

Death Announcement

Tuesday, February 08, 2011

SENATE

Tuesday, February 08, 2011

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

**SEN. THE HON. VASANT BHARATH'S MOTHER
MR. NEIL JAGGASSAR'S MOTHER
(Deaths of)**

Mr. President: Hon. Senators, I wish to put on record before the Senate the passing of the mother of Sen. Vasant Bharath and also the mother of the Clerk of the Senate, Mr. Neil Jaggassar. I have instructed the Clerk to send a suitable letter of condolence to each of them on behalf of all the Senators in the Senate as a whole.

Thank you.

**MISCELLANEOUS PROVISIONS
(MINISTRY OF JUSTICE) BILL**

Bill to amend certain enactments to provide for the vesting of functions and powers in the Minister of Justice, brought from the House of Representatives [*The Minister of Justice*]; read the first time.

PAPERS LAID

1. Audited financial statements of the National Helicopter Services Limited for the financial year ended September 30, 2009. [*The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday)*]
2. Annual audited financial statements of the National Information and Communications Technology Company Limited for the financial year ended September 30, 2010. [*Sen. The Hon. S. Panday*]
3. Annual audited financial statements of the East Port of Spain Development Company Limited for the financial year ended September 30, 2009. [*Sen. The Hon. S. Panday*]
4. Special report of the Auditor General of the Republic of Trinidad and Tobago on the Fifth Summit of the Americas, Office of the Prime Minister. [*Sen. The Hon. S. Panday*]
5. Annual administrative report of the Chaguanas Borough Corporation for the financial year 2008/2009. (*Sen. The Hon. S. Panday*)

6. Annual report of the Ministry of Science, Technology and Tertiary Education for the period October 01, 2006 to September 30, 2007. [*The Minister of Science, Technology and Tertiary Education (Sen. The Hon. Fazal Karim)*]

**JOINT SELECT COMMITTEE INTERIM REPORT
Central Tenders Board Act
(Legislative Proposals)
(Presentation)**

The Parliamentary Secretary in the Ministry of Energy and Energy Affairs (Sen. Kevin Ramnarine): Mr. President, I have the honour to lay on the Table the following report as listed on the Supplemental Order Paper in my name:

The interim report of the Joint Select Committee appointed to consider and report to Parliament on the legislative proposals to provide for public procurement and disposal of public property and the repeal and replacement of the Central Tenders Board Act.

**ORAL ANSWERS TO QUESTIONS
1990 Coup Attempt
(Details of)**

13. Sen. Penelope Beckles-Robinson on behalf of **Sen. Fitzgerald Hinds** asked the hon. Attorney General:

- A. Would the hon. Minister indicate the total cost of the litigation incurred by the State in the recovery of compensation arising out of the 1990 coup attempt by the Jamaat al Muslimeen, in which state property was destroyed?
- B. Would the hon. Minister indicate the actual sale price and receipt for each of the defendant's properties that was auctioned by the State in pursuit of such compensation?
- C. Could the hon. Minister tell this honourable House, why was there no "upset" or "reserve" price, in relation to the properties in this auction, in order to guarantee higher returns?
- D. Would the hon. Minister indicate whether there was a prior valuation by the State in respect of these properties and if so, by whom and the cost of such valuation?
- E. Are there any further plans with regard to (A), above, and would the hon. Minister indicate a time frame for such action?

The Attorney General (Sen. The Hon. Anand Ramlogan): Mr President, an action was initially filed in July 1994, by the then PNM-led government, mere days before the limitation period was due to expire against the Jamaat al Muslimeen and 114 members of the Jamaat. Their action was for damages for trespass and damages to and/or destruction of the Trinidad and Tobago Police Headquarters, which you may recall was destroyed in the attempted insurrection. Fifty-eight out of 115 defendants were served and entered appearances in the matter. These included the Jamaat al Muslimeen itself and Mr. Yasin Abu Bakr. The State therefore, proceeded only against those 58.

On September 16, 1996 under a different administration, the UNC government, judgment in default was entered against the 58 defendants, they having filed no defences in the matter. It was ordered that these defendants pay the State damages to be assessed and costs to be taxed. It is noteworthy, that over two years had lapsed since the action was filed in July 1994, Mr. President, until judgment in default of defence was entered. Those of us familiar with the civil court practice procedures will know that that is an unusually long time and that the judgment in default of the defence could have probably been taken up a lot earlier. That is why I highlighted the change that took place in the administrations.

The State therefore having obtained judgment in default of defence applied for the assessment of damages to be proceeded with in 1999 and after that the matter was adjourned from time to time.

In April 2000 the defendants attempted to have the default judgment set aside. This was objected to and the attempt was unsuccessful and they, in fact, filed an appeal in October 2000 in respect of the dismissal of the application to have the default judgment set aside.

An assessment of damages was eventually heard before the hon. Mr. Justice Joseph Tam on January 15, 2001, and the judge assessed damages at \$15 million at the rate of 3 per cent interest. This came about after the matter had been adjourned on a number of occasions. In fact, there was one point you may recall, Mr. President, the talk that perhaps the judges themselves seemed to have been a little reluctant to have the trial of the assessment of the damages conducted in this matter. But eventually that was done and completed. The total sum, when calculated in terms of the damages awarded inclusive of interest, came up to \$19,710, 924.72.

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The court also ordered the defendants to pay the legal costs of the State. The defendants thereafter filed a notice of appeal to challenge the order made on the assessment of damages by the hon. Mr. Justice Tam. The two appeals were in fact consolidated, that is to say the appeal against the refusal to set aside the judgment in default of defence and the appeal against the order made on the assessment of damages. These two appeals were consolidated by the Court of Appeal in March 2002 and dismissed in May 2002.

1.40 p.m.

The judgment, however, remained unsatisfied until a summons for sale was issued on February 06, 2006 on behalf of the government pursuant to the Remedies of Creditors Act. This action, in itself, was perhaps precipitated by questions which were filed on the Order Paper, by then Sen. Wade Mark, asking what steps the government was taking in light of the fact that the judgment had been assessed at almost \$20 million since 2001 and no steps had been taken since 2001 to enforce that judgment.

The State had a judgment in its favour; the damages were assessed and no steps were being taken to enforce that judgment. Questions by the then Opposition, the United National Congress, were posed on the Order Paper and answered in Parliament by my predecessor and, as a result of that, it seems as though that may have been the catalyst for the summons to sale which was issued eventually on February 6, 2006.

Eleven parcels of land were subject to be sold under that summons, belonging to the second named defendant, and one piece of property belonging to the 94th defendant. Various affidavits were filed by the defendants in opposition to the proposed sale. The second defendant, in fact, Mr. Bakr, had filed an affidavit in June 2006 alleging in his defence, among other things, that he had struck a deal or come to some form of agreement with the then Prime Minister in 2002, which included, among other things, the fact that Mr. Manning had promised that the State would not enforce the order for damages against the Jamaat and its members and in exchange for that the Jamaat would give cooperation and support for the PNM and actively campaign for them in the marginal seats. Bear in mind that no steps were taken from 2001 to 2006 and this was the explanation given as to why that was the case by the defendants.

In response, the State applied to strike out that affidavit as being irrelevant since the allegations, if true, were unenforceable as a matter of civil law, because it would have been contrary to public policy to have an agreement of that kind

coming from a Prime Minister as head of the Executive arm of the State with an organization such as the Jamaat al Muslimeen and for that agreement to bear any fruit that would be countenanced by a court of law.

The first judge ruled that he would allow the affidavit. The State appealed. Eventually, the matter found its way to the Judicial Committee of Her Majesty's Privy Council, and on May 05, 2009, it ruled that the affidavit be struck out as irrelevant and the defendants could not rely upon an illegal agreement, which, if true, would have amounted to a corrupt agreement under the Prevention of Corruption Act, Chap. 11:11. The matter was dismissed with costs to be paid by the State.

In its ruling, the Privy Council made it clear that the facts alleged, though irrelevant to the narrow legal issue that was before the court as to whether that affidavit was relevant to determining the legal issue before the High Court—that though it may be irrelevant to that question—the allegations made were very serious and if they were proven they would amount to a most serious criminal offence.

It was in those circumstances you may recollect that Justice Rajendra Narine, as he then was, eventually ordered the Commissioner of Police to launch an investigation into those allegations. To date, that investigation, we are none the wiser as to where it has reached, but we mention it as part of the chronology of the events that led to the attempt to enforce the judgment against the State. It may be high time that the Commissioner of Police update us on the status of that investigation.

The summons for sale, however, was fully heard and concluded on September 11, 2009, when Justice Narine ordered that the 11 properties be sold by public auction to satisfy part of the debt owed to the State. The court ordered that costs be paid certified fit for senior and junior counsel. Having regard to the plethora of matters over the last 16 years, and, secondly, the award of costs that have been made in favour of the State during the meandering history of this litigation, it is impossible at this time to assess the total costs of the litigation incurred by the State during that 16-year period of time prior to the actual sale of the properties.

Sixteen years is a long time and some of the records may not even be in the ministry, I am advised. But, furthermore, in any event, it would be difficult because of the fact that we won and costs would have been awarded to the State in

these matters during the 16-year history, during which time it spawned and generated satellite litigation that took us to the Court of Appeal and even the Privy Council.

It must be appreciated over the years that even though these awards were made in favour of the State, there appears to have been little attempt to enforce even the cost awards, and in some cases to perhaps tax the bill or quantify them. So that if it has not been quantified, it is impossible to have the offset that will be required to give a true picture and reflection of what would have been spent under the various administrations, starting with the UNC administration, with the PNM administration, and now the People's Partnership. What I can do is to give the costs incurred by the People's Partnership since we have assumed office.

Although a clear order for sale was made for the sale of the properties to satisfy the judgment debt by Justice Narine on September 11, 2009, no attempt was made by the then administration to give effect to this order, up until the time that that government went out of office on May 24, 2010. So not only was an action filed against the Jamaat and judgment in default of defence not taken up for almost two years; not only was judgment taken up and for almost five to six years no attempt made to have the assessment of damages by the court, even when the damages were assessed, even though there was a clear order made by the High Court to sell the properties since September 11, 2009, nothing was done until after the general election when the People's Partnership assumed the mantle of leadership.

It was in June 2010, under my instruction, a team led by Senior Counsel, Dana Seetahal, was set up to implement the order of the court to proceed with the sale by way of public auction of all 11 properties. Prior to the auction, one property became the subject of contention when lawyers made a claim that the property had been fraudulently conveyed to the second defendant, Mr. Bakr.

As advertised, 10 properties were eventually auctioned for sale on August 17, 2010 by auctioneers Peter and William Soon, at City Hall, Port of Spain. The auction began at 10.00 a.m., and in attendance were representatives from the Ministry of the Attorney General, staff of the auctioneer, many members of the media and, of 25 others, the majority of them were connected to and represented the Jamaat al Muslimeen, at the sale itself. The properties were advertised as being sold as is and where is, and parties were at liberty to bid. Many of the properties had to be reoffered several times, but at the end of the day, at around 2.00 p.m., all of the properties, save one, had been sold, all at a minimum of half the valuation of the property.

The expenses incurred for the public auction were as follows: the auctioneer's fees, including security—and security was a major component of that—was \$272,875; advertising costs, \$71,289.08; counsels' fees, \$300,000.

The following properties of defendant No. 2 were sold at the following prices: 14,807 square feet of land in Mayaro, \$72,000; deed property, 635 square metres with building, \$1.3 million; three pieces of land at Indian Trail, Couva, \$450,000. That is \$200,000; \$200,000 and \$50,000. It is three pieces of land; a separate piece of land at Indian Trail, \$310,000; Marabella land, 1,086 square metres, \$1.6 million; a half share in Park Avenue, Queen's Park West, \$1.1 million. One piece of property of the 94th defendant was auctioned for \$380,000 but was found to be severely vandalized after the sale.

The State agreed that the selling price would be \$300,000, thus the total sum realized by the sale was \$5,132,000. Two properties remain outstanding, and these are a piece of land in Diego Martin where, as mentioned earlier, this is a dispute as to the ownership of the property and a half share in the La Puerta property currently occupied by Anisa Abu Bakr, which attracted no serious bid. As you know, Mr. President, an undivided half share is a very difficult interest in land and building to sell.

I am advised that the public stating of a reserved price does not guarantee the highest bid. Further, it was felt that the setting of the reserve prices would operate as a deterrent in respect of the sale of the properties, in general, and in particular, with respect to the properties owned by the members of the Jamaat al Muslimeen. The depressed market at this time would have contributed in no small measure to this legitimate concern.

The persons having conduct of the sale were of the opinion that they wanted to attract bidders in the first place and not scare them off any further. So based on the advice of the team that was dealing with this matter, it was recommended that the sale be approached in this particular way because the market was depressed and—let us not bury our heads in the sand—selling properties owned by the members of the Jamaat al Muslimeen was a Herculean task in its own right, which perhaps explains why no other administration had attempted to do it.

In any event, the auctioneer had advertised that he was not bound to accept any bid which, in fact, he did not, in respect of the property at La Puerta. In addition, in at least two cases, all that was available for sale were half shares which were difficult to sell, and in respect of the prime properties, they were all occupied.

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I can confirm there was, in fact, prior valuation of the properties by Brent Augustus and Associates in June 2009 and the cost of the valuations paid by the State was \$28,175.

I am grateful for this question, because it seems as though my learned friends on the other side are now agitating for us to enforce the judgment that they themselves did not take steps to enforce. The State is intent on pursuing the outstanding debts by the defendants in this matter. There are 55 other defendants who are indebted to the State. These are 55 members of the Jamaat who stormed this very Parliament and caused loss of life, limb and property.

As at August 16, 2010 the sum outstanding was \$42,383,617.90. After payment for the sale of the nine properties, the remaining balance is \$37,251,617.90, plus interest from that date. The State is in the process of pursuing the matter against the other defendants. Miss Seetahal SC and her team have conduct of that matter. We are unable to give, for obvious reasons, a time frame for the action at this time but my Ministry is working as hard as we can, given the many other competing matters in which we are engaged. Of course, you would have to have means and asset examinations; you would have to trace assets and then you can enforce. It is very difficult to say how and when that will be completed, but Miss Seetahal SC, I am advised, and her team, are working assiduously to bring some closure to this matter.

I thank you very much.

Tunapuna to Maracas Tunnel (Details of)

20. Sen. Terrence Deyalsingh asked the hon. Minister of Works and Transport:

With respect to the project to construct a tunnel from Tunapuna to Maracas as mentioned by the Minister of Finance during the 2010-2011 Budget debate, could the Minister:

- (a). provide a status update on this project;
- (b). indicate what are the expected costs associated with its construction;
- (c). advise whether feasibility studies have been done;
- (d). provide the expected start and end dates;
- (e). outline the anticipated impact on the existing traffic conditions as opposed to the implementation of a rapid rail system?

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, I apologize that the Minister of Works and Transport has not arrived as yet. Could this question be stood down for a few minutes, please?

Question, by leave, stood down.

**CLICO Financial Subsidiaries
(Details of Valuation/Audit)**

24. Sen. Penelope Beckles-Robinson asked the hon. Minister of Finance:

Could the Minister inform the Senate:

- (a) whether a valuation and/or an audit on CLICO, CL Financial, CLICO Investment Bank, Guardian Holdings Limited and any of its subsidiaries has been conducted by the Government;
- (b) if the answer to (a) is in the affirmative, what is the total value of the assets of the above mentioned companies and the name of the company which conducted the audit;
- (c) whether the Government has entered into any agreements for sale of the assets of the companies at (a) above?

The Minister of Finance (Hon. Winston Dookeran): Mr. President, with respect to part (a) the most recent completed audit of CLICO was for the period ending December 2008, and the accounting firm KPMG was hired in January 2010 to complete the 2009/2010 audits.

For CL Financial, the most recent completed audit was for the period ending December 2007.

Owing to the poor state of record keeping at CL Financial, the new board hired Ernst and Young to assist in the preparation of final accounts for the period 2008/2010. Thereafter, the Board of Directors will choose a firm to audit the accounts for these periods.

Mr. President, the Central Bank revoked the licence of CLICO Investment Bank in 2009, and since then the Central Bank has taken control of the CIB.

Guardian Holdings is a private company regulated by the Central Bank of Trinidad and Tobago.

Mr. President, based on the answers in part (a), part (b) of this question is not applicable.

Mr. President, the Government has not entered into any agreement for the sale of any of the assets of CL Financial and CLICO. However, on January 30, 2009, CL Financial and the Government of Trinidad and Tobago entered into a memorandum of understanding for the rehabilitation of CLICO Investment Bank, CLICO, the British American Insurance Company. The emphasis of the MOU was the protection of depositors and policyholders of CLICO and British American, as well as third-party creditors of the CLICO Investment Bank. Under the terms of the MOU, CL Financial agreed to dispose of the following assets in an effort to meet its obligation: shareholdings in Republic Bank Limited, shareholdings in Methanol Holdings Trinidad Limited, shareholdings in Caribbean Money Market Brokers Limited; any other assets which may be required.

Additionally, on June 3, 2009, the then administration advised, in keeping with the terms of the MOU, that they had no objections to the sale of the following subsidiaries providing that CL Financial applied the net proceeds from these sales transactions for funding the ongoing operations of CL Financial. Companies are: Premier Group of Companies, CL Marine Limited, CLICO Holdings Barbados, CLICO Suriname, CLICO Guyana, and Caribbean Resource Limited Guyana. The Board of CL Financial approved hiring PricewaterhouseCoopers as advisors for the sale of these companies: Primera, CL Marine and Trinidad Bulk Traders, an ethanol producer. The only company that has generated significant interest is Primera and the proposal is currently under consideration by the Government.

Scarborough Regional Hospital (Details of Construction)

25. Sen. Dr. Victor Wheeler asked the hon. Minister of Health:

With respect to the new Scarborough Regional Hospital being constructed at Signal Hill, Tobago, could the Minister indicate to the Senate:

- (a) the expected date of completion;
- (b) the estimated final cost of construction and installation of furniture, fixtures and equipment (fixed and non-fixed);
- (c) the state of completion, at present; and
- (d) the status of the procurement arrangements for the furniture, fixtures and equipment?

The Minister of Health (Sen. The Hon. Therese Baptiste-Cornelis): Thank you, Mr. President. It is an honour to be able to update the nation on the status of the Scarborough Hospital as requested by Sen. Dr. Wheeler.

The expected date for completion of the new Scarborough Regional Hospital was asked of me in part (a) To answer this question I will give it to you in three stages.

It should be noted that NIPDEC is the project manager for this particular project, and as such NIPDEC has informed the Ministry of Health that the expected completion date for construction of the Scarborough General Hospital has been given as June 30, 2011.

In terms of the installation and commissioning of all fixed medical equipment and other fixed equipment at the Scarborough General Hospital, we have been given an expected date of three months later, being September 30, 2011. The installation and commissioning of the unfixed furniture, fixtures and equipment has been given as one month later than that, being October 31, 2011.

The estimated final cost of construction and installation of fixed and non-fixed furniture, fixtures and equipment is broken down as this:

The cost of construction under NH International Caribbean Limited was \$155,617,747 which was awarded in the previous administration. The cost of construction of the Scarborough Hospital and fixed medical and other fixed equipment under the Chinese Railway Construction contract was \$477,667,349.10, again awarded prior to this administration and that comprised \$241,344,009.40 for construction and \$236,323,349.70 for fixed equipment. The cost of unfixed fixtures and furniture and equipment is given as \$38,874,955.71.

Please note this is an estimated budget which was approved by the previous Cabinet. It must be noted that this budget was based on estimates of cost and as thus, was prepared nearly one year ago. Actual prices may have fluctuated in the

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intervening period and the exact price will only be available upon completion of the tender process. This gives us a total of \$672,160,051.81. The above cost does not include the associated consultancy cost from Genivar and NIPDEC project management fees.

However, Sen. Dr. Wheeler, such can be obtained, if you require more information, from the Ministry of Health upon request.

I visited the Scarborough Hospital last week Wednesday, and NIPDEC and Genivar were present, and we were advised that the project is currently 84 per cent complete.

Instructions have been issued to NIPDEC with respect to the procurement of the furniture, fixtures and equipment by open tender. The medical equipment specifications prepared by the Ministry of Health for such are currently being finalized by the Tobago Regional Health Authority. It is expected that the TRHA approved list of specifications will thus be forwarded to the Ministry of Health by February 16, 2011, for onward submission to NIPDEC. Once the approved list is received, NIPDEC will commence its tender process. I thank you.

Mr. President: Leader of Government Business, I do not see that we are in a position to deal with question No. 20. Is it that we are going to defer it to the next sitting of the Senate?

Sen. Panday: Defer it for today, and I apologize for indicating to the Senate that we would have been able to answer today. Unfortunately, the Minister involved has not arrived. I sincerely apologize to you and to hon. Members of the Senate.

Sen. Deyalsingh: Mr. President, may I be heard please?

Mr. President: Sen. Deyalsingh

Sen. Deyalsingh: As requested after last week's non-answer, is it possible to have a written answer circulated so that the information could be brought to this Senate in a more timely fashion? We will accept a written answer.

Sen. Panday: Senator, I shall endeavour.

2.05 p.m.

**FINANCIAL INTELLIGENCE UNIT OF TRINIDAD
AND TOBAGO (AMDT.) BILL**

Bill to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009 [*The Attorney General*]; read the first time.

FIU (Amdt.) Bill

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Motion made, That the next stage be taken at a later stage of the proceedings.
[*Hon. A. Ramlogan*]

Question put and agreed to.

MUNICIPAL CORPORATIONS (PENSIONS) (AMDT.) BILL

Bill to amend the Municipal Corporations (Pensions) Act, Chap. 25:05 [*The Minister of Finance*]; read the first time.

JOINT SELECT COMMITTEE INTERIM REPORT

**Central Tenders Board Act
(Legislative Proposals)
(Adoption)**

The Parliamentary Secretary in the Ministry of Energy and Energy Affairs (Sen. Kevin Ramnarine): Mr. President, I beg to move the following Motion standing in my name:

Be It Resolved that the Senate adopt the Interim Report of the Joint Select Committee appointed to consider and report to Parliament on the legislative proposals to provide for public procurement and disposal of public property and the repeal and replacement of the Central Tenders Board Act be adopted.

Mr. President, given that time is at a premium today, I would be brief in my submission. I would first of all give some background on this Motion. The Government had promised that it would bring to Parliament proposals related to public procurement within 30 days of coming into office. I am pleased to report that this promise was kept and legislative proposals were laid in the other place and in the Senate on June 05, 2010 and July 06, 2010, respectively. These proposals were:

1. a proposal to provide for public procurement and disposal of public property; and
2. a proposal to repeal and replace the Central Tenders Board Act.

The first proposal, the proposal to provide for public procurement and disposal of public property, has its base in the Procurement and Disposal of Public Property Bill, 2006, which in turn was based on a 2005 White Paper on the Reform of Public Sector Procurement. That White Paper was subsequently

retracted by the Cabinet of the former government because it omitted to consider certain global trends with respect to technology. The proposal provides for the appointment of a public regulator who will be an officer of Parliament and it also proposes a decentralized procurement model.

The second proposal I referred to seeks to repeal and replace the Central Tenders Board Act. It provides for the establishment of a National Tenders Board and a parliamentary commission to monitor the afore-mentioned board. The proposal has its base in the National Tenders Board Bill of 1997 and proposes a centralized model.

Pursuant to the laying of the proposals in both Houses of Parliament at a sitting held on October 08, 2010, the House of Representatives resolved to appoint a joint select committee to consider and report on the legislative proposals to provide for public procurement and disposal of public property, together with a legislative proposal to repeal and replace the Central Tenders Board Act.

In furtherance to this mandate, the committee was required to do the following:

1. examine the legislative proposals;
2. consult with stakeholders and interested persons;
3. send for papers, records and other documents;
4. recommend amendments to the proposals with a view to improving the drafts; and
5. to submit a report to Parliament within three months from the date of appointment.

On November 02, 2010, the Senate agreed to the same resolution. The first meeting of the committee was held on November 12, 2010, and at that meeting the Minister of Education, Dr. Tim Gopeesingh, Member of Parliament for Caroni East, was elected as chairman of that committee. Thus far, there have been five meetings of the committee, and in these meetings, the committee has been engaged in a review of literature as it relates to conventions, rules, protocols and best practice.

The committee has reviewed international models prepared by the UN, specifically, the United Nations Commission on International Trade Model Law on procurement of goods and services. The committee has also received and considered submissions and presentations from various stakeholders including the

Office of the Chief Parliamentary Counsel, the Ministry of Finance, NIPDEC and the Joint Consultative Council for the construction sector. It was also recommended that the recommendations flowing from the Uff Commission of Enquiry be considered for inclusion in the formulation of new policy and legislation.

What has emerged thus far, Mr. President, from these deliberations in the five meetings, the review of literature and considering submissions that were presented to the committee, is that there could be three possible options; one being a centralized approach to procurement; the second being a decentralized approach to procurement; and the third, of course, being a hybrid model to procurement.

To aid in making a decision, the committee has requested from the Ministry of Finance that the Ministry provide the committee with data that would allow it to make a comparative assessment of these three options. The Ministry is expected to provide this information to the committee shortly. The committee also considered that any new procurement legislation, while seeking to ensure openness and transparency, should also consider the efficacy of doing business in Trinidad and Tobago and provisions for local content. The committee has concluded that the two legislative proposals that were laid before Parliament last year are mutually exclusive, and that neither proposal meets the requirement of an appropriate legislative framework for a modern and relevant procurement system in Trinidad and Tobago.

Given the nature of the task and the imperative to get it right, the committee is of the view that additional time is required to complete its work, which is considered to be important and relevant to the realization of good governance in Trinidad and Tobago. This is an ideal to which I think both sides of this Senate subscribe. In this regard, the committee humbly recommends:

1. that it be granted a three-month extension to complete its mandate;
2. that during the period of extension the committee proposes to continue its work in collaboration with the Ministry of Finance and the Office of the Attorney General. It also proposes to complete the review of the two legislative proposals and compare that comparison against best practice and with due regard for Government's policy positions on this issue; and
3. that the committee be permitted to submit recommendations for an appropriate draft Bill to be considered by Parliament in a form to be determined.

JSC Interim Report
[SEN. RAMNARINE]

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Mr. President, I want to close by thanking all Members of this Senate, and Members of the other place who are members of that committee, for the time and the effort that they have put out over the last three months and for the synthesis of ideas that has emerged from those discussions. I also want to thank all those bodies that made submissions for the consideration of the committee.

Mr. President, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Faris Al-Rawi: I thank you, Mr. President, for allowing me to make a short participation into this Motion before this honourable Senate. May I start by firstly lamenting that, save for having received notification that this would be laid some 10 minutes ago by email and having received the hard copy in a sealed envelope on the desk of the Chamber, we had no notice that this was in fact being dealt with today.

I will admit that there was notice that we had a draft report which was being circulated amongst members of that joint select committee, in which I am proud to participate, but I lament the fact that, yet again, we are here before this honourable Senate to discuss a matter with which the Members of both sides would not have had a proper opportunity to deal.

Now, I understand by way of guidance that it is an established convention that short commentary is made when interim reports are laid of this nature. I have, of course, undertaken to be short in my contribution, but I wish to state that short surely cannot mean at the very last moment by electronic dissemination. I think that it is incumbent upon those who seek to uphold the highest standards of behaviour in Parliament, and efficacy, that we do have proper dissemination of materials with proper lead time to allow for reasonable and responsible commentary.

Mr. President, relative to the Motion itself and the interim report that has been laid, I wish to note that the recommendations of the committee are in essence that a further three-month extension be given. I wish to state openly, that I am not optimistic in any form whatsoever that we are going to have any positive result coming out of a further extension of time for three months. I say so, firstly, because the mechanism by which we are discussing this particular issue of public procurement is quite a novel point. In fact, Sen. Abdulah had referred to it in our last engagement in this Senate, and that is the concept of pre-legislative scrutiny. Indeed, we had some discussions here as Senators on the pros and cons of pre-legislative scrutiny, but as I would remind you, Mr. President, the jury is still out on that concept.

Mr. President, I say that I fear that we will not have positive result, mainly because the committee is significantly handicapped by a failure of this Government to provide a stated policy with respect to public procurement, and it is incumbent upon the Government to give pronouncement of its policy. Without going into the workings of the committee, I can state that the question was asked several times and no answer was given as to what this Government's policy is on public procurement.

What is afoot is really the adoption of two orphan pieces of legislation which are mutually exclusive to each other, and which we are hoping, by way of some form of synthesis, to arrive at a policy point. However, dare I say that my complaint is that it is my humble view that it ought not to be the business of any committee to develop a government's policy per se. That is echoed in the contributions of those who have come to assist the committee in its work, specifically the Ministry of Finance, and specifically the Chief Parliamentary Counsel, both of whom, as we describe to be technocrats, have asked for a statement of policy by the Government.

Mr. President, in keeping with the debate relative to the efficacy of Parliament, I think that it is critical for us to accept the realities of the time that this Parliament has to engage in this kind of scrutiny. Indeed, I wish to compliment the chairman of the committee, and all members of the committee have been very diligent in sitting on five out of seven occasions. On two occasions, the committee was not able to meet as a result of a quorum.

I was present, Members of the Opposition were present, however, the quorum limit was a little too high at that point and we revised that position. But five times meeting successfully and consecutively on each Monday was not enough notwithstanding best efforts, and if we are to arrive at a solution which relates to showing up the loopholes in our system as they relate to leakages, especially through public procurement, we must have a government's statement of its policy and we must appreciate that the exercise of examining two orphan pieces of legislation, which are mutually exclusive to each other, is a difficult one.

2.20 p.m.

Dare I say that I offer a complaint on behalf of the contributors who are not parliamentarians to that process, because contributors are being asked, Mr. President, to analyze and to send commentary on the two orphan bits of mutually exclusive legislation when it is absolutely apparent that neither version is going to fly forward. It is going to be a very difficult task for any committee to draft

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legislation of its own accord. You see, Mr. President, the usual process for drafting legislation of this type is, as I understand it: statement of policy by Government; consideration in a wider selection by Government; draft legislation is produced by the Government after consultation and not in a parliamentary position. That draft legislation is taken before its subcommittees of Cabinet for review. It is then perhaps brought through the Finance and General Purposes Committee (FGP) route. It is then dealt with by Cabinet for approval and, when a policy is stated in that document, then it is brought to the Parliament. Regrettably what we have is no statement of policy.

So, Mr. President, I wish to commend to this honourable Senate that we disabuse ourselves of adopting a practice of considering legislation where there is no statement of policy. And on behalf of the Opposition which is the watchdog of legislative production, I wish to make a cry that this Government come with its policy statement as a matter of immediacy and that it pronounce them, not only publicly by way of things including a legislative agenda or other aspects, but it provide the Joint Select Committee with its statement of a specific policy so that the business of legislation may move forward in an efficient fashion. With those few words, I thank you, Mr. President.

Sen. David Abdulah: Thank you very much, Mr. President and Members of this honourable Senate. I am a bit surprised by both the tone and content of Sen. Al-Rawi's contribution to this particular Motion. Having regard to the very useful—and I think certainly the members of the committee I am sure—think fruitful discussions that we had been having on this particular issue of the legislative proposals.

While it was recognized that the two pieces of legislation did come at various points in time in the development of some approach to addressing the issue of public procurement, I certainly think that our deliberations in the committee—we have had excellent deliberations in the committee. I also wish to place on record, thanks to the members of the parliamentary staff who provided the committee with a tremendous breadth and wealth of research information and documentation about best practice on public procurement in various jurisdictions, not only in the Commonwealth but in Europe and also, as mentioned by my colleague, Minister Ramnarine, on the issue of UNCITRAL's model legislation, I think that the committee members had been, in the course of deliberations, beginning to understand very, very clearly and, with the excellent support, as well, if I may say so, of the Chief Parliamentary Counsel and staff of the Chief Parliamentary Counsel, understanding the key issues before the committee in terms of the legislative proposals.

And therefore, the recommendations made, quite unanimously by the committee I should say, for the extension of three months to complete its mandate, was done with a recognition that, in fact, we can complete the work within that particular time frame. And further, as noted in recommendation No. 3, identified at 11.1.3 in our interim report: “that the committee be permitted to submit recommendations for the appropriate draft Bill to be considered by Parliament” is an indication that the committee felt that we could move beyond simply discussing and making particular general recommendations, to actually coming to the Parliament with a drafted Bill that is appropriate for the public procurement regime of Trinidad and Tobago.

I want to say that it is very, very important that Trinidad and Tobago, particularly having regard to the situation that necessitated the Uff Commission of Enquiry, and having regard to the recommendations as well of that Commission of Enquiry, that we do move quickly to bring into being a proper legislative arrangement to address public procurement in Trinidad and Tobago. The requirement of transparency, of accountability demands no less and, listening to Sen. Al-Rawi, one wonders if some of his comments were not meant to suggest—well, we cannot do it—and therefore somehow or the other, the People's Partnership would then be held responsible for not having in place a proper legislative framework for public procurement in Trinidad and Tobago.

We want to say, Mr. President, that—and this was signalled—we are very committed to having a proper legislative framework for public procurement in Trinidad and Tobago and this can be done. The process which we have committed to—Sen. Al-Rawi is right—we did discuss it when we met here in the Senate on the last occasion, on another legislative proposal. The approach that we have taken is really to engage the Opposition and Members of the Independent Bench in the process to arrive at what is best for Trinidad and Tobago and what is appropriate for Trinidad and Tobago. In the course of the coming period, it would be very clear if they are in any doubt whatsoever, it would be very clear to members of the committee what the Government's policy proposal is as we seek to arrive at a draft Bill.

So I just want to place on record that I am really quite surprised by the reticence of Sen. Al-Rawi this afternoon. Having regard to his own excellent contribution in the Joint Select Committee it would seem, Mr. President, that in Joint Select Committees we work very harmoniously, we work in a spirit of building consensus and work in the national interest, to achieve good law for the citizens of Trinidad and Tobago, and, in this particular instance, to ensure that the

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people's money, taxpayers' money, is spent, not only and accounted for, is spent in a way that ensures value for money, which is what good legislation of public procurement is aimed at achieving.

While we work harmoniously and we discuss, once the television cameras are on us, it seems that when we come onto the floor of the Senate, we now get back into an adversarial mood. And as the Attorney General is saying, that the reality of it is that when that White Paper was laid in the Parliament and commitments were made by the then government to implement the White Paper and bring legislation, all of a sudden, the Cabinet decided to withdraw the White Paper. And is no doubt why—and we are all well aware—why nothing was done on that particular White Paper because of the fact that they really wanted the UDeCott project to continue unabated and so on.

So we do not wish that to continue, we wish to ensure a proper framework and this must be done with urgency, it is not a matter that we can drag our feet about any longer. We think that the work in the Joint Select Committee would be very fruitful, very useful. It builds consensus, it builds clarity on all sides and we have the benefit of submissions by stakeholders and discussions with stakeholders and the advice of experts. And through the process of pre-legislative scrutiny we can, in fact, arrive at a draft Bill, which is our recommendation No.3: arrive at an appropriate draft Bill to be considered by Parliament in a form to be determined.

2.30 p.m.

Therefore, not only do I commend this Motion for the support of all Members of this honourable Senate, but I also want to indicate to the members of the national community that the People's Partnership Government is very, very serious about this particular legislation, and we are very committed to the process by which we think good law could be arrived at, through the work of a joint select committee, and to allow the committee to continue the work, which we have done, and to bring that to completion, bring it to fruition and, notwithstanding the naysayers and the doubting Thomas's and those who think that it cannot happen and so on, that, in fact, within three months, we can come back here and have good law laid in the House of Representatives.

I hear what you talk about, policy statement. Unfortunately, some of the Members opposite—Sen. Al-Rawi was talking about the process of a draft Bill and it goes to the Legislative Review Committee of the Cabinet, then it is laid in the Parliament and debated. That was a process which they used. Quite frankly, they have difficulty in thinking about processes that are different from what they

are accustomed to for so many years. That is the difficulty. And, we cannot, if we want to make progress and change in this country, be stuck in the old form. If you are doing something the same way all the time, and ending up with the same bad results, how can you expect to get good results by continuing to use the same old process? It just would not happen. We need to move beyond that process. Let us consider it in the Joint Select Committee and, on the basis of that, we are confident we could come forward with the wisdom of my good friend, Sen. Al-Rawi. [*Interruption*]

Sen. Al-Rawi: You are my good friend.

Sen. D. Abdulah: Thank you very much—with your wisdom, and the wisdom of your colleagues from the Lower House and, of course, with the wisdom from our colleagues here in the Senate from the Independent Bench.

Sen. Drayton has contributed to the understanding of our challenges in a very, very important way. I am sure in that collective way, quietly, very, very quietly, but very, very effectively, with the support of the technocrats, we can come back here in three months with the kind of legislation that this country ought to have had since early 1990s, ought to have had, but which we are committed to bringing about as the People's Partnership.

I thank you and I, therefore, commend this Motion for the Senators' support. Thank you very much.

The Parliamentary Secretary in the Ministry of Energy and Energy Affairs (Sen. Kevin Ramnarine): Mr. President, I want to thank Sen. Abdulah for his contributions to the debate on this Motion. The concerns expressed by Sen. Al-Rawi are taken on board. I want to commend him for the contribution he has made in our five meetings. I think he has attended every meeting. He has a good record of attending meetings of the joint select committee. I also want to commend Sen. Drayton for the contributions she has made to the joint select committee.

In Sen. Al-Rawi's contribution, he spoke about having short notice. I do not know exactly what the procedure is, but this matter was dealt with in the other place last week, by Dr. Gopeesingh, who is the chairman. That should have provided some sort of notice that it would have popped up here today. I am a regular customer of the Parliament Channel. I look at it all the time, so I do not know about him.

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The other thing is, in winding up his contribution in the other place last week, Dr. T. Gopeesingh gave a commitment that—he said: “We assure you that the policy will come back to this committee from the Cabinet.” That was in response to the similar concern raised by the Leader of the Opposition.

In winding up on this debate, I want to summarize by saying that we are at a very critical point in time, in the history of this country. The legislative framework that governs public procurement, of course, has not kept pace with the way the world has changed and has not kept pace with technology. The average citizen in Trinidad and Tobago could now go online and buy parts for equipment and so on. The technology has changed and the world has changed.

We also had a commission of enquiry in this country last year that came up with very important recommendations. Those recommendations could be considered and collapsed into procurement policy and procurement legislation. The work of the committee thus far has really been, I would describe, a synthesis of thoughts and ideas. Senators have contributed richly to that process.

I want to wind up by, again, saying that three months is not necessarily a long period of time. The Government has committed that it is going to bring to this country modernized procurement legislation, I believe, within the next three months we are asking for, that will be realized.

Mr. President, I beg to move.

Question put and agreed to.

Report adopted.

**FINANCIAL INTELLIGENCE UNIT
OF TRINIDAD AND TOBAGO (AMDT.) BILL**

The Attorney General (Sen. The Hon. Anand Ramlogan): Thank you, Mr. President. I beg to move,

That a Bill to amend the Financial Intelligence Unit of Trinidad and Tobago, Act 2009, be now read a second time.

Mr. President, I rise today to make a contribution on this matter, which is before this honourable Senate, that is on a Bill entitled the Financial Intelligence Unit of Trinidad and Tobago (Amdt.) Bill, 2011.

The Financial Intelligence Unit of Trinidad and Tobago Act was passed and assented to on October 09, 2009, and proclaimed February 09, 2010. The Act was enacted by the last administration to give effect to recommendation 26 of the Financial Action Task Force (FATF).

In 1989—by way of a little background and backdrop to the FATF—the group of G7 nations comprising Heads of State of the world’s major industrialized countries: Canada, France, Germany, Italy, Japan, United Kingdom and the United States of America, established the FATF at its 15th G7 Summit which was held in Paris.

Recognizing the threat posed by money laundering and the danger to the banking system and financial institutions, the G7 Heads of State and the President of the European Commission convened the FATF from the G Member States, the European Commission and eight other countries. FATF was, thereafter, given the responsibility for examining money laundering techniques and trends, reviewing the action which had already been taken at a national and international level and setting out the measures that still needed to be taken to combat the scourge of money laundering.

In April 1990, less than one year after its creation, the FATF issued a report containing a set of 40 recommendations. These recommendations provided a comprehensive plan of action to fight money laundering and, indeed, any form of terrorism financing that comes with money laundering.

In October 2001, the FATF issued eight special recommendations to deal with the issue of terrorist financing. The continued evolution of money laundering techniques led the FATF to revise the FATF standards comprehensively in June 2003.

In October 2004, the FATF published a ninth special recommendation, further strengthening the existing international standards for combating money laundering and terrorist financing. The recommendations are what we commonly refer to as FATF 40 + 9 Recommendations today. The FATF 40 + 9 Recommendations are recognized by the IMF and the World Bank as the international standards for combating money laundering and the financing of terrorism.

Regionally, the FATF process has been translated through a process, via the operations of a Caribbean Financial Action Task Force, commonly referred to as CFATF. The CFATF is an organization of 29 states of the Caribbean Basin, which have agreed to implement common countermeasures to address the problem of money laundering and financing of terrorism.

Member States of CFATF include: Anguilla; Antigua and Barbuda; Aruba; the Bahamas; Barbados; Belize; Bermuda; the British Virgin Islands; Cayman Islands; Curacao; Dominica; Dominica Republic; El Salvador; Grenada;

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Guatemala; Guyana; Haiti; Honduras; Jamaica; Montserrat; Nicaragua; St. Kitts and Nevis; St. Lucia, St. Maarten; St. Vincent and the Grenadines; Suriname; Turks and Caicos Islands; Venezuela; and, of course, Trinidad and Tobago.

In November 1996, 21 members of the CFATF, including Trinidad and Tobago, entered into a memorandum of understanding. That memorandum of understanding sets the framework for the goals and objectives that would lead to compliance with the FATF Recommendations. In that document, CFATF members agreed to adopt and implement the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to endorse and implement the FATF 40 Recommendations and later the nine special recommendations that deal with terrorist financing, to fulfil the obligations expressed in the Kingston Declaration, as well as, where applicable, in the plan of action of the Summit of the Americas, and to adopt and implement any other measures for the prevention and control of the laundering of the proceeds of all serious crimes, as defined by the laws of each Member State.

Trinidad and Tobago, via this vehicle of CFAFT, is duty-bound to implement the 40 + 9 Recommendations of the FAFT organization. We are bounded with our Caribbean neighbours as one regional grouping and block, one geopolitical as recognized by the outside world, to implement the FATF Recommendations.

Recommendation 26 of the FATF Recommendations bears particular significance to our debate today, because that recommendation required all countries to establish a body that will serve as a national centre for receiving, requesting and analyzing and disseminating suspicious activity reports and other information regarding potential money laundering or terrorist financing.

The Financial Intelligence Unit of Trinidad and Tobago sought to establish, by statute, a department of the Ministry of Finance to be called the Financial Intelligence Unit (FIU). The FIU, under section 8 of the FIU Act, is the primary institution for the collection of financial intelligence and information and the analysis, dissemination and exchange of such financial intelligence and information amongst law enforcement authorities, financial institutions and listed businesses in Trinidad and Tobago and, indeed, internationally.

The term “listed business” is defined under the Proceeds of Crime Act, and there in an interdependence relationship between the Proceeds of Crime Act, which is commonly referred to as POCA, and the Financial Intelligence Act. Now, a listed business, under POCA, means a business or profession which is listed in the First Schedule and the following types of businesses are listed in the First

Schedule: real estate; motor vehicle sales; money or value transfer services; gaming house; pool betting; national lotteries; online betting games; jewellery; a private members' club; accountants; attorneys and other independent legal professionals; art dealers; trust and company service providers.

2.45 p.m

Mr. President, as you can see from this list, these are businesses where cash transactions can take place and dirty money, laundered money, can be washed, laundered, cleaned up and put back into the system. And that is why these businesses are listed. Mr. President, you would have heard in my previous response to a question on the Order Paper the list of businesses acquired by an organization that stormed this nation's very Parliament. Where did the money come from? From which bank account?

There are persons in this country who seem to have no known source of income, they never filed an income tax return in their life, "doh" have a single pay slip, but yet still they are able to amass a fortune and they are able to purchase properties in cash, properties, Mr. President, that you and I can only dream about affording; around Queen's Park Savannah in prime real estate areas in this country, and one has to ask, what is the source of the financing? Is it the proceeds of crime? Is it illicit drug money? Is it financing for terrorism? Is it coming from a foreign government? Is it coming from a foreign terrorist organization with links in Trinidad and Tobago?

How is it that the system can exist where people can purchase million-dollar properties and pay for them in cash? Is the money that is being utilized to purchase these properties ransom money from when they kidnap people's children? Jewellery business—jewellers are flourishing, but where is the money coming from to reconcile the jewelry that you see on display for purchase with the money that they invested in the business in the first place; to compare it with the sales? Is it that the jewellery is coming from a pawn shop whereby people are being robbed of their jewellery and then it is being pawned or as has been the case, the gold is melted, recreated and refashioned into other forms and items of jewellery?

Pool betting and betting on the whole, Mr. President, who is checking on where people are getting the money from to bet? In some cases "you could mind a mark and you guaranteed to win, if you mind the mark." You can work out the mathematical probabilities and there are people who actually "mind a mark," and put ten and "hundred thousand dollars" on it, and cash in at the end of the day.

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This is not about the little “whe-whe” banker who is operating behind a cane field in the remote rural areas. This is sophisticated, high-level movement of funds, and there has been no system in place to detect the movement of these funds, and to track where it is coming from.

Art dealers—you can purchase on the Net, you could purchase it anywhere. Paintings and originals are worth a fortune. Are people doing it and bringing it into our country? That is why the FATF mandates that countries should ensure that these listed businesses are subjected to some effective form of monitoring and regulation, to ensure that there is compliance with the requirements to combat money laundering and terrorist financing.

It is only when a jurisdiction and a country has a functional and effective supervisory regime for financial institutions and listed businesses, that it can truly protect and safeguard against the risks of financial fraud and crime, and in particular, money laundering and the financing of terrorism.

Mr. President, in one country money transfer utilizing non-conventional methods has been identified as a major source, a major medium, a major vehicle for the export of money from one country to the other. Does anybody regulate—is there any system in place to regulate the transfer and movement of money via money transfer?

To address the mandate an amendment to the Proceeds of Crime Act was enacted on October 9, 2009, in particular section 34 of the Act provided:

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

- (a) financial institutions; and
- (b) listed businesses...”

Mr. President, while this amendment to POCA sought to give the FIU power to act as a supervisory authority for certain financial institutions and listed businesses, the scope of section 8 of the Financial Intelligence Unit of Trinidad and Tobago did not in fact allow for such an expanded remit. In short, you had the Proceeds of Crime Act imposing a statutory duty and responsibility on the Financial Intelligence Unit, but the FIU Act was not in fact amended to facilitate the imposition of that statutory burden and responsibility. So in effect what you had was an inchoate legislative attempt at fighting money laundering.

So it is in those circumstances, Mr. President, that this Bill is now brought to this honourable Senate, because it seeks to give the FIU this expanded remit to allow for the Financial Intelligence Unit to actually supervise listed businesses to monitor the activities of these businesses, and to regulate them, with a view to determining whether there is dirty money passing through the business.

Mr. President, we will expand the remit by amending section 8 to now give the FIU any other function that may be given under any other written law, namely the Proceeds of Crime Act which gave it the supervisory function, and to correct a small cross-referencing error in the same section. Whilst this appears to be a simple amendment, Mr. President, the visionaries among us will see the bigger picture and understand the ramifications and the implications for this simple measure.

The Government's approach towards fighting crime, Mr. President, both on the ground and white-collar crime, is to look for the fruit of the crime, and the tree that bears that fruit. Because if we cannot catch the criminals at the primary stage when they are committing the crime, when they seek to cash in on the proceeds of their crime, then if you can catch them there and you can snuff it out, that will be a great deterrent to crime.

So our approach to crime is to destroy and attack the very tree from which the poisonous fruit of crime has sprung. We will systematically destroy every root and every branch and every flower on that tree. And this amendment will be one of the vehicles through which that will be done. For far too long criminals have been allowed to feed and nourish themselves on the poison fruit from the crime trees. Money laundering and the expenditure of illicit funds, with no legitimate source, Mr. President, allows them to enjoy the fruits of their crime at the expense of law-abiding citizens. This amendment is an attempt to aim for the very root of that tree of crime. If crime does not pay, and you cannot taste and enjoy the fruits of crime, then that in itself is bound to send a clear message and strong signal and be a deterrent to the criminals. [*Desk thumping*]

2.55 p.m.

Mr. President, money laundering is the process of taking illegitimate proceeds of crime, and, through a series of activities, making it appear that the money has a legitimate source. It is a crime which has destabilized financial institutions, private sector companies and a country's economic development, and can significantly derail the financial services industry in Trinidad and Tobago.

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Who among us could forget a few years ago when the drug cartel in Colombia was so boldfaced and so brazen that it offered to pay off the country's national debt if they would leave them alone and just let them be? In many countries, the contribution to the gross domestic product by virtue of money laundering is something that is so significant that the criminals and the drug traffickers have their hands around the neck of the economy, and they can strangle it if they withdraw. In this country we are saying we have not reached that stage, but we wish, before that hand comes to grip the neck of the economy, to repel the money launderers who wish to come to Trinidad and Tobago to set up shop and live a comfortable and luxurious lifestyle.

Mr. President, this will not just be about money laundering through drug trafficking. Even the bandits and the kidnapers, they too want to spend their money. The bigger gangs in this country have a more sophisticated way and methodology in terms of how they spend. Some want to acquire headquarters like it is a corporation, some of them want to buy luxury homes to put the sub lieutenant. This has mushroomed to the point where crime is a business and business means money.

That is why we are going to tackle the fruit of the crime, which is the money, illicit funds gathered from criminal activities such as drug trafficking, arms trafficking, embezzlement, fraud, tax evasion, corruption, even human trafficking or kidnapping, organized crime. They are then laundered into clean currency and this can be used to fund new criminal operations. That is how the gangs are expanding or can maintain the status quo.

When you are a gang member—when you are trying to recruit a new gang member and he has to work hard for an honest day's pay like ordinary citizens, but the gang leader is able to entice him and induce him because he can take him out and literally take \$10,000 out of his pocket and slap it on the table, and say, "Run t'ing to drink for everybody, run t'ing to eat", you buy friends, women, drinks, eats and it is endless and limitless. The awe and the admiration and the adoration that leads to a virtual hero-worship of that person is what takes place and the transformation from an innocent youth into a gang member becomes a very fast one, and that is why we have to get to the money.

Mr. President, as you know, Trinidad and Tobago is geopolitically situated between North and South America, drug producing and illicit drug consuming countries and this increases our vulnerability to money laundering. Our geopolitical position is such that we are neatly poised, and well positioned to be a major trans-shipment point, not just for drugs but also for money. It is therefore

imperative that we sustain our efforts to diminish this vulnerability. To effectively target crime therefore, we need to strengthen mechanisms to pursue money laundering offences, unearth the financing of crime and indeed convict offenders.

Just as the prevalence of terrorism and terrorist activities have commanded worldwide attention, Trinidad and Tobago, together with the rest of the global community, is working hard to eradicate all forms of terrorism and suspected terrorist activity within our borders. We as a country, a small country, must pay particular attention to this. We see what the Commission of Enquiry into the storming and insurrection is producing, but in addition to that we have had the experience of seeing our nationals convicted of terrorism-related offences in the United States of America. We know for some time now that Trinidad and Tobago has been viewed with a bit of suspicion where that is concerned, because of the assault on this very Parliament.

Mr. President, the financing of terrorism has been identified as the lifeblood for terrorist activities. The methods and practices of terrorism in all its forms and manifestations are aimed at the destruction of human rights, fundamental freedoms and the undermining of democracy. Terrorism threatens territorial integrity, security of states and destabilizes legitimately constituted governments. Trinidad and Tobago must therefore fulfil its responsibility as part of a global initiative in ensuring that terrorists have no access to funding.

Mr. President, in the wake of 9/11, the first thing that the American Government did was to freeze the assets and bank accounts of all suspected terrorists so that they could dry up the blood so that it would not enter into the veins of the terrorist beast. This seemingly minor amendment, therefore, gives us the gateway to set up the supervisory regime within the FIU. This regime would effectively safeguard the integrity of the public sector and indeed the private sector, that is to say financial institutions and listed businesses. It will safeguard from abuse, it will introduce increased transparency and accountability, it will facilitate the prevention and detection of illicit proceeds and assist in the investigation and prosecution of money laundering and terrorist financing offences, it will assist in the recovery of assets gained from illicit proceeds and essentially this regime will bring much needed supervision to a sector that we have turned our backs on for far too long and allowed to flourish and go unregulated and unmonitored.

Moreover, Mr. President, this amendment brings the FIU into alignment with the FATF recommendations. In recognition of the cross-border aspects of money laundering and terrorist financing, compliance with global standards for the

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combating of money laundering and terrorist financing is imperative, and this Government will comply with those recommendations.

I invite Members of this honourable Chamber to consider the sad history, the legislative history of Trinidad and Tobago, with respect to this particular aspect of our laws. Mr. President, I want to let the country know that when, under the previous administration, this issue arose about the need to comply with the FATF recommendations, I want the country to know what a gamble the then government, now Opposition, took with the economic and reputational viability of Trinidad and Tobago and the precarious position that they pushed Trinidad and Tobago in.

In 2005 a mutual evaluation was carried out on this country by CFATF, and it was adopted in 2007. Trinidad and Tobago in 2005 was found to be partially compliant or noncompliant with 15 out of 16 key and core recommendations of the FATF. Trinidad and Tobago was found to be partially compliant or non-compliant on 26 other recommendations. Among the reasons for this noncompliant rating was the failure of the former administration to develop the legislative framework and architecture to establish the Financial Intelligence Unit.

3.05 p.m.

Mr. President, that legislation was not brought to Parliament until 2009. That is to say, from 2005 the mutual evaluation was carried out, and in 2007 it was adopted, and it was not until 2009 legislation was brought to this Parliament to give the appearance of an attempt to comply with the FATF recommendations. That delay and the former government's inaction had led us into an international abyss and a grey area.

It was only under the threat of international sanctions being imposed by FATF that the government was forced to introduce the Financial Intelligence Unit of Trinidad and Tobago Act in 2009. One would have thought that with the threat of international sanctions glooming large over Trinidad and Tobago, and the severe economic repercussions for the country, the former government would have been galvanized into action to ensure that the country became FATF compliant, but sadly that was not the case. Instead, it would seem as if they embarked upon a series of actions aimed at giving the international community the appearance of compliance, when in reality and in truth and in fact they lacked the political will to give full effect to the spirit and intent of the legislation. Let me illustrate what I mean.

Firstly, when the FIU legislation was introduced in May 2009, in the midst of the debate on June 03, 2009, under the guise of looking at comments made by the other side, the debate was halted. It was not reconvened until September 2009. It then passed through both Houses in a matter of days, but what they did not convey to Parliament at that time when that matter was debated, was that a FATF plenary session had been convened in Paris from the 14th—16th October to respond to the call by the G-20 leaders to identify high risk jurisdictions by February 2010.

You see, it was only when that plenary session was being convened to identify high-risk jurisdictions that they were prompted into action. Since 2005 the mutual evaluation had been conducted and it was adopted in 2007. Why the tardiness? Why the lethargic approach when your country's reputation was at stake? Why the fear of establishing a FIU?

I made the point when I piloted the Motion for the Anti-Corruption Bill to be referred to a joint select committee, that throughout the history of the Opposition when they served in government under the PNM, there is a history of not dealing with corruption—no legislation to deal with it—and this is but another symptom and manifestation of that same failure. It is a virtual political systemic failure, as though it is engrained in their DNA, not to deal with corruption. It is in the political DNA of the PNM not to deal with corruption. That is why from 2005—2009 they did not bring legislation to deal with the FIU. These are the facts. When we speak about them, it is not that you are looking in the rear-view mirror, but it is important to remind the country where we came from and what we left behind.

We have inherited situations that have put us in a very embarrassing predicament. Let me illustrate further what I say. The former government was finally forced to enact the FIU legislation. What did they do? The FIU is obviously meant to be an independent body. It is there to monitor the listed businesses; it is there to monitor even if Ministers are engaged in wrongdoing. What did they do? The letter and spirit of FATF Recommendation 26 was such that the FIU was required to be independent and impartial in the exercise of its function and not susceptible to any undue political interference or political influence.

In order to give effect to that imperative, section 3(2)(a) of the legislation was drafted to ensure that the director of the FIU must be a public officer—at least someone who is already in the system and appointed by the independent Public Service Commission and so on. You know, in the face of that clear provision requiring that it be a public officer—let me advert to the relevant section.

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Section 8 of the Financial Intelligence Unit of Trinidad and Tobago Act, 2009 says:

“8. (1) The FIU shall be the primary institution for the collection of financial intelligence and information and the analysis, dissemination, and exchange of such financial intelligence and information among law enforcement authorities, financial institutions and listed business in Trinidad and Tobago and internationally.”

Section 7 states:

“The salaries and other conditions of service of the Director and Deputy Director shall be subject to review by the Salaries Review Commission...”

Section 3(2) states:

“The FIU shall consist of such number of suitably qualified public officers including a Director and Deputy Director as may be necessary, for the performance of its functions and may include—

- (a) public officers, appointed, assigned, seconded or transferred from another Ministry or statutory corporation to the FIU; and
- (b) officers and other persons appointed on contract by the Permanent Secretary of the Ministry of Finance.”

Mr. President, what is abundantly clear about that legislation is that the head of the Financial Intelligence Unit was clearly meant to be an individual known to the public service, respected by the public service and would be someone who would operate independently.

What did the former administration do? The former administration appointed Mr. David West, an attorney-at-law, as Director of the FIU. Mr. West, at that time, was not a public officer. He was, in fact, an attorney-at-law in private practice, and he was also a legal consultant who was on a monthly retainer at the Ministry of the Attorney General and was performing the functions of the head of the Central Authority, reporting directly to the Attorney General of the country.

So here it is you had someone who is not a public officer but was selected by the PNM Cabinet to receive confidential financial information from financial institutions, and that person reported directly, wearing a different hat, to the Attorney General of the very administration, and all along, at the same time, was in private practice.

Mr. President, he reported to the AG as a consultant for the Central Authority and, at the same time, in private practice, he was in the position of determining in his discretion whether information received and analyzed by the international FIU should be submitted for further investigation by the Commissioner of Police or the DPP. That was the situation.

Now, I cast no aspersion on Mr. West. Mr. West may very well have been and, I dare say, a competent attorney-at-law, but what you could not do is to put Mr. West in the unenviable, embarrassing and, indeed, I dare say, even an illegal position of appointing him to serve as the director of the FIU and to perform the functions of the director of the FIU. I believe they tried to create a little fancy, clever footwork to say, well, he is director designate. A rose called by any other name smells just as sweet. At the end of the day, you were appointing someone to perform statutory duties and assume statutory responsibilities and Parliament clearly intended to invest in an independent person as opposed to someone who had a boss in the person of the Attorney General, who was a member of the political Executive arm of the State.

In addition, although section 15 of the FIU Act provides that the responsibility for investigating these reports is clearly placed on the shoulders of the Commissioner of Police, under the PNM those reports were submitted for investigation to the Financial Investigations Branch, which operated within SAUTT.

Sen. Hinds: In respect of Mr. David West, is the hon. Attorney General aware that notwithstanding that he was on contract, and his contract may have permitted him to practise otherwise, that he had worked in the public sector for many years doing very confidential, important work? That was up until the time he was appointed to act as director.

Secondly, as far as I am aware, having worked in the public sector myself and having interfaced with Mr. West in that capacity, I have never heard a single negative comment or blemish about his performance in his various capacities. Do you have any such information that can impugn the outstanding service of Mr. David West? I am asking.

Sen. The Hon. A. Ramlogan: And I would answer.

Sen. Hinds: So that we would get this beyond any doubt.

Sen. The Hon. A. Ramlogan: Mr. President, I think my learned friend misunderstands the point as usual, and he misses the mark entirely. A conflict of interest that is patent and glaring and as conspicuous as can be, that is illegal, according to legislation, which required a public officer—a serving public officer—not someone who is on contract, the legislation did not envisage that someone who is reporting to the Attorney General, who is his boss, could be the head of the FIU which is an independent office. That is like saying that the Chief Justice of the country could be Mr. David West, because he is a nice fellow, he is competent and there is nothing bad to say about him and, at the same time, be head of the Central Authority and have a private practice. It is nonsensical!

If you take any independent office under the Constitution or under any piece of legislation, what my learned friend is saying is that you can take someone who reports to a politically appointed person, any government minister, and let them continue to report to that minister and, at the same time, simultaneously be head of the FIU. That is impossible in law. It is a most glaring conflict of interest.

They undermined the FIU Act. The point is not about Mr. West. The point is that he was not able in law to concurrently perform all three functions and wear all three hats at the same time, but the PNM had a tendency towards that. It was like a former Independent Senator in this very Senate who pretended to be independent, but sat on six and seven state boards. It was like a former CEO of a state enterprise who served on six and seven state boards and wore one, two, three and four hats.

They seem to have a passion and a love for people wearing more than one hat at a time. Mr. West, under the legislation, could not and ought not to have been put in that compromising position where he wore a hat as a private practitioner as a criminal defence lawyer or a criminal prosecutor and the head of the Central Authority reporting to the Attorney General and, at the same time, head of the Financial Intelligence Unit. Mr. President, that undermines the very rule of law in this country, and they must take blame and own up to the shame for that. That is the reality of it!

Sen. Hinds: Nonsense! [*Crosstalk*]

Sen. The Hon. A. Ramlogan: Mr. President, as if that was not enough—

Sen. Al-Rawi: I thank the Attorney General, through you, Mr. President, for giving way. It is just a minor point of clarification, if you will. Could you please, just for the benefit of the record, clarify the illegality that you have mentioned if I

got it wrong? You said it is unlawful—the illegality as to Mr. West’s position. What sections were offended and what the illegality is? This is just so I could better understand the position. Thank you.

Sen. The Hon. A. Ramlogan: Sure. Permit me to elucidate. Section 3(2) of the FIU Act states as follows:

3.20 p.m.

“The FIU shall consist of such number of suitably qualified public officers...”

Not retired public officers.

“public officers, including a Director and Deputy Director as may be necessary for the performance of its functions and may include—

- (a) public officers, appointed, assigned, seconded or transferred from another Ministry or statutory corporation to the FIU...”

That means current. Mr. West could not be a public officer, he had resigned his position from the Central Authority. He had resigned.

“(b) officers and other persons appointed on contract by the Permanent Secretary of the Ministry of Finance.”

Mr. West was not appointed on contract by the Ministry of Finance. He was in fact serving on contract at the behest of the Attorney General’s Ministry. Furthermore, Mr. President, just so my friends will understand the point, let me crystallize it because it seems as though their government missed it.

The conflict of interest point and the undermining and acting contrary to the spirit and intent of the law is the overriding point. The legislation could never have envisaged; could never have envisaged—[*Crosstalk*]—I want to tell my learned friend, I understand he is in a loveless party and if he feels that he can get love from this side, I want to tell him he is right.

Sen. Hinds: I want to assure you, I am not half interested in your kind of love.

Sen. The Hon. A. Ramlogan: I want to tell you I see that your former leader and your now leader are embracing and trying to get some love. Tell them they can learn from the love of the People’s Partnership and I want to tell you, Sen. Hinds, that make-up, that artificial make-up, a hug does not make for a political relationship, my friend. But, Mr. President, I can understand why love is in the air, political love seems to be in the air on the other side and I understand why my learned friend is perturbed about that.

But, Mr. President, as if that was not enough, the Counter Drug Crime Task Force which was responsible for investigations under the Proceeds of Crime Act was dissolved by Cabinet in 2010 and placed within the organizational structure of SAUTT. This is a further undermining of the institutional mechanisms to deal with the problems. What they did, Mr. President, was to take the Counter Drug Crime Task Force, dissolve it—Cabinet dissolved it and they put it within SAUTT. SAUTT which has no legislative mandate, no legislative structure or authorization, they put it there and this Counter Drug Crime Task Force had been operating as a *de facto* FIU for many years and had been recognized internationally as an effective FIU so much so, that their advice and expertise was sought after by other jurisdictions when their FIUs were in their infancy.

So what was working well they attempted to undermine. What was not there that they were meant to create and introduce, they refused to do so and they have the unmitigated gall and temerity to come to this honourable Chamber and point fingers at the other side. Again I ask, why would a government that was supposedly intent on fighting crime, or so they told to public, undertake these actions? That is why, during the tenure of the last administration, there was not a single conviction for money laundering. Whilst the former government was engineering schemes to ensure that all financial investigations were under their control, Trinidad and Tobago's international reputation was being sullied. A chasm of international unease was growing and Trinidad and Tobago's reticence to join globally in the fight against money laundering and the financing of terrorism was noted with concern.

In February 2010, under the governance of the People's National Movement, Trinidad and Tobago was placed by the Financial Action Task Force (FATF) on a list of countries with strategic AML and CFT deficiencies. That was in February of this year. So the position that confronted us is that in February we are put on this list of nations with strategic deficiencies, not blacklisted, not blacklisted. Mr. President, I wish to place on record, the reason we were not blacklisted is because of the Herculean and singular efforts of the hon. Minister of National Security, Sen. The Hon. Brig. John Sandy,— [*Desk thumping*]—and I pay tribute to Sen. Brig. Sandy, the Minister of National Security, and place on record my personal appreciation. Because Minister Sandy, having been confronted with this problem, took the bull by the horns, went to meet the FATF representatives and ascertained firsthand how we can remedy this problem, how we can get out of this red zone, the danger zone—because we were not blacklisted. But had we not brought this legislation today, had we not acted with some degree of alacrity, then we could have been, we could have been. You see, Mr. President—[*Crosstalk*]

This Government, Mr. President, is in the process of unravelling, therefore, the various anomalies and irregularities within the legislative and administrative system which limit our ability to effectively address the scourge of money laundering and other financial crimes. This will undoubtedly mean that when we return to this very Chamber later this month to review the FIU Act as is mandated by that Act in section 28, you can expect to see substantial amendments.

Mr. President, we are at present, along with a team from the Ministry of the Attorney General and under the leadership of the team from the Ministry of National Security, looking at the FIU Act to see where we can bolster and strengthen up the legislative arrangements that are in place to deal with this problem. However, cognizant of the effect that blacklisting by FATF has had on our Caricom neighbours, as a responsible Government, we have chosen at this critical juncture to comply with our international obligations in respect of the establishment of a supervisory regime to monitor listed businesses.

To explain why this is so important and for us to understand why it is so serious and dangerous that it was not done before today, our Caricom nations experienced a lack of growth in the financial sector, decrease in business activity, increased unemployment and a decline in government revenue. They started losing their competitive edge because of the blacklisting. To be more detailed by way of illustration, Mr. President, in the Bahamas, the number of registered banks fell from 415 in 1999 to 317 in mid-2002. The number of offshore banks declined from 72 at the end of 1998 to a mere 18 in the December of 2000. In Grenada, over 40—right in Grenada over 40—offshore banks migrated. They “pack up shop and leave”. In St. Kitts and Nevis, new incorporations declined by approximately 50 per cent as customers complained about the taint to their reputation if they had to do business with a blacklisted jurisdiction.

In particular, Mr. President, I wish to draw your attention to the effect that a mere public advisory can have on a jurisdiction. The number of licensed banks in Antigua and Bermuda was reduced from 58 in 1997 to 22 at the end of 2001, when FATF made a pronouncement on the strategic deficiencies in that jurisdiction—just a mere public advisory.

We refuse therefore, Mr. President, to gamble with the economic and reputational viability of this country. We have chosen to take deliberate steps and action, immediate action, to free ourselves from this international quagmire that the former government has created for our country and we are therefore making an attempt to comply with international standards.

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3.30 p.m.

This is not about an individual; it is not about Mr. David West. My learned friend, Sen. Hinds, was quick to point out that Mr. West served and did good work as a public officer. [*Interruption*]

Sen. Hinds: True or false?

Sen. The Hon. A. Ramlogan: That is true; I know Mr. West personally. But the problem is: The shenanigans which took place were such that they painted Mr. West into a corner, a very unenviable predicament, whereby they put a very good worker in a position where he was straddling three positions, and the law simply was being violated and no one said anything. That is the reality. In fact, that is why we have taken deliberate steps in adopting vigorous countermeasures against money laundering and the financing of terrorism, as recommended by FATF.

I ask the question, Mr. President: if I selected someone from the private Bar and hired them on contract, on a private retainer, gave them a private contract and hired them on a monthly retainer to be a legal consultant in the Central Authority for the Attorney General—the person is on a month-to-month contract; he reports to me every month; for that contract to be renewed, “I is de man who have to do it”, so I hand-pick someone from the private Bar; I give them that job; I then say to them, “You could maintain your practice and, in addition to that, I am now going to make you head of the FIU.” I want to know what my learned friends on the other side would have said about that. They would not be saying what they would say in their defence. The reality is, when something goes wrong, as you have seen, own up to it; admit it. That is the reality. [*Interruption*]

Sen. Hinds: Then we have more to hear about the SIA!

Sen. The Hon. A. Ramlogan: Yes. Talk about the FIU now, not the SIA. Talk about why you did not want to have a supervisory jurisdiction in the FIU. Whilst there is all this “ol’ talk” about drug money, building house and money laundering, “talk cheap”. Where was the action? Where was the legislative action? “Talk cheap.” [*Desk thumping*]

“Man could buy how much car they want from Dole Chadee and drive around and be their political leader; talk cheap”. This is where the real teeth and the real meat lie: Coming to this House and saying that we want to enact laws to comply with international standards. “You find out who buy the car.” [*Interruption*]

Sen. Hinds: Mr. President, a point of order. The Member is imputing dangerously improper motives on a current Member of the Parliament of Trinidad and Tobago.

Hon. Senators: Which one?

Sen. Panday: Who is it? [*Laughter*]

Hon. Members: Which one?

Sen. Panday: Who is it?

Sen. Hinds: Mr. President, point of order.

Sen. Panday: “Yuh fraid”? Who is it? [*Laughter*]

Mr. President: Are you finished with your point of order, Sen. Hinds? I am not going to take up the Member’s point about imputing conduct. What I would say is that you are raising a matter of conduct of a sitting Member and I would ask that you refrain from that direction.

Sen. Hinds: Mr. President, in light of your ruling and given the fact that the facts rehearsed by the Attorney General of this country are wholly incorrect and inaccurate, I am asking you to go a bit further and have it expunged from the public record.

Mr. President: I know nothing about the accuracy or inaccuracy of the statement and, therefore, I am not going to proceed on that basis. I have asked him to refrain from going in that direction.

Sen. The Hon. A. Ramlogan: Mr. President, for the record, I have identified no Member, but my learned friend seems to have a member in mind. He will share it with the appropriate agencies.

Cabinet in 2010 appointed an interministerial committee comprising the Ministers of Justice, Finance, National Security and Legal Affairs, to look into the legislative and administrative hurdles associated with the FIU. That committee is in the final stages of preparing recommendations for Cabinet. [*Interruption*]

Mr. President: I just want to bring to your attention that you have five minutes left before you have to wrap up, including injury time.

Sen. The Hon. A. Ramlogan: I am grateful, thank you.

In accordance with our international obligations, regulations under the Anti-Terrorism Act and the FIU have, in fact, been drafted. The former was laid in Parliament last Friday and the latter will be made by the Minister of Finance as soon as this amendment, which is now before you, is enacted.

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In November 2010, to comply with Recommendation 30(1) of the FATF, Cabinet reconstituted the defunct National Anti-Laundering and Counter Financing of Terrorism Committee which seeks to bring together all key government entities to advise on the policies and strategies necessary to combat money launder and terrorist financing.

This committee is constituted by key stakeholders, such as the Commissioner of Police, the Comptroller of Customs, the DPP, regulatory and supervisory agencies such as the Central Bank and the Securities and Exchange Commission. That committee has embarked upon a national risk assessment to identify the risks and vulnerabilities of Trinidad and Tobago to money laundering and terrorist financing, which is the foundation of any strong and effective legislative and administrative regime.

Further, the organizational structure of the FIU was approved by Cabinet. I wish to unambiguously state for the record that this Government recognizes the deleterious effect that money laundering can have on the financial stability, national security and integrity of our country. We are, therefore, cognizant that it is for us to implement a rigorous regime that will create a more secure, transparent and accountable global financial system.

This amendment is one that will go a long way. It is a first step in the right direction, in a short journey, because we will come back later to this Senate. It will be a short journey so we will implement systems and procedures to combat the scourge of terrorism, money laundering and illicit trafficking.

I beg to move.

Question proposed.

Sen. Terrence Deyalsingh: Mr. President, section 40 of the Constitution, under “Composition of Parliament”, if you will permit me, deals with the Senate:

“The Senate shall consist of thirty-one members...who shall be appointed by the President in accordance with this section.

(2) of the thirty-one Senators—

(a) sixteen shall be appointed by the President acting in accordance with the advice of the Prime Minister;”—so we have the Government Benches—

“(b) six shall be appointed by the President acting in accordance with the advice of the Leader of the Opposition;”—hence the presence of the six on the Opposition Bench.

If this Constitution was to be changed to make it seven, then we would be the Magnificent Seven, but I am happy to be part of the “Marvellous Six”, but that is not the crux of my argument.

Section 40(2)(c) states:

“nine shall be appointed by the President in his discretion from outstanding persons from economic or social or community organizations and other major fields of endeavour.”—part of these nine honourable ladies and gentlemen.

I am no defence attorney for the Independent Bench, but I take umbrage at the hon. Attorney General for sullyng the reputations of the Independence Bench, when he referred to a former Independent Senator. What he is indirectly doing is saying that the President is appointing Independent Senators who are not independent. [*Desk thumping*] That is a very, very serious attack on the integrity of the Independent Bench. Why would an hon. Attorney General go that route?

Sen. Abdulah: You are stretching that matter.

Sen. Ramlogan: One person, Anisette; that is it.

Sen. T. Deyalsingh: Are you saying that the President acted incorrectly? It is quite amazing how this Government falls in and out of love with Presidents to suit their own ends. At the 18/18 tie, they had the most vile things to say about then President Robinson. At that time, President Robinson was the biggest enemy of the UNC, now he is the darling; it is now an attack on President Richards. I think the Independent Bench could speak for themselves; I just took it as an affront to our President.

An Act to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009, that is what we are debating here; an amendment. In making an overview in my contribution to this Bill, I will attempt to correct many misinterpretations, many Government statements which, quite frankly, have more holes than the canteen at high noon in some western bar or west of the Pecos. [*Laughter*]

At last Tuesday’s sitting, speaker after Government speaker took pains to indicate that the previous government brought no legislation to this House to deal with corruption or crime; yet they are bringing an Act, which we brought in 2009, to amend an Act which we brought in 2009. Which is it? Did we or did we not bring some legislation? That is the first misstatement the population needs to have corrected.

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What is this FIU? [*Crosstalk*] So bringing one is the same as bringing none? This Government really has to be introduced to something called T-R-U-T-H. This FIU straddles two ministries. Clause 3 says that it is a department of the Ministry of Finance and clause 15 subsection (3) speaks about the Minister with responsibility for National Security. I will come to that later.

Clause 16 talks about the cooperative function that this unit has with the Central Bank and any other agency so deemed or any other government. So this FIU has both an internal relationship and an external relationship and, as the hon. AG said several times, words like “accountability, transparency, credibility”. What moral right, coming out of the Reshmi Ramnarine affair, can they have about accountability, transparency and credibility? [*Desk thumping*] They talk about the disappointment of Mr. David West. What about the appointment of Reshmi Ramnarine, with no apology to satisfy the national community?

It is staggering, the hypocrisy, when you compare the Reshmi Ramnarine issue with their lofty statements, when the Attorney General soars on the winds, soars on the currents and hits some heights of oration which would make Shakespeare look small. When you look at the veracity of the statements, that is when the wind beneath his wings moves away and he crashes to earth. The veracity of the statements cannot hold to scrutiny.

Part of this legislation deals with the Egmont Group and whether we are signatories or members of this group. My information, and I am subject to correction, is that when we demitted office we had policies and procedures in place and were taking the necessary actions to join the Egmont Group.

3.45 p.m.

I think the population needs to know what the Egmont Group is, because it is mentioned in the Act to create the FIU. The Egmont Group is a clearing house, if you will, for Financial Intelligence Units around the world. It is a clearing house for the collection and exchange of information. So that we can track illegal funds, illicit gains.

“The Egmont Group agreed in its Statement of Purpose, adopted in Madrid on June 24, 1997, to pursue among its priorities the stimulation of information exchange and to overcome obstacles preventing cross-border information sharing.”

Note the global impact of being a member of the Egmont Group. And being a member of the Egmont Group, we have to have credibility, we have to have

intelligence gathering, we must be accurate, and we must be believable if we are to stand international scrutiny. And, once more, we are the laughing stock of the international community over this SIA, SSA affair.

And not only that, in their haste to promote one of their girls' clubs members, they even brought the Office of the President into disrepute, because the President signed off on the SSA or the SIA, when it was supposed to be the other way around. Where is the credibility? Where is the intelligence? Where is the accuracy and where is the believability? Because what you have are people in Parliament speaking first and shooting later. You have ministers coming to this Parliament, misleading the Parliament, either deliberately or unintentionally. But the doctrine of ministerial responsibility will tell you, whatever you say in this Parliament are your words. And you have to take responsibility for your ministry.

And that leads me to another point, Mr. President, if you will just permit me to sidetrack for one minute. But it is in relationship to this whole thing about government statements and government policy. There was an article in today's or yesterday's *Express*. "Man takes loan to buy maxi, but hits licensing roadblock." It appears that the hon. Minister of Works and Transport made a declaration that, come February 1, anybody can license a maxi taxi.

This poor man, Mr. Rooplal Lutchman, decided to take a loan to buy a maxi taxi, going on the veracity of the statements of the hon. Minister of Works and Transport, only to reach the Licensing Office to hear that no such thing exists. There is a pattern of Government ministers speaking first and then taking prisoners after. Why should this poor man have to be subjected to this?

Mr. President, what is sadder about this whole issue? As I said last week, FITUN is now silent on inflation, and the Keith Noel Committee is now silent on murders and crime. Now, the pro bono lawyers who were very active under the PNM, I wonder if any pro bono lawyer would take up this case for Mr. Rooplal Lutchman? But that is just a digression.

Do we have the confidence in this Government that they can represent us at an international level for intelligence gathering, that they can take us to the Egmont Group and our Minister of National Security can stand tall, that when they research our spy agencies, whatever you want to call them, they will see that people are appointed who deserve to be there? And the hon. Attorney General talks about credibility. Hollow words soar high, but do not look pretty.

This issue of trust, Mr. President, is eroding not only local confidence, but it is also eroding our confidence abroad. And I ask the question again: why are we not

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yet a member of the Egmont Group? When we left there were certain stages to be followed and they have not been followed to the best of my knowledge.

And if they are going to appoint people to head the FIU, who are going to screen the résumés of these people? Who is going to make sure that the qualifications possessed by these people are accurate? Are they only going to appoint people sympathetic to their cause? Because, for the FIU to work, Mr. President, we have to maintain some sort of international standing.

Mr. President, the Ministry of Finance under clause 3 has a very important role to play in this. If you would allow me to just read the relevant section:

“There is hereby established a department of the Ministry of Finance to be known as the Financial Intelligence Unit, for the purpose of performing the functions and exercising the powers vested in it under this Act and any other written law.”

Mr. President, the veracity of statements emanating from the Minister of Finance, again, brings his office into question, and we can look at two statements which give me cause for concern. One of his very first statements had to do with the amount outstanding to contractors. He and the Minister of Works and Transport disagreed on the amount. Was it \$7 billion, was it 2.7 billion? But what was more disappointing, if we are to trust the Minister of Finance, if we are to repose confidence in the holder of that office, had to do with his statement that the People's National Movement made no deposits into the Heritage and Stabilisation Fund.

I think we all remember those statements, which were subsequently disproved. I would like to read, very briefly, the Annual Report 2010 of the Heritage and Stabilisation Fund. Page 3:

“The Fund ended the year under review with a market value of US \$3,619.7 million. It is worth noting that the central government made transfers amounting to US \$477.3 million to the Fund in 2009/2010.”

The reason I am raising this, comes back to my central theme of veracity, credibility in collecting information. If we have Ministers charged under this Bill, with executing the functions of the Financial Intelligence Unit, we have to be able to take our Ministers at their word. There are three posts in government—
[*Interruption*]

Sen. King: I wonder, through you Mr. President, if I could ask the hon. Senator for which year did the Minister of Finance state that there were no inputs into the Heritage and Stabilisation Fund. Thank you.

Sen. T. Deyalsingh: If you recall, Sen. King, in his budget presentation 2010, the hon. Minister said that the People's National Movement made no deposits into the Heritage and Stabilisation Fund—in the run up to election—sorry, prior to May 24, 2010.

Sen. King: That is not so.

Sen. T. Deyalsingh: But then he clarified.

Mr. President: Get back to the Bill at hand. Thank you.

Sen. T. Deyalsingh: But there are three offices in Government where the incumbent Ministers have not been as clear as they can. And for a government to have credibility, we need the Attorney General, Minister of National Security and Minister of Finance to carry that very heavy ethical burden. Because for the FIU to work, under section 15, subsection (3), it talks about the Minister of National Security. And if you permit me to read his duties under that section:

“For the purposes of this section, the Minister with responsibility for national security may by Order prescribe the law enforcement authorities to which the FIU shall submit a report within the context of its subject matter.”

3.55 p.m.

Mr. President, my point is, the Minister of National Security has been embroiled in a lot of debate recently. How are we to be comforted by his role in this Financial Intelligence Unit? How are we to take comfort that he can execute his responsibilities as given in this Act?

Mr. President: Senator, you know you are not allowed to bring into question the conduct of any Senator of this Senate.

Sen. T. Deyalsingh: Yes.

Mr. President: I thought you were—unless on a substantive motion, obviously, if you bring a substantive motion you could bring the conduct of anybody into question.

Sen. T. Deyalsingh: Thank you, Mr. President. I am grateful for your correction as usual. But, Mr. President, if we look at this FIU Bill, what would give us cause for concern again is the status of our application to be a member of

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the Egmont Group. We have heard about the appointment of Mr. David West. Has that person been dismissed? If not, has he been replaced? Because our understanding is, there is currently no one heading the FIU. Is there somebody heading the FIU? Do we know that person? Is there a new director? We need to know these things.

The FIU represents a serious piece of legislation to combat money laundering and drug trafficking. We need to have all hands on deck with this piece of legislation. If we are to support the legislation certain questions need to be answered and certain assurances need to be given. We need to know what is the time frame for getting us into the Egmont Group and we need to know what is the real reason for bringing this amendment now. Because the hon. Attorney General, in the first half of his presentation, presented the rationale to combat lotto shops and jewellery shops from doing nefarious activities. Was that the real reason or was the real reason contained in the second half of his argument where he spoke about possible blacklisting? We need to know what is the real reason for the urgency in bringing this amendment to the Parliament. Is it really to go after lotto shops and jewellery shops? Because he has tarnished the reputation of all jewellery shops in one fell swoop; he did not say jewellery shop A, jewellery shop B; lotto player A, lotto player B. We need to know what the real reason is. My suggestion is that there is possibly someone looking into our status in this FIU; there is a group of people coming down to look at us and that is why we have to have this amendment rushed through the Parliament. We just need to know what the truth behind this amendment is at this point in time. When these questions are answered, Mr. President, we would be only too happy to support it.

Thank you very much.

Sen. Basharat Ali: Mr. President, I am pleased to be able to make a contribution to the amendment Bill before us, which is very short but still very significant.

Mr. President, some of us would have been here in 2009 when both the Proceeds of Crime (Amdt.) Bill plus this Financial Intelligence Unit Bill were discussed and went through all its stages and that was at the end of 2009. If I look across here at our Senators—I know Sen. Oudit was here at the time; Sen. Panday would have been from the other House; on the Opposition Bench I think the only one would have been Sen. Beckles-Robinson, because she was a Member in the government at the time—she was Deputy Speaker, I believe it was—and then on our Bench there were four of us who were there in that Ninth Parliament which did both of those Bills.

Mr. President, we got very late notice of this amendment, because it is only on Thursday evening I was called by the Procedural Clerk and told there was a change in the agenda and this Bill was going to be introduced and would be going through all the stages and then on Friday I saw the hard copy of what the amendments were which looked minuscule.

Fortunately for me, Mr. President, and purely by coincidence, I was looking at just those two Acts a couple of weeks before in preparation for last Tuesday's sitting on the Motion which was then before us and which I intended to not support on the basis of what I feel and know happened with these things. Because in looking at what we have been doing, I came to the conclusion that we are very good at getting legislation in place. Whether we do it this way or whether we do it through a joint select committee after it is laid properly as a Bill, we are pretty good at doing that. I think those two Bills I would speak to, what the process was, certainly, to get to the point of enactment of those two Acts in October of 2009.

So my rationale when I say I was not going to support that Motion was, we are pretty good at passing legislation. We have lots of legislation, some very big ones with international obligations, but when it comes to the implementation of an Act, we are—I put it down as—so-so. We do reasonably well in the paperwork in terms of regulation, but we do not really get that amount of implementation, that is why I say so-so. The third part of it is enforcement and that is where I say no-no. That is why I felt in fact that—and I should not be speaking to that now—Motion which came before us was premature and should have been withdrawn, because to me it was like the Carnival season, all-inclusive. The long list of crime there was like the all-inclusive fete they have now, one price you pay and you are supposed to get everything. [*Desk thumping*]

Sen. Panday: We did not need that one.

Sen. B. Ali: So I did, in fact, look at these two Bills from the Bill stage to the Act stage quite carefully, the Proceeds of Crime (Amdt.) Act and the Financial Intelligence Unit Act, those were the two Acts.

Mr. President, I have the timeline for those Bills and I have chosen purely the Senate aspect of it because this honourable Senate did those two Bills on two separate days. The first one we passed was the Proceeds of Crime (Amdt.) Bill and that, after having been in the other place from May and passed at the end of June, we had to in October—and my data here from the Parliament website said the second reading of that took place on October 05, 2009. The debate was from 1.30 p.m. to 11.00 p.m., passed with amendments. It was a pretty hectic debate

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because we had 14 speakers in that period from 1.30 p.m. till about 11.00 p.m., the amendments then had to go back to the other place. So this is how the Proceeds of Crime (Amdt.), which was Act No. 10 of 2009, was enacted and assented to on October 09 and in fact was proclaimed immediately. It was proclaimed on October 09.

The second Bill then, which we would be speaking about, would have been the Financial Intelligence Unit of Trinidad and Tobago Bill, 2009, and in this honourable Senate we did that the following day. So having gone home about 11.00 p.m., we came back at 10.30 a.m. the next day to do the Financial Intelligence Unit Bill. Once again there were about 14 speakers as I listed them here and again it was from 10.30 a.m. to 11.00 p.m., so we had two full days here in Parliament. I see my friend over there nodding her head because she was here for the whole show also, and once again it was passed with amendments in this Senate. So having been passed on October 06 through this Senate it went to the other place on October 09, 2009 and it was enacted there and assented to on that date, so both those Bills went through the system on that one day, October 09, 2009. Some of us would remember it because I know a couple of my people spoke at that time.

The final part with respect to that legislation is the fact that the proclamation of the Financial Intelligence Unit Act took place some four months later and that would have been February 09, 2010, so today being February 08 that is about a year ago when that Act was proclaimed. I believe the reason for that period of proclamation was really also to get into place the regulations. My records show that the regulations for that would have been tabled on February 02, 2010; I think it was four months later, the Financial Obligations Regulations was also tabled in Parliament and I cannot say it was passed because very cleverly the Proceeds of Crime (Amdt.) Bill provided for the change in terms of orders and regulations from affirmative resolution to negative resolution.

So the Financial Obligation Regulations did come here in 2010 requiring negative resolution. It was very interesting and I was surprised really when I started to do work on this to find that the regulations were very complete. In fact, some 35 pages of regulations attached to the Financial Obligations Regulations cover a lot of areas which we are talking about now. By the way, if any of our Senators here would like to see what those regulations are, they can go to the website, and the website would be www.fiu.gov.tt. So you could download it and read it and then you would get a better picture of what it is all about.

I only found this out by chance—and very interesting legislation too, because some of the things we are talking about for this amendment today I wonder whether there is need for it. [*Desk thumping*] Certainly there is a need to change that reference to the Proceeds of Crime Act from section 53(3) to section 55(3), really looks like just a number change and could well be a typo, but I would come back to that.

4:10p.m.

Let me say all I have heard the hon. Attorney General speaking about is one of the amendments here is to add a little addendum to sections of the Bill. The regulations in fact provide for the FIU to be the supervisory authority for certain categories in the listed businesses. In fact, the new list came out in POCAA, as an amendment Act which gives that long listing of the businesses that need to be looked at.

In this supervisory authority part, it provides for all the listed businesses. So it has three supervisory authorities: one will be for the financial institutions, that is the Central Bank, one will be for stockbroking, et cetera and that is the SEC, and the third will be the listed businesses which will be the FIU. So that these regulations give the authority already for the FIU to be the supervisory authority to look after all the data that come in from all the listed businesses which I heard enumerated a few times here today. I would not talk about the casinos, the gangs and everything else. But the FIU has the authority. So in terms of the amendment that we are looking at, I do not see why we need to do it because it is there. In fact, it is mentioned also in the POCA amendment, and there it comes under section 56. It says under section 56 of the POCA (Amdt.) Act, until regulations are made under the Act, which is the POCA (Amdt.) Act, then the FIU will be the supervisory authority for the listed businesses which, as I said, is all of these except for the financial institutions, et cetera.

Really what has happened here? I think it is an embarrassment, Mr. President. To me, it is totally an embarrassment. Those of us who were here in the Parliament before will have to feel ashamed that it went through. I went and looked at the first reading of that Proceeds of Crime (Amdt.) Bill and from that onwards the same—and the FIU Bill in fact, and from that same Bill, I got this misnumbering. So it has been there from May 2009 till now. It has been there all along. [*Desk thumping*]

I notice they do not give any explanation, but it is a very basic part of the whole process for the Proceeds of Crime (Amdt.) Act and the FIU. Because the Proceeds of Crime (Amdt.) Act really gives the authority to set up the FIU and we

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have not heard that said here today. So this is why I chose to go through this and to speak about it. And as I say, as Sen. Deyalsingh wanted to know also, why have we not been a member of the Egmont Group? As we know the Egmont Group is—they say they are the informal group of Financial Intelligence Units (FIU). Somehow or other, and I have a listing for them, and it should be an up to date listing because I did it only yesterday, and we are not on that list at all; Trinidad and Tobago is not there. I had that question: why are we not a member of the Egmont Group?

I noted my friend, Sen. Deyalsingh, gave some reasons, but I would like to hear from the other side why not. There are a number of our regional people who are members. Look at the list; 34 people in the Americas who are members of the Egmont Group includes Antigua, Bahamas, Barbados, Belize, BVI—if you want to call it that—Cayman Islands—shall I go through more?—Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Turks and Caicos Islands. So that is a long list and then all the big ones, the United States, Venezuela and everybody else. They are all there. But we are not there. Why? When all these other small Caricom countries are there, we are conspicuous by our absence. Jamaica also is not there. So I ask that question and I hope to get that answer soon because, to me, it is important from the point of view of our image why we are not there.

The Egmont Group is really the basic group which started this together with FATF which is from the task force set up by the Group of 7, it was then. So the Egmont Group really does allow coordination. In fact, FATF now has a Secretariat in Toronto. So, I wonder why not. We talk FATF and CFATF, but CFATF, Mr. President, is an associate member. They do not have status. They are an associate member; so all those Caribbean countries, 41 countries or 31 countries, were listed as being FATF, are associate members but we go through the process of the mutual evaluation reporting system, and this is why I think Sen. Deyalsingh was talking about the reports that come out of there are not very favourable to us at all. Because we have been through the evaluating process we have a number of comments.

One of the things I have noticed in fact, Mr. President, is that there has been quite a bit of tension, tension I call it between FATF and the other group, the basic group, and CFATF, maybe because we are just associate members. CFATF—in fact, in one of the more recent reports, I picked up something which is from December 2010; it is an extract from the *World Money Laundering Report, Volume 6 No. 9*, published in December 2010, that was the latest thing I have here. And there was

a lot of backbiting between both groups. It is amazing. The CFATF in reporting speaks of the arrogance of FATF and FATF is saying well, these people, a lot of them do not pay their fees on time. So that is the kind of feeling that they have. But notwithstanding that, I had gone through, I think Sen. Deyalsingh must have done the same thing gone through with the reviews, the Mutual Evaluation Reports (MER) and the prognosis for us was not very good.

4.20 p.m.

The summary for the Trinidad and Tobago—and this is from the last report that I spotted—was FATF looking at “Improving Global AML/CFT Compliance: update on-going process.” It is from a report on October 22, 2010. Here is what this report says about Trinidad and Tobago, and this is an official report:

“In February 2010, Trinidad and Tobago made a high-level political commitment to work with the FATF and CFATF to address its strategic AML/CFT deficiencies. However, the FATF has determined that certain strategic AML/CFT deficiencies remain. Trinidad and Tobago should continue to work on implementing its action plan to address these deficiencies, including by: (1) implementing adequate procedures to identify and freeze terrorist assets without delay (Special Recommendation III)”

That would be one of the nine recommendations for financing of terrorism.

“(2) implementing adequate procedures for the confiscation of funds related to money laundering (Recommendation 3); and (3) establishing a fully operational and effectively functioning FIU, including supervisory powers (Recommendation 26). The FATF encourages Trinidad and Tobago to address its remaining deficiencies and continue the process of implementing its action plan.”

Because, as I believe Sen. Deyalsingh pointed out, we did not do very well and, in fact, I think the hon. Minister did, in their reviews, the Mutual Evaluation Report, and the level of compliance was really appalling at the second follow-up report. In fact, they said that:

“Trinidad and Tobago was rated partially compliant or non-compliant on fifteen (15) of the sixteen (16) Core and Key Recommendations and 26 other Recommendations.”

They give the rating of the core and key recommendations in this report. So this is the third report which was submitted through this procedure, the MER procedure. Things were looking up at the time. Notwithstanding those ratings, the conclusion on this at the end of the third follow-up report, says:

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“As noted in the beginning of this report, Trinidad and Tobago was rated partially compliant or non-compliant on fifteen (15) of the sixteen (16) Core and Key Recommendations and 26 other Recommendations. Enactment of the POCAA,”—that is the Proceeds of Crime Amendment Act—“and FIUTTA,”—that is what we are talking about today—“the FOR”—which is the Financial Obligations Report, 2010; would have been there—“and the ATAA”—that is the Anti-Terrorism Amendment Act—“has addressed substantial deficiencies identified in fourteen (14) Core and Key Recommendations.”

And they give a listing of those in this here. It says:

“This is a substantial improvement over Trinidad and Tobago’s former situation. However, substantial deficiencies in one Key Recommendations (R. 23,) and nine other Recommendations remain to be addressed.”

The final sentence was:

“Based on the foregoing it is recommended that Trinidad and Tobago be required to report back to the November 2010 Plenary and Council meetings.”

I am not aware whether we had representation there, but that was the report. So I do not know about the blacklisting. They have seen improvements, particularly these Bills that we have enacted.

Sen. Panday: Hon. Member, could you kindly give way? In November, yes, the Government of Trinidad and Tobago was represented through the hon. Minister of National Security, Brig. Sandy. He did attend that one and also the subsequent one in Miami, so we had representation. I do not think there was representation before by the Government of Trinidad and Tobago at those meetings.

Sen. B. Ali: Thank you, hon. Senator, for giving me that update. I am relieved that we have been in such a position, but my worry is with CFATF, in fact, because one other report there says that CFATF emerges from years of introspection. This report is published in December 2010 and extracted from *World Money Laundering Report*.

So this report here, once again, is not very favourable. That is the one that speaks of arrogance on the part of FATF and whatnot. But I think we are on the right path and with this correction—because, really, that section 55(3), I am surprised that it was never brought before, because, really, that is the section of POCAA which gives the authority for the FIU to do all these things. Section 55(3) is what we did there.

While I was doing this, a very strange thing happened. I said, well look, it is good to just go through that section 55 completely, and then I looked at some of the amendments that they had there and that same section 55 they had a comment there:

“(c) in subsection (7), by deleting the word ‘(12)’ and substituting the word ‘(10)’.”

And going back to the parent Act I did look at that and that “12” and “10” referred to subsection (10). So that was okay, because I really do not know why it was there. So there is the change there to subsection (10). Then immediately after that, the amendment said:

“(d) by repealing subsection (10);”

Subsection (10), in fact, is an important one in that. Subsection (10) says that the Minister may by order, subject to negative resolution of Parliament, amend the First and Second Schedules of this POCA. The First Schedule, in fact, has a listing of all the businesses which have to be overseen, and the Second Schedule, really, I saw it once again in that draft Bill, the Offences, because a lot of the offences from that draft Anti-Corruption Bill would have been going to the Second Schedule.

So I do not understand how they can change to subsection (10) and then repeal it. My problem is—if I am correct, well, we have taken out the ability of the Minister to make amendments. So I pose it to the powers that be. The Attorney General is not here, but perhaps you may wish to follow that up and let me know whether that is also an error in the section 55.

There is not very much else for me to say. I believe, quite frankly, that notwithstanding all that has been said, as a neutral person here I think we have the makings of getting down to brass tacks on this whole subject of crime control and supervision and I hope that we will take it where it should go. I heard the hon. Attorney General say that some more amendments are coming to the FIUTT Act. If that is so, then we will be here and I am sure my colleagues here will be very happy when it comes to have our input in that also.

Thank you very much, Mr. President.

Mr. President: Hon. Senators, it is now 4.30 p.m., so I propose to take the tea break. This House will be suspended until 5. 00 p.m. when we will resume.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. Kevin Ramnarine: Thank you very much, Mr. President. I rise to make a contribution on this very important Bill before this Senate, the Financial Intelligence Unit of Trinidad and Tobago (Amdt.) Bill, 2011. The Bill before us, of course, in law, is a very simple piece of legislation. I believe there are just two clauses in the Bill. The Bill might be simple but the law that it relates to, the Financial Intelligence Unit Act, 2009, is an extremely serious piece of legislation that deals with things like money laundering and corruption.

The last time this Senate met, we dealt with the Prevention of Corruption Act and we referred that matter to a joint select committee. So it underscores the importance of combating corruption, of combating the drug trade and money laundering to the Government of the Republic of Trinidad and Tobago.

Before I start I would like to give a contextual framework in which I believe this Bill is couched. Trinidad and Tobago, it is no secret, is one of the larger economies of the Caribbean and Latin America and that is as a result of the nature of our economy, which is an oil-and gas-based economy. My research indicates that for the period 1995—2009, this country attracted US \$10 billion in foreign direct investment into its energy sector, and that figure accounts for 90 per cent of all the FDI inflows into Trinidad and Tobago in that period. So quite a lot of money was passing through our energy sector in the last 14 to 15 years, and the majority of that money, about one-third of that money, the largest chunk of that money, was spent on one project, the Atlantic LNG project. So that is this energy dimension to the economy.

The other dimension to the economy, of course, is a bit more nefarious, and that is that we are blessed by geography to sit where we sit, 10 degrees north of the Equator and just a couple of miles away from the South American mainland. That has, of course, advantages and disadvantages. It means, therefore, that we sit directly between the supply and demand for the international drug trade, the supply being South America and so on, and the demand coming from North America. When we analyze what is happening in a country like Mexico, Mexico has—of course it is no secret, they have a very serious problem in Mexico with the illegal drug trade and they also have a very serious problem with illegal guns. But one must consider where the demand is coming from for those drugs and where the supply is coming from for those guns. Because the largest consumer of illegal drugs in the world is the United States and the largest producer of guns in the world is the United States. So Mexico's problem is not necessarily Mexico's problem; it is also a problem for the United States, and they have recognized that.

In like manner, the problem of combating transnational crime and the problem of combating the illegal drug trade is not necessarily a localized or Trinidad and Tobago problem, but it is an international problem that needs an international approach and an international solution and that lies at the very heart of what is intended for the Financial Intelligence Unit.

So as I said, the Bill before us is very simple, but what it intends to do, what it intends to impact on is very significant. Money laundering is unfortunately a feature of the modern global economy that is characterized by an almost seamless movement of money across borders. In such a scenario, the proceeds of crime and, indeed, the proceeds of transnational crime can be distributed and later integrated into the asset base of benefactors.

5.05 p.m.

In some cases the proceeds of crime are reinvested into criminal enterprise, and thereby making that criminal enterprise even stronger. In such a case, what does the state do? In fact what does the international community do? The response has to be through creating strong institutions that can monitor and question financial transactions that are suspicious.

Mr. President, it is found that depriving the criminal element of the proceeds of their crimes is one of the most effective ways of combating transnational criminal activity. Progress in this area is critical to fighting organized crime, corruption and the financing of terrorism, et cetera.

So, Mr. President, the Bill before us as I said is very important. In one of the earlier contributions, Sen. Deyalsingh alluded to the establishment of the Heritage and Stabilisation Fund and that fund too—as I want to put on the record—was established in the late 1990s, it was then called the Revenue Stabilisation Fund. It was established under the UNC administration of 1995/2001, and like the Dollar for Dollar programme which was rechristened GATE, the Revenue Stabilisation Fund was rechristened the Heritage Stabilization Fund. [*Desk thumping*] I think the saying would be the “same wine in different wine skins.” But the intention is the same.

The intention of course was to save for a rainy day, and that fund I am told is now somewhere in the region of US \$3.6 billion, according to the latest figures in the report laid in this Parliament last week. So Trinidad and Tobago is one of the more mature economies in the region, and as I mentioned before, we are also susceptible to the nefarious activities of money laundering and drugs and criminal cartels and so on.

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Mr. President, as you and hon. Senators in this august Chamber would know the Financial Intelligence Unit was established by, I think, it was Act 11 of 2009, and the FIU of course, stands on the shoulder of an amendment to the Proceeds of Crime Act, which is Act 10, 2009 and the parent legislation for the Proceeds of Crime Act is Chap. 11:27 which is the Proceeds of Crime Act, 2000. That was passed again under the UNC administration of 1995/2001, and that was a period when there was a lot of legislative initiative taken by the government of the day to deal with the drug trade and to deal with crime.

In that period, in addition to having the Proceeds of Crime Act, we also had the Judicial Review Act, which is a piece of legislation that was very skillfully used by our now Attorney General in his previous incarnation as an advocate before the courts, and in that period, we also had the Mutual Legal Assistance in Criminal Matters Act passed in the year 1997. We also had the Freedom of Information Act passed in that period and of course, one of our favorite Acts, that is the Constitutional (Amdt.) (No. 3) of 1999 which creates the joint select committees to have oversight over regional corporations and state enterprises and so on.

So the role of government and the role of legislation continues to evolve to match what is happening in the wider society. And given the nature with which moneys can be moved easily around the world now, through wire transfer, through simple things like buying works of art, ill-gotten gains can be transformed into legitimate assets and thereby camouflaged. It is therefore, important to have some sort of legislative infrastructure, to peer into these transactions to identify when these things are happening. Because, corruption has a very unquantifiable and almost invisible impact on the economy.

It is estimated that in certain Asian countries the impact of corruption on GDP—and as I said, it is very difficult to quantify the impact of corruption on GDP. It is estimated in some Asian countries, the impact, to be as much as 5 per cent of GDP is being eroded or corroded away because of corrupt activities. And in one report it was estimated that in Mexico it could be as much as 9 per cent of the economy is lost as a result of corruption. Corruption and money laundering distort markets.

In Trinidad and Tobago it has been rumored that corruption and money laundering distort the real estate market, it also has an impact on companies' appetite for innovation and for productivity. Because if a company knows that another company is going to get ahead through corrupt acts, then they would be

demotivated to be more productive and more innovative. So we could go on and on and talk about the impacts of corruption on the economy of Trinidad and Tobago and other economies.

So what does this Bill before us do? Essentially, the Bill before us seeks to make a very simple amendment to section 8 of Act 11 of 2009 by inserting after the word “internationally” the words “and shall exercise any other function given to it by other written law”. That is one of the proposals, and then it also proposes to delete the words “53:3” and substitute the words “55:3”. What the intention behind—as I think the words the lawyers use is “what is the mischief behind this”, right. So, I am an engineer so—

When the Proceeds of Crime Act was amended through Act 10 of 2009, the Act itself made provision in section 34—Section 34 of Act 11 of 2009 says:

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

- (a) financial institutions at paragraphs (d), (h), and (i) of the definition of ‘financial institution’; and
- (b) listed businesses.”

And as I mentioned before, the Financial Intelligence Unit Act stands on the shoulder of the Proceeds of Crime Act, and it was therefore supposed to have been that the intention of the Proceeds of Crime (Amdt.) Act would have been reflected in the FIU Act of 2009, and what this Bill before us today intends to do is to bring some sort of synchronization to those two Acts, by giving the FIU the supervisory authority over financial institutions and thereby giving it more teeth.

You see, Mr. President, the most powerful weapon in the fight against crime is information and, once the FIU has the appropriate authority and the appropriate teeth, it would be empowered to deal with strange and unusual transactions that are taking place in the economy of Trinidad and Tobago.

So, Mr. President, as we move on the Bill before this honorable Chamber seeks to now give the FIU an expanded remit by amending section 8, to now give the FIU any other function that may be given under any other written law, and to correct a small cross-referencing error in the same section. Whilst this simple amendment is an important one, it would enable the Minister to make the necessary regulations to deal with certain financial institutions and listed businesses under the Financial Intelligence Unit Act of Trinidad and Tobago, 2009.

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So basically, in a nutshell, as I said, it is a very simple piece of legislation that we have before us here today, and it seeks to enhance openness and transparency in the governance of Trinidad and Tobago and its affairs.

5.15 p.m.

It also seeks to put us in good stead with the international community, because one has to be compliant with certain international provisions if one is allowed to trade, to buy and sell internationally. There are many Trinidadians who at home privately at nights trade on Ameritrade or trade with other e-trade platforms, and for them to continue to do things like that, it would require that the country that they are trading from has all the necessary compliances and so on with international regulatory bodies.

So this Bill continues to allow Trinidad and Tobago to integrate its economy into the world economy, and, as I have mentioned before, our economy has long been integrated into the world economy. In fact, in comparison to other Caribbean jurisdictions, we are far advanced in terms of how we trade internationally. So, we have had a long experience with respect to energy, with respect to banking and with respect to manufacturing of trading internationally. So what this does is simply give us another plank of compliance with international best practice.

As we know, what has happened since September 11, 2001, when the terrorist attacks took place in New York and in Washington, is that there has been an international clampdown by the United States and other countries to try to stop the movement of terrorist funds throughout the world, and Trinidad and Tobago has been compliant with those requirements to stem the flow of terrorist funds throughout the world.

So, Mr. President, before I wrap up my very brief contribution, I want to add that we on this side are fully appreciative of the need to provide our country, to provide our economy with all the tools that are necessary to navigate the global economy, and to be competitive in that global economy, we need to have certain compliances that will allow our businessmen, will allow our—I want to use the word “capitalist”, but it is not necessarily a word that resonates with many people—our entrepreneurs—that is probably the word I should be using—to do business in the global environment and not to be shunned or sidelined.

So, Mr. President, with those few words, I wish to end my contribution on this important Bill.

Thank you very much. [*Desk thumping*]

Sen. Faris Al-Rawi: Thank you, Mr. President. I rise to join in this debate of what has been described as a simple bit of legislation. I wish to compliment Sen. Ramnarine on a very eloquent delivery. In listening to him, I dare say that if ever there is thought for a new Attorney General, he may fit the characteristics. I hope that he qualifies as an attorney, and I say so not in any sense wickedly, Mr. President, sincerely, because he has done a good job at trying to describe for this Senate what he considers to be the mischief which is sought to be addressed by this particular Bill. I do not quite consider that he did hit the target, but he certainly went, much more, way into identification of mischief, if I can borrow the phrase, because the Attorney General failed in his delivery to identify this.

Mr. President, in listening to the Attorney General give his presentation to this Senate, it reminded me of last week's occasion—there were mixed emotions. The hon. Attorney General was chained to the speech from which he read for the first part of his opening—quite a considerable bit of reading for a man of his talent. But nonetheless, in being chained to it, he was chained to a line of rhetoric on the one hand, and he was also chained almost verbatim to excerpts taken from various bits of material that I have in fact read.

When we come to this Senate to debate matters, it is critical for us to try to avoid long run-ups to the wicket, it is critical for us to dive to the heart of a debate, to unashamedly declare what it is we consider as the mischief on the table and to have debate upon that in an open discourse. Regrettably, that did not come from the delivery of this Bill by the hon. Attorney General. There was a lot of song and dance again of persecutorial nature as opposed to prosecutorial nature, something on which I have had comment in previous debates—that there is an undue prevalence of persecution as opposed to prosecution, in my humble view,—on the part of the Attorney General.

I say that there is an elephant in the room. This bit of legislation, this Bill brought to us today, is accompanied by a very large elephant, and there has been very careful attempt to avoid the declaration that there is an elephant in the room, by the contributions thus far on the Government side. Mr. President, the elephant that I consider to be in the room is that Trinidad and Tobago must pay attention to section 28(1) and (2) of the Financial Intelligence Unit legislation, that is Act No. 11 of the 2009.

Mr. President, I thank Sen. Ramnarine for putting it properly upon the shoulders of the Proceeds of Crime Act, No. 10 of 2009, and I thank him and those speakers before me for reflecting upon the fact that we are dealing with concurrent overlap of legislation, and that in seeking to address the issue of

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financial regulation in an attempt to avoid money laundering and proceeds, and financing of terrorism, which is what the Financial Intelligence Unit was meant to establish—what we are doing is recognizing that we must look at the holistic approach of legislation.

The elephant in the room, as I have described it, lying in section 28(1) and (2) of the Financial Intelligence Unit of Trinidad and Tobago Act, No. 11 of 2009, is there insofar as I state and I wish to read from section 28:

“28(1) Within one year of coming into effect of this Act, the Minister shall return to Parliament for a review by Parliament of the operation of this Act;

(2) The review shall be debated by Parliament with a review to any amendment of the Act that may further the compliance with the Financial Action Task Force obligations of the State.”

Mr. President, this Act was debated in 2009. There was extensive debate on the Act and one need only to reflect upon the *Hansard* of October 06, 2009 in the Senate alone. It is quite a voluminous document when you go through it. It is about 138 pages long and that does not even include the debate in the Lower House. When we look at what the debate which gave birth to this legislation involved, we note that the Act itself, the Financial Intelligence Unit Act as it was then debated, the parent Act for this Bill that is being debated today—it came with an open statement that Trinidad and Tobago being a member of a global community, in a global financial environment, was being reviewed by international agencies, the Financial Action Task Force in particular, with respect to its rankings and potential blacklistings as they prevailed then. There was no attempt to hide that.

There was a lot of debate and song and dance on the part of the Opposition, as it was then constituted, saying that the legislation was rushed, that there was negligence in bringing it forward as late as they perceived it to be brought, and indeed that was echoed by the Independent Bench. That is until the hon. Attorney General as he then was, Mr. John Jeremie SC, brought home the debate and then demonstrated in a very pellucid fashion why that debate was actually not late. That it had been in the making for some two years at that point, and it was with an intention to achieve a balancing of rights between derogating from rights established under sections 4 and 5 of the Constitution, and looking to make sure that we did not run afoul of passing law under the ambit of section 13 of the Constitution, balancing that on the one side with the rights that one sought to enforce by the establishment of a unit which would advance us in the international financial climate.

So, the hon. Attorney General, as he then was, answered the question as to why that bit of legislation then was being brought forward at a very late hour. He accepted that it was late. He went into a justification for the type of model that was being advocated which is embodied in the Act itself, being an administrative model, being one of four potential models, as to why that was good when one compared dicta, for instance, by the hon. Chief Justice in the Northern Construction case which showed that section 33 of the Proceeds of Crime Act was a safe provision in its parallel comparison to what was then being debated because it was born from model legislation and that the administrative model adopted by the Financial Intelligence Unit Act was a safe bet to be adopted because as he described it, it was the “first pass” to the creation of mandatory provisions of international Conventions to which we are a signatory.

Mr. President, I am sure I do not need to remind you that there are three international Conventions that have governed the development of this type of legislation, that is, financial legislation, financial investigation units, FIUs, and those bits of legislation are, if I could reflect, firstly in 1999, we had the Convention for the Suppression of Financing of Terrorism which required criminalization of the financing of terrorism; secondly, the United Nations Convention against Transactional Organized Crime which was declared in 2001; and thirdly, and this ought to be familiar to us because we dealt with it on the last occasion here, when we were dealing with the establishment of a joint select committee for the anti-crime legislation and dealing with the United Nations Conventions against Corruption 2003, which as we all know, Trinidad and Tobago signed on to on December 11, 2003. Those three bits of international treaties and the last two in particular, required in specific terms, and in the last document in mandatory senses, the establishment of FIUs. It was with that in mind that there was an acknowledgement that these international treaties, and particularly the last two, were born out of the FATF recommendations, in particular Recommendation 26 of the 40 + 9 recommendations which the hon. Attorney General alluded to.

In Recommendation 26, it became clear, as clarified by the international treaties, that there was an obligation amongst signatories to the treaties to create the FIUs. That is what was done in 2009. Notwithstanding the contradictory statements by the Government that the People’s National Movement did not in its opinion bring any legislation to deal with corruption, in 2009, three pieces of legislation were brought forward, which had sincere impact upon addressing this country’s compliance with mandatory terms to international Conventions firstly,

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and secondly, taking a very strong step towards demonstrating to the international community and the local community that crime will not be tolerated. Those three pieces of legislation were: the Proceeds of Crime (Amdt.) Act, No. 10 of 2009; the Financial Intelligence Unit of Trinidad and Tobago Act, No. 11 of 2009; and in January of 2010, Act No. 10 of 2010 which is the Anti-Terrorism Act.

5.30 p.m.

Those three bits of legislation were brought under the People's National Movement and were necessary to be brought. But coming back to the elephant in the room, there was no elephant in the room when the People's National Movement piloted that legislation and when there was sincere debate because it was laid open on the table, Mr. President, that we were going to be reviewed by international agencies. And need I state now for clarity, the review is, in some instances, on a quarterly basis.

I noted with great concern the debate in the Lower House this year, this parliamentary session on January 12, 2010, when the hon. Colm Imbert stood in debating the Anti-crime Joint Select Committee proposal, to ask the Government to take note that Trinidad and Tobago was being prejudiced by the Government's failure to address outstanding conditions as they related specifically to the FIU.

There was—and it is on the *Hansard* record—much song, much dance and cries of Privileges Committee from Members of Government Bench and they complained that Trinidad and Tobago was not blacklisted and, on explanation in further debate, the hon. Colm Imbert in fact clarified that Trinidad and Tobago was being prejudiced. Indeed, Sen. Ramnarine recommended for us the fact that it is in our best interest to deal with this Bill today so that Trinidadadians may participate in international trade. Mr. Imbert was referring us to the fact that he had received communication and correspondence from trading houses in the United States that said that they would not process trade transactions as they related to stocks and shares because Trinidad and Tobago had not met the required standards in particular with respect to its FIU and the obligations under the FATF, Mr. President.

Today we are dealing with a Bill which is disguised to be on two points. One, which is a non-point and that is, clarification and correction of a typographical error clearly, and that is as it relates to the replacement of the reference in section 8 of the Act to section 53(3), as opposed to section 55(3); accepted, non-issue, no debate over that.

But the Government has come here today to say: "Let us deal with this Bill as a matter of priority, Mr. President." Because we need to make sure that we are cross-tying the Proceeds of Crime Act as it relates to the establishment under section 34 of the amendment in Act No. 10 of 2009 and section 34 was the transitional provision which said that until a supervisory authority is established, the FIU is to be the supervisory authority under that Proceeds of Crime Act. They say that must be tied into the FIU Act itself, Mr. President.

But, Mr. President, the elephant in the room was not addressed because the hon. Attorney General has not told us, and I hope he will do so in his wind-up, notwithstanding the fact that he is again not here in the Senate, Mr. President. He came, we were enlightened by his presence, he rose the heat and temperature in this Senate, and as quickly as he raised the temperature he has left again. And I must state for the record again that I consider in my humble perspective that the nine members behind me, the six members of the Opposition who are here and the one, two, three, four, five, six, seven persons on the Government benches who are here, need to have the second most powerful person in Trinidad and Tobago present for debate. Because he is the Attorney General. The Prime Minister is sworn in and then the Attorney General is sworn in. I cannot, for the life of me, fathom how he is intended to respond to issues if he is not present for the debate.

Sen. Panday: I am taking notes here.

Sen. F. Al-Rawi: I am grateful that he has a very efficient secretary in the person of Sen. Panday but my fear in the notetaking, Mr. President, is what happened on the last occasion. When it is I raised the issue of the prevalence towards persecution as opposed to the prevalence towards prosecution, generally I recommended to the Attorney General that he could take avail of the private indictable route, generally, to deal with things. He, in his wind-up, refusing to give way said that he was talking about perjury which I was not. So the note taker must be careful to get it right, Sen. Panday. Get it right because the Attorney General, through you, Mr. President, will not give way when he is caught out, like a bull in a china shop he is at times, an intelligent one of that I mean, and I mean no disrespect to him, he is a good advocate, he is convincing. But, regrettably, he is trivializing the issues in this Bill, for instance, by failing to declare that the elephant in the room is the fact:

Firstly, notwithstanding having come to Government on May 24, 2010; notwithstanding the fact that this legislation was proclaimed in February 2010; we are now in February 2011, and Mr. President, I just want to reflect on the date in particular, proclaimed 9th February, 2011. We are in the Senate today, today is

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February 8th, 2010, one day. In fact, if you do the calculations as attorneys do, we are on the mark, we are on the day. We are obliged under section 28(1) and (2) of the Act to be debating the efficacy of the FIU legislation, Mr. President. That was the cry, a clarion call of the Independents and also of the Opposition as it then sat.

Mr. President, there were—I think if my reading of the *Hansard* is correct from October 6, 2009—by my recollection, seven persons of the current Government sitting in on that debate. Yes there were, seven. There was the honourable Speaker as he now is, Wade Mark as he then was, hon. Senator. There was Mrs. Oudit; there was Dr. Moonilal, Leader of Government Business; there was—and forgive me if I do not have the designations correct—the hon. Chandresh Sharma; there was Sen. Vasant Bharath; there was hon. Dr. Tim Gopeesingh, Minister of Education. They gave sterling contributions. But, Mr. President, in proof of a theory which I advanced earlier in this Senate, in earlier debates, they have proven to me the theory of what I call “recent government”. And that is, everything that they have said in Opposition is nothing of what they will observe in Government. It is odd.

In that regard, I invite you specifically, Mr. President, to reflect upon the debates in the *Hansard* in this Senate on Tuesday, October 6, 2009. Permit me, Mr. President, to refresh the memories of the population at large and to the Members of this honourable Senate. Sen. Wade Mark made heavy criticism of the timing by which the Bill to establish the Act was brought and of the fact that, in particular, he considered that and I quote here from page 292 of his contribution of the *Hansard*:

“...the Government does not know what they are doing. They do not know what they doing. It is broad-brush; they are painting everybody in.... Because they are under pressure so they are doing all kinds of wild things.”

He goes on to state at page 293 that he has serious concerns about this legislation. That it ought not—that is the Financial Intelligence Unit needs to be properly assessed since it may not be prudent to establish it within an administration that does not enjoy the trust and confidence of the population.

5.40p.m.

He was saying that he had objection to the FIU being established in a government Ministry, specifically the Ministry of Finance.

He then goes on to state that there was not enough operational autonomy to allow the FIU to carry out its assigned tasks without due interference, and he complained specifically that the Ministry of Finance should not be the home for the administrative model selected as the FIU.

He goes on to complain that in establishing the FIU, under the Ministry of Finance, the Government and people of Trinidad and Tobago would be exposed to the vagaries of political interference. He said that it was too close a relationship between the Minister of Finance and the FIU.

He went on to state as well that there were dangers. He says at page 296:

“How could you bring a piece of legislation and not tell the country and the people who would appoint the director; who would appoint the deputy director; how are officers going to be employed?”

He goes on to state, at page 297:

“The FIU should be comprised of the following: An accountant; an attorney who is a senior counsel; we want police officers there and we also want other officers, such as consultants from the United Nations Drug Enforcement Office...”

He goes on at the bottom of that page to say:

“How is this body going to be financed?”

Then he goes into general difficulties as to not having a specified and stated budgetary allocation for this unit.

He goes on to state at page 298:

“We have made a number of recommendations in terms of amendments:

1. The funds and resources of the FIU shall consist of any moneys as may from time to time be provided by Parliament.
2. The FIU shall prepare for each new financial year an annual budget of revenue and expenditure which shall be submitted to the Minister at least two months prior to the commencement of the financial year.
3. The FIU shall keep proper accounts...”

He then says:

“4. The accounts of the FIU each shall be audited by the Auditor General...”

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Sen. Mark, as he then was, goes on to state that he has difficulty with regulations being made in consultation with the Minister, that regulations made under this section should be by way of affirmative resolution to the Parliament, and he goes on giving, and I compliment him, excellent criticism of the kind that responsible Opposition ought to make on any piece of legislation, which is giving an origin to a new found body. His sentiments are most laudably echoed by Sen. Lyndira Oudit, as she sat as an Opposition Senator then.

But, relative to all of that commentary and all of that expertise and the hours of statement of criticism, nothing of what was said then has been brought today, the one-year marker point, when this legislation is supposed to be debated under section 28(1) and (2) of the Act; nothing as to the difficulties in relation to the hiring of a director; nothing in relation to the autonomy points that were raised; nothing in relation to the financial aspects for budgetary allocation; nothing in relation to the separation away from the Ministry of Finance. None of the points have been made. But, Mr. President, most spectacularly of all, the Opposition, and indeed the Independents, cried out for almost as a condition precedent to voting for the Bill in the affirmative, that section 28, as it now stands in the Bill, be introduced. Because the hon. Attorney General, as he then was, acknowledged that this was a first pass introduction in the best form that his government was then able to bring.

We had, from May 24, 2010, and we have come to February now, to have literally just a replication of the argument set out in this *Hansard*, dealt with and determined. Instead of coming to this Senate, as they should, to lay on the table the amendments to the Act which they cried out for, and dare I say, they are now sitting in the seat of power, ought, morally speaking, to have brought today, they have not. Apart from not having brought it, they come here today to fool us, I say respectfully, into thinking that we must just simply broaden the supervisory aspects of the FIU, because of the savings provision, the transitional provision in the Proceeds of Crime Act, section 34 of Act No. 10 of 2009, when that clearly could not be the purpose.

Nor have they come here today to tell us of a scandalous state of affairs which prevails in the FIU. They have not told us that the FIU is currently staffed by three persons. They have not told us that, instead of holding on to whom the hon. Attorney General referred to as an excellent man, that is David West, a well-known attorney, instead of holding on to him, he was let go. They have deconstructed the division down to three men. West has gone home; a man who has been noted to have been the person responsible for keeping Trinidad and Tobago off

blacklisting. David West, as far as I am aware—I confess that I have known him for a while as an attorney—was hired by Ramesh Lawrence Maharaj, SC, in 1997, when he sat as Attorney General. The UNC hired him.

Mr. Jeremie SC, when he came in as Attorney General, kept him on. Nobody was sent home because they were UNC, PNM or whatever. I think Mr. West is above political classification. I know him just to be a responsible attorney. He was kept on. But, as the UNC came into power on May 24, 2010, David West, acting as the director, was sent home. [*Interruption*]

Sen. Panday: Mr. President.

Sen. F. Al-Rawi: Point of order?

Sen. Panday: Point of order. You are misleading the Senate. My instructions are that Mr. David West left voluntary to go into private practice. My instructions are further that he is showing no interest in coming back, so he was not sent home as you are trying to indicate to this Senate.

Sen. F. Al-Rawi: Mr. President, with the greatest of respect to my learned Senior, he is a man who sports silver hair, under the present do. He is an eloquent and sensible man. First of all, if I have misled the Senate, I will certainly be the first to offer an open apology and an unequivocal one; not of the type that we see now being offered.

Secondly, there is something called constructive dismissal. Thirdly, I am personally aware that he has—[*Interruption*]

Sen. Panday: Bring the evidence.

Sen. F. Al-Rawi: And I will, in the proper context and time, but I would not be distracted from my debate. The point is, we sent home a director. The hon. Attorney General, I asked him to clarify and he kindly gave way, as to why he said that Mr. West's appointment was unlawful, as he said. He even said illegal at one point, and I would have to reflect upon the *Hansard* to see which word he used. I asked him to state it on the record, because he said clearly, and I intend to deal with this later on in the proper way. He said that it was the Attorney General who hired Mr. West. My own information is that it was the then Minister of Finance, Karen Nunez-Tesheira, who hired him. I will deal with the issue of who is misleading the House at another point and in a proper fashion. That is why I asked him to clarify it, and I was happy that he stuck to his guns.

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Mr. President, we have seen a dismantling of the FIU; three persons running the FIU. Beating of chest, celebration for the 24th, party, wine, dance, but the security systems in Trinidad and Tobago are being dismantled. We have seen, and I do not even need to make much measure of this, what has happened to the SIA. I have a lot of regard for the hon. Minister of National Security, both of them. Sen. The Hon. Brig. Sandy took licks like a man when he was the man who reportedly said: “I do not agree” in the beginning. He apologized. I did not see that there was need for him to apologize, but he apologized stoically, as he always does. Other persons apologized as the fiasco unfolded. By my count, I think the only gentleman left to apologize is the hon. Leader of Government Business in the Senate. *[Interruption]*

Sen. Panday: I am willing to apologize, providing the Government apologizes for what they did to Commissioner Stephen Williams when they brought a Motion to the House to appoint him as Commissioner of Police and voted against their own Motion.

Sen. F. Al-Rawi: Mr. President, you notice the manner in which I always give way? I am very grateful to have given way, because the Leader of Government Business in the Senate said, and he is right, the Government must apologize. He said the Government, in the manner in which they treated the Commissioner of Police. He is right; Freudian albeit his slip. He is right. They fired the Commissioner of Police before he was meant to go and they should apologize. This is why I am always happy to give way.

No offer for injury time being afforded to me. I must press on with my debate. I was on the point of the dismantling of the systems in Trinidad and Tobago. If one were to reflect on the number of acronyms which labour our institutions that have fallen prey to mismanagement and to omission, one can count: SIA, SSA, FIU and you could even throw in OPVs. I could, perhaps, get many things from the alphabet, three-name rules, three-letter rules. You cannot run an FIU with three persons. You ought not to have—I am going to borrow a term from my heritage—de-Ba’thified the FIU. Would it not have been apposite to the nation’s best interest to hold on to Mr. West until a suitable replacement had been found, perhaps, apposite to our best interest, after a debate on the whole legislation as to the appointment of the director was had by today’s date? Would that not, perhaps, have been best? Regrettably, David West went home. Let us just say that at highest. He went home; three persons running the FIU. And we wonder what other elephant is in the room. That is the elephant of blacklisting or negative treatment.

On the Act, the FIA, surely we all recognize that countries that have adopted similar provisions have in their respective Acts provision where they must publish non-compliant countries, or countries that are not sufficiently complying with FATF regulations.

There is another elephant in the room. Why is it that we have not attained Egmont admission? If Sen. Prof. Watson were here, he would cringe when I said Egmont, Airmont (phonetic) if you want to be French, having been established in Brussels. Why is it that we have not attained that admission? There are 120 countries listed as signatories to the Egmont membership. There were 16 Caribbean/West Indian countries that have full membership. Those 16 countries, my learned friend Sen. Ali already has mentioned some of them. Of those 120 agencies: Antigua; Anguilla; Aruba; Bahamas; Barbados; Belize; Bermuda; British Virgin Islands; Cayman Islands; Dominica; Curacao; Grenada; all included.

5.55 p.m.

St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Turks and Caicos Islands, and below us, southward, Venezuela. We are not there; we are satisfied for this Government to tell us that the Caribbean Financial—the CFATF, being an associate member of that group, the Egmont Group is enough, when our legislation specifically incorporates the use of the Egmont. Our legislation says as one of its stated principles by way of reference to the Egmont in the definition section, and in the international corporation section, it says specifically that we are looking to attain Egmont admission. But this Government has not come here today to tell us anything as to why, in the period May 24, 2010 to February 8, 2011 they have not achieved that. They had all the answers when they were in Opposition, but they seem to have forgotten that.

Mr. President, there is also an extreme difficulty in the Act, and that is specifically in reference to—and I thought the debate today would have been on these things. Notwithstanding the fact that we got notice that this debate was to be had on Friday night, received letters on Saturday morning and then came here Tuesday for a debate, notwithstanding the brevity of that notice, in the same shotgun scenario that they complained of, when the original Bill was laid that established the Act in 2009. In that same fashion notwithstanding that, they had all the time in the world, Mr. President, to bring forward meaningful issues for debate in this Parliament in accordance with section 28(1) and (2) of the Act. But they have not done it.

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Instead we heard the Attorney General say, “We have kept another election promise,” but he is not being honest, because it is an empty position to say you have kept a promise when it is meaningless, Mr. President, [*Desk thumping*] it has failed to comply with the terms of the Act. Do you know what else has failed to comply with the Act, that no mention had been made of? Any of the provisions by which the business of the FIU is to be done.

In the Act, and we are aware that in an administrative model you must receive, request data, analyze it, and then you pass it on to those who must prosecute it. That was one of the savings protections that the hon. John Jeremie spoke of when he said he did not want to derogate too far into the rights in sections 4 and 5 of the Constitution. That was one of the protections he offered to the hon. Members who started saying that you can pass this piece of legislation because this arm cannot prosecute, it can only receive, analyze and then send out. But this Government has not come here today to tell us anything about the director’s function within the terms of the Act.

You see, Mr. President, if we reflect upon the terms of the Act, the FIU Act, we are in real jeopardy with respect to sections 4, 8(3)(c), 8(3)(e), 8(3)(f), 8(4)(a), 8(4)(b), 11, 12, 13, 15, 16, 17, 18, 27 and 28 of the Act, Mr. President. Without going through each one of those provisions, I can tell you, the heart of one of the points that I am addressing now, is the fact that it is the director of the FIU who must, in his view, request information, further information under section 11 for example, or take further action under section 15 of the Act.

It is the director who must deal with suspended transactions, it is the director who must view circumstances which require further information and report to law enforcement agencies; it is the director who must coordinate and cooperate with persons named in the Act. It is the director who must submit, within 60 days of the financial year, and that is in Trinidad and Tobago within 60 days of October 1, and it should have been 2010, an annual report to the Minister. And the Minister must, 30 days thereafter, report to Parliament and by my check that was December 1, 2010 as to the goings on, the analysis, the typologies of the FIU. But none of that has been stated by this Government; trivialization, simple Bill, elephants all over the place.

The Indians in India, in dealing with corruption and crime, have a concept of someone called the “invisible abominable man”. He is the man responsible for corruption there; nobody knows who he is, what he is or what is happening. We have an invisible abominable omission going on, we have no director of the FIU and have had none since August of last year, we have three persons staffing the

FIU, and we are beating our chest on the Government Bench “Oh we have scored another victory, done, another election promise fulfilled.” What promise? An empty, empty promise? No substance in it, all sizzle no substance? Is that the contempt with which we are to be treated in this Senate, when there are persons who sit on the Back Bench who participated in the debate of this very Act when it was born in October 2009? Is that the regard that they hold hon. Members of this Senate in or with?

Mr. President, I wish to register my strong protest against the treatment which has been meted out to us today. They should have the decency to admit what they are here to do. If the hon. Colm Imbert was correct in saying that we are being prejudiced by the omissions of the Government in failing to deal with the FIU, then say so. If they are supposed to bring an annual report since December last year and they failed to do it, then say so. If today, February 8, 2011, the last day of the one-year marker, they should have been bringing meaningful debate to this Senate, then they must say so.

Mr. President, there is further difficulty to be had if we reflect upon the concept of a magic bullet. This piece of legislation is not the simple solution to our woes. This piece of legislation is coordinated with other pieces of legislation: the Integrity in Public Life Act; the Proceeds of Crime Act; the anti-terrorism provisions; the Mutual Assistance provisions; many provisions, but Mr. President, what cries out is the need for a legislative agenda.

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

Motion made, That the hon. Senator’s speaking time be extended by a further 15 minutes. [*Sen. P. Beckles-Robinson*]

Question put and agreed to.

Sen. F. Al-Rawi: Much obliged, Mr. President and Members. Yes, Mr. President, in saying that there is a coordination of legislation omnibus approach that must be had, June, July, August, September, October, November, December, January, February, nine months, Mr. President. I will go on my knees if I have to. I am begging for a legislative agenda.

6.05 p.m.

I enjoy doing the work of the people, of researching material and coming to this House, but how am I to continue to do my duties to family, to profession and to the hon. Senators in this House, if we constantly get renotification of emergencies and if we at least do not have an agenda to say this is coming, that is

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coming, this coming. Surely, if we wish to elevate the standard of debate and bring meaningful provisions like this, this conundrum that the Government is in could have been avoided if they had consultation with Sen. Oudit, with Sen. Bharath, with any of the Independents, with the hon. Dr. Tim Gopeesingh, Minister of Education, with the hon. Leader of Government Business in the lower House. This conundrum of coming on the last day, skating in, and tricking us to say that they are dealing with this legislation which surely is an attempt to avoid negative listing, that could have been avoided by a legislative agenda.

Mr. President, yesterday in my office a most unfortunate event happened. An old gentleman came in with his daughter to receive some advice, he was ailing. I went out to his car to see him. Regrettably he passed away. I spent an hour—first CPR, resuscitation, ambulance, DMO, police, other commitments and I watched myself for one moment, flinch—“Oh my gosh, I have got work to do”, when there is a man in my arms, Mr. President, passed away. I felt to myself, how we can continue to live this way with torn emotions.

Mr. President, I am a family man, I know you are a family man. We see each other in certain places with our children in tow. Yours, some tall, and some on the other end, but Mr. President, there is an extreme feeling of guilt that one feels when you do not discharge your responsibilities as a father—and I know Brig. Sandy will hear me on this—when on a weekend you are torn between the work that you have received last minute from this Government, Mr. President, and you cannot perform your moral duties to God and to family because you have an overriding and overarching of obligation to the people of this country to come prepared for debate. Mr. President, I am pleading to you, can we please have a legislative agenda?

Mr. President, I wish to make one last point, and that is, we are not only in breach of the provisions of the Act itself, Act No. 11 of 2009, but we are also in breach—and I heard the hon. Attorney General state—forgive me if it was not him, one of the speakers state that we were 50 per cent into observation of the FATF standards, I think we had crossed 26 of them or so, of the 40 + 9. Mr. President, we have actually gone backwards in the FATF observations. I can say so because if you reflect upon the fact that we do not have a director, that we are not prosecuting matters, that we do not have debate in this Parliament on the meaningful terms and provisions that should be here today, that we are not making manoeuvres with respect to international cooperation, as we are obliged to do under the legislation, that we have not gained access and entry into the Egmont

Group, Mr. President, really and truly, we are also going back on the 40 + 9 recommendations. Specifically—and this is for the hon. Sen. Panday who is taking notes for the hon. Attorney General, who is too busy to be here, I wish him to please reflect upon, in particular, the jeopardy which we face with respect to Articles 21, 23, 25, 26, 27, 31, 33, 34, 37, 38, 39 of the 40 recommendations and also Article 5 of the + 9 regulations.

You see, Mr. President, enough song and dance. Caesar was throned on May 24, 2010. The people of this country, in an overwhelming display of democracy, elected the People's Partnership, and I am pleased to see democracy at work. Enough celebration in the coliseum, Mr. President. Too many people are being sacrificed to the lions there. The people who I refer to are: the SSA, the SIA, the FIU, the Aluminium Smelter, the OPVs. The crime wave gripping this country as Sen. Panday properly pointed out, the Commissioner of Police, who the Government fired, enough feeding of lions, Mr. President. Let us see some action on the part of this Government. Let us identify the elephants in the room and lead them to the proper place that they should be, let us have the courage, as the hon. John Jeremie did when he came to say, "I am late but I need to deal with this or else we will be blacklisted". Courage of that type demonstrated in October 2009, let us have that kind of courage, lest you suffer the same fate that we suffered.

I want you to achieve your purpose of being a good Government, but I will not for one moment let go of my obligation to be a proper watchdog, diligent in my inspection of your performance. With those few words, Mr. President, I thank you. [*Desk thumping*]

Sen. Helen Drayton: Thank you, Mr. President, I will be very brief. First, let me say that I do not think that this is a trivial piece of legislation. It is a very serious piece of legislation. I also want to say that the Financial Intelligence Unit (FIU) is really no different in its purpose from any other intelligence unit, where it is gathering sensitive information on citizens for the purpose of detecting crime and preventing crime. I also want to make an observation with respect to what the hon. Attorney General said when he made mention of the fact that this is an independent institution. It is not even remotely independent, and it is why, when we were debating the Bill in the House a year or so ago, we had very serious concerns with respect to the placement of the Financial Institution Unit under the nose of the political directorate. We felt that was in contravention of the very Convention established by Egmont and the FATF, where they have asked for a distance with respect to influence and interference.

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I do not know whether the Government took the time to read all the comments that were made. We felt that it was absolutely necessary that the director should be appointed by the President in consultation with the Leader of the Government and the Leader of the Opposition. We felt very strongly that regulations made by the minister, in effect gave the minister a certain amount of control with respect to the FIU.

6.15 p.m.

Unlike the Proceeds of Crime Act and other Acts which interact with that legislation, the regulations are by affirmative action of Parliament, for the very reason that it is a critical and important piece of legislation and regulations can very well undermine what the intent is with respect to distance from the political directorate. That was the view, a strong view, of the then UNC in Opposition, and it was a strong view of the Independent Senators.

If I recall, and I think the *Hansard* would reflect it, we agreed to that legislation on the basis that the Government would return to Parliament within a year so that we can review and debate the operations of the Act. As far as I am concerned, that aspect of the law has been impaired by the Government.

With respect to the specific piece of legislation, I am really not clear as to what the amendment means. The phrase "...and shall exercise any other function given to it by any other written law," why I do not understand that is that in the Explanatory Note accompanying the Bill, it states that the FIU does not have a core function of supervision, which seems a bit peculiar to me, given all that I have read with respect to the mandates under the Proceeds of Crime Act and the very FIU legislation. So as layperson, I am not a lawyer, I ask a fundamental question, you want to give it powers of supervision—and I believe that it has powers of supervision—then why are you not amending the law to do exactly that? Why are you amending the law to say that it can be given any other function under the law? I really do not understand why this piece of legislation is necessary.

The basic purpose of the FIU is to receive, analyse and disseminate financial information through suspicious activity reports. It collaborates with the Central Bank, and the Central Bank supervises the financial institutions; it collaborates with law enforcement agencies, and it is those agencies that would actually make serious investigations; and it collaborates with other agencies such as customs and immigration.

Here you have a piece of legislation that seriously impairs fundamental rights under the Constitution. We are bringing legislation that can very well change its mandate, but you do not know where that mandate would end, and you are saying that it is a simple piece of legislation. To me, you are interfering with this legislation in a very substantial way.

If I might add, whilst the legislation impairs section 4 of the Constitution, it does not impair section 85 of the Constitution. In accordance with section 85 of the Constitution, the Minister shall exercise general direction and control over that department, and subject to such direction and control, the department shall be under the supervision of a permanent secretary whose office shall be a public office. So that even though it is under the direct supervision of the Permanent Secretary, to my mind, it does not negate the minister's responsibility with respect to overall direction and control of the department. So for the hon. Attorney General to say that this is an independent unit, it is, by no means, not even remotely independent.

Mr. President, I have circulated an amendment, because I believe that amendment would bring us closer to ensuring compliance with what the Convention intended—that is some remoteness from influence and interference—and that basic amendment calls for the regulations to have the affirmative action of Parliament, and not the negative resolution. Certainly, I would like to see in such regulations, what are the exact terms and conditions of employment; what are the qualifications. As I said, this is an institution no different from the SIA, the SSA or the MI5 or whoever. It is an intelligence gathering institution, and I think it is being trivialized. I hope, therefore, Mr. President, that the amendment would be considered by this honourable Senate and accepted. I thank you.

Sen. Panday: Hon. Senator, would you kindly give way?

PROCEDURAL MOTION

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of this matter engaging the attention of the Senate and also, if possible, Bill No. 1 on the Order Paper which is a Bill to amend the Statutory Authorities Act, Chap. 24:01.

Question put.

Mr. President: Can we get a division here?

Sen. The Hon. S. Panday: Mr. President, I do not want to aggravate that. Can hon. Senators indicate—[*Interruption*]*—*about how long should we go with this matter? [*Crosstalk*] I bow to pressure, Mr. President, and I withdraw the first Motion and accept the position.

Motion withdrawn.

PROCEDURAL MOTION

The Minister in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of the proceeding before this honourable Senate.

Hon. Senators: Yes. [*Desk thumping*]

Question put and agreed to.

FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO (AMDT.) BILL

Sen. H. Drayton: Just to wrap up there, Mr. President, I hope that this honourable Senate will consider the amendment that I have circulated. If I recall, this Act was proclaimed in February 2010. I am aware that somewhere either in October or November advertisements were in the newspaper to recruit personnel. If I may ask—I hope that the Government will give us some indication as to whether, in fact, someone has been recruited for the position, and when will it bring the first report on the FIU to Parliament.

Thank you. [*Desk thumping*]

Sen. Lyndira Oudit: Mr. President, I thank you for the opportunity to contribute on this particular Bill. Let me first start off by congratulating Sen. Al-Rawi for having the courage to admit in his closing remarks that the former Attorney General, Mr. John Jeremie SC, actually said that it was at the cost of blacklisting that particular Bill was debated so hurriedly. So I want to thank him for clearing that up, because it was at the pains of the then Opposition to have the former Attorney General admit that, when we concluded two strenuous days and nights of debates. Sen. Al-Rawi, thank you for that clarification—“Out of the mouths of babes dey say...”

In hon. Senators’ contributions on the opposite side, reference was made to the former Attorney General, Mr. John Jeremie SC’s contribution with respect to this particular Bill. The claim or the argument is now being used that the People’s

Partnership Government is being tardy. I would like to draw, not from the former Attorney General's contribution on this Bill, but rather the former Minister of Finance. I think what is very clear is that in no way is this particular Government's position one of tardiness.

In fact, you will hear the admission of the former Minister of Finance. I am going to read here and draw reference from her *Hansard* contribution dated June 03, 2009, and is marked "Unrevised"—the Financial Intelligence Unit, Hon. Karen Nunez-Tesheira, and the second document is dated May 22, 2009. It does not have "Unrevised", so I am going to assume that is the revised version.

Mr. President, in making her contribution, she indicated that particular FIU Bill was governed by three pieces of legislation which were brought out here in the Senate and one is the Proceeds of Crime Bill. She admitted at that time that in 2009 that Bill was before this particular House.

The second piece of legislation which governed the FIU would have been the Financial Obligations Regulations 2009, and that was specifically to put in place the compliance regime to combat anti-money laundering or the financing of terrorism.

The third piece of legislation would have been the Financial Intelligence Unit Bill and, at that time, it was before the House. So that particular Bill, the essence of it was to ensure the enforceability of provisions, specifically as it related to the Proceeds of Crime (Amdt.) Bill.

In this particular Bill, the mover of the Motion was, in fact, not the Attorney General but the Minister of Finance. I am reading from her contribution here and she admitted that the FIU was created administratively in 1997 on the basis of Cabinet authority. So this is the background to the FIU.

In her contribution, she admitted that unit fell under the umbrella of the Counter Drug Crime Task Force of the Ministry of National Security. I see the former Minister in the Ministry of National Security, and this would have been very clear to him.

That administrative unit was the genesis of the FIU, and this is what the former Minister of Finance had indicated. However, she proceeded to explain that while that was an administrative unit falling under the purview of the Ministry of National Security, the task force—she was referring to the Counter Drug Task Force—lack legal authority. So, therefore, what was created under that task force was an administrative unit which the then Minister said was the FIU and it was an administrative unit created in 1997.

6.30 p.m.

She admitted that they did lack legal authority and she identified three respects. She indicated that:

- “1. There is no legal framework within which the task force serves as a national centre for the receiving and, as permitted, requesting, analysis and dissemination of suspicious transaction reports...;
2. There is no legal framework within which the task force can assess directly or indirectly on a timely basis financial and law enforcement information that it requires to properly undertake its functions; and
3. There is no legal framework within which the task force can serve as Trinidad and Tobago’s supervisory authority for monitoring and enforcing the anti-money laundering and counter terrorist financing regime...”

Now, in explaining why that piece of legislation was brought to this Senate in 2009, not too long ago, within reason, she indicated that:

“...Government has decided to establish a FIU based on the principles of an administrative unit...”

But following the models of the FIU defined by the Egmont Group, and so this is where we are here.

Mr. President, in no way is the Partnership Government or this Government here tardy, and I want to make that very clear, it is not tardy. This is a former Minister of Finance explaining why in 2009, since 1997, the procedures and establishments were there but there was no legal framework. There was nothing that guided that same Bill that came here in 2009, there was nothing; the legal framework was sadly, sadly lacking and that was the admission of the former Minister of Finance in this very House, so I really find that it is unacceptable that the younger Senators of the opposite side who selectively choose bits and pieces of information coming out of *Hansard* to support an accusation of tardiness on the part of this particular Government, did not do enough research to go way back.

Do not only look to your former AG’s contribution, he was a very measured man, he took a very measured approach to the way he took broad legislation here and that must be commended. But we have to look real hard before we point fingers and we stymie the efforts of this particular administration moving forward.

Mr. President, the then Minister indicated that the rationale for selecting the particular model of the Egmont Group, and I am quoting, she says:

“The rationale for this selection is needed to establish a buffer between the financial sector and, more generally, entities and professions and the law enforcement authorities responsible for finance, crime and investigation.”

Mr. President, she went on and, if it was not shocking then, it is clearly shocking that the Minister, the former Minister of Finance, admitted the Government also considered the current FIU which has been in operation in T&T for 12 years and I am reminding you that this was as an administrative unit under the Counter Drug Crime Task Force of the Ministry of National Security. She says it:

“...has been in operation in Trinidad and Tobago for 12 years and which, despite its assiduous efforts, continues to be constrained by severe limitation primary among which is the absence of empowering legislation.”

These are not the words of the current Minister of Finance, these are not the words of the current Attorney General, these are the words of the former Minister of Finance and in the scheme of things in recent times, 2009 is not long. So we have admission after admission that what was required for that particular body was missing, it was lacking, it was simply not there.

Mr. President, in this particular House we have heard why, why we need to have this FIU, so there is no need for me to go into why again. We all know that Trinidad and Tobago is guided by the recommendations that came out of the Financial Action Task Force (FATF), and even then it came out of that particular task force. Moreover, the admission that the legal framework did not exist also proved or showed that the former administration clearly had lacking the authority, the authority to ensure that Trinidad and Tobago worked within the guidelines of an international arena.

Mr. President, again the admission of the former Minister of Finance, she says here:

“...because money laundering invariably involves cross-border types of activity, the Financial Intelligence Unit must be given the authority to undertake certain international functions on behalf of Trinidad and Tobago.”

This is in 2009, and here the Minister is admitting that the unit “must be given”, therefore a recognition of where the responsibility lies must be very clear. What this piece of legislation today seeks to do is to move forward. I was very heartened when I listened to Sen. Basharat Ali, before the tea break, because, as

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he admitted, as he had indicated to this House with the exception of the four Independent Senators, I was present in the last debate of the Financial Intelligence Unit and so it is important that anyone who was not there, it is necessary for you to go back.

Sen. Al-Rawi talked about the voluminous amount of information that came out, but it is very important that we simply do not seek to lay blame at this stage but we go back to the constraints as they occurred in the past, and so moving forward, that is where we have to be. That is what this nation expects of us. When we come here, it is not to talk about who is tardy and which Government and the UNC Government and all of these things. It is not the place. This is critical legislation, and this one small piece is simply a way to move forward. It is a way to move forward.

Mr. President, in addition to the international agencies, I hope the nation and Senators in this House understand that Trinidad and Tobago is also accountable to the Caribbean Financial Action Task Force, which is the regional affiliate. So not only do we have to draw upon the requirements of the international group, but we have a regional body and that is very important because somebody said here in this Senate that Trinidad is located geographically in quite a unique spot and that comes with the territory of this region, it comes within the region. We are called the gateway. We are called the gateway not only to North America but to South America, so it is important that we understand that we do have obligations internationally and regionally so the Caribbean Financial Action Task Force, which is the regional affiliate, is part and parcel of where we hold our responsibilities.

Mr. President, one of the key requirements of both the Caribbean and the international, region of any of the Members affiliated, is that country's ability to do assessment of its own self to demonstrate its ability to prevent money laundering or to act on anti-money laundering performance and it is required that we do have a strong statistical base.

6.40 p.m.

This piece of legislation seeks to empower the agencies that are given the task of gathering and collating data, so that internationally and regionally assessments can be done and cross-border assessments will be able to be accomplished. That is not only the demand of Trinidad and Tobago or even the region, it is a global demand.

We did the Prevention of Corruption Bill last week. Everyone is referring to the Proceeds of Crime Bill and a lot of pieces of legislation. We have come to understand very, very clearly that information in a global environment travels almost faster than the speed of light—almost. The way in which we are able to gather data and transfer information is very crucial to the way in which we are able to deal with the very things that are causing us the most suffering in this country.

I do not wish to say too much on this, but I felt it necessary that we simply draw the right referencing when we make reference to what was good or what was not good, and we should not, at this stage, especially with this piece of legislation, when the global community is looking to a country—I heard two speakers talk about the importance of Trinidad and Tobago’s economy as leaders in this region. Therefore, as leaders in this region, we have to set the tone. We have a responsibility, that when we stand here each of us does not represent our individual selves, not even the 15 Members on this side, 15 Members on that side, or 30 here. No, we represent the voice of the people outside there and we have a responsibility. It is their responsibility, it is this nation’s responsibility, to command the respect of the global environment.

This is not a stand-alone piece of legislation; it goes hand in hand with several pieces already identified. Really and truly, this particular Bill today is to give life to the Attorney General’s ability and the legislative power to move forward with the requirements of the FATF, in bringing to a close the FIU, so we are better able to deal with and cope with the international arena.

Mr. President, I thank you.

Sen. Dr. Lester Henry: Mr. President, I join this debate at a rather advanced stage. It is kind of ironic in the sense that last week, just a little later than this hour, I was the one to raise this issue in this honourable Senate when we were discussing the Prevention of Corruption Bill. I guess it was late in the night, so some of my colleagues did not really pay much attention to me. [*Interruption*]

Sen. Panday: We heard you. We heard you. [*Laughter*]

Sen. Dr. L. Henry: Thank you, Sir.

I see that my contribution—though late and some Senators being somewhat tired—led to the requisite action on the part of the Government. I commend you for that. Just give me a little “Thank you” note. [*Laughter*]

Sen. Panday: I will.

Sen. Dr. L. Henry: Why have this debate now? Several people made enquiries before and it is my information that the Financial Action Task Force is due to arrive this week, that is why they have this Bill today and in the Lower House tomorrow. I hope that clears up that for the Members who may not know. [Interruption]

Sen. Panday: The urgency.

Sen. Dr. L. Henry: Obviously, since they already admitted, I brought it to their attention and I read the quote that they were going to do this in February, and we are in February—some of the targeted jurisdictions for additional scrutiny, and we were on that list, so no surprise there.

I briefly want to commend Sen. Drayton for her brief contribution, which I admired greatly, because I would like to model mine after hers. She raised three critical points that also bothered me about what I heard in the proceedings before and associated with this Bill. One is, of course, the wording of the amendment in the Explanatory Note about “any other law”, a kind of general reference, a catch-all phrase which I found to be somewhat disturbing.

She quite eloquently pointed out that if the emphasis was simply on enhancing supervision, why did you not say so. Under whose authority? Just be more specific and say if it is the Minister of Finance or the Attorney General, whoever is going to be directing the FIU to carry out these general laws or instructions, or whatever they want to call it. I thought that was a very critical observation. I made it myself and I also wish to thank Sen. Drayton for bringing it to the attention of the Senate.

She also mentioned the issue of the independence of the FIU, which I was rattled by, which was part of my agenda today, to mention it when the Attorney General made a big deal about the independence of the FIU. It is not so straightforward. Internationally there are different models. Countries adopt different models of how they implement this thing; there is no one formula. Many countries have a relatively high degree of autonomy with their FIU, others do not. For example, in Bulgaria the head of the FIU is appointed by the Minister of Finance with the approval of the Prime Minister. In India I believe the FIU is technically an independent body, but reports to the Minister of Finance.

The point is that there is no guarantee, there is no magic bullet in terms of independence of this institution. At the end of the day, they must be accountable to the Government, whether it is the Attorney General or the Finance Minister, as Sen. Oudit pointed out, in the initial formulation, which was the administrative

model set up in 1997 or thereabout. Many people did not know that it existed as far back as then, that we had an FIU. Since then, we have sought to change the model and put it more into law; this is why the Bill was introduced in 2009.

Another point, which was phrased in the form of a question raised by Sen. Drayton, was whether they had planned to announce a new director for this agency. She made reference to the fact that she had seen ads being put out. Let me inform this honourable Senate that my information is, once again the Partnership is at “its not so” best in this matter. My understanding is that this Government set up a panel of people who they thought was capable of recruiting a director for the FIU. They interviewed three to four persons who were supposed to be suitable candidates for director of the agency and, lo and behold, they completely dismissed all the applicants and picked someone who was not interviewed. Will the Minister of National Security or the Attorney General explain to this honourable Senate why they bypassed the process that they set up and why did they not make this public? Because supposedly there is some plan to announce the new director very soon.

We have a name; I will not call the person’s name. I am telling this honourable Senate that many Senators raised this issue before today, in terms of why we do not have a director as yet announced publicly. I am putting it to this honourable Senate and asking for an explanation. If I am wrong, I stand to be corrected. This is my information. They set up this process. Are we to believe they would stir up another fiasco so soon, following the well known one? I do not even need to call the name.

The funny thing is, they have already admitted that they listened to me last week, but I also said, “Do not make the same mistake again.”

Sen. Panday: Senator. [*Sen. Panday displays document*] [*Laughter*]

Sen. Dr. L. Henry: Lo and behold, a few hours later or thereabouts, I was informed that the exact, same thing is possibly going to happen. Maybe that is why we have not heard the name publicly announced of the Director of the FIU as yet. You cannot set up a process, bypass it and then pick one of your friends. That is not good governance; that is not transparency. Fellow Members of this honourable Senate, I await some kind of explanation from the Senators on the other side, maybe they could tell us.

One other point I would like to make is that many speakers before mentioned the Egmont Group which I also mentioned last week in terms of the membership. I do not want to beat a dead horse, but what I think was not mentioned by any of

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the speakers before were the consequences of not joining the group. There is one important consequence that we should keep in mind. Just like last week—I am saying this as a country, not necessarily Government versus Opposition. The FIU will not necessarily be properly functional if you do not join. Information sharing between other FIUs is very important, because money laundering and countering the financing of terrorism is an international problem. If you cannot share information then it defeats a large part of the purpose of having an FIU.

When you do not join the group, you have problems sharing information. People do not trust your FIU if you are not in it; that is why countries rush to join. So if you ask for information, they will be very reluctant to share. If you do not join, you run the risk that if you are pursuing a matter and you ask for information from abroad, they may not give it to you, because they feel you cannot be trusted if you are not part of the group. That is one serious matter that I think needs to be addressed in terms of speeding up, getting that process going in joining the Egmont Group.

The critical points about the independence, the wording of the amendment, I think we need to address that and also the announcement of the new Director, which I wait to hear.

With these few words, Mr. President, I thank you.

6.55 p.m.

Sen. Subhas Ramkhelawan: Mr. President, thank you for giving me this opportunity to speak on this amendment to the Financial Intelligence Unit Bill of Trinidad and Tobago. I speak from the perspective, firstly, of a practitioner in the area of financial and investment services. I speak particularly to the impact that anti-money laundering, anti-terrorism financing legislation has and will have on the industry overall. The Financial Intelligence Unit will in part jointly or on its own oversee institutions such as banks, securities companies as they now are and the regulation speaks to dealers, investment advisors and other listed businesses.

What happens, Mr. President, and what is happening now is that in order to continue to do business with institutions outside of Trinidad and Tobago, primarily, there is a whole list of compliance requirements as it pertains to anti-money laundering and anti-terrorism. And most institutions that operate here and who would want to enter into counter-party relationships with agencies abroad must meet all of these requirements—must not may. So that there is a movement to become compliant. Certainly in the banking sector the banks would have

moved a long time ago to ensure that funds coming through the banking system would be properly declared as to sources of funds by any individual or any institution.

Now what is happening, my understanding is that at the level of the securities firms, dealers and investment advisors, upon whom this requirement is being pressed upon, not only through international counterparts, but also on the part of some self-regulatory organizations such as the Trinidad and Tobago Stock Exchange and its associated company, the Trinidad and Tobago Central Depository. So that movement is taking place.

What it means though, Mr. President, is there is going to be an extended listing of institutions and persons who would have to have adopted anti-money laundering policies and anti-terrorism policies and all of them have to be funnelled through the Financial Intelligence Unit. And therefore, there must be sufficient in terms of capabilities to manage that flow through the Financial Intelligence Unit.

If I am to believe what has been said in this Parliament, that there are three persons and there is not a director of the Financial Intelligence Unit, there will be great operational difficulty for the FIU to approve all of these anti-money laundering policies being adopted by these various institutions. And therefore, I think it is very much incumbent on the Government to ensure that that particular Unit is very well staffed, adequately in terms of numbers and in terms of qualifications or else, we will get back to that same place that we have been bouncing up against, which is legislation in place and enforcement not available. We want as much as possible to be able to move away from that.

It is my understanding that there is a lot of traffic at the Financial Intelligence Unit in terms of its ability as currently constituted to deal with the policies and so on that are coming before the Financial Intelligence Unit. I certainly invite Members of Government to give some clarification as to what the status of this matter is and how the matter is going to be rectified.

We can put laws in, we can put laws, we can put laws in, but if we cannot enforce, we come now to the heart of matter. The heart of the matter, as the hon. Attorney General spoke to so eloquently, was that there are persons, in his view, who are achieving illicit enrichment, and, as a result of that illicit enrichment, that it is the cause for increased money laundering. It is the cause—and these are my words—for little hardware stores springing up all over Trinidad and Tobago. It is the cause for some groceries springing up, new groceries in Trinidad and Tobago. It is the avenue; these are the avenues that are being used to wash money and get it back into the banking system.

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And so, we do not—every decent thinking citizen does not want to have a situation like this develop. Because once you start to get into the areas of anti-money laundering, you know behind that there is a growing level of crime and criminals developing in our nation, and not the little boys who go shooting with their guns all over you know, because that is the unsophisticated element of crime. The greater element of crime which could be hardly counted properly is the white-collar crime; the crime that you hardly see but you can sense is increasing and growing around you.

I think the Attorney General spoke to persons who have developed a very significant level of wealth without any clear means by which that wealth is being acquired. So that I strongly support any legislation that is meant to enforce anti-money laundering measures. I support and appeal for the enforcement to take place as well. Without having a director of a FIU, we have no head, no chief, and not many Indians if three is the number, and this is a matter of great challenge and difficulty. I submit to the hon. Attorney General, absent as he is, I submit my—

Sen. Panday: He is here.

Sen. S. Ramkhelawan: My eyes deceive me. Ah! I see him. I submit to the hon. Attorney General that the enforcement remains the most difficult matter at hand that has to be corrected. But let me move on.

I speak again operationally outside of those persons who are required to report on matters of anti-money laundering. There are these regulatory organizations that play a significant part in the whole question of anti-money laundering and anti-terrorism. Of course, you have the Central Bank regulatory authority for the banks and you have the SEC regulatory authority for dealers, investment advisors securities companies.

7.05 p.m.

Mr. President, one thing troubles me and troubles me very much as far as this administration is concerned. The Trinidad and Tobago Securities and Exchange Commission, if it is to do its job properly, must also be properly manned, not only in terms of anti-money laundering but every other aspect. But it has been quite some time, as far back as midyear 2010, that this body has been limping along with a bare quorum, a minimum number of commissioners. In fact, in October with the resignation of one of the commissioners, it was not able to be quorate, could not be effective and could not enforce the legislation that was before it.

Subsequently, there was the addition of one member to the commission which made the commission three which was the minimum requirement for the commission to be effective and operational. It is my understanding that within the next couple of days the term of office of one of the remaining commissioners is going to expire and I think that we do not want an institution that is as important as this dealing with the flow of funds in our country to not be quorate, to not be operational.

Therefore, I appeal to the Government that within the next few days, I believe the timeline is February 12, to ensure that we have a fully operational commission, because it is a great danger in terms of money laundering, but it is at a great inhibition to the operations of the various players in that industry because decisions have to be made and without the commission being effective those decisions cannot be made and the business of that industry cannot go forward. So I appeal to the Government to ensure that this is in place, even more so, not to allow a commission as important as this to drag along, to limp along. Put in the required number of commissioners! What is difficult about that? You need seven and you are struggling with three, bordering on getting to two, it does not make a lot of sense, and therefore when we talk about efficiency and effectiveness there are some simple things that the Government needs to have and get done. This is one of them and I do so appeal.

Mr. President, I was here when this Bill was passed into legislation in October of 2009 and I can tell you that the reason this Bill was allowed to go through in a most questionable form was because the assertion was made that if we did not pass the Bill on that day the country would be blacklisted. So all of the contributions if we were to look at all the contributions in *Hansard*, particularly by the Independent Senators, since the Bill required a three-fifths majority, it was the duty and obligation of the Independent Senators to do the right thing if not the technically correct thing, but the right thing to ensure that our country was not blacklisted, and so it was done, but it was done with certain definite caveats and I remember them well.

Section 28 of Act 11 of 2009 was a clause which was put in at the last moment to satisfy the requirement, certainly of many of the Independent Senators, to ensure that this Bill would come back within one year. It has been quoted already so I am not going to quote it. But I believe, respectfully, that the Minister of Finance who is the Minister being referred to here is in breach of the law. He is in breach of the law because section 28(1) says:

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“Within one year of the coming into effect of this Act, the Minister shall return to Parliament for a review, by Parliament, of the operation of this Act.”

I do not believe—I do not want to believe that any Minister would want to be accused of being flagrantly in breach of legislation such as this, important legislation such as this. It is in many respects an abomination that is almost equal to the blacklisting of this country. How can we give undertakings as serious as this and then, with no respect for the Parliament when October 2010 comes around, or whenever the Bill was put into legislation, not come back to the Parliament and say, “can we have some more time?” So we now want to pass an amendment to the legislation, which, as we would say, if I can put it in colloquial language as I interpret from the Attorney General “small t’ing, just a minor amendment, pass it through”, but he himself said that it is a bit more than “small t’ing”, it is a significant amendment even though it is short in terms of the number of words.

And so, I want to ask another question. Should we as a Senate validate a piece of legislation now where there has been a flagrant abuse by the Minister in attending to this matter of anti-money laundering? Are we going to, like the last time, have another gun to our head, the gun of blacklisting? Are we going to have that gun of blacklisting yet a second time without having the corrections that would have been required to this Bill or to this Act being made before we go and compound the matter with another action? That, to me, does not appear to be kosher.

Hon. Senator: Good question.

Sen. S. Ramkhelawan: Mr. President, at that time I was very reluctant to support a piece of legislation that was somewhat inconsistent with the approach that I thought we would have to take in the creation of independent, though not necessarily autonomous, bodies, to look after matters as sensitive as money laundering and the investigation of persons who were deemed to be or who were considered to be in the process of money laundering.

I acceded then because sometimes or most times you have to put the interest of the country before some of your personal anxieties with regard to these matters. But for how much longer and for how many more occasions are we going to have to do this? Is it then that at every instance we are going to be blackmailed by blacklisting? I want to submit to you respectfully that this is not how it ought to be. So I have some grave reservations about going a second round. If we continue to do the same things over and over, we are not going to get any better solutions, and that is what this piece of legislation suggests today.

Mr. President, the amendment being sought in clause 2(a)(i) is that—and I want to read it in its full context because it seeks to amend section 8 of this Financial Intelligence Unit Act. It seeks to amend it in expanding the function of the FIU. It expands the function starting from the original position that:

“The FIU shall be the primary institution for the collection of financial intelligence...”

“Intelligence”, that happens—it sounds like a bad word now. We do not like to use that word anymore. Intelligence is a very bad word. It gets everybody crotchety, defensive, unable to explain all kinds of developments, intelligence or lack thereof, but let me go on:

“...for the collection of financial intelligence and information and the analysis, dissemination, and exchange of such financial intelligence and information among law enforcement authorities, financial institutions and listed business in Trinidad and Tobago and internationally”—and this is the addition, this is the amendment—“and shall exercise any other function given to it by any other written law.”

I wonder, Mr. President, this piece of legislation required a three-fifths majority in both Houses and I wonder whether this amendment, as wide as it is, as deep as it is, as broad ranging as to give any other function given to it by any other written law so wide, whether this amendment does not in and of itself require a three-fifths majority. I would be guided by the learned attorneys in this Senate, the Attorney General being one of them, if not necessarily the foremost among them. I would be guided by my learned colleague, Sen. Prescott SC, on the matter, but I certainly want to be guided as a layman that I am not going to put my vote, if it comes to that, on an amendment which is not legal in its full sense.

These are my concerns. My concerns are operational and my concerns are legislative. I go back to operational a bit, Mr. President, because when we as financial practitioners and investment practitioners wearing some other hat go out there, there are some very significant requirements, one of which is if you, for example, Mr. President, were to go to an investment security firm and you wanted to place \$100,000 with that firm, you first have to fill out a source of funds document, and there is now an obligation by some of the regulatory authorities that I make a check or the institution which you go to must make a check with an international checklists to ensure that your name is not on that blacklist. If your name is on that blacklist a number of actions would have to take place to ensure that your name could be expunged, otherwise these institutions cannot do business with you.

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And of course there are very significant penalties for not reporting, not only on the part of the investor, but more so on the part of the institution that is receiving and placing those funds. There are very, very important and critical requirements in terms of reporting to the Financial Intelligence Unit (FIU) and of course if you do not comply, well, we would see in the legislation the penalties, not only pecuniary, but prison terms associated with certain levels of offences. I therefore want to see that the Financial Intelligence Unit is operated up to scratch and up to par and doing exactly what it should do. And I therefore, want to see a Financial Intelligence Unit that is not perceived to be politicized in any way, and I support strongly the independent body.

But that is not what we are here for today, Mr. President. We are here to pass certain amendments. But the caveat is that when you come back to us in this honourable Senate, when you come back to us you would have come back, addressing the question that Sen. Drayton raised, the question of affirmative resolution rather than negative resolution; that you would have come back with a framework, because that was promised, that was an undertaking. It was the undertaking on which some of us here gave our undertaking to support. And the undertaking was to look at the organizational structure, to ensure that this was an independent body that could not be interfered with and tampered with; some would say as politicians are wont to do. I will not say.

Just to expand on this a bit; a person is recruited under the auspices of the Minister. His terms and conditions as director are determined by the Minister. He can, under certain circumstances, be terminated by the Minister; and you are saying that that is an independent person? It is difficult for me to make that full connection because he is, if not under the foot of the Minister, he is under the thumb or the forefinger of the Minister and that cannot be independent.

We would have hoped that before we come back to put this gun to our head to speak of blacklisting and so on, that these matters would have been resolved, and that we could have an independent body of some sort that is not caught up by perception, if not reality; that is not caught up in the politics of the day. This is my greatest concern and I am sure, as I have heard from various speakers, it is the concern of all that we create that separation, that distance, that insulation between those who sit in political positions and the impact it can have on the credentials and reputation of those who are under scrutiny.

Let us take an example and see what will be the outlook of the Government. The Government has undertaken to pay some \$10.5 billion of the people's money to depositors of a failed institution. That is the Government's right once they can get legislation to support it. But if the Government is paying the people's money to that institution will this Government ask now, when it is paid, what was the source of funds? Should it? Ten point five billion dollars, Mr. President—some 25 per cent or more of the revenues of this country in any one particular year because those would constitute—instances like that would constitute the acid test to see whether we are really serious or not.

I do not think the Government would want to be complicit in any way or accused of paying out the people's money without ensuring that when those funds first came in they were as clean as a whistle, in all cases. I certainly would like to encourage the Government that when it pays the people's money that it should not find itself being complicit. I am sure that it is not something that would have even crossed the Government's mind. But we have legislation to ensure that either way, in or out, you check source of funds.

These are some of my concerns operationally, Mr. President. I find myself somewhat hard-pressed to support the legislation, the amendment in the form that it is in, hard-pressed, because I did not feel comfortable supporting the original legislation, and the amendment that comes here before us does not deal with any changes in the structure and the format of the original legislation. All it does, it puts another amendment that widens the powers seemingly, ostensibly, widens the powers of the FIU without the necessary checks and balances, no additional checks and balances but wider powers.

These are my concerns and I share these concerns with the Senate and the citizens overall; one, the question of whether the amendment requires a three-fifths majority. Two, I think the Government should come out and say what is the need for the urgent passage of this legislation. Three, just like the last bit of legislation, when the then administration gave a commitment within the law that it would come back here—and that commitment was broken, but a commitment was given in law that the Minister shall, shall report to the Parliament within one year. If those commitments are given on the understanding that there is some urgent case of blacklisting, I certainly would have to think again. But as it stands now, I find myself somewhat hard-pressed, but I would listen to all of the remaining arguments before I come to some conclusion as to what my vote will be.

I thank you, Mr. President.

7.30 p.m.

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday): Thank you very much, Mr. President. I want to thank all the speakers who have preceded me and I will start answering my namesake, in that, indeed, tomorrow would be that year of reporting and what had happened was, as you would know there was a change in administration and hence we have that problem. However, I think that I am in a position to give you that comfort of that commitment which you so desire when we return. I think that all the contributions of my friends have been valid. On this side we said there were very short amendments but very far-reaching.

As you know, the Financial Intelligence Unit of Trinidad and Tobago came into law in February 2010, merely one year ago, and as we say, that Act was enacted by the last administration to give effect to Recommendation 26 of the Financial Action Task Force which requires all countries to establish a body that serves as a national centre for receiving, requesting and the dissemination of suspicious activity, reports and other information regarding potential money laundering or terrorist financing.

We have heard Senators on the other side speak about how we have come here at this last moment, but if one looks at the history of this legislation, it is not that I am casting aspersions on anyone, but this legislation, according to Sen. Basharat Ali, has had a bumpy life in this Parliament. As you remember, it was introduced by the then Minister of Finance, Mrs. Nunez-Tesheira, as she was then; started it in May and then came back in October almost as a last-minute matter.

So, as I say, that is new legislation. We are exploring uncharted waters and hence the reason for us moving in this way. We are not really following what has happened before, but to say that we have been working assiduously to reach to this point where we have arrived. Money laundering and terrorist financing are grave acts and it is fortuitous that this debate is taking place today when a Commission of Enquiry into the 1990 coup attempt had occurred. I hope that that Commission of Enquiry will investigate the events leading up to that coup and that they try to determine where the funding came from for that terrorist act.

The reason I make that comment is really to show the importance of this legislation at this point in time. We ask, what is FATF? I will come to the question that Sen. Basharat Ali spoke about in a few minutes. FATF is an intergovernmental body whose purpose is the development of national and international policies to combat money laundering and terrorist financing.

We have passed many pieces of legislation in this Parliament to deal with crime and the types of crime we dealt with were crimes of a violent nature, and there was concern by certain Senators as to why we are only introducing legislation to deal with crime as it affects the small man. This legislation deals with the invisible criminal; the criminal who is behind the scene; the criminal who is benefiting from all criminal activities and has not been able to be caught in the past. We hope that when this legislation is passed that we will be taking that first important step in dealing with white-collar crime.

FATF 40 + 9 Recommendations are recognized by the IMF, the World Bank as international standards for combating money laundering and financing, hence the reason for moving in this direction today. As we say, FATF is international, but regionally, FATF's process is translated through the process of operations of the Caribbean Financial Action Task Force, CFATF. So whilst 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 CFATF.

CFATF is an associate body of FATF, because our information is that FATF is made up of a number of associate members, for example, the Pacific Group, the GAFISUD, that is the South American Group. There are many groups within FATF which are associate bodies and we are part of that. It is not an isolated situation, but because CFATF is an associate of FATF, we are bound by all the recommendations of FATF. Also, Sen. Basharat Ali spoke about the tension between CFATF and FATF. Our information is that that document was produced by a group of persons and it was not sanctioned by CFATF. So we are not really alone and out on a limb; we are, like many other countries in the world, associate members of FATF, so there is no real point of identifying us as being out in the open. We are a part of the organization.

Before I move on, Sen. Basharat Ali and also, I think, Sen. Deyalsingh, spoke about the Egmont Group, that we are not a member, and the hon. Senators were asking why we are not a member of it. The question is, in order to become a member of that group, there is a process involved. What has happened is that in 2007 we became a signatory, I think, to CFATF, and we have been moving in that direction to become a member of the Egmont Group. My instructions are that there are eight stages in the process to become a member of the group and we are at stage seven, on the verge of becoming a member. It is said that before we are considered for membership, we must have the FIU properly established within a legislative framework, hence the reason for passing this legislation today to give us that impetus to move to the next stage.

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It was asked why certain countries like Antigua and St. Kitts and Nevis had already become members of that group. It is because they had passed legislation in the past and they have arrived. Today, we have been very combative and I do not want, at this point, to continue that trend, but merely to say that there were problems in the way; it was a new experience and the former administration probably wanted to be cautious and went along slowly. We picked up from there, and this is where we are today. [*Desk thumping*]

I stand here as Leader of Government Business to cast no aspersions or to make any adverse statements on anybody, because this legislation is so important that if it is not passed today, not only will we suffer, but the country also will suffer. [*Desk thumping*] So, today, we come here with this legislation to deal with that issue and I hope, Sen. Basharat Ali, that has explained why we have not arrived as yet.

I have read the *Hansard* in the other place in the 2009 debate and also in this honourable Chamber, and Sen. Henry, I also read your contribution, Sir, and the contribution of Mr. Imbert in the other place and the debate of the other matter which we had the other day. I want to say that your comments were noted and that it is not because of the comments we are here, but in any event, we are here.

The Financial Intelligence Unit of Trinidad and Tobago Act, No. 11 of 2009, sought to establish by statute a department in the Ministry of Finance to be called the Financial Intelligence Unit and we have heard questions being asked today: why it is there; why it is here; why it should not be there. The question is that the former administration, in its wisdom, when the legislation was passed, placed it there and we are continuing along that line. We say, you do not throw away the baby with the bath water, in that you do not throw away everything. You take what is good and you continue with it.

The FIU, under section 8 of the Act was named as a primary institution for the collection and section 8 says, and I quote:

“...for the collection of financial intelligence and information and the analysis, dissemination, and exchange of such financial intelligence and information among law enforcement authorities, financial institutions and listed business in Trinidad and Tobago and internationally.”

When I looked at the discussions in *Hansard*, I saw where, I think it was Minister Karen Nunez-Tesheira who said that the unit was existing some 12 years before but did not have legislative approval or legislative sanction, and hence this legislation, in the Government trying to comply with the FATF recommendations,

enacted legislation. The financial institutions legislation was enacted at the same time that the amendments were made to the Proceeds of Crime Act, Chap. 11:27. The amendments to the Proceeds of Crime Act were also necessary again, in order to meet the 40 + 9 Recommendations requirement. As I said, all steps in the past have been taken so that compliance could be ensured in relation to the 40 + 9 Recommendations.

In order to give effect to the FATF requirement, financial institutions and listed businesses to be supervised under the Proceeds of Crime Act—and I will come to Sen. Basharat Ali's point in a minute—the supervisory authorities were required to supervise some financial institutions and listed businesses.

7.45 p.m.

Mr. President, the legislation before us appears to be very short, but very far-reaching. And our argument is that until such time as regulations could be made to identify such supervisory authorities, there was a necessity at that time to provide for transitional arrangements for the supervision. Therefore, section 34 of the 2000 Proceeds of Crime Act provided that, until the regulations are made under section 56, which Sen. Ali was speaking about, for the selection of the supervisory body, the Financial Intelligence Unit shall be the supervisory authority for the financial institutions.

My humble understanding was that what the legislation was saying there is that the supervision could take place under the (POCA), the Proceeds of Crime Act.

Sen. Ali: Mr. President, through you, I was referring also to the regulations—Financial Obligations Regulations 2010, and even under the interpretation there, you have three persons who can act in that position of—the supervisory authority means in respect of—and they are all financial institutions, the Central Bank; then persons licensed as a dealer or investment advisor under the Securities Industry Act, the T&T Securities and Exchange Commission; and the others, all the listed businesses, the FIU. So, the FIU, through these regulations, seems to have the authority to, in fact, do that supervisory authority role for all the listed businesses, and that is the long list that we have in the back there, jewellers and real estate people and everybody else.

So I did not see the need for the clause (2)(1) in the amendments. And I will be happy if all we do today is to correct that 53(3) to 55(3). That is all I am asking for today, I do not think there is anything else to do because that is a serious typographical error which has been there from day one till today and we are going to correct it because a lot of the remit of the FIU is given by section 55.

Sen. The Hon. S. Panday: Thank you very much for your kind intervention. When you said that amending the 53(3) to 55, indeed that is important. I have not seen the regulations which you have spoken about, but my understanding of the law is that regulations are really subsidiary legislation, and subsidiary legislation cannot create new law to perform a function and, as such, the purpose of subsidiary legislation is really to give effect to the substantive law. So, therefore, I want to humbly, as a point in the law, say that the regulations to which you have referred cannot create a new function for a body. It must be created by substantive law and hence the reason for this amendment. As I say, that argument is based upon statutory interpretation and legal point of view.

[MADAM VICE-PRESIDENT in the Chair]

That is why, Madam Vice-President, it is said that until the regulations—that we need to have the FIU being given that power not as a permanent position but until that situation is rectified. It is really a transitional stage moving forward so that we could prepare ourselves to enter into that group and also to fulfil the requirements that Sen. Dr. Lester Henry and Sen. Subhas Ramkhelewan spoke about as a matter of urgency.

While the amendment in the Proceeds of Crime Act [*Interruption*] Madam Vice- President, I do not intend to argue with my—

Sen. Hinds: Apart from the fact you want our support, of course, [*Interruption*] [*Laughter*]

Sen. The Hon. S. Panday: That too. Madam Vice-President, this is what this really hopes to achieve, and on the issue—I will come a little later on the issue that Sen. Drayton and that you, Sen. Hinds, have spoken to me about and I said I will check the law for you, and also Sen. Basharat Ali.

While this amendment in the Proceeds of Crime Act sought to give the unit the power to act as a supervisory authority for certain financial intuitions and listed businesses, the scope of section 8 of the FIU, the Financial intelligence Act does not give it that remit, and if one—I do not intend to waste the Senate's time, but it lists there in section 8 of the Financial Intelligence Unit Act, No. 11, 2009, in which section 8 spells out the functions of the FIU, and it says and I will go to section 8(1), the FIU shall—sorry 8(1), I move on to 8 (2) and I will not read the whole section but what I shall attempt to do is merely to précis it.

Section 8(2) is merely to says that it shall receive suspicious transactions and suspicious activity reports from the financial institutions; request financial information from financial institutions, analyze and evaluate reports, collect

information, annual periodic reports, tactical analysis, set reporting standards, engage in exchange of financial intelligence. And having said that, the reason we really need to pass this legislation is because, if we want to engage in the exchange of financial intelligence with members of the Egmont Group if we do not move forward and attempt to reach that stage where we can enter the Egmont Group, there might be an occasion where we may endeavour to obtain information from an international organization and they may refuse to give it to us. Hence the reason for this legislation today, so that we can all move forward.

So I think this is a very important aspect of this legislation to reach that goal that Sen. Deyalsingh and Sen. Basharat Ali recommend that we should approach, and I am not putting an obligation on you. It says to disseminate at regular intervals financial intelligence information so we may disseminate but, to get information to deal with anti-money laundering offences, we may find ourselves in a problem. [*Interruption*]

Sen. Deyalsingh: Reciprocity.

Sen. The. Hon. S. Panday: Reciprocity. To facilitate the sharing of information among the financial institutions, to provide information, financial advice and assistance, to retain—the other things are not important, to exchange intelligence, et cetera. So what has happened, Madam Vice- President, section 8 gives or spells out the functions of the FIU as it stands today.

7.55 p.m.

Therefore, in subsection (a) the amendment says:

“...by inserting after the word ‘internationally’ the words ‘and shall exercise any other function given to it by any other written law.’;”

What they are really doing there, Madam Vice-President, is increasing the remit of the Financial Intelligence Unit to deal with the situation at this time.

Madam Vice-President—and I will come to this section a little later on the interpretation of the law—the Bill before the Senate gives, as I say, the unit this expanded remit by amending section 8 to now give the FIU any other function that may be given under any written law, and to correct—now, I think this might be an appropriate time—Sen. Hinds is not here, but some of my colleagues on the other side were saying that, having said in subsection (1) by inserting after the word “internationally” the words “and shall exercise any other functions given to it by any other written law”, I think Sen. Subhas Ramkhelawan had a concern about that also. The argument that is being raised is that any other law—by saying that,

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it may mean that there may be laws which impact and infringe under sections 4 and 5 of the Constitution and, therefore, if that is the case, this should be passed with a special majority.

Our advice on this matter is that when we speak about any written law it could mean either any law which is already on our law books, and if those pieces of legislation had impacted upon the fundamental rights as stated in sections 4 and 5 of the Constitution, those laws would have already been passed with a special majority, and is merely giving effect to laws which have been passed either with a simple majority or with a special majority. Then you may ask the question: what about future laws? We know that those laws would have already come through the Parliament, been scrutinized and went through with a special majority. Sen. Subhas Ramkhelawan says, “What about the future laws?” Again, our advice is, those laws will be unconstitutional. If those laws impact upon the rights of the citizens under sections 4 and 5 of the Constitution, they would be invalid if they were not passed with the scrutiny of the Parliament and with the special majority. Hence, this legislation will not be in a position to give effect to laws which are void. So therefore, the argument is that even in the future when those laws are introduced, those laws will go through the same scrutiny of those which have been passed, so that the rights will be protected at that stage. Here we will be giving the FIU the power to execute those pieces of legislation. So in any event, those pieces of legislation will have to be passed by a special majority

Madam Vice-President, these are some of the questions that were raised, but FATF mandates countries to ensure that designated non-financial businesses; professions, namely jewellers as the Attorney General had alluded to; casinos, where it is a haven for this type of activity which this legislation hopes to deal with; real estate agents; lawyers—and I want to indicate to the Senate that the Law Association has already sent a questionnaire to lawyers to comply with the legislation—notaries; other independent legal professionals; accountants; trust companies; and service providers. All these refer to all persons or businesses that are not covered elsewhere under the FATF recommendations and are subject to the effective systems and monitoring, and ensuring the compliance with the requirements to combat money laundering and terrorist financing.

Those offences are very, very serious offences and that is why we are here today to ensure that we do not fall—I am certain my learned friends, Sen. Subhas Ramkhelawan and Sen. Deyalsingh, will understand, when I say that we are here today not to fall foul of any obligations with which we have to comply. It is only when a jurisdiction has a functional and effective supervisory regime for financial

institutions and listed businesses, can they protect and safeguard against risk of financial crime and, in particular, money laundering and the financing of terrorism.

Earlier today, when the hon. Senator on the other side mentioned about the core functions of the FIU, he said that the core function of the FIU includes what we are endeavouring to do here today. The core function of the anti-money laundering and CFT supervisory regime is to ensure the safety of the financial system by overseeing designated non-financial businesses and professions to determine whether they comply with the governing laws and supervisory requirements. This, Madam Vice-President, will not only promote financial stability and sound business practices, but assist the Government in preventing the use of financial and designated non-financial institutions for financial crimes and money laundering, and that takes into consideration the various institutions and units which Sen. Ramkhelawan mentioned.

A supervisory regime within the FIU makes the FIU responsible for monitoring compliance within reporting obligations and other preventative obligations of all institutions it supervises. It is important to note that this is done in Canada, Spain and Australia. An advantage of such an arrangement is that the AML and CFT expertise is concentrated in one supervisory agency which improves the efficiency of compliance programmes, thereby the reporting of suspicious activities and transactions. That is what we are here today for and that is the objective of the legislation.

Madam Vice-President, this arrangement will allow our financial institutions, listed businesses in Trinidad and Tobago, to become compliant with internationally accepted standards and will promote the adoption of policies and procedures that are designed to control and manage money laundering and terrorist financing risks. Moreover, the amendment brings us much further, as was said before, into compliance with FATF recommendations. Complying with FATF recommendations is particularly pertinent to Trinidad and Tobago, when one considers the vulnerability of money laundering in Trinidad and Tobago.

The vulnerability for money laundering in Trinidad and Tobago exists as a result, as we have said before, of our geographical location between illicit drug producing and illicit drug consuming countries in the world. As Senators indicated, that scourge of drug trafficking is really impacting adversely, not only on those young men who are in gangs and having turf wars, but it impacts adversely on everybody in Trinidad and Tobago—upon businesses.

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When you have money laundering—or as Sen. Ramkhelawan says, washing money—entering the system, you will find that many genuine businesses cannot survive because those persons who inject this money from these corrupt practices, like drugs, they undersell the genuine businessmen, and as a result of that, you will find genuine businesses going under and these drug supported stores, hardwares as mentioned, you will see them rising at the expense of people. When we say at the expense of the people, not only in pushing genuine persons out, but leading young people to take the lives of one another, leading to the society degenerating.

As it says, we are in a position where we are between the drug producing and the drug consuming countries.

Sen. Hinds: We know all of that, we want to find—

Sen. The Hon. S. Panday: And I am certain that Sen. Hinds will join in that fight.

Sen. Hinds: [*Inaudible*—the records are there.

Sen. The Hon. S. Panday: And I say today is not a day for fighting.

Sen. Brig. Sandy: I trained him.

Sen. The Hon. S. Panday: You were trained by the—

Sen. Hinds: Yah, yah.

Sen. Brig. Sandy: Fortunate enough.

Sen. Hinds: That is why I am surprised—[*Inaudible*]

Sen. The Hon. S. Panday: Look! Okay, okay. Madam Vice-President, Trinidad and Tobago's position in the Caribbean archipelago makes our nation susceptible to illicit activities. Our country lies right off the coast of South America and is often used as a trans-shipment point for drugs, arms and, at times, persons destined for North America and Europe.

The illicit trafficking of drugs, arms and humans are directly linked to money laundering as criminals need to make their illegitimate proceeds from such crimes appear to be legal, and that is the purpose of this legislation today. It is therefore imperative that we sustain our efforts to diminish this vulnerability. This should be done through the stringent AML regime with the necessary legislative and institutional framework, and I humbly ask my friends on the other side to join with us in that endeavour.

Furthermore, to combat crime and money laundering, we need effective and efficient implementation of these frameworks. Sen. Ramkhelawan, I want to give you the undertaking that the concerns which you have raised about implementation would be addressed. We intend to cut the bloodline for further illicit activities.

Madam Vice-President, as I say, today is not a day for fighting, and hence, I will cut my speech from that point to make my good friend, Sen. Hinds, happy. Thank you very much for giving me this opportunity to contribute. [*Desk thumping*]

8.10 p.m.

Sen. Fitzgerald Hinds: Thank you very warmly, Madam Vice-President. I am so happy that my friend made the admirable contribution that he made in this important debate and I am very happy to come immediately after him. I must say that the tone that he set has sort of slowed down my thought processes somewhat, to some extent, but only a little, because important things must now be said.

Hon. Senator: Definitely so.

Sen. F. Hinds: The first thing I want to make very clear, Madam Vice-President, is that several times during the course of this debate I heard the use of the concept of blacklisting. Every time I heard it, it pained my soul, for I considered it at worst, offensive, and at best, politically incorrect. In consequence, for the benefit of my many friends in this Chamber, I would want to propose in future we use the term “sanctioned” or perhaps even “ostracized” or any other concept but the term “blacklisting” offends me somewhat and as I said, no doubt it offends other people.

Madam Vice-President, the Attorney General, when he made his presentation here today, in typical seagull mode, spoke of conflict of interest. He indicated that a very hard-working individual who he named, Mr. David West, but who I had to draw out from him because when he first spoke, any unwitting listener may have come to the mistaken position or conclusion that something was wrong about Mr. David West. So I rose and I sought clarification from him and I did so for two reasons: to offer Mr. West some protection from innuendo in this country, and secondly, to protect this country from the unwillingness of persons to serve the State because of the conduct of some politicians in dealing with that service.

And having done so, Madam Vice-President, the Attorney General recanted somewhat. He resiled from the lofty innuendo-filled posture and made it very clear, much to my happiness, that David West served astutely, he served well and

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there is no blemish upon him. The question of whether he was fit to serve as a public officer, another or otherwise, the jury is out on that. But certainly it is clear that Mr. West served us very, very well and is a man without blemish. He spoke of conflict of interest which I thought raised the bar somewhat, but since he raised the bar that high, it is easy to do a limbo under it.

And I remember when the current Minister of Finance, Mr. Winston Dookeran, was the Governor of the Central Bank and we had reason to think that he assisted in writing or giving support to members of the party that he now is a central part of. Though I must admit there was a hiatus between her tenure as an Independent Senator and her reincarnation as a Minister of this Government, Sen. the Hon. Mary King sat on the Independent Benches. I heard the Attorney General say today that some Independent Senator pretended to be independent casting, as my friend Sen. Deyalsingh pointed out, aspersions on all those who now sit because it lends members of the public the mistaken impression that these current Independents might be like the one to whom the Attorney General referred. He has, in that way, demeaned the very high and esteemed office of the Independent Senator appointed by the President independently.

But as I always point out to him, the minute he sets aside his notes and begins to speak extemporaneously, he gets into significant trouble. It appears to me now that he does not feel comfortable anywhere else but in a muddle of trouble because that is his wont.

And more latterly, if I may put it that way, the appointment of a young practising Criminal Attorney by the name of Daniel Khan, the son of Israel Khan and if you do not know who Israel Khan is, he is a very recent, frequent writer in the newspapers of this country, a Senior Counsel, who, much to my shock and horror, is actually defending the conduct of the Chairman of the Police Service Commission, defending it as trivial and suggesting that the nation cast it aside and rather than the Leader of the Opposition treat with a matter that is of public concern, in facts that we know sufficiently well, he is raising issues of race for the Opposition Leader to consider. Obfuscation in the extreme!

But Daniel Khan is a practising criminal attorney. He was speaking about Mr. West and he is now appointed as the Inspector of Prisons, a job that entails investigating complaints by prisoners in criminal matters in terms of the way they are treated in the prison, in terms of prisons' conditions, while he is a practising attorney and can come to court tomorrow with information obtained officially and use it in a certain way to his advantage. But you see, as we say in the colloquial way "monkey doh see dey own tail."

So when the Attorney General spoke of conflict of interest, I was troubled by it but I was far more troubled, Madam Vice-President, when he spoke about the PNM and us doing absolutely nothing about corruption. Remember he said that. But Sen. Deyalsingh correctly pointed out, it was the PNM who introduced the legislation that he brought here for amendment today. To use my very often used example, he met a house, he now has to change a window but he forgot who built the house in the first place.

This very FIU, if I may give some credit to the UNC, the Financial Intelligence Unit originally called “The Counter Drug Task Force” was introduced by the United National Congress during their time in government. Am I correct, Sen. Panday?

Sen. Panday: I was not part of that government at that time. You know I was not.

Sen. F. Hinds: You are hardly a part now, I understand that. You were very lately thought of, we understand that. I do not know if you were the beneficiary of Mr. Warner’s negotiation but we see you here, we recognize you, among others. But the Attorney General told us today that the PNM has a history, it is in our DNA, nice political talk for Tabaque where he lost; nice political talk.

[MR. PRESIDENT *in the Chair*]

Let me pause to allow the President to retain his seat. By the way, Mr. President, let me place on record that I find that in your robes and your bands, you look rather elegant and I must compliment you. And as a Rastafarian, I must also compliment you, it seems as though, Mr. President, you had a very recent visit to the tonsorial artiste, the barber. That is old english for the barber, you know that. [*Desk thumping*] The satorial artiste deals with one’s clothing but the tonsorial artist deals with one’s hair, you see. Anyway, this is not about you, it is about the Attorney General and his conduct.

Mr. President, the Attorney General told us that the PNM’s DNA manifested an absence or a failure to do anything about corruption. But I pointed out a second ago that the original Financial Investigation Counter Drug Task Force was established by the UNC, more correctly, the then Attorney General, Ramesh Lawrence Maharaj. And why I single him out is because, when he took a stand inside of their government for corruption, and he and two others brought down their government for corruption, the Attorney General was one who was upset with him, “vex” and the current Prime Minister was “vex” with him too, for dealing with corruption. This is why I always say the UNC was born in political

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sin and shapen in political wickedness and iniquity. Vex? And now have the temerity, the gumption, the gall, to come here today—tonight and talk about PNM corruption and we are amending a Bill that the PNM put in place in this Senate, with objection, against serious objection from those on the other side; objection!

8.20 p.m.

Mr. President, that having been said, with your kind leave, I would like to press on. We have to understand. “Yuh see dis ting” about Counter-Drug Task Force and FIU? It is not a plaything. It is a very serious thing. It is an important part of the fabric in keeping the society drug free, crime free, corruption free and compromised. It is an important part of the fabric, to keep us miles away from what transpires in other countries like neighbouring Venezuela, like Mexico—Mehico (phonetic) if I may put it in the Spanish twang, where judicial officers are taken down, prosecutors are taken down and many other very horrible things. I read last week that an entire police force in a certain district in Mexico, from commissioner to the last-joined recruit, every man resigned, en bloc, in the face of a threat from the drug cartel. This is not a joke!

We are here tonight, which began earlier today, to amend this Financial Intelligence Unit of Trinidad and Tobago Act; what appears to be a very simple amendment, but as usual with the UNC, what appears innocuous and simple always carries a sting in the rear. Let me say why, and it has already been mooted by Sen. Ramkhelawan. It has been mooted by Sen. Al-Rawi. It has been mooted by, I think, Sen. Ali. While the amendment reads in clause 2 of the Bill before us:

“The Financial Intelligence Unit Act, 2009 is amended in section 8 in—

- (a) subsection (1), by inserting after the words ‘internationally’ the words ‘and shall exercise any other function given to it by any other written law.’”

we are not in a position this evening to contemplate all the other functions that can arise in future. We are being told this evening that the function that we are talking about is an expansion of its supervisory capacity or jurisdiction, as envisaged in the Proceeds of Crime Act, (POCA) as we call it. We are told that the supervisory capacity under the FIU Act does not have the reach that it should have, to carry out that supervisory function under the Proceeds of Crime Act and, as such, this amendment is to treat with it. That is easy to understand. But, then this says:

“any other function”

One day when this is passed, it will read “any other function” and somebody could come up with something that we, tonight, did not contemplate. And that Government must not, cannot be trusted. I do not know how the COP did it, but as for me, I know they cannot be trusted.

We need to take a look at this and we will be proposing some kind of adjustment to those words “other function”, to give comfort to the serious concerns that we have on this side of the Senate.

Further, it goes on to say—let me for, simplicity read it again:

“...subsection (1), by inserting after the words ‘internationally’, the words ‘and shall exercise any other function given to it by any other written law.’”

Now, this clearly is intended to deal with the other law, the Proceeds of Crime Act, but it says “any other written law.” Another day from now, there might be some other law that we are not contemplating tonight. So might I ask the Attorney General and the Government to consider an adjustment to these words and maybe specifically say POCA, rather than “any other law”?

Sen. Ramlogan: I thank the learned Senator for giving way. Perhaps it might give you some comfort to know that after Sen. Ramkhelawan’s contribution, which I was listening to outside, I conferred with one or two Senators on the opposite side and I have decided to circulate an amendment, which will be along the lines of confining it by reference to the Proceeds of Crime Act and the Anti-Terrorism Act; those being the only two other pieces of legislation that make reference to the FIU. I have already done that and it is already drafted. It will be circulated in due course. I want to express my gratitude to the Senators of the Independent Bench and yourself and Members of the Opposition for that.

Sen. F. Hinds: Rather gracious of you. Rather uncharacteristic too. You have not displayed that kind of warm behaviour for a long time, but we do appreciate it, in the interest of the people of Trinidad and Tobago. In light of that wonderful concession from the Attorney General who speaks on behalf of the Government, I set this bit of paper aside and press on. *[Interruption]* “No, no, I eh finish yet. Ah now start. I eh break ah sweat yet. Yuh wah meh tuh sid dong?”

Mr. President, I had reference to some of the debates on the Act that we are amending tonight, and it made rather interesting reading, very interesting reading. Some of it reflected, to me, that the then Opposition—I do not know what I now suggest about them is correct, because, for us on this side, there has been a golden

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thread through all that we have done in and for this country from our establishment in 1956. There is commonality, a shared philosophy, a shared understanding of things, a shared morality that renders whatever—[*Interruption*]

Sen. Abdulah: Would the hon. Senator—

Sen. F. Hinds:—one Member of the PNM would have said—[*Interruption*]

Sen. Abdulah: Would the hon. Senator give way?

Sen. F. Hinds: I would not, at this time, give way. I am mid-sentence.

Sen. Abdulah: All right, at the end of your sentence.

Sen. F. Hinds: Yes. I assure you it would be a long one, because “you coming to give me some”—I was saying before there was an attempt to derail and to disturb me—I am always gracious to my friend, but I can anticipate what he is coming with. It happened before.

I was making the point that it is that shared philosophy, that shared understanding of the world, that shared understanding of the Caribbean, that shared understanding of Trinidad and Tobago, that shared understanding of politics, not what is, but what ought to be politics, you can be certain that those who stood in this honourable Chamber in 1956, 1957, 1961, 1962, 1965, 1976, from this side, PNM side, we spoke basically the same language. Yes, that is why we have sustained. There is a golden thread that has held us together. [Interruption]

Sen. Abdulah: Is the sentence over, Mr. President?

Sen. F. Hinds: Mr. President, I am not giving way.

Sen. Abdulah: Is the sentence over?

Sen. F. Hinds: “De sentence eh finish yet. Is ah long sentence.”

Sen. Abdulah: Full stop.

Sen. F. Hinds: When they were in Opposition and we presented this Bill, remember Sen. Ramkhelawan pointed out tonight that very Act we are amending, they promised this country and this Parliament and itself that we would have come back here one year late—“Shall”, for a review of it—it took Independent Sen. Ramkhelawan—he was very bold and brave do it. Because, I have noticed, every time an Independent Senator gets up and makes a comment that appears to be at odds with what the Government thinks, they come under attack, whether it was from the Minister of Works and Transport or whether it was the Attorney General.

Only last week, when Sen. Corinne Averille Amber “something” Mc Knight got up here and spoke, she was attacked viciously by the Attorney General, following on the Minister of Works and Transport who attacked Sen. Helen Drayton. It took some courage on the part of Sen. Ramkhelawan to get up here this evening and to have pointed out to them a serious omission while they were in Government. They should have brought the thing back and, as they brought it now, not a word about that commitment under the law—not a word!

I notice, from the readings of *Hansard* as we passed the Act, that they had taken serious objection to the fact that, insofar as the appointment of the Director of the FIU is concerned, there was no mention of what qualification he should possess and nothing around it.

Sen. Wade Mark, as he then was, they all took strong objection to it and they have an opportunity today, as they bring an amendment, and they have done nothing about the position of director, as spelt out in the Act. You would have thought that if they had the common golden thread that we have, you would have seen an amendment consistent with the positions they had taken when the Bill was first presented to this Senate, but they do not have that. That is a chop and change pickup side. Anything could happen. There is no institutional memory. It is a patchwork, intra-UNC, COP and everybody else and inter-UNC it is a patchwork too. There is no—

Let me point out to them that they had raised issues about the director, but it took Sen. Dr. Lester Henry to tell us this evening that it came to his attention as it, indeed, did mine, that there was a process undertaken, established and put in train by your Government recently, for the appointment of a director of the FIU. They began the process of interviewing applicants. Four persons were interviewed. A phone call came to the head of the interviewing panel saying to scuttle the process, to stop it, and that they did.

They have now put a man with the initials WR. I do not want to taint the young man’s name. He would have done no wrong, much like Reshmi Ramnarine. I do not think she is personally to be held responsible for the fiasco, the travesty, that Government has put upon her, her family and this nation. That is why the Leader of the Opposition, and I support him, we all support him wholeheartedly, is now calling for a criminal investigation into the circumstances surrounding the appointment of Reshmi Ramnarine.

He is also calling, and we support it, for the immediate removal of one Julie Browne, and we still want to know from the Minister of National Security—since he complained that he was set up and somebody misled him and he apologized to

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the Senate and said that he did not mean to mislead the Senate and at the time of the misleading statement he did not contemplate it to be true—who gave him the information. The next question is whether they believed it to be true or not. Somebody is guilty of something.

8.35 p.m.

We also support the Opposition leader who is saying that so far, with a half-baked, crocodile apology, the Prime Minister tried to confuse this nation, but she still has not reflected to us what her role in this was, and we want to know. [*Desk thumping*]

So here we are with the FIU, Mr. President, they made a phone call and scuttled the interview process. The man, from the information we have, who—the very David West applied for the job notwithstanding the Attorney General's admission that he was of impeccable service, very experienced, worked in the mutual assistance arena and the extradition proceedings from the Attorney General's office for years. Even if you say he was not a public servant, he did not have to be here now, he applied for the job, he was rejected.

We are told that the man who came out on top of the interview process that they scuttled, was a man by the name of Jefferson Clarke, a highly qualified no doubt about this one—a very highly computer-literate individual, he has a degree, I think in Information Technology, and other high qualifications; very experienced. He had been working with the very Unit from its origins as the counter agency, the Counter-Agency Drug Task Force, very experienced. He was on top of the pile when they scuttled it. And now they are contemplating the young man with the initials W R who I would protect, because I do not want them to taint him as they did Reshmi Ramnarine.

They already approved it, I am being told, and he was just a lawyer like me, no background in extradition, no background in mutual assistance, no background in financial intelligence and he too was not interviewed. So when you get a crocodile apology from them talking about Reshmi Ramnarine and it would not happen again, it is happening right now as we speak. [*Desk thumping*] That is why I say “the UNC was born in political sin and shapen in iniquity”—and he is due to pick up work this month.

As I told you a while ago, I am a true born son of the soil, Trinidadian, I am a man, I believe in God, I am a Rastaman. And there is a singer by the name of Anthony B., you may never have heard him, Mr. President, but I commend his work to you. He has a song called ‘Damage’, and we are not permitted—the

temptation to sing here is almost irresistible, but I do not have a very harmonious tone, so I will quote his words for the benefit of the Prime Minister of this country. Anthony B. in a song says “You do not have to say you are sorry, for all the wrong that you have done, I do not wanna hear no sad story, cuz the damage already been done”. [*Desk thumping*]

How does Jefferson Clarke feel today, having paid his dues, having worked — let me tell you something, Mr. President. That Counter Drug Task Force, the origins of this, they had during their time over 600 mutual legal assistance requests from countries, England, Canada, the United States and other countries in the world. They came in for high praise. They were led by a police officer, now a Deputy Commissioner of Police, a man by the name of Raymond Craig. I call him a ‘tonne load’ of police, real police, the real McCoy, red-blood police. They were led by him. They did tremendous work in this country. They received praise, as I told you, from Janet Reno, who was then the Attorney General in the United States. Craig headed it for seven years. They did very serious work. Jefferson Clarke was with them all the time working hard. He studied, he developed himself. He was interviewed, at the top of the pile. How is he to feel today?

Let me ask another question to the Minister of Planning, Economic and Social Restructuring and Gender Affairs through you, Mr. President. How are all the thousands of young people in this country, who we told you must go to school and work, primary school, five years, you pass your SEA, you go to secondary school for another five or seven years, you get your eight ones, you get your four A level subjects, Add math, Math, Caribbean Studies and whatever other subject you may have chosen, then you go to university, submit yourself to the discipline of learning for another three, four, five years, if it is medicine and then you are in Trinidad and Tobago, I admit, in trying economic times, you are unemployed, you are looking for a job, you cannot get one but the Government led by the Prime Minister going out of its way concocted a résumé to give a friend a job? What about all the thousands of young people out here who want employment and who have paid their dues? “The UNC was born in sin and shapen in iniquity”, I repeat.

And the tears of the young people of this country, because they would have seen what you did, and all of your cover-up. Now you cost the Minister of National Security a large chunk of his reputation and credibility. And all of the young people watching all of that and you are still covering-up, to create a job for a friend. We want to know what is the connection. Why? The young people in the country want to know that.

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Mr. President, it is crime this Bill is intended to deal with. They also are considering before—I understand they have made the appointment with W.R already, but they were considering a man, one of the English citizens who is here, former officers who worked with SAUTT, some Mr. Balbosa, they were considering him. He earns about TT\$70,000 a month, we are told, because they have to be paid in TT equivalent with what they were earning and the hardship and all of that for being in Trinidad, transposing the family to the Caribbean, so they are paid. I imagine these are the considerations that led to Mr. Gibbs being the highest paid Commissioner in the western hemisphere, \$110,000 a month.

So when I read *Hansard* and I saw some of their comments in the past, I was rather taken aback. I found it rather interesting reading, Mr. President. When I read the explanatory note in this Bill before us today, I saw it described the FIU as not having a supervisory jurisdiction. Well, I suspect by now it is quite clear that was an error, because it does have a supervisory function, and what we are doing this evening is extending that supervisory function to accommodate POCA. *[Interruption]* Does, it always did. The director of such an institution, the FIU, obviously must be a person of the highest integrity. You see when Mr. Craig was in charge—and by the way, as I am talking about Mr. Craig, let me read for you very quickly—if you would bear with me for one moment, Mr. President.

8.45 p.m.

Let me read for you very quickly what the then Member of Parliament for Tabaquite, Ramesh Lawrence Maharaj SC, had to say about that unit and Mr. Craig. That unit was headed by a police officer, a police officer who was cleared by the intelligence in the United States, in Canada and in England. I have a duty to mention his name because I realized—I think he was an inspector but, as I said, now he is a deputy commissioner, Mr. Raymond Craig. He was the one who headed the task force.

“This task force or Financial Intelligence Unit, for these purposes was accountable to the Commissioner of Police and to the Director of Public Prosecutions. It originally fell under the Ministry of the Attorney General and the Ministry of National Security, then it went under the Ministry of National Security, it was like a department of the Government, therefore what we had”—“and if the Attorney General can look back, because he was not there after 2001—“he will see that the Task Force was regarded by the international community as causing Trinidad and Tobago to be the leading country in the region in the fight against drugs and money laundering. Because the Task Force was not staffed by anyone who was not only cleared by local intelligence, but who was cleared by intelligence of the United States, England and Canada...”

—and that was a task force that Janet Reno, the then AG of the United States of America highly commended, and so on.

I am making a point here that when it comes to these sensitive matters you saw that the clearance, the background checks were not only done locally but internationally. That did not happen with Reshmi Ramnarine. I am almost certain—since WR has not even been interviewed, I am almost certain that there have been no such background checks. This deals with the international terrorist movement of money, international money laundering. It is very serious. It is not a joke.

The effects of drugs are there for us all to see, you know. You could go anywhere in the innercities, around Port of Spain, Woodbrook, St. James, Dibe, Caroni, and see a trail of vagrants, many desperate souls hooked on cocaine, limping around the place with a bag of bottles. Night after night, week after week, month after month, year after year, some of them are locked into that for 15, 20 years! This drug thing is very serious and we understand that. The effects of it are there for us all to see. A drug deal goes sour, a home gets burnt in Laventille, or burnt in Caroni, somebody from Westmoorings “lose a head”, things go funny.

Mr. President, I call upon this Government to stop playing games. Stop playing games and understand that this is serious business. As I was telling you, Mr. President, the director has to be someone of high tested—and I want to say retested integrity, because when you take up the position of director having passed these tests, the thing is a moving target, it is not static. In serious countries such a person would be tested intermittently, routinely to ensure that they continue to be on course, for you could join with a clean slate, and you become corrupted two months later. So it is lie detector and all the other tests and background checks, and cross-referencing as you continue in the job.

“It has nothing to do with partisan thing and friend yuh know, and concubine, and limin pardner and drinking pardner.” Let me repeat that. Members of the Government, this has nothing to do with “limin friend” and disco friend and champagne friend and dancing friend and karaoke partner. This thing is serious. Tell your Prime Minister that.

There is much more to be said. I am minded to retain my seat now, Mr. President, if you would permit me. If, of course, you feel that I should continue, Mr. President, I am very able because there is a lot more to be said, but I think I have sent a message clearly to the Prime Minister of this country. I see smiles, embarrassing smiles, on the faces of all of my colleagues opposite. I know they will communicate what we have said on this side to their Prime Minister at first opportunity. They will have to pick a moment, I know they will have to pick a special moment. Mr. President, I do not propose to be distracted. This is serious business.

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I myself attended, just to say as I approach my conclusion, some of these CFATF conferences when I was in the Ministry of National Security. I remember on a particular occasion that we were trying to get an agreement from all the Governments of the region, and I was there with the technocrats who represented Trinidad and Tobago. I do not want to call their names, because they may take offence, it might be a little discomfoting, but one with the initials SJH, another with the initials CW. All these people came out of the SSA and other institutions, other agencies. We went, and I remember what we had to do to win agreement and to put Trinidad and Tobago in a good light, and we did that, so this thing has special resonance, Mr. President, with me.

Mr. President, the thing is so serious that only recently lawyers of this jurisdiction, like you and I, were briefed by the FIU as to our responsibilities under this law, because when it comes to reporting suspicious transactions let me just for the record, and for the benefit of those who listen, say, that suspicious transactions include:

- a request for or a discovery of an unnecessarily complicated trust or corporate structure involving several different jurisdictions;
- payments or settlements to or from an administered entity which are of the size or source which had not been expected, an administered entity entering into transactions which have little or no obvious purpose or which are unrelated to the anticipated objects;
- transactions involving cash or bearer instruments outside of a recognized clearing system;
- sales, invoice values exceeding the known or expected value of goods or services, sales or purchases at inflated or undervalued prices, the sale of a motor car maybe or a house;
- a large number of bank accounts or other financial services products all receiving small payments in which the total amounts to a significant sum;
- large payments of third party cheques endorsed in favuor of the customer;
- unwillingness to disclose the source of funds;
- the use of postal boxes for no obvious advantage;
- unnecessarily complex group structure;

- unexplained subsidiaries; and finally
- the use of several currencies for no apparent purposes.

This list, of course, is not exhaustive. Persons who are engaged in the practice of law can come across a situation where someone wants to purchase a house, and they want to do a cash transaction for \$350,000, or any other sign that it is suspicious, lawyers were briefed about a month or two ago as to our responsibilities. Lawyers now have a duty to report any suspicious transaction to the FIU. They were lectured to, because, like accountants, lawyers can come into contact with people who want to transfer properties for money, as I have indicated, and other major trust arrangements and so on.

The thing, Mr. President, is very serious, and we all have a responsibility to keep this platform nice and clean. So Mr. President, in light of an understanding of that, we want to indicate that so long as the Government makes the adjustments that trouble us, and we have gotten a commitment from the Attorney General, we are prepared to give consideration to support for these measures. Mr. President, I wish to thank you.

8.55 p.m.

Sen. Elton Prescott SC: Mr. President, thank you very much for permitting me to enter into the debate on the proposed amendment. In light of what has fallen from the lips of the Attorney General, it may be that what I am about to say may become, at the very least, unnecessary, but in the event that he has not succeeded in persuading those who drafted it to do so, I shall persist in my endeavour.

Mr. President, the introductory remarks by the hon. Attorney General, reminded me of a situation some years ago where the President of the United States of America appeared on television, and in one simple sentence, less than 10 words, he denied that he had a special relationship with a young intern, and by those nine words, he altered my view, and I am sure the view of many others, of how to look at certain relationships with members of the opposite sex.

This Attorney General, you will remember said here, "While it appears simple, this amendment, the visionaries would see the bigger picture, the ramifications". Simple amendments, regrettably, turn out to be very invidious, and one has to be exceedingly cautious with them, and it is for those reasons I persisted in staying and taking part in the debate.

Mr. President, permit me to firstly refer to the Explanatory Note. Reference has been made to it already, but the languaging of the Explanatory Note does not

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find repetition in the amendment itself. In short, the amendment is not faithful to the Explanatory Notes. The Explanatory Note reads as follows:

“This Bill seeks to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009. Under the Proceeds of Crime (Amendment) Act 2009, the Financial Intelligence Unit was designated the Supervisory Authority for listed businesses and certain categories of financial institutions. This designation meant that the Financial Intelligence Unit was now required to carry out a significant supervisory role under the Proceeds of Crime Act.”

So we note that the emphasis is on the supervisory role. It goes on:

“Under the Financial Intelligence Unit of Trinidad and Tobago Act, 2009, supervision is not one of the core functions of the Financial Intelligence Unit. To therefore allow for this expanded remit of the Financial Intelligence Unit clause 2 of the Bill would amend section 8 of the Financial Intelligence Unit of Trinidad and Tobago Act to empower the Financial Intelligence Unit to carry out any other function given to it under any other written law.”

So in the very last sentence of the Explanatory Notes, we note that the drafter took a detour, a total diversion from how the thing had commenced. The Explanatory Note commenced on the basis that all that was required was to provide the FIU with certain supervisory powers, and it ends by saying, however, we wish instead to give it greater and wider powers, that is to say, “to carry out any other function given to it under any other written law.” So it is a sort of *carte blanche* that has now been proposed to be given to the FIU.

Unless it is explained to us that this amendment shall limit the supervisory function—functions which are set out in the Proceeds of Crime Act and the Anti-Terrorism Act, as the Attorney General has promised it would do—then we are providing the FIU, and the Minister to whom it reports, with a charter that is without limit, and without limits Parliament becomes a nonentity. [*Desk thumping*] The danger is that the door will be opened by permitting all manner of activities to be bundled up and presented as supervisory actions. For example, what is to prevent “supervision” to include investigative powers? It seems to follow naturally.

So if you come to this Parliament, unless the Parliament is very alert, “under any other written law” and you introduce the power to investigate, you have given the FIU, by a simple majority, an exceedingly intrusive power into people’s lives and, in particular, into listed businesses. Because firms of attorneys at law are

included. I am very keen to know that they are not necessarily, without the benefit of a three-fifths majority in this Senate, going to be subjected to that kind of power.

What if these functions that are proposed in the Explanatory Note includes the interception of communications? Is there any reason why the supervisory role cannot be so interpreted, that you now have the power to intercept communications in order to ensure that there is no money laundering going on? Could it be that is what is intended?

What about the seizure of cash? Under section 19 of the Proceeds of Crime Act, a police officer has the power to seize cash if he thinks it is associated with money laundering. Could that be part of the new function that is proposed, if not in this amendment, in a subsequent amendment under another written law? Would that not have required, standing on its own, a three-fifths majority, because it is inconsistent with sections 4 and 5 of the Constitution? [*Desk thumping*]

Now, I make the point because in the Act, the Proceeds of Crime (Amdt.) Act, the following has been introduced; a police officer. Section 4(d)(ii) of the Proceeds of Crime (Amdt.) Act amends section 2, which is the definition section. It now says that a police officer should include also “any officer of an agency of the state, lawfully vested with investigative powers similar to those exercisable by” a police officer—“appointed under the Police Service Act...” “Any officer of an agency of the state”—if you invest him with investigative powers, he is now regarded as a police officer for the purpose of the Proceeds of Crime Act.

So the supervisory function that we propose to grant to the FIU may, if we are not alert, and do not patrol the legislative border with very close scrutiny, we may very well find that a police officer empowered by the Minister of Finance, can go out there and seize the property of some partnership or firm in the legal business or maybe an accounting firm.

How does the Minister of Finance come into this here? In the Proceeds of Crime (Amdt.) Act, it is declared that the FIU is a mere department of the Ministry of Finance, and we ought not to overlook that.

Section 3 of the Financial Intelligence Act says:

“(1) There is hereby established a department of the Ministry of Finance, to be known as the Financial Intelligence Unit...for the purpose of performing the functions and exercising the powers vested in it under this Act...”

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It is a department of the Ministry of Finance. If you go to the Constitution of Trinidad and Tobago, you would find that once you have given that power to a Minister—a Minister who has been assigned the responsibility for any department of government, as it does in section 85 of the Constitution—that Minister may delegate his authority to some officer working in the Ministry.

So that we will find—if you have the kind of mind that is required to delve into this—that an officer in the Ministry of Finance could be empowered to direct the director of the FIU to do all these things which I am warning are likely to be included either today, or under some written law in the future, as functions of the FIU, and we ought to be very wary about simply allowing this to pass today in the hope that nobody would notice tomorrow what is likely to happen. All I am doing is inviting caution on the part of those who are contemplating voting in support of this amendment.

It would have been much easier—and I suspect that is what the Attorney General will tell us when he proposes his amendment—to say that the functions of the FIU are expanded by granting to it the function of supervision, which is permitted or which is referred to or which is granted under the Proceeds of Crime Act or the Anti-Terrorism Act. There is no need to go into the language that is suggested here.

Prior to his promised concession, I had intended to bring to the attention of this Senate that even the languaging of the amendment as proposed by clause 2 of the Bill would tell us that the drafters of this provision are thinking not so much of functions, but are giving powers to the FIU, and there is a distinction between functions being given to be performed by a body and powers being given by statute to any body. If you give powers to a body by legislation, a duty is imposed on that body, a duty which, if it fails to carry out, by judicial review you can have a court mandate that it carries it out. An unreasonable refusal to exercise the power can find a court commanding the body to perform, because it has been given a duty under the Act.

If you look at the Interpretation Act in section 44, you would see those provisions are contained there. So those powers must be performed. My suspicion is that in drafting the amendment, clearly, the drafter sought to grant powers to the FIU, and it certainly does not have those powers under the parent Act.

May I, therefore, invite your attention to the parent Act, so that we can see what, indeed, the Legislature intended? The Financial Intelligence Unit of Trinidad and Tobago Act, Act No. 11 of 2009, says in section 3—I think I have read this before:

“(1) There is hereby established a department of the Ministry of Finance...for the purpose of performing the functions and exercising the powers vested in it under this Act and any other written law.”

So if you want to know where its powers are or what functions it has, it is this Act that must tell you this. That is section 3.

In section 8, you find the following:

“(1) The FIU shall be the primary institution for the collection of financial intelligence...”

I want to stress the word “collection”:

“and information and the analysis, dissemination, and exchange of such financial intelligence...”

There is no supervision required there of any body. You go out and collect the data and analyse it.

“and information among law enforcement authorities, financial institutions and listed business in Trinidad and Tobago and internationally.”

So we can see that the body is created with those functions in mind, that it would be a body that goes out and collects data, analyzes it and feeds it to someone else. If you wish to know who that someone else is, it is contained in the Act at section 15, and it says:

“After the FIU has concluded its analysis or evaluation of a suspicious transaction or activity report, and where the Director is of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority for investigation...”

No investigative powers. All it is required to do, having satisfied itself that this suspicious transaction has occurred, it shall report it to the relevant law enforcement authority.

9.10 p.m.

How much more supervisory power do you require? What supervisory function is contemplated by the legislation? It is no more than observing activities going on in the world which may well have some connection with drug trafficking or money laundering and if you are satisfied to the degree that the relevant law enforcement agency or authority—pardon me—the relevant law

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enforcement authority takes you seriously, then they/it will take over and do what has to be done. Mind you, section 52 says, it shall take appropriate action and naturally that is to be expected.

Even if we were to focus therefore more closely on what powers have been given to the Financial Intelligence Unit, we will find that the power is limited in section 9 to the following: to monitor the effectiveness of its anti-money laundering policies by maintaining comprehensive statistics. Even where the Act gives it power as opposed to functions, it limits it to monitoring the effectiveness of its own money laundering policies, so that no amount of supervision is contemplated by this legislation and if, as is intended by this amendment, it should now have those supervisory powers, it ought to sail very closely to what is provided for in the parent Act. That is the thing that causes me concern. Any such extension of the function must sail closely, very closely, to those functions as set out in the Act.

Mr. President, you would forgive me if I read briefly—well scan—I had better not say scan—if I run through the functions as set out in section 8 of the Financial Intelligence Unit Act, merely to demonstrate, as I was saying, the passive role intended for this Financial Intelligence Unit, passive not active, not direct but indirect, standing on the periphery—it says in furtherance of the functions assigned to it under subsections 1 and 2, and I have read those already, the gathering of information, et cetera, therefore the FIU may request financial information from a financial institution, that is subsection 3(a), in order to facilitate the exercise of its powers, and remember, its powers are only to monitor its own policies:

- it shall analyze and evaluate reports and information upon receipt thereof;
- it shall collect information as required for annual and periodic reports or for tactical analysis in order to generate activity patterns, investigative leads and identify possible future behaviour;
- it shall set reporting standards to be followed by financial institutions or listed businesses;
- it shall engage in the exchange of financial intelligence with members of the Egmont Group;
- disseminate financial intelligence and information to local and foreign authorities;

- facilitate the sharing of information among local financial institutions;
- provide information, advice and assistance to persons and law enforcement authorities;
- provide assistance to financial institutions and listed businesses; and
- it shall retain all pertinent information received for a six-year period, minimum.

So that, once again, it is clear that the Parliament in 2009 contemplated that the Financial Intelligence Unit would be a gatherer of financial intelligence and would analyze it and pass to the relevant authorities trends that make it suspicious that an activity should be reported because it is, at the very least, linked to money laundering or drug trafficking. There was never any intention that this body should go out there and be supervising others. I limit supervising to the use of the word—to the word “monitoring”. It is no more than that. It is a monitoring body and it will go out there and monitor. But the Attorney General, in his introductory remarks said, “Currently inchoate legislative attempts have been made at fighting money laundering. The purpose of this exercise is to give expanding remit to the FIU to supervise, to monitor and to regulate”. Very well, but to regulate what—to determine whether there is dirty money passing through the business and then presumably it is to take action, because, if this Bill were to be passed it will now have—the gateway will now be open for some other written law to give to it some other power which would permit it to intervene in people’s lives.

Mr. President, one notices also, and I think we ought to make the point, that although it is said that the FIU is obviously meant to be an independent body, we note that the Act limits it to being led by a director who is a public officer and who reports and responds to the directions of the Minister of Finance. So that, inherent in it is that contradiction that this is not quite an independent official at all and, by extension, nor can the body which the director leads be regarded as independent. With all those in mind therefore it would be necessary for us in this Senate to reject the proposed amendment unless it can be established that this amendment is going to be limited to providing the FIU with functions, inclusive of supervisory functions, such as are recontemplated or provided for in the Proceeds of Crime Act and the Anti-Terrorism Act.

Mr. President, because I am inclined to think that the Attorney General will stick to his word as was promised to this Senate, I shall end my contribution there.

Thank you very much.

Sen. Shamfa Cudjoe: Thank you, Mr. President. I join this debate at a really advanced stage. Most of what I was prepared to talk about was already said. But, I want to treat with a comment made by the Attorney General while he made his presentation at the beginning of this session. He gave the impression that the People's National Movement had done nothing to treat with money laundering and anti-terrorism and that kind of thing—that we did not have the guts to bring the legislation and that kind of thing. Mr. President, for the record allow me to state that it was the People's National Movement that brought the Proceeds of Crime (Amdt.) Act in 2009, the Financial Intelligence Unit of Trinidad and Tobago Act in 2009 also, the Financial Obligations Regulations Act and the Anti-Terrorism Act in 2010.

Mr. President, allow me please to read a short piece of the contribution of a current Minister of National Security. Last year, August 2010, there was a conference at the HYATT here in Port of Spain on the Prevention of Corruption and the Prevention of Financial Crimes, and that kind of thing and this is the Minister of National Security, boasting about the legislation and the way in which we have treated with legislation to take care of money laundering and that kind of thing.

9.20 p.m.

Mr. President, I quote:

“Trinidad and Tobago has made successful strides in our attempts to become compliant with these international standards and our intention is to generate a culture of compliance at all levels of society thereby creating a robust institutional framework. This will no doubt help strengthen partnerships with the international community as we confront these global criminal activities.

To evidence our commitment, within the last year, Trinidad and Tobago has made substantial progress in its legislation to assist the international, regional and local assault against money laundering and terrorist financing. Recently, four (4) pieces of legislative counter-measures were enacted to enhance our national regime.

To further carry out our commitment to combat all financial crimes we have established an institutional framework to deal with such matters professionally and effectively. Our established Financial Investigations Branch...is an integral part of this framework and is mandated with investigating crimes of national significance which include money laundering and terrorist financing. The FIB, established in November 2009, has been aggressively pursuing investigations under the Proceeds of Crime Act...and was instrumental in conducting this country's first cash seizure under POCA on 29 June 2010.”

The Attorney General sits next to Sen. Brig. Sandy. If he would only have consulted him, he would have known.

I want to treat next with the comments made by Sen. Oudit. She said that this legislation today was to bring new life and to breathe new air and that it was a way of moving forward to a new direction in dealing with money laundering. She said that if the young Senators would have done their research, we would have seen that this thing started under the UNC and we would have read the *Hansard* records and figured out what would have happened in the last debate and debates prior to that.

Mr. President, I have done my research, and I saw in the last debate that Sen. Oudit, along with the other Opposition Senators at that time, objected strongly to the legislation brought by the PNM in 2009. The Opposition Senators along with the Independents said that the legislation was too weak, that it was rushed legislation and was not independent enough. The *Hansard* record would show that the process was being sped up in order to get Trinidad and Tobago compliant with FATF recommendations in preparation for a review; however Article 28 of the legislation, as we said before, speaks to coming back every year to review the legislation and to strengthen it.

Today, as the Government is now in a position to make the necessary changes and to strengthen the legislation, to add teeth to this legislation that they claimed to be so weak in 2009, it surprises me that the change being made is one amendment to try to—first things first, Mr. President, the Explanatory Note does not relate to the legislation itself, as was rightly stated by Sen. Prescott SC. They had so many problems with the parent legislation, about it not treating with how the director was appointed and that it was being placed under a government ministry, namely the Ministry of Finance, and none of that was proposed in today's Bill.

We find ourselves here today, pretty much in the same position that the PNM would have found themselves in 2009, making rush legislation and this is no new direction, because we continue to build on what they claim to be weak legislation. It is the same position we find ourselves in today.

Sen. Dr. Henry would have pointed out that this amendment was being made, not just to update the legislation and to add strength to it, which it is really not doing, but to get prepared for the visit, in a couple of days when the FATF is going to come to Trinidad and Tobago. I understand that the FinCEN is going to do its report next month, so whether or not this is really to strengthen the legislation or to look good in the eyes of the international community, it puzzles me.

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I am glad that the Attorney General cleared the air on the proposal that was made in the legislation. I do not call this just late legislation, since the Minister has passed the deadline to come back to the House and straighten this out. I call this lazy legislation, because when you look at the amendment that is being made—“and shall exercise any other function given to it by any other written law”—it is far-reaching; it is a sort of catch-all statement. I think for a unit or an institution like the Financial Intelligence Unit, there should be clear guidelines, clear restrictions as to what can and cannot be done.

I do not just call this late legislation, this is lazy legislation. The Explanatory Note says that it is supposed to introduce supervisory measures, but the measures taken in the Bill do not do that. By doing this, I want to know: How is this going to improve our standing? How is this going to improve where we are on the list of the 31 high-risk jurisdictions?

In our attempt to fix things, I see that we are confusing the legislation further. I want to know, how is this going to work? We can say in black and white and on paper that we are strengthening the legislation, but in practice, do we have the necessary resources to make this happen? Do we have the professionals, the human resources and the manpower to make this happen? Do these people have the necessary qualifications and experience to do the supervisory function? As it relates to infrastructure, do we have the right infrastructure? Enforcement is a problem.

We have to find a way to treat with intelligence because this is a highly sensitive matter dealing with people's bank accounts and your private property. It also treats with cooperation among the intelligence units, nationally, regionally and internationally. Learning today that the unit has only three people makes me wonder: Are we doing this just to look good in the eyes of the Financial Action Task Force or are we really improving legislation to treat with the situation of anti-money laundering in Trinidad and Tobago?

Mr. President, in doing some research related to setting up FIUs and giving them supervisory function, I want to recommend this document called “Financial Intelligence Units Confidentiality versus accountability”, written by Nomzi Gwintsa. She is a researcher for the Institute of Security Studies in Cape Town. This document can be found at the IMF Legal Department and the World Bank Financial Market Integrated Division.

I quote from the document, Mr. President:

“Care should be taken not to give the FIU more responsibilities than it can cope with, given its expected resources. In some cases, other agencies that have resources and experience may be in a position to exercise certain functions, such as the supervision of AML/CFT requirements, in a more effective way than an FIU. Overlapping functions should be avoided to the extent possible, and to the extent such overlap is unavoidable, coordination mechanisms should be established to minimize conflicts and maximize cooperation between the concerned agencies.”

The book goes further in the third chapter to say:

“It should be noted, however, that supervision is a resource intensive task that requires considerable knowledge of the supervised institutions. If the FIU is to discharge its responsibilities in this regard, it should be granted adequate resources for the purpose, so that this task can be accomplished without constraining the FIU’s ability to carry out its core functions.”

This is page 7, 72—73. So we see that this is a critical piece of legislation that we are dealing with.

I want to sound the alarm that while we are doing this to get into compliance with the international standards, I think that we need to mind our own business. This Government finds itself coming to Parliament to do rush legislation, weak legislation, shoddy work and, at the end of the day, these international organizations and international officers are going to go back to their country, but we have to live here. So when the legislation says to come back after one year and revisit to strengthen the legislation, we must mind our own business to do that. It is not just about complying with the international standards; we have our own problems, we have our own issues here to deal with.

For instance, some of the other speakers would have mentioned how money laundering perpetuates crime and how it could affect our economy and the integrity of our financial institutions. You find today with globalization, cash flows are faster and freer within the countries in the region and globally. As the more developed countries seek to improve their legislation and framework to guard against money laundering and financial crimes, the developing countries like ours tend to lag between. However, the criminals are strengthening and enhancing their techniques to become better drug dealers, better kidnappers, and better money launderers. So it is not just about following the international

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standards and passing the test of the Financial Action Task Force, we have to mind our own business. At the end of the day, when we come here to treat with legislation to improve our country, we have to live here.

With those few words, Mr. President, I thank you.

Sen. Dr. Victor Wheeler: Mr. President, I just have a few brief comments to make.

First of all, this Bill we are debating today is an amendment to the Financial Intelligence Unit of Trinidad and Tobago Act. We have heard it said that one reason it is being debated now is because it is due for review in one year; the other reason may be a visit from a team from abroad coming to inspect our institutions.

The whole purpose of this Financial Intelligence Unit (Amdt.) Bill is really to deal with money laundering. Money laundering is generally regarded as the practice of engaging in financial transactions to conceal the identity, source and/or destination of illegally gained money.

In the United States, money laundering is not only applied to financial transactions related to organized crime, but also any financial transaction which generates an asset or value as a result of an illicit act. This also extends to even tax evasion or false accounting. I am not certain how we intend to interpret money laundering in Trinidad and Tobago, but I am hoping there would be some clarity to that.

9.35 p.m.

The main amendment here is to expand the remits for the Financial Intelligence Unit to carry out its supervisory and any other function. The Attorney General has indicated to us that that remit will be reduced. And I am happy that that is the case because the powers did seem to be fairly wide-ranging. One thing I would like to point out, I am not sure if it was mentioned when this debate occurred in 2009, but it is said there are several businesses that would be affected by this Bill: real estate services, motor car sales, accountants and attorneys.

Now, what this means is that, the conductor of business or these businesses would be significantly affected. We all know that if someone goes to the bank to make a significant deposit, it would not be unusual for the person to be asked lots of questions regarding the source of funds. But for someone to go, for example, to a lawyer to purchase property, and give that lawyer \$40,000 in cash, under this Bill the lawyer will be required to identify, or to at least make every effort to determine the source of funds.

That would require personal questions to be asked of that individual, which is not normally the case. So I am hoping that the Government intends to certainly conduct a public campaign to let not just the businesses that would be affected know that they would need to try as far as possible to determine the source of funds that people will come to them with, but also the general public would need to know that when they go to transact certain business transactions from now, they may be asked particular personal questions that they may or may not be comfortable with; the reason being that these service providers could have their businesses affected. They may find themselves having to employ extra staff to assist to make sure that they are not in breach of the law. Because I am seeing where the penalties can be very high, as much as half a million dollars.

One thing that is not clear—I am a medical doctor by profession and I am a service provider—are medical practices or health institutions also subject to this Act? I did not see it mentioned before and I am not sure the AG can assist me with this.

One last matter I would like to address is, in the AG's introduction of the Bill, there was a lot of time spent on commenting and criticizing of the previous Attorney General who is not here to defend himself. There has even been some criticism of Members of the Independent Benches. I think the Government needs to spend a lot more time on the business of managing the economy, getting on with the business of managing because there is a lot of work to be done.

It is eight months into the term, there is a lot of work ahead for the rest of the four years and four months, I would just like to urge the Government to get on with the people's business. Thank you.

Sen. Penelope Beckles-Robinson: Thank very much, Mr. President. I know I was not listed to speak but, having listened to a number of my colleagues, I just have a couple of questions I would like to ask the hon. Attorney General to address in his winding up.

The first question really has to do with the fact the Hon. Minister of Finance has not been a part of this debate. And this has nothing to do with the competence of the AG because he has presented a lot of Bills, so that has nothing to do with the Attorney General. But having regard to the seriousness of the Bill, and the fact that we know that the FATF is going to be here next week, I think that it would have been very, in my humble view that is—I think we would be very happy to hear some kind of comment, if at all, from the Minister of Finance on this particular Bill and certainly even some comments as they relate to the status of the activities of the FIU. That leads me, of course, Mr. President, to express some concerns about some of the statements that have been made.

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Mr. President, when you look at the substantive legislation, you would see that section 15 says that:

“After the FIU has concluded its analysis or evaluation of a suspicious transaction or activity report, and where the Director is of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority for investigation to determine whether a money laundering offence has been committed, or whether the proceeds of crime are located in Trinidad and Tobago or elsewhere.”

And, of course, Mr. President, the Act itself refers to exactly what the director shall do. Now, it means, if there has been no director since the month of August, as I understand it, then what you have is a situation where no suspicious transaction or no suspicious activity report could be sent to the Commissioner of Police or any relevant law enforcement authority; subject, of course, to any further interpretation by the Attorney General.

The Act also says that—and this is at section 4:

“The Director shall be the head of the FIU and shall be responsible for the overall supervision of the department...”

Now there is a deputy director, as I understand the Act but it is only the director who can do this analysis and if the director decides that, based on the information that is before him or her, further analysis needs to be done, it is only the director that can liaise with the relevant authorities.

So, Mr. President, my concern is this, I would really—and that is why I personally believe it is unfair to ask the Attorney General this question. Of course, he is quite capable of answering and he may very well have the information. But my concern is, if the legislation and Parliament, in its wisdom, decided that the director is the sole person to send these suspicious activity reports, suspicious transaction and suspicious activity reports; if the director is the only person vested with that power, if at the FIU there has been no director since the month of August, then what it means is that these reports and these activities have been sitting at the FIU since the month of August and cannot go to the Commissioner of Police.

Mr. President that is a serious, serious, very, very serious indictment. I am sure that there are probably hundreds of those reports and activities that are sitting there. Even if under this law the deputy director can open those envelopes—in my

humble view, those reports ought not to be opened—the fact is that the deputy director cannot ask for any further information. He or she may do the analysis, maybe as a matter of course, but it simply cannot go to the Commissioner of Police.

The fact is that we have August, September, October, November, December, January, February, we are talking about seven months therefore, without a director and, in truth and in fact, seven months in which the FIU has been inactive. Now we have a situation where the Financial Action Task Force and Mr. President, the Financial Action Task Force is a group of seven to develop and provide national and international policies to combat money laundering and terrorist financing.

As I understand it, Mr. President, that task force would be here either this week or next week to evaluate the performance of the FIU and review. Now, as I said, the Attorney General may very well have the answers to that. But the question I think we have to ask ourselves in this honourable Senate, is why would this Government, from August to now, have the FIU functioning without a director, knowing how important the function of the director is and knowing full well that this Unit, this task force, really comes to Trinidad on a yearly basis and is in constant contact with the Ministry of Finance as it relates to the performance of the Financial Intelligence Unit?

9.45 p.m.

Now Mr. West—and the Attorney General indicated that Mr. West is a consultant and he is in private practice, and therefore he sees some conflict of interest. Mr. President, I know you are well aware that there are many attorneys, because of their areas of expertise and because of the shortage of that particular area of discipline who are consultants and who are also in private practice, because there may be only few attorneys in Trinidad and Tobago who specialize in those areas.

Now as my colleague, Sen. Hinds said, Mr. West is probably one of the few persons in Trinidad and Tobago who has experience in this particular discipline. As Sen. Hinds said, that when the PNM came into office, it would have been under Mr. Ramesh Lawrence Maharaj SC, then Attorney General, that the Central Authority was set up and under which Mr. West was employed, and when the PNM came into office the PNM did not get rid of Mr. West. The PNM actually kept Mr. West.

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It is unfortunate that one gets the very distinct impression that anyone who has been employed during the tenure, particularly of the last nine years or so, that this Government seems to have adopted a policy that there is absolutely no trust in those persons and they would seek to get rid of almost everyone who has been employed under the PNM for the last eight, nine or 10 years. Here it is, in my humble view, that you have someone who—I think the Government would have probably spent, I am certain, even millions of dollars, sending him to train all over the world in this area of expertise and he is no longer working there. The point is that it was said that Mr. West left. Mr. West was fired! Mr. West was told that his contract was not—

Sen. Ramlogan: May I please? Mr. President, I am grateful to my learned friend for giving way. Mr. David West was not fired. Mr. David West resigned his position at the Central Authority and after some time was taken on a consultancy. The period of the consultancy had expired and then he was on a month-to-month basis. That is all! You cannot fire someone who is providing consultancy on a month-to-month basis. You fire someone or you terminate if they have a contract, but he was on a month-to-month basis and that is the simple fact about it.

Sen. P. Beckles-Robinson: Mr. President, I am grateful for the explanation that the Attorney General has given, but the fact of the matter is, if you have been providing service for a considerable length of time on a month-to-month basis and you are called and told that your services are no longer required, that “Your consultancy is up and we no longer need you”, I do not know what else that can be classified as other than being fired. That is in my view.

Sen. Ramlogan: May I please? Let me clarify. As I indicated before, Mr. West was allowed to retain his private practice. That means to say that Mr. West would not be reporting for duty on an 8.00 to 4.00 basis but Mr. West would conduct his private practice and he would come to the Ministry as and when required, as and when he deems fit as the case may be or as and when the Attorney General deems fit. But Mr. West, when the consultancy arrangement came to an end and it was not renewed, that was done because it was felt that the Central Authority needed a permanent head, because on the establishment it was never envisaged that you will have a temporary person who is a private practitioner filling that important office.

That position was advertised and I personally told Mr. West that he was free and entitled to apply for the position so that the State could have the benefit of someone permanent coming to work 8.00 to 4.00 like other public officers who earned their salary which was far below, in some cases, what the retainer may

have been. So those are the facts. The position was advertised because it is on the establishment, and, rather than have someone in private practice coming on a part-time basis, the position was advertised, he was free to apply and those are the facts. What is wrong with that?

Sen. P. Beckles-Robinson: Mr. President, I got the distinct impression that after we have all finished speaking the Attorney General will have his opportunity to wrap up.

Sen. Ramlogan: I cannot allow you to mislead the Senate.

Sen. P. Beckles-Robinson: I am not misleading the Senate, you have your interpretation and I have mine! [*Interruption*] You are a lawyer, I am a lawyer too. [*Interruption*]

The fact of the matter is, Mr. President, I hope when the Attorney General is wrapping up, he will indicate then why it is from August to now his Government has not been able to appoint a director for the FIU? That is the point! You have removed someone, in essence, who has been specifically trained in this area for all the years and I am sure that whatever was needed to be done, there is some way that they could have found a way that you could have had some succession planning and ensure that the benefit and the expertise to which Mr. West had become accustomed, that the country could have had the benefit of that. That is my point! [*Desk thumping*]

Here it is they have spent a lot of time making the PNM out to be the worst thing and not dealing with corruption. The fact of the matter is, is it so difficult between August and now that the Government could not have found a director? We know very well that the Financial Action Task Force comes this week or next week and the reason we are rushing this is because they have read the Riot Act and the Government does not want to be embarrassed when they come to Trinidad and Tobago this week. [*Desk thumping*] They do not want to be embarrassed!

It must not be a situation where the Government would say, "Well look, we do not have a director, we have not passed any legislation", because, Mr. President, when we have completed debating this today it goes to the House to be debated tomorrow, so that when the Financial Action Task Force comes the Government can say to them, "Here it is, we have passed legislation." That is the whole point! Therefore, none of us must be fooled here about this whole thing about blacklisting. Blacklisting, yes you could be blacklisted, but if you had a director in place the chances are that would not have happened.

Sen. Ramlogan: You all did not have one either.

Sen. P. Beckles-Robinson: The Attorney General is saying that the Minister of National Security is the one who has saved us from blacklisting. The bottom line is, the Minister of National Security had to go to Miami to give the assurance that the Government is going to appoint a director and make sure they put their house in order. [*Desk thumping*] That is what they are proposing to do now.

The fact of the matter is, so many things have been talked about Mr. West and Mr. West, I mean, just come clean with us and say exactly what it is you have to do. We understand this is a sensitive matter; we understand this is an urgent matter and we understand that there are certain things that need to be done, but the bottom line is that from August to now, if you needed a director, a director should have been appointed.

He talks about the fact that the position was advertised. Yes, the position was advertised, people were interviewed, the interview process was stopped, none of the persons who were interviewed has been accepted and yet still Cabinet has approved the appointment of someone. When you are on your legs you deny that! You deny that; and that is the fact. The person who has been appointed and approved by the Cabinet was not interviewed. You deny that! So do not come today and make it out—

Sen. Ramlogan: Was Mr. West interviewed?

Sen. P. Beckles-Robinson: When you are talking you deal with that. Let me deal with what I have to talk about!

Sen. Ramlogan: Was he interviewed? Was he interviewed?

Sen. P. Beckles-Robinson: When you are on your legs, you talk about the interview process. You talk about the interview process.

Sen. Ramlogan: “Them ain’t interview nobody.”

Sen. P. Beckles-Robinson: “Hee, hee, hee” Right! “Do so eh like so.” The point about it is, you have the opportunity now to do the right thing. If you are saying the PNM did the wrong thing, you now do the right thing!

Sen. Ramlogan: We will!

Sen. P. Beckles-Robinson: Good! When you are on your legs say if you did the right thing when you appointed the new director who Cabinet approved. You say whether you did the right thing!

Mr. President, at the end of the day, the most important thing is that we have made our comments and as it relates to the amendment that the Government has proposed, I am happy that before I made my contribution that amendment has been made because that was one of my major concerns. I would also like the Attorney General to indicate whether, in his opinion, this is a Bill that requires any special majority or whether or not it is a Bill that requires a simple majority.

As I close, it is my hope, of course, that when the Financial Action Task Force comes, by then the legislation would be passed and a director would be appointed in keeping with the legislation and he would have the appropriate requirements, skills and qualifications to be able to do the job.

Thank you.

Sen. Dr. Rolph Balgobin: Thank you, Mr. President. I rise to just make a few small comments on the Bill to amend the Financial Intelligence Unit of Trinidad and Tobago Act of 2009.

May I say, as is often the case, the smallest changes often excite the longest and some very interesting discussion and debate, and perhaps rightly so because there are significant implications to what is being discussed. I just have a very few short points. The first would be just to draw the Senate's and the national attention to the fact that we are putting in place, through legislation of this type, and we are giving life to a set of mechanisms that in fact do impact on the cost and complexity of doing business in Trinidad and Tobago.

Just today, in researching for this, I was quite surprised to learn that if one uses a proper interpretation of the Proceeds of Crime Act, for example, if one wants to buy a motor vehicle, really the motor vehicle vendor has to get, if it is a company, up to three years of financial data from the business, has to satisfy themselves that the moneys that you are using are in fact clean, even if those funds are already in the financial system which is something that I think bears some contemplation. Because, once they get into the financial system they ought to be considered fairly clean or sanitized, but that is something I suppose that we need to look at in a broader sense.

Yes, the cost of doing business is going up, the complexity is going up and this could disadvantage competitiveness. I think it is something that we ought to think about because more and more people are talking about what that is and they talk about sustainability and economic growth and development and we all think we are talking about the same thing but not entirely. What I am talking about is the speed at which we do business, the level of productivity that the country

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enjoys and how much time we spend in observance of rules and regulations which in fact add no value or little value to the transaction, save and except to satisfy somebody that the transaction is as honest as both parties ought to know it is or should be.

I am minded in that to recall the case of Brazil when the United States first introduced fingerprinting and photographing post 9/11 and a Brazilian magistrate, I believe, took umbrage and introduced a reciprocal arrangement. The only complication was that in a United States airport it took you two to three minutes to get fingerprinted, at the outset—it is much faster now—whereas in Brazil it could take you up to nine hours to get fingerprinted.

I think we have to be careful in how we adhere to the rules that we implement and how we implement them; the regulations are very important, because things that work for different societies with different structures and different frameworks could actually slow things down here quite a bit or make doing business very onerous in a developing society. But does a developing society need these things? Yes, absolutely. I think you are seeing a proliferation of small hardwares, groceries and restaurants that require a fair amount of start-up capital I would think and you can see where they have come up from and you know that they do not have a business history there, so it is almost overnight that some of these things are appearing and that would always give rise to concern.

10.00 p.m.

Where does the money come from to start some of these businesses? Of course a much quoted example from some years ago would be real estate. And to what extent have real estate prices in some parts of the country gone up beyond what would be a natural economic point as a result of the proceeds of crime flowing into that and driving it to a supernormal level? But really, Mr. President, I just have two issues or two challenges, both of which I think the Attorney General has or will comprehensively address. I am hopeful at least, the first one certainly is and they relate really to independence, governance and resourcing.

On resourcing, what I want to say is that there is clearly a resourcing issue with the FIU and not just with the FIU. I think that they have been challenges in finding good people, not just to staff these organizations, even at the level of State boards and so on. Some of these things have taken perhaps a little longer than they should and one is hopeful that we can get that fixed. So that we are not just able to say to visitors that we have passed a law, but that we have a robustly staffed, well staffed unit that is fully operational and gathering intelligence, collecting data and making sense of what is happening in our financial system.

I also think, when I look at the Bill and the parent Act, that this whole notion of governance and independence needs to be reviewed. If I could invite your attention very briefly to sections 22 and 23 of the parent Act, what you will find is that there was a nod in the direction of concerns expressed about independence where section 22 says that the director does not have to disclose anything to a Minister over and above what he or she is required to do and that requirement is really based on whether it is a suspicious transaction or a report on analysis and so on. Then section 23 goes on to say that if an FIU officer in the course of their doing business makes any disclosure to anyone, even outside of just the Minister, then there are penalties and so on.

But I think that to my mind this is a tool that can be used as a weapon, a political weapon, and that would give me some pause. The people we see today—you know we pass this legislation, but so much of what we do here is personalized. I do not know who the Minister of Finance will be tomorrow. I might have trust in the one today. I do not know who is going to be tomorrow, or the day after that. And when we have legislation like this that gives life to these kinds of units, that can be put to monitor people who are perceived to be opponents, I think that is something that we ought to pay some attention to. So I would prefer if it were not a creature of the Ministry of Finance, and it says quite clearly in section 3 of the parent legislation that it is, it is a department of the Ministry of Finance. So I am hoping that that is something that would invite the attention of the Attorney General and the Government in due course.

The second point that I had to make really has been comprehensively addressed by the amendment that the Attorney General I think has just circulated, which circumscribes the focus of the FIU to the Proceeds of Crime (Amdt.) Act of 2009 and the Anti-Terrorism Act of 2005 which I think makes eminent sense. So given the urgency of the situation and what is before us, and in light of the proposed amendment, I would be prepared to support, if I had the undertaking that there is going to be a further review, that a review of this FIU is going to come back to the Parliament within a reasonable period of time, and that that review gives some special focus to the question of independence of this unit.

I recognize that the Attorney General cannot make such a pronouncement here, given that that would be something that should be the product of the Cabinet discussion, that is the determination of the independence of the FIU. But I am certainly hoping that I can get some kind of commitment that that would be included in the review of the FIU which ought to come back here within a reasonable time and certainly in no less than one year.

Thank you, Mr. President. [*Desk thumping*]

The Attorney General (Sen. The Hon. Anand Ramlogan): [*Desk thumping*] Thank you, Mr. President. Mr. President, I wish to thank my colleagues in the Senate for a very enlightening and illuminating debate on a simple but rather deep amendment. I think it is safe to say that we appreciate now the need for this kind of change to the law to allow for some supervision. I detected no disagreement or no discord from anyone with respect to the change that this amendment seeks to bring about. I think it is safe to say that there is consensus that there is a need to monitor and regulate listed businesses in the country.

Many points were made with respect to what has transpired since this Financial Intelligence Unit (FIU) came into being. And perhaps I can start by responding to my learned friend, Sen. Beckles-Robinson for whom I have the greatest respect, and likewise she says; such a gentle and wonderful person to deal with.

You see what had happened is that this legislation from day one has posed a challenge to a small country such as Trinidad and Tobago. That is why even the former administration had some difficulty in grappling with what to do and how quickly we are required to do it by the international agencies, including FATF and the G7 and the G20 countries where, in their societies and countries, perhaps the infrastructure and the expertise exist in a way that would have facilitated a much more expeditious implementation of the FATF recommendations.

That is perhaps why it was—in Trinidad and Tobago, I have made the point before that we do not have a history of addressing, confronting, dealing with the problem of financial fraud and financial crime and financial issues on the whole. For that reason, the number of persons with expertise in this area, they are very limited. And in fact, it is for that reason as well I wish to correct some of the misconceptions that may now be held by some who may listen to the debate. You see— [*Interruption*]

Sen. Beckles-Robinson: This is just either from your experience or your knowledge. Is there any of this area that we are treating with that could be dealt with under the Income Tax Act? This is based on what you have just said. That traditionally this matter is not a matter that the country has not normally—have you come across that, and do you know of, for example, any instances in Trinidad where we have tried to treat with that whole issue through that Act?

10.10 p.m.

Sen. The Hon. A. Ramlogan: I would say not really, because, you see, money laundering, I would say, is quite different from income tax violations, and even there, our country is not really one that has a proud history of grappling with tax evasion and tax avoidance. Tax evasion and tax avoidance schemes, and schemes in the sophisticated sense, and schemes in the local parlance sense, abound and are aplenty. But what I do wish to say is that—

Sen. Beckles-Robinson: Can I ask you one more question?

Sen. The Hon. A. Ramlogan: Sure.

Sen. Beckles-Robinson: I just want to ask you whether, in your tenure, that is a matter that you will consider, if only because—I am sure you would have realized that a lot of the First World countries have used that method quite successfully. I mean, we see it; for example, Wesley Snipes is there now serving his four years, and they have used this really in a very excellent, almost scientific way. I do not know if it is a matter that you are giving any consideration to.

Sen. The Hon. A. Ramlogan: Well, that would be a matter for the hon. Minister of Finance, but with that said, I think I am at liberty to say that the whole question of the Board of Inland Revenue is something that we would want to review, because one would want to tighten some of the loose ends and the loopholes that exist. You may recall, for example, in the not too recent past, that legislation was, in fact, under comprehensive overhaul with the Revenue Authority, but even in that, there was no attempt to repeal, say, the Financial Intelligence Unit so that the functions of that unit can be housed and performed by the Revenue Authority.

They have always remained distinct entities, and I think the Financial Intelligence Unit, unlike that function which deals with revenue collection—that is where the emphasis is there; the Board of Inland Revenue, the emphasis is on revenue collection in terms of income tax collection, but the different emphasis in the FIU is really to deal with money laundering and financing for terrorism, and that is why, perhaps, they have been kept separate and apart. But mutually exclusive as they may be, I would concede and agree with you that there will be a degree of intersection in the two circles. They would definitely meet at some point.

But getting back to the point about the absence of a financial history to deal with financial fraud and crime, this Act was proclaimed on February 09, 2010, and given the sense of that history, I think it was in those circumstances there was

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a rush to get someone to fill the position and, ideally, the position, both in law and in reality, would have had to have been filled by someone who is independent. Mr. West, whose name has featured prominently in the debate—and I wish to place on record, I have absolute regard and respect for him; [*Desk thumping*] I have nothing against Mr. West.

Mr. West, his expertise was in extradition law. Mr. West was the head of the extradition department or the Central Authority in the Ministry of the Attorney General. That is where his expertise was, and, as my learned friend, Sen. Beckles-Robinson pointed out, Mr. West was retained even by a different government. But permit me to hasten to point out, that is not a retention per se, because he was on the establishment as a permanent worker. He was working in the Central Authority. He was not a private practitioner on a consultancy, which is a different thing.

So Mr. West worked there and he, in fact, assisted the State in many extradition matters. But extradition matters would not give you an expertise in financial intelligence. They are two different disciplines, quite frankly. But it became expedient, because it became obvious that a deadline was approaching, just like one is approaching now, that we had to put someone there, and when my learned friends, Sen. Beckles-Robinson and Sen. Hinds, launched a scathing criticism for not having a director there and asked the rhetorical question: “Well, what really has happened, pray tell, since August to now”, I want to tell you and I want to place on record, there has never been a director of the FIU in this country. Never!

What happened was that Cabinet, understanding the predicament it found itself in, appointed Mr. West as what they called director designate. Now, director designate is not a term or a form of appointment that was within the contemplation of the law because, as we have alluded to, the law required a director or a deputy director. There is nothing in the law such as a director designate. But what happened was, they realized that they could not put Mr. West as a director or a deputy director, because the law did not permit it, because he was not a public officer and he was not an officer who had been appointed by the permanent secretary in the Ministry of Finance. Let me clarify the latter one, because some misconception arose as a result of that.

It is not that Mr. West’s appointment is valid because he is appointed to serve in the FIU under the hand of the permanent secretary in the Ministry of Finance. No. That is a circular way of looking at it and it is to retroactively validate it. No. What the law requires is that, for you to say to be eligible to be considered for the

appointment of director or deputy director, you would have had to have been appointed yourself to serve in a public office as a contract officer by the Ministry of Finance through its permanent secretary. In other words, if the permanent secretary in the Ministry of Finance had appointed me to serve on contract, I would have been eligible to be considered to serve as director or deputy director of the FIU.

Mr. West was not, in fact, appointed or serving in a contract under the auspices of the permanent secretary in the Ministry of Finance, nor was he a public officer who had been serving in a ministry or statutory corporation, who could be seconded or transferred. There was no secondment; there was no transfer, and, indeed, he was not serving in a contract position under the hand of the permanent secretary in the Ministry of Finance.

Sen. Beckles-Robinson: I am just trying to understand. You are saying that he was employed in the Attorney General's office and that he was a consultant at the FIU. Is that it?

Sen. The Hon. A. Ramlogan: No, no. It is the other way around. He was a consultant at the Ministry of the Attorney General.

Sen. Beckles-Robinson: And employed as the director designate at the FIU?

Sen. The Hon. A. Ramlogan: Correct.

Sen. Al-Rawi: Hon. Attorney General, just a second clarification, and thank you very much; just to get it right, because your argument I am following. Is it that you are saying that you can be a public officer on contract, so that section 3(2)(b) when it makes reference to "or any other person on contract" you are saying that other person on contract can be a public officer on contract?

Sen. The Hon. A. Ramlogan: I am saying for the purpose of this legislation—and I wish to qualify it by answering it that way, because there are other laws where such a person may not qualify to be a public officer. But in this Act, section 3(2)(a), makes it possible for an officer or any other person appointed on contract by the permanent secretary of the Ministry of Finance—it makes it possible for such a person to be appointed director or deputy director. There is a separate category for that.

Sen. Al-Rawi: *Ejusdem generis*—

Sen. The Hon. A. Ramlogan: Right. So that there is a separate category, and what I am saying is that Mr. West fell into neither category that the law permitted, and what the former administration did, confronted with this difficulty, was to appoint him as a director designate, the law, not providing or having within its

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countenance or contemplation any concept of a director designate. That is why I say, without fear of contradiction, that there has never, ever been a director of the FIU.

So when my learned friend seeks to chastise, it reminds me of the phrase: “Those who live in glass houses should not throw stones”, because that is the stark reality of the situation. That is why I was at pains to say that the appointment was unlawful and illegal and I say so because, notwithstanding the fact that the Cabinet appointment was specific in its terms as being director designate, I have seen correspondence signed by Mr. West in his capacity as director and that is not a capacity which he held, because he was never appointed to it.

But I do not wish to go further. As I said, it is not about Mr. West, it is about a position that he was put in and it is an unenviable position. But those are the facts, and when one speaks glibly and says, “Well, you know, we would have invested so much money and trained him; so much in this area and we should have therefore kept him on”, how could I, as Attorney General, be asked to retain and preserve an illegal status quo, may I enquire? The minute I discovered that this was an illegal appointment and an illegal state of affairs that undermined the very rule of law and the Constitution, I had a duty in law to terminate it.

Sen. Al-Rawi: So it was terminated.

Sen. The Hon. A. Ramlogan: No, no, no. Hold on. I am coming to that. With respect to the allegation that so much money was invested in training in this area and so forth, this Act became law on February 09, 2010 and Mr. West was appointed director designate in March 12, 2010. So that is one month later. What training, pray tell, in the one-month period could he have gone on?

Sen. Beckles-Robinson: He was training all the time.

Sen. The Hon. A. Ramlogan: So has everybody else. Nobody has been training in this area because it was a new area. His expertise, for the last time, was in the field of extradition.

Sen. Beckles-Robinson: And mutual assistance.

Sen. The Hon. A. Ramlogan: And mutual assistance, even if you want, fine.

Sen. Beckles-Robinson: Cross-border crime.

Sen. The Hon. A. Ramlogan: Sure. You see, it is interesting that my learned friends on the one hand claim that this is the only person who was available, but in the next breath said they seem to know that interviews took place and seven persons applied and were interviewed.

Sen. Beckles-Robinson: We never said that.

Sen. The Hon. A. Ramlogan: How many? How many?

Sen. Beckles-Robinson: We never said he was the only person.

Sen. The Hon. A. Ramlogan: All right, good. Well, I am grateful for the concession that there were others who may have been qualified and who could have been considered. Do you wish to clarify that he is not the only person?

Sen. Beckles-Robinson: I never said he was the only person. I talked about the issue of succession planning. I said that, here it is, if you have somebody working, whether as a consultant or otherwise, if that person is leaving in August and you do not have somebody, as you do not have today, I am saying that, in my humble view, the best thing would have been to have some succession planning, so his intellectual memory that he has could have been passed on. I never said he is the only person.

Sen. The Hon. A. Ramlogan: Okay. There are two problems with that. The first is, you can only have succession planning when the concept of successorship even enters into the equation. That could not enter here because there was nothing to succeed, because he was never appointed. An improper appointment is *void ab initio* and it being *void ab initio*, it was a nullity from the beginning. There was no succession; nothing to succeed.

Sen. Al-Rawi: We have a written opinion on that.

Sen. The Hon. A. Ramlogan: But, you know, apart from that, what is interesting is that we lull ourselves into a false sense of security, that by virtue of having a name on a paper as director designate, that somehow gives us some measure of compliance. It did not. You are setting up a new unit for the first time and you are telling me that we should retain someone who is running an active private practice, who is holding on to head of the Central Authority as a legal consultancy, and with the little spare time, will be able to create this structure and this new entity. I mean, let us be realistic and reasonable. Let us be realistic.

Moving on from that point—and permit me to clarify for the record, when someone is on a consultancy arrangement, on a month-to-month basis, as and when required, if it is not required it comes to an end. The position is that there was someone in the Central Authority who was on maternity leave, a very senior

officer. When the person returned from maternity leave and the human resource was strengthened in the unit, there was no need to have a private practitioner on a private consultancy.

10.25 p.m.

What we did is, therefore, to seek to get value for money for the State and I said we would advertise the position, it has been advertised and I told Mr. West that he is free and entitled to apply for the position. There is nothing wrong with that. Consultancies and private retainers of lawyers is a costly business and they are not there to do work exclusively for the State, because they have their private practice to see about. So I do not for myself make any apologies with respect to that because I think that is the correct way to go, and I think the other way around was the wrong way to go that is to say, have someone on a private retainer while there is a position on the establishment to have a full-time person.

Sen. Drayton raised the point with respect to whether or not the regulations should be subject to negative or affirmative resolution. On this particular Bill, that is not a matter I could entertain at this juncture, because what we are about on this particular mission is to simply create and facilitate the supervisory jurisdiction for the FIU. I think it would be beyond the scope of this particular Bill to go into whether the regulation should be subject to affirmative or negative—and I express no view one way or the other on it for now, but simply to say that the law as presently stands is that it is subject to negative resolution.

The other point is that time is of the essence and, if we are to change it as suggested, that would introduce even further delay in a procedure that is going to be time consuming and perhaps, more importantly, costly, given what the situation is at present. Apart from that, section 53(3)(a) of the Standing Orders makes it quite clear that any amendment proposed must be relevant to the subject matter of the Bill that is before the House. The subject matter of this Bill is the supervisory jurisdiction and function of the FIU.

Now, I think I heard it said from one of the members on the Opposition Bench that there is no need for this amendment, that perhaps the Act itself as drafted would have already catered for this. And then, of course, you asked a simple question: if there was no need for this amendment then why was the FIU not exercising the supervisory jurisdiction all along, from the beginning, from the word go?

You see, the amendment was necessary because the Proceeds of Crime Act could not impose a statutory duty and responsibility on the FIU without the parent

Act which governs the FIU itself being amended to receive and accommodate the exercise of that power, to authorize the FIU to actually do this; that is why this amendment is necessary.

To return to the regulations point about subject to affirmative or negative resolution, I just wish to point out that this is not a stance that is as intransigent as would be made out. I think I would like to set the record straight as well, and perhaps correct one or two things that may have been said in error. The regulations made under the Proceeds of Crime Act, section 56(2) are subject to negative resolution. This is the sister or companion regulations to the Proceeds of Crime Act Regulations and there is nothing unfair about having these regulations likewise follow in similar vein to be subject to the negative resolution of Parliament.

The Anti-Terrorism Act, section 41(2), regulations there are subject to the negative resolution of Parliament. So that the three pieces of legislation that we are concerned with, there is a consistent methodology and procedure when dealing with regulations and I see no good reason to pluck this one out of the bunch as it were.

Sen. Ali: On the question of affirmative or negative resolution, I am sure you are aware that under the POCA (Amdt.) Bill, this was changed from affirmative to negative—that is when it was changed. Before that it was by positive affirmation, so it was changed only with this POCA amendment.

Sen. The Hon. A. Ramlogan: I was coming to that. I am grateful to you, Sen. Ali. The issue is not a dead one. As you know, there is a one-year review that has to take place which was built into the Act, and that review will have to come. I said in piloting the measure that we will have to come back to this Senate very soon, to undertake the review that was promised to Parliament so that we will look at all of these things.

I cannot say now what direction it will go in, but we will certainly look at it. We will have to take a second look at it [*Desk thumping*] because I think that was the intention of Parliament when they had the review provision. Because, as you heard from some of the Members of the Independent Bench, this was a matter that was rushed upon them, as it were, at the eleventh hour. So perhaps mature reflection may not have been possible at that time. Now we are going to come back to the Senate with a review of the Act.

I believe Sen. Hinds had raised the issue of, why are we not a member of Egmont—or it was not Sen. Hinds, someone else on the Bench did. All right, Sen. Al-Rawi lays claim. And the simple reason in short, without getting into too much

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detail, is simply that this is an eight-stage process to become a member. Membership is an eight-stage process. We are at stage seven, so that we have the finish line in sight and we are running towards it, so that will come. *[Interruption]* The lucky seven number that you like so much.

Sen. Hinds: Are you going to compliment anyone *[Inaudible]*

Sen. The Hon. A. Ramlogan: I will certainly compliment the Hon. Minister of National Security who has done a tremendous job in getting seven in seven months, perhaps. *[Interruption]*

You see, but when my learned friend, Sen. Hinds, who I welcome back to the Chamber—and you know, when I am missing, my learned friend, Sen. Al-Rawi, pounces on it. He says I light a fire and I “digs” off, I rush off. Mr. President, permit me to say for the record, because it is being said, that the reason the Office of the Attorney General, I think, was designed and constructed next to the Parliament and opposite to the Parliament is because there is a door that facilitates our running back and forth. When I am not sitting in my chair, I am either in the committee room, the tea room or in my office, actually looking at the debate, preparing notes or doing work.

If we do not do that, the Ministry will grind to a halt and I am afraid that is something that I cannot avoid doing, and I think I dare say, having spoken to those who have a little more experience in this Senate, that is not anything different from any previous Attorney General. My learned friend misses me and I am happy to hear that, but I want to reassure him, I listen well to what he has to say.

Now my learned friend, Sen. Hinds, raised the issue, for example, of the appointment of private practioners and cited, by way of illustration, Daniel Khan, who was appointed Inspector of Prisons, and somehow sought to draw a parallel between that appointment and the appointment in the FIU with respect to Mr. West. Permit me to say, this special office of Inspector of Prisons has always been held, I am advised, by a private practitioner. *[Interruption]*

10.35 p.m.

No, it does not matter—a private practitioner. It does not have to be—I do not know whether it is a crime or not, but a private practitioner has always held that office unlike the situation that obtained in the set example. But be that as it may, permit me to take the opportunity to extend my heartiest congratulations to Daniel

Khan, who was in fact, I want to let you know, supported and nominated by the Law Association itself, given his work in that particular sphere. So it is not that he came out of the blue.

As for your grouse with Mr. Israel Khan, I would leave that for you to deal with Mr. Khan on your own. I think Mr. Khan will not be easily forgotten for being a very outspoken public supporter of your party.

Sen. Hinds: You mean his writing?

Sen. The Hon. A. Ramlogan: Yes. I think he wrote and spoke in support of your party.

So with respect to whether or not we needed a special majority in this matter, a law can be passed with a special majority and that may be because one section in the Act infringed constitutional rights. So if one section infringed a constitutional right, the whole Act requires the passing with a special majority. But that does not mean the Act in its entirety, every single section, if you had to amend it, would require a special majority. The section we are amending does not require a special majority because it does not interfere with constitutional rights as such, and I think we are fine on that.

Mr. President, this measure is one that is really necessary. There have been many stumbles and fumbles—let us face it—and we are making an attempt to get it right, and to correct some of the zigzags that occurred during the history of this legislation.

I dare say, the Financial Intelligence Unit is one that is surely needed in a country such as ours, and I want to urge upon this honourable Senate that we support this amendment without reservation because all we are doing is to empower the FIU to enable it to do that which is being done in other countries in the world in the interest of combating the scourge of money laundering and financing of terrorism.

Mr. President, with those few words, I beg to move and thank you very much.
[*Desk thumping*]

Question put agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1.

Question proposed, That clause 1 stand part of the Bill.

Sen. Drayton: Mr. Chairman, could I refer to the amendment at this point in time.?

Mr. Chairman: We have not reached that yet. We are on clause 1, which is the title to the—

Question put and agreed to.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed, That clause 2 stand part of the Bill.

Mr. Chairman: The question is that clause 2 be amended as follows:

2(a) Delete the words “by any other written law” and replace with the words—

“Chap. 11:27	Under the Proceeds of Crime Act, 2000, the
Act No. 11 of 2009	Proceeds of Crime (Amendment) Act, 2009 and
Act No. 26 of 2005	the Anti-Terrorism Act, 2005”.

Sen. Drayton: I would like to suggest that, given what was said in the Explanatory Note, as well as with reference to Standing Order 53 that an amendment must be relevant to the subject matter of the Bill, the Explanatory Note refers specifically to supervisory functions and, therefore, I want to suggest that we delete the word “function” under 2(a)(1) and replace with the words “supervisory functions”, so that it would read,

“and shall exercise any other supervisory functions under the Proceeds of Crime Act, 2000, the Proceeds of Crime (Amdt.) Act, 2009, and the Anti-Terrorism Act, 2005.”

It was stated quite clearly that we want to give the FIU core supervisory functions and I think that is what we should stick to.

Sen. Ramlogan: Mr. Chairman, we feel comfortable with the amendment as drafted because, whilst it is clear that we are dealing with supervisory functions, there are only two Acts that mentioned the FIU, and the FIU is mentioned in a

specific context and setting, but it is not limited to supervisory and if you put the word “supervisory”, you created a potential for litigation as to whether or not any of the functions conferred fall within the definition of supervision, on supervisory or not. We think it will be much safer to err on the side of caution by saying that it is “any other function conferred under the Proceeds of Crime Act, its amendment, or the Anti-Terrorism Act” and leave it as is.

Sen. Hinds: Could Sen. Ramlogan just give a short example of some function other than supervisory?

Sen. Ramlogan: I mean, you may have some analysis to perform of information collected. You may have—

Sen. Hinds: That is part of the supervisory function?

Sen. Ramlogan: Yes, that is what I am saying.

Sen. Hinds: An analysis?

Sen. Ramlogan: Yes, I do not want to speculate as to what possible permutations may come, but the point is that the laws that we have referred to as they presently stands, it is fairly confined and constrained.

Sen. Drayton: But by your very words, Mr. Attorney General, under the subject matter, the Explanatory Note accompanying this Bill, giving the purpose for an amendment, it says specifically, under the FIU of Trinidad and Tobago Act, 2009, supervision is not one of the core functions of the Financial Intelligence Unit. To therefore allow for this expanded remit of the FIU, clause 2 of the Bill would amend section 8 of the Financial Intelligence Unit. This is what is the subject matter and this is what we are dealing with. The very reason you gave as to why you cannot amend the legislation at this stage to change from a negative resolution to affirmative resolution with respect to the regulation, you pointed out to me that section 53 will not permit that, and here you are, where you have defined the subject matter and now you are expanding and changing the subject matter. The subject matter does not refer to any function. It refers to a specific function which is supervisory.

Sen. Ramlogan: I will have to go with the legal draftsmen on this particular issue because we have incorporated by express reference, as a matter of policy, the Anti-Terrorism Act. Now, the Anti-Terrorism Act does not in fact contain any supervisory aspect per se, but it refers expressly to the FIU. These are the only two pieces of legislation that were passed, that refer to the FIU, and we

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will prefer to leave it as is because, in the event there is anything or any need in the future to deal with this particular issue, it may very well be that it can be dealt with within the confines of what we have in the least complicated manner.

As it stands, it is not outside of the Standing Order because, as you have rightly pointed out, what is there in the law that is being incorporated by express reference, is really the supervisory aspect of it. But rather than limit it, we have met you all halfway, we have taken out “under any other law” and we have circumscribed it now by reference to the two specific laws and they have already dealt with the FIU. We prefer to leave it there for now. The draftsmen have advised that if we go the route that you are suggesting, it could present rather fertile soil for potential litigation that we would rather avoid at this stage, to be honest.

Sen. Al-Rawi: Mr. Chairman, through you, hon. Attorney General, as I understand the mischief as stated by Sen. Ramnarine, in particular, in the debate, the purpose of including a power as to supervision is to address—I do not think the Attorney General is paying attention.

Sen. Ramlogan: I am listening to you.

Sen. Al-Rawi: Are you sure? It does not appear so. I do not mind if you finish your conversation.

Sen. Ramlogan: Go ahead, I am listening.

Sen. Al-Rawi: When you are ready. Yes, through you, Mr. Chairman, the purpose of the legislation as brought to us today, the Bill, is to deal with a specific power of supervision. Sen. Ramnarine in his contribution addressed us to the transitional provisions. I believe it is in section 34 of Act No. 10 of 2009. That is where the FIU is, act as the supervisory authority under that bit of legislation. He said that the FIU legislation standing on the shoulders of the Proceeds of Crime Act, No. 10 of 2009, was the mischief that we were attending to. That being the case, I cannot understand how we would be running afoul of any provision to have the supervisory element of it specifically linked.

Sen. Ramlogan: Are you finished?

Sen. Al-Rawi: You heard what I said, so—

Sen. Ramlogan: I see your mike is still on, that is why I asked you if you are finished. Sorry. Mr. Chairman, the position remains the same. I understand what they are saying, but what they are saying is no different to what we are saying. It

is just as a matter of drafting we prefer to have this as is. There are two specific references to two laws that mentioned the FIU and it is done in a particular context and a particular manner. We have compromised to bring it down to this because their concern was “any other laws”. I think we are really—

Mr. Chairman: The question is “and shall exercise the supervisory or any other function given to it”.

Sen. Ramlogan: Sure! I—yes.

Sen. Al-Rawi: Mr. Chairman, just to remind you, first of all, we have not seen before us the Anti-Terrorism Act, so I do not want to assume unto myself knowledge of that Act just like that, one. Two, there was in the 2009 October session, in the debate on this legislation, heavy weather made of the fact that the buffer of a warrant, for example, as raised by Sen. Seetahal, was not allowed and that the FIU having very great powers, that we should be very careful how it is we derogated from sections 4 and 5 constitutional rights.

And the argument proposed by the then Attorney General, John Jeremie SC, was that, because the FIU was only going to have limited powers and not extended powers as it relates to prosecution or investigation, that being passed onto another entity, that that was why the Act was put in the administrative body that it was—that is why the FIU was. So my fear is: are we going to be derogating from sections 4 and 5 constitutional rights by leaving any form of words that are too wide and beyond supervisory authority, specifically as stated in section 34 of the Proceeds of Crime (Amdt.) Act, No 10 of 2009? That is my point because the debate was very specific as to preserving the balance between section 13 and sections 4 and 5 constitutional rights.

10.50 p.m.

Sen. Drayton: Mr. Chairman, if I may? It was not a concern only with respect to the words “by any other law”. Our concern also had to do with expanding the functions of the FIU, for example, to include investigative powers. So that it is—I do not think this is a question of compromise, or this is not a question of what we prefer, it is a question that the Standing Orders are specific. We came here with a Bill that asked for a specific mandate and that is to bestow upon the FIU the powers of supervision. Although I think a number of us had agreed that we see no reason for this amendment in the first place. So that it is also a question of the functions and this is not a question of preference.

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We were just told that section 53, Standing Order 53 “an amendment must be relevant to the subject matter...” and I am not aware anywhere in the Proceeds of Crime Act or the Anti-Terrorism Act that the FIU has any powers other than receiving information, analyzing information, monitoring and, as it is, it has substantive powers because it can go into one’s financial information and make notes of my account or your account, if there is reason to have suspicion. I am not prepared to sit here, a Bill that already impairs our constitutional rights in a very severe way, to agree with any clause that is quite open-ended in terms of the functions and the roles and responsibilities of the FIU.

Sen. Prescott SC: A very good case is being made out for introducing the word “supervision” into the amendment. Perhaps the Attorney General could also consider, if he is reluctant to use the word “supervision”, that we simply say “shall exercise the functions given to it under those three Acts.” Because I have seen a provision in the Anti-Terrorism Act that suggests that the FIU, in one case at least, one of its officers, for example, may enter businesses and make certain demands. So I suppose it is that kind of thing the Attorney General is thinking of. So that, would he want to consider whether he should say, “to exercise the functions given to it under the three Acts mentioned” and remove the reference to any other function.

Sen. Ramlogan: That would be acceptable. I would regard that as a very useful and valuable compromise.

Sen. Drayton: I certainly appreciate the effort of my colleague but I feel we should stick to the mandate and the mandate is supervisory functions.

Mr. Chairman: I am not pretending to know the Proceeds of Crime Act or the Anti-Terrorism Act, but I suspect both of them have savings regarding sections 4 and 5 of the Constitution.

Sen. Ramlogan: They do.

Mr. Chairman: So that if in both of those Acts they gave those functions, in fact, you exercise the right, this Parliament exercises rights, to grant those functions to the FIU already, it is just there was a *lacuna* in this piece of legislation that is now being fixed, as it were, and it is done already, it is not that it is not there.

Sen. Drayton: So that it begs the question: why do we need this amendment? I think we already agree that the FIU has such powers, so why are we amending?

Sen. Prescott SC: I am saying that the FIU did not state it as a function.

Sen. Ramlogan: That is the point. The point is really that it was not expressly stated as a function.

Sen. Drayton: What was not expressly stated as a function?

Sen. Ramlogan: Supervisory.

Sen. Drayton: Supervisory?

Sen. Ramlogan: Yes.

Sen. Drayton: So if supervisory was not expressly stated as a function, why are we going beyond the supervisory?

Sen. Ramlogan: We are not.

Sen. Drayton: Because once you—so what is the issue with using the word “supervisory”?

Sen. Ramlogan: As I have explained before, it is a style of drafting position that was adopted and we agree with it and we are prepared to accept the compromise by your colleagues on the Independent Bench, Senior Counsel, Sen. Prescott, that that would be a useful compromise for us but that is as far as we are prepared to go on this particular issue.

Sen. Al-Rawi: What is the persuasion, by way of style of drafting, that is meant to convince us?

Sen. Ramlogan: If you were listening, Sen. Prescott SC outlined it.

Sen. Al-Rawi: No, I heard Sen. Prescott SC’s submission. Your submission is that there is an issue with the use of the word “supervisory” because it is a style of drafting and then you left off. Is it just that?

Sen. Ramlogan: What I am saying for the last time, Mr. Chairman, is that the position of the Government on this matter is that we are prepared, we have compromised from moving from “any other law” and brought it down to two specific references and we are prepared to compromise even further by accepting the suggestion from Independent Senator, Sen. Prescott SC, and that is the position of the Government on this matter.

Sen. Ramkhelawan: Mr. Chair, what is the final draft of this matter in accepting Sen. Prescott’s position?

Mr. Chairman: What he is now saying is that we would be inserting the words “and shall exercise the functions given to it under the Proceeds of Crime (Amdt.) Act, 2009 and the Anti-Terrorism Act, 2005”.

Sen. Ramkhelawan: Thank you.

Mr. Chairman: The question is that clause 2 of the Bill, as amended in subclause (a) to read by inserting after the word “internationally” the words “and shall exercise the functions given to it under the Proceeds of Crime (Amdt.) Act, 2009—”

Sen. Prescott SC: May I interrupt you, Chairman? There are three pieces.

Mr. Chairman: The Proceeds of Crime Act, 2000, the Proceeds of Crime (Amdt.) Act, 2009 and the Anti-Terrorism Act, 2005. So the question is that clause 2, as amended, do now stand.

Sen. Prescott SC: Mr. Chairman, forgive me again, is it 2(a) or 2(a) and (b)?

Mr. Chairman: We are doing 2(a) and (b), but (b) has not been modified unless, of course, you have some comment on it. But we were dealing with the whole clause 2.

Sen. Prescott SC: Pardon me. I wondered if you had overlooked it.

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the Bill.

11.00 p.m.

Sen. Ramkhelawan: Mr. Chairman, I know this is not part of the amendment, but the hon. Attorney General spoke to a review, but he was not kind enough to give some sort of time frame. Now that an entire year has already passed, is he prepared to say a review within a six-month, or even within a one-year time frame, just for the record?

Sen. Ramlogan: The position, Chair, is that that would be a matter for the Minister of Finance. I am not in a position to give a commitment with respect to that. Suffice it to say, one would expect that another year ought not to elapse before such a review would come before this Senate.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

ADJOURNMENT

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhash Panday): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, February 15, 2011 at 1.30 p.m., at which time we shall proceed with the Bills in the order as stated on the Order Paper.

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Sen. Al-Rawi: Can you state what they are? Seriously.

Sen. The Hon. S. Panday: The Statutory Authorities, the Act to amend the Bail Act, an Act to protect investors and an Act to give effect to the Convention on the Prohibition of the Development—

Mr. President: Please repeat.

Sen. The Hon. S. Panday: I said that we shall proceed with the Bills as they stand in the order on the Order Paper.

Mr. President: You had a matter on the adjournment?

Sen. Beckles-Robinson: No.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned 11.03 p.m.