

SENATE

Tuesday, June 02, 2020

The Senate met at 10.00 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

PAPERS LAID

1. Ministerial Response of the Ministry of Rural Development and Local Government to the Fourteenth Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on an Inquiry into the Financial Oversight and Financial Management Systems at Municipal Corporations. [*The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein)*]
2. Ministerial Response of the Ministry of Rural Development and Local Government to the Eighth Report of the Joint Select Committee on Land and Physical Infrastructure on an inquiry into the effectiveness of measures in place to reduce traffic congestion on the nation's roads. [*Sen. The Hon. K. Hosein*]
3. Administrative Report of the National Library and Information System Authority for fiscal year 2016-2017. [*The Minister of Communications (Sen. The Hon. Donna Cox)*]
4. Ministerial Response of the Ministry of Education to the Twenty-First Report of the Public Administration and Appropriations Committee on an Inquiry into the oversight of State Agencies under the purview of the Ministry of Education and funding to Private Secondary School Institutions. [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]

UNREVISED

5. Ministerial Response of the Ministry of National Security to the Eighth Report of the Joint Select Committee on Land and Physical Infrastructure on an inquiry into the effectiveness of measures in place to reduce traffic congestion on the nation's roads. [*Sen. The Hon. F. Khan*]
6. Ministerial Response of the Office of the Prime Minister to the Thirteenth Report of the Joint Select Committee on Social Services and Public Administration on an inquiry into the prevalence of teenage pregnancy and the State's capacity to minimize the occurrence of teenage pregnancy and provide services and assistance to teenage parents. [*Sen. The Hon. F. Khan*]
7. Ministerial Response of the Ministry of Social Development and Family Services to the Fifteenth Report of the Joint Select Committee on Human Rights, Equality and Diversity on the Current Provisions for the Education of Children who require Special Education Programmes and Services in Public Primary and Secondary Schools. [*Sen. The Hon. F. Khan*]

JOINT/SPECIAL SELECT COMMITTEE REPORTS

(Presentation)

Miscellaneous Provisions (Local Government Reform) Bill, 2019

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I have the honour to present the following reports:

Fourth Interim Report of the Joint Select Committee appointed to consider and report on the Miscellaneous Provisions (Local Government Reform) Bill, 2019 in the Fifth Session, Eleventh Parliament.

Evidence (Amdt.) Bill, 2019

Report of the Special Select Committee of the Senate appointed to consider and report on the Evidence (Amdt.) Bill, 2019.

Constitution (Amdt.) (Tobago Self-Government) Bill, 2018

Sen. Nigel De Freitas: Madam President, I have the honour to present the following report:

Second Interim Report of the Joint Select Committee appointed to consider and report on the Constitution (Amdt.) (Tobago Self-Government) Bill, 2018 in the Fifth Session, Eleventh Parliament.

URGENT QUESTIONS**Trinidad Petroleum Holdings Limited/NGC****(Change in Credit Ratings)**

Sen. Wade Mark: Thank you, Madam President. To the Minister of Public Administration and Minister in the Ministry of Finance: Can the Minister indicate whether the recent change by Moody's of the credit ratings of Trinidad Petroleum Holdings Limited and the NGC from a stable to negative outlook will adversely impact the cost of borrowing for both companies?

The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, Moody's did not change the rating of either company. The rating remains consistent to what it was last year. What has changed is the outlook for those companies.

Sen. Mark: Can I ask the hon. Minister, through you, Madam President, whether access to international capital by both Trinidad Petroleum Holdings Limited and NGC will result in a higher rate of interest being charged on loans that are accessed by these two bodies?

Sen. The Hon. A. West: Madam President, the companies which—especially Petrotrin, because we have example of Petrotrin going out to refinance last year when its rating is consistent with what it was now, and it managed to secure a loan

to refinance its existing credit at reasonable rates and without Government guarantee, having regard to the fact the rating has not changed, we do not expect a negative impact of the change in the outlook which is caused by the coronavirus impact on the borrowing capacity or interest rates being charged to the company. Thank you, Madam President.

Sen. Mark: Madam President, can I ask the hon. Minister to share with this Parliament what was the rate of interest accessed by Heritage on the international capital market that she made—Madam President, arising out of the question I am asking a question. She gave a response.

Madam President: Yes, that was part—*[Interruption]*

Sen. Mark: So I am responding.

Madam President: But that question does not arise, Sen. Mark. Next question, Sen. Hosein.

Rio Treaty

(Government's Intention to Withdraw)

Sen. Saddam Hosein: Thank you very much, Madam President. To the Minister of Foreign and Caricom Affairs: Given the statement by the US Department of State that this country should withdraw from the Rio Treaty if it does not wish to abide by it, can the Minister indicate if the Government intends to withdraw from said Treaty?

Madam President: Minister of Foreign and Caricom Affairs, you have two minutes.

The Minister of Foreign and Caricom Affairs and Minister in the Ministry of National Security (Sen. The Hon. Dennis Moses): Many thanks. Madam President, recently, only but last week this matter, meaning whether Trinidad and Tobago should cease being a member of the Rio Treaty, was the focus of a

question to the hon. Prime Minister during a press conference. The Prime Minister responded pointedly and in clear and articulate terms. Madam President, the Government of Trinidad and Tobago, of course, continues to persevere notwithstanding local efforts to counteract the foreign policy of Trinidad and Tobago. The Government is insistent and resolute in safeguarding the welfare of our population. Attempts to foist any other policy upon us is tantamount to undermining the foreign policy of Trinidad and Tobago, and imperilling the welfare of citizens and the protection of the national interest of Trinidad and Tobago.

Contrary to logic, the stated position of Caricom, and the Charter of United Nations, some right here in Trinidad and Tobago have decided to recognize the leader of the National Assembly as the President of Venezuela. Much flows from this interference in the mandate of our duly elected Government. The potential for increased vulnerability of our country in this period is highly unfortunate. Madam President, attempts to taunt the attainment of a foreign policy objectives and development goals of Trinidad and Tobago to the detriment of citizens and residents must be resisted. The Government continues to act as a bulwark against success in any such attempts. In this, the population can find some measures of comfort. Thank you.

Sen. S. Hosein: Thank you very much, Madam President. With all due respect, the Minister did not answer the question but, Madam President, I will pose a supplemental question, in that, is the Government's position that they will abide by the Articles of the Treaty and the decision of the OAS in order to abide by the restrictions being placed on member states who are part of the Rio Treaty, for example restrictions—

Madam President: No. Sen. Hosein, ask a question clearly and concisely.

Sen. S. Hosein: Sure. Can the Minister then indicate, Madam President, whether it is the Government's intention to abide by the Articles of the Treaty and decisions taken by the OAS?

Sen. The Hon. D. Moses: Madam President, it is somewhat muffled, but totally in harmony with the first part of the question that I resisted to respond to. I would not be a party to ignorance. Thank you.

Sen. S. Hosein: That was a very nonsensical response given by this Minister, Madam President. When we are discussing such an important matter of public importance—[*Desk thumping*]

Madam President: Members, please. Sen. Hosein, have a seat. When you want to ask a question, ask a question. There is no preamble to it. There is just a question. Ask a question.

Sen. S. Hosein: Madam President, can the Minister state whether or not it is the intention of the Government of Trinidad and Tobago to abide by the travel restrictions placed on Venezuelan officials and companies of Venezuela?

Madam President: Sen. Hosein, I would not allow that question.

QUESTIONS FOR ORAL ANSWERS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, the Government is pleased to announce that it will be answering questions Nos. 111, 117, 146 and 148. We ask for a deferral of questions Nos. 112, 147 for two weeks. Thank you very much.

The following questions stood on the Order Paper:

Increased Resources/Support Systems for the DPP

(Measures Taken to Address)

- 112.** In light of the appeal made by the Director of Public Prosecutions (DPP) for increased resources and support systems for the office, can the hon. Attorney General indicate what immediate measures are being taken to address the needs of the Office of the DPP? [*Sen. W. Mark*]

New Debt Obligations

(October 01, 2019 to April 30, 2020)

- 147.** Can the hon. Minister of Finance provide information on any new debt obligations engaged by the Government, directly and by government guarantee, for the period October 01, 2019 to April 30, 2020? [*Sen. T. Obika*]

Questions, by leave, deferred.

Sen. Mark: May I seek some clarification from you? Is question No. 96 on?

Madam President: I think the Minister indicated that he is not in a position—that that question will not be answered today.

Sen. Mark: But did he indicate when it will be answered, Madam President?

Madam President: Sen. Mark, let us deal with that at the end of the question.

Sen. Mark: Which one do I ask, Ma'am?

Madam President: So you are free to pose question 111.

Increased Gas Prices

(Steps Taken to Resolve)

- 111. Sen. Wade Mark** asked the hon. Minister of Energy and Energy Industries:
Can the Minister indicate what steps are being taken to resolve the issue of increased gas prices between the National Gas Company and Methanex Trinidad Limited?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, public

pronouncements have been made by both the NGC and Methanex relative to the ongoing negotiation between both companies which are parties to the contract. Both parties have issued a clear statement confirming their commitment to reach an agreement. There was in place an extension of the interim arrangements until 31 March, 2020, to facilitate an agreement. Prior to the expiration of the last interim agreement, Methanex took the decision on March 16, 2020, to idle its Titan Plant at Point Lisas.

This decision was taken as a result of the significantly reduced industrial demand globally for methanol which also prompted a similar decision by Methanex in respect of its Chile IV Plant in Chile. These plans are part of the global portfolio of Methanex and are likely to remain idle until the methanol market rebound. Despite the idling of the Titan Plant, discussion between Methanex and NGC continues and remains focus on arriving at a long-term contract reflective of the current and projected market dynamics. The Government remains available to support the efforts of both the NGC and Methanex in arriving at an agreement.

Sen. Mark: Madam President, can I ask the hon. Minister whether the National Gas Company has a timeline for arriving or concluding a gas contract agreement with the Methanex?

Sen. The Hon. F. Khan: Both parties have to agree. What is being placed on the table now, there are some differences because the market conditions has changed so fundamentally that it is affecting the pace of the negotiations. Methanol prices are now this morning—it was \$219 per metric tonne. Just January last year that same price was \$350 per metric tonne. So the international global economy is affecting the petrochemical business. There is something called the gas value chain which is currently being addressed and these are sensitive commercial discussions

that are taking place between two sophisticated commercial entity, and all I will ask the Opposition, and the country, by extension, is to understand these are complex commercial negotiation and all will be revealed in due course. The Government is committed to finding a settlement.

Sen. Mark: Madam President, in light of the market conditions outlined by the Minister, can the Minister indicate whether once these conditions have stabilized there is every likely possibility for an agreement for gas supply over a long-term period between the NGC and Methanex?

Sen. The Hon. F. Khan: The answer is most definitely.

Sen. Mark: Can the Minister indicate whether, Madam President, the changes in natural gas prices has contributed to the delay in arriving at a gas contract between the parties?

Sen. The Hon. F. Khan: Obviously there are differences of opinion between Methanex and the NGC with regards gas pricing. That is the basis of the negotiation. What affects gas pricing is twofold. Gas pricing is indexed to methanol prices on a price curve. It is also cognizant of what you pay upstream for gas. So all these things work out itself into a matrix that has to be analysed very, very scientifically to come to where the sweet spot is as it were, to find out what will be the settled gas price, and these are where the complex negotiations take place and these discussions cannot be aired in public.

Sen. Mark: Madam President, can I ask the hon. Minister whether the upstream cost or price of natural gas, which is sold to NGC, is being looked at by the Government for some degree of renegotiations with the upstreamers that initially has resulted in this complexity that the country is facing?

Sen. The Hon. F. Khan: The answer to that is an affirmative yes.

Madam President: No, that is it, Sen. Mark. Next question.

Threatening Protest Action by MTS
(Measures Taken to Address)

117. Sen. Wade Mark asked the hon. Minister of Public Utilities:

In light of reports that MTS workers are threatening protest action over issues negatively affecting the workers, can the Minister indicate what measures are being taken to address the concerns of these workers?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, the Government, and by extension the National Training Security Company Limited, better known as MTS, is committed to good industrial relations. In this regard, we have adopted a proactive approach in dealing with industrial relation issues. A major focus in this regard has been the holding of non-crisis meetings periodically with employees' representatives to appraise and update them on issues of concern.

In this regard, two major issues of concern have been, one, the delay in submitting remittances on behalf of workers to certain financial and related institutions, and two, outstanding negotiations for the period 2014—2017. With respect to the remittances, this matter has since be settled with financing from the Government. The negotiations for the period 2014—2017 is currently being addressed by the Chief Personnel Officer.

Sen. Mark: Madam President, can the Minister indicate when, or does he anticipate an early and speedy settlement of the negotiations for a new collective agreement between parties for the period 2014—2017?

Sen. The Hon. F. Khan: Madam President, I cannot indicate the timing. Obviously it will depend on the attitude and the positioning of both parties, which is the representative body for the workers at MTS, the CPO, and by extension the management of the MTS Company.

Sen. Mark: Madam President, can the Minister indicate whether the Government is committed to a speedy settlement through the CPO and the Minister of Finance on this outstanding collective agreement between parties?

Sen. The Hon. F. Khan: The Government is committed to a speedy settlement of the issues, but all that will depend on what transpires around the negotiation table between the side of the company which includes the CPO and the management, and the side of the workers' representative trade union. It is a negotiation no different to Methanex and the NGC. Let the negotiation take its course. We cannot negotiate here in the Parliament.

Sen. Mark: Madam President, can the Minister share with this honourable Senate the critical outstanding matters between the parties at this time? We are not negotiating. We are just asking whether you can share with this honourable Senate the outstanding items or matters between the parties?

Madam President: No. Sen. Mark, I would not allow that question. Next question, Sen. Obika.

Mahaica Oval Construction Contract

(Details of)

146. Sen. Taharqa Obika asked the hon. Minister of Sport and Youth Affairs:

With respect to the details of the contract for the construction of a pavilion and other works at Mahaica Oval in Point Fortin, can the Minister outline the following:

- (i) the names of the contractors involved;
- (ii) the amount spent on the project as at April 30th, 2020;
- (iii) the remaining cost of the project; and
- (iv) the expected date of completion?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin

Khan): Thank you very much, Madam President, once again. The Sports Company of Trinidad and Tobago is responsible for the construction, maintenance and management of the country's major sporting facilities. The Point Fortin region—and Sen. Obika will be quite aware of—is well-known for its sporting excellence and has produced its fair share of international sporting personalities. To encourage the development of sporting talent and better serve the residents of Point Fortin and environs, the Government developed a plan for the upgrade of the Mahaica Oval, Point Fortin, consistent with international standards.

In January 2018, Cabinet agreed that the Government, through the Ministry of Sport and Youth Affairs, enter into a contract with UDeCOTT for the implementation of a project for the upgrade of the Mahaica Oval. SporTT will provide the monitoring and oversight services for the project. Constructing of the Mahaica sporting complex commenced in August 2018 and included a new main pavilion to a seating capacity of approximately 795 persons, and three levels serviced by an elevator and external staircase. The pavilion will also include ground floor change rooms, public washrooms, electrical rooms, administration storage rooms, physio/sick bay rooms, first aid rooms and 30 parking spaces.

First floor: meeting rooms, offices, reception areas, first aid room, storage room, concession booths, et cetera. Second floor: media centre, VIP lounge, washroom, kitchen, electrical rooms. To date, Madam President, a total of nine contractors have worked on the upgrade of Point Fortin. They are as follows:

1. Traffic Fix, General Contractors Limited: preliminary works;
2. SMH General Contractors Limited: substructure and foundation;
3. Yorke Structures Limited: structural steel;
4. LCB Contractors Limited: concrete work, external work, roofing and finishes;

5. MMAL Construction Limited: seating;
6. CAG 2K Industrial Services Limited: plumbing, tanks and sewer;
7. In-Electra Limited: electrical;
8. Peake Technology: air conditioning; and
9. RBP Lifts Limited: for elevators.

To answer to (ii), the amount spent on the project as of April 30th is \$17,378,408.97 VAT exclusive. The remaining cost of the project is \$28,823,500.17 VAT exclusive, bringing a total cost of approximately \$46.2 million. The expected date of completion, Sen. Obika, of this project is right around the corner, October 31, 2020.

Sen. Obika: Madam President, given the significant cost overruns as the budgeted allocation at the beginning of this project was \$15 million, can Minister indicate what are the reasons for the increase in costs in this project?

Sen. The Hon. F. Khan: I was not aware—I saw no reference to what was the initial cost. The answer that was prepared here is how much money was spent as of 30 April, 2020, and what was the remaining cost of the project. But from all indication it is value for money because it is an elaborate construction site bringing full international standard facilities to the people of Point Fortin and environs, and I am sure you would be glad for that.

Sen. Obika: Thanks, Madam President. Of course, anything for Point Fortin I am glad for, however, the question still stands, then I will rephrase it. What would have been the original cost of the project given the initial allocation was in fact \$15 million?

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

Sen. Obika: The question, Madam President, is: What is the initial cost of

Mahaica Oval construction?

Madam President: And you have just repeated it and I am not allowing that question based on the question that has been asked. Any further supplemental?

Sen. Obika: Well, if those questions do not qualify, no. Madam President, I do not have any further supplemental questions.

Sen. The Hon. F. Khan: Congratulate the Government for its good work. [*Desk thumping*]

Sen. Obika: I will challenge the Government on the—[*Interruption*]

Madam President: Next question, Sen. Obika.

Sen. Obika: Yes, Madam President. They will answer to the increasing cost of projects on the platform.

Madam President: Sen. Obika?

**Point Fortin Highway
(Expected Completion Date)**

148. Sen. Taharqa Obika asked the hon. Minister of Works and Transport:

Can the Minister indicate the expected completion date of the Point Fortin Highway?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, the Government is concentrating on the San Fernando to Point Fortin segment of the project at this time. The COVID-19 lockdown caused a delay in the progress of the project which was expected to be completed by January 2021. With the resumption of work and providing that we have fair weather and no further unseen delays, it is expected that this segment would be completed by the first quarter of 2021. I thank you.

Sen. Obika: Madam President, can the hon. Minister indicate if these delays have increased the cost of the project?

Sen. The Hon. R. Sinanan: Madam President, the delays were caused by the COVID-19, and at this time I have no indication that there will be any increase in the costing of the project. Thank you.

10.30 a.m.

Sen. Obika: Can the hon. Minister give a figure as to the full cost of the project over the last five years?

Madam President: No, Sen. Obika, that question does not arise.

Sen. Obika: Final question, Madam President, is: What stretch of the road do we expect to have in place before they leave office when the general election is called?

Madam President: Sen. Obika, that question does not arise.

Sen. Obika: Okay, well, they will have to answer to the public.

Sen. The Hon. R. Sinanan: By 2030, it should be finished.

Sen. Mark: Madam President, I am hoping Standing Order 27(15) as it relates to the first question.

Madam President: So Standing Order 27(15) is invoked in respect of Question No. 96.

JOINT SELECT COMMITTEES

(Extension of Time)

Miscellaneous Provisions (Local Government Reform) Bill, 2019

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Fourth Interim Report of the Joint Select Committee appointed to consider and report on the Miscellaneous Provisions (Local Government Reform) Bill, 2019, Fifth Session (2019/2020), Eleventh Parliament, I beg to move that the Committee be granted an extension to June 30, 2020, to complete its work and submit a final report.

Question put and agreed to.

Constitution (Amdt.) (Tobago Self-Government) Bill, 2018

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, having regard to the Second Interim Report of the Joint Select Committee appointed to consider and report on the Constitution (Amdt.) (Tobago Self-Government) Bill, 2018, Fifth Session (2019/2020), Eleventh Parliament, I beg to move that the Committee be granted an extension to August 31, 2020, to complete its work and submit a final report.

Question put and agreed to.

**MEMBERS' CONTRIBUTIONS
(TENDENCIES RE DEBATES)**

Madam President: Hon. Senators, before I call on the Attorney General, permit me to make a few observations about some tendencies that seem to be emerging in the course of Members contributing to debates in this Chamber.

The first tendency is that of reading. I will remind Members of the provisions of Standing Order 42(11) and I will remind Members that contributions are not to be read. I do not know if the introduction of the podium is lending to that tendency but I would ask Members to please, please observe the Standing Order.

The second tendency is that I am noticing that reference is being made to previous rulings by the Presiding Officer as to relevance or otherwise and Members are making off-hand remarks about said rulings clearly conveying their disapproval of such rulings. I will ask Members to be reminded that such declarations are improper and can be seen as containing veiled challenges to a Presiding Officer's previous rulings and to the Presiding Officer's authority to make such rulings with respect to a Member's contribution. So I am asking Members to please desist from that tendency and that method of debate.

**MISCELLANEOUS PROVISIONS (REGISTRAR GENERAL,
REGISTRATION OF DEEDS, CONVEYANCING AND LAW OF
PROPERTY, REAL PROPERTY, STAMP DUTY AND REGISTRATION
OF TITLE TO LAND) BILL, 2020**

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. I beg to move:

That a Bill to amend the Registrar General Act, Chap. 19:03, the Registration of Deeds Act, Chap. 19:06, the Conveyancing and Law of Property Act, Chap. 56:01, the Real Property Act, Chap. 56:02, the Stamp Duty Act, Chap. 76:01 and the Registration of Title to Land Act, 2000, be now read a second time.

Madam President, the Bill before us today is one of the most important pieces of law that the country will have under consideration. The parliamentary record for this Session, the Eleventh Republican Parliament, will demonstrate that this Bill has had previous incarnations beginning in the year 2017. We have been at the amendments to this package of law: 2017, 2018, 2019 and now 2020. I say that because in looking at the amendments that this Bill proposes to these several pieces of law, we have had deep stakeholder contribution and consultation for nearly four years ongoing.

In particular, the consultative process has been deepest with the Law Association. The correspondence passing between the Attorney General's Office and the Law Association is on record beginning in 2017. In 2017, straight up to today's date, the Law Association has been in deep consultation. As a result of the

consultation with the Law Association in particular, I wish to say that we propose amendments to the Bill before us. We have taken the opportunity, Madam President, out of ease and convenience, since last week, to submit to all Senators, a marked-up revised version of the Bill. That has been submitted to Opposition, Independent and Government Senators and I wish to profusely thank the Law Association and its conveyancing committee referred to as the C-4 Committee for their excellent work in providing responses. I wish to thank Sen. Rambharat in particular who sat with me for many, many, many hours in Zoom meetings with the Law Association for that.

By way of letter dated June 02, 2020, that is today, the President of the Law Association has expressed his thanks for the last two meetings we held Thursday 21st May, Wednesday 27th May, to discussions on the provisions of the Bill and he has acknowledged that there are still some issues which are of concern, he has tabled it as great concern for the conveyancing practitioners and that he is happy that I will continue to meet with them and he acknowledges even whilst we continue the debate on the Bill scheduled for today. So we have come a very long way. I want to thank the Bankers Association, the Financial Intelligence Unit, the Chief State Solicitor's Department, members of the public, the Law Association, for four years of work.

Permit me to also now put onto the record that this Bill comes alongside the land registration package. The Registration of Titles to Land Act, the Land Adjudication Act, the Land Tribunal Act, the amendments to the State suits provision which we did in this Parliament, and very importantly, that this Bill has a proclamation clause and this proclamation clause which is at the very early parts of

the Bill is specifically intended—and I want to give an undertaking on the record of the Parliament now, that clause 2 which refers to the Act coming on to operation by way of proclamation, this Bill will not, if it passes muster, be proclaimed as and until a very critical piece of operational machinery is installed, commissioned and tested as working at the Registrar General's office, that is, the Property Business Real Estate Solution.

By that Bill, operating with the technology at the Registrar General's office, this law—I am giving the parliamentary undertaking which is actionable, that the Bill will not be proclaimed until that law is built upon the system. I can tell you that the Property Business Real Estate Solution has been tested by the Law Association for two years nearly. The version three goes live this month of June and it is intended to be in full operation hopefully by September but that is once we test it with the Law Association and therefore allow, importantly, electronic filing of everything contemplated by this Bill. In other words then, the administrative difficulties at the Registrar General's office will be put to an end by clicking the submission at your desktop in your office and submitting electronically and that therefore takes away all of the confusion as to how the law will be operated.

Permit me to jump immediately to the Bill. What time is full time, Madam President?

Madam President: Six minutes past 11.00.

Hon. F. Al-Rawi: Much obliged. Madam President, land is the most precious resource next to your liberty and life and probably in front of cash. In an island like Trinidad, an island like Tobago, it is a finite resource. In our land system, we on average every year register—and I will give you the figures for 2018 at the Land

Registry. We registered in every month, added together for 2018, 27,306 deeds. That is a deed of every type: a deed of release, a deed of mortgage, a deed of conveyance. A deed poll is separated out but general other categories of deeds, 27,306.

Registration of deeds is a requirement set out in our laws. Under our system of laws, we register so that your title is known to the world. We also register something else and that is mortgage bills of sales. We take loans over cars at banks, et cetera, and to protect the interest in a mortgage bill of sale, the loan for a car, we register it within a short time frame, you only have seven days to register or else you have to go to court to get an extension of time. We registered 21,000 mortgage bills of sales within seven days as against 27,000 deeds. The short submission is we register in a shorter time frame with more strictures and protect strictly a \$25,000 loan on a car but for land which is a precious resource, save for deeds of gift and deeds of settlement, there is no requirement for registration. What does that mean? That means that fraud is rife in our country.

The FIU tells us, when you look to the fraud factors, that in the year 2014, \$30.1 million in fraudulent transactions in deeds. In 2019, \$114.8 million in suspicious activity and completed transactions being part of that for that year. For the period 2014 to 2019, when we aggregate these things—attempted transactions, et cetera—Madam President, you know that in the bracket of fraud, the FIU has told us in one year alone, you have had up to \$22.5 billion of fraud.

How is fraud perpetuated? Fraud is perpetuated because our system of registration right now for land ownership is spread across three laws. The three laws which require registration are: the Registration of Deeds Act, that is an Act of

Parliament which was born in the very early part of our life, that is in the early provisions of the 1976, the Registration of Deeds Act; the Real Property Act was born by Act No. 20 of 1945 but it was introduced in the 1800s, the Torrens system as we are well aware. We take those two, we add the Registration of Titles to Land Act which was birthed in 2000. We did amendments recently, we intend to go live with that to give absolute title guarantee when we get to the PBRs system going live.

We envelope those laws inside of the Conveyancing and Law of Property Act and the Conveyancing and Law of Property Act is an Act of Parliament, 18 of 1939. We, of course, pay stamp duty and that is an Act of Parliament, No. 28 of 1908. Obviously, there were colonial laws that had these things. The Registrar General is the repository of these instruments and the Registrar General operates under the Registrar General's Act which is an Act of Parliament, No. 49 of 1921.

In short measure, Madam President, permit me to dive directly to the Bill. Number one, we seek to amend the Registrar General Act by creating registries. We create registries to allow for beyond what the index of registers allows right now. We want to add on to that the beneficial owner registry, the registrable documents' registry, the contract for sale registry and very importantly, a registry of trusts. Why? One of the major mechanisms for conducting fraud in this country is the use of a declared trust where attorneys-at-law execute a trust, pay a stamp duty of \$25 on it, register a deed in John Brown's name whereas the trust says it is really Jane Doe; 20 years later, they roll up and unwind the trust and simply transfer the stamp duty from one instrument to the next, clean perfecting a fraud if it is intended, without the lawyer's knowledge necessarily, a fraud upon Trinidad

and Tobago. For example, a corrupt politician receiving a deed in 25 years' time where his son or daughter receives it but as it is passed right now, it is shown in some innocuous name.

That is compounded by the fact that what lawyers have engaged in, they execute a conveyance, they pay the stamp duty because there is a heavy clock for that, they sit down on the fact that there is no requirement for registration and then they register the instrument 20 years later, pulling it out of a drawer where deeds are kept and there is no penalty whatsoever and that fraud is known to every single conveyancing lawyer in this country and it is practised in wide expanse, not by way of breach of the law because there is no law to say that they are breaking but by way of avoidance. Because the client simply legitimately has a proper lawyer acting, dismisses the lawyer and says, "Look, give me my deed, thank you, I pay you for your services", the lawyer says, "Look, I did not register the deed yet", the client says "That is okay". The client sits with that deed in a drawer for 20 years hiding behind the fact that the law of equity prevails and that they are the bona fide value purchaser that cannot be put out of the transaction. Well, today is the day that that bacchanal and fraud in Trinidad and Tobago comes to the floor to be stopped.

[Desk thumping]

Now, I say this bearing in mind that I have practised in conveyancing and mortgaging and worked for almost the entire banking sector since I qualified in 1996. I have deep conveyancing and mortgaging practice, deep corporate law practice and if you notice every piece of law that has come from the Attorney General's Office in this Session has been disclosed beneficial ownership in companies, "follow the money" transactions, income tax amendments and today,

we add on to demonetization, closing the abuse of trusts, closing the system where registration is not a requirement of law.

Now, is conveyancing a simple practice? No, it is not. What we propose here put in simple terms, number one, we create the registries as we make the amendments to the Registration of Deeds Act. Number two, we allow for those registries to be public as to one part and private as to another. In the deed of trusts area, it is a private register. We only allow for those private registers to be searched in the context of law enforcement: the Financial Intelligence Unit, the Trinidad and Tobago Police Service, the Board of Inland Revenue or by way of an order of court and you will see that at clause 3.

We then, Madam President, define a trust for the first time as an express trust, not an implied trust, not a constructive trust, only trust that treats with land. If there is an express trust knowing that there is an abuse of that system right now, we allow for that to be registered in a closed register. We, for the first time, reduce the fees for late registration in particular for deeds of gift and deeds of settlement because there is a requirement in section 18 of the Registration of Deeds Act that deeds of gift and deeds of settlement must be registered within 12 months. We do not do it for any other type of deed, only gifts and settlement. We are reducing that now from an arbitrary, up to a high of 2,000 pursuant to the RG, to just \$200.

Madam President, this law proposes that we dis-apply the law to public bodies as you will see in the amendments that we intend to move. We say that public bodies, because we will perfect the public disposal of land law by way of an amendment, hopefully by next week, public bodies are set aside from this transaction because the Auditor General operates, the Cabinet operates and the

Public Procurement Regulator operates.

Madam President, what we do is we build a concept of a registrable instrument. A registrable document is everything that treats with the conveyance of land, if there is going to be a transfer of land in any form or fashion by way of a lease that is over three years, by way of a deed of conveyance, et cetera, it is going to be a registrable document, but we do not include in that definition a contract or any other document that may be accepted. Why? Because we do not want contracts to be in a cycle of a contract being filed for a contract and I will explain that when we get to the requirement for contracts.

Very importantly, we say specifically by way of a proposed amendment, Madam President, we are not coinciding equity and law. We are preserving the fact that when you execute your deed, that the equitable interest principles prevail. In other words then, your title passes on execution exactly the way it does in practice right now. We make that clear by an amendment to section 3 of the Registration of Deeds Act and we specifically propose to amend to include a concept of feeding the title. We take section 32A of the registration process where a deed of mortgage may be registered after a conveyance, we keep section 32A of the Conveyancing and Law of Property Act so that when you register the mortgage after the conveyance, even though it should have been done the other way round, you feed the title and you cure the title.

Madam President, basically, we say in subparagraph (f), we are harmonizing the way in which you execute deeds inside and outside of Trinidad and Tobago and these amendments to the registration of deed process, we lift the exact formula that we used in the Real Property Act. So instead of having two systems that are

confusing, common law and real property, we make sure that the method of execution, mode of execution in and out of Trinidad is harmonized. Madam President, did you say six minutes past?

Madam President: I did.

Hon. F. Al-Rawi: God help me. Madam President, we ask for the inclusion of a contract for sale or other disposition of land. What we do here, we took on-board suggestions coming from the Law Association, we have removed all of the aspects of the Bill where the Registrar General could have exercised a discretion. The Registrar General has an obligation simply to receive a contract for sale, receive a notice of termination, receive a notice that they do not agree and what we are doing here is we are protecting purchasers. The rule in law is caveat emptor, buyer beware. But what happens in our system is buyers are never told the whole truth and in that particular system, we are saying if you are going to have a conveyance, if you are going to dispose of land, put your contract for sale on the record so that the whole world knows who is treating with land.

I polled a number of attorneys-at-law in conveyancing. I can tell you I have only had three matters in 24 years go to court where a deposit was lost. Most lawyers will tell you the vast majority of transactions are ended with peace. What we do in this particular position is we put buyers aware of the situation and there is a methodology because the small cases where people do not agree, they inevitably end up in court asking for specific performance and then you are put out of the transaction. This protects poor people in particular who do not have the wherewithal to know what is going on in a transaction.

It is tied into other aspects of the Bill where for the first time we are putting

an obligation on attorneys-at-law. Number one, they must be FIU registered; number two, they must have practising certificates; number three, in this Bill, we tell attorneys-at-law you must certify in writing to your client what the transaction involves. No more will there be a poor little old lady coming to your door to say I did not understand what the lawyer said. No more will there be a lawyer at the mercy of an untruthful client saying the lawyer did not explain it to me and those matters end up in court and before the Disciplinary Committee on a constant basis. That comes to an end under this law.

Very importantly, we say all registrable documents, under Part IV, the new 15D onward, all registrable documents are to be registered. But what we do is we dis-apply the law. We do not include in the registrable factor within 12 months anything which is bona fide. Number one, deeds of release, deed of rectification, deeds of confirmation, substitution, surrender, exchange, mortgage, debenture, partition, assurance, amalgamation, commercial leases, residential leases, deeds of agreement for sale of land, deeds under court order, family settlement and we specifically say they are not required to have a contract before the instrument.

So what we only hold on to is a contract with respect of a disposition of land. “Yuh selling yuh land, put yuh contract on record.” We only say that the contract must come on record when it is fully executed. We therefore preserve the right to have it delivered in escrow. Out of escrow, we preserve the facility to have multiple contracts. We preserve the ability to have part performance in law, that is specifically set out here and we do not say anything other than, before you register your conveyance or your disposition, register your contract. In other words then, the two can actually happen almost simultaneously. It allows for the flexibility of

contract.

Madam President, we say because we recognize that there are loads of reasons why somebody may not be able to register a deed within 12 months, for instance, Valuations Division at stamp duty is not yet ready, somebody may have had some difficulty in getting instructions, they may not have the money for the stamp duty. What we say is when you have fully executed the deed, file a notice to say you have fully executed. We allow in this law applications for extension of time for the notice of execution, for the contract and for the conveyance. We allow in this law for the conveyance, the assurance, the disposition of land to be extended up to 24 months. No penalty up to 24 months. After two years, knock on the door of the court and ask for permission to register late.

Let me remind you why I mentioned mortgage bills of sales. To protect a \$10,000 loan secured by way of a car being used as collateral in a mortgage bill of sale, you have seven days to do that and you find yourself in court, lawyers go to court to extend that mortgage bill of sale life. Why can you not do it for land worth billions of dollars? So we preserve due process routes and requirements.

Madam President, we put in a very important new Part V which is the duty of attorneys-at-law to inform clients of obligations. This is to protect consumers and protect the legal fraternity at the same time, but stick a pin. Every step of the transaction that we are asking lawyers to now add into this thing is done by way of forms. We have “precedented” the forms, you do not have to make it up as you go, there is a form that you fill out.

Now, Madam President, the Real Property Act brought into effect in this country in the 1800s when you look at the iterations of the law prior to that. That

law, title does not pass until the memorial is registered on the certificate of title. In other words then, 20 per cent of Trinidad and Tobago's land title is secured by way of no transactions happening until you register the instrument. We are not doing that. We are preserving the fact that your title passes on execution but we are requiring you to register the instrument exactly as you would for a mortgage bill of sale, you must register the instrument.

11.00 a.m.

Madam President, we have very importantly in the new 15I inserted the curing of title by way of registration of a deed of release after a conveyance. Obviously you cannot convey something that you do not have. You do not have it if there is a mortgage because part of the ownership is owned by the bank, part of it is owned by you. So you have to have a release. We insert a new subclause (10), you will see in the marked up provisions for Senators, where we preserve the fact that the title is cured when the release is registered after the conveyance. Why? Because we are preserving the rule of equity. Nowhere in this law are we disturbing the law of equity—

Madam President: Attorney General, you have five minutes.

Hon. F. Al-Rawi: Much obliged, Madam President. We have taken on board recommendations from the Law Association. We removed the use of penalties which looked exactly like the Stamp Duty Act under the new Part VII of the registration of deed cycle. And what we do, where the lawyer is negligent, where the lawyer has failed after a whole 24 months to do what the lawyer should do, two years, no excuse, the lawyer's maximum exposure is to lose half of what the sale of fees that the lawyer could charge would be. That is not unreasonable, Madam

President. We also allow for the situation where a client can fire a lawyer. The transaction may be completed, the deed is not registered, it is fully executed. In those circumstances, we put the obligation upon the purchaser, the legal personal representative, whomever it may be, to take the obligation and we have again reduced the prospect of penalties and we have put it down to a minimum of \$5,000. After they had the same opportunity to extend, to apply, to be aware, we are protecting all sides of the transaction, Madam President.

Madam President, we also very importantly, in the rest of the law, simply, apart from "precedenting" out all the forms, so that there can be no exorbitant charge, lawyers only need to fill out forms, we allow for the reciprocity where the Registrar General will acknowledge receipt, serve the receipt, anything where there is disagreement, all parties are made aware and then what we do in the rest of the Bill is we copy and paste the formula from the Registration of Deeds Act into the Real Property Act, we harmonize the Conveyancing and Law of Property Act, and critically, we remove an insanity in law. Right now, the avoidance of stamp duty, worse yet the evasion of stamp duty is a \$400 fine. We amend that today to put criminal sanction proportionate to the abuse of stamp duty.

Now, Madam President, this law is not like any other law; there are views for or against. The purpose today is very narrow. Register your deed. Why are you sitting down on an unregistered deed inside of a drawer? Why? If you have a reason, tell the Registrar. If you have a reason, tell the court. Get permission. You have no excuse lawfully or within reason to sit down on an unregistered deed except that you are intent on fraud. Let me repeat that. You cannot be sitting down on an unregistered deed.

Number two: What is wrong with disclosing your contract? Is there some difficulty as to a small aspect of contracts where there may be dispute? Yes. Go to the court. You will see the High Court actions for specific performance or to set aside a deed that went to somebody else because somebody else had a prior interest. Those matters will go to court anyway. What we are doing now is we are feeding the concept of caveat emptor, buyer beware. We are protecting people and lawyers at the same time.

I want to say this most respectfully. When the 1986 reforms were coming into effect, the Law Association kicked up storm and dance, while he wrote a whole book, all of us at law school read it, never once came into law. When we were amending the Companies Act, song and dance, the system will die, continuance will kill the profession; that came and went. When we were changing to the Civil Proceedings Rules, the profession will end, it will never happen. Today, matters finish within one year. When we did the beneficial ownership law the other day, the non-profit organizations law the other day, the anti-terrorism law the other day, the Criminal Division law the other day, the Law Association objected to all of it in certain aspects. Not them alone but society as well. All of that has come and gone. The same Criminal Division that they objected to is the salvation for this country in electronic filing, virtual appearances, and so, Trinidad and Tobago, do not be afraid to make amendments to eliminate fraud. This is about money laundering and, Madam President, I look forward to the debate before us as I have run out of time and I beg to move.

Question proposed.

Sen. Wade Mark: Thank you, Madam President. Madam President, I am very

pleased to make my contribution on this very important miscellaneous provisions Bill of 2020 which seeks to amend a number of very critical pieces of legislation including the Registrar General's office and falling under the Registrar General's Act, the Registration of Deeds Act, Conveyancing and Law of Property, Real Property, Stamp Duty and Registration of Titles to Land Act.

Now, Madam President, no one can argue the need to curb and to get at the root of fraud in transactions that may be taking place in land and to deal with the whole issue of money laundering that would flow from those activities. But, Madam President, because this Bill constitutes a fundamental and radical departure from established practice and what has been referred to as common law in the field of conveyancing and property law. I believe it is very important that the Government, even though the AG has referred to consultation and it being had on a large or wide scale, we are yet to see, Madam President, a Green Paper on this very important subject matter.

We have not seen any legal opinion that would indicate how this will impact on property rights and property relationships between vendor, purchasers and of course the regulator. So, it would have been useful and very important in a society that has respect for democratic norms and values, when fundamental changes are being made to land matters that it be subject to large scale consultation with the population. And, Madam President, I believe that even though the Attorney General has indicated that there has been some correspondence from the President of the Law Association on this matter, it is my considered view that there are fundamental differences still existing between the Law Association of Trinidad and Tobago and the Government of Trinidad and Tobago as it relates to what measures

we are debating today. And therefore, I would like to urge the Attorney General that this matter ought to be referred properly to a joint select committee so that this could be aired and addressed properly and not be rushed as the Government is attempting to do, because, Madam President, there are several important pieces of legislation that are involved and that will impact, as I said, how business is conducted in land matters.

Now I know that the fundamental question of registration of agreement of sale or sale of agreement for the purchase of land and other mortgages, that remains a touchy subject, and for the Attorney General to say that he is going to pass the legislation but will not proclaim it, I think represents a betrayal of what I understand to be a commitment given by the Government to the Law Association that they will allow this matter to be referred to a select committee or a joint select committee. I just put that based on the information that has reached me on this very important piece of legislation that we are debating today.

Now, Madam President, because of the complexity and the number of pieces of legislation that is involved in this Bill that is before us, I can only focus on maybe one or two pieces of legislation that are being amended in this miscellaneous provisions Bill of 2020 that we are debating. The first area, Madam President, I would like to pay attention to, is the Registrar General Act of 1921. Now, Madam President, I find it amazing that the Government currently has under the Registrar General's office, four indexes, and in the Bill that was tabled recently in this Senate, it was increased to seven, and with the proposed changes, Madam President, as circulated, it has now gone to eight. Now, could you imagine, Madam President, the Registrar General's office having the capacity to deal with eight

registries, eight of them, with all the challenges that the current Registrar General's office has to deal with? So, I find it amazing, stunning, that this is being proposed.

Madam President, what is even more amazing in the legislation, and I want to thank the Attorney General for indicating about the fraud, about the money laundering, about the denial of stamp duties to the Treasury by elements that are involved in transactions involving deeds of trust. And you know, it is obviously concerning that we were told by the Attorney General about these developments and these transactions and why would you sit on a registration of deed matter? Why would you not register it? You save it years because you are intent on committing fraud, or words to that effect.

Madam President, I want to ask the Attorney General, through you, with the eight new indexes that are being proposed in the legislation, one specifically dealing with the index of trust, why would the Attorney General want that index of trust not to be exposed to the public? Madam President, the Attorney General has made a case for that index of trust to remain open to the public and we are objecting very strenuously and very firmly against any decision through legislation, Madam President, to deny the public access to deeds of trust. I think deeds of trust should be open and accessible to the public of Trinidad and Tobago and I call on the Attorney General to reconsider that change that is being proposed in the legislation, Madam President. I do not think Attorney General—

Madam President, I must tell you I have done some research on this matter, I have looked at international standards, international treaties, that treat with the issue of access to information and, Madam President, access to information has been deemed by international standards and treaties and declarations as a

fundamental human right. That is why, Madam President, in our Constitution there is a provision that deals with the freedom of expression and the freedom of thought. And in all the international standards, declarations and treaties, it has been made abundantly clear that that provision of freedom of expression and freedom of thought is equivalent to your freedom as a citizen to access information and therefore I believe that the Attorney General needs to revisit that question. This collides with sections 4 and 5 of our Constitution. You cannot deny the citizens access to information.

Madam President, may I also ask you to consider where in the current Registrar General Act, I am talking about clauses 5 and 6, you and I and members of the public can now go the Registrar General's office and with the payment of a fee as prescribed under 5 and 6 in the Schedule, we can access any deed of trust? Why is the Attorney General, in 2020, after almost one hundred years— Madam President, may I advise again that this Act called the Registrar General Act came into effect and existence in 1921?—almost one hundred years ago and our people from that period to now, as we speak, have access to deeds of trust. So almost for one hundred years upon the payment of a fee we could go to the Registrar General's office and have access to deeds, trust deeds or deeds of trust but we are being told today, Madam President, that the public under the amendment, Madam President, and the amendment is very clear. The amendment says, Madam President, that in clause 3 of the legislation, that:

“...The Register General shall, in addition to the indexes under subsection (1),”—which is now 8—“keep a separate index for all instruments of trusts registered under the Registration of Deeds Act which shall not be open to the

public and which may only be accessed by—”

—the following individuals.

“the Director of the Financial Intelligence Unit...

a Member of the police service of the rank of superintendent...

the Chairman of the Board of Inland Revenue;”

—as well as an—

“order of a court.”

Why would we want to deny the people of Trinidad and Tobago access to the trust of an individual? Why would we want to do that? When over one hundred years, 1921 when this Act came into being, we could have paid a fee and accessed a trust deed, because that will assist our country in dealing with transparency and accountability and fraud and corruption. What does the Government have to hide? Why is the Government seeking to deny access to the population of our country to this important fundamental democratic right, the access to information? Why? That is the oxygen of democracy; information. Why do you want to deny us that?

Madam President, I am very disturbed about this development and I am calling on the Government, through the Attorney General, to back back, to back back on this decision. Madam President, I want to join with the Attorney General on this matter because I agree with the Attorney General that there are people in this society who are using trust deeds in order to deny the people of this county their just dues in terms of stamp duties, and the Attorney General of our country who was a former attorney in private practice would be familiar with this particular practice. I do not want to expose anybody here today but I can tell you I have evidence of this practice involving high ranking people in this society, Madam

President, who have used the trust deed as a method, as a technique, in order to deny the citizens the right of proper stamp duty. And that is why when I refer to stamp duty, we are amending the Stamp Duty Act in order to make it more expensive for those persons who engage in fraudulent activities, who falsify documents in an effort not to pay taxes to this country. Madam President, that is a very serious matter.

Madam President, I am aware of a situation and I will not call names, but I have the names of these people, where a fraudulent act was committed against the people of Trinidad and Tobago using the same stamp duty and using the deed of trust. Madam President, land was transferred amounting to three lots located at an unknown number on Picton Street in Port of Spain from a company, I researched the company. The name of the company is Canon. And this company transferred three lots of land, Canon, to a company called Belgrave Properties. Madam President, would you believe that Canon bought these three lots of lands from Century Janitorial Services Limited for \$3 million. Janitorial Services bought it then for one point something million and they bought that for \$3 million. Madam President, would you believe that this same Canon Company sold to themselves, they created a company called Belgrave Properties, and they sold the land 12 years later. They bought it in 1999/2000, and in 2012 they create a company called Belgrave Properties and you know what they did? They sold themselves the three lots of land that they bought for \$3 million, you know how much?—for \$1.75 million. This company called Canon sold to itself, created a company called Belgrave Properties, for \$3 million, and sold it to Belgrave for \$1.7 million. That is what the AG is talking about. Because by doing that they have denied the public

and the citizens of this country stamp duties, Madam President. That property that they sold for \$1.7 million was valued at over \$12 million, over \$12 million, and they sold that property. And you know who bought that property, Madam President? You know who bought that property for \$1.75 million? Another high-ranking individual in this Government.

Madam President, I am not telling tales out of school. You can go in the registry right now and see who are the new owners of Belgrave Properties. And you have over 60 apartments being constructed right now on Picton Street. And Madam President, we are being told—if we did not have access to the registry to get the trust deeds, how would I be able to tell you this today, Madam President?—that there are people who are using the trust deed in an effort to deny the country revenue, to engage in fraud, to engage in money laundering in this country and the Attorney General should be investigating. In fact, this is a matter for the police. The police should be involved in this matter because the Attorney General is aware of the individuals who are involved in this transaction.

Madam President: Sen. Mark, I do not think that you can say that. I think you have to withdraw that statement and—

Sen. W. Mark: Okay, let me withdraw it.

Madam President: Yes, and continue.

Sen. W. Mark: I am sorry, I apologize. What I can tell you, Madam President, is that it is amazing how these things are taking place in our country and we have an Attorney General who I could only say is not au courant with what is going on here, or either he is aware of what is going on here, and I want to know, Madam President, is the Government seeking to cover up? Is the Government seeking to

deny? Is the Government attempting to hide those elements that are using trust deeds in an effort to deny us stamp duties? Is that the objective why the Government is saying we must not have any access to trust deeds in this country? Madam President, it goes on. It goes on. And I believe that the Ministry of Finance of this country needs to come and tell us whether he is aware of a company called Belgrave Properties. We would like the Minister of Finance to tell us this. We would like the Minister of Finance to tell this country, Madam President, and this Senate, whether he bought a property for \$1.7 million when that property was worth \$12 million, and deny the country endless stamp duties? These are matters that we want to get clarified. I cast no aspersions. All I am concerned about is, like the Attorney General, we want to root out fraud, we want to root out money laundering, we want to get our just dues that are owed to the people of Trinidad and Tobago, and we need to get these people who are involved fully exposed, and the police, the Commissioner of Police, should be involved in this land fraud transaction where we have been denied millions of dollars, if not hundreds of thousands of dollars in stamp duties, Madam President.

Madam President, you know, they always talk about the Mohicans, *The Last of the Mohicans*? Madam President, this question about the index of trust, we have to be very clear on what we are doing. Because this thing is the tie, Madam President, to a situation; another example. And again, Madam President, if I did not have access as a citizen of this country to go to the Registrar General's office to assess these trust deeds, how would I be able to share this information with you today? And you are telling me, through the Attorney General, in 2020, after one hundred years, that you are going to deny me and the 1.4 million people of this

country access to trust deeds, when you know, Madam President, that fraud is being committed in this country and all kind of money laundering is taking place? This is wrong, Madam President.

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

Sen. W. Mark: Madam President, I am closing. Because as I said, I cannot deal with everything today, but I zero in on something that touches the hearts and minds and soul of the people, because right now we do not have money. We are crying out for money and finance and revenues. And Madam President, there are people who are cheating, "tiefing", denying, undermining our stream of income.

Madam President, let me in give you a classic in closing. You are talking about the Mohicans? I want to deal with the Mohicans. Madam President, there is a building rented by the Defence Force for three years. That building, Madam President, cost the taxpayers close to \$600,000 a month in this country. I have the name of the owner. I would not call the owner. But it was sold, Madam President, a short while ago. But you know it was sold to another company that is well-known in the prisons business, transporting prisoners. They transferred that property, Madam President. Do you know how, Madam President? Through a deed of trust. Through a deed of trust it went to that person's company. And do you know what happened? "Dey eh pay stamp duties." Or if they paid stamp duty, it was next to nothing. Because, just like how Canon transferred to Belgrave, and "dey eh pay nothing, is de same way this company transferred to another company and dey eh pay no stamp duties", or they paid next to nothing.

But, Madam President, you are coming here today, as the Attorney General, who is supposed to be the guardian of the public interest, and telling us that my

fundamental human right which is enshrined in the Constitution under the section that deals with freedom of expression and thought that I do not have any right from today, when this Bill is passed, to access information under trust through the Registrar General's office? So why are you creating a secret society?

So Madam President, only a few people who are engaged in this dirty kind of transaction, they are now going to be given protection by the Parliament of this country, because the Parliament of this country is going to pass legislation that will deny even lawyers, even the Attorney General, when he goes back into private practice shortly will not be able to access deeds of trust because he is a member of the public. Only four individuals, including the court, would have that right. That is wrong.

Madam President, I call on the Attorney General not to proceed with this amendment that it going to deny the public access to information on deeds of trust. It must remain as it is, open and available to the public. I have many more things to say but I am awaiting the campaign to deal with this matter. I have names to call, but I know, Madam President, you will not permit me to call names in this Parliament. I can do it on the public platform. But it is too much for the poor people of this country and the AG must take action. The Commissioner of Police must take action, and the Attorney General must withdraw that offensive, obnoxious, insulting provision or clause that is going to deny the public access to information, which is my fundamental human right, Madam President.

Madam President, I could say much more, but I know that my time is up. I will get an opportunity to speak on another matter very shortly and at this time, I want to thank you for giving me the opportunity to deal with this matter. Thank

you very much, Madam President.

Sen. Charrise Seepersad: Madam President, thank you for the opportunity to contribute on the Bill, an Act to amend the Registrar General Act, the Registration of Deeds Act, the Conveyancing and Law of Property Tax, the Real Property Act, the Stamp Duty Act, and the Registration of Title to Land Act, 2020.

Madam President, the Explanatory Notes of the Bill address the issues with respect to prevent fraudulent land transactions; two, make legal arrangements and the beneficial ownership with respect to land or property transparent; and three, comply with international requirements under Recommendation 25 and Immediate Outcomes 5 of the Financial Action Task Force Recommendations.

While I understand the amendments are critical in order to strengthen the existing laws as they relate to properties transactions, I agree with the need for, one, compliance with the international requirements under Recommendation 25 and Immediate Outcomes 5 of the Financial Task Force Recommendations as shown in clause 3(1) of the Bill, that is the amendment to the Registrar General Act; the implementation of the closed index of instruments of express trust will ensure compliance with these international requirements. The index is expected to have a high degree of confidentiality, which I support, since it will only be accessible by the Financial Intelligence Unit, the Fraud Investigation Division of the police service, the Board of Inland Revenue and the court. And the index will permit the analysis, investigation and the prosecution of financial crimes.

Two, clause 4 of the Bill deals with the scrutiny by the Registrar General's Department, of persons who can present deeds and other documents for registration. These persons have to be authorized by an attorney-at-law who is

registered with the Financial Intelligence Unit and has a valid practising certificate issued under section 23 of the Legal Profession Act. Madam President, this measure is essential to mitigate fraud in land matters.

Madam President, I now come to the office of the Registrar General's Department. From my research, I understand that the primary function of the Registrar General's Department is to maintain the records of the registry and to operate two systems, one, deeds registered under Real Property Ordinance, the RPO; and two, deeds registered under the common law. The amendments proposed in the Bill require the role of Registrar General's Department to be expanded and they would have some quasi-judicial authority.

If this expanded role is incorrectly or negligently played by the Registrar General or not played at all, parties can suffer, potentially suffer, losses. So my concern is whether the Registrar General is adequately staffed and resourced to facilitate this requirement which may also include liabilities for losses incurred by the parties. I know that the Registrar General's Department is presently woefully under resourced. Most of the staff are on short-term contracts and they are not even adequately trained to deal with the current registration system, so they can hardly cope with the current demands asked of them.

Madam President, what will be the situation when the department is required to deal with a large volume of conveyancing documents, all of which must be registered, I agree electronically, but in a timely manner, as provided in clause 15 of the Bill? Now I understand the electronic filing system, which is the Property Real Estate Business Solution, is going to be implemented and is not in place, but however, people still need to be properly trained to deal with the electronically

filed documents.

With respect to Tobago, I am not aware of any provisions to address the existing difficulties with property title searches in Tobago. This Bill, in my opinion, will further complicate conveyancing in Tobago. I hope that consideration will be given to deal with the peculiar issues with conveyancing matters. Madam President, why not assist those who own land, but have no legal title, to rectify this unsatisfactory situation instead of complicating it?

Now, I have had some experience in some of these matters and in my view, the process proposed by the amendments in this Bill will result in making the process of buying, selling and leasing properties more complex, involve a rigid and longer process. However, in many common law jurisdictions, they have progressively simplified and modernized land law; countries such as Jamaica, Canada, England and Ireland. So the Bill contemplates title passing to the new owner only upon registration of the deed, and not when the purchase price is received by the vendor. Many impediments can occur between the receipt of the purchase price and the final registration. For example, we have frequent delays by the Board of Inland Revenue in accepting the purchase price as the market value of the property and that is used to calculate stamp duty, or, delay the final registration of the deed by the Registrar General because she requires some information or explanation about whatever is presented to her. Now, during that time the vendor has received the entire purchase price which the bank may have financed, so no title of the property has been acquired by the purchaser and by extension, the bank or financial institution.

The amendments proposed will invariably result in increased cost for the

sale purchase of property. Attorney's fees and various disbursements will escalate because of the requirements to register and file a significant increased number of documents for the sale and purchase of property to be satisfied. This will cause hardship, particularly to those persons who wish to purchase lower and middle-cost properties. Madam President, it may even result in the increase in the real estate prices under this scenario.

Compulsory registration is also required for the contract for sale, as well as for all variations in the terms of the contract. This is in clause 15, and things that this covers such as changes in the names of the parties, and extensions of time to complete the transaction. So further, while parties are currently able to privately negotiate an agreement for sale of land, the Bill makes it mandatory that the contract must be first prepared by an attorney-at-law and registered with the Registrar General's Department within a month of execution. Failing to do this, severe penalties will be imposed for non-compliance.

While the Registrar General is empowered to extend the time, there will also be an additional cost. The attorney's administrative cost of doing business also will increase. They may be liable for fees and for fines under section 3(4)(d). Insurance providers may also increase indemnity insurance premiums because of the additional risk now associated with conveyancing and leasing matters.

Madam President, with respect to confidentiality and the need to register agreements for sale, parties, including companies, to property purchase and sale transaction may wish to keep these transactions confidential until the sale purchase is completed. Given the need for competitive advantage by businesses, unwarranted disclosure of intent can negatively impact the viability of transactions,

and by extension, projects. Also the amendments could potentially adversely affect Trinidad and Tobago's ranking in the Ease of Doing Business Index. We are currently ranked 105 out of 190 countries. A further degradation in this index is really not a welcome change for the country, especially in these challenging economic times.

When we look at anti-money laundering, counter-terrorism financing and the FIU legislation, the proposed compulsory registration of a beneficial interest in real estate is far more reaching than any other jurisdiction to comply with FATF Recommendations.

The existing FIU legislation is comprehensive and is really adequate to monitor and supervise fraudulent transactions. For example, all attorneys, real estate agents, practitioners, and financial institutions have to be registered with the FIU who supervises these entities. If it is proven otherwise, then the legislation that really deserves to be reviewed is the FIU legislation and not the conveyancing laws per se.

With regard to the constitutional right to property, in my view, the harsh provisions contained in the Bill interferes with parties' freedom to engage in the sale and purchase of real estate, puts a restriction on a person, whether it is an individual or business, enjoyment of property enshrined in the Constitution, and also, Madam President, severely restricts the owner's ability to dispose of property.

Given the centuries of jurisprudence and precedence which have developed our country's land laws, coupled with the possible encroachment on the constitutional right to property, I propose that the legislation be reviewed by an independent commission. Now, I am not suggesting that this be a long drawn-out

process. This could be—you can give them a deadline of say June 30th but the commission must be appropriately resourced and given the necessary time to carefully study the impact of this Bill on the existing laws. The commission should be charged with making the recommendation to changes and restricted to the objectives identified in the Explanatory Notes to the Bill, Madam President, that is, address fraudulent land transactions; make legal arrangements and beneficial ownership, that is, with respect to property matters, transparency; three, comply with international requirement under Recommendation 25 and Immediate Outcomes 5 of the Financial Task Force Recommendations.

Thank you, Madam President.

Sen. Anthony Vieira: Thank you, Madam President. Madam President, let me say that originally when this Bill was brought I was dead set against it. I had serious concerns, among other things, the additional cost that I thought the new system might impose on purchasers. I, like Sen. Seepersad, was concerned about the effect public disclosure could have on commercial deals. I was very concerned about the increased risks and vulnerabilities that could be imposed on conveyancers, and I was very concerned about the heavy burden being imposed on the Registrar General's office, particularly bearing in mind that that office does not have the capabilities that the Bill, as originally passed, would have put on the Registrar General because under the original version, the Registrar General would have been exercising a quasi-judicial function.

Happily, the Attorney General has not been tone deaf to the remonstrations and concerns raised by lawyers like myself and the Law Association. He has circulated a revised draft which I think is a step in the right direction, and has

alleviated many of those concerns. So, under the new version, certainly I think fraud is being effectively dealt with. That will rein in the scourge of white collar crime that is occurring in real property transactions. It will also go a long way to conquering anti-terrorism, money laundering. The Bill does provide an antidote in those areas. The Bill, I think, will also meet FATF requirements.

He has reduced the crippling fines that were originally there to, I think, a reasonable level, which would be half of the prescribed fee. And he has restored the Registrar General's functions to their original scope, which is essentially about making sure that the formalities are met and towards maintaining records.

So, I do think we have come far. And I do think that lawyers are being effectively regulated under the FIU Regulations, the FOR Regulations, also in private practice because lawyers can be sued when they are negligent or do wrong things. But this just makes the ecosystem more sufficient because lawyers will now be further regulated in the practice of real property.

Now to be fair, the Attorney General was right. The legal profession has not always been the fastest sprinter out of the sprinter's block when it comes to the passing of laws. I recall the old Companies Ordinance, we sat on the fence for that one for many, many years for all the wrong reasons. I recall one practitioner even saying, "Why amend the law? It would mean I will have to buy some new text books." We were not very quick when it came to the alternate dispute resolution procedures. That has come about now but it took some time in the making. Similarly with the Civil Proceedings Rules, the work reforms are out there early o'clock, but we seemed to be going in the right direction and then everywhere else in the Caribbean overtook us and we were very late in accepting the CPR, and yet,

the CPR today is one of the best things that we have. And similarly with the Madrid protocol. You know, its lawyers who have been holding back on the Madrid protocol treaty being joined.

So, sometimes the Attorney General does need to push and prod to get the Law Association to come along, but in this instance, I have to say that the Law Association's concerns did have validity. Now, I have been—conveyancing is not my main area of practice. I have done some conveyancing and I have had some difficulty trying to peer into the future to see how these new amendments will impact the profession the practice of conveyancing. I have been trying to imagine what are the potential pitfalls, whether it is against clients or against attorneys that would need to be guarded against and whether the substantive law in relation to conveyancing is also being impacted.

I have to say I am not quite sure where I stand here. I still have some concerns. Every agreement for sale being registered within a certain time, otherwise the extensions from the Registrar General having to be sought. The notification provisions, if an agreement ends, for example, how is that going to play out in practice? The biggest concern for me was the question of title. When would title pass? Well, the hon. Attorney General made clear in his contribution that title remains, it will pass on execution but you must now register the instrument. I have to say that did not leap at me. That was one of the things I was wrestling with; whether title was now going to pass on registration and not at execution, and how would that impact completion. Because, at the end of the day, conveyancing is really about the transfer of legal title of real property from one person to another.

I am not there yet, and I am happy that the Attorney General is still continuing discussions with the Law Association. It is important to bear in mind that when it comes to conveyancing, the legal profession has a monopoly. Conveyancing can only be done by lawyers. It will be lawyers who will operationalize this legislation and it is lawyers who also stand most to be affected. So, it is very important that in moving forward with this legislation, the Attorney General should have the imprimatur of the Law Association.

Before I conclude, just to say a couple things about Sen. Mark's contribution. I understand the concern about trust, but the fact is, the law does allow for secret trust, usually in the context of somebody leaving under their will a secret trust for the provision of unnamed beneficiaries. That is entirely legitimate. It is not always for a sinister purpose and because of that, I am comfortable with just law enforcement having access to that sort of information because people have a right to certain privacy. Also, I mean lawyers, we do all the time, we come up with ways and means in which we can legitimately avoid stamp duty. So, for example, when it comes to the sale of real property, that can also be achieved by a company owning the real property and instead of the property being sold, what you have is just a sale of shares; tremendous saving in stamp duty. Again, legitimate.

I think we all are hoping to see a modern conveyancing system, a more user-friendly conveyancing system. I think that this legislation is a step in the right to tackling fraud, to meeting our FATF requirements, but I am hopeful that between now and when we conclude the debate and committee stage, that we will in fact have a document that all stakeholders are happy and comfortable with, and I thank you.

Misc. Prov. (Registrar. Gen., Reg. of Deeds,
Conveyancing & Law of Property, Real Property,
Stamp Duty & Reg. of Title to Land) Bill, 2020
Sen. Dr. Dillon Remy

2020.06.02

Sen. Dr. Maria Dillon-Remy: Madam President, I thank you for the opportunity to be able to contribute to this debate on the Miscellaneous Provisions (Registrar General, Registration of Deeds, Conveyancing and Law of Property, Real Property, Stamp Duty and Registration of Title to Land) Bill, 2020.

In the Explanatory Notes, the Bill purports to deal with fraud, with land dealing, making provisions for transparency in respect of legal arrangements and beneficial ownership, and meeting our international requirements under the Recommendation 25 and Immediate Outcomes 5 under the Financial Action Task Force Recommendation.

12.00 noon

Madam President, regarding the first aim of preventing fraud, the Attorney General has talked about the fact that this could be estimated to be about \$22.5 billion a year in land transactions that could be related to fraudulent activity. So, I am in agreement with some of the changes that have been put in this Bill to address unscrupulous practices, be it from the attorneys, or from landowners, or from the persons working within the Registrar General's Department, all people who are wishing to deceive the public. I do agree that some of the changes that are put in this Bill will address some of those issues related to fraud. It is not new, fraud is not new and I agree that it needs a remedy.

In fact, I recall that about 20 years ago, a friend of mine was involved in purchasing a piece of property from the bank in an issue of foreclosure. It was supposed to be nine acres of land, it was in Tobago and when they checked, it was found that this land that was nine acres and mortgaged to the bank, when the check was made, that land was sold twice. So, nine acres was mortgaged to the bank but a

three-acre piece was already cut off and sold to somebody else and that registration of the three-acre piece was registered before, and as a result, this transaction had to be adjusted.

So, the issues related to fraud is real and I hope that the Attorney General and the crafters of this legislation ensure, however, that the remedy that is being put in place here today, is better than the disease. The reason I am saying that, if you provide a cure that is worse and does not bring the desired outcome, then Attorney General, it would put us in a worse situation.

Madam President, I am very mindful that change is difficult and as the Attorney General said, this change from this Bill is going to be far reaching in terms of how people currently practise, in terms of dealing with lands, conveyancing, et cetera, registration. And a concern that I have is that there must be public education, significant public education in terms of not just the lawyers who have been—or some of them have had an opportunity to liaise with the Attorney General's Department, those that are involved in the Law Association, but many of them right now are not involved, and they do not have any understanding of how these changes are going to affect them. So, the lawyers, the land developers and ordinary people wishing to be involved in land transactions, selling lands, or purchasing lands, that a massive education project would be needed to ensure that the far-reaching effects of this Bill is known.

Clause 3(ii), (1A) of the Bill where:

“The Registrar General...”—is required to—“(1), keep a separate index for all instruments of trusts...”

Like Sen. Mark, I too was concerned as to why this was private or restricted,

whereas the others were accessible to the public. But I am not sure if the Attorney General would probably just want to deal with that again.

Does the Registrar General also have an obligation, hon. Attorney General, to report suspicious activity? Or is it that the Registrar General, if they should just refuse registration in case they see something untoward? In other words, a piece of land is registered already for sale, there is an agreement already registered and when someone comes about to register that—registration for that same piece of land, it would be seen that there is a registration already there for that. Is the Registrar General only empowered to refuse that registration? Or is the Registrar General also—does the Registrar General have the power to also report to the FIU or whoever else about transactions that may be seemingly untoward.

My main point though, Madam President, is in relation to clause 4 of the Bill that amends the Registration of Deeds Act. This area, in terms of deeds, goes deep into the—will deeply affect what goes on in Tobago. I quote from an article taken from the website, *www.terrainstitute.org*. The article is entitled, “The Trinidad and Tobago Experience in Land Policy Administration and Management” by one Asad Mohammed of UWI:

“The government of Trinidad and Tobago”—I quote—“has recently completed a comprehensive Land use Planning and Administration Technical Assistance Programme...funded by the...”—IADB—“This programme was completed approximately a decade after another comprehensive sectoral analysis established the programmatic framework for land related reform.”

And he said:

“The previous effort was itself conducted some ten years”—earlier—“after major legislative review, which resulted in a comprehensive set of land legislature being passed in the parliament.”

So the Attorney General talks about 2007 as far as this particular suite of laws are concerned, however, this goes back to even further. And I quote again from the article:

“It is fair to say that the analysis, recommendations and programmatic framework coming out of these studies have not been matched by implementation. While there remain inadequate or confused areas of analysis and policy or programmatic solution, the cause for this gap between recommendation and implementation lies mostly outside the realms of technical issues.

The 1980’s comprehensive Land Law...package was abandoned with some justification, but has been replaced by an ad hoc legislative agenda.”

And I am asking the Attorney General, specifically as it relates to land issues in Tobago, this Bill does not necessarily deal with those issues. It actually makes it more complex as far as people in Tobago are concerned. There are already issues related to not having proper land titles for many different reasons. There was an extensive discussion that was undertaken in the year 2006. There was a report by the Tobago House of Assembly where they had a special committee appointed to make recommendations for the amendment of the Real Property Ordinance and judges guidelines, with a view to finding a solution to pressing problems of land titles in Tobago. This committee was chaired by former Independent Senator, Dr. Eastlyn Mc Kenzie, and included the well-known lawyer, Mr.—now deceased—

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Eric Taylor. The report was dated to the House of Assembly, it was dated August 30, 2006. One recommendation at that committee was that they strongly recommend, I quote that:

The Tobago sub-registry be given a home to function effectively, efficiently and even on its own, without having to resort to Trinidad for simple services relating to land matters under the Real Property Ordinance.

Madam President, some of these areas were addressed because the Registrar General's office in Tobago now is better positioned, it is better staffed, et cetera, but the issue of having to come to Trinidad to deal with deeds under the RPO remains, and there are stories of clerks who come to Trinidad, have issues when they get to the Registrar General's office, have to come back to Tobago, et cetera. And Attorney General, it is the concern of persons in Tobago that these changes are going to significantly affect dealing with land issues in Tobago and I would like to have those things considered.

It was also suggested by someone, that:

There was need to have a registration of titles Act to address the regulation of land holding in Tobago, and that this Act would allow for adjudication of parcels of land in Tobago and that they would have a special court established to deal with disputes that the adjudicator cannot handle.

These are things that have been discussed before. I am not sure how relevant they are now, Attorney General, but I would like you to consider it.

Madam President, while this Bill considers welcome changes that will address for fraudulent activities in terms of registration not now of deeds, but registration of agreements, it deals that lawyers must be registered with the FIU

and therefore you are having more control over what they do. I am asking the Attorney General to please ensure that the age old issues with land titles in Tobago are addressed and not made more complex by this new legislation. Madam President, I thank you. [*Desk thumping*]

Madam President: Minister in the Ministry of Finance.

The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Madam President, thank you for allowing me to participate in this very important debate on the Act to amend the Registrar General Act and several other miscellaneous bits of legislation. Madam President, as a student of tax law ages ago, the first case that I cut my teeth on was a case called the *Inland Revenue Commissioners v Duke of Westminster*, which was a 1935 case which established a very important principle and that is, that tax law is to be strictly interpreted so that an individual ought not to be deprived of his property unless the tax authority could bring his transaction squarely within the provisions of the legislation. Because that created avenues for avoidance, a lot of tax legislation since that time have introduced anti-avoidance provisions. So we have anti-avoidance provisions in the income tax legislation, the corporation tax legislation, the petroleum taxes legislation, the VAT legislation, but there is no anti-avoidance provision in the stamp duty legislation.

So, stamp duty legislation which essentially imposes stamp duty on documents in the absence of anti-avoidance legislation, it means that if the instrument does not fall squarely within the ambit of those categories of instruments brought into the charge, then no stamp duty is imposed and that opens the door for avoidance from stamp duty. So that, what we have seen is a practice

developing and growing of persons advised by attorneys at law or other practitioners to enter into agreements for sale of property but never execute those, or finalize, or bring to close those transactions by entering into deeds of registration.

So, a contract for sale of property does not have to be registered and does not attract stamp duty, a deed of transfer, a deed of conveyance does. So if you enter into a transaction for a conveyance of property that you never finalized by deed, then you are never required to pay the stamp duty and you are not breaking the stamp duty law by doing that. And so, a lot of avoidance occurred as a result of this approach. So, the tax authority, at the moment, is not allowed to look behind the document to determine as well what is the actual nature of the transaction. They have to look at what is written in the document and apply that to the stamp duty legislation. Either it is caught or it is not, either it is at rate A or it is at rate B. So those lacunas in the stamp duty legislation have led to a lot of loss of stamp duty for the Board of Inland Revenue.

So, for example, if we think back to maybe a decade ago when people were flipping properties like it was going out of style. You would have One Woodbrook Place, for example, you would enter into an agreement to purchase a unit at One Woodbrook Place and sell that within six months, and you keep doing that, that would have resulted not only in significant loss of stamp duty because a lot of them may not have been translated into deeds of conveyance which attracted stamp duty, but it would also have led to a loss of income tax/corporation tax. Because in that legislation, people are required to account for tax on short-term capital gains. So, if you buy and sell real estate within 12 months, any gain that you make on that real

estate would attract income tax or corporation tax depending on whether you are an individual or a company. But if there is no requirement to register those transactions, and therefore they never come to the attention of the tax authority, all those taxes would be lost. It would be interesting to do an assessment of how much tax was lost during that period when we were flipping property like crazy, to the Inland Revenue to the citizens of Trinidad and Tobago because of this.

This legislation that the Attorney General is seeking to pass would address that because not only does it require you to register a contract for the sale of property, but it also requires you, within 12 months, to register the deed for that transfer. So it, within short order, brings to the attention of the tax authority what transactions have occurred in property and therefore, to allow him or her to assess whether any losses have occurred, and whether they need to go after these people for short-term capital gains tax for stamp duty. So this is a very important key in the attempt to reduce or mitigate stamp duty avoidance and other tax avoidance in this country. The provisions would certainly operate to mitigate those transactions.

In considering the importance of this, one needs to recognize that Trinidad and Tobago is one of the few countries in the world that does not impose a tax on property per se. We do not really have a capital gains tax, we charge income tax on short-term capital gains, but if you own property and you sell it 13 months after you purchased it, there is absolutely no tax on that. We no longer—decades ago we had a tax, an estate duty tax which allowed the country to recover some taxes on the death of a person. That was abolished in the 1980s or 90s and therefore, the only tax that we have, in respect of property, is stamp duty. A rate is applied on the transfer of property and that rate varies depending on whether it is residential or

commercial, and of course, on the value of the property, but this is the only tax we have. We do not have any other taxes on property and it is important for us to recognize that as a society seeking to develop and grow, we need to ensure that all the avenues that we have in place to collect taxes legitimately from the citizens of the country are properly collected. And this bit of legislation, as we are seeking to pass today, will allow us to do that.

Perhaps of more significance than the tax issues than the ability to mitigate the avoidance of stamp duty is the impact that this bit of legislation will have in our fight against white collar crime, which we are seeking in various ways to get under control. So, look for example at the demonetization exercise that we went through in December. An individual with cash that was inexplicable, he was not able to provide a legitimate explanation for it, could have gone to a businessman who can explain millions of dollars in cash, and say to him, "Let me purchase a property from you. I will give you the cash, which I cannot explain. You can explain the cash to the bank so they will accept it and at some time in the future, we would reverse this transaction." In the absence of the requirement to register that agreement and to register the subsequent deed that may completely escape the oversight of the authorities, a provision like this which not only applies to future transactions but also to transactions which occurred prior to the date of proclamation, but which are required to be registered within 12 months of that date, will also give the authority some measure of opportunity, some opportunity to look at a transaction like that, identify a transaction like that, and take the appropriate action.

So not only as I said, are we looking at tax avoidance, but were also looking

at white collar crime. And that is only one example of the various ways in which property can be used and has been used in white collar crime; anti-terrorism, money laundering, these are all areas where property is used because property is one of those assets that can be easily used to hide behind the proceeds from illegal activity. So requiring individuals and companies who get involved in land transactions, to register these transactions, narrows the door for that abuse. So, in crafting the legislation, the Attorney General, assisted by the LRC and other members of his team, have designed several solutions to track these—to treat with these issues. For example, in clause 15, it requires all agreements for sale to be registered. This is absolutely new.

Clause 4, which proposes an amendment introducing a 15A, requires the persons drafting the document to reflect all the relevant details in that document. What we have seen happen is that we have had agreements for sales that say one thing, deeds of conveyance that say something completely different and that too allows the individuals involved in the transaction to avoid taxes. For example, there is a case that was fairly widely circulated information and the case was fairly widely circulated a couple years ago, where there was an agreement for sale for property of, let us say, \$15 million but before the Inland Revenue was a deed that said the value of the property was \$50,000 and so, the stamp duty was significantly lower than what the agreement reflected. When you now have a requirement to not only register the agreement and register the deed within short order, but also ensure consistency in the terms that allow you to avoid situations like those that we have experienced in the past.

The proposed section 15F requires the register— again that the deed and the

agreement be similar in terms and that they be registered within the year. Section 15F again, requires the attorney-at-law— it puts an onus on the attorney-at-law who is involved in the drafting of these documents to be registered with the FIA, to be an attorney in good standing. And therefore, that closes the gap with the bit of legislation that we brought some time ago requiring attorneys at law to register with the FIA. So, it is—you have to look at the whole umbrella of legislation that the Attorney General and his team have carefully crafted to treat with white collar crime which is a significant scourge in Trinidad and Tobago, which is depriving the formal economy of billions of dollars and therefore depriving the citizens of Trinidad and Tobago of the benefit of these funds. And so, this is one element of that whole umbrella of legislation seeking to deal with these issues, and it is a critical part of it and we need to add it to the toolbox so that we can complete the cycle and therefore properly deal with these issues.

The proposed section 15D require the terms of the deed to be consistent. The proposed section 15I is the section that requires all deeds that have been executed in the past but that had not yet been registered, to be registered within 12 months of proclamation. And that is important to bring us to a level playing field to identify any past issues so we can deal with those, and to ensure that going forward we have a system that is consistently administered throughout.

Sen. Mark went on ad nauseam about this, depriving people of their right to information. Now, I will allow the Attorney General to deal with this more specifically but what I will say is that this legislation is not removing any right to information that currently exists. What it is saying that information that was not—

Madam President: Minister, you have five more minutes.

Sen. The Hon. A. West: Thank you, Madam President. Information that is not currently on the register needs to be put on the register. Certain elements of that information will be available to the public but certain elements of the information which we recognize as private and confidential, and we are always at pains to protect people's financial information because they consider that their fundamental right to protection of that information, will be only accessible to certain people who are looking to ensure that things are being properly regulated and that no criminal activity is taking place, no tax avoidance is takings place.

So that is why it is restricted to the Director of the FIU, to a Superintendent of Police who is engaged in an investigation, to the Chairman of the Board of Inland Revenue, or by order of the court. We are not depriving any citizen of Trinidad and Tobago of any right of access to information which they currently have. One, because that information does not currently exist in a public space and two, they therefore do not currently have any right to that information.

And finally, what we are doing is increasing the penalties that currently exist in certain spheres for persons who act in a way to defraud the Government of stamp duty and in other ways to enter into criminal activity or assist in the action of understating, hiding activity and so on. So this, as I said, bit of legislation, briefly, Madam President, does in my view two things: it allows us to treat with stamp duty avoidance which is a huge issue and hopefully bring stamp duty receipts from the region of \$400 million where it is now, to much closer to a billion dollars where it probably would be if we were properly declaring all of the transactions which we ought to declare, and at least as important and probably more important, it allows us to more effectively treat with white collar criminal

activity as it involves land and trust.

And so, Madam President, this bit of legislation would allow us to close that loop and allow us, going forward, to properly tackle white collar crime. Madam President, I thank you very much.

12.30 p.m.

Sen. Sean Sobers: Thank you, Madam President, for recognizing me this morning to participate in the debate. Now, I would like to begin, having listened to Senator the hon.—her name escapes me.

Madam President: Minister in the Ministry of Finance.

Sen. S. Sobers: Correct, yes please. I do apologize, I do not know. And she is so nice. But what I wanted to touch on is the fact that in terms of BIR, I have heard a lot of persons speaking about issues regarding fraud that exists with respect to stamp duty and escaping stamp duty. Now, I would declare just like Sen. Vieira indicated, that I am not a conveyancer by profession. I am an attorney. I have dabbled well in terms of conveyancing, both in Trinidad and also in Guyana as well too. But my understanding with respect to fraudulent activity related to stamp duty and BIR, is really when it comes to the production of the valuation documentation that accompanies the deed.

So, I listened and I tried to follow where some level of fraudulent activity would take place with respect to the non-registration of the sales agreements. And I know for a fact that in some instances what occurs is that when the sale agreement is actually prepared, let us say the agreed, the actual agreed purchase price for the property may be \$5 million, the agreement would reflect a figure of about \$3 million in an attempt to escape stamp duty penalties and then the extra \$2 million

may be paid on the side. So that even the deed itself when it is presented to stamp duty for BIR purposes, for the calculation of stamp duty, there is a loophole that exists there as well too.

So, when I looked at the Bill and I contemplated whether or not it would treat with some of these issues related to stamp duty, I thought to myself that in terms of that aspect of things, in terms of persons presenting documentation to stamp duty, to BIR for it to be stamped, it does not as it pertains to the valuation itself, the most that would occur if the BIR has a question as it relates to the value of the property, is that they would send it for review and then a government valuator would be appointed who would go and adjudicate over the matter and visit the property.

But in and of itself, there are a lot of other issues regarding to that particular aspect. For example, there are issues related to how the BIR adjudicates over issues with respect to properties that may exist in a quasi-state. For instance, some properties may be both commercial and residential or a property may have been—it is a residential property by all indications, but it is on a main road, and when the property was held by the previous owner, the vendor, which would have been maybe a decade, two decades ago, the zoning by the town and country commission of that particular area has now changed to a commercial setting. But as it pertains to the indications with respect to how the property is constituted at that point in time, it appears residential. Who is to say at that juncture, how that situation should be adjudicated? You would have the BIR indicating well, listen, let us deal with it as a commercial property, the vendor saying—the purchaser saying no, it is not, it is residential in nature, town and country saying well, we have changed the zoning

for that particular area, it is now commercial in nature and then it is a question as to what is the possible or future intention in terms of usage for the property, which would affect stamp duty.

So when we speak about fraudulent activity, that conversation as it pertains to BIR and stamp duty could take us this entire debate. Because in my short time in practice, I have seen all sorts of fraudulent activity taking place at BIR, all, all sorts of fraudulent activity. And I am not entirely comfortable just by simply registering an agreement for sale that it would in fact stamp out that level of fraud that takes place there.

I thought maybe I might have seen a requirement within that section where there is now going to be a list prepared of registered valuers, just like the bank would do it in some instances or the banks do it in all instances, that you cannot just pick any Tom, Dick and Harry valuator and present their documentation that would be taken at face value, that it must be from this approved list. And I think that as well, too, would stamp out a significant amount of fraud that occurs at the BIR when you are coming to deal with stamp duty and documents related as such. So that is my two cents in terms of that particular issue. And I thought it would have been best to raise it because I was still, I mean, I—maybe subsequent to the debate, we could have that discussion and I may be enlightened a bit.

Now, when I first read this Bill, I must admit as I indicated before I am not a conveyancer in the truest sense of the word. And in the initial read of the Bill, I thought to myself, well, we are moving in a direction that is not really objectionable per se, but just like most of the other Senators within the Chamber, I would have been issued with, you know, the comments by the Law Association a

couple of weeks ago and I read them, I juxtaposed them with the Bill itself. And I recognized then that there were some principles, some settled principles of conveyancing that this legislation was now infringing upon.

One of the most outrageous aspects of it was the fact that title was not being passed upon signature or execution but upon registration, which has been amended here in this new incarnation of the Bill.

But the real question, the real meat of the matter is whether or not the Bill in and of itself will totally address fraudulent activity as related with respect to the registration and conveyancing of land in this country. And last I was here, we were dealing with the real estate Bill and I gave an example then, of how easy it is in Trinidad and Tobago for title to pass in a fraudulent way. That there are many matters before our courts in Trinidad, where persons, legitimate title owners, for whatever reason may not have been as they say minding their business with their properties, are now taking bona fide purchasers of property before the court because a fraudulent individual or a person who perpetuated fraud, sold or pretended to act as a vendor for that particular property and sold it to this purchaser. And when I read the Bill that is what I was looking at to see whether or not the Bill addressed that particular issue.

I must say in terms of comparison with what is here, and in my humble opinion, which could be to my detriment with respect to many practitioners in Trinidad and Tobago, I am a fan of the Roman Dutch system that exists in Guyana. I think the process is a bit longer than exists in Trinidad, quite a bit longer. But it is designed in that particular way to eliminate as best as possible issues related to fraudulent transactions.

This particular Bill, by the registration of the agreement for sale, some penalties that could be accrued, for late registration, the ability for the Registrar General's department to adopt—not really quasi-judicial function but a more active role in terms of conveyancing, is quite similar to what exists in Guyana. And you know, later on in my contribution, I will just run through the happenings of that system in Guyana and—but the thing is, it does not in its entirety, mirror the system. And I think based upon that, there are several loopholes that would currently exist.

Is it a building that should be totally disregarded? My humble opinion is no. But what I do believe should happen is that we should take our time and possibly have it committed to a special select committee or just like Sen. Seepersad would have indicated, a committee that could treat with this issue most palatably and aptly for persons concerned because it is a problem that has been far too long existing without proper attempts being paid to it, to arrest this fraudulent situation that exists within our country.

I indicated that in terms of the issue regarding fraud in conveyancing, the biggest problem is that we do not have a system set up—and the Bill does not address it, respectfully—where the actual ownership of properties can be easily located and identified. The Bill would allow for persons to access the registry which I, you know, I have no problem with, they pay a fee, they access the registry, they are able now to see who these owners are. But not any individual could just simply do it. And I think that is one of the biggest problems that exists now.

My humble opinion is that I agree. Either an attorney-at-law or clerk with the proper authorization as the Bill purports, should be the individual accessing the documents or the registry, because it would help limit the level of fraudulent activity that would take place if any individual is able to just simply access those documents. Because upon accessing those documents, the person could then initiate fraud by doubling as the owner of the property, engaging a purchaser to sell the property and going through the process as I indicated on the last occasion of getting a fraudulent identification card, procuring an address document from one of those companies, FLOW, whosoever it may be, and then actually going and engaging and selling the property, sometimes two and three times over, just by simply having the agreement for sale being done, and no requirement at this juncture for having the agreement of sale being registered.

So the fact that the agreement of sale is now going to be registered as it is contemplated here, would help stamp that out, because there is a provision within the legislation—within the proposed legislation, within the Bill that would allow for the Registrar General's department to be able to see if a particular agreement of sale has been registered more than once. And that to many persons who as Sen. Hosein and myself, and the Attorney General would have indicated on the last occasion, who spent the majority of their lives saving to purchase a property and have it vested in their name, it would help stamp out those fraudulent ones amongst us, who would want to sell that property three and four times just by virtue of the agreement for sale.

Because they take a down payment once, they go by Tom, they take a down payment from Tom, they go by Trevor, they take a down payment from Trevor.

And during that period of time because there is no registration required currently, this person takes those down payments, he makes away with it, by the time you finish go through the search process with your lawyer and you are ready to execute, you cannot find this alleged vendor.

That is the position currently right now. And I said it on the last occasion, we have many matters within our court system where persons have gone through that process and even went as far as having the lawyers conduct the searches which they are required to do, take the relevant information from the proposed vendor, ID card, proof of address and everything like that, search the property, bona fide property, good root of title, execute deed, title allegedly passed upon execution and registration and what not. And in this time, the person who sold you the land or the house and land is not the actual owner of the property. What is your redress? You now have to go and find a lawyer; the owner of the property, when he or she becomes aware, to take action against this vendor, this purchaser. So this would help in great measure by the simple registration of the agreement to stamp that out, right.

Now, in terms of—I looked at, and I heard the hon. Attorney General in his presentation with respect to the duties of the attorney to explain to the clients and what not, located on page 25. And I mean, it allows now, there is an obligation for certain things to be disseminated by the attorney-at-law to the client, and there are penalties now imposed if that is not done. I am just thinking as it stands right now, we as attorneys-at-law have to take instructions, and those instructions must be signed by the client.

1.45 p.m.

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

Sen. S. Sobers: Wow. Yes. Thank you, Madam President. So we have to take the instructions, they have to be signed. And, I mean, anybody who goes to law school understands that that is the process flow of information, and if you do not, you could very well end up before the Disciplinary Committee. I am wondering whether or not we are at the stage where we need to have this actually written into legislation for consideration. At wrapping up, we can have that discussion.

Also, in terms of the penalties, I am seeing that there are penalties. The penalties have been cut because before, in the previous incarnation of the Bill, the penalties were quite high. That was an issue I had. But I am thinking—and that is at clause 22—some of the offences that would require these penalties to be paid by the lawyers in terms of non-registration of documents and whatnot, I did not get from the section whether or not there would have been an opportunity to indicate by the lawyer, that this would have been based upon possible instructions by the client.

I would have heard in terms of the submissions by the Attorney General that, you know, in most instances, if you have a document that has been prepared and you have not executed it, it is more than likely that you are going to be involved in fraud. But I am wondering whether or not we should at least have a provision just in case. It may very well be that it is not fraud and, for some reason, there may be a problem with respect to receiving comprehensive instructions and whatnot if the client, for instance, is incapacitated due to, you know. And, you know, in speaking to one or two persons, they have indicated that they still found yes, the agreement for sale—the Bill calls upon all agreements for sales to be done by attorneys-at-law

and no longer can it be done by members of the public. So that there is a bit of an expense that would now have to be borne by members of the public when they actually now have to go out and contract a lawyer to do the agreement for sale.

I am a bit concerned whether or not the Registrar General's Department is able to do what we are asking of them to do because at the beginning of the Bill, it calls upon them to be able to have all these new documents kept and whatever—the widening of the documents and whatever—and I am wondering whether or not they are in a position of readiness, because the majority of the time, just to get a certified copy from the Registrar General's Department takes quite a long time. So now that we are asking them to do more, we have to ensure then that they are properly well-resourced and they are able to treat with those issues.

Now, I do not know how long I have again but I just wanted to take this quick opportunity for consideration by the Attorney General and the Government in terms of what happens in the Roman-Dutch system with respect to the same agreement for sale has to be entered and it has to be registered. There are searches that are done and these searches are done by the lawyers to ensure that there are no encumbrances, good root of title. And there are also other further searches done to ensure that no other agreements have been registered and if they are, there is an application that could be made for termination, variation and an order of priority with respect to those sales agreements.

In terms of the agreement for sale also being registered, there are affidavits that accompany the registration of the agreement for sale. So there is an affidavit prepared by the purchaser and an affidavit also prepared by the vendor just to ensure then what is placed within the contents and the body of the agreement for

sale is, in fact, bona fide, and then there is an instruction subsequent to that that goes out for the transfer of the title to actually be advertised, and that would allow then for all and sundry within the public to know then what is actually taking place—who are the owners of the property that it is actually going to be sold, and if someone has an objection, they have an objection to file that objection all in an effort to have proper transparency. And once there are no objections, it will then go to the transport court— well, the registrar’s court for it to be transferred and that is actually handled by the Registrar’s Department to ensure it is bona fide.

Madam President, at committee stage, we will have a better discussion but I thank you for the opportunity to present. [*Desk thumping*]

Madam President: Hon. Senators, the sitting will now be suspended. We will return at 1.20 p.m. When we return, Sen. Deyalsingh will be the first speaker and I trust, hon. Senators, that when we return to the Chamber at 1.20 p.m. there will be a minimum of 10 Senators in the Chamber.

12.50 p.m.: *Sitting suspended.*

1.20 p.m.: *Sitting resumed.*

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

Mr. Vice- President: Sen. Deyalsingh. [*Desk thumping*]

Sen. Dr. Varma Deyalsingh: Thank you, Mr. Vice-President, for allowing me to partake in this debate and I must say, when I heard the Attorney General’s, you know, opening this discussion he has given a picture of: we need this legislation to fight fraud, we need this legislation to bring to fruition all the other pieces of legislation he has put before us, and I think it is really paramount to us to at least give him some sort of legislation that could help him in his effort, and could help

the country in its effort too. But when he closed his discourse, he actually mentioned a lot of cases where the Law Association did oppose, various pieces of legislation that he brought before, so he listed that. So it came as if the Law Association was really—a lot of things that he brought to the table, there was always that opposition, and they may have their concerns and that is valid. But, Mr. Vice-President, I must say, I also have to give a little unfortunate series of events that occurred recently.

On May 07, 2020, I got an email that actually invited me to partake in one of those Zoom meetings with the Law Association and this email actually suggested that Ms. Khisha Peterkin was actually written to—the Procedural Clerk—and she was given the opinion that all Senators would be invited to partake in the discussions on this same Bill. Lo and behold, the meeting was on Saturday and only on Monday the Attorney General had sent some letters giving some effects that: “Hey, you know, not all Senators were invited and even Ms. Khisha Peterkin did not even get that email to send to us.”

So it appears that it was a little—there were a series of emails between the Law Association and the Attorney General—we were included, but it came to the idea that what came to the front was that certain Senators were invited, the Opposition and the Independent, but the Government Senators were excluded, and I think the Attorney General did put that in this Bill. It also came to the fact that the Law Association wrote and said that we Independent Senators had asked for an audience with them, and I want to deny this and the other Independent Senators could also bear in it, but we never asked for any meeting with the Law Association, and this was in writing. I think this is something we have to know why this was or

what was this web of deception, because if we never asked for it— it is not to say it is not within our right, eh. I could ask the Law Association or gather information from anybody to help me in the law, but we never had asked for it, and I want to clarify that.

So, therefore what I am saying is that what came to the discussion is that this email was sent to Ms. Khisha Peterkin, but it was never— I think the Procedural Clerks said they never got it. So something happened there that caused some sort of, what I may say, dismay to me that I felt like I was being used as a pawn. But all I could say, I think the Law Association gave some opinion and I am thinking that we need to know what transpired there that caused this.

But as it may, I am looking at the role of the Law Association. So criticisms were made about them. This scenario developed recently where, I am saying, certain things came to light that I am thinking, you know, why this should have happened, and I do not know. And the other issue I want to raise— the fact is, we really need legislation to help against the land fraud. We need legislation to help against what is going on in the country where people buy land and suffer. And even up to two years ago, I remember there was an attorney down south, he got \$75,000 bail for some fraudulent activity and history has shown different attorneys do, in fact, engage in that.

I remember a very high official said there are criminal lawyers and lawyer criminals and you know, the opinion is in all fields you may get persons who may dishonour their profession. So therefore, if this legislation also serves to put a cap on certain attorneys who may be on the fringes of the law, I think this legislation is needed. So what I am saying, Mr. Vice-President, we need this legislation.

Our Trinidad and Tobago is 5,128 square kilometres of land. We should have been able to have a system in place where the whole idea of land title, land ownership, should have been something that gives us a little more satisfaction all these years. We had countless of Attorneys General actually came with certain things on the table but we are still deficient. And even the specific developmental goals of the United Nations, we have to appreciate that the specific developmental, Goal 4, provides that all men and women should have equal rights to ownership and control of land, you know, and this is something that, looking at this developmental goal—I mean, there are different developmental goals, eradication of poverty, amongst other things. So this is something which is our basic right. This is something that we have to look at meeting these United Nations goals and even—we need to factor in the 250,000 squatters on the land, because we are passing legislation to title, but really to look at the equality of land, the equality of land use, I am thinking we need to factor, yes the titles, but the squatters.

Now, the problem we have here in Trinidad and Tobago is the fact that we have different systems existing and as the attorneys did point out that the old systems where people could have, you know, their land and then they came with the Registration of Deeds Act, so there is a civil aspect that the Registration of Deeds Act which, you know, came—and then, even as far back as 1884, we had the Registration of Deeds Act which is about 175 years old. We had the Australian system was brought in. So Robert Torres brought in the legislation to make it a little more since—that would be in 1892, there were changes again to try to see. So since that year, attempts have been made—1892—to see somehow we could make a better system in the registration of land and therefore, it is time now, I think, that

we actually do something.

So you see, I think the real thrust came about in 1977 where they had the land reformation was really started. I remember in 1981, there was Prof. Wylie who had packages of laws that he gave, and the Parliament then discussed it and they were supposed to go forward with those laws, but somehow it never went further. It was good legislation, legislation that we needed and somehow it was there, it was stuck there. Even after Prof. Wylie, I remember there was the Law Reform Commission under the late Justice Gaya Persad. He and the then Attorney General at the time, Ramesh Lawrence Maharaj, did put across some good legislation, pieces of legislation, that I am thinking would have helped us. So all along, we had attempts made to bring in legislation.

We had also, I remember in, you know, I think it was around 1988 we had—no 2008, Mr. Vice-President, the IDB gave us a loan and they gave us a loan of \$100 million and \$7 million to go to Tobago, and that loan really was a loan to somehow cause, to put into place better systems to register land. What happened to that money? Is it still available? Is it in abeyance or did the IDB take it back and give it to another country? All these things we have to factor in. All that money we got to do something and we still have not reached that level that we should be in.

So therefore, the fact is, I appreciate the Attorney General wanting to have this piece of legislation to factor in the fraud that occurs, to look at the FATCA legislation, to bring us into tandem with what is going worldwide. Even the EU demands that, you know, you have to have better pieces of legislation to look at money laundering, to see how land dispersion occurs, and where people could use it against, you know, use it for illicit gains, to hide money.

So, therefore, even if the Attorney General is going after that and even though the Minister of Finance stated that there is a need to get this money that is out there, I am looking really at the plight of the poor person. Because there are individuals in Trinidad and Tobago who, when they have to do any sort of land transaction, the length of time it takes is one thing. The second thing is, I had a patient there—very good relationships—and when the parents died, the two children had two deeds for the same property, and it caused a major trouble. So definitely, the people suffer. Definitely, there is a need to have these issues settle early o'clock rather than to have to go to a court matter that takes years and beats up on the people and psychologically could make them depressed, angry. And, you know, these are things that we have to realize that land victimization occurs and it is really a nightmare sometimes when you have to deal with these issues.

Sometimes you have persons who are “alzheimeric” patients, who somehow being able to suddenly get a clarity of mind and sign their deeds to their lands. These are things we have to stop and if pieces of legislation like this could help it, if you could now—if there is any land transaction and it could be there in a registry. So if I know my sister might be going behind my back for my mother to change that deed, I could look at it. You could stop things earlier. So the openness, the transparency is something, I think, we need to see if we can get at.

There is also the situation there, not just with the false deeds and the profits, I am thinking that those—I am saying attorneys who were engaged in any sort of fraudulent activities, as I am saying, I mentioned the case. There was a case in south where the person—the Law Association should use disciplinary measures to show us, “Hey, we are going after these arrant attorneys.” There should be a list of

attorneys also who, if they are involved in any sort of activity, we can red flag them.

Now, thankfully now, according to this legislation, they have to be compliant, you know, with the FIU. So the compliancy issue is there, the fact that they have to be above board and we are putting things in place to make it a little more transparent. But what I am saying, the transparency, the open access, the need for digitalization of these titles, all these are things that I could stay at home and do not have to line up to go. I could just go into the computer system and see who owns this piece of property, who owns this piece of land.

You see, this piece of legislation, if it is there to protect individuals, I am saying, it is much needed. And when I looked at the Bill, Mr. Vice-President, I realized that the intent I am thinking is there, it is good. I am looking at the fact that when you are looking at the instance in clause 3, I just wanted to realize when in clause 3, Mr. Vice-President, the Registrar General is to keep an additional index for all instrument of trusts and it should be a closed index. I must say, I would like to agree with Sen. Mark that I think there is a need for transparency. There is a need for transparency because if you are doing business above board, and you have nothing to hide, you should not have any problems in putting that there that the public could now access to see what is going on. So I am thinking somehow that closed index is something I am in a little disagreement with and I am thinking this should be changed.

I look at the fact that under section 7(2) when we had the initial Bill, some of the fees were very high, like the registration of a contract for the sale of land was \$2,000 and whatnot. And I realized with this amended version that the Attorney

General came back down to \$200 which I think is where it should have been, not an inflated rate of \$2,000. I would like to say that when I look at the section 5B, in section 5B where the deed is executed in Trinidad and Tobago in the presence of, at least, one witness not being party to the deed, and a qualified functionary and the deed signing and delivery, so part of the condition, you have to get one witness. What I am saying, Mr. Vice-President, with all the fraud that occurs, I am saying that we could have put it as part of the legislation that two witnesses so at least it gives us a little level of protection. I have seen people in the hospital dying and sometimes their relatives will come in and want them to sign a deed or to give a fingerprint. I am saying no, have two witnesses, not just one, at least we could protect and ensure that proper things are being done.

When I look at the execution of instruments by marksmen, which is the proposed section 5D, it mentioned that the certificate on the deed, you know, that when you are going to have this deed, you have to have an attorney-at-law or a duly licensed interpreter being one person to give the signatory of the deed. I am saying, Mr. Vice-President, sometimes you have persons who have to give a mark, a patient with a stroke, a patient who, for some reason, cannot read or write. I am still thinking in cases like this, somewhere along the line, we should have factored in that—

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

Sen. Dr. V. Deyalsingh: Sure. Thank you, Mr. Vice-President. Something we should have factored in there that a doctor to be present to give a competency test. Because you see if you have to give a marker and a patient is there, okay, if they cannot, you know, they are unable to write, this is one thing. But if there are cases

where you have people giving fingerprints, I am thinking factor that in, that we should have a doctor being present or somebody there being present that could attest to that person's mental state because this is something that we are seeing more and more that we are having to deal with as doctors too. Recently, I had a patient who made a deed and the patient was definitely demented and after the legal action came out, I was asked to come and give evidence to say that that patient had dementia five years ago and could have no way give a proper signature to that.

Mr. Vice-President, I looked at the proposed section 15B where it is said that the Attorney General or his authorized clerk should have to give a notice within 30 days for the execution of the contract, and it is clear that some contracts remained there in Netherlands, I would put it. Netherlands contract, where it is a state of limbo, where the intention of that would really be to some sort of matter of fraud where you just leave it there, and the Attorney General did give that. So I commend that aspect to say that we have to give the level of when these contracts started, when the deed was started, at least to have that notification.

I also would like to, you know, support Sen. Mark's idea where he mentioned that had so many different registers you need now, it may cause a bureaucratic delay unless the system is somehow fine-tuned or digitalized. I am thinking we may need more staff there but the Attorney General did say this would not be proclaimed unless it starts to be in a way, you know, actualized with more staff, and I look at the other pieces of legislation and I am thinking that the aspect of it where you are giving the attorneys—you are putting a fee to the attorneys or a punishment to the attorneys if they do an offence and do not portray this deed in

time, I am thinking the attorneys may feel we are penalizing them, but the idea is things have happened and some of them may have been part of the problem. And I am thinking, if this goes away—it goes in a way to somehow get them to do what is demanded of them, the proper thing, I have no problem. But I saw there was a change from a \$10,000 and imprisonment to just a percentage of the fee, and I think probably the AG gave way there, but I was willing to support that 10,000 that was in the original piece of legislation.

So, I must say, Mr. Vice-President, I think that this piece of legislation here is needed. I think we need to at least— to have the legislation in place. After so many years, we need to do something. The fact that Tobago has a different system, I think that is a little strange because if the quality before the law is there, and the land distribution in Tobago is different, that comes like geographical discrimination. Because if you are trying to get a title in Tobago, it is different from Trinidad, because of the events in Tobago, but some people may look at it as inequality before the law. So I am thinking, we need to be digitalized, we need to make it more transparent, we need open access and we need to open up the system to protect the small man and the citizens from the atrocities that exist. Thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Amrita Deonarine: Thank you, Mr. Vice-President, for the opportunity to contribute to the debate today. I would be brief in my contribution today, because I have mainly two points that I would like to highlight. So, Mr. Vice-President, the first thing that I want to say is that land administration and registration of property in Trinidad and Tobago is something that is very outdated and complex. Right now, we have a system where we are conducting land transactions in an archaic

and vulnerable administration system that serves as a breeding ground for fraud to take place. So, Mr. Vice-President, the complex nature of our land administration is reflected in our performance in terms of the ease of doing business index and this is actually where my main concern is.

Sen. Seepersad actually alluded to the fact that right now we rank 105 out of 187 countries according to the latest World Bank calculation of the ease of doing business index. But what is interesting, Mr. Vice-President, is the fact that registering property, that particular indicator, under the ease of doing business index, actually is one of the indices that causes the entire ease of doing business index to be significantly low. We actually ranked 158 out of 187 countries when it comes to registering property in Trinidad and Tobago. So, when you compare that to the rest of the region, we are actually way below average for the Latin America and the Caribbean region. Jamaica, Grenada and the rest of Caricom performs better than Trinidad, with the exception of Dominica. That is the only Caribbean country that we perform better than.

So, Mr. Vice-President, without this legislation even being in effect, we have a situation where, on average, it takes approximately 77 days to complete a land transaction. It takes nine procedures and it accounts for 7 per cent of the cost of the property for which you are conducting the transaction on. That is the cost of the transaction.

So, when you look at this legislation, inclusive of the amendments that would have been circulated by the Attorney General, from a fraud perspective, it is a very good step but, Mr. Vice-President, what I am worried about is the effective implementation of this law. The enforcement of the law in an effort to reduce land

fraud would mean that now we are increasing the number of procedures. So, most likely, we are going to move from this average of nine procedures that it takes to conduct land transaction to a larger number. It lengthens the process. So it may now very well take more than 77 days to complete a particular transaction when it comes to the purchase and sale of property. And now, because we have a situation where lawyers are more accountable and liable, because now they are the main stakeholders, the main persons involved in conducting the transaction in this new system, their cost too will also increase, and this will most likely mean that it will no longer just cost 7 per cent of the cost of a property to complete a transaction and it may very well go up. Now, Mr. Vice-President, all of these factors that I have discussed feeds into the actual calculation of the ease of doing business index and, therefore, that aspect of the ease of doing business index, the property registration aspect, would be even worse.

So the second concern that I have, Mr. Vice-President, has to do with the administrative framework. Now, I am not entirely confident that the required administrative framework to implement this is in place. What we need is a robust and sound administrative framework which is critical to carry out this law. The main actor in this administrative framework is the Registrar General's Department. And yes, I have to admit that the department has undergone significant strides in terms of its move towards automation. They have moved significantly from a completely manual system to a good bit of automation. However, Mr. Vice-President, we cannot depend only on the property business registry system to solve all the problems. It is not just about getting the system up and running.

1.45 p.m.

What we have to be cognizant of is the fact that when we are undergoing a process of modernizing archaic systems, there tends to be a resistance to change and they also have a significant tendency towards wanting to continue to operate in a manual mindset. So for this legislation to work, Mr. Vice-President, you need to have the RGD completely automated, yes, but you need to also have significant change management in the transition. We need to get the persons behind the system, behind this automated PBRs system to get out of the manual mindset of doing things. In addition, the administrative system must be integrated with other stakeholders involved in land administration. Right now we have too many players with limited interministerial and interdepartmental coordination.

It is critical that we communicate not only within the Registrar General's Department but also amongst other public offices that are key players in the land administration system. These divisions are Lands and Surveys Division, stamp duty, Commissioner of State Lands, Inland Revenue, HDC even to some extent, and also the regional corporations. All these agencies have a role to play in land administration and communication is lacking significantly amongst those departments. What is currently happening, Mr. Vice-President, is that we have a situation where everyone has developed their own little system and their own little way of doing things and they operate in siloes. I say this because I have seen it and it is a problem not only in RGD, in the Registrar General's Department, it is a problem across the public service.

In my experience working with a multilateral lending agency, anytime we had a situation where we are trying to implement a project which involves radical change and radical transformation in systems in Trinidad and Tobago, what we

found is that a lot of times we have to play the role where we spend a lot of time with conflict management, getting departments to actually talk to one another to know what it is each other are doing, and also many times we act as an intermediary for interministerial coordination, because these Ministries and Departments are simply just not talking to one another and that coordination that is required for radical change is not there. So it is a reality, Mr. Vice-President, and it needs to be given strong consideration.

Mr. Vice-President, the last thing that I want to raise, the last point I want to raise is with respect to the legal framework for doing things online. Now, I expected to see this legislation laying the foundation for a legal framework to do things online. To me it does not create that framework for being revolutionized to a digital environment, and this is a major, major drawback when it comes to the World Bank's Ease of Doing Business Index, a lot of things cannot be done online. I do not see the legislation being accommodative to eventually take services online. Again, we are reverting to the statutory, we are reverting to these paper-based forms which must be completed and submitted in hard copy. Some forms do not provide space for email addresses in some instances; when we reach at the committee stage I will draw reference to them. And even though some clauses require the Registrar General to give notice, both in writing and electronically, there are forms in the schedules that do not provide a space for the clients to provide that information.

So, Mr. Vice-President, that is all that I have to say. During the committee stage I would drill down to the clause by clause issues that I have. Thank you, Mr. Vice-President. [*Desk thumping*]

Misc. Prov. (Registrar. Gen., Reg. of Deeds,
Conveyancing & Law of Property, Real Property,
Stamp Duty & Reg. of Title to Land) Bill, 2020
Sen. S. Hosein

2020.06.02

Mr. Vice-President: Sen. Hosein. [*Desk thumping*]

Sen. Saddam Hosein: Thank you very much, Mr. Vice-President, for recognizing me to join this debate on the miscellaneous provisions Bill, 2020, which deals with the Registrar General, Registration of Deeds, Conveyancing and Law of Property, Real Property, Stamp Duty, and Registration of Titles to Land Acts. Now, Mr. Vice-President, this particular piece of legislation, it is one of the most far-reaching and has one of the most extensive reach if this piece of legislation is passed, and I say this because coming out from the jurisprudence in terms of land law in Trinidad and Tobago, there have been hundreds of years of settled practice and law that can be affected by this particular piece of legislation. Some welcomed and some may not be welcomed, some fixed and some cannot be fixed, and we have to understand the climate in which Trinidad and Tobago finds itself, and because of our history you would realize, Mr. Vice-President, that over time we were governed by several different states and we would have adopted their laws in Trinidad and Tobago and the end product is that we ended up with two systems of law in terms of registration. We have what is called the common law system of registration and then we have what we call the registration under the Real Property Act. So it is two different systems we have.

Currently the registry at the Registrar General's office has two different registries, one that receives and registers common law conveyances, which everyone might be familiar with, which if you have a deed at home you will see them on the legal size paper; and then you have the RPA, the Real Property Act where you have the large certificates of title which are the instruments, and at the back of those instruments are endorsed with the various transactions of the land

over time. You will see them as Crown grants also. And that is the difference, Mr. Vice-President, because of the common law system, in order to determine who has title, the chain of title must be proven, and how the chain is proven is that based on several years of registration of several deeds you will see how one particular piece of land or an interest in the land, or part of the land has been transferred over time to several owners. And in the real property sense you will see, endorsed at the back of every certificate of title, the transactions that would have occurred over time, and the real property system you would also have assurances by the State in terms of the guaranteeing of title. So that is a more protected manner in which land is registered in Trinidad and Tobago.

Now, you would remember, Mr. Vice-President, that in 2018, this Senate was asked to consider and pass amendments to what we call the suite of land legislation, and this suite was passed in the year 2000, and you would remember we had the Land Tribunal Act, we have the Land Adjudication Act, the State Suits Limitation Act, and also we made amendment to the Registration of Deeds Act.

Hon. Al-Rawi: Registration of titles.

Sen. S. Hosein: Registration of titles, sorry. Thank you very much. And you would remember that the policy of the Government was to take these two streams and bring them into one, so therefore, we have one proper registration system of land in Trinidad and Tobago, that Trinidad would have had now one registry in which we would have all of these lands converging.

We were also told, and several Senators raised this, especially Sen. Dillon-Remy, in terms of the issues that Tobago has with respect to the titles of land in Tobago. So I say this to say, Mr. Vice-President, is that we are now trying

in this instance to reform especially the common law system of registration. So I ask the Attorney General whether or not there is a shift in the Government's policy with respect to those pieces of legislation that we had passed to what we are doing now, because what we will be doing now is expending resources to set up various and additional registries when we could have been directing these resources and getting the system set up that we all agreed to in terms of the suite of legislation that was passed in 2000.

[MADAM PRESIDENT *in the Chair*]

So whether or not we are channelling our resources in the wrong direction at this point in time, I know also—Madam President, I welcome you back to the Chair—is that, yes, we have our obligations to the Financial Action Task Force; yes, we did well in terms of our mutual evaluation, and I understand that part of the Bill would have dealt with trying to address some of those recommendations, namely Recommendation 25 which deals with beneficial ownership and the setting up of registries with trust. So I understand that part of the Bill, but I would also pose this question to the Attorney General, whether or not the other parts of the Bill are going beyond what is Recommendation 25 and what FATF had asked us to do? I know in the piloting of the legislation the mischief that we are trying to fix here is fraud. Now, Madam President, all of us in this Senate, I think, will agree that there is some level of fraud in the society when it comes to land because we have seen several fraudulent land transactions previously, and we as a Senate agree that, yes, this must be something that we address but we have to also examine the legislative framework that is being put in place, whether or not we are going to reach that legislative aim in terms of fraud. Because what the Attorney General is

asking us to do, and this Bill was in fact examined by members of the Law Association, is that some members believe that this particular Bill really is not addressing what the aim is, whether or not this would in fact combat fraud, whether or not this would decrease the number of fraudulent transactions that take place with land, because when you look at the current framework and structure, attorneys-at-law now fall under the ambit of the FIU, the Financial Intelligence Unit.

When land transactions take place they have their “know your customer” forms and also the AML/CFT guidelines. Also, when persons withdraw funds or deposit funds with land transactions in the banks, they have to declare a source of income or why they are withdrawing so much money in terms of transactions, and you would have these individuals presenting deeds, agreements for sale to the financial institutions in order to access the funding. So I am asking whether or not this dual registration system in terms of registering agreements for sale will in fact really allow us to reach our legislative aim, or whether or not we already have it, or whether or not we should just go back or expend our resources to the system that we had agreed to way back in 2000, because 20 years had passed several administrations, and we have yet to see the set-up of that registry. So those are the issues in terms of the policy of this particular Bill I wish to raise in this particular debate.

Now, Madam President, you would also have in this particular Bill, and if you remember the Bill that we previously dealt with which relates to the real estate agents in terms of the cost of transaction, and I believe Sen. Deonarine would have spoken to some of these aspects, whether or not now land transactions, the prices,

the complexity will increase as we go along in terms of this, which can affect an already burdened economy in terms of the ease of doing business, because we have to also look at those issues when we pass legislation in this Parliament.

Now, Madam President, I want to drill down in particular to some clauses of the Bill that I had outlined. And if you would permit me, Madam President, I know that we have the Bill that was laid in the House, but subsequently a marked-up version of the Bill was given to us with further amendments, so I want to examine the two Bills, namely the marked-up version, although I know it is not before the Senate, but it will facilitate the debate especially with respect to our time limitation.

So I want to look at the definition at clause 4 in terms of the definition of “interest in land”, and I note that the Attorney General did in fact accept the recommendation of the Law Association with the deletion of “equitable interest” for the definition of “interest in land”, because as we know, that in fact will cause some level of ambiguity as we go forward. Because once the legal instruments are registered you will have the legal interest passing and sometimes the court is asked to adjudicate upon what might be considered an equitable interest which is something that is not in particular registered, because it all stems from the person’s contribution dealings in the particular property or land, Madam President.

Now, I looked at clause 4, at clause 4(d) in particular, and at clause 4(d) it dealt with also that:

“Every registrable document executed in Trinidad...or elsewhere...”—can only—“...be registered under this Act in order to be valid and effectual...in law...”

Now, what does this tell us? This tells us, Madam President, that title to property passes on registration. As is the law now, is that in common law transactions title passes on execution of the deed. In RPA, real property, lands that fall under RPA, title passes on registration of the documents. So that is the difference. Now, what the Attorney General is proposing is that common law conveyances, title only passes on registration. Now, I saw the exception being created for mortgages where it provides that section 32A of the Conveyancing and Law of Property Act shall continue to apply, and, Madam President, what does that say is that, that section in particular of the Act, it provides that when a mortgage is discharged the old rules continue to apply whereby it will take effect on execution rather on registration; in section 32A of the Conveyancing—

Hon. Al-Rawi: Thank you, hon. Senator, for giving way. Very quickly, that is the feeding of the title aspect that is to allow you to convey the property even though the release did not happen yet. So that is the mechanism by which you cure the title. You can file the mortgage, the deed of release after and cure the title. So that is what you call the concept of feeding the title, it is not what you have just described.

Sen. S. Hosein: So what we are saying, what we are proposing here, Attorney General, is that the law will continue to apply as is. So we maintain the status quo with respect to mortgages, but with respect to other instruments that fall under the common law system, title only passes on registration.

Hon. Al-Rawi: Effective on execution.

Sen. S. Hosein: On execution. But I looked further down in the Bill, Attorney General, where it is now deemed that the date of registration will also be

considered the date of execution. That is found at clause—

Hon. Al-Rawi: Fifteen.

Sen. S. Hosein: Clause 15. Yeah. And I will get to that particular point, but that is what we are seeing, some sweeping changes with respect to common law conveyances.

Now, what we are also looking at, Madam President, is that at clause 4(g), clause 4(g) dealt with some aspects of:

“The Registrar General may refuse to register any Deed executed...”—and so on.

Now, the Law Association did comment on this section and they said that it left some level of discretion, because now we are making all registration mandatory under the miscellaneous Bill and the use of the word “may” may in fact infer that you can have a different system of registration. So I think they just wanted to make an amendment with respect to making it more directory in terms of using “shall” rather than “may” in that particular instance.

I want to look at proposed section 15—Madam President, may I ask how much time I have again?

Madam President: You finish at 10 minutes past 2.00.

Sen. S. Hosein: Ten minutes?

Mr. Vice-President: Yes, past 2.00.

Sen. S. Hosein: Thank you. Now, I want to look at clause—

Madam President: And you now have five more minutes.

Sen. S. Hosein: Thank you. I want to look at clause 4, new 15B; 15B dealt with the registration of agreements and contracts and agreements, and this is with

respect to agreements for sale, so what the Attorney General is proposing is that any agreement for sale that has to now be prepared by an attorney-at-law has to be registered, and the registration system for that must take place within 30 days of full execution of the contract per disposition. Now, there is also provision for late registration. If a person decides to register late, I am seeing all he has to do is make an application to the Registrar General. Now, the Law Association previously had some issues with giving the Registrar General inadvertently some quasi-judicial function, because that could seriously affect the certainty of the sale of land in terms of—and the completion of the transaction, whether or not the Registrar General will accept the instruments.

Now, whether or not we are giving the Registrar General a discretion, so what will the Registrar General consider in terms of giving approvals or extensions of time with respect to the registration of agreements for sale? I also note, and I think Sen. Sobers mentioned it, that it is now restricted to attorneys-at-law being the only persons who will be able to prepare and execute an agreement for sale. Because far too often, Madam President, you would not believe this, is that a lot of Justices of the Peace in Trinidad and Tobago prepare contracts of sale for land and you will see that there are certain errors, because a contract for the sale of land has certain stipulations and requirements by law that should be present in order to have a proper sale going forward, and that is something we have to look at. I know there will be an argument that we are restricting attorneys-at-law and maybe attorneys may be able to benefit from this particular amendment, but it creates some level of certainty with respect to doing transactions going forward.

I also noticed that at 15C a new regime based on the proposed amendment is

being put in, in terms of some further forms, notice of variation, termination and rescission and the notices of objection—I know my time is very short and I note these particular clauses. Suffice it to say I will expand in the committee stage is that I believe, Attorney General, this will cause some level of further bureaucracy in the system because now you would have persons having to file notices of variation or termination or rescission. Then the person will have to file a notice of objection, and when these things go before the court you will also be filing caveats in some instances; you will be filing certain lis pendens in certain circumstances. So there would be a host of various instruments that will have to be filed now when you are going forward with respect to a contentious application or a contentious claim before the court to determine the rights of the owners for a particular piece of land.

Clause 4, 15G, again this is the extension of time for registering a document, which is 12 months now from the date of execution. Attorney General, before I close in one minute, I just wanted to get some further clarification to, is that if we are going to now move the system of common law registration for the date of registration for title to pass, what happens in the instance, or even in this instance where you have 12 months to register, if a caveat is lodged and the Registrar General is not in a position or legally bound not to register any deed or instrument based on the lodging of a caveat.

Hon. Al-Rawi: That is only in the RPA—not new law.

Sen. S. Hosein: Right, exactly. So it will apply for RPA only in that instance, caveats.

In this instance now with respect to if a lis pendens is filed, what is the

position of the RG for a common law—[*Crosstalk*] So that they will file the deed although the existence of the *lis pendens*. And also whether or not this will affect some persons going forward with transactions in terms of getting land without encumbrances, because what we can see is that if you are taking effect on registration, that period between execution and registration, there can be a judgment being registered or some other transaction with the land. So all of those things we could probably address at the stage of the committee. I thank you very much, Madam President, for indulging me. [*Desk thumping*]

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

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President. Madam President, an overarching theme has been the risk of business becoming more complex to do, the risk of fees being increased and the risk of land transactions becoming too expensive. I listened to Sen. Deonarine in particular and, Madam President, I would recommend to all my colleagues, those who love lawyers and those who do not, to read the 2008 book written by Richard Susskind. I love the title—Susskind, S-U-S-S-K-I-N-D—the title is, *The End of Lawyers?* And as a solicitor I enjoyed reading it, but what Richard Susskind really tackled, because I myself, Madam President, in 2014, while I was practising in Canada, I was shocked, overnight the Toronto-based firm of Heenan Blaikie disappeared; the seventh largest law firm in the country, more than 500 lawyers just collapsed. With law firms, Madam President, they use the word “collapsed”, and that is because of something that had been happening in the way legal services were purchased and provided.

In fact, the book, *The End of Lawyers?*, there is a subtitle to it, *Rethinking*

the Nature of Legal Services, and what had happened across North America somehow never got to Trinidad yet. What had happened was the big clients, the mining companies in particular and the banks, they decided to take matters in their own hands and determine what they were going to pay for legal fees and they started to dissect all the work that they farmed out to law firms and decided, those types of work that could be best provided in-house, those types of work that had to be farmed out, and in the case of those things to be farmed out, who it is going to go to, and they chose persons who were reasonable, available, accessible and experienced, and what it meant was that the work was being spread all over. Companies found that their work was being done in an efficient manner and in a cost-effective manner.

So, Madam President, I will answer that overarching theme that I have identified by saying, technology, electronic forms, and prescriptive legislation actually helps us in being able to remove the bureaucracy and inefficiencies of transactions, reduce the cost of having transactions performed, reduce the time of inefficiencies and allow us to perform them in a less expensive way, and COVID-19 has shown us how we could do that.

2.15 p.m.

Madam President, anybody without the bricks and mortar and the air-condition and the downtown rents to pay, could perform legal services on a laptop or a smart phone from home. From where I sit that is what I see. I see the potential for a more structured way in which we provide conveyancing services, a process that is defined and set out in the legislation and we see the sort of forms that work well in an electronic environment, and we see so many instances where there are

checks and balances in the system that would achieve the objectives of the legislation.

So I want to tell my colleagues—all my colleagues—that there will be some unease, because, across North America, when the big companies were changing the way they did business, there was a lot of unease. But out of that discomfort we have gotten a lot of progress and it is about time we progress along the lines that we set out to do, as I said when I spoke on the Real Estate Agents Bill, as we set out to do back in the 1980s.

It has been a long and largely bad history in dealing with land. Madam President, those of us here and listening who passed through a law school anywhere would have heard this thing about the systems of land administration and conveyancing, and so on. I listened to everybody so far. Some people defined it as two systems; that is the one we were taught in law school, two systems: the Torrens system and the old law system. Not long after you discovered, depending how long you were in practice, it did not take you long to find out in Trinidad we had three systems: Torrens, the old law, and the unregistered system to which the AG has referred, and which is one of the main things we are attacking in this legislation, this unregistered system.

Because we know if you spend five minutes in a land law class, they will tell you, you do not really need a deed. You need the memorandum, a record. You could dip in your back pocket and pull out “ah ol’ receipt” and write a memorandum in relation to land. So we have had this third system, this unregistered system. But I dare say there is a fourth system. What we have in Trinidad are four systems of conveyancing. We have the old law, the Torrens, we

have the unregistered system and we have the fraudulent system.

Madam President, the most frightening thing to me, I thought I had seen it all, but I believe it was last year, 2019, when someone who had witnessed a highly fraudulent land transaction deposited the documents on my desk. It related to signatures which were forged, stamps which were fabricated and a complete fraudulent transaction which passed the muster of one of the largest financial institutions in this country, and in respect of which that institution granted a \$6 million mortgage. So this was not petty fraud. This was not snake oil salesmen. This had become big business, and in half an hour that package was dropped off to the office of the Commissioner of Police. Most recently I was informed by that office that they had made substantial progress. But that troubled me. It troubled me that the transaction could be so fraudulent, but yet so clean as to pass muster with a large financial institution and support the granting of a \$6 million mortgage.

I also had to deal, and it was on a *Sunday Express* front page, it shocked me that a lady had been making fortnightly payments and receiving receipts in the name of the HDC, a mortgage constructed naming law firms and lawyers and all of that, a properly constructed mortgage transaction in respect of two properties owned by our Ministry. I was shocked at how brazen they were, but, more importantly, how convincing they were to get this lady to part with her money on a fortnightly basis over a period of several years. And if I had not been the sort of Minister who shows up all over the place at any time, I would not have found that lady doing renovations to these two properties as though they were hers, and possibly in her mind they were hers. I could stand here all night, but this law and these changes are required.

We all grew up as lawyers in this law and equity, and it is the only disappointment really for me that we are not likely to go there. The AG has proposed some amendments to the Bill, and the amendments include removing the reference to equity. So as it stands now the two streams continue to flow side by side, and we still have legal rights which are registrable, and equitable rights which are created in the form of constructive trusts or other developments on the equity side. We in the original Bill, the Bill that is before you, wanted really, as they said with Lord Caine's law, the waters to merge and that equitable interest, whatever they are, should be registrable interest.

The Attorney General, based on consultations, and I was there with him throughout the consultations, extensive consultations, I dare say what he would not tell you. We spent two hours with the Law Association on the word "mortgage". I fell asleep and got up and met the discussions exactly where I left them. I was tired. That is the extent to which we have consulted on this Bill, but that provision, the AG proposes a change in what was originally 4(d), clause 4(d) that is proposed we originally had the insertion of a new (ii), but the reference to equity in there will be removed.

Madam President, with overheated prices in the country for land, with low availability and the challenges to affordability, fraud has become rife, and in the three objectives stated for the Bill, the very first one is to deal with fraud. We could not have put it in simpler language, to deal with fraud, to create transparency, especially in relation to beneficial ownership. Beneficial ownership is not something that is new to us in the Parliament. We have tackled that in various forms, in particular, the companies legislation dealing with once and for all

the issue of the beneficial ownership of shares. We go further now and deal with beneficial ownership in relation to land. And that meets in part the third objective of the Bill which is to satisfy the international agreements we have made, in particular those dealing with the FATF.

Madam President, I would say that there are five things that this Bill brings to us. The first is certainty. I disagree that it would make things more complicated. I agree initially it will make things a little chaotic because our profession is slow to change, and conveyancers and solicitors are even worse. But it would bring certainty, because the use of forms—and the AG, I am sure, in the wrapping up will talk about the substantial progress that has been made on the IT backbone to drive the use of technology in the provision of legal services and the administration of legal transactions in the country.

The second thing it would do is provide some credibility and verification. Madam President, I listened to my old boss, Ashmead Ali, in making his submissions in relation to what is new, and that is the requirement to register contracts for sale, and that to me would make it easier for anybody dealing with land. But in dealing with Caroni (1975) Limited, for example, where we have had on one hand in relation to the residential parcels of land under the VSEP, we have generated more than 7,000 deeds in respect of that. On the one hand with the two acres we have generated about 8,849 deeds, and on the residential lands we have generated about 7,446 deeds. That is 15,000 deeds. That is 15,000 opportunities for people to sell the same parcel of land, and in some cases find themselves in the hands of the police.

So some people have gone around and offered the same parcel of land,

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because there is no need—the only thing that is registrable is the ultimate document of transfer, the assignment of the lease, but in some cases—

Madam President: Minister, you have five more minutes.

Sen. The Hon. C. Rambharat: Thank you, Madam President. For the sake of a bargain you may withhold even the registration of that. We say here, in relation to leases, that there is no need to register a contract for the sale. But we also say that it is not to be abused. So we have said that if a contract for sale or if a lease is being transferred at a premium which represents the full value of the land, then we know you are doing the lease as a device to escape registration of a contract. So we have given thought to it. We have given thought to facilitating some of the concerns, and many of the concerns of the Law Association, but as far as possible we have tried to keep our legislative objectives on track, because this legislation does not work alone. It works with the Real Estate Agents Bill, the people who will be involved in the land transactions.

If you remember we talked about all the documentation, and I talked about mistakes in stating acreages and so on, and the need for certainty, the need for documentation, the need to be able to be accountable, so this works for that.

To answer Sen. Dillon-Remy I will just remind Sen. Dillon-Remy that that matter in relation to Tobago was addressed. I do not believe you were in the House as yet, but I always refer to that evening in June 2018 when we debated and we passed three of those four Bills, and the AG gave us his shortest winding-up on those Bills. He stood up and he sat down on I think two of them. But the suite of legislation, and it was testified that priority would be given to Tobago, and those changes addressed the two most important things you addressed Sen. Dillon-Remy.

You asked about registration of titles and the cleaning up of that and, secondly, the special court which is why we modernized the land tribunals to deal with those boundary disputes and those other issues in relation to title as part of the cleaning up process.

A lot of technical work has gone into it in terms of cleaning up the survey plans that we have for Tobago. We have been working on the way we have to do it in the public service of fleshing out the job titles which are stated in the legislation, and proceeding to go to Cabinet to do the advertisement and the recruitment of persons for those positions which are in the legislation, so that we could start the work in Tobago. So what you have asked for is significantly advanced. Unfortunately in the public sector we take a long time to do things, and that work I expect us to start seeing the fruits of it.

To answer a point that Sen. Hosein made in relation to the same suite of legislation, I do not see the need for—you asked if we abandoned that and doing this instead. The two have to be done at the same time, the two work together. It is neither one nor the other, because we do in fact have, and we will have with us, an old law system, and what still remains a more modern system, while at the same time the Law Association is advocating for a completely new system, where we could provide a guarantee of title.

Madam President, with those words I say certainty of verification, transparency, which is one of the objectives of the Bill. I spoke about duplication. I think the registration, the more information we cause people to put on record in relation to a title the less likely we are to have duplication of transactions and the opportunity for fraud. And again, just as we did in the Real Estate Agents Bill, this

Bill requires a similar amount of details to be provided in relation to a transaction, and that minimizes the opportunity for errors and mistakes and, most importantly, fraud.

I thank you very much.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. I wish that the Benches were full because I know that downstairs it is very hard to pay attention on the television. So I do hope that hon. Senators are paying attention. May I thank all hon. Senators for their contributions today; the perspectives and recommendations are duly noted.

Madam President, Sen. Rambharat gave a very good wrap-up of the issues, that there are more than one system of registration afoot. The land registration system in Trinidad and Tobago is the common law or old law system, the manner by which we register deeds. A deed is only a record of a transaction from one party to the other. A deed does not certify the title that you are dealing with. It says A and B entered into a contract in relation to a piece of land, if we are talking about a conveyance, and it just records that fact.

To figure out who really owns the property you have to do an investigation of title. The investigation of title in the common law is where you go back to something called a “root of title”, and the root of title is what the law determines in its formula to be something which is fairly unassailable, for example a deed of mortgage. A deed of mortgage is deemed to be a good root of title because it is assumed that in a 20-year period if you have got a deed of mortgage that the bank did good due diligence. Therefore, you work your way up, once you find a proper root of title you check every deed along the way to make sure that it appears to be

in order.

The second system of registration is the RPA, the Real Property Act. The Real Property Act has been around since before 1900. We have brought that from Ordinance into Act, and that Real Property Act is the closest thing we have to a fairly guaranteed type of system. Originally all lands in Trinidad and Tobago were supposed to fall under that system, but that system never really came to life because it was voluntary. So only about 20 per cent of our land titles are in the RPA.

But in that system your title is fairly good because you have a certificate of title or a Crown grant, and everything that happens on that transaction process is recorded on the back of the certificate of title. It is a memorandum; a memorandum of mortgage, memorandum of discharge, memorandum of lease, et cetera, et cetera.

The third system that we actually have on the books of Trinidad and Tobago is the registration of title to lands system which came about in the land package of the year 2000. The Law Association beat up, screamed, bawled in 1986, 1987, 1988, 1989, and so we went, all the way up to the year 2000 when Attorney General Ramesh Lawrence Maharaj brought the registration of title to land package, and that law has never been proclaimed. That is the third system of registration.

The fourth that Sen. Rambharat referred to is the fact of an unregistered system where people hold on to an element of the common law or old law system, they do a deed, they pay their stamp duty. Why do they pay their stamp duty? Because there is a heavy penalty for late stamp duty; it is exponential—and then

they sit down on it. That system is where the fraud happens.

Now, may I address in the round a number of concerns. Let us start off with Tobago. The Tobago land system is in shambles. In Tobago, in particular after Hurricane Flora passed, a lot of people lost their documents. Tobago has an ancestral system where land was partitioned and divided over time from the estates into people's hand, and Tobago has a lot of what we refer to as "possessory title". People just do not challenge the fact that their grandfather and great grandfather had it but they have no piece of paper in their hand. Either it was destroyed in the hurricane or it was never converted properly. People in Tobago have been forced to go through the Real Property Act to bring the lands under the provisions of the Real Property Act to convert their possessory title into real property title. But that cost them about \$60,000 to \$100,000 per person.

The reason why land title in Tobago has not worked is that nobody bothered to operationalize the Registration of Titles to Land Act, where the State takes the opportunity to cause the mandatory conversion of all title in Trinidad and Tobago. RPA or common law, you feed it into the Registration of Title to Land Act. You go and you declare a zone as a zone. You begin land adjudication. You feed it into the system. A tribunal decides whose land needs to be worked out or not, but that cannot happen like any other law, unless you have plant and machinery, people and processes.

We have in the last five years under this Government, under this Attorney General, this Minister with responsibility for lands, as Sen. Rambharat is, we have digitized millions of documents at the registry. We have taken the IDB loan. We have converted all of the maps, the GIS information system—because Sen.

Deonarine was right, too many silos where people do not talk to each other. We have purchased the Property Business Real Estate Solution. Sen. Deonarine is right, nobody was worrying about electronic filing. They were confined to paper based. Nobody looked at electronic payments, because our ease of doing business really and truly fell apart because you are confined to a paper system and you cannot pay online using an online service.

So the Tobago title gets fixed beginning June of this year. We are in the month of June right now. Version three of the Property Business Real Estate Solution goes into effect. We will test it with the lawyers, June, July, August, September, and then we will take that system live in September and begin converting the Tobago title into absolute title. Why? Because we bought the software. We bought the hardware. We digitized all the information. We did the geographical information surveys. We did memoranda of understanding between Board of Inland Revenue, municipal corporation, all of the state agencies. Planning Division now talks to fire, municipal corporation, OSH. All of those agencies are now integrated, and therefore we allow the systems to go online, because, as Attorney General, I have already passed the financial instructions into effect, and that is why you are able to pay for Government services at the Registrar General online.

Sen. Deonarine raised the point about this law not dealing with electronic filing. It is not this law that is going to deal with electronic filing. It is the Electronic Transactions Act. That Act came into operation in 2011. No one bothered to operationalize it. This Attorney General operationalized it, which is why you can now do your services online.

I can tell you that in the miscellaneous provisions Bill that we will bring shortly, in a week, we are dealing with the final bits of signatures. The Property Business Real Estate Solution allows for the electronic filing of documents. This reality is finally upon us. But you cannot operationalize law, you cannot stop silos from operating independently, unless you introduce plant and machinery, people and processes. Let us deal with people.

The Registrar General's office has had a 66 per cent increase in staff. Because the public services have taken long to give the permanent employment, we absorbed a massive increase in staff using short-term employment. We have converted that short-term employment into three-year contracts. That is why we have, as Sen. Seepersad raised it, the issue of short-term employment.

Let us deal with the other factors now surrounding the legislation itself. Madam President, this law is not about the Financial Action Task Force Recommendation 25, or Immediate Outcome 5. No, Sir, no, Ma'am, no hon. Senator. This law is about fraud in Trinidad and Tobago. The fraud that is perpetuated in Trinidad and Tobago, Sen. Sobers painted it very sharply and very well. It is about people being made victims by other people who go and change their name, pretend to own a property—because I can change my name to Senator X, go and do a deed poll for it, get two forms of ID, get a deed with the name “Senator X” on it, be, in all appearances, a legitimate owner of property, and in that way I can enter into multiple agreement for sale, take the deposits from multiple unsuspecting victims, who are unsuspecting, and walk away with their money.

This Bill is designed to tackle fraud in the context of Trinidad and Tobago.

This Bill is designed to tackle corrupt people who have executed agreements for sale, who then go and execute conveyances, who pay their stamp duty and who never register their conveyances, because there is no law to compel them to register conveyances. What happens is when law enforcement goes to look at the property that they believe is under investigation, it will show up in the name of the old owner. That happens every single day in this country. This law puts an end to that. That is why so many people are afraid of this law, including lawyers. Let me repeat that: That is why so many people, including lawyers, are afraid of this law, because there is rampant fraud in this country, and lawyers know it.

Madam President, Sen. Mark raised the issue of the private register and said that the issue should be that we should have public registers. May I ask what time is full time, Madam President?

Madam President: You finish at one minute past three.

2.45 p.m.

Hon. F. Al-Rawi: Much obliged. Madam President, the Law Association of the Republic of Trinidad and Tobago asked for the closed register. We agree with the closed register because secret trusts are a principle of trusts, and secret trusts in respect of land, be they for family arrangements, et cetera, they are permitted by law. What we are compelling for the first time is that that law ought to be registered. The trust ought to be registered, kept in a private register for a number of reasons: number one, the European Court of Human Rights struck down public registers for trusts, they held it to be unconstitutional. Number two, the stakeholders have asked for it to remain private. Number three, we allow for the Trinidad and Tobago Police Service, the FIU and the court to have access to those

registers.

Further, we are keeping within precedent. In the non-profit organizations law, in the real estate agents law, anything involving sensitive personal information was kept in a private register. Further, if we were to try and breach that right, that privacy right, right to private life even though it is not absolute, we will require a three-fifths majority.

Further, what Sen. Mark attempted to do today in the most interesting and I say deplorable of ways, was to paint a story by asking a series of questions. Whilst I was sitting here, I pulled up the Companies Registry and I went to deal with the example that Sen. Mark dealt with. The mechanism of abuse of trust is because a trust agreement that is used right now to escape the true owner, the beneficial owner being known, those are never registered. Those agreements are never registered. All that they do is they pay \$25 stamp duty on the declaration of trust. Sen. Mark raised an example of a company called Canon, which bought from Century 21, he then said Belgrave bought from Canon, and he said in 2012 that there was some degree of scandal, and he asked a question that the Minister of Finance should speak to this.

So, I went to the Companies Registry, I pulled up Belgrave the company, I called the Minister of Finance and I can certify today that the Minister of Finance has confirmed that a company named Belgrave was the subject of purchase of shares by he and his wife. He bought that shareholding in December 2012 and he paid \$7.5 million for the transaction. So all of that hoorah and attempt to create scandal that Sen. Mark raised, is to be completely ignored, and the questions are now completely answered. Whatever happened between Belgrave and Canon is not

Colm Imbert, was not in the transaction and was not there.

So, Madam President, let us get on to a few of the issues raised by Sen. Hosein who raised it in the context of an echo that many other Senators had. This law does not propose a change in the law as we know it for when title passes. The amendments that we propose to the Bill say that the transaction is made effective at the date of execution. You have an obligation to register the conveyance but it is effective at the date of execution. What does that mean?

Madam President, one can sign a deed in December 2020, register it on or before the end of December 2021, when you register it, it is effective as at December 2020. We do not change the law of equity in any form or fashion.

Under the Real Property Act, title only passes on full registration. We do not deal with the law of equity, we preserve the law of equity. What is the law of equity? Madam President, put quite simply, the law of equity is the law of fairness. You can own something in law like a piece of land in two ways, equitably or legally. If I go to a bank and I ask a bank to lend me money, I convey the legal title to the bank, I hold on to the equitable title. It is like taking a dollar bill and tearing it in half, you give the bank half of the dollar bill and you keep half. For the bank to sell the property, they must get your equitable ownership by a mortgagee sale, so they get your half of the dollar bill. For you to get back your property, it is called the “equity of redemption”. You get back your redemption when you satisfy them by paying, and you unite the other half of the dollar bill here. We do not change the law of equity in any form or fashion. All that we are doing is saying that you have to register your instrument.

As a bit of trivia, Madam President, whilst I was sitting here, I signed no less

than 15 deeds of gift extension of time. Madam President, without bringing you into the debate, any Minister of Legal Affairs will know that section 18 of the Registration of Deeds Act says, if you have a deed of gift or a settlement, that you have a time frame of 12 months to register under section 18 of the Registration of Deeds Act and you are exposed up to \$2,000 in penalties, because the Register General under the existing law, being a saved law, has quasi-judicial functions to exercise a discretion as to penalty.

Madam President, we are removing that from the law. We are removing section 18, we are harmonizing it now so that every registrable instrument, every conveyance, every deed of gift, every settlement, all of them must be registered, just like deeds of gift within 12 months. But what we do, is that we allow you to apply for an extension of time up to a maximum of 24 months; two years. The Registrar General has no discretion whatsoever. The Registrar General only accepts the instrument and registers it, no discretion. After the 24 months, you go to the court and you tell the court why you should have the option to extend out of time.

Let me repeat what I said earlier in a slightly different way. If you compare the registration of deeds against a mortgage bill of sale— a mortgage bill of sale is where you do a loan in a bank for a car, you are buying a car, you want a \$50,000 from the bank, you give them the car, you do a mortgage bill of sale. The mortgage bill of sale must be registered within seven days of execution.

We are saying, if you do a deed for conveyance, you are buying a piece of land for 10 million, 20 million, \$500,000, you have to register it within 24 months, otherwise you need the court's extension of time. That is seven days less than 365

multiply by two. In other words then, Madam President, it is disproportionate. We give that two-year time frame because of the vicissitudes or the complexities of the transactions.

We also ask, Madam President, for the registration of a contract and in registering a contract for a registrable instrument which includes conveyances, et cetera, what we are saying is, let your contract be produced. Why? It is perfectly legitimate for people to enter into complex contracts for them to apportion the purchase price. You might have an agreement for sale to buy a piece of land for \$2 million. You might actually have the conveyance at \$1 million; that is perfectly lawful if the rest of the purchase price is fairly expressed in terms of with the Stamp Duty Act. For instance, chattel receipts can be used in a legitimate way and that is always the case, because if I produce a deed which sold a property for \$1—let us assume I had a deed that said I bought the property for \$1, the law is that the stamp duty that is paid on the \$1 deed is to be assessed by the Board of Inland Revenue. So they will come along and say, even though you actually paid \$1, your stamp duty to be paid is market value stamp duty. So there is nothing wrong with that, the problem is, there was a gap between the agreement for sale and the conveyance.

Now, Madam President, it is—Sen. Seepersad's contribution was on the law as it presented itself in the Bill. Sen. Seepersad explained to me that she was not aware that the amendments had been circulated since last week, and I should say on her behalf now, she is not present, but she did tell me that, as a member of a law firm, J.D. Sellier & Company, that she omitted to say that she is aware that law firm was on the record for the C-4 Committee in providing comments. So she said

that, in the event that there is any conflict of interest, she wanted to declare it and so, I am doing so on her behalf because the hon. Senator said that expressly so that she is covered under our Standing Orders.

So, Madam President, when we look to the issue that has come up, whether there can be an increase in costs, first of all, attorneys-at-law in non-contentious business in relation to land, they are guided by a scale of fees, you cannot charge “nilly-willy”, you are obligated to observe the scale of fees.

Secondly, what this law actually does is to reduce the runaway cost on properties potentially. Why do I say that? Very often in an unregulated real estate industry, you would have real estate agents who are telling purchasers, “If you do not buy, somebody else wants to buy and somebody else wants to buy, \$500,000 more, \$1 million more,” and bidding war starts.

What this does, by having a register of contracts, is that allows you to know the state of a contract and what the price is actually. Is that unreasonable? Is that a fetter of your right to property or interest? No, it is not because all that it is, just like Sen. Sobers said, it is reflective of the Roman-Dutch system. The ease of doing business in Jamaica, the ease of doing business in Guyana is simpler because they have a system closer to what we are bringing into law today. The ease of doing business goes in a positive direction for Trinidad and Tobago by having certainty of contract, by having certainty of title, by eliminating fraud, because when people have agreements for sale and they do not agree that it is at an end, they go to court for specific performance or for return of their deposits, they go to court anyway. All that this registration of contracts does is to provide one location in an ease of doing business sense—five minutes?

Madam President: Five minutes, Attorney General.

Hon. F. Al-Rawi: Much obliged. One location for ease of doing business that the registry can find. Somebody raised the issue as to whether your professional indemnity insurance would go up. No, it would go down. Why?—because number one, you have certainty of transactions. The attorney has a better understanding of the risk on the title, for the first time ever. The attorney has a certainty that if an agreement is not registered, there is none. The attorney has a certainty that if the conveyance is not registered that there ought to be a reason. If the reason is not there because we provide for the ability to give reasons. If the reason is not there, it means that there is no further transaction on the property. So the risk on the title is better managed and we therefore allow for a reduction in professional indemnity insurance, and a better position.

But, Madam President, who could have complaint with an attorney-at-law being under a positive obligation in law, a statutory duty to tell a purchaser what the risk of the transaction is? Who could complain with that? When we often see at the Disciplinary Committee people coming forward, clients coming forward to bring their attorneys before the committee, complaining that the lawyer did not exercise proper professional diligence in explaining transactions. This is a protection for the lawyer, this a protection for the client, it is a protection by way of certainty on the title.

Let us deal with the cost of the transactions itself. Madam President, that is why we did a precedent of forms. Attached to the law before us the Bill, we have a compendium of forms. Forms A, B, C, D, E, E1, E2, et cetera, G, H, I. We have “precedented” the forms to make it easy to give notification.

Now, some people may ask, “Well, if you are going to go for an electronic system and there is a query on the title, how do you deal with that”? Simple, we do that everyday. When you file a company’s document or you file anything under Real Property Act, a query notice is issued and the attorney-at-law is told there is a query on your memorandum of transfer, there is a query on your system, there is a query on your form.

Now, Sen. Hosein was raising the issue about *lis pendens* and caveats. The hon. Senator allowed me to answer the point, I observed that there was a small confusion, I do not think it was intentional. Caveats are solely for real property transactions under the RPA and caveats have a specific system of existence.

We did not go as far as what Sen. Sobers had recommended in the Roman-Dutch system. We actually have it in the Bill but we are proposing by way of amendments to delete it, where the registrar determines whether the agreement for sale is over, you establish a priority listing, we have deleted all of those things because of the complaint that would be the Register General exercising a quasi-judicial function, so we took it out. In the amendments you will see that we proposed that, but whether a contract amounts to *lis pendens de facto*.

Look, is a purchaser going to be put off by the fact that somebody has an agreement for sale that is not yet at an end; that is very simple to manage. Better contract provisions which is why we have said, attorneys-at-law are to be the people to handle agreements for sale. Attorneys-at-law know that they charge anywhere between \$500 or \$750 for an agreement for sale. And I want to say this, real estate agents, when they do these transactions, or Justices of the Peace, real estate agents earn up to 3, 5 or 7 per cent on the transaction, attorneys-at-law earn

under 0.75 five per cent of the transaction, their fees are strictly regulated.

Madam President, I will end by saying this. Under the FIU, it is not sufficient. Of the 5,000 lawyers on the roll of attorneys-at-law, we only have 700 lawyers registered at the FIU, it is just not good enough. This law is designed to kill corruption, better certainty of transactions and protect interests in this country, it will ease the doing of business, and it is appropriate. In those circumstances, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: So, at this stage, the list of amendments circulated on behalf of the Attorney General, and I am seeing that Members are receiving them, the list. Sen. Mark, I believe you have a list of amendments as well which will be circulated shortly.

Sen. Mark: Madam Chair, why did the Attorney General not circulate these things at the beginning at our debate? I am now seeing, you know—

Madam Chairman: Well, before I call on the Attorney General to respond, I believe that a marked-up copy of the Bill—

Sen. Mark: This is not a copy?

Madam Chairman:—with these amendments—

Sen. Mark: Okay.

Madam Chairman:—have been circulated. So the amendments still have to be circulated separately. Correct, Attorney General?

Sen. Mark: So this is the marked-up version, Attorney General?

Mr. Al-Rawi: So, Madam Chairman, thank you so much. We did much better than just circulate the amendments, we went as far as to put it in the context of the Bill. So last week, because we had met with the Law Association and we knew that we wanted amendments, we did not want to catch Senators by surprise. So what we did is we thought it easier for Senators to read the proposed amendments in the Bill as marked up, so we sent a colour-coded marked up with amendments in red with strikethroughs, et cetera. And, in fact, all of the Opposition Senators have referred to those amendments in the course of this debate. So what is now circulated is reflective of exactly what is in that marked up version of this Bill.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Yes. Madam Chairman, in the beginning of my presentation in piloting the Bill, I noted for the public record that the Law Association had written to me, the President of the Law Association by way of letter of today's date. In that letter, the President of the Law Association thanked me for meeting with the Law Association on the several occasions and noted that we would be sitting to debate the Bill today.

In speaking with the Law Association, they have asked for one further meeting to narrow a few issues between us and in those circumstances, we proposed and we did today, complete the debate, we are now at committee stage. What we are asking for—and the Leader of the House will treat with just now—is that we adjourn this committee of the whole to allow for that final meeting with the Law Association, and that we will continue this committee stage subject, of course, to the President's ruling on another occasion which we expect to be next week.

Madam Chairman: Sen. Mark.

Sen. Mark: Madam Chair, and Attorney General, I have been advised that there were some discussions surrounding this matter and that the view was expressed, because of the gravity and the complexity of the proposed changes, that it ought to have been referred to a select committee of the Senate rather than just adjourning and having another face-to-face discussion with the Law Association. So, I do not know if we are getting mixed signals but I would have preferred, because of the gravity and the far-reaching nature of this legislation, that we could have placed it before, not a joint select committee, but a special select committee.

Mr. Al-Rawi: Madam Chair, that has not been the suggestion of the Law Association. We have been in consultation with all stakeholders since 2017 on this law. We are now in 2020. We have spent umpteen hours in particular with the Law Association. We dealt with the Bankers Association, the FIU, the Chief State Solicitor, a wide host of stakeholders. The Law Association, we spent two Zoom meetings that Sen. Rambharat raised in his contribution, we spent two hours discussing the word “mortgage”, so we have had deep consultation with them. They have, as I understand it, one issue left, the issue of the contract because the amendments that we see circulated are largely from the Law Association’s comments coming from their committee.

This particular provision is not a complicated law that we are doing. We are leaving the law of equity exactly as it is, the effective date exactly as it is. We are asking for deeds to be registered within 12 months or 24 months, depending upon extension, and we are leaving the common law largely exactly the way it is.

Further to that, we are only adding in, if you have an expressed agreement for sale, register that as well. Those are the two things that we are doing, nothing more than that.

Sen. Mark: Madam Chair, is the Attorney General asking that the committee's deliberations be postponed or adjourned until next week? Is that what I am being told?

Madam Chairman: I think what I am hearing, yes, I think the Attorney General is saying that the deliberations of the committee will proceed next week. Attorney General, is that correct?

Mr. Al-Rawi: Yes, Madam President, to allow the Law Association to make one last meeting which we are doing. Sen. Vieira said something, he said he would like to have the imprimatur, if it is possible, of the Law Association; 95 per cent, if not 99 per cent represents their imprimatur. Out of an abundance of caution and in deference to the Law Association's request, the Government wishes to have one more meeting with them. They, in fact, held meetings with the Opposition and with the Independent Bench, and therefore, we want to have that meeting with them so that we can make sure that we know exactly what our issues are, if any.

Sen. Mark: Okay.

Madam Chairman: Hon. Senators, at this stage, there are some technicalities that the Attorney General will now treat with.

Mr. Al-Rawi: Madam, at this point may I?

Madam Chairman: Yes.

Mr. Al-Rawi: So, Madam Chair, in accordance with Standing Order 68(14), I beg to move that progress on the Bill be reported to the Senate.

Question put and agreed to.

Senate resumed.

Hon. Al-Rawi: Thank you, Madam President. Madam President, I wish to report that a Bill entitled an Act to amend the Registrar General Act, Chap. 19:03, the

Misc. Prov. (Registrar. Gen., Reg. of Deeds,
Conveyancing & Law of Property, Real Property,
Stamp Duty & Reg. of Title to Land) Bill, 2020 (cont'd)

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Registration of Deeds Act Chap.19:06, the Conveyancing and Law of Property Act, Chap. 56:01, Real Property Act Chap. 56:02, the Stamp Duty Act, Chap. 76:01 and the Registration of Title to Land Act, 2000, was considered in committee, however, the deliberations on the Bill were not concluded. I therefore seek leave of the Senate to resume the committee stage on—is that Monday?—on June 09, 2020.

Question put and agreed to.

Madam President: Leader of Government Business.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Wednesday, June 03— that is tomorrow— Wednesday, June 03, 2020 at 10.00 a.m. During that sitting we plan to do the House amendments on the Interception of Communications (Amdt.) Bill, and time permitting we will attempt to do the Urban and Regional Planning Profession Bill, 2019.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised. Sen. Mark.

3.15 p.m.

Bacteriological Weapons Convention Action of 2012

(Promulgation of)

Sen. Wade Mark: Thank you, Madam President. Madam President, it will be recalled that on the 15th of May, 2019, just over a year ago, and following a successful regional Caricom workshop held here in the Parliament, and supported by the Government of Canada, I took the opportunity to table a resolution before

this honourable Senate enquiring as to the continued failure by the Government to promulgate the Bacteriological Weapons Convention Action of 2012. At the time, and given the resolution outlined, I sought to highlight in particular the public safety and public security implications of this very important Act of 2012, noting in connection therewith, the growing risk of biological weapons in the global community of today.

Madam President, fast forwarding 12 months later and given developments pertaining to COVID-19 in the last five months in Trinidad and Tobago, and around the world, I do not believe I need to dwell too long on the fact that the continued failure by the Government to promulgate this crucial Act now represents a clear and present danger to the people of Trinidad and Tobago. Madam President, while this Act may focus more specifically on deliberate biological attacks, it is to be observed that had full promulgation and implementation taken place closer to the date of adoption of this Act, now some eight years later, because it took place in 2012, certain provisions therein may well have been of some useful application in the context of the current pandemic and the challenges it poses to us in this country.

Madam President, legislation implemented to address deliberate, biological attacks can also mitigate the risk of unintentional biological weapons attack. Madam President, here I would like to draw to the attention of this honourable Senate, in particular, to Articles 7 and 10 of the Biological Weapons Convention itself. It should also be noted that in the past three months considerable and more credible reputable international commentary is now emerging, highlighting that the likelihood of the next pandemic being deliberately, not accidentally, induced, is much more probable and likely than heretofore, has perhaps been the case. And

therefore, Madam President, non-state actors, including terrorist organizations, have not been blind to the effects of the pandemic that the country and the globe has been experiencing. Here in Trinidad and Tobago we have not been strangers either to the threat of this development or terrorism in this land. Madam President, in light of what I have advanced, I am again requesting of the hon. Minister of Foreign and Caricom Affairs to inform this Senate as to what steps, if any, have been taken to address the issues that he indicated still require treatment before the Act could be proclaimed in the intervening 12 months since we last discussed this matter in this honourable Chamber.

Madam President, the well-being and basic safety of the people of Trinidad and Tobago deserve nothing less, and therefore, Madam President, I would like to call on the hon. Minister of Foreign and Caricom Affairs to really address this issue and to really advance to this Senate, where do we stand as a country both in terms of the promulgation, the issuance of regulations, as well as what was highlighted when the hon. Minister last addressed this Senate, that there are some issues that have emerged that require treatment before the Act can be proclaimed, and he went on to say, Madam President, in closing, we continue to persevere to achieve the laudable aims of the convention.

So, Madam President, this is my submission. It is the third time in five years I have raised this matter and I am hoping that the hon. Minister would be able to bring some kind of finality to this very important matter. I thank you very much, Madam President.

The Minister of Foreign and Caricom Affairs and Minister in the Ministry of National Security (Sen. The Hon. Dennis Moses): Thank you very much, Madam President. Indeed it falls to me to bring some enlightenment to a matter

Bacteriological Weapons Convention
Action of 2012 (Promulgation of)
Sen. The Hon. D. Moses (cont'd)

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that comes from a period of 2012. Indeed, years would have passed, 2013, '14, '15, and it continues.

Madam President, the Bacteriological (Biological) and Toxic Weapons Act, 2012, was created to give legal force to the convention and the prohibition of the development, production and stockpiling of bacteriological and toxin weapons and on the destruction to which Trinidad and Tobago acceded in July of 2007. Among the stipulations of the Act is the requirement to establish a biological and toxin weapons committee which is to consist of competent professionals from several fields to accomplish its work. This has to be accomplished before the Act may be proclaimed. Unfortunately, addressing the challenges that have arisen and have precluded taking the actions required to facilitate proclamation and subsequent operationalization and implementation of the Act, has become a more protracted exercise than anticipated.

Madam President, renewed efforts will certainly be expended by the relevant entities towards ensuring that the necessary action is taken to allow for the proclamation of Act No. 4 of 2012. I thank you. [*Desk thumping*]

Madam President: Sen. Mark.

Public Procurement Legislation
(Promulgation of)

Sen. Wade Mark: Madam President, the other matter that I wish to bring to your attention and to this honourable House, and Senate, that is, is the need for the Government to address almost post haste. Madam President, it is almost the end of this PNM period of service over the last five years since they were elected to run this country, and they came on a platform of morality in public affairs. They accused the outgoing administration of bid-rigging, and corruption, and lack of

transparency and accountability. This Government, Madam President, close to five years in office, having told the country that they will, as a matter of urgency upon entering office, operationalize by proclaiming the public procurement and public disposal of land legislation. Madam President, that was old talk by the PNM to fool and to mamaguy the population. It is now five years later, Madam President, and this public procurement law has not been proclaimed in its entirety. It has not been operationalized, and at the same time, Madam President, billions, upon billions, upon billions of moneys, public moneys, have been spent, have been expended by this Government without any serious tendering and/or procurement procedures.

Madam President, whether it is the purchase of fast ferries out of Australia, whether it has to do with two Cape Class vessels that are costing the country \$300 million that it cost the very Australians to purchase some time ago, whether it is contracts issued to deal with road works, whatever element of contract that is involved, as we witnessed during COVID-19 lockdown, where the Government came to this Parliament, got \$11 billion from the Heritage and Stabilisation Fund, amended the loans Act to get another \$10 billion, and, Madam President, they have been spending moneys as if it is going out of style without any form of accountability, \$20 billion they have taken from us. We do not know where that money has gone. We do not know how they have spent that money. What we do know is that there are companies that are getting billions and billions of dollars to raise in loans for this Government. I refer to NCB Global Finance that has been given contract after contract and without any transparency or accountability. Madam President, I was shocked to see this fly-by-night organization whose balance sheets was less than \$80 million in 2015, their asset base was \$80 million, and today through government loans, and government contracts, and government

activity that organization is our multi-billion dollar outfit. You know the last time, Madam President, they were called upon to raise a bond valued at \$1.5 billion for this country.

Madam President: Sen. Mark, I normally do not interrupt when these Motions are progressing, but I may be mistaken but I think that this specific matter you are treating with right now was dealt with on a previous Motion in this Senate.

Sen. W. Mark: Madam President, I am dealing with procurement.

Madam President: You are dealing with procurement, but you are now going into an issue that has already been debated. *[Interruption]* No, “doh argue with me nah”. Sen. Mark, continue with your Motion, but proceed.

Sen. W. Mark: So, Madam President, the reality is that the Government has not been able to proclaim the law, and that is why all these things are happening before your very eyes and before the people's eyes. Madam President, may I remind this honourable Senate that on the 28th of February, 2020, the Minister of Finance told the Parliament, and I quote:

“The last correspondence from the regulator was received by the Minister of Finance on the December 18, 2019...

Following that letter of December 18, 2019, the draft regulations and proposed amendments to the Act was submitted to Cabinet and sent to the Legislative Review Committee for final review.”

That was in February of this year, Madam President. He said:

“Barring unforeseen circumstances, it is anticipated that the final amendments to the Act will be laid and debated in Parliament by March of 2020, followed by the regulation shortly thereafter.”

Madam President, March has come and gone. March of 2020 has come and gone

and there are no regulations tabled in this Parliament, and there is no final amendments to the Act as was proclaimed and indicated by the Minister of Finance.

Madam President, the absence of the proclamation, full proclamation, because when we were there in 2014 certain aspects and elements and/or provisions of the legislation were proclaimed, but it was left up to the incoming administration to do the final proclamation and operationalization of the legislation. But, Madam President, we have not been lucky under this Government. The Government has failed and they have a lot to answer. They have a lot to answer, because, Madam President, if you want to deal with corruption, if you want to deal with waste, if you want to deal with widespread wastage of our resources, and theft of public money, we need, Madam President, to ensure that the public procurement legislation is proclaimed, is operationalized, and in action.

So today I am calling on the Government to take action, because it will take a new administration led by the UNC to actually promulgate and operationalize the actual Act that I am dealing with here today. The Government has failed to do it, and I call on the Government and whoever the spokesman this evening, to give this Parliament and this Senate a clear, unambiguous, unequivocal commitment that they are going to actually proclaim and operationalize the public procurement law. The people are crying out. Justice demands that that be done, Madam President. We can no longer continue with this slap-dash approach to public moneys in this country. And, Madam President, we have spent close to \$300 billion and there has been no real public procurement legislation to look at how the Government has been spending our money in terms of awards of contracts in this country.

Madam President, I thank you very much.

Public Procurement Legislation
(Promulgation of)
Sen. The Hon. C. Rambharat

2020.06.02

Madam President: The Minister of Agriculture, Land and Fisheries.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I am happy to be here, because if I was a stranger listening at home I ran the risk of being convinced by what I call the dubious, frivolous and foolish Motion.

Madam President, there is nobody better positioned in this House, possibly in this Parliament, to understand the oversight for public procurement even in the absence of the new legislation than Sen. Mark. I do not think we have had a situation in history of this Parliament where a Member has served as Sen. Mark serves now on the PAAC, the public committee that deals with expenditure of public funds based on the allocation in the budget; Public Administration and Appropriations Committee. He sits on the PA(E)C, he sits on the PAC, and he sits on the committee on state enterprises.

And Sen. Mark must know that this Government and no Government operates in the absence of procurement legislation, regulation and oversight. The Central Tenders Board continues to exist. The Defence Force Act contains provisions for procurement to be done for the military. The state enterprises have rules governing their procurement, the RHA—enshrined in the legislation creating the RHAs have rules relating to procurement. So, this Government has not been operating in the absence of procurement legislation, regulation, oversight, including oversight from my friend Sen. Mark.

The second point I would make, Madam President, is that he has used this sling-shot Motion to continue to promulgate a massive piece of misinformation relating to NCB. And I just want to say one thing, Madam President. I sit in the Cabinet, and I see those Notes when they come, and Sen. Mark every time you cast

aspersions on the funding and the awards of mandates to fund, you are casting aspersions on the Permanent Secretary in the Ministry of Finance and those public servants. [*Interruption*] Those are the ones.

And then the third thing I want to say is this, because that is where the recommendation comes from, and you know because you were a former Minister and you were in a cabinet. I “doh” know, you could be sleeping in Cabinet or anything like it. And the third thing is this. This story about delay, within the first two months of coming into Government, we laid a Bill to amend the procurement Act of 2015, and that had to deal with removal of the regulator, reporting to the PAC, and the disposal of state lands. That Bill was referred to a Joint Select Committee, and completed its process and was passed, assented, in June 2016.

So, the first 10 months went in preparing the Bill and getting it through this parliamentary process. Fifteen months after we came into Government we had a second Bill, laid on 19th December, 2016, that had to do with reducing the term of the regulator. That was assented March 2017. The board now being in a position, His Excellency at the time, to appoint a board, the board was appointed on 12 January, 2018. The first employee was hired July 01, 2018, and the first meeting the Office of the Procurement Regulator had with the Ministry of Finance was 26 October, 2018. So, it took three years and one month for the Procurement Regulator to meet with the Minister of Finance, the Chief Parliamentary Counsel and the Solicitor General. And that is because of things that had to be done.

The first submission of the draft regulations was in November 2018. And, Madam President, that is almost 14 months after we came in office we received the first draft. There were meetings between the Procurement Regulator and the Ministry of Finance, and 83 days after receiving the first draft, the Ministry of

Finance submitted comments to the OPR. Thereafter there were exchanges between the OPR, the Ministry of Finance, leading up to the completion of the technical review by the Ministry of Finance of the regulations, the draft regulations, in June 2019. Thereafter, Madam President, in September 2019, the regulations, the draft regulations, were submitted to the Cabinet and referred by the Cabinet to the Legislative Review Committee. And in March 2020 the LRC commenced its work with the Office of the Procurement Regulator on the regulation and on certain proposals to amend the parent Act, and I would say, Madam President, yesterday, while the LRC was meeting, we received from the Office of the Procurement Regulator the feedback on the proposals to amend four sections of the parent Act. And, we also recently received the regulations, the latest version of the regulations, which are being reviewed by the CPC.

Madam President, this Government, and the Minister of Finance in particular, contrary to what Sen. Mark, because he never did embark on that Motion. He was all over the place, contrary to any suggestion he has made relating to delinquency or delay, I have set it out exactly how we have proceeded. The Government intends to lay in the Parliament the amendments, a Bill to make the amendment. We intend to lay the regulations, and the Government intends as promised, to deal with having in place this new procurement regime. But I close by saying, there currently exists a procurement regime used by my friends when they were in Government and used by us, with all the oversight mechanisms in place, including oversight by this Parliament. I thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned according.

Adjourned at 3.43 p.m.