appears in a number of places and I looked at that one and I could not really say who these were. Is this the intended unit that we might be having? It may be, because it is a police officer or an officer of a law enforcement authority. I do not know whether we have any other officer of law enforcement authority. It is something I have asked and it repeats itself throughout these amendments and I would like some feedback as to who else is covered by that.

The other thing is, because FIU comes under one Minister and everything else comes under another Minister, I wonder how will the coordination be, which is my territory; which is my baby; which is the other person's, because FIUs have all the powers in this even to suspend certain businesses. The FIU has that power, from what I can see, if they have strong suspicion, et cetera. But there are legal processes there.

Sen. Browne: Thank you very much for giving way, Senator. I think that the point that was made under the FIU was that the FIU in itself had no investigative powers. Its purpose is to filter the information to determine a prima facie case and the information is then passed on to an investigative arm which does the actual detailed work and the actual policing work, which is required as a result of that. I think that is the critical issue to be made clear.

Sen. B. Ali: Thank you, hon. Minister. I realize that our FIU is an administrative arm, because they have about four different categories of FIUs, from my reading and this one of your FIUs is described as an administrative body. But how do they work then to carry out matters in which they have strong suspicion, et cetera? How do they work it? Is it a police officer? Because even the FIU, we do not know what the qualifications of the FIU director is, or the deputy director. All they say is a person of suitable experience and qualifications. That is all it says. So it could be anybody. I really do not know whether it is a policeman, a lawyer, an economist or an engineer for that matter.

Mr. President, I thank you very much for your patience. I felt I needed to do it because I had not been getting the feedback from the other side that I require, to convince me that we are on the right path. So I thank you for your patience and I thank my colleagues for their support in this matter. Thank you. [*Desk thumping*]

Sen. Dr. Adesh Nanan: Thank you, Mr. President. I rise to make a contribution on the Anti-terrorism (Amdt.) (No. 2) Bill, 2010.

Once again, the Government is the author of another piece of draconian legislation and I will go, in my opening, to the United National Congress Manifesto of 2000. Mr. President, at that time, under the United National Congress Manifesto 2000, the Prime Minister was the hon. Basdeo Panday. On page 39, if you look at pages 38 and 39, which I would not go into extreme detail, it deals with crime security and peace of mind.

It was a comprehensive approach by the hon. Basdeo Panday administration in dealing with the problem of crime, and not only was the murder rate falling under the Basdeo Panday administration and all the other amenities were in place with respect to policing: Refurbishment of police stations and new police vehicles on the road, as well as the strengthening of the coastguard and deployed anti-drug aircraft on the ships to protect our coastline. Of course, we signed the Shiprider Agreement with the USA to further strengthen our capability to fight the drug lords, but in bold on page 39 it reads:

“Trinidad and Tobago is well on its way to being only the second country (the other being Finland) in the world to have fully complied with the submission of human rights reports to the United Nations.”

That was under the Panday administration.

I want to remind the Attorney General about a debate in the House of Lords dealing with anti-terrorism legislation and this if from Lord Falcon as QC. I am sure the Attorney General is aware of this:

"First, our society is based on the liberty of the individual. It is what we fight to protect, when necessary. Our starting point, therefore, in a free democratic society must be that the liberty of the individual should not be limited unless a proper case for limitation is established."

That was Lord Falcon, a QC.

When we compare the parent Act to the amendment before the House, we see a three-fifths majority in this particular amendment Bill and we saw with the other Bill a simple majority. We have heard, in terms of the legislative aspect and going to court on a particular matter, but when we are dealing with anti-terrorism legislation, and we heard about state-sponsored terrorism, I want to embellish the statements of my hon. colleague, Sen. Wade Mark with respect to state-sponsored terrorism. I want to remind the Senate of the PNM administration. How many of you remember that picture with armed policemen at the home of the hon. Basdeo Panday? Armed policemen? How many of you remember letters being given to teachers of the Arima Senior Comprehensive? Armed policemen delivering those letters? Do you remember all those things? You remember the kind of terrorism that you inflicted on this population in all different frames? I could remind you of every incident, but I would not do that.

4.15 p.m.

The population has no trust and confidence in you. [*Desk thumping*] There is vindictiveness and a lack of trust. We would have been able to pass this legislation with very little debate from the Opposition, but we recognize the arm of the administration. When we look at the situation with police and policing, we cannot put this power in the hands of ordinary policemen.

When they were dealing with bank accounts—I do not want to bring the President into this debate—we heard about people hacking into people's bank accounts—many people would remember that incident—and privacy being breached. What is interesting, as I talked about the whole scenario of the Panday administration, not only were we dealing with crime locally, we were also dealing with it internationally.

Anti-Terrorism (Amdt.) Bill
[SEN. DR. NANAN]

Monday, January 18, 2010

The Minister of National Security, in his opening remarks, talked about various conventions. Who signed the Convention on the Physical Protection of Nuclear Material in April 2001? It was the UNC administration. Who signed the International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly of the United Nations on December 15, 1997, in April 2001? The UNC administration. In terms of this particular International Convention for the Suppression of the Financing of Terrorism, which relates to this particular piece of legislation, I am not sure; I recall the Minister talking about September 2009—I could be wrong—with respect to the signing of this particular convention.

Sen. Jeremie SC: September 2009. What is wrong with that?

Sen. Dr. A. Nanan: If that is correct, there has been a major delay; from 1999 to 2009. The PNM should not be happy about that time lag.

Sen. Jeremie SC: September 03.

Sen. Dr. A. Nanan: So you are looking at a 10-year span.

Sen. Jeremie SC: That was accidental.

Sen. Dr. A. Nanan: With respect to tardiness, that is why I support Sen. Ali with respect to the lapse of all those Bills before the Senate. The Attorney General should bow his head in shame—[*Desk thumping*]*—both current and former in your administration.*

We saw no consultations on the Anti-terrorism (Amdt.) Bill. We heard of a conference. When you are having your political meetings, you have it in all different parts of the country. We heard of a conference; we do not know what it will reflect in terms of consultation. You should have wider consultation. You are dealing with trampling on the fundamental rights and freedoms of the population and you should take that into consideration when bringing this kind of draconian legislation before the Senate.

Sen. Jeremie SC: What clause?

Sen. Dr. A. Nanan: No, section. You are infringing sections 4 and 5 of the Constitution in the Bill. That clause refers to sections 4 and 5 of the Constitution.

Before the tea break, I would like to deal with that issue of the law enforcement authority that my colleague raised in this debate. It gave me an opportunity to examine the intelligence agencies. We have the National Security Council, the Security Intelligence Agency, the Strategic Services Agency, the

SSA, the Counter Drug Crime Task Force, the CDTF, the Organized Crime and Narcotic Unit, the OGNU, Special Branch, the Defence Force Intelligence Unit, the Joint Operations Command Centre, the Customs Preventative Unit and, of course, the Special Anti-Crime Unit of Trinidad and Tobago (SAUTT). We have the Anti-Kidnapping Squad. We have 11 spy services/intelligence agencies and secret services.

The Government—correct me if I am wrong—has equipment for the interception of land line and cellular conversations. So, in terms of the actual reaching out, with all these agencies and this capability of the equipment for the interception of land line and cellular conversations, we are very skeptical and guarded about this big brother approach. We are afraid because we reflect on Guyana under Forbes Burnham, Germany under Hitler, the Third Reich under Stalin; Gairy in Grenada; Baby Doc in Haiti; there is Mugabe—the mayor could not go into the capital in Zimbabwe—Idi Amin in Uganda; and I can go on in terms of the examples. That is what we are afraid of with this legislation and we have a right to be afraid because we have all these agencies and we are not sure if they are not all politically motivated.

This fear all started when the hon. Prime Minister Patrick Manning handed a letter of appointment to the Commissioner of Police. We have reports of the Minister of National Security in a forestry vehicle going to Mayaro with Abu Bakr to campaign. He could have denied that, but he is not here. We have to be very careful with respect to the Government and the so-called terrorists. Of course, there was some report in a newspaper—they can deny it—that the hon. Prime Minister said that he would do anything to remain in power.

Mr. President: Hon. Senator, in the context in which you were speaking, that is grossly out of order. Do not go there today! There is no need. Talk about the Bill and you will be safe. You will be doing your duty just to talk about the Bill.

Sen. Dr. A. Nanan: Can I talk about the C-26 aircraft? There is a C-26 aircraft that the Canadian Government gave to the Government with fully interceptive equipment, forwarding reading radar and sophisticated ground photography. All of that has to do with terrorism. The Government has all this equipment and capability, but will they use it for the benefit of citizens or against the citizens as we have seen in other countries? We have to be extremely careful.

I read every clause of this Bill because it was so interesting—

Mr. President: I stopped Sen. Mark on the same point. It is one thing to suggest that assets like you have described could be used improperly by person or

Anti-Terrorism (Amdt.) Bill
[MR. PRESIDENT]

Monday, January 18, 2010

persons unnamed. It is another thing to suggest that the present Government could or would use them for improper purposes. That is out of order.

It is not asking too much surely to ask you to use your language skills—you were a former Minister of Education—to express yourself in a genteel manner so that the reputation of the Government of the day is protected as is required under the Standing Orders. You know how to do that. You can suggest the dangers and the pitfalls that may be contained in the Bill and that is perfectly in order; but to ascribe motives that are not proper to the Government is out of order. I am telling you for the second time: Do not go there! You know how to put things properly and I am asking you and instructing you to do it within the bounds of the Standing Order. I do not want to tell this either to you or any other Senator again this afternoon.

Sen. Dr. A. Nanan: I am not going to debate your ruling, but there is an issue. If I say there is a hypothetical situation with a government getting two C-26 aircraft. They have all this capability in terms of tapping people's phones and they are now bringing legislation. I am not calling names. They have that particular capability to reign terror on the population. That is quite—[*Mr. President shrugs shoulders*] Exactly!

Sen. Jeremie SC: What did I miss?

Sen. Dr. A. Nanan: You missed when I said you should bow your head in shame.

We have to ask another question: Is there a hypothetical situation developing of police with a political agenda? We have leakage of confidential information from the Attorney General's office to the media.

Sen. Jeremie SC: My office? Nah.

Sen. Dr. A. Nanan: I am not implying improper motives. That is a fact. Look at how the Germans operated. They had a propaganda machine. We have to be very careful in terms of using the power to the State to attack ordinary citizens.

I was looking at new section 22C of this amendment Bill and I do not know if I missed something. It reads:

“(1) Where a financial institution or listed business knows or has reasonable grounds to suspect that funds within the financial institution or listed business belong to an individual or a legal entity who—

- (a) commits terrorist acts or participates in or facilitates the commission of terrorist acts or the financing of terrorism; or
- (b) is a person or entity designated by the United Nations Security Council,

the financial institution or listed business shall report the existence of such funds to the FIU.”

I do not know if there is something missing with respect to (b). “Is a person or entity designated by the UN Security Council”. Is that correct? Something has to be missing there. As what?

Mr. President: Hon. Senators, it is 4.30 p.m. We will suspend for the tea break and resume at 5 o'clock. The sitting is now suspending until 5 o'clock.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Sen. Dr. A. Nanan: Thank you, Mr. Vice-President. The Bill gives some definitions. On page 3 there is the definition of “terrorist”.

“‘terrorist’ means a person who—

- (a) commits a terrorist act by any means directly or indirectly, unlawfully or wilfully;
- (b) participates as an accomplice in terrorist acts or the financing of terrorism;
- (c) organizes or directs others to commit terrorist acts or the financing of terrorism; or
- (d) contributes to the commission of terrorists acts or the financing of terrorism by a group of persons acting with a common purpose where the contribution—
 - (i) is made intentionally and with the aim of furthering the terrorist act or the financing of terrorism;
 - (ii) with the knowledge of the intention of the group of persons to commit the terrorist act or the financing of terrorism;”

We have been given the definition of “terrorist”. I want to quote from an article from America’s Best Political Newsletter, called *counterpunch*. This article is headed Terrorists R US, by Patrick B. Barr. I quote:

Anti-Terrorism (Amdt.) Bill
[SEN. DR. NANAN]

Monday, January 18, 2010

“During the past several years, the words “terrorist” and “terrorism” has been effectively nuanced. So cleverly has the transformation been made that whatever the actions of the major powers, they are never called terrorists. Waging an unprovoked war in Iraq is not terrorism; but opposing that occupation, is.

The word has been reserved solely for the weak who strike back in desperation.

Even the dictionaries are playing along, not recognizing that state terror exists:

The systematic use of violence as a means of intimidating or coercing societies or governments.”

That is WorldNet Princeton University.

“The unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments, often for ideological or political reasons.

The American Heritage (R) Dictionary of the English Language, 4th ed.,...

It would seem that these companies associate themselves with the state and, thus, cannot see the forest for the trees.

In that context, Israel’s policy of killing the leaders of Palestinian organizations is not considered state terror, even though the Palestinians must be terrified of the overwhelming power of the state of Israel. The fact is that it is the Palestinians who are responding to Israeli state terror and not Israel responding to the suicide bombers from Palestinian. Note the behaviour of Israel when things seem to be getting too quiet to satisfy Sharon’s designs: another targeted killing.

On cursory examination, it should be painfully obvious to anyone that it is in the interest of Ariel Sharon to keep turmoil on the front burner, especially now that he has embedded President Bush, whose sympathy with Israeli tactics knows no bounds.

And in the case of the brutal war being waged against Iraq, not a single reporter, or talking head, has ever referred to the invasion as an act of terrorism. Unprovoked by Iraq, the USA travels across the ocean to unleash a deadly mix of weapons of mass destruction on innocent Iraqis, but it is the people resisting the brutal occupation...”

Sen. Jeremie SC: That is going in *Hansard*.

Sen. Dr. A. Nanan: “who are labeled terrorists, both by the media and the perpetrators in the White House.”

I brought this article to show the varying connotation of the word “terrorist” and the interpretation of “terrorism”.

In this particular piece of legislation, my colleague Sen. Mark made reference to the police officer going to the judge for a warrant for searching. Again, it deals with trust and vindictiveness. When we observe events in our society, questions and alarm bells are raised.

I make reference to a particular situation of the searching of a top businessman’s home by the police. Of course, the police had a warrant. When asked to present the warrant, the police said: “You do not have to see this warrant.” That is the attitude. When asked: “Would you wait until my lawyer comes before the search? No, we not waiting on anybody.” That is the kind of attitude and the kind of power that the State has. We want to give them more power in terms of this particular piece of legislation. This is not hearsay; there are sworn affidavits to back up these statements, with respect to the brutish arm of the State and the approach of the police. That is why we are continually asking these serious questions with respect to this particular piece of legislation.

Of course, if you look at the events in our society and you look at the harassment of the former Chief Justice in our society by a Member of the Government—*[Interruption]*

Sen. Jeremie SC: Who?

Sen. Dr. A. Nanan: I am not calling any names. There is a full report on that incident. I spoke earlier, in terms of the leakage of information from the Attorney General’s office. We are seeing a propaganda machinery. If you make the link, it is a mosaic of activity by the Government to suppress the rights and freedoms of the people of Trinidad and Tobago using all the power at its disposal and we are not going to be part of a legislative approach to increase your power to suppress the rights and freedoms of the citizens. Freedom of expression is written in our Constitution. We are being trampled and suppressed in this Senate, when we speak out on the activities of the Government.

The words “politician” and “politics” mean dialogue and compromise. There is nothing on that side, in terms of dialogue and compromise. There is no dialogue and compromise. It is a bull in a China shop approach by the Government, railroading legislation through the Parliament.

Anti-Terrorism (Amdt.) Bill
[SEN. DR. NANAN]

Monday, January 18, 2010

Mr. Vice-President, this Bill also talks about the financial institution and investigation by financial institutions. What investigative powers do financial institutions possess, in terms of investigation? You must have an investigation by the financial institution before you can refer to the FIU. References are being drawn with respect to the political infiltration in all our independent organizations.

You know something, not to digress, when I talked about the Environmental Management Authority, the hon. Prime Minister got up and said that is an independent organization. [*Interruption*]

Sen. Mark: The Cabinet appoints everybody.

Sen. Dr. A. Nanan: Exactly. It is the tentacles of the State inside the Environmental Management Authority controlling them, but the Prime Minister jumps up and says that it is an independent body. That was with respect to the aluminium smelter project, but I would not go there because that is a whole new debate. Terrorists could be down there too in the aluminium smelter project.

With respect to that, we need clarification. On what investigation? It is going to be minor investigation. It is very interesting; the financial institution has to investigate. How will they investigate, with respect to background checks on these individuals? The financial institution has to do some investigation before they can transmit to the FIU. [*Interruption*] Know your customer. I am not getting any kind of concrete response from the other side, so I would move on. That is something that needs to be looked at. Financial institutions only have a certain amount of power of investigation. They could only look at the transactions of suspicious activity.

Do you know what is interesting too? This is indirectly or directly; not directly. If I happen to give an organization that comes to my office, a little donation—they come with a sheet: “We want ah little donation for ah charity down de road.” [*Interruption*]

Sen. Jeremie SC: Indirectly or directly is not directly.

Sen. Dr. A. Nanan: Correct me if I am wrong. If I am going to give a little donation, a small amount money, to an organization that comes along that wants to have a football club development or repair a road and it ends up being in a terrorist group, am I going to be liable because I gave a contribution and I did not know the organization was part of a terrorist group? What happens there? That is one area where we need clarification. Mr. Vice-President, it points to invasion of privacy and we have to balance invasion of privacy and the security aspect of the State. It is a balance between those two.

5.15 p.m.

Sen. Mark: What is the Attorney General doing in this legislation? I do not know what he is doing there.

Sen. Dr. A. Nanan: I am sure he is making an amendment to remove himself, so do not worry about national security. [*Crosstalk*]

“22C.(1) Where a financial institution or listed business knows or has reasonable grounds to suspect that funds within the financial institution or listed business belong to an individual or legal entity who—

- (a) commits terrorist acts or participates in or facilitates the commission of terrorist acts or the financing of terrorism;”

How is that going to be applied? “Where a financial institution or listed business knows or has reasonable grounds to suspect...” How will that be interpreted? [*Interruption*] We need to get some clarification with respect to new section 22C. Of course there has to be an amendment to (b) in new section 22C because that does not make sense, “a person or entity designated by the United Nations Security Council”, as what?

Sen. Mark: I do not understand that. I do not know what that means, ask the Attorney General to clear that up.

Sen. Dr. A. Nanan: The Attorney General does not even know what—

The other one I was making reference to in terms of actually pointing to the clause of the FIU was to:

“examine the background and purpose of all transactions which have no economic or visible legal purpose under paragraph (a)(i) and make available to the FIU, written findings after its examinations where necessary.”

You are asking these financial institutions to have investigative power. “Make available...written findings after its examinations...” so you will have to have—what you call those people—the forensic accounting taking place in these institutions.

“Where a financial institution or listed business knows or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism...the financial institution or listed business shall make a suspicious transactions or a suspicious activity report to the FIU...”

Anti-Terrorism (Amdt.) Bill
[SEN. DR. NANAN]

Monday, January 18, 2010

So before they can actually make a report they have to do some kind of investigation.

Now, the other part is new section 22C(7) which says:

“When the report referred to in this section is made in good faith, the financial institution or listed business and their employees, staff, directors, owners or other representatives as authorized by law, are exempt from criminal, civil or administrative liability, as the case may be, for complying with this section...”

Now, lower down in new section 22D and the subsequent clauses point to an area that if the financial institution does not give the information they could be liable, which is wrong because they have to do investigation and then they have to go to the FIU, but if they did not investigate in the first place and they have found that you could have investigated you could be liable. It is the same if you do not give the report to the FIU on a particular suspicious transaction.

Mr. Vice-President, the situation with the police officer, that is after the words “or officer of a law enforcement”; we do not know—this is like the “grab-bag” special we are getting here.

Sen. Jeremie SC: What is that?

Sen. Mark: That is a vernacular. You stayed in England by the queen too long.

Sen. Dr. A. Nanan: Yes, because we do not know what investigative authority is being talked about there. [*Interruption*] There is something I need to clear up too, Attorney General, with respect to the DPP and the role of the DPP.

Hon. Senator: Where is that?

Sen. Dr. A. Nanan: That is new section 24A(1):

“A police officer or officer of the law enforcement authority may, for the purposes of an investigation into the offence of financing of terrorism apply to a Judge for a warrant under this section.”

Now, Sen. Mark made reference to this particular situation where the DPP is the one who makes the application to the judge for a warrant. Why are we bypassing that normal system to go into this new—

Sen. Jeremie SC: Which normal system?

Sen. Dr. A. Nanan: New section 24A(1).

Sen. Mark: Go to the Barbados legislation; it is more civilized.

Sen. Dr. A. Nanan: Rather than have a police officer apply to the magistrate—

Sen. Mark: Go and look at the Barbados legislation.

Sen. Seetahal SC: You are talking about 24—

Sen. Mark: No, I am not talking about that. I am talking about where the Attorney General wants to make application.

Sen. Dr. A. Nanan: Yes, all right, I am making reference to this particular one and the question I want to ask with respect to this one is, is it different from the anti-terrorism legislation, because in that one it is a judge without a jury. You could detain in the anti-terrorism legislation—the judge alone could decide that particular matter. I do not know if I am wrong.

Sen. Jeremie SC: A chambers judge.

Sen. Dr. A. Nanan: Okay. I want to go on to new section 24(3):

“Where a police officer or officer of a law enforcement authority has entered the premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant was issued.”

Now, if you follow this in chronological sequence, you are going to have a situation where the law enforcement authority applies to the judge for a warrant and enters the premises in the execution and seize and retain any material [*Interruption*] other than an item subject to legal privileges which is likely to be of substantial value. We have already had a situation where we have seen the police officers in operation in terms of search and seizure. So we have to ask certain questions and we must ask these questions with respect to this particular approach. I know it may be in all the different legislation, but with respect to the operations of the police officers and what we have seen in other cases we still have alarm bells being raised.

The Minister made reference to the various orders that the judge may issue and the judge has to be satisfied that there are reasonable grounds for believing that the financial institution or listed business may have information that is relevant in the investigation.

“Customer information is information as to whether a person holds, or has held, an account or accounts at the financial institution or listed business

Anti-Terrorism (Amdt.) Bill
[SEN. DR. NANAN]

Monday, January 18, 2010

(whether solely or jointly), and information identifying a person who holds an account, and includes all information as to—

- (a) the account number or numbers;
- (b) the person's full name;
- (c) his date of birth;
- (d) his most recent address and any previous addresses;
- (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
- (f) such evidence of his identity as was obtained by the financial institution;”

And it goes on:

“(g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him;”

So, Mr. Vice-President, if there is a situation with respect to this joint account and you are just going to sign—let us say a father just wants to put you on his account and all the bank wants is your signature on the account to make it joint, so you are not aware of any other thing that is taking place with respect to if it is financing for terrorism or whatever, and your name goes on that joint account, then you have a situation developing now where the bank is investigating that particular account, what will happen to the signatory on the account, because that person would not be aware of any dealings with respect to terrorism and he is just signing as a—

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

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

Question put and agreed to.

Sen. Dr. A. Nanan: Thank you, Mr. Vice-President. As I go through these sections here I am just trying to get clarification because when this matter has to be dealt with, with respect to the financial institution, we do not want people who have no idea of this anti-terrorism legislation and being caught and then have to

get representation by a lawyer to defend themselves, so that particular issue with respect to the joint account and it goes on:

- “(h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts; and
- (i) any other information which the court specifies in the customer information order.”

The other part is:

- “(5) Where the customer is a legal entity, the information shall include—
 - (a) a description of any business which it carries on;
 - (b) the country or territory in which it is incorporated or otherwise established and any number allocated to it;
 - (c) its registered office, and any previous registered offices;
 - (d) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts; and
 - (e) any other information which the court specifies in the customer information order.”

What is this “any other information”? Another vague part here the court specifies in the customer information order, would it be which political party you belong to?

Subclause (6):

“A financial institution or listed business shall provide the information to the authorized officer in such manner, and at or by such time, as is specified in the order.”

So it goes on—you are leaving the financial institution out:

- “(7) An authorized officer for purposes of this section is the FIU.
- (8) No obligation to maintain the confidentiality of information held by a financial institution or listed business, whether imposed by a law or contract, can excuse compliance with an order made under this section.”

So this is the invasion of privacy. This is the particular subclause. [*Points at document*]

Anti-Terrorism (Amdt.) Bill
[SEN. DR. NANAN]

Monday, January 18, 2010

“...excuse compliance with an order made under this section.

(9) Where a financial institution or listed business subject to an order...”

Now this listed business could be—

Sen. Mark: It could be a law firm.

Sen. Dr. A. Nanan:—anything. It could be a CEPEP contractor actually.

Sen. Mark: Right, you never know.

Sen. Dr. A. Nanan: “Where a financial institution or listed business subject to an order under this section, knowingly—

(a) fails to comply with the order; or

(b) provides false or misleading information in purported compliance with the order,”

5.30 p.m.

Now, we have to be careful with this particular statement of misleading information, because we heard the Attorney General did not want to fill out his integrity form because he had not brought all his belongings from abroad.

Sen. Jeremie SC: It is not that I did not want to, could not.

Sen. Dr. A. Nanan: Oh, he could not because he did not want to mislead the Integrity Commission.

Sen. Jeremie SC: But I did it subsequently. I just wanted you to know that I have complied with the law.

Sen. Dr. A. Nanan: So in a situation like that, Mr. Vice-President—
[*Interruption*]

Sen. Jeremie SC: Not like some people.

Sen. Dr. A. Nanan: In this situation, Mr. Vice-President, you provide false or misleading information in purported compliance with the order, who will determine and how will it be determined that the information provided is false or misleading? We need to get some clarification here because we are dealing with jail time. [*Interruption*]

Sen. Jeremie SC: Ask Ramesh.

Sen. Dr. A. Nanan: "the financial institution or listed business commits an offence and is liable on conviction on indictment to a fine of one million dollars."

One million dollars for some mistake. So you see why we have to be so telescopic in this particular piece of legislation.

Sen. Mark: Very good. Very good, Adesh.

Sen. Jeremie SC: Ten million dollars for—*[Inaudible]*

Sen. Dr. A. Nanan: Alexander and Jeremie could afford more than that. I know that. Clause 12:

"(10) A financial institution or listed business that has been served with an order under this section shall not disclose the existence or operation of the notice to any person..."

If I am running a business and I am now served with an order, I must not tell anybody that I am now served with an order. I shall not disclose the existence or operation of the notice to any person—"except—

- (a) an officer or agent of the institution for the purpose of complying with the order;
- (b) an authorized officer referred to in the order."

Sen. Mark: What is this?

Sen. Dr. A. Nanan: "(11) Where a financial institution or listed business contravenes subsection (10)..."

If I go and tell you my business, I am being monitored by the State.

Sen. Mark: By the Attorney General.

Sen. Dr. A. Nanan: By the political arm of the State.

Sen. Mark: Yes, by the Attorney General, John Jeremie SC.

Sen. Dr. A. Nanan: "it commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars."

My business gone through.

[MR. PRESIDENT *in the Chair*]

Sen. Mark: "They jailing yuh".

Sen. Dr. A. Nanan: No, \$500,000. Probably later on in the legislation.

"24C. (1) A police officer or officer of a law enforcement authority may apply, ex parte to a Judge for a monitoring order directing a financial institution, listed business or non-profit organization..."

Anti-Terrorism (Amdt.) Bill
[SEN. DR. NANAN]

Monday, January 18, 2010

Non-profit. Now these poor churches, all these poor churches, non-profit, could be anyone of those little CBOs that they have around, that are trying to— So you are killing entrepreneurial spirit in this country with this kind of draconian measures.

"...a monitoring order directing a financial institution, listed business or non-profit organization to provide certain information."

Now, non-profit organizations get donations from time to time and they do not know where the donations are coming from. Suppose it is part of a ring to pass it through the non-profit organization to go to the terrorist. The poor non-profit organization now has to go through this monitoring order.

"(2) An application under subsection (1) shall be supported by an affidavit..."

Listen to the monitoring order:

"(3) A monitoring order shall—

- (a) direct a financial institution, listed business or non-profit organization to disclose information it obtained relating to transactions conducted through an account held by a particular person with the financial institution, listed business or non-profit organization;
- (b) not have retrospective effect; and
- (c) only apply for a period not exceeding three months from the date it is made."

Now, this is the next part.

"(4) A Judge shall issue a monitoring order only if he is satisfied that there are reasonable grounds for believing that—

- (a) the person in respect of whose account the order is sought:
 - (i) has committed or was involved in the commission, or is about to commit or be involved in the commission of, an offence; and
 - (ii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of an offence; or
- (b) the account is relevant to identifying, locating or quantifying terrorist property."

You know, when I listen to this thing about terrorist property, the question has to be asked in terms of quarrying in this country, an illegal quarrying, but that is another debate. We really have to quantify terrorist property. Where is the monitoring as Sen. Mark spoke about in terms of monitoring accountability and transparency?

The Minister of National Security said nothing about the working of the anti-terrorist legislation, the parent Act.

"(5) A monitoring order shall specify—" [*Interruption*]

Sen. Jeremie SC: So far only one person got charged. Only one.

Sen. Dr. A. Nanan:

"(a) the name or names in which the account is believed to be held; and

(b) the class of information that the financial institution, listed business or non-profit organisation is required to give."

So, is there a classification for information with respect to the various institutions, or is it one specific type of information that is required, the class of information that the financial institution, listed business or non-profit organization is required to give?

"(6) Where a financial institution, listed business or non-profit, organisation subject to an order under this section knowingly—

(a) fails to comply with the order; or

(b) provides false or misleading information in purported compliance with the order,"

Now, if the non-profit organization says, well, I received this donation from this particular—[*Interruption*]

Sen. Jeremie SC: Foundation.

Sen. Dr. A. Nanan: Foundation or donor. I am not doing anything else. Is it now the onus upon the receiving organization—this is the non-profit organization—to do a background check on everything that is coming in from all these various donations? Is that the intention now to have a kind of clearing house or screening mechanism for funds coming into these organizations? Are you going to now stifle all these organizations that play a major role where the Government has failed in certain parts? We have to ask those questions.

Anti-Terrorism (Amdt.) Bill
[SEN. DR. NANAN]

Monday, January 18, 2010

Here is what—They committed an offence and are liable on a conviction or indictment of a fine of one million dollars. This is million-dollar legislation.

"(7) A financial institution, listed business or non-profit organization that is or has been subject to a monitoring order shall not knowingly disclose the existence or operation of the order to any person..."

They had that again, non-disclosure.

"(8) Where a financial institution, listed business or non-profit organisation contravenes subsection (7)..."

So let me ask you a hypothetical question. If I am in a bar, I am the owner of a business and I am under the influence—*[Interruption]*

Sen. Jeremie SC: You say bar?

Sen. Dr. A. Nanan: Yes—of alcohol—*[Interruption]*

Sen. Jeremie SC: *[Inaudible]*

Sen. Dr. A. Nanan:—and I said that, you know these people are investing me and I said that in the bar, am I going to be charged under this particular piece of legislation? If I disclose that, we have to ask that question: Under what circumstances will this particular clause make reference to? This disclosure?

Sen. Jeremie SC: You see that rum talk—

Sen. Dr. A. Nanan: Clause 13:

"(1) Every person or regulatory authority who has any information which will assist..."

Every person will assist; every person or regulatory authority. "Every person or regulatory authority who has any information which will assist in—

- (a) preventing the commission by another person, of a terrorist act; or
- (b) securing the arrest or prosecution of another person for an offence under this Act, or an offence under any other law and which also constitutes a terrorist act,

shall forthwith disclose the information to a police officer..."

If you only get that information—but you have to be sure. You could probably be charged for wasting police time with this particular legislation.

Mr. President, it is matter of trust or a lack of trust with the Government, and this, so we cannot support this particular Anti-terrorism (Amdt.) Bill, 2010 in its present form.

Thank you. [*Desk thumping*]

Sen. Dana Seetahal SC: Thank you very much, Mr. President. The Bill before us, as had been said I believe by the proposer of the Bill, really is an amendment to the 2005 Act. The chief purpose of this Bill is to criminalize financing of terrorism and to criminalize the possession of the assets, in that it provides for confiscation of the assets from those who finance terrorism.

Now, Mr. President, I do not know that in Trinidad and Tobago we have much of that type of problem. At present, I do not know that. It might be interesting to find out, if this is not in breach of our national security concerns, but I imagine that in this day and age where we have had in recent times, serious issues of terrorism where people have died; where you have threats to countries at large; that there would be an international interest in controlling and in criminalizing the financing of such terrorism by those who can afford it through persons who are zealots or otherwise fanatics in the pursuit of terrorism for religious or perceived religious and other purposes.

Mr. President, what really concerns me in this Bill is the provision throughout the Bill of certain powers to be given to a “law enforcement officer”. There is nowhere in this draft Bill any specific definition of it, except “law enforcement authority”, as provided under the Financial Intelligence Unit of Trinidad and Tobago Act. Now, I remember at that time when we went through this definition, there was concern as to what this meant and whether it would include in time members of SAUTT.

Now, it seems to me that if we are to say that law enforcement authorities will have a wealth of powers, powers of search, powers to apply under section 24 of the original Act, to gather information, to make applications to the court for information. The problem is that if we have an undefined law enforcement agency and we give them all of these powers, we do not know the ranks of the officers in that law enforcement agency, and what we have done now is to reduce— For example, in section 24, we talked about a person of the rank of inspector who would have the power to gather information. Now what we are doing is amending the legislation to say, that any officer. So any constable could do a lot of these things, could seek a lot of information and more importantly, could demand that person hand over to him information concerning terrorists.

The problem, of course, with that is that many persons deeply mistrust or do not deeply trust the police. Put it in another way, they mistrust a lot of them.

5.45 p.m.

So the purpose of having someone of the rank of inspector is to interpolate that kind of protection and to assuage the fears of the ordinary citizen. So if now you have removed that protection from section 24, anyone, virtually, any police officer, any member of a law enforcement agency, may apply to a judge in chambers for an order gathering information. That is what is going to happen. Any officer may execute a search warrant under this Act; any officer—as it is not just police officers again—may apply for a restraint order now. Before it could be any police officer, that was true, but now it is expanded to any law enforcement officer, whose details we do not know. I think that there needs to be something put into this amendment to up the ante, as it were, so that only officers at certain levels of seniority in those law enforcement agencies should be privy to this information. That is the first concern.

In relation to other points, the new Bill provides for a definition of terrorist which was not contained in the original legislation. In the original Anti-terrorism Act there was no definition, now we have at section 2 which provides what terrorist means:

“terrorist’ means a person who—

- (a) commits a terrorist act by any means directly or indirectly, unlawfully or wilfully;”—and then there are other definitions.

If we are now going to define what a terrorist is, I think we have to be very careful about that terminology. A person cannot commit a terrorist act "unlawfully or wilfully". Presumably it would be unlawfully and wilfully? So if you are unlawful, then you are not liable if you are also willful? You have to be careful as to the meaning of that. I think what is meant is unlawfully and wilfully, and that is just one example.

It is useful to have such a definition, although the definition itself contains all the words "terrorism", so it is a kind of semi-circular definition. What it does include, is not only the commission but also participating as an accomplice and so on, which in my view, in any event, under the general criminal law, he would be

caught; but for purposes of clarity I expect it is why the Government is doing it. So I think it is useful; however, you have to bear in mind that if you say terrorist “means” a person, it means it is restricted to that. It should probably read terrorist “includes”, because you do not want to restrict yourself to other growing types of terrorism later on.

This new Bill also amends the primary section in the old legislation. Under the old legislation, section 3, it was provided—this is the start of the 2005 Act, at the outset—that a person who committed a terrorist act was guilty of an offence and liable to imprisonment; so the essence of the offence was a person who committed a terrorist act. Now I see the offence is widened, perhaps to any person who participates in a terrorist act. Do you participate in a terrorist act? Is that clear enough or is it that you participate in the “commission of a terrorist act”? That primary culpability, as it were, needs to be clarified. Do you “participate” in an act? How do you exactly? Do you participate or are you part of the act? When one is prosecuting for an offence under this section, one might have difficulties if it is not made clearer—a person participates in the commission of an act.

Moving along, the primary purpose of this legislation was to prohibit the financing of terrorism, and the offence of the financing of terrorism is spelt out. It seems to me that is clear enough; that a person who, by whatever means, wilfully provides or collects funds for financing terrorism is guilty of or commits the offence of financing terrorism. So there is no real issue with that, in my respectful view.

When we come to the ancillary provisions, however, there might be concern. The first ancillary provision is the new listing order. I think other Senators have mentioned it before, but there is now a provision for the Attorney General to apply to a judge for an order in respect of an entity included in the UN list of entities as terrorists. Apparently the UN has a list of terrorist organizations. It is thought that this list should be published from time to time. What is good about this provision is that it is not done directly; it is only done consequent upon an application to a judge for an order to publish this list and to freeze assets. I think that is a useful and wise thing actually, because there is protection of the courts from the exercise of executive function.

Two things that we must be concerned with: one is 22B as drafted:

“22B. (1) The Attorney General shall apply to a Judge for an order under subsection (3)...”

that is the order to declare an entity listed as one of those entities that we are talking about, “where the Director of Public Prosecutions (DPP) has reasonable grounds to believe that the entity has committed or participated in the commission of a terrorist act.”

If a person is applying for an order on reasonable grounds, usually it is of his own belief. I do not know how it would work out in court that say I am applying for an order on the basis of Sen. Ali's reasonable belief. Of course, Sen. Ali could go on affidavit, but then his belief would become my belief. So it is really the person who is applying for that order who must be the one who has this belief. What he bases that belief on is a different thing. He could base that belief on affidavit evidence from police officers, from the DPP or the DPP staff or whoever, so I feel that 22B (1)(b) should read:

"where he has reasonable grounds to believe that the entity has knowingly committed an offence."

So 22B which gives the AG power to apply to a judge for an order—bear in mind that it is not the Attorney General who is going to be doing this on his own, the fact that he is going to a judge, he would have to convince the judge, just as if you were applying for an injunction or some other ex parte order, and there is provision for affidavit evidence. It seems to me that he is applying for it based on reasonable grounds that the DPP has. His grounds, that is the AG's, could be based on evidence from the DPP, but it remains his grounds.

So a police officer, for example, when he arrests the person, has reasonable grounds to believe that an indictable offence has occurred. Where does he get the reasonable grounds from? Usually from information, which means he has an informant. An informant either discloses or not discloses. So having got that evidence, then he has the reasonable grounds. I think it is critical and needs to be considered and amended.

The second point is that under subclause (5), once the Attorney General gets the order, he:

"...within seven days after the date...cause to be published in the *Gazette* and in two daily newspapers..."—the copy of order, which is the listing.

I think it should not be mandatory for the Attorney General to do; it should be made, because he ought to be able to exercise a discretion whether to publish or not. Why I say this is because at some time in the future we may have trials where terrorist organizations may be before the court. If you have a listing of any one of those organizations by the UN and you print in the daily newspapers, "Terrorist organizations of the United Nations", if that organization is coming up for trial in a few months and they are going to be printed again after, if they are still on the list by the UN, is that not recurrent pre-trial publicity? On that basis alone the organization could ask that the matter be stayed. It is possible that a trial could be

stayed because of that kind of publicity. I am suggesting that at subclause (5) the use of the word "may" be included, and somewhere in that it might be useful to include, "having regard to the question of prejudicial pre-trial publicity" or something of that nature.

Mr. President, there are provisions in the Bill for an onus on a financial institution to report to the FIU, the Financial Intelligence Unit, in relation to organizations, individuals or legal entities who they believe have committed terrorist acts or is an entity on the UN's list or where the transactions seem to be suspicious, in that, they might be afool of the FATF. I do not see anything really questionable about that. I think it is necessary that financial institutions have these obligations to disclose certain things, otherwise we would just go along having financial institutions in this country facilitate money laundering and matters of that kind, as has happened in other jurisdictions because they have had no obligations or they pay heed to no obligations, and people know that they are safe havens and say "We can get away with all kinds of criminal activities there". I think the obligation to disclose to the FIU is important. It is a good thing to have it there.

The obligation to the FIU who, after it receives the information—the FIU is supposed to be comprised of persons who are specialists, people who are experts in various fields dealing with finance and matters of that kind, presumably money laundering—having looked at the information from various organizations: the banks, the credit unions and what have you, they would decide that an investigation by the police—I prefer not to say "law enforcement authority", is necessary and then they send it to the "relevant law enforcement authority." Whoever that is, again, is in question, because the legislation defines "law enforcement authority" as one under the FIU. I am not too sure what "relevant" means; I guess it is meant to suggest that whoever it is most appropriate to.

This brings me to the point that until and unless the Government brings before this Parliament legislation dealing with the Special Anti-Crime Unit of Trinidad and Tobago (SAUTT), which we have been promised legislation, Minister, this Bill cannot become law, because it really makes no sense. We only have one law enforcement agency of any count; that does not include Customs, because there is a separate designation of customs under this Bill; so law enforcement agency has to mean the police and any other new agency.

All the units that Sen. Mark and, I believe, Sen. Dr. Nanan referred to, are mere units within the police service. So you need to pass that law re SAUTT otherwise they cannot act, and the way it has been operating in this country, where that agency, which is not a valid legal entity yet, has so many resources, it

Anti-Terrorism (Amdt.) Bill
[SEN. SEETAHAL SC]

Monday, January 18, 2010

would not be able to use any of these resources in a way to fall within this legislation and this Bill, if they are not legalized. In other words, a lot of their activities would be by the way or on the side, as is happening right now. This legislation would have to come into effect when that legislation is passed.

Authority for search—The new or proposed 24A(1) merely expands the previous law. There is not much more outside of what there was—actually this is new. This is the new provision expanding the powers of search and did not emanate—*[Interruption]*

6.00 p.m.

Section 24A(1), the previous section dealt with gathering information. Under the new legislation, authority has now been given for search which is a common power given to the police when you have a suspicion that an offence has occurred. So I see nothing new in that.

If you have the power to search, then you have power to retain material which can be used to prosecute an offence. The only real issue with that is that now you are extending that power to law enforcement agencies, whereas before, it was the prerogative of the police or the customs under their legislation. So if you are going to have that we need to be much more careful because you cannot be giving persons powers willy-nilly. You cannot be giving persons who are uncertain or unsure or organizations which are not yet within the law.

The new legislation continues for provision of customer information order and there seems to be some concern about this. Under the current Evidence Act, section 30, there is a provision on the application of any party to a legal proceeding, a court or judge may order that the party be at liberty to inspect and take copies of any entry in a banker's book for any of the purposes of the proceedings. An order under this section may be made either with or without summoning the bank or any other person and shall be served on the bank three clear days.

The point is that while we say we have all these concerns divulging information, the power is already there for a person to go before a judge to inspect bank records. Police officers can currently do that under the Evidence Act and they have done it in court. Of course, there are bankers who are unwilling, but if you go to court, and you get an order, they must do so.

The customer information order, there is also a monitoring order and now, there is under—when I say there is I mean there will be of course—the proposed 32 a new duty of disclosure and I have a concern with that.

Previously, Mr. President, every person in authority who has any information which will assist in preventing the commission of a terrorist act, or securing the arrest or prosecution of a person shall forthwith disclose the information to a police officer. This is the proposal.

Previously it was: shall forthwith disclose that information to a sergeant, a police officer not below the rank of a sergeant. Now with the amendment, you are talking about any old police officer, constable and up, and a person of a law enforcement agency.

The only good thing about this is that many persons do not know about this requirement and they will not know. After today probably people will forget the next few months. So it has not been abused and that is the problem; too many powers we have can be abused. So if I am saying to you to forthwith disclose this information, arbitrary police officers can, if they wish, and if they knew, exercise powers under this and other legislation to command their ordinary citizens against whom they have malice. So we need to understand that and we need to—through you, Mr. President, to the Attorney General and the Minister of National Security—ensure that the Police Complaints Division is operating properly.

We cannot be thinking about widening the ambit of police powers especially in this day and age when we have about 50 media and people looking on and all exposé, that is one thing; as well as the history of abuse by persons who have the power and do not know how to control those powers without having the protection of the complaints mechanism.

So that is something that needs to be looked after. It is not working as it should right now, I do not know if the Commissioner of Police Department needs some kind of ancillary department there to ensure that correspondence is dealt with. Right now a response to a complaint is a rare event.

The legislation deals, of course, with expanding restraint orders. All of these amendments really have to do with expanding the powers to law enforcement officers. I have said what I had to say about that.

There is an interesting new provision dealing with the seizure and retention of cash:

"Any customs officer, police officer or officer of a law enforcement agency may seize and detain any part or the whole amount of any cash where it is suspected that it is intended for the use of committing an offence under this Act."

Anti-Terrorism (Amdt.) Bill
[SEN. SEETAHAL SC]

Monday, January 18, 2010

The thing is here, Mr. President, through you to the Minister of National Security, when you have reports in the newspapers, US \$91,000 missing from a police station, you have very little confidence created in the citizen, or to put it the converse way; citizens have no trust, or little trust, or they might be suspicious of this.

It might be one individual or two; I do not think it was the entire station, but it is a lot of money. That is over TT \$500,000 missing; you may say it is foolhardy to secure that in a police station and I will agree with you. The fact is, however, if you are talking about terrorist financing and you are giving any customs officer, any police officer, anybody, this kind of power, do we have mechanisms in place to ensure that these things are lodged properly, or will we? What is being done about that? I would like to find out because I know there are Standing Orders and ever so often when you ask about all these different registers, there is even a pocket diary register—I actually found that out last night—for the issuance of pocket diaries.

Do you know every single one out of all police officers I have asked on the other side—Where is your pocket diary?—did not have any because none was issued? Now that I know there is a register, the next time anyone says that, I am going to call for the register and see whether or not they were issued. That is the point I am making here; that you are having these powers for seizure of cash—*[Interruption]* It is not that kind of pocket diary, it is a little black one with an elastic band over it and you write a certain way, and you record your events.

Maybe we should start dealing with logs like the British where every two minutes they write what they did in the course of searching and seizing and maybe that is what should happen. Maybe in this way, we can protect the officers from themselves and that is a point to the Minister of National Security through you, Mr. President, because we are all concerned about the disappearance of valuable items. Whether it is money or drugs; terrorists deal in drugs, you know, to finance their terrorism and that is just one small thing.

Something that goes missing too is cocaine. It is valuable, it is said that 1 kilogram of cocaine, street value could be \$2 million; so think about that when you have all these things missing.

Moving along, there is in relation to that provision, the seizure and retention of cash, the police officer would seize it initially in order to keep it, the Director of Public Prosecutions under clause 5 may make his views to the judge and the judge will decide whether to extend the detention.

The Director of Public Prosecutions may also, under this, apply to the judge to forfeit the cash and then it becomes the cash presumably of the State and it is not said here but I would like to know where it goes, or where it is intended. In other countries, for instance, the United States of America when these moneys, boats and so forth are seized, you have the boat used by the police or by the coast guard and it actually has a psychological effect when these criminals see the police, the coast guard or the law enforcement agency (LEA) are doing their job with their equipment. I do not know why it cannot be put in there or somewhere that it then becomes the property of the Government to be used in law enforcement exercises or something of that nature. To make sure that you do not go through a long process where you see these things just sitting there and no one knows what happened to them and they are wasted. So I think either through rules or right in the legislation you can put it in; because if you wait for those rules, it might be another seven years.

Another point in connection with this is the legislation says that the application and views shall be of the Director of Public Prosecutions (DPP). My question is—and contrary to what Sen. Mark says—seeing that the Attorney General is involved in MILAT's matters (Mutual Legal Assistance), things to do with extraditions and conventions and the Terrorism Act has a lot to do with the enforcing of these conventions and cross national matters, it would seem to me that the Attorney General should be included here in terms of the application for seizure. It should be either the Attorney General or the Director of Public Prosecutions (DPP). That would be useful because seeing that the DPP would not even know about matters involving extradition, the DPP has nothing to do with extradition or MILAT's because these are matters that deal with foreign governments.

Anything to do with foreign governments it is the Executive arm, that is the Attorney General; State to State as Sen. Prof. Deosaran is pointing out. That is why extradition is government to government and its representatives, so therefore it has nothing to do with the local internal prosecutions. The Director of Public Prosecutions (DPP) is responsible for the prosecution of offences. I think there was some question raised on this; whereas the DPP is responsible for matters that are across nations and the providing and asking for assistance so the DPP himself, if we need witnesses from abroad, for example, it would have to go through the Attorney General.

So I would think if things are seized and it becomes clear that those matters could be the source of an offence which could be indicted abroad—for instance, you have drugs that are in Trinidad, but the intended person to receive that is somewhere in the United States of America, and it is an offence in the US, and

Anti-Terrorism (Amdt.) Bill
[SEN. SEETAHAL SC]

Monday, January 18, 2010

then the United States of America may ask for extradition of persons here and you have all that money, and the boat possibly and the drugs which would be disposed of not sold again to make more money. So the money, the boat, the equipment, the person here with property, what happens to them? That is a matter for the Attorney General to deal with and, therefore, I think that provision ought to be made here for him to have that power otherwise it would take forever and reside in the bosom of the DPP alone who will not be concerned with that kind of offence because it does not fall within his purview.

Mr. President, there are other minor matters, one or two I have pointed out, of drafting or need for clarity to my mind. For instance, you include an entity “on” a list or “in” a list, things like that, but I would not trouble this Parliament at this time. I think that is a useful piece of amendment to the parent Act and the intention is good, but we need to be careful about the powers how they are posited and how they rest insofar as law enforcement agencies in particular are concerned.

Thank you very much.

6.15 p.m.

Sen. Laurel Lezama: Mr. President, thank you very much for giving me this opportunity to make this very brief intervention on the Anti-Terrorism (Amdt.) Bill, 2010. We live in a digitally enhanced era when at the click of a button I can contact my allies in Australia perhaps, or anywhere around the world, have this communication, be on par with one another and have something done. It is a reality that the world over faces acts of terrorism by different groups around the world, be it in the Middle East, the Africas, the Americas or even right here in the Caribbean. It therefore is incumbent on the Government of Trinidad and Tobago to do everything in its power to ensure that its citizenry, nationals and visitors are all protected.

When the Minister of National Security brings these amendments to Parliament to include something as important as the financing of terrorism, the seizure of terrorists' assets and those involved in the financing of terrorism and related matters, I would have assumed that it would have won the overwhelming support of all the Senators in this honourable Chamber. When I was listening to some of the Opposition Senators speak earlier, I have to say that I was disturbed and unsettled. It was rather unnerving because the pervading theme coming from the two Senators so far was that there is a fear in the country and there is the issue of trust of the Government.

I wish to categorically place on the record here this evening, that when you contest an election and you are democratically put into government, you are given a clear mandate with the people's trust to take the country forward to deal with the people's issues and to protect the citizens.

Something else that was also brought up was the issue of democracy in the country. As I like to say, all our actions begin at home. It is something with which I must treat. Sen. Mark made reference to human rights and fundamental freedom and that those lie at the heart of all democracies. Under the UNC Alliance citizens' rights are never compromised and the UNC is the eyes and ears of the democracy. That is unadulterated hypocritical nonsense. On January 24, the People's National Movement would be celebrating 54 years as a party offering its services to the people of Trinidad and Tobago.

Ironically, on January 24, the United National Congress will be having what it deems the mother of all elections.

Sen. Rahman: One man one vote.

Sen. L. Lezama: One man one vote? Unfortunately, the 16,000 persons who registered to vote are being denied [*Desk thumping*] as well as the 1,800 from Chaguanas West. It is really unfortunate that Senators would stand here bound by hypocrisy, riding on clouds of delusion of grandeur that all is well in their camp. Having been rejected by the electorate and the people, they come here and have the audacity to say that this Government does not have a clear mandate to treat with the people's business, especially with something as serious as the financing of terrorism.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon Conrad Enill): Mr. President, I hate to do this, but in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until maybe around 8.30 p.m. or before depending on what takes place.

Mr. President: Think about it.

Sen. The Hon. C. Enill: Until 10.00 p.m., Mr. President.

Question put and agreed to.

ANTI-TERRORISM (AMDT.) BILL

Sen. L. Lezama: Thank you very much, Mr. President. As I was speaking about the hypocrisy of speaking about the issue of trust, what about the trust of the young children? They speak of vindictiveness of this Government. During the

Anti-Terrorism (Amdt.) Bill
[SEN. LEZAMA]

Monday, January 18, 2010

last sitting I received a magazine published by the Member of Parliament for Chaguanas West. In it there was a picture of a very young girl crying in a yellow T-shirt. Clearly, she was from an opposing sect. Vindictiveness to me is when you have adult politicians assaulting young children and making them cry because they support their parents who support an opposing view. Vindictiveness is trying to force my dear, dear Sen. Lyndira Oudit to resign when she makes sterling contributions in the Senate. [*Desk thumping*] That is vindictiveness.

The issue of trust is when you are about to enter an election and you are not guaranteed that the votes cast for you would be counted and given to you rightfully. That is where the issue of trust should be considered.

Sen. Dr. Adesh Nanan spoke about the conventions signed by the UNC administration in 2001. I wish he were in this Chamber at this time. I beg to ask him: Are you merely a signatory by putting your hand on the paper and not promising to live the ideals that are recommended? When you become a signatory to these international treaties you are supposed to adhere to them and ensure that such policies are implemented in your country and jurisdiction. Let us not even talk about the CCJ. When you are in government it is one story, but when you go into opposition it is a completely different kettle of fish.

All these Financial Action Task Force recommendations, are we now going to have them rejected by the same Opposition that boasts to be a signatory of many of these conventions? I want to know. I think that it is very offensive when Members of Parliament could talk about police with political agendas, police with bias, insulting the very officers who protect and serve each of us in this Chamber and across Trinidad and Tobago. [*Desk thumping*]

They spoke about the invasion of privacy. To me blatant disregard to that false belief is when you stand on a political platform and announce people's phone numbers and personal addresses. That is an invasion of privacy. You cannot stand here with a forked tongue and talk all these different things. You are saying one thing with your mouth, but you are acting differently. That is why, I have said it before, we are here and they are there. We have been given a clear mandate to govern. Once again, they have been rejected.

I hope that with all the other sterling contributions that are going to be made from this side as well as from the Independent Senators who have made some very brilliant contributions thus far, that some sense is brought to the debate in so far as the Opposition's contribution is concerned. I wish to support this legislation

wholeheartedly and I trust that my colleagues will see the same, as we seek to provide a better country for our citizens in Trinidad and Tobago. [*Desk thumping*]

Thank you.

Sen. Lyndira Oudit: Mr. President, I thank you for the opportunity to speak on the Anti-terrorism (Amdt.) Bill, 2010. First of all, I publicly acknowledge my appreciation for the concern raised in this Senate about the irregularities that are feared to be possibilities in what is turning out to be the mother of all elections. I appreciate the sentiment. However, I am heartened to hear the voice of the young Senator, but I must indicate that with respect to this Bill, there seems to be a discontent in the lives of people throughout and a sort of disconnect between the words of the Senator and the pervasive language of fear that, unfortunately, comes from the voices of victims not only of criminal acts, but also possibly of terrorist acts. When Senators on this side speak of fear we have to recognize and give cognizance to the validity of those fears. I thank the Senator. I also wish to point out that we have to recognize the fears offered on the side of these individuals here.

I ask the question of the sense of timeliness in this piece of legislation. I do not refer to the timeliness being that we might be blacklisted or sanctioned. I am suggesting that in light of the environment globally, I would hate to think, as with the FIU and other pieces of legislation we passed at the end of the last session, we are not bringing legislation to Parliament because we feel the urgency to implement and incorporate international pieces of legislation to protect. There is nothing wrong with wanting to protect your people, regionally, internationally and globally. However, we have to be careful that we are not simply putting a collective house arrest.

Sen. Mark referred to the rights of individuals. I point out that I hope that we are not putting a collective house arrest while allowing individuals or entities to use the loopholes that are presented in the very weighty pieces of legislation that we so hurriedly put together and we are passing them all in an effort—I state that the intention of the legislation, this one as well as the FIU, et cetera, is excellent but we have to be careful.

I have spoken in the past in this Parliament about loopholes. I have also urged that when these loopholes are pointed out, the onus is on the Government. You cannot turn around and say you did not know or you were not informed. If the loopholes are pointed out, the onus is to make it better. If you can do so at this stage before it goes anywhere else, please do so. This is the highest area of public consultation that the country can afford for any passage of legislation.

With that in mind I indicate my first concern, which is the reason it possibly took so long. I have the database for the International Convention for the Suppression of the Financing of Terrorism status as at January 15, 2010. This is treaties.un.org as the site. There are 176 countries listed in this particular document of which Trinidad and Tobago is one of them.

6.30 p.m.

There are three sections: The Participant; The Signature; Date, as well as the Ratification or Accession. So there are three columns. Next to Trinidad and Tobago we do have, not the 3rd of September as the Attorney General pointed out; it is the 23rd. Maybe the ink ran out in the printer. It is the 23rd of September 2009 as the date it was acceded to and there is no signature next to Trinidad and Tobago.

There are only four countries out of the 176 countries that acceded to this; there are only four countries that signed as late as 2009. Those countries are Niue, Pakistan, Solomon Islands and Trinidad and Tobago. Out of 176 countries, these are the only four that signed as late as 2009. All the other countries signed way before, starting from 2001, et cetera. That is the first thing.

The second thing is that all 176 did not sign. Forty-three of the countries did not sign as having their initial signature and the Attorney General knows that Trinidad and Tobago never did sign. In fact, that would have showed our ratification, acceptance and approval. What we did was, we went to accession.

So that there are many things, according to what Sen. Mark has indicated, not what the Minister said, but what he did not say. So we have to be very clear that we are not misleading the powers that be who actually have access to the same databases that researchers would have had, and it is unfortunate that these are things that are not clearly told to the population.

Now, in terms of the definition, I would like to refer to the definition as given and I would like to direct the Minister in his research to possibly look at what is referred to as the "State Watch" or "terrorist listing". There are four major regions: the US, UK, the UN and the European Union. What this State Watch does is a comparative analysis on acts of terrorism, law enforcement agencies, listing, legal issues, exclusions, inclusions, et cetera.

We had a question of what is the definition of terrorism. It is not included in our piece of legislation. I would just like to read for you what is a simple and acceptable definition according to these four groupings in the world: the US, UK, the UN and the European Union. It says:

"The definition of terrorism:

The use or threat of action designed to influence the Government or to intimidate the public or a section of the public for the purpose of advancing a political, religious or ideological cause."

It further went on to identify what were considered criminal acts.

One of the loopholes in this piece of legislation, as was pointed out by two Senators in this debate, is you do not have a definition of the word "terrorism". So I would assume that there is going to be some amendment where you have— simply because a terrorist may be an individual who may involve himself in a terrorist act, which is based on time, place and circumstance. Because you could be a terrorist not doing anything, but if you are involved in an act, then you are part of the terrorist act and then you can be charged for terrorism.

So I may very well have terrorist tendencies, but I may not be involved in an action and I think it was clearly pointed out by Senior Counsel Dana Seetahal, when she indicated that we have to be very clear that we do not allow for loopholes so that the real terrorists out there could say, "Ha, boy, they ain't even define it." So I could sit in my home and plan all sorts of things, but never become involved in an act. So we are simply leaving room for loopholes.

Mr. President, section 22B of this piece of legislation refers to the listing. But I would like to identify that, again, if we are going with international standards and international benchmarks, there are categories of listing and the Attorney General as well as the Minister of National Security ought to be in a position to indicate to the country, in order to be ratified further by your international agencies, that you do comply with what is required as your listing. There is what is called "scope of lists" and they are varied. For example, there are three identified: foreign terrorist organizations; organizations and individuals linked to terrorism, because they need not be within an organization; and three, terrorist exclusion lists.

So that we have people here who are considered aliens but associated with terrorist entities or designations. So for the purposes of bringing this piece of legislation in 2010, it is hoped that you can find some way to include—

Sen. Jeremie SC: We have the list.

Sen. L. Oudit: Right. The scope of lists, so that, again, we do not provide loopholes. This ought not to be about providing loopholes. You see, if it is for eyes only, hon. Attorney General—if it is for eyes only—then we do not have

Anti-Terrorism (Amdt.) Bill
[SEN. OUDIT]

Monday, January 18, 2010

access to it. But it should have been included here and therefore the public would have had access to it. So for eyes only—there are certain things of national security, certainly you will not want, but this is in the public domain. You can Google this information and get it.

The Minister referred to this recommendation as complying with FATF, the 40 recommendations as well as the nine special recommendations that deal with terrorist financing. Terrorist financing, that particular piece of legislation, actually when the FATF came about, they decided that there was need to expand on what was called Recommendation No. 19 and Recommendation No.19 is very clear.

On October 06, 2009, it says that basically we had to include a modification and the modification was to identify the central agency, and also Senior Counsel Dana Seetahal referred to your central agency. Are we to assume, since you have replaced the words "Designated Authority" with the FIU, that your central agency is now going to be the FIU? But we also had concerns when that piece of legislation came, simply because of the appointment of the deputy director and the director and the politicizing of the agencies. So we have to be very careful, Mr. Attorney General, that we do not politicize the machinery.

Sen. Jeremie SC: You are going against—

Sen. L. Oudit: No, I am not going against. I am saying that we have to be very careful that we do not.

Mr. President, clause 5 deals with terrorist organizations. Clause 5 of the Bill is quite interesting and what it referred to was a legal entity which is a list of entities designated as terrorist activities. My question is: Why are we including the word "legal" when all of the international regulations did not include the word "legal"? It left it free for the interpretation of the legislation to include—and I will tell you what it is here:

"Persons or organizations, individuals or groups or undertakings or registered associations."

So when you put legal entities or groups, we have to understand what is the criteria for being included and there is a clear criteria for inclusion in international anti-terrorist legislation.

There are several areas that you must look at and this piece of legislation does not spell it out. So, again, we are going ahead full steam, hurriedly, but we are leaving out critical pieces of information that normally come back to bite us in the back. We have to be very careful—the nature and scale of the organizational

activities. We have to include persons, groups, individuals or any entity legally associated or incorporated or not. Therefore, we should not put in here that it should only cover "legal entities".

That is one of the points that I wanted to make. If you look at section 22C(2), again, it came down to the question of legal entities. So we have to be careful that we remove the word "legal" and we do not give individuals who are not associated in any organization the right of passage of freedom to act in a terrorist manner.

Sen. Dr. Dick-Forde: I just want to ask, for clarity, could you just tell me where you saw that again? You said section 22C, something. I am trying to follow you.

Sen. L. Oudit: Section 22C(1).

Sen. Dr. Dick-Forde: You said it says "legal" again. Okay, thanks.

Sen. L. Oudit: Yes, legal entity; referring to legal entity.

Sen. Dr. Dick-Forde: Okay, I am seeing it. Thank you.

Sen. L. Oudit: You are welcome.

Mr. President, nowhere in this piece of legislation is there any reference to the expiration of any designations that may have been given. So that when a person is identified on a list, is it for life of the organization? So according to this international benchmark, we have to include an expiry of designation. In fact, internationally, it says that we indicate two years after a review of all the criteria that have been identified.

Sen. Dr. Nanan did speak about non-profit organizations and in speaking about non-profit organizations, the question of election campaigning and the funding that is used during election campaigning. In fact, that was a Motion that was brought to this very Parliament by Sen. Prof. Ramesh Deosaran. So we have to ask, if it is that non-profit organizations or NGOs are included in this piece of legislation, do we have supporting legislation, for example, through the association of incorporation and companies information that we can cross reference and we can have checks and balances where it is recognized that NGOs in particular are very vulnerable when it comes to being used by legal entities for terrorist activities? And there is a whole list in the public domain as to what are some of the examples and the experiences worldwide, of this. We have to ask ourselves, really and truly, do we have a supportive network of legislation at this point?

Anti-Terrorism (Amdt.) Bill
[SEN. OUDIT]

Monday, January 18, 2010

At this point, I do not wish to state with any degree of expertise what I feel should have been a better piece of legislation. I do not wish to stay very long; I think this debate really has to deal with how we are providing legislation, but we also have to deal with the loopholes, Mr. Attorney General, through you, Mr. President, and there are several loopholes. In fact, Sen. Seetahal SC, identified several in terms of the minor aspects, but I would hope that you can take all of the reasonable suggestions that have been given so that when we pass this and you take it to the House on Wednesday, for example, that you actually have a stronger piece of legislation. It is our hope that we can work together on this because it is important.

I thank you. [*Desk thumping*]

6.45 p.m.

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Mr. President, I would like to make a very brief intervention to try to add some clarity to the discourse and to support the Bill.

Very briefly, what we have heard so far has gone just where you would have expected it—hearing a lot of ranting and raving from Sen. Mark that did not add—[*Interruption*—It did not sound nice to me at all. I had great concern that the very serious issue of terrorism and what it means was lost on him and Sen. Dr. Nanan.

We are in a very strange time in the world, and whereas other countries have had to deal with terrorism in the Middle East and so on, it took the act, in 2001 in particular—even though there might have been others in the past—the world changed dramatically. The very comprehensive opening of the debate by the Minister of National Security showed that, since 1972, conventions with respect to terrorism were being put forward. It means that these have been global issues, but not in a way that has changed everybody's lives the way it happened in 2001.

So we are dealing with an issue that has changed people's lives. We never had to go through airports and take off our shoes and now we have to as a result of terrorism. So when the hue and cry is being raised about matters being constitutional and draconian, we seem not to be able to put things in context. We hear the word "draconian" for every Bill and this is quite a serious matter.

For everyone who travels and even for those who do not travel—the majority of people who died in the September 11 event were not travelling. When it happened, I was at UWI as a lecturer. I recall—it was on TV happening in New York—that the first thing that came to my mind was to get my children and take them home.

It was not in the country where I was. That is how serious these issues are and should not be trivialized to get cheap political points on the front page of the newspapers. They are serious issues, so when we come to the table to discuss an amendment that deals with a critical part of dealing with terrorism, which is financing—if you dry up the financing, you will see a reduction in these acts.

Most recently, in December, we saw a young man try to blow up a plane with well over 300 persons. It is not something that we can take lightly. It is a major change in the world; therefore this is a very important Bill that requires a serious look on the part of all involved. We are seeing it from the Independents and from here, but we are not sure if that is what we are seeing from the Opposition.

I want to support the amendment and to go through some of what was raised by Sen. Oudit. I have covered Sen. Mark and Sen. Dr. Nanan simply by that context alone.

I did not understand the point that Sen. Oudit made with respect to the whole issue of discontent and the voices from victims of terrorist acts. That point made absolutely no sense. You said that they have to recognize the fears of these individuals. From the terrorists or from the victims?

Sen. Oudit: I was simply responding to the opening remarks of Sen. Lezama when she indicated there was no fear in the country. That is the disconnect I was referring to.

Sen. The Hon. Dr. E. Dick-Forde: I think you misunderstood what Sen. Lezama was saying. Sen. Lezama was saying that the Opposition's story, as presented by Sen. Mark and Sen. Dr. Nanan, was that people were afraid of the Government and so they did not trust the Government. Your point about the victims of terrorist acts did not make sense.

I was waiting for the loopholes. I have not heard them. You had some research which was good; much better than your colleagues who spoke before you. What I found interesting was the whole issue of the international standards and there is actually one thing that would need to be considered—the issue of the central agencies. Certainly your research was sound, but your explanations seem to have dropped into a hole afterward. I could not follow some of what you were trying to say and that is not from a lack of understanding.

I think that piggy-backing on what Independent Senators say is a new skill of the Opposition. Sen. Seetahal SC was referred to over and over for credibility, but it was not linked to some of what she actually said.

Sen. Oudit: I identified clear loopholes. I identified that the definition of “terrorism” is missing and should be included. I identified the lists and the criteria used for inclusion in the listing; the non-profit organizations and the relationship; the expiry of designations as well as the legal aspect, and the removal of the words “legal entity” from the clauses.

Sen. The Hon. Dr. E. Dick-Forde: You are saying that we should remove the words “legal entity”. I was coming to that in a minute, but I heard the Attorney General tell you that there was that scope of list. The expiration, I am sure, will be explained by the Minister of National Security or the hon. Attorney General.

With respect to the definition of “legal entities”, there is a definition on page 3. When you look at organizations and how you explain them, the definition of a legal entity is broad enough to include all organizations that you could possibly want. You also have non-profit organizations lower down on that same page, which is very broad. “Legal entity” means a body corporate, foundation, partnership, association or other similar body and the key explanation for “legal entity” is “or other similar body that can establish a permanent customer relationship with a financial institution or otherwise own property”. So the strength of this definition is not in the name “legal entity”; it is in the definition itself, “or other similar body”, which covers just about anybody who can open an account.

Sen. Oudit: With all due respect, Madam Minister, you did not understand the point. I am saying that for that very reason, it is not supposed to be in this legislation. If you are looking at anti-terrorism, and all of the offshoots as well as non-profit organizations, you have to identify them. It is not only legal entities, there are individuals. There are organizations which may not, and that has to be if you have to broaden the definition to include individuals and other groups.

Sen. The Hon. Dr. E. Dick-Forde: You are saying that when we identify who is a terrorist, it does not capture an individual. A terrorist is an individual described here, who can also finance terrorism. You do not have to put an individual separate.

In my own research on this, there are both legal entities and non-profit organizations defined and the research shows that for all of the terrorist acts that were both committed and prevented, particular types of organizations were used. There were churches, legitimate and illegitimate businesses. I believe that legal entities and non-profit organizations cover those. To leave it open for individuals is to create a loophole. By defining legal entity carefully, you have included a wide range of legal entities.

If there is a need for the capture of individuals, that will have to be separate, but legal entities are widely defined to capture any institution, organization, foundation, partnership, association or similar body that can establish a permanent customer relationship with a financial institution.

One of the things they found in terrorism and terrorism financing is that most, if not all, of the financing has come in an institutional form. It has not been from individuals. The Minister of National Security will have to speak to that if there is a need now to define individuals. You do not have to define individual. That is standard. You have to define what an entity is, engaging with a financial institution that would come under the ambit of this kind of legislation and certainly non-profit organizations.

The research is very clear that these are the types of vehicles that have been used to finance terrorism and, therefore, need to be carefully outlined. If you look at the definition of non-profit organization, it means a legal entity or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes or for the carrying out of other types of philanthropic work. That really captures the majority of institutions; not only those that were involved, but that could actually be doing it.

Quite a number of the September 11 suicide bombers were in the US for educational purposes and funds were funnelled to them as if they were getting funds for studying. From my own research, I find that these two definitions are wide. Maybe they need to put “individual” and define it. As I said before, I did not understand your point and it was not for lack of comprehension skills.

There was a point made by Sen. Dr. Nanan that baffled me. It had something to do with financing by NGOs and why it is their responsibility to know where money comes from—the requirements for NGOs and non-profit organizations to know the source of funds when accepting it. I questioned his being able to say something like that. For example, some churches—I belong to a church and you should never accept funds for which you do not know the source, especially large amounts of money. It is your responsibility as a citizen and an organization to know the source of funds coming to you. You should not accept money from anybody and everybody.

That is why the law must be commonsense and it is a commonsense thing for persons to be able to say where they got their funds. I lived in Barbados for a long time and even when the University of the West Indies gave you a cheque that was

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. E. DICK-FORDE]

Monday, January 18, 2010

over \$10,000, you had to say why, even though that was your employer. That is part of common practice across the world with respect to these issues.

My interjection is simply to say that I needed to hear a little more because there was a long interjection in the beginning about loopholes and one or two that you called that might be legitimate I may have missed because they were clouded by the ones that were not legitimate.

7.00 p.m.

Mr. President, my concern as a person who has to travel ever so often and as an individual living in this world, is that this is a very important piece of legislation that seeks to bring Trinidad and Tobago, which is an increasingly attractive country, to many, many people—Internationally, we have had two major conferences. We have seen people coming and more people wanting to come, whether it is just for holidays or to set up business. We have many people showing interest in the country. We would need to get these pieces of legislation in place to have a tighter—we already have a level of control—control over these aspects of terrorism and terrorism financing that are critical to the safety of the global and certainly for the safety of each and every citizen in Trinidad and Tobago.

I willingly take off my shoes or whatever else they ask you to take off when going through the airports. I do not mind if they keep me in the lines for hours checking bags back and forth, because at the end of the day when you go on to the airplane you feel a lot safer. This is also another aspect or level of control to protect citizens.

There is the whole thing about violating sections 4 and 5 of the Constitution. The Opposition somehow seems to forget that section 13 of the same Constitution gives you the opportunity to say that an Act is still in effect even though inconsistent with those two sections. The mere fact that you have that provision, means that it is on the Government's part to come and convince the Parliament that indeed this is important.

I hope this reminds people of how serious these acts of terrorism have become and how important it is for us to actually give up a little bit of our rights, or even a little bit more of our rights, so we can have the right to live. I prefer to live and be searched for 10 hours than to be blown up because people do not want to be checked.

There is a word in the *Bible* that says the law is for the lawless. I think we need to be very particular. The law is for the lawless. It is a very important word. This should not bother people who are operating legitimately. It does not say that people cannot criticize it; I am not saying that. The criticism that comes from the point of view of people being afraid of the Government and that kind of argument really does not hold in such a serious matter as terrorism financing.

Certainly, we have seen this Senate, particularly Independent Senators, giving significant contributions that have improved the Bills that have come before the Senate and we look forward to those, but we are imploring the Opposition to think through their oppositional stance and to take one that actually recognizes the seriousness of what is before us.

Thank you, Mr. President, for this opportunity to contribute.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you very much, Mr. President. I rise to add my voice to a Bill:

“to criminalize terrorism and the financing of terrorism, to provide for the detection, prevention, prosecution, conviction and punishment of terrorist activities and the confiscation, forfeiture and seizure of terrorists’ assets...”

This long title, which has been now repealed, is now cited as the very simple Anti-terrorism (Amdt.) Bill.

The purpose of the Bill is simply to criminalize the use of funds, which have been used to support terrorism. In this regard, I think I am reminded that it was Thomas Jefferson who said the price of freedom is eternal vigilance. I think that is a reality that we must face. *[Interruption]*

Hon. Senator: Say that again.

Sen. The Hon. M. Browne: They did not hear me? The price of freedom is eternal vigilance. During the course of the debate today I heard several comments which have been made about the possibility of politicizing the instruments of government and a number of other issues. I think some of them missed the point. We are very afraid, it would appear, of following and pursuing our own space in life.

Sen. Basharat Ali made a number of points. In fact, he pointed out that the last report, which is available, was very late and very critical of Trinidad and Tobago’s position. He was also critical of the fact that we were involved in a very busy period coming on to the end of the year when we passed a number of pieces of legislation and wanted to know where we were, in terms of meeting the

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Monday, January 18, 2010

requirements. As I said, during the course of the debate on the Financial Intelligence Unit, the passing of that legislation in fact fulfilled a substantial number of the recommendations; I think approximately 24, if I am not mistaken. The reason it has not yet come into force, as I tried to explain—in fact it has been assented to, but not yet proclaimed. The reason for the time frame hiatus, in terms of the proclamation, is the time required to put the administrative structures in position so that we could actually hit the ground running, so to speak. That sometimes requires a little time.

I can tell that at this stage, we are in the middle of—we have in fact presented a number of Cabinet Papers which provide for a development plan for training and hiring, which will go into position. I also showed you the Financial Obligations Regulations, 2010, which I indicated had already come into force. I was mistaken in that regard. It has already been approved by Cabinet. It will come into force in the listing of an Order. That Order is expected to be completed before January 21, at which point in time, of course, it would be published. You got the advance copy, so to speak.

The reality is, notwithstanding the comments which have been made about Trinidad's late ascension to the various treaties, that we are moving post haste to correct, if you want, that hiatus of time. The answer is that we are now very much part and parcel of implementing all those 12 conventions, which were established and identified. In fact, I think the hon. Minister of National Security, in piloting the Bill, listed the conventions and accessions based to which we had appended ourselves or signed on.

In the comments, in response, I was just reminded by the hon. Attorney General, certainly in relation to the comments which were made by Sen. Basharat Ali, perhaps a large portion of our delay was in fact due to the absence of a special majority during the period in the other place. There was a delay, in terms of us getting to this particular point. Now we are at that point and now we are moving post haste, so we expect to meet all our treaty obligations.

One of the reasons the Bill is being introduced in the Upper House today is to ensure that it is given the necessary rigour and clarity, which is required of a Bill of this nature, particularly given some of the comments. *[Interruption]* It is being presented in the Upper House in preference to being introduced in the Lower House, so that we could in fact give it the level of rigour, debate and intervention. *[Interruption]*

Sen. Seetahal SC: You do not get it in the other place?

Sen. The Hon. M. Browne: Give it the level of rigour that is required.

It is also clear that where we have come from, terrorism, is not something that simply affects other countries. I think that point has been very well made by Sen. Dr. Dick-Forde, who has amply clarified it. Perhaps, we have arrived at a period in time when the conventions go back as early as 1963, but at the same token they are, in a sense, proceeding with a certain degree of speed between 1970 onwards. Of course, many of the terrorists movements in fact began to have a global outreach: the Bader Meinhof Gang, and the Red Brigades and included, in terms of North American, the Weathermen Gang; lest we forget that the US themselves had their own particular crew, there was also a terrorist outfit in Canada, I forget the name of that particular outfit; all of which involved themselves in activities, which were not exactly “complementary” to the operation of an open society, as a result of which many of these conventions were formed.

We had some more egregious examples of active terrorist intervention; not the least of which would have been 1972, at the Munich Olympics. Of course, perhaps, the best example would be 9/11, effectively, which has brought it home in a very, very clear and deliberate fashion. The reality is that we have had perhaps, a certain amount of intrusion, in terms of our personal lives as a result of terrorism. All of us who travel every day understand that and if we wanted a more timely recognition that the threat has not gone away, then the recent events shortly before Christmas, I think, has brought that home and dry. It is pretty clear that terrorism is still very much with us.

This Bill has to be looked at in the context of international developments and the world in which we live and the fact, actually, that it is increasing the internationalization and globalization and the fact that electronic technology has developed in such a way that it requires, perhaps, a greater level of care.

One of the lessons that have been learnt over time is that at the end of the day, all activities require some level of cash and financing, legal and illegal ones. It has been variously estimated that the cost of financing the perpetrators of the 9/11 events could be somewhere as low as US \$300,000 to a high of approximately US \$4 million. When you take into consideration the fact that they had to be trained, spend time there and so forth, that money had to have come from somewhere. There has been an understanding, certainly with regard to the developments in Europe, Germany and Italy, that invariably those underground movements to purchase arms and do everything else, require some level of financing. As a result of that, part of the anti-terrorism position is not merely the question of detection, underground work and the issue of community policing and everything else that goes with that, it also requires

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Monday, January 18, 2010

that the law recognize that some people, for whatever it is worth, will find ways to put money in those types of coffers and that we need to expand our approach and we need to be very considered in how we deal with those possibilities.

That brings us immediately to the Anti-terrorism (Amdt.) Bill as we have it here today, and the amendments. In particular, some of the amendments bring into position the recommendations under the FATF, in particular the definition of “funds”, which is included in section 2 amended and section 5. There is also the definitions of a “terrorist act” and “terrorist”. I know there has been some argument about the issue about a legal entity and what does it mean. As illogical as it sounds, it is actually a very all-encompassing definition, even if it sounds a little oxymoronic. But the reality is that it really does cover literally anything and anyone. *[Interruption]*

Sen. Seetahal SC: Oxymoronic?

Sen. The Hon. M. Browne: Well, take it as what you call it, some liberties, but it is an oxymoron.

Let us say we are complying with the international agreements. Also, one of the fundamental changes has been the definition of moving away from the concept of a police officer, to any law enforcement agency. I know some comments have been made, but the reality is this anticipates certainly other types of developments, which will take place. The Opposition and the Independent Bench have long argued that special legislation should come to, in a sense, give legislative effect and intent to the operations of SAUTT. That will come. *[Interruption]*

Sen. Seetahal SC: To legalize it.

Sen. The Hon. M. Browne: It is not illegal. *[Interruption]* It is not illegal! To give it legislative cover and we understand that. So, it will come.

Also too, many of the definitions bring into force some of the recommendations as well; the special recommendations which have been required and noted under the FATE, in particular the interpretive notes and the definition of “non-profit organizations”. Those definition sections are also strong insofar as—and they are meant to accord with the FIU Act.

7.15 p.m.

One of the other issues is the amended clause 8 which amends section 21, moves us to the word “commit” and I do not think I need to say much more about that, but that is put in robust and strong in its own right.

I think we also need to look at, in particular, Part IIIA and I think we need to juxtapose that against some of the comments which were made by Sen. Mark. These provisions in large measure accord with the Financial Institutions Act. You remember in the Financial Institutions Act we did in fact pass fairly stiff penalties for persons who would breach or give out information.

Now, terrorists do not walk around and identify themselves, do they? In fact, that is why we talked about the price of freedom as being eternal vigilance. They live amongst us; they are one of us; they are very much part and parcel of our societies. In fact, what was the last example of that would be in Afghanistan where I think there was one particular person, who in fact eventually became a suicide bomber, was said to be acting with the government at the time. He was deemed to be an insider and everybody thought he had turned; he was supportive of the government; X, Y and Z would happen until, of course, the video was shown and he said that he stood in a particular and different light.

The reality is you do not know. One never knows. We often hear about crimes being committed and when you go to the families and ask, well, this was your next door neighbour, what type of person was he? He was a very ordinary, everyday type of person.

Sen. Seetahal SC: Nice, he was a nice person.

Sen. The Hon. M. Browne: You cannot tell; you do not know; he was a nice man, so you can never tell. So it is not a debate; nobody walks around with a label.

Sen. Rahman: We have to watch you.

Sen. The Hon. M. Browne: And I have been looking at you myself for a little while now. [*Laughter*] I have been looking at you. We would not talk about profiling here now. [*Continuous laughter*]

Sen. Rahman: [*Inaudible*]

Sen. The Hon. M. Browne: No, no, you are carrying me in a different direction, my name is not Mark. [*Laughter*] But the issue is, it is very difficult to profile people along those lines; you do not know, so you cannot do it.

So the reality is that you have to engage, perhaps, the wider society and in particular the institutions, to have them act as a filter. In fact, all of these conventions have been focused, have been central and have been directing their efforts at what we would call looking at multiple activities or what was deemed to

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Monday, January 18, 2010

be suspicious activities. Now, what is a suspicious activity or what is a suspicious transaction? But it is very difficult to define those things, and quite frankly they change. What worked today as a methodology of operation may not necessarily work tomorrow. So that banks by definition have developed fairly rigorous and large departments which we call compliance units, and it is the compliance units of those entities to which these financial obligation regulations, which, when they come into force are directed in terms of determining a methodology to determine a risk assessment to identify the types of transactions, and it affects all of us in very simple ways.

I think the hon. Minister of Housing, Planning and the Environment identified how it affected her when she was a member of the university and her salary payments. Any one of us who has sold a car or has done something would be given a form which requires us to disclose how and where these moneys were arrived at. That is actually the result of practice and what we consider to be the best practice. The regulations, in fact, go on to developing best practice over time. So there is always a difficulty, and the disclosure hurdle of \$10,000 means different things in different societies. It is a measure. It is a rough-cut measure. It is probably not the best measure but it is something that we have to use by definition.

Now, section 22 sets out a number of changes—there is the point which is made on page 19, section 24B “customer information orders”. Under banking law—I think the law was established by *Royal British Bank v Turquand* which is an old piece of law, which I myself have not gone back to for quite sometime. Banks are required to treat with customer information with a certain degree of confidentiality. I think that is the critical issue. In fact, the term in law is with utmost good faith, and quite frankly that is the bedrock of the financial system, that all transactions would be handled in a fashion and in a certain way by the financial institutions with which you come into contact.

So, by definition, banks are not meant to give out information and they can only do so under the banking law as has been developed over time, the relevant case law and the critical exemptor is “with the approval of the customer”. That is the first case, with the approval of the customer. In other words, since you own your account you can give out any information that you want; so if you authorize me to disclose information I will do so. That is probably the cleanest disclosure that you can get.

The second method is that which is recognized in law where there is a court order and the court orders have always been narrowly constrained in terms of what they may declare and what they may contain. What this banking Act and the

financing of the Anti-terrorism (Amdt.) Bill attempt to do is set out certain types of conditionalities in which one can request the information and that is how it is supposed to happen. So in other words, the banks now have, if you want, an exiat. They can give the information, but they must give it under certain types of conditions where, for example, a judge has determined by order that it can happen, on an application from a law enforcement personnel. That is standard. That is accepted virtually anywhere in the world you go; that has become best practice. So the banking law, as we have grown up with, is now if you would codify that, you could give the information if the person authorizes you to or if the court determines you must give the information.

The reality about it is to—I think that Sen. Mark had made the point that he was complaining that for example the person whose information is being given out may not necessarily be a party to it. Well, he could not be. If you have doubts, if you have suspicions about what a third party is doing, you cannot very well go and tell them, “well I am not so certain what you are doing so give me the information now”. It does not make sense. You alert him to everything that is possible. So you cannot give him the information or you cannot let him know, you cannot alert him to that fact.

During my time as a practising banker, on several different occasions we did a money transfer business with one of the international agencies and it was always felt that it was a form of petty transfers that could take place by which people were financing part of the drug trade and they were moving money abroad. The difference was in Barbados, there is also exchange control, so it was an allowable window within the definition of exchange control and on several times the Financial Intelligence Unit came to us and said to us, “well, we suspect that this transaction would be going through” and our question to them would always be, “what do you want me to do? Do you want me to stop the transaction? Well, let me know because I cannot act on the basis that you have told me that it might be. I cannot do anything with that. It must be much clearer, it must be definite and you must give me an instruction otherwise I am taking my instruction from the customer.”

This Bill goes a long way to clearing up some of those issues and [*Interruption*] quite frankly that is reasonable. It is reasonable in the circumstances where I have a reasonable expectation—or a reasonable judgment—to have information which leads me in that direction and that is clear. If it does not do so fully in the case of drugs then that is something that we need to take care of, but the reality is—and you are perfectly correct. We have heard of the Iran-Contra affair and the issue of using money from drug sales to finance other things. So it is more than possible,

Anti-Terrorism (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Monday, January 18, 2010

and we certainly know in the case of Colombia and Mexico that the proceeds of the drug trade have been used to finance other illegal purposes, some of which have been terrorism. We are aware of those things. Exactly how we translate it in the legislation, those are things that are going to be developed as they become—as we learn more and we become a bit more adept having practised it, and the case studies which are recorded also help us in that direction.

So the issue here—and certainly with regard to the position of the Attorney General—I do not need to defend the Attorney General, I think he is very good at defending themselves. He can do a very good job with himself, but I do not see what is the difficulty about the Attorney General applying to a judge for an order under subsection (3). This is very clear, in addition to which there is a clear defence to anybody who is affected, not must they have a copy of the order but the matter will be reviewed every six months and within 60 days after the date of the publication of the order under subsection (5) the entity in respect of which the order is made, may apply to the judge for review.

So, there is nothing hidden, there is nothing wrong here; it is in clear public sight, and in fact there is an automaticity with respect to which it is going to be reviewed. It is not that you apply for an order and it is locked up, it is permanent; it is not, and several other areas of the legislation also give that equality of treatment. So to say that it is one-sided at all and that we are moving in the direction of penalizing third parties is completely incorrect; certainly the provisions in law do not allow for that.

It goes further on page 9 under 7(d), to “determine whether or not the order should be revoked on the basis of the information available to the Judge and, if he determines that the order should be revoked, make an order for such revocation”. So it allows for equality of hearing. You make an order; the judge allows the Attorney General a certain leeway—

Sen. Jeremie SC: That is what Sen. Seetahal SC said.

Sen. The Hon. M. Browne: And she said it on your behalf, I was just responding to Sen. Mark.

Sen. Jeremie SC: Tell him to go and get the *Hansard* of Sen. Seetahal SC. [Laughter]

Sen. The Hon. M. Browne: I am sure he heard you. So, Sen. Mark in case you did not hear the Attorney General, he said please get hold of a copy of *Hansard* and the comments of Sen. Seetahal SC. [Interruption]

Now, the reality is that there are going to be instances in which certain unusual transactions which are being done by somebody in their private right will be captured, will be caught, will be deemed to be suspicious and I can only do well to give you a bit of my own experience in this regard. As Sen. Mark often—how shall we call it—tells me, he has a file on me. I think it is common knowledge that he has several files—

Sen. Jeremie SC: He has several dossiers.

Sen. The Hon. M. Browne: He has several dossiers with no information in them. [*Laughter*]

Sen. Mark: All I have to do is to Google.

Sen. The Hon. M. Browne: Since you always want to put that in the public domain let us deal with that particular transaction as a case in point, certainly as an unusual and suspicious transaction.

Consider the issue of the managing director of a bank coming to a conclusion with his employers and deciding that he is going to raise funds on the international market to buy the bank. So, of course to be able to finance the transaction you also want a certain degree of third party deference, because you do not necessarily want your employers to know exactly where the money is coming from, so you arrange with another bank, in fact open an account to make some deposits and so on. So I go to a good Canadian bank [*Interruption and laughter*] which shall remain unnamed, they do not operate in Trinidad and Tobago, and I open the account and make a deposit, and they then send me a note with questions for disclosure purposes. What are you going to do? What is the true purpose of this account? How many transactions are going to pass through your account because we do not have any history of you, we do not know who you are. Well, in reply I said the account is an account for convenience. I am opening it primarily to buy a bank, so there is a certain period of silence from the bank. What is the total volume? Where are the funds coming from? The total amount of money coming to this account will approximate US \$25 million and it will be coming from several different sources, it would be used to purchase a bank, et cetera.

Well, I want to tell you that the bank sent me a letter and attached my cheque to it. [*Laughter*] They closed the account. [*Interruption*] They did not know me, they are not certain what was going to take place, it is an unusual transaction, it is not taking place in their jurisdiction; if it was taking place in their jurisdiction and they knew of the circumstances they would be more willing to accommodate it.

Sen. Seetahal SC: They have Financial Intelligence Unit there, you know.

Sen. The Hon. M. Browne: The answer is, even if they did not have an FIU they had certain guidelines and principles under which they operated and they could have reported it, but there is also what we deem in banking, “a risk assessment”, and that is one of the reasons we have compliance departments in banks. We determine what is the risk of this transaction, in addition to which the one thing that any banker or any financial institution wants to stay clear of is anything or any type of transaction that will do damage to its reputation. Banks do not want to be involved in anything that looks fishy, that looks foul, that could be deemed to be; it was part of a third party organization and if we wanted any example of how that would work, there is an organization call BCCI. Anybody remember that?

Sen. Jeremie SC: Bank of crooks and—[*Laughter*]

Sen. The Hon. M. Browne: There will be all different explanations as to why BCCI failed, and all different types of things were said about it in terms of transaction which were handled on behalf of the CIA and that they handled on behalf of the CIA.

7.30 p.m.

They did not only do transactions for X purpose, these things happened. International organizations which deal in that type of business also need to finance certain types of transactions. But BCCI closed down, literally. Did they take a week? Did they take two? It literally closed up just like that, and they are not the only one. You have Riggs Bank in Washington DC. Literally, it was closed in “two twos” because it was felt that they were collecting money, or deposits were coming from certain types of African countries which the Federal Reserve Board was not prepared to countenance. It did not take them two weeks to close it down. It did not take them two weeks, and the reality is a bank that takes reputational risk, even if it were allowed to survive, would always be operating under a cloud.

So all organizations, all financial organizations put into practice a certain, if you want, a form of risk filter, to ensure that they are not caught, they are not painted, that they are not identified with either an illegal purpose or an activity which could be deemed to be outside the pale of normal recurrent business. Compliance is perhaps one of the largest growth areas in commercial banking in the world today, to the extent to which, at this present point in time, when you are establishing a commercial banking relationship with another bank in another country, that is one of the first things they check for, what is your compliance routine. Because if I am your correspondent bank and you make a mistake, it could affect me. That transaction could have come through me. It could affect my

status in the jurisdiction of origin. It could affect my relationship with the relevant authorities. No financial institution really wants to go through that particular difficulty, and that is one of the reasons why those screening devices are put into position to ensure that the name, the reputational capital, because that is also an important part of the functioning of any institution—reputational capital.

On our own as we attach reputational capital to individuals we call it integrity, and that is what it is about. It is about integrity. So these rules are meant to give the banks a certain degree of legislative cover. It is meant to operate on a sort of rule-based principle so they will know what to expect. By the same token, insofar as we put penalties upon staff in the FIU, it also puts certain penalties on the staff that we are dealing with on the other side of the fence. You cannot disclose the information because by definition, to do so prejudices rights of action. It prejudices what we are about or what we are trying to prevent. So it requires privity, it requires privacy, it requires confidentiality, and it must be treated in that fashion. It must be treated in that fashion on all sides of the fence: in the FIU, in the investigating authority, in the financial institution, otherwise you compromise the investigation. That is the reality.

So that is what this Bill seeks to do, and it seeks to give proper guidelines and proper protection to both sides of the fence, and it achieves that balance so that the person being investigated has a reasonable right to know where it is. You cannot say exactly what the specifics are, but you can give enough information so that they have some understanding of where you are going. And by the same token, it does not give the law enforcement agencies complete rights of action. They can only act within a certain guideline and within a certain court appointed order.

So the Bill achieves balance, and insofar as it makes the relevant amendments, it also meets the requirements of the FATF recommendations.

So hon. Senators, I can do no better than to commend this Bill to yourselves.

I thank you. [*Desk thumping*]

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, by agreement, I beg to move that this Senate do now adjourn to Tuesday, January 19, 2010 at 10.00 a.m., where we will continue the debate.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.34 p.m.